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Tuesday
May 15, 1979

Highlights

Telecommunications Device for the Deaf—Office of the Federal Register provides a new service for deaf or speech impaired persons who need information about documents published in the **FEDERAL REGISTER.** See the Reader Aids section for the telephone listing.

28606 Agriculture Production and Commercial Fishing DOE/ERA adopts amendment to provide middle distillates for period through 7–31–79; written comments on ground passenger mass transportation by 5–21–79, written comments other issues by 6–15–79, requests to speak by 5–16–79, oral statements by and hearing on 5–18–79, (Part X of this issue)

28280 Nutrition Education and Training Program USDA/FNS finalizes rules to combine requirements for implementation and operation of program; effective 5–15–79

28594 Powerplant and Industrial Fuel Use DOE/ERA establishes interim rules regarding prohibition against increase use of petroleum by existing electric powerplants; effective 6–15–79, comments by 8–15–79, (Part VIII of this issue)

28530 Powerplant and Industrial Fuel Use DOE/ERA issues interim rule regarding definitions and administrative procedures and sanctions; effective 5–8–79, comments by 8–15–79 (Part IV of this issue)

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Highlights

28588 **Federal Mine Safety and Health** Labor/MSHA establishes procedures and requirements for applying for, receiving, and administering State grants; effective 6–14–79, (Part VII of this issue)

28600 **Targeted Jobs Demonstration Program** HUD/CPD announces that letters of intent are being accepted for competition for grants; effective 5–15–79, (Part IX of this issue)

28558, 28564 **Toxic Substances Control** EPA issues Initial Inventory and interim rules regarding premanufacturing notification requirements and review procedures; comments by 6–14–79, (Part V of this issue) (2 documents)

28524 **Floodplain Management** DOD/Engineers prescribes policies and procedures; effective 5–15–79, (Part III of this issue)

28318 **Securities Investor Protection** SEC adopts rules designating financial responsibility; effective 5–15–79

28328 **Compensation Rate Increase** VA amends pension and parents' dependency and indemnity compensation rates; effective 6–1–79

28395 **Ethics in Government** Commerce/Secy publishes interim procedures for public inspection and copying of financial disclosure reports; effective 5–15–79

28286 **Food Service Equipment** USDA/FNS apportions assistance funds among States in compliance with Child Nutrition Act; effective 5–15–79

28287 **Food Program** USDA/FNS issues final decision concerning formula for determining funding level for each State agency participating in Special Supplemental Food Program for Women, Infants and Children; effective 5–15–79

28468 **Sunshine Act Meetings**

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28474 **Part II, USDA**
28524 **Part III, DOD/Engineers**
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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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

Excepted Service; Department of Transportation

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment reestablishes under Schedule C one position of Special Assistant to the Director, Office of Public and Consumer Affairs. This position was formerly titled Special Assistant to the Director, Office of Public Affairs.

EFFECTIVE DATE: March 16, 1979.

FOR FURTHER INFORMATION CONTACT: William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3394(a)(35) is reestablished as set out below:

§ 213.3394 Department of Transportation.

(a) Office of the Secretary. * * *

(35) One Special Assistant to the Director, Office of Public and Consumer Affairs.

* * * * *

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

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

[FR Doc. 79–15132 Filed 5–14–79; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Part 213

Excepted Service; Department of Commerce; Department of Housing and Urban Development

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment (1) excepts under Schedule C certain positions at the Department of Commerce and Department of Housing and Urban Development because they are confidential in nature and (2) changes the headnote of the National Fire Prevention and Control Administration to U.S. Fire Administration. Appointments may be made to these positions without examination by the Office of Personnel Management.

EFFECTIVE DATE: April 4, 1979.

FOR FURTHER INFORMATION CONTACT: William Bohling, 202–632–4533.

Accordingly, the headnote of 5 CFR 213.3314(u) is amended and 213.3314(u)(4) and 213.3384(j)(6) is added as set out below:

§ 213.3314 Department of Commerce.

* * * * *

(u) *U.S. Fire Administration.* * * *

(4) One Deputy Administrator.

* * * * *

§ 213.3384 Department of Housing and Urban Development.

* * * * *

(j) *New Community Development Corporation.* * * *

(6) One Deputy General Manager.

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

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

[FR Doc. 79–15133 Filed 5–14–79; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Part 213

Excepted Service; Federal Labor Relations Authority

AGENCY: Office of Personnel Managment.

ACTION: Final rule.

SUMMARY: This amendment excepts under Schedule C a position because it is confidential in nature. Appointments may be made to this position without examination by the Office of Personnel Management.

EFFECTIVE DATE: March 30, 1979.

FOR FURTHER INFORMATION CONTACT: William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3392 is added as set out below:

§ 213.3392 Federal Labor Relations Authority.

(a) *Office of the Chairman.* (1) One Confidential Secretary to the Chairman.

* * * * *

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

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

[FR Doc. 79–15134 Filed 5–14–79; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Part 213

Excepted Service; Department of Housing and Urban Development

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is twofold: (1) To except under Schedule C two additional secretarial positions on the basis that they are confidential in nature and (2) to change the titles of eight existing Schedule C positions due to a change of supervisors. Appointments may be made to these positions without examination by the Office of Personnel Management.

EFFECTIVE DATE: March 9, 1979.

FOR FURTHER INFORMATION CONTACT: William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3384(a) (9) and (12) are amended, (a) (62) and (65) are revoked and (a) (70) and (71) are added as set out below:

§ 213.3384 Department of Housing and Urban Development.

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

(9) One Special Assistant to the Under Secretary. * * *

(12) One Special Assistant to the Secretary. * * *

(62) / Revoked /. * * *

(65) / Revoked /. * * *

(70) One Secretary (Steno) to the Executive Assistant to the Secretary (Special Projects) and four Special Assistants to the Secretary (Special Projects).

(71) One Secretary (Steno) to the Executive Assistant to the Secretary (Operations) and four Special Assistants to the Secretary (Operations).

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

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

[FR Doc. 79-15135 Filed 5-14-79; 8:45 am]

BILLING CODE 6325-01-M

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5 CFR Part 213

Excepted Service; Department of Health, Education, and Welfare, Environmental Protection Agency

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment excepts under Schedule C certain positions at the Department of Health, Education and Welfare and Environmental Protection Agency because they are confidential in nature. Appointments may be made to these positions without examination by the Office of Personnel Management.

EFFECTIVE DATE: April 3, 1979.

FOR FURTHER INFORMATION CONTACT: William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3316(a)(46) and 213.3318(b)(9) are added as set out below:

§ 213.3316 Department of Health, Education, and Welfare.

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

(46) One Confidential Assistant to the Executive Secretary.

§ 213.3318 Environmental Protection Agency.

* * * * *

(b) *Office of Legislation.* * * *

(9) One Special Assistant to the Director.

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

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

[FR Doc. 79-15136 Filed 5-14-79; 8:45 am]

BILLING CODE 6325-01-M

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5 CFR Part 213

Excepted Service; Department of State, General Services Administration

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment excepts under Schedule C certain positions at the Department of State and the General Services Administration because they are confidential in nature. Appointments may be made without examination by the Office of Personnel Management.

EFFECTIVE DATE(S): Department of State—March 21, 1979; General Services Administration—March 30, 1979.

FOR FURTHER INFORMATION CONTACT: William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3304(a)(36) and 213.3337(a)(24) are added as set out below:

§ 213.3304 Department of State.

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

(36) One Staff Assistant to the Senior Advisor to the Secretary.

* * * * *

§ 213.3337 General Services Administration.

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

(24) One Confidential Assistant to the Director, Information Security Oversight Office.

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

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

[FR Doc. 79-15137 Filed 5-14-79; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 227

Nutrition Education and Training Program; Final Regulations

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: These final regulations combine the requirements for the implementation and operation of the Nutrition Education and Training Program set forth in the interim regulations published in the **Federal Register** on March 24, 1978 (43 FR 12296-12299) and on June 9, 1978 (43 FR 25132).

These regulations govern the application for funds by the State agency, the needs assessment, the development of the State plan, and other operational requirements. Minor changes have been made to the interim regulations to govern the operation of the Program on a continuing basis.

DATE: These regulations shall become effective on May 15, 1979.

FOR FURTHER INFORMATION CONTACT: Audrey Maretzki, Director, Nutrition and Technical Services Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-9081.

SUPPLEMENTARY INFORMATION:

Analysis of Comments

The interim regulations published on June 9, 1978, provided a forty-five day comment period for both the March 24 and June 9, 1978 regulations which closed on July 24, 1978.

The Department received 65 comments in response to the interim rulemaking. The comments addressed three major areas of the Program: (1) The State Coordinator's minimum qualifications, (2) the time frame for obligating fiscal year 1978 funds, and (3) the dissemination of scientifically valid information. A summary of the comments follows:

1. *The coordinator's minimum qualifications*

The Department received 28 comments regarding the minimum qualification requirements for the State Coordinator. The majority of the commentors (25) were nutritionists or dietitians who stated that the qualifications were not specific enough in regard to the academic preparation in nutrition for the Coordinator. These commentors suggested that a degree in foods and nutrition at either the undergraduate or graduate level should be required. The Department also received numerous oral comments regarding this issue. State educational agency staffs stated that the Federal Government should not be establishing qualifications for State agency personnel.

The State Coordinator's qualificaton requirements were a major concern in the development of the interim regulations. The minimum qualifications that are required in the regulations provide State agencies with the hiring authority to employ a State Coordinator but still assure that the individual appointed has knowledge and experience in areas necessary to implement the Program. Placing any additional requirements on the State Coordinator position would restrict the State agencies' hiring practices. The Department does not believe that the regulations for the State Coordinator's qualifications should be changed.

2. *Timeframes for obligation of fiscal year 1978 funds*

The Department received 13 comments regarding this issue. Section 227.5(g) of the interim regulations stated that any unobligated funds as of September 30 are to be returned to the Food and Nutrition Service (FNS). The commentors requested the Department to allow States to carry over any unused or unobligated funds into fiscal year 1979. The Department has taken action

on this issue. A policy memorandum regarding the obligation of funds in 1978 was issued on September 13, 1978, stating that all funds to which a State is entitled under a State plan approved before midnight September 30, 1978, were thereby obligated in fiscal year 1978 regardless of the State's ability to commit these funds by September 30, 1978. This policy statement addressed the commentors concerns for fiscal year 1978 and requires no regulatory action.

3. *Insure scientifically valid information is disseminated in the program*

Seven commentors raised this issue for consideration. The commentors requested that the Department require the dissemination of scientifically valid information in this Program. Their concern is that the Department will emphasize information that urges decreased consumption of red meats and that such information is not scientifically valid. The Department has no such intention. Moreover, the Department believes that the type of information disseminated through this Program is the prerogative of the State agencies.

4. *Compliance with title IX of education amendment of 1972 (20 U.S.C. 1681–82)*

The Department received one comment regarding this issue. The commentor recommended that the regulations address the applicability of title IX to this Program. State agencies will be required to comply with title IX. The U.S. Department of Agriculture and the U.S. Department of Justice have agreed to issue one set of regulations governing compliance with title VI of the Civil Rights Act and title IX of the Education Amendments of 1972. The Department plans to amend these regulations, part 227, adding a section governing title VI and title IX compliance at the time of the issuance of the regulations governing title VI and title IX.

Changes in Regulations

The interim regulations were designed to initiate the Program in two phases. Special provisions were made for the first year of operation. In order to provide State agencies with the opportunity to begin operating a Nutrition Education and Training Program as soon as possible, advance funding was made available to State agencies for hiring a Coordinator, and for conducting a needs assessment and developing a State plan. The final regulations reflect several minor revisions from the interim regulations as a result of the experience gained in the Program's first year of implementation. These revisions are as follows:

1. *Agreement form.*—The interim regulations required the State agency to submit and execute the Form AD–623 "Application for Federal Assistance (Nonconstruction Programs)." For the first year of participation in the Program the form served as the written agreement between the Department and the State. The form also provided a mechanism by which to advance funds to the State agencies for hiring a State Coordinator, and for conducting a needs assessment and developing a State plan. Since the Federal-State agreement form (FNS–74) used in all other Child Nutrition Programs administered by the Food and Nutrition Service, USDA, has been revised to include the Nutrition Education and Training Program, this form (FNS–74) will now serve as the Federal-State agreement. The State plan for Nutrition Education and Training will serve as the application document for Program funding on a fiscal year basis. However, in the first year of participation a State agency should use the Form AD–623.

2. *Responsibilities of State agencies.*—The interim regulations did not require the State agencies to comply with OMB Circular A–95, part III. OMB Circular A–95, part III requires a State agency to submit the Plan to the governor for comment or approval. This requirement has been added to the final regulations.

3. *Evaluations.*—Although the interim regulations did not contain a specific section on evaluations, further clarification is required in the final regulations. State agencies are required to conduct an ongoing need assessment. This process should serve to evaluate how effective their activities are in reaching their goals and objectives. The results of these evaluations should serve as the basis for the development of the State plan and are required as part of the State plan submission. The final regulations add a new paragraph § 227.31(c) concerning the issue.

4. *Funds.*—Funds to implement the Program are available on a Federal fiscal year basis. Therefore, for a State educational agency to receive prior to the beginning of the Federal fiscal year. The final regulations specify that State plans are to be submitted prior to the beginning of the fiscal year and that the Secretary shall designate a date by which State plans must be received by the Department. However, for the first year of participation the State agency is allowed nine months from the award of the planning and assessment grant to submit a State plan.

5. *Needs assessment.*—The interim regulations required States to conduct a needs assessment. Questions have been raised whether this is a continuous process. The final regulations specify that the needs assessment is an ongoing process. The goals and objectives of the State plans are to be based on the findings of the updated needs assessment and evaluations of previous years' plans.

6. *State coordinator.*—Due to personnel ceiling constraints, several State agencies have been unable to hire full-time coordinators. The final regulations have been made flexible to allow States to hire a State Coordinator through a contract with an individual. However, the State agency is not permitted to contract with an organization to obtain the services of a State Coordinator. The overall administration of the Program continues to be the responsibility of the State agency.

7. *State Plan Requirements.* The Form Ad–623 is being discontinued as the application form for those States which previously participated in the Program. This form provided the Department with budget information. The State plan requirements now compel States to submit a budget with their plan. The interim regulations also required States to establish management evaluations and review procedures and a financial management system. However, the regulations did not provide for description of these required components in the State plan. Accordingly, final regulations require States to provide a description of their plans to establish management evaluations and review procedures and a financial management system in their State plan. During the review of fiscal year 1978 plans, the Department determined that the information required in interim regulations § 227.37(b)(12) (i) and (ii) was repetitious with the information required in § 227.37(b) (9) and (10). Therefore, the content previously required in § 227.37(b)(12) (i) and (ii) is incorporated into the requirements for § 227.37(b) (9) and (10). The requirement under § 227.37(b)(12)(ii) is retained to obtain a description of State agency plans to conduct pilot projects not under contract.

Other Areas of Concern

The Department has received questions regarding the following areas:

1. *Definition of "Reaching all Children" § 227.37(b)(7),* Pub. L. 95–166 mandates that each State plan shall include "plans for reaching all students

in the State with instruction in the nutritional value of foods and the relationship among food, nutrition, and health." Reaching all children with nutrition instruction is more than distribution of nutrition leaflets and brochures. Reaching children with nutrition instruction should involve direct motivational approaches that encourage the application of sound nutrition information to the improvement or maintenance of good dietary practices.

The Department recognizes that not all children within a State can be reached with nutrition instruction in one or even two years. The ultimate goal for the Nutrition Education and Training Program is to reach all children. The State plans should include a description of how many children will be reached during the fiscal year with available funds and how the State is planning to expand the Program to reach additional children in subsequent fiscal years. The States are asked to provide an estimate of the number of children that can be effectively reached with resources available.

2. *Participation of Private Schools and Child Care Institutions.* If a State agency receives funds based on all children enrolled in public and nonprofit private schools and institutions, the regulations require that the State make the Nutrition Education and Training Program available to those schools and institutions. The Department has made special efforts to insure the participation of private schools and child care institutions in the Program. Fiscal year 1978 State plans were reviewed with particular emphasis on the participation of these institutions in the State-planned activities and programs. If States did not adequately consider these institutions in their planned activities, they were required to submit additional information on how these institutions would be reached before their State plan for fiscal year 1979 could be considered for approval. In addition, the management evaluation process to be conducted for each State by the Regional Offices of the Food and Nutrition Service will assist States in reaching private schools and child care institutions with nutrition education and training activites.

3. *Definition of Training concerning "Preservice" versus "Inservice".* § 227.37(b)(2) of the regulations limits training for teachers and foodservice personnel to inservice training. Nutrition Education and Training Program funds are to be used only for training those teachers and foodservice personnel who are currently employed with the schools and institutions in that State. Training under the Program is not to include those individuals who are preparing for a career in teaching or foodservice.

4. *Use of State and Local Advisory Councils.* The State advisory council should include representatives from all the groups listed in § 227.37(b)(6), including consumer and advocacy groups concerned with child nutrition, nutrition education and training. As nutrition education and training programs are implemented by local educational agencies and sponsoring agencies, it would be desirable for such programs to form and utilize similar advisory mechanisms. Local nutrition education technical advisory groups can provide valuable information and support for nutrition education and training efforts.

Accordingly, Part 227 is revised to read as follows:

Subpart A—General

Sec.

227.1 General purpose and scope.
227.2 Definitions.
227.3 Administration.
227.4 Application and agreement.
227.5 Program funding.

Subpart B—State Agency Provisions

227.30 Responsibilities of State agencies.
227.31 Audits, Management Reviews, and Evaluations.

Subpart C—State Coordinator Provisions

227.35 Responsibilities of State Coordinator.
227.36 Requirements of Needs Assessment.
227.37 State Plan for Nutrition Education and Training.

Subpart D—Miscellaneous

227.40 Program information.
227.41 Recovery of Funds.
227.42 Grant Closeout Procedures.
227.43 Participation of Adults.
227.44 Managment Evaluations and Reviews.

Authority: Sec. 15, Pub. L. 95–166, 91 Stat. 1340 (42 U.S.C. 1788).

Subpart A—General

§ 227.1 General purpose and scope.

The purpose of these regulations is to implement section 19 of the Child Nutrition Act (added by Pub. L. 95–166, effective November 10, 1977) which authorizes the Secretary to formulate and carry out a nutrition information and education program through a system of grants to State agencies to provide for (a) the nutritional training of educational and foodservice personnel, (b) the foodservice management training of school foodservice personnel, and (c) the conduct of nutrition education activities in schools and child care institutions. To the maximum extent possible, the Program shall fully utilize the child nutrition programs as a learning experience.

§ 227.2 Definitions.

(a) "Administrative costs" means costs allowable under Federal Management Circular 74–4, other than program costs, incurred by a State agency for overall administrative and supervisory purposes, including, but not limited to, costs of financial management, data processing, recordkeeping and reporting, personnel management, and supervising the State Coordinator.

(b) "Child Care Food Program" means the program authorized by section 17 of the National School Lunch Act, as amended.

(c) "Child Nutrition Programs" means any or all of the following: National School Lunch Program, School Breakfast Program, Child Care Food Program.

(d) "Commodity only school" means a school which has entered into an agreement under § 210.15a(b) of this subchapter to receive commodities donated under Part 250 of this chapter for a nonprofit lunch program.

(e) "Department" means the U.S. Department of Agriculture.

(f) "Federal fiscal year" means a period of 12 calendar months beginning October 1 of any calendar year and ending September 30 of the following calendar year.

(g) "FNS" means the Food and Nutrition Service of the Department.

(h) "FNSRO" means the appropriate Regional Office of the Food and Nutrition Service of the Department.

(i) "Institution" means any licensed, nonschool, public or private nonprofit organization providing day care services where children are not maintained in permanent residence, including but not limited to day care centers, settlement houses, after school recreation centers, neighborhood centers, Head Start centers, and organizations providing day care services for handicapped children and includes a sponsoring organization under the Child Care Food Program regulations.

(j) "National School Lunch Program" means the lunch program authorized by the National School Lunch Act.

(k) "Needs assessment" means a systematic process for delineating the scope, extent (quantity), reach and success of any current nutrition education activities, including those relating to (1) methods and materials available inside and outside the classroom; (2) training of teachers in the principles of nutrition and in nutrition education strategies, methods, and

techniques; (3) training of school foodservice personnel in the principles and practices of foodservice management; and (4) compilation of existing data concerning factors impacting on nutrition education and training such as statistics on child health and competency levels achieved by foodservice personnel.

(l) "Program costs" means costs, other than administrative costs, incurred in connection with any or all of the following: (1) The State Coordinator's salary, and related support personnel costs, including fringe benefits and travel expenses; (2) applying for assessment and planning funds; (3) the conduct of the needs assessment; (4) the development of the State Plan; and (5) the implementation of the approved State Plan, including related support services.

(m) "Program" means the Nutrition Education and Training Program authorized by Section 19 of the Child Nutrition Act of 1966, as amended.

(n) "School" means (1) An educational unit of high school grade or under operating under public or nonprofit private ownership in a single building or complex of buildings. The term "high school grade or under" includes classes of preprimary grade when they are conducted in a school having classes of primary or higher grade, or when they are recognized as a part of the educational system in the State, regardless of whether such preprimary grade classes are conducted in a school having classes of primary or higher grade. (2) With the exception of residential summer camps which participate in the Summer Food Service Program for Children and private foster homes, any distinct part of a public or nonprofit private institution or any public or nonprofit private child care institution, which (i) maintains children in residence, (ii) operates principally for the care of children and (iii) if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government. The term "child care institution" includes, but is not limited to: Homes for the mentally retarded, the emotionally disturbed, the physically handicapped, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children; long term care facilities of chronically ill children; and juvenile detention centers. (3) With respect to the Commonwealth of Puerto Rico, non-profit child care centers certified as such by the Governor of Puerto Rico.

(o) "School Breakfast Program" means the program authorized by section 4 of the Child Nutrition Act of 1966, as amended.

(p) "Foodservice personnel" means those individuals responsible for planning, preparing, serving and otherwise operating foodservice programs funded by USDA grants as provided for in the National School Lunch Act and the Child Nutrition Act of 1966.

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

(r) "State agency" means the State educational agency.

(s) "State educational agency" means, as the State legislature may determine: (1) The Chief State School Officer (such as the State Superintendent of Public Instruction, Commissioner of Education, or similar officer), or (2) a board of education controlling the State Department of Education.

§ 227.3 Administration.

(a) Within the Department, FNS shall act on behalf of the Department in the administration of the Program.

(b) Within the States, responsibility for administration of the Program shall be in the State agency, except that FNSRO shall administer the Program with respect to nonprofit private schools or institutions in any State where the State agency is prohibited by law from administering the Program in nonprofit private schools or institutions.

§ 227.4 Application and agreement.

After the initial fiscal year of participation each State agency desiring to take part in the Program shall enter into a written agreement with the Department for the administration of the Program in accordance with the provisions of this Part. The State agency shall execute Form FNS–74, which shall constitute the written agreement.

§ 227.5 Program funding.

(a) *Total grant.* The total grant to each State agency for each fiscal year for Program costs and administrative costs shall consist of an amount equal to 50 cents per child enrolled in schools and institutions within the State during such year, but in no event shall be less than $75,000: *Provided, however,* That a State's total grant shall be reduced proportionately if the State does not administer the Program in nonprofit private schools and institutions. If funds appropriated for a fiscal year are insufficient to pay the amount to which each State is entitled, the amount of such grant shall be ratably reduced to the extent necessary so that the total of the amounts paid to each State does not exceed the amount of appropriated funds. Each State agency which receives funds based on all children enrolled in public and nonprofit private schools and institutions shall make the Program available to those schools and institutions. Enrollment figures shall be the latest available as certified by the Department of Health, Education, and Welfare.

(b) *First Fiscal Year Participation.*— (1) *Assessment and planning grant.* A portion of the total grant shall be made available to each State agency during its first fiscal year of participation as an assessment and planning grant for (i) employing a State Coordinator, as provided for in § 227.30, and related support personnel costs including fringe benefits and travel expenses, (ii) undertaking a needs assessment in the State, (iii) developing a State Plan for nutrition education and training within the State, and (iv) applying for the State assessment and planning grant.

(2) *Advances for the assessment and planning grant.* FNS shall make advances to any State desiring to participate in the Program, to enable the State to carry out the responsibilities set forth in paragraph (b)(1) of this section. Advances shall be made in two phases, in accordance with the following procedures: (i) Initially, State agencies may receive an advance up to $35,000 for the purpose of hiring a State coordinator, as provided for in § 227.30. Application for such an advance shall be made on Form AD–623 when the State agency applies for participation in the Program. The information required for this advance shall be set out in Part III, Budget Information, Section B, Budget Categories. The State agency shall there indicate the funds required for the salary, travel, and fringe benefits of the State Coordinator, and related personnel costs necessary to carry out the duties and responsibilities of the State Coordinator. (ii) After appointment of the State Coordinator, the State agency may receive an additional advance of up to 50 percent of the total grant to which the State agency is entitled for the first year of participation, after deduction of the advance made for the State Coordinator under § 227.5(b)(2), but not to exceed $100,000, for the purpose of undertaking a needs assessment in the State, developing a State Plan for nutrition education and training, and applying for the assessment and planning grant.

Application for such advance shall be made by amending Part III, Budget Information, of Form AD–623.

(3) *Funds for implementing State plan.* (i) States receiving advances. Each State agency shall receive the remaining portion of its total grant in order to implement its State plan, which has been approved by FNS, if the State agency has carried out the responsibilities for which advances were received. With the submission of the State plan each State agency may apply for the funds remaining of its total grant. (ii) States previously participating. Those States which previously participated may apply for their total grant upon submission of the State Plan.

(c) *Administrative costs.* Each State agency may use up to 15 percent of its total grant for up to 50 percent of its cash expenditures for administrative costs.

(d) *Payment to State agencies.* Approval of the State plan by FNS is a prerequisite to the payment of funds to the State agency. All funds made available for the Program shall be provided through a letter of credit or check, as determined by FNS.

(e) *Unobligated funds.* The State agency will release to FNS any Federal funds made available to it under the Program which are unobligated by September 30 of each fiscal year.

(f) *Funds for existing programs.* State agencies shall maintain their present level of funding for existing nutrition education and training programs. FNS funds for the Program shall augment current nutrition education and training programs and projects. Funds made available by FNS for this Program shall not replace such funds.

Subpart B—State Agency Provisions

§ 227.30 Responsibilities of State agencies.

(a) *General.* Except to the extent that it would be inconsistent with this part, the Program shall be administered in accordance with the applicable provisions of Office of Management and Budget (OMB) Circular A–102 and Circular A–95, Part III.

(b) *Application.* For the initial fiscal year of participation States shall make application for administration of the Program on Form and are responsible for amending Form AD–623 to request advance funding. In the initial application, in connection with the request for advance funding for the State Coordinator, Part IV, Program Narrative, of Form AD–623 shall indicate the State agency's procedures for hiring a State Coordinator and contain a justification for the dollar value of salary requested. The narrative shall also indicate the time frame for hiring the State Coordinator. In amending Form AD–623 in connection with the request for advance funding for the remaining portion of the assessment and planning grant, Part IV, Program Narrative, shall set forth the details for areas of the assessment and planning grant, other than employment of the State Coordinator.

(c) *State Coordinator.* After execution of the agreement the State agency shall appoint a full-time nutrition education specialist to serve as a State Coordinator for the Program. The State Coordinator may be a State employee who reports directly or indirectly to the Chief State School Officer or an individual under contract with the State agency to serve as the State Coordinator. A State agency shall not contract with an organization to provide for the services of a State Coordinator. The State Coordinator, at a minimum, shall meet both of the following requirements: (1) The State Coordinator shall have a Masters degree or equivalent experience. Equivalent experience is experience related to the position being filled or as defined by State civil service or personnel policies. If the Masters degree is not in foods and nutrition or dietetics, the Bachelors degree shall include academic preparations in foods and nutrition or dietetics. (2) In addition, the State Coordinator shall have recognized and demonstrated skills in management and education through at least three years experience in one or more of these areas: elementary or secondary education, but not limited to classroom teaching; foodservice management and training for adults; community nutrition or public health programs; foodservice operations for children; or community action or assistance programs.

(d) *Needs assessment.* Each State agency shall conduct an ongoing needs assessment in accordance with § 227.36 The needs assessment shall be the data base utilized in formulating the State plan for each fiscal year. For the first year of participation a State agency may apply for funds in order to carry out the needs assessment in accordance with § 227.5.

(e) *Developing and submitting the State plan.* Each State agency shall submit to the Secretary a State plan for Nutrition Education and Training in accordance with § 227.37 prior to the beginning of each fiscal year. The date of submission for the State plan shall be designated by the Secretary. The Secretary shall act on the submitted State plan within 60 days after it is received. For the first year of participation the State agency shall submit to the Secretary, within nine months after the award of the planning and assessment grant, a State plan for nutrition education and training in accordance with § 227.37.

(f) *Records and reports.* (1) Each State agency shall maintain full and complete records concerning Program operations and shall retain such records in accordance with OMB Circular A–102 Attachment C. (2) Each State agency shall submit to FNS a quarterly Financial Status Report, Form SF–269, as required by OMB Circular A–102, Attachment H. (3) Each State agency shall submit a performance report (Form FNS–42) on a quarterly basis, commencing with the quarter in which funds are received. (4) Each State agency shall maintain a financial management system in accordance with Federal Management Circular 74–4 and OMB Circular A–102, Attachment G. (5) Each State agency shall comply with the requirements of OMB Circular A–102, Attachments N and O, and Federal Management Circular 74–4, for property management and the procurement of supplies, equipment and other services with these Program funds. (6) Any income accruing to a State or local agency because of the Program shall be used in accordance with OMB Circular A–102, Attachment E.

(g) *Nondiscrimination.* Each State agency shall ensure that Program operations are in compliance with the Department's nondiscrimination regulations (Part 15 of this title) issued under Title VI of the Civil Rights Act of 1964.

§ 227.31 Audits, management reviews, and evaluations.

(a) *Audits.* (1) Examinations by the State agencies in the form of audits or internal audits shall be performed in accord with OMB Circular A–102, Attachment G.

(b) *Management reviews.* The State agency is responsible for meeting the following requirements:

(1) The State agency shall establish management evaluation and review procedures to monitor compliance with the State plan for local educational agencies and land grant colleges, other institutions of higher education and public or private nonprofit educational or research agencies, institutions, or organizations.

(2) The State agency shall require participating agencies to establish program review procedures to be used

in reviewing the Agencies operations and those of subsidiaries or contractors.

(c) *Evaluations.* The State agency shall conduct formal evaluations of program activities at least annually. These evaluations shall be aimed at assessing the effectiveness of the various activities undertaken by the State and local agencies. State officials shall analyze why some activities have proved effective while others have not and shall initiate appropriate improvements. Participation in the evaluations shall not be limited to State agency staff. Representatives of State Advisory Councils and agencies that participate in the State agencies' programs as well as representatives of other groups shall be invited to participate in the evaluations. The results of the evaluations shall be used to make adjustments in ongoing activities and to plan activities and programs for the next year's State plan. The State agency shall submit a plan for evaluation of Program activities as part of the State plan in accordance with § 227.37(b)(14).

Subpart C—State Coordinator Provisions

§ 227.35 Responsibilities of State coordinator.

At a minimum, the State Coordinator shall be responsible for (a) preparation of a budget, (b) the conduct of the needs assessment, (c) development of a State plan, (d) implementation of the approved State Plan, (e) evaluation of the progress and implementation of the State Plan, (f) coordination of the Program with the Child Nutrition Programs at the State and local levels, (g) coordination of the Program with other nutrition education and training programs conducted with Federal or State funds, (h) communication of needs and accomplishments of State nutrition education and training programs to parents and the communty at large, (i) use of Program funds in compliance with all regulations, instructions, or other guidance material provided by FNS, (j) coordinating the submission and preparation of the Program financial status report (SF–269), and (k) annual evaluation of the effectiveness of the State Plan.

§ 227.36 Requirements of needs assessment.

(a) The needs assessment is an ongoing process which identifies the discrepancies between "what should be" and "what is" and shall be applied to each category listed below to enable State agencies to determine their nutrition education and training needs for each year. The needs assessment shall identify the following as a minimum: (1) Children, teachers, and foodservice personnel in need of nutrition education and training; (2) existing State or federally funded nutrition education and training programs including their: (i) Goals and objectives; (ii) source and level of funding; (iii) any available documentation of their relative success or failure; and (iv) factors contributing to their success or failure; (3) offices or agencies at the State and local level designated to be responsible for nutrition education and training of teachers and school foodservice personnel; (4) any relevant State nutrition education mandates; (5) funding levels at the State and local level for preservice and inservice nutrition education and training of foodservice personnel and teachers; (6) State and local individuals, and groups conducting nutrition education and training; (7) materials which are currently available for nutrition education and training programs, and determine for each: (i) Subject area and content covered; (ii) grade level; (iii) how utilized; (iv) acceptability by user; (v) currency of materials; (8) any major child nutrition related health problems in each State; (9) existing sources of primary and secondary data, including any data that has been collected for documenting the State's nutrition education and training needs; (10) available documentation of the competencies of teachers in the area of nutrition education; (11) available documentation of the competencies of foodservice personnel; (12) problems encountered by schools and institutions in procuring nutritious food economically and in preparing nutritious appetizing meals and areas where training can assist in alleviating these problems; (13) problems teachers encounter in conducting effective nutrition education activities and areas where inservice training or materials can assist in alleviating these problems; (14) problems in dietary habits of children and areas where nutrition education may assist in positive changes; (15) problems encountered in coordinating the nutrition education by teachers with the meal preparation and activities of the foodservice facility and areas where training might alleviate these problems.

(b) The needs assessment should be an ongoing process and provide not only data on current activities but also a description of the problems and needs in each category and whether training or materials would help alleviate the identified problems.

§ 227.37 State Plan for Nutrition Education and Training.

(a) *General.* Each fiscal year the State agency shall submit a State plan for Nutrition Education and Training for approval to FNS. The State plan shall be based on the needs identified from the ongoing needs assessment and evaluation of the State plans from previous years. The State plan shall be submitted in accordance with Section 227.30(e). Guidance for the preparation and submission of the State plan shall be provided by FNS.

(b) *Requirements for the State Plan.* The State plan shall provide the following: (1) Description of the ongoing needs assessment conducted within the State; (2) the findings of the needs assessment within the State used to determine the goals and objectives of the State plan and results of the evaluation of the previous years' State plans for: (i) Inservice training of foodservice personnel, (ii) nutrition education of children, (iii) inservice training in nutrition education for teachers; (3) goals and objectives of the State Plan, (4) identification of the priority populations to be reached during the fiscal year; (5) provisions for coordinating the nutrition education and training programs carried out with funds made available under this part with any related publicly supported programs being carried out within the State to include: (i) Identification of existing programs that may be utilized, (ii) description of how representatives of such groups are to be involved in the planning and implementation of the State program; (iii) criteria and procedure for selection of such representatives; (6) plans to establish and description of the functions of a State level advisory council which solicits the advice and recommendations of the National Advisory Council on Child Nutrition, and includes representatives from other offices within the State agency, interested teachers, food and nutrition professionals and paraprofessionals, school foodservice personnel, administrators, representatives from consumer groups, parents, and other individuals concerned with the improvement of child nutrition; (7) plans, including a timetable, for reaching all children in the State with instruction in the nutritional value of foods and the relationship among food, nutrition and health, for inservice training of foodservice personnel in the principles and skills of foodservice management

and nutrition and for inservice instruction for teachers in sound principles of nutrition education; (8) any plans for using, on a priority basis, the resources of the land-grant colleges eligible to receive funds under the Act of July 2, 1862 (12 Stat. 503; 7 U.S.C. 301–305, 307, and 308) or the Act of August 30, 1890 (26 Stat. 417, as amended; 7 U.S.C. 312–326 and 328), including the Tuskegee Institute; (9) a brief description of the Program or activities to be contracted with land-grant colleges, described above, and other institutions of higher education, and other public or private nonprofit educational or research agencies, institutions or organizations for carrying out nutrition education and training activities; (10) a brief description of pilot projects, including objectives, subject matter and expected outcomes, to be contracted with the land-grant colleges described above, other institutions of higher education, public and nonprofit educational or research agencies, institutions, or organizations for but not limited to projects for development, demonstration, testing and evaluation of curricula for use in early childhood, elementary, and secondary education programs; (11) identification of schools, school districts, and sponsoring agencies which may agree to participate in the nutrition education and training program; (12) a brief description of (i) State agency sponsored pilot projects including objectives, subject matter and anticipated outcomes and (ii) nutrition education and training programs to be conducted by schools, school districts, and sponsoring agencies receiving funds under this provision including objectives, subject matter and expected outcomes; (13) time frame and milestones for implementation of State plans; (14) plans to evaluate program activities including an evaluation component for each objective of the State plan; (15) description of staff available to perform State agency responsibilities of the State nutrition education and training program which includes: (i) Definition of duties and responsibilities, (ii) minimum professional qualifications, (iii) number and classification of personnel; (16) a description of the procedures used to comply with the 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; (17) plans for the conduct of audits in accordance with § 227.31; (18) a budget detailing the use of Program funds; (19) description of the financial management system in accordance with § 227.30(e); (20) description of the management evaluation and review procedures established in accordance with § 227.31(b); and (21) other components that the States determine necessary.

Subpart D—Miscellaneous

§ 227.40 Program Information.

Persons desiring information concerning the Program may write to the appropriate State agency or Regional Office of FNS as indicated below:

(a) In the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont: New England Regional Office, FNS, U.S. Department of Agriculture, 33 North Avenue, Burlington, Mass. 01803.

(b) In the States of Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculture, One Vahlsing Center, Robbinsville, N.J. 08691.

(c) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FNS, U.S. Department of Agriculture, 1100 Spring Street NW., Atlanta, Ga. 30309.

(d) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin: Midwest Regional Office, FNS, U.S. Department of Agriculture, 536 South Clark Street, Chicago, Ill. 60605.

(e) In the States of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming: Mountain Plains Regional Office, FNS, U.S. Department of Agriculture, 2420 West 26th Avenue, Room 430D, Denver, Colo. 80211.

(f) In the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas: Southwest Regional Office, FNS, U.S. Department of Agriculture, 1100 Commerce Street, Room 5–C–30, Dallas, Tex. 75242.

(g) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory of the Pacific Islands, the Northern Mariana Islands, and Washington: Western Regional Office, FNS, U.S. Department of Agriculture, 550 Kearny Street, Room 400, San Francisco, Calif. 94108.

§ 227.41 Recovery of funds.

(a) FNS may recover 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 instructions and guidelines.

(2) If FNS determines 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.

(3) If FNS determines that a State agency is not providing full and timely reports.

(b) FNS shall effect such recoveries of funds through adjustments in the amount of funds provided under the Program.

§ 227.42 Grant closeout procedures.

The requirements of OMB Circular A–102, Attachment L, are applicable in the termination of any grant under this Part.

§ 227.43 Participation of Adults.

Nothing in this Part shall prohibit a State or local educational agency from making available or distributing to adults education materials, resources, activities or programs authorized by this Part.

§ 227.44 Management evaluations and reviews.

FNS shall establish evaluation procedures to determine whether State agencies carry out the purpose and provisions of this Part, the State agency plan and FNS guidelines and instructions. To the maximum extent possible the State's performance shall be reviewed and evaluated by FNS on a regular basis including the use of public hearings.

Note.—The Food and Nutrition Service has determined that this document does not contain major proposals requiring preparation of an Economic Impact statement under Executive Order 11821 and OMB Circular A–107. The reporting and/or recordkeeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

Dated: May 10, 1979.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 79–15219 Filed 5–14–79; 8:45 am]

BILLING CODE 3410–30–M

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7 CFR Part 230

Food Service Equipment Assistance Program; Apportionment of Funds for Fiscal year 1979

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This action apportions food service equipment assistance funds (formerly nonfood assistance funds) among States in compliance with subsections 5 (b) and (e) of the Child Nutrition Act.

EFFECTIVE DATE: May 15, 1979.

FOR FURTHER INFORMATION CONTACT: Margaret O'K Glavin, School Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250 (202–447–8130).

7 CFR Part 230 is amended by adding the following appendix:

Appendix—Initial Apportionment of Food Service Equipment Funds Pursuant to Child Nutrition Act of 1966, for Fiscal Year 1979

Pursuant to sections 5 (b) and (e) of the Child Nutrition Act of 1966, Pub. L. 89–642, 80 Stat. 887, as amended, food service equipment assistance funds available for the fiscal year ending September 30, 1979, are apportioned among the States as follows:

Section 5(b)

State	Total Apportionment	State Agency	Withheld for Private Schools
Connecticut	$170,894	$170,894	
Maine	86,725	82,332	$4,393
Massachusetts	440,368	440,368	
New Hampshire	60,211	60,211	
Rhode Island	48,590	48,590	
Vermont	35,387	35,387	
Delaware	47,184	45,768	1,416
District of Columbia	40,159	40,159	
Maryland	250,337	250,337	
New Jersey	431,667	431,667	
New York	1,010,409	1,010,409	
Pennsylvania	824,423	824,423	
Puerto Rico	288,399	288,399	
Virginia	438,288	431,529	6,759
Virgin Islands	12,660	12,660	
West Virginia	145,399	145,399	
Alabama	359,274	352,743	6,531
Florida	643,006	643,006	
Georgia	568,737	568,382	355
Kentucky	324,677	324,677	
Mississippi	265,189	265,189	
North Carolina	582,307	582,307	
South Carolina	303,836	299,022	4,814
Tennessee	385,483	380,135	5,348
Illinois	659,894	659,894	
Indiana	409,246	409,246	
Michigan	432,776	432,776	
Minnesota	358,000	358,000	
Ohio	695,859	651,877	43,982
Wisconsin	319,538	319,538	
Arkansas	201,922	198,091	3,831
Louisiana	451,484	451,484	
New Mexico	110,531	110,531	
Oklahoma	228,104	228,104	
Texas	998,682	975,571	23,111
Colorado	177,305	172,844	4,461
Iowa	284,491	284,491	
Kansas	195,031	195,031	
Missouri	380,278	378,796	1,482
Montana	57,439	57,439	
Nebraska	124,861	114,489	10,372
North Dakota	57,356	52,684	4,672
South Dakota	62,832	62,832	
Utah	133,505	133,505	
Wyoming	28,856	28,856	
Alaska	15,446	15,446	
American Samoa	5,253	5,253	

Section 5(b)—Continued

State	Total Apportionment	State Agency	Withheld for Private Schools
Arizona	160,908	160,908	
California	1,089,540	1,089,540	
Guam	11,038	11,038	
Hawaii	96,726	90,827	5,899
Idaho	65,493	65,493	
Nevada	37,799	37,799	
Oregon	155,491	155,491	
Trust Territory	12,789	12,789	
Washington	217,918	210,429	7,489
Total	16,000,000	15,865,085	134,915

Section 5(e)

State	Total Apportionment	State Agency	Withheld for Private Schools
Connecticut	$182,360	$182,360	
Maine	42,720	35,180	$7,540
Massachusetts	146,899	146,899	
New Hampshire	11,459	11,459	
Rhode Island	18,559	18,559	
Vermont	16,819	16,819	
Delaware	10,840		10,840
District of Columbia	13,893	13,893	
Maryland	143,837	143,837	
New Jersey	597,678	597,678	
New York	1,175,433	1,175,433	
Pennsylvania	264,196	264,196	
Puerto Rico	35,925	35,925	
Virginia	57,734	1,065	56,669
Virgin Islands	2,138	2,138	
West Virginia	14,640	14,640	
Alabama	41,976	70	41,906
Florida	11,705	11,705	
Georgia	11,394	11,394	
Kentucky	16,070	16,070	
Mississippi	24,500	24,500	
North Carolina	35,993	35,993	
South Carolina	59,298		59,298
Tennessee	4,713	522	4,191
Illinois	1,144,952	1,144,952	
Indiana	173,181	173,181	
Michigan	481,148	481,148	
Minnesota	20,494	20,494	
Ohio	275,566	62,047	213,519
Wisconsin	291,297	291,297	
Arkansas	3,015	205	2,810
Louisiana	73,508	73,508	
New Mexico	3,892	3,892	
Oklahoma	490	490	
Texas	158,198	125,368	32,830
Colorado	24,397	9,075	15,322
Iowa	14,290	14,290	
Kansas	46,028	46,028	
Missouri	37,416	36,921	495
Montana	33,132	33,132	
Nebraska	57,025	47,555	9,470
North Dakota	3,932	2,100	1,832
South Dakota	4,910	4,910	
Utah	2,364	2,364	
Wyoming	7,428	7,428	
Alaska	32,162	32,162	
American Samoa	600	600	
Arizona	51,665	51,665	
California	1,881,093	1,881,093	
Guam	540	540	
Hawaii	6,191		6,191
Idaho	9,597	9,597	
Nevada	9,290	9,290	
Oregon	35,942	35,942	
Trust Territory	10,715	10,715	
Washington	164,763	137,548	27,215
Total	8,000,000	7,509,872	490,128

(Secs. 2, 5, 6 and 9 through 16, 80 Stat. 885–790; (42 U.S.C. 1771, 1774, 1775, 1778–1785))

Note.—The Food and Nutrition Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A–107.

Dated: April 21, 1979.

Robert Greenstein,

Acting Administrator.

[FR Doc. 79–15010 Filed 5–14–79; 8:45 am]

BILLING CODE 3410–30–M

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7 CFR Part 246

Special Supplemental Food Program for Women, Infants, and Children; Administrative Funding Formula

AGENCY: Food and Nutrition Service.

ACTION: Final Administrative Funding Formula for the Special Supplemental Food Program for Women, Infants and Children. (7 CFR Part 246.)

SUMMARY: The U.S. Department of Agriculture is publishing its final decision concerning a formula to be used in determining the administrative funding level for each State agency participating in the Special Supplemental Food Program for Women, Infants and Children (WIC). The final administrative funding formula will not be republished in the Code of Federal Regulations.

EFFECTIVE DATE: May 15, 1979.

FOR FURTHER INFORMATION CONTACT: Jennifer R. Nelson, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, Washington, D.C. 20250, (202) 447–8206.

SUPPLEMENTARY INFORMATION: On December 12, 1978, the Department published at 43 FR 58106 a notice describing a proposed formula for use in determining the administrative funding level for those State agencies participating in the Special Supplemental Food Program for Women, Infants and Children (WIC). Although the proposed formula was utilized for the second quarter of fiscal year 1979, the December 12, 1978, notice was published to allow the opportunity for public comment. The 60 day comment period ended February 12, 1979.

I. Discussion of the Comments

A total of 212 comment letters were received within the official comment period. The commentors included 41 State Agencies, 82 Local Agencies, 60 Individuals, 13 Public Interest Groups, 5 Congressmen, 6 Regional Offices, 2 Special Interest Groups and 3 Medical Groups. Commentors from several States apparently organized their efforts to emphasize their suggestions. A large number of comments received were very similar to one another or, were signed copies of form letters.

During the review of the comments a count was made of those that supported or opposed a particular component of the formula. Alternative suggestions presented by the commentors were also analyzed. Comments were varied and covered all phases of the procedure. To provide an orderly discussion of the comments received, that will be grouped according to the component they address.

General.—A considerable number of comments were made that did not apply to any particular component of the formula so these were grouped under the General category. Many of the comments concerned the reallocation process. For example, some commentors suggested not reallocating administrative funds while others did not want any WIC funds, administrative or program, to be reallocated. There was support for, as well as opposition to, the guarantee of 75 percent of administrative funds. One commentor wanted 100 percent of administrative funds guaranteed to States with a total population under 1 million. It was also suggested that funds be reallocated only once a year.

Some commentors suggested increasing the funding for two State agencies. Other commentors dealt with the procedure or with the interim use of the formula during the second quarter of fiscal year 1979. A great number of commentors opposed the interim use of the formula during the comment period and prior to its issuance in final form.

Suggestions were made that special consideration be given to Hawaii and Alaska and to urban areas because of the high cost of living and, in urban areas, of the presumed decrease of in-kind services. Other comments included giving greater consideration to State agencies as individual entities, having State agencies submit annual budgets with justifications, updating data annually, having FNS contract with migrant agencies directly to relieve State agencies of the duty, and using statisticians to develop the formula. Some local agencies wanted the Regional Office to become more involved in the funding process.

Suggestions concerning alternative formulas include convening the funding panel annually, convening the panel to review the comments and to develop an alternative formula, finalizing the formula by March of each year in order for State agencies to include budgets in their State Plans, and reverting back to the 25 percent of food costs method until a new formula acceptable to the commentors is developed and critically evaluated. One commentor opposed the whole formula but offered no alternative formulas. Two other commentors recommended using migrant data to assure sufficient program (food) funds to meet migrant farmworker needs.

In response to the comments concerning the reallocation, the Department believes that the current reallocation procedure is the most prudent on a nationwide basis. Given past problems with State agencies not knowing the level of their administrative funding, it is necessary to assure the State agencies of a level of funding upon which they can develop their budget. However, the total allocation should not be guaranteed at the time of the initial allocation since that may tie up funds in a State which is not spending them while another State agency is able to utilize additional monies. Therefore, the reallocation procedure will remain as proposed.

Various mathematical procedures and data sources suggested in the comments have been discussed with the Department's statisticians to determine which options were the most viable and which were proper methods to use in comparing data elements. Pub. L. 95–627 mandates the use of a formula for allocating administrative funds, therefore, the Department must implement Pub. L. 95–627. Previous funding procedures such as using 25 percent of food expenditures to obtain administrative funding levels could not continue to be used since the 25 percent method did not constitute a formula application and also was not the result of a formula application.

Minimum grant: There was unanimous support for this concept. A few comments were made which suggested raising or lowering the level; however, due to the favorable number of comments received, the Department decided that $30,000 is the most appropriate minimum grant level.

Fixed grant: While there was overwhelming support for the fixed grant component of the formula, most of the comments received suggested increasing the fixed grant level, especially for small agencies receiving $3 million or less food funds or with a participation of 5,000 or less. For these small agencies the commentors believed that 25 percent of fiscal year 1979 food funds should be provided. Other percentage levels suggested included 24 percent of fiscal year 1979 food funds for all except minimum grant agencies and an apportionment according to agency size—18 percent for large agencies, 20 percent for medium agencies and 22 percent for small agencies. Some alternative components of the formula suggested included program size and number of local agencies. Some alternative procedures included increasing funding based on previous performance, and providing funds on a per enrollee basis.

The suggestions for increased fixed grant levels were a result of the increased requirements contained in the WIC Program Proposed Regulations, the expense of installing automated data systems, and inflation. Commentors felt that increasing the fixed grant level would provide them with a more stable grant with which to budget. Additionally, they felt that smaller agencies should be assured at least 20 percent of their total grant for administration, since they must meet the same requirements as larger agencies with less money.

The Department would not be able to provide 24 percent of food costs to all except minimum grant agencies and still have remaining funds with which to apply a formula. Additionally, the use of varying percentages could prove arbitrary in determining agency size categories.

By using a set percentage applied to food funds to determine the fixed grant level, the formula is taking program size and the number of local agencies into account.

Remaining Funds Formula

a. *Rurality factor*—A number of commenters felt that factors affecting rurality should be included in the formula but felt that to use rural counties as a factor was invalid. Alternatives most often mentioned were the number of rural births and population per square mile. Another alternative was the use of percentage of rural counties within the State. Some felt that other indicators of rurality should be considered, such as, for example, geography and physical barriers, or the degree of decentralization of a State program. There was some agreement with the proposed procedure for determining rurality, but not with the percentage of the remaining funds allocated for distribution based on rural areas (25 percent). Some commentors felt that the percentage allotted was too high and others believed it to be too low.

After a review of the comments, the Department decided that an alternative procedure for determining rurality must be used in the formula. The percentage of rural births in the State will therefore be considered a factor to be included in the formula.

b. *Migrant factor*—As with the rurality factor, many commentors disagreed with the inclusion of high

migrant impact counties as a factor in the formula. However, there was more opposition to the use of this factor than to the use of rurality factor. Some suggested alternatives made by the commentors supporting the high migrant impact counties factor included the use of the number of migrants in the county, the number of service areas rather than counties and a comparison of migrant influx to stable population to determine impact. It was also suggested that DHEW data used in conjunction with farmworker organization and State statistics, and that the most current data be collected. While most commentors wanted the percentage of remaining funds allocated to high migrant impact counties left at 25 percent, others suggested a reduction to 10 or 15 percent or an increase to 35 percent. One commentor suggested that a comparison be done to indicate the relationship between migrants and the programs serving their needs to determine if the service of migrants is increasing the State's costs. A similar comment was made about rural programs. As stated above, there was considerable opposition to the inclusion of the high migrant impact counties factor and specifically to its application to the total years' grant. Most of the State agencies serving migrants will do so only during a portion of the April to October migrant season. Therefore, commentors felt that is was inappropriate to consider migrants at all in the formula. Additionally, several comments stated that as migrant and rural counties are often the same counties, the formula gave double weight to some counties. It was, therefore, the Department's decision that to provide additional administrative funds without providing corresponding food funds was not an effective means to enhance service to migrants.

In its April 1, 1979, reallocation of food and administrative funds, the Department provided a mechanism by which State agencies could request additional funds to serve migrants within their service area. Such requests are made through the appropriate Food and Nutrition Service Regional Office and provide information on the number of migrants the State agency plans to serve, how many new local agencies will be opened or existing agencies will be expanded, the number of migrants being served or previously served, and the food package cost.

Based on analysis of this information, program (food) funds were provided to each requesting State agency. These food amounts were then totaled and multiplied by 25 percent to determine total administrative funds to be distributed. The administrative formula described below was then applied to this total administrative fund to determine the administrative grant for these State agencies.

c. *Unfunded areas factor*—There was great opposition to the use of this factor as well as to the method utilizing the factor. The largest group of commentors discussing this factor felt that the factor should not be used at all. Another large group of commentors thought that the unfunded areas should be classified or categorized. A number of alternatives were suggested including the use of percentage of unfunded areas within a State, a split of the 50 percent of remaining funds allocated for unfunded areas into 25 percent for unfunded and 25 percent for underfunded, the use of unfunded population, the number of clinics to be opened given food money limitations, and the use of population per square mile to weight unfunded areas.

Suggestions were also made to change the percentage of remaining funds allocated to unfunded areas. One commentor wanted the percentage reduced to 25 percent while another wanted it changed to 25–40 percent. The use of current data was suggested along with recommendations to contact State agencies directly for the most current data on unfunded areas.

One commentor felt that two additional factors should be added; these were a timeframe within which the State must open new local agencies with the money allocated for this purpose by the formula and a correlation between the food and administrative formulas to assure that those State agencies receiving additional funds for starting up programs in additional areas have sufficient food monies to serve additional participants.

Since there was such a great deal of opposition to the unfunded area factor and of emphasis on the need to tie start-up funds to additional food funds, the Department decided to increase the fixed grant percentage rather than consider a separate indicator for unfunded or underfunded areas. The lack of an easily accessible, current standardized data base was also a factor in this decision. By providing a set percentage rather than basing funds on a variable indicator States will be encouraged to open new areas.

Alternative administrative funding formulas.—An organized comment effort came from two States and included signed copies of form comment letters. One group of commentors suggested either providing 19.99 percent of the total WIC grant to all agencies over minimum grant, or funding based on a State's past expenditure rate to a maximum of 19.99 percent. Any State below the 19.99 percent level would be given a two percent increase and each State agency would be allowed to justify its need for more money. The second group of commentors felt that a cost of living factor should be included in the formula. Other recommendations dealing with percentage bases included providing all State agencies with 20 percent of their total grant for administration, providing 20 percent to those agencies that spent all of their fourth quarter allotment, and giving every State agency the same percentage. Some alternative procedures were suggested such as basing quarterly allotments on incremental projected increases in enrollment; considering each State's need (i.e., current spending level, population density of the geographical area, etc.); giving 20 percent of the formula funds to the local agencies with less than 600 participants; matching cost per client to indicators such as reduction in number of low birth weight infants, size of program, and rural/urban areas. There was also a recommendation to eliminate the possible double weight of rurality and migrant factors. The one native American State agency commenting suggested a separate formula for Tribal States. This formula would guarantee the minimum grant and provide additional funds based on a budget submitted by the State agency. Approval of the budget would be based on consideration of various applicable factors (i.e., in-kind resources available, travel rquired, etc.).

The use of a formula for determining administrative funds is mandated by Pub. L. 95–627. The use of a straight percentage of total grant would not take into account the varying needs of State agencies. The Department feels that an indicator of cost differences between States is a valid factor to use in comparing State agencies. Since, according to the Department's Administrative Cost Study, salaries comprise the majority of administrative expenses, it was believed that this factor should also be included in the formula.

II. Description of Final Administrative Funding Formula

Minimum grant factor.—The minimum grant of $30,000 to every State agency remains unchanged from the proposed formula. As stated in the **Federal Register** notice of December 12, 1978, the

$30,000 level was computed to allow the equivalent of two to three person years, depending on salary scales used, for operations of a small WIC Program. From the comments received we believe that this figure provides an adequate minimum grant to all State agencies.

The minimum 20 percent level for agencies with a quarterly food grant of $750,000 or less is a new factor included in the final formula to assist those small agencies that are over the minimum grant level but too small to be able to meet all the current WIC requirements with the present funding levels. For the second quarter of fiscal year 1979, 36 State agencies had a quarterly food grant level of $750,000 or less. Several of these State agencies received an administrative percentage of less than 20 percent of their total grant in the proposed formula. Due to their small size, these States previously gained few additional funds in the remaining funds formula. The funds allocated were so minimal that they were not always able to meet basic operating expenses. Therefore, the provision was made that any State agency with a quarterly (the quarter being funded) food grant of $750,000 or less will be given a minimum of 20 percent of its total quarterly grant for administrative funds.

Maximum grant.—This provision remains unchanged from the proposed formula. No State agency may receive more than 25 percent of its total grant for administrative funds, unless they are receiving the $30,000 minimum grant.

Fixed grant.—The fixed grant factor of the proposed administrative funding formula was intended to accomplish two objectives: (1) insure that State agencies did not receive decreases from the previous fiscal quarter in their administrative funding levels; and (2) provide incremental administrative funding to correspond to the additional food funding for those State agencies which were not held harmless under the program (food) funding formula.

Although these two objectives were partially met, it became apparent from the comments received that there were some inequities in the results. Under the proposed formula State agencies were given either 25 percent of the previous fiscal year's fourth quarter food allocation or 22 percent of the current fiscal year quarterly (quarter to be funded) food grant.

Therefore, State agencies who were held harmless under the food grant always were given 25 percent of their previous fiscal year's fourth quarter food level which equates to 22.7 percent of the current fiscal year's quarterly food grant or 18.5 percent of the total grant. On the other hand, States who were not held harmless and were given additional food allocations received 22 percent of the current fiscal year's quarterly food grant which equates to only 18 percent of the total quarterly grant.

In effect, the Department's intent to insure adequate administrative funds to those States which received increased food funds and which, therefore, should experience the greatest expansion and the concurrent need for additional funds for local agency administrative startup costs was not met.

This inequity has been addressed in the final formula by providing either: (1) 25 percent of the previous fiscal year's fourth quarter food allocation; or (2) 23 percent of the current fiscal year's quarterly (quarter to be funded) food grant. This insures that the fixed administrative grant is proportionate to the increased food grant and will provide a more equitable administrative base. For hold harmless State agencies, the 23 percent of the current fiscal year's quarterly (quarter to be funded) food grant provides a base administrative grant which provides the previous fiscal year's fourth quarter level plus a slight increase which may help to offset inflation.

Remaining funds formula.—While the intent of the fixed administrative grant is to provide State agencies with an administrative base related to the number of participants, the remaining funds distribution is intended to provide funds based on factors related to higher administrative costs within the State irrespective of population size. Therefore, in the remaining funds formula 70 percent of the funds remaining after the determination of fixed grants will be apportioned among the State agencies based on the percentage of rural births for each State agency (number of rural births in each State divided by the total number of births in each State). The percentages of all State agencies are then totaled and each State's percentage is divided by the sum of all States' percentages to arrive at a percentage of funds each State will receive from these remaining funds. As the rurality of a State, in the Department's opinion, is significantly related to higher operating costs, the rurality factor was a necessary component of the formula. The Department considered using the number of rural births, however, this factor is directly tied to overall population. Since the fixed grant is based on food funds which in turn are based on population, it was decided that to use the number of rural births would place too much emphasis on the population of a State. Consequently, to eliminate the population bias which the number of rural births would impose, the Department decided to use the percentage of rural births as a factor in the remaining funds formula. It is important to emphasize the difference between the use of the number of rural births and the use of the percentage of rural births. The total number of rural births would distribute funds to those States larger in size, even though the number of rural births in that State might represent a small percentage of the total births in the State. The use of the precentage of rural births more accurately shows the rurality of each State. A State which has an equal balance of urban to rural births is able to allocate administrative funds between urban and rural local agencies. The State may give a higher percentage to the rural local agency because the urban local agency may need a lower percentage. A State which is predominately rural, however, cannot utilize such balances, and therefore usually needs a higher overall administrative fund percentage.

Thirty percent of the remaining funds formula is based on a salary differential. This decision was made because many comments received expressed concern that the proposed formula gave little consideration to States which had extremely high operating expenses due to high salaries and high cost of living. After considerable review of the effects of salary levels on a State's needs, the Department determined that use of a salary differential for those States which had salaries above the national average was an important factor to use in the remaining funds formula. Since the fixed grant already relates to participation levels, it was believed that the salary differential should apply irrespective of participation levels. Accordingly, by using a salary average of all full-time State and local government employees in each State, and determining which State agencies have average salaries above the national average, States could then be allocated funds based on the difference between their average salary and the national average. Twenty-one State agencies had a salary average above the national average and funds will be distributed proportionally among these State agencies based on the difference between the State's salary and the national average.

As data is not available on average salaries for Indian State agencies, the salary differential for an Indian agency will be the same as the salary differential for the State in which the

Indian agency is located. The Department felt that to attract competent employees a native American State agency would have to pay a salary comparable to the salaries throughout the State, and therefore would need the same administrative funds increase.

75 percent administrative funds guarantee.—The Department has decided that each State agency should have 75 percent of its administrative funds guaranteed. Therefore, 75 percent of the administrative funds allocated to each State agency will not be subject to withdrawal during reallocations.

Data Bases for Remaining Funds Formula

(a) *Percentage of rural births.* Data from the National Center for Health Statistics was used in the formula. Rural births data was extracted from a report from the U.S. Bureau of the Census entitled *Vital Statistics of the U.S., Vol. 1, Natality, 1976.* Each year the natality data in the Report is updated. The 1976 Report is not yet published but all available data can be obtained from the U.S. Bureau of the Census. The data is compiled based on live births in urban areas and in "balance of area" which is considered rural. For WIC purposes we use the total number of live births by place of residence of the person giving birth for each "balance of area" in each State.

Beginning in 1970, vital statistics data for cities and certain other urban places are classified according to the population included in the 1970 Census of Population. Data for the remaining areas not specifically identified are shown in Census tables under the heading "balance of area" or "balance of county."

Urban places are designated in the Report as being within one of the following categories.

1. Urban places in metropolitan counties are those with populations of 10,000 or more; urban places in nonmetropolitan counties are those with populations of 10,000 or more but less than 50,000. Independent cities and counties included in standard metropolitan statistical areas (SMSA's) or in New England metropolitan State economic areas (MSEA's) are included in data for metropolitan counties; all other counties are classified as nonmetropolitan. The SMSA's used in all but one table in the Report are those established for 1970 by the Office of Management and Budget and used by the U.S. Bureau of the Census except in the New England States. In table 1.46 of Section 1 of the Report which we have not used, the SMSA's are those established for 1975.

Except in the New England States, an SMSA is a county or a group of contiguous counties containing at least one city of 50,000 inhabitants or more or "twin cities" with a combined population of at least 50,000.

In addition to the county or counties containing such a city or cities, contiguous counties are included in an SMSA if, according to specified criteria, they are essentially metropolitan in character and are socially and economically integrated with the central city or cities.

In the New England States, the Office of Management and Budget used towns and cities rather than counties as geographic components of SMSA's. The National Center for Health Statistics cannot, however, use the SMSA classification for these States because its data is not coded to identify all towns. Instead, MSEA's are used. They are established by the Bureau of the Census and are made up of county units.

For metropolitan areas around New York City and Chicago, several contiguous SMSA's and additional counties that do not appear to meet the formal integration criteria for SMSA's but do have strong interrelationships of other kinds with New York City and Chicago have been combined into the New York Northeastern New Jersey and the Chicago Northwestern Indiana Standard Consolidated areas.

2. Urban places other than incorporated cities for which vital statistics data are shown in the Report included the following:

(a) Each town in New England and each township in New Jersey and Pennsylvania that had no incorporated municipality as a subdivision and had either 25,000 inhabitants or more, or a population of 10,000 to 25,000 and a density of 1,500 persons or more per square mile is considered an urban place;

(b) Each county in States other than the New England States, New Jersey, and Pennsylvania that had no incorporated municipality within its boundary and had a density of 1,500 persons or more per square mile is considered an urban place. Arlington County, Virginia, is the only county classified as urban under this rule.

For Puerto Rico and Indian State agencies, some assumptions were made by the Department. For Puerto Rico, total births were available but were not separated as occurring in urban places and balances of area. Consequently, rural births were identified by utilizing the U.S Department of Commerce, Social and Economic Statistics Administration, Bureau of the Census; 1970 Census of Population, Volume 1 Characteristics of the Population, Part 53–7, which indicated that 41.9 percent of Puerto Rico's population was rural. The Department assumed, therefore, that 41.9 percent of the births in Puerto Rico were rural.

For Indian State agencies, the Department considered that all births were rural, as reservations are generally sparsely populated and off-reservation tribes often live primarily in rural areas. Therefore, all Indian State agencies are considered to have 100 percent rural births. Although this provides Indian State agencies with a rurality percentage higher than any State, the provision that no State agency may receive more than 25 percent of their total grant in administrative funds is applied and the funds which would have been applied to the Indian State agencies in excess of 25 percent are recovered and redistributed among the other State agencies.

(b) Salary Differential

Data for the average State and local salaries was taken from the U.S. Department of Commerce, Bureau of the Census, 1978, publication, specifying the number of employees and payrolls of State and local governments, by type of government and by State. The report is published annually and the 1978 publication contains 1977 data. Data for the State governments shown in the report resulted from a complete canvass of all State Departments, agencies and institutions. Local government data was estimated from a random sample of approximately 16,000 local units nationally. Using the 1970 population as a base, the local sample included all county governments having 50,000 or more inhabitants and all municipalities having 25,000 or more population. The sample also included local governments whose relative importance in their State was above a specified amount based on expenditure or debt. A random selection of the remaining units was made from a compilation of all local governments within selected large standard metropolitan statistical areas (SMSA's), other major counties, and the balance of the State, further grouped by type and size of government. From this list a random sample was chosen using probabilities that were based on the ratio of each government's annual expenditure or indebtedness to the State total.

Estimates of standard errors in this local sample based on standard errors found in 1979 data were found generally

within 2 percent of the estimated figure, and less than 1 percent for 37 States, for local government totals of full-time employees, full-time employee payrolls and full-time equivalent employment. Sampling errors of the 1977 data are expected to be of the same order of magnitude since the same panel and same survey procedures were used in the 1977 and 1974 surveys. State government figures are not subject to sampling.

For the 1977 survey, employee and payroll figures reported by State and local government officials are generally accepted as being substantially correct by the Bureau of the Census. In some cases, varying interpretations of the instructions or deficiencies in governmental employment and payroll records may make it difficult for officials to render complete and accurate reports of their governments. These difficulties are dealt with by (1) careful definitions of terms and detailed instructions in difficult cases, (2) supplementary correspondence and telephone followup to officials, and (3) intensive examination of data collected—i.e., verification of internal consistency and comparison with previous reports, and other sources of data. Errors that may be introduced during processing (input preparation, etc.) were minimized through the use of intensive computer editing of the data at various stages of the processing system.

Unfortunately, the Bureau of the Census salary data source does not contain data for the Virgin Islands or for Puerto Rico. However, in reviewing the 1978 Civil Service Commission's *State Salary Survey*, it was found that both of these territories consistently indicated salaries substantially below States on the continent. Therefore, they are considered to have salaries below the national average.

In order to compute the salary differentials the Department used data from Table 8 of the Bureau of the Census Salary Data Report—The Average Earnings of All Full-Time Employees. A monthly salary average for the U.S. ($1,078) is given and each State's salary average for State and local government employees is recorded. Each State with an average salary above the national average participates in the salary differential funds distribution, including Indian State agencies if the State in which they are located participates. A total is computed of all State agencies whose average salaries are above the national average. Each State agency's average salary in those States where the average salary is above the national average is then divided by the total of all the above average salaries to determine that State agency's percent share of the funds.

Data Base Charts

(a) Number of Rural Births and Total Births.

Source: National Center for Health Statistics, *Vital Statistics of the U.S., Volume 1 Natality*, 1976; Table 2–2, Live Births by Attendant and Place of Delivery and by Birth Weight, by Race for Population-Size Groups in Metropolitan and Nonmetropolitan Counties: United States and Each State, 1976; Table 039, Live Births by Attendant and Place of Delivery: Puerto Rico and Each Municipio, 1976; Table 040, Live Births by Attendant and Place of Delivery and Race, Virgin Islands by Island and Specified Urban Places, and Guam, 1976.

(b) Above Average Salaries.

Source: Public Employment in 1977, U.S. Department of Commerce, Bureau of the Census, GE 77 No. 1; Table 8, Employment and Payrolls of State and Local Governments by Type of Government and by State: October 1977.

Administrative Data Base

State	Above average salaries [1]	Total births	Rural births	Percent rural births
New England:				
Connecticut	1086	35,606	12,245	34.4
Maine		15,012	10,945	72.9
Massachusetts	1114	66,012	22,035	33.4
New Hampshire		11,217	6,833	60.9
Rhode Island	1081	10,806	2,603	24.1
Vermont		6,737	5,932	88.1
Mid-Atlantic:				
Delaware		8,087	6,251	77.3
Maryland	1127	52,714	36,366	69.0
New Jersey	1157	90,800	29,367	32.3
New York	1255	235,688	86,197	36.6
Pennsylvania		148,289	82,745	55.8
Puerto Rico		71,888	30,121	41.9
Seneca Nat., NY	1255	144	144	100.0
Virginia		70,038	39,815	56.9
Virgin Islands		2,343	607	25.9
West Virginia		28,569	22,462	78.6
Southeast:				
Alabama		57,974	34,729	59.9
Florida		104,655	48,674	46.5
Georgia		79,258	51,627	65.1
Kentucky		55,198	39,825	72.2
Mississippi		42,943	29,786	69.4
North Carolina		80,594	58,371	72.4
South Carolina		47,788	38,934	81.5
Tennessee		62,582	32,811	52.4
Seminoles, FL		29	29	100.0
Choctaws, MS		170	170	100.0
E. Cherokee, NC		140	140	100.0
Southwest:				
Arkansas		34,162	21,126	61.8
Louisiana		69,754	38,114	54.6
New Mexico		22,054	10,882	49.3
Oklahoma		43,705	19,002	43.5
Texas		218,746	68,734	31.4
Acoma, NM		48	48	100.0
N. Pueblo, NM		157	157	100.0
Isleta Pueblo, NM		432	432	100.0
Santa Domingo, NM		64	64	100.0
Six Sandoval, NM		262	262	100.0
WCD Ent., OK		150	150	100.0
Choctaws, OK		364	364	100.0
Cherokee, OK		1,258	1,258	100.0
Chickasaw, OK		199	199	100.0
Tonkawa, OK		191	191	100.0
Potawatami, OK		771	771	100.0
Zuni, NM		4,881	4,881	100.0
Midwest:				
Illinois	1206	170,257	54,328	31.9
Indiana		80,713	39,541	49.0
Michigan	1258	131,370	60,695	46.2
Minnesota	1152	56,598	29,360	51.9
Ohio		155,491	68,576	44.1
Wisconsin	1087	64,915	32,956	50.8
Mountain Plains:				
Colorado	1087	41,003	16,423	40.1
Iowa		41,635	24,088	57.9
Kansas		35,419	15,497	43.8
Missouri		68,879	38,259	55.6
Montana		12,600	8,660	68.7
Nebraska		23,804	12,867	53.3
North Dakota		10,692	6,738	63.0
South Dakota		11,671	8,115	69.5
Utah		35,273	19,762	56.0
Shos & Ara., WY		118	118	100.0
Ute Mt. Tribe, CO	1087	87	87	100.0
Winnebago, Neb		121	121	100.0
Cheyenne Rv., SD		153	153	100.0
Rosebud, SD		294	294	100.0
Standing Rock, ND		155	155	100.0
Western:				
Alaska	1721	7,942	5,791	72.9
Arizona	1107	39,969	15,030	37.6
California	1360	332,256	83,804	25.2
Hawaii	1211	16,377	7,021	42.9
Idaho		17,347	11,089	63.9
Nevada	1114	9,659	3,656	37.9
Oregon	1140	34,863	21,687	62.2
Washington	1206	52,987	30,968	58.4
ITCN	1114	245	245	100.0
Total [2]		24,925	3,235,372	1,512,503 5030.9

[1] National Salary Average—$1078.
[2] Nationwide.

III. Final Administrative Formula Calculation

The total amount of funds available for administrative grants is determined by taking 20 percent of the total funds available for allocation for the current quarter. Eighty percent of the funds available for allocation for the quarter is designated for distribution through the use of the program funding formula for the food grant. After the total amount available for administrative funds for the quarter is determined and each State agency's quarterly food grant is determined, each State agencies' share of the total amount for administration can be calculated by use of the administrative funds formula.

The administrative funds formula involves several steps in determining the total amount of administrative funds to be allocated to each State agency operating the WIC Program. For the fixed administrative grant three calculations are carried out: First, the funds equaling 25 percent of each State agency's previous fiscal year's fourth quarter food level is determined. Secondly, the funds which equal 23 percent of each State agency's quarterly food grant (quarter being considered) is calculated. Third, these two figures are compared to each other for each State

agency and the State agency is provided the greater amount for its fixed grant. All of the amounts for each State agency's fixed grant are then added and the total is subtracted from the total amount of funds available for administrative grants.

With the remaining funds, the remaining funds formula is employed. This formula divides the remaining funds into two portions, one containing 70 percent of the total remaining funds and the other containing 30 percent. The 70 percent portion is allocated among State agencies on the basis of the data on percent of rural births. The 30 percent portion is allocated among State agencies on the basis of the data on salary differential. Each State agency's allocations for both are then added together with the agency's fixed administrative grant. After all administrative funds allocations have been determined, each State agency is checked to determine whether: (1) all State agencies are receiving at least $7,500 ($30,000 minimum grant divided by four) for administrative funds, (2) any State receiving a quarterly food grant of $750,000 or less is allocated at least 20 percent of its total grant for administrative costs, (3) any State is receiving more than 25 percent of its total grant for administrative funds. If a State agency's allocation violates any of these three constraints, the amount of funds is increased or decreased as necessary to conform with the three constraints. Consequently, those States which have been determined to receive a minimum quarterly administrative grant of $7,500, or have been brought up to 20 percent of their total grant for administrative costs, or which are limited to 25 percent of their total grant are taken out of the next formula run. The total amount of funds subtracted from State agencies receiving over 25 percent of their total grant to bring them into compliance with this constraint is redistributed by the remaining funds formula to the remaining State agencies. The total amount of funds needed to bring State agencies up to their minimum grant level is subtracted proportionately from the other State agencies according to the remaining funds formula.

This comparison of every State agency's administrative funding against the three constraints and the resulting redistribution process continues until no State agency violates any of the three constraints and all administrative funds are allocated.

The final administrative funding formula was used in the third quarter of FY '79 to calculate administrative grants for the base administrative grant as well as for the reallocation and migrant grants for those States which were eligible to receive those grants. The amount of administrative funds each State agency is allocated for the third quarter of FY '79 is listed below. Also included is the food grant allocation for the third quarter of FY '79 as this figure is the basis for computing the fixed administrative grants.

State	Total food grant 3rd qtr.	Total adm. grant 3rd qtr.
New England:		
Connecticut	2,458,106	636,757
Maine	744,000	209,772
Massachusetts	2,126,484	558,733
New Hampshire	345,006	111,425
Rhode Island	515,154	172,760
Vermont	1,212,673	323,634
Mid-Atlantic:		
Delaware	272,469	89,313
Maryland	2,124,495	568,047
New Jersey	2,781,967	727,769
New York	8,316,431	1,993,008
Pennsylvania	5,070,525	1,200,282
Puerto Rico	2,693,026	636,974
Seneca Nat., NY	33,117	11,566
Virginia	3,001,887	726,867
Virgin Islands	183,326	53,384
West Virginia	1,406,161	401,058
Southeast:		
Alabama	2,709,039	661,360
Florida	3,698,813	874,331
Georgia	3,572,290	854,672
Kentucky	3,138,506	765,928
Mississippi	2,722,071	668,439
North Carolina	5,139,443	1,228,342
South Carolina	3,571,637	873,563
Tennessee	3,190,405	766,929
Seminoles, FL	21,930	7,648
Choctaws, MS	59,247	19,749
E. Cherokee, NC	58,860	19,620
Southwest:		
Arkansas	1,878,303	474,985
Louisiana	3,390,130	813,585
New Mexico	681,414	181,750
Oklahoma	1,380,006	352,056
Texas	8,676,459	2,015,653
Acoma, NM	27,246	9,082
N. Pueblo, NM	30,787	10,481
Isleta Pueblo, NM	23,332	7,777
Santa Domingo, NM	22,066	7,514
Six Sandoval, NM	53,832	18,153
WCD Ent., OK	155,425	51,808
Choctaws, OK	95,628	31,876
Cherokee, OK	256,562	86,595
Chickasaw, OK	47,029	8,117
Tonkawa, OK	39,600	13,738
Potawatami, OK	26,191	8,730
Zuni, NM	11,684	7,500
Midwest:		
Illinois	5,186,339	1,267,865
Indiana	1,456,176	470,155
Michigan	4,084,321	1,025,894
Minnesota	1,618,893	457,687
Ohio	6,331,506	1,484,431
Wisconsin	1,813,137	498,718
Mountain Plains:		
Colorado	1,106,843	348,561
Iowa	1,266,793	326,706
Kansas	844,394	212,718
Missouri	2,876,355	695,500
Montana	873,614	244,686
Nebraska	509,827	144,315
North Dakota	501,065	153,506
South Dakota	330,072	110,023
Utah	1,183,119	306,300
Shos & Ara., WY	44,625	14,875
Ute Mtn.Tribe, CO	7,983	7,580
Winnebago, Neb	29,106	9,702
Cheyenne Rv., SD	60,195	20,065
Rosebud, SD	72,080	24,026
Standing Rock, ND	78,558	26,186
Western:		
Alaska	149,943	49,980
Arizona	3,034,417	769,807
California	8,230,966	1,974,669
Hawaii	317,510	106,011
Idaho	720,696	232,972
Nevada	523,989	174,661
Oregon	1,622,416	464,537
Washington	2,111,742	578,628
ITCN	45,480	15,160
Total	124,994,922	31,477,254
Nationwide Total Food and Administrative Grant 3rd Qtr.	156,472,176	

Signed in Washington, D.C. on May 9, 1979.

Carol Tucker Foreman,

Assistant Secretary.

[FR Doc. 79-14969 Filed 5-14-79; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Stabilization and Conservation Service

7 CFR Part 718

Determination of Acreage and Compliance; Flue-Cured Tobacco

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

ACTION: Final Rule.

SUMMARY: Rules for determining acreage and compliance (7 CFR Part 718) were revised for 1978 and subsequent years on May 8, 1979 (44 FR 26848). This amendment further revises the rules by (1) changing the flue-cured tobacco acreage limitation effective for the 1979 crop to conform to the decision announced by amendment to regulations applicable to the tobacco loan program at 7 CFR Part 1464 (44 FR 15993) and (2) making the measurement variance rules applicable only with respect to 1978 crops.

EFFECTIVE DATE: May 15, 1979.

FOR FURTHER INFORMATION CONTACT: James Davis, Production Adjustment Division, ASCS, USDA, 3636 South Building, P.O. Box 2415, Washington, D.C. 20013, (202) 447-7641.

SUPPLEMENTARY INFORMATION: Flue-cured tobacco producers who have entered into an agreement with the local county ASC committee not to harvest the bottom 4 leaves of the stalk are allowed to plant more than 100 percent of their acreage allotment and still retain eligibility for price support. For the 1978 crop the limitation was 120 percent of their allotment. The limitation is lowered to 110 percent for the 1979 crop since the bottom 4 leaves constitute closer to 10 to 12 percent of the plant rather than 20 percent of the plant.

Since producers are planting their 1979 crop acreages and since the flue-cured acreage limitation has been

previously the subject of rulemaking (44 FR 9393 and 44 FR 15993), I have determined that compliance with the public rulemaking requirements of 5 U.S.C. 553 is impracticable and contrary to the public interest. I have further determined that it is not possible to publish these regulations in proposed form and allow 60 days for comment in accordance with the provisions of Executive Order 12044. Therefore, these amendments shall become effective upon publication in the **Federal Register**. Accordingly, 7 CFR Part 718 is amended to read as follows:

Final Rule

§§ 718.5, 718.6 and 718.9 [Amended]

1. Sections 718.5, 718.6, and 718.9 are amended by changing the phrase "120 percent" to read "110 percent" wherever it appears.

2. Section 718.6 is revised by changing the title of paragraph (c) to read as follows:

§ 718.6 Determining farm operator adherence to program requirements.

* * * * *

(c) *Measurement variance—Applicable only to 1978 crops.* * * *

(Sec. 314, 373, 375, 52 Stat 48, as amended, 65, as amended, 66, as amended; (7 U.S.C. 1314, 1373, 1375))

Note.—The Agricultural Stabilization and Conservation Service has determined that this document does not contain a significant proposal requiring preparation of an impact statement.

Signed at Washington, D.C., on May 11, 1979.

Ray Fitzgerald,

Administrator, Agricultural Stabilization and Conservation Service.

[Amdt. 3]

[FR Doc. 79-15230 Filed 5-14-79; 8:45 am]

BILLING CODE 3410-05-M

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7 CFR Part 729

Acreage Allotments, Marketing Quotas, and Poundage Quotas for 1978 and Subsequent Crops of Peanuts

Corrections

In FR Doc. 79-13293 appearing at page 25404 in the issue for Tuesday, May 1, 1979, make the following changes:

1. On page 25406, first column, tenth line from the top, delete the "a" between "segregation" and "1"; and in the third line of paragraph (b) of § 729.59, "balanced" should read "balance".

BILLING CODE 1505-01-M

Animal and Plant Health Inspection Service

9 CFR Part 75

Contagious Equine Metritis (CEM); Quarantine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of these amendments is to quarantine certain equidae on various premises in the State of Missouri because of the existence of contagious equine metritis (CEM). CEM, a communicable disease of equidae has ben diagnosed in various breeds of horses in the State of Missouri. In order to protect the equine industry of the United States from this highly contagious communicable disease and the integrity of the export of equidae from the United States, it is necessary to quarantine certain premises in the State of Missouri and to provide exceptions for the movement of certain equidae from or through areas quarantined; and to specify conditions under which certain equidae may move interstate from or through the areas quarantined when such movements can be made without undue risk of spreading CEM. The intended effect of these amendments is to stop the spread of CEM in the United States.

EFFECTIVE DATE: May 8, 1979.

FOR FURTHER INFORMATION CONTACT: Dr. Ralph C. Knowles, USDA, APHIS, VS, Federal Building, Room 738, Hyattsville, MD 20782, 301-436-8433.

SUPPLEMENTARY INFORMATION: Contagious equine metritis (CEM), a highly contagious, communicable disease of equidae, has been diagnosed in various breeds of horses on certain premises in Boone County, of the State of Missouri. Also, certain horses in Calloway County, of the State of Missouri, have been exposed to CEM. Heretofore, CEM has only been diagnosed in the State of Kentucky among breeding horses of the thoroughbred breed. In order to protect the equine population of the United States from the spread of this highly contagious disease of equidae, it is necessary to quarantine the areas of Missouri in which animals known to be affected or exposed to CEM exist and to regulate the movement of certain animals from and through the areas quarantined.

Definitions of the terms "breeding animal" and "artificial insemination" are added to §75.5 of the regulations for the purpose of clarifying the meaning of these terms as used in the regulations.

A "breeding animal" is defined in §,75.5(l) of the regulations as any mare or stallion more than 731 days old on the date of interstate movement.

The term "artifical insemination" is defined in § 75.5(m) of the regulations as the collection of semen from a stallion through use of an artificial vagina and the introduction of semen collected by that means into the female reproductive organs of a mare without sexual contact. The purpose of that definition is to insure that semen use in artificial insemination is collected by use of an artificial vagina and introduced into the female reproductive organs of a mare without sexual contact in order to prevent the possible spread of disease through such contact.

In order to differentiate the paragraphs concerning CEM in Part 75 from the other portions of said part concerning Dourine in Horses and Asses and Equine Infectious Anemia (Swamp Fever), a new heading is added after § 75.4 and prior to § 75.5 to read "Contagious Equine Metritis (CEM)." The heading of § 75.8 is amended to read *"Restrictions on the Interstate Movement from or through Kentucky."* The change in heading was made necessary because of the addition of § 75.9 which concerns restrictions on interstate movement from or through Missouri.

A new § 75.7(b) of the regulations is added to give notice that animals in areas of Boone and Callaway Counties, Missouri, are affected with or exposed to CEM, and that certain premises therein are quarantined as a result thereof.

Section 75.9(a) of the regulations prohibits the interstate movement of animals from or through the quarantined areas specified in § 75.7(b) except in accordance with the conditions set forth in § 75.9(a)(1)-(8) and except as provided in § 75.9(b). This prohibition of movement from or through the quarantined areas of Missouri is necessary to prevent the spread of CEM from the quarantined areas. The eight conditions under which an animal may be moved interstate from or through the quarantined areas (§ 75.9(a)(1)-(8)) are discussed below. They allow the movement of certain animals under conditions which will not present an undue risk of the spread of CEM from the areas quarantined.

Section 75.9(a)(1) of the regulations is added to permit the interstate movement of geldings from or through quarantined areas in Missouri without restriction. CEM is a breeding disease of equidae,

and since geldings are not used for breeding purposes, they are excepted from restrictions on movement from or through such areas.

Section 75.9(a)(2) of the regulations is added to permit the interstate movement of weanlings or yearlings from or through a quarantined area in Missouri if accompanied by a certificate. These animals are not used for breeding purposes and, therefore, if not affected or exposed to CEM, do not pose a threat to spread CEM. Information required on the certificate is for the purpose of confirming the fact that the animals identified on the certificate are not affected or exposed animals and to establish the fact that the animals being moved are the same as those listed on the certificate, thereby insuring that such animals are eligible to move under the regulations.

Section 75.9(a)(3) of the regulations is added to permit the interstate movement of breeding animals which are not affected or exposed to CEM from a quarantined area in Missouri for other than breeding purposes when accompanied by a certificate. Such movements are permitted because the incidental contact between animals at races, exhibitions and for purposes other than breeding is negligible and is not likely to spread CEM.

Section 75.9(a)(4) of the regulations is added to permit breeding animals which are not affected or exposed to CEM to be moved interstate from a quarantined area in Missouri for breeding by artificial insemination in the presence of and certified to by a State or Federal Veterinary Services Inspector if such animals are accompanied by a certificate. Such movement for breeding by artificial insemination is allowed because such breeding, if properly conducted, is highly unlikely to spread CEM. The requirement that the breeding by artificial insemination be done in the presence of and certified to on the certificate by a State or Federal Veterinary Services Inspector is necessary to insure that the breeding is in fact done by artificial insemination in a proper manner to prevent the spread of CEM.

Sections 75.9(a)(5)–(7) of the regulations is added to permit the interstate movement of certain mares and stallions as described below from the quarantined areas in Missouri if it has been determined by a State or Veterinary Services Inspector through epidemiological investigation that such animals are not affected or exposed animals and they are accompanied by a certificate. The Department believes that such an epidemiological investigation by a State or Veterinary Services Inspector will insure that the animals to be moved are not affected or exposed to CEM. The interstate movement of such animals from the quarantined areas of Missouri will not pose an undue risk of the spread of CEM from those areas. The purpose of the certificate accompanying these animals is to confirm the fact that the animals identified on the certificate are not affected or exposed animals and to establish the fact that the animals being moved are the same as those listed on the certificate, thereby insuring that such animals are eligible to move under the regulations.

Section 75.9(a)(5) of the regulations is added to permit the interstate movement of a mare after February 1, 1978, on a known infected premises from a quarantined area in Missouri if it has been determined by a State or Veterinary Services Inspector through epidemiological investigation that she is not an affected or exposed animal and she is accompanied by a certificate. February 1, 1978, is the date on which the Department believes CEM was introduced into Missouri.

Section 75.9(a)(6) of the regulations is added to permit the interstate movement of a mare not bred on a known infected premises from a quarantined area in Missouri if it has been determined by a State or Veterinary Services Inspector through epidemiological investigation that she is not an affected or exposed animal and she is accompanied by a certificate.

Section 75.9(a)(7) of the regulations is added to permit the interstate movement of a mare or stallion bred on a premises which is not a known infected premises from a quarantined area if it has been determined by a State or Veterinary Services Inspector through epidemiological investigation that the animal is not an affected or exposed animal and it is accompanied by a certificate.

Section 75.9(a)(8) of the regulations is added to permit an animal which is not an affected or exposed animal to move interstate through the quarantined area if accompanied by a certificate and if moved through such area without contact with other animals in such area. Animals which are not affected or exposed present no undue disease risk. The purpose of preventing contact of such animals moving through the quarantined area is to prevent the animals from becoming affected or exposed animals while in the quarantined area. The purpose of the certificate accompanying these animals is to confirm the fact that the animals identified on the certificate are not affected or exposed animals and to establish the fact that the animals being moved are the same as those listed on the certificate, thereby insuring that such animals are eligible to move under the regulations.

Section 75.9(b)(1) of the regulations is added to require that affected or exposed animals shall not be moved interstate except for immediate slaughter directly to a federally inspected slaughtering establishment operated under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) or to a State inspected slaughtering establishment which has inspection by a State inspector at the time of slaughter and if accompanied by a permit. This requirement has been established because such animals obviously pose a threat to disseminate CEM and therefore must only be permitted to move interstate for immediate slaughter. The reason the types of slaughtering establishments are specified is that such establishments have Federal or State officials present who will insure that the animals are received and slaughtered. A permit is required because it will provide a means of identifying and tracing the particular animal.

Section 75.9(b)(2) is added to require that nonaffected and nonexposed animals may move interstate for immediate slaughter only if they comply with the provisions for affected or exposed animals moved for slaughter.

This requirement is necessary in order to provide a means of identifying the origin of such animals and to trace the movement of such animals which may be established at the time of slaughter to be affected with CEM.

Section 75.9(c) is added to establish cleaning and disinfection requirements for means of conveyance used to transport affected or exposed animals interstate to slaughter. Such requirements are necessary to prevent the spread of CEM because CEM may be transmitted by the animal to the means of conveyance or articles in the means of conveyance. Therefore, in order to prevent any other animals which the means of conveyance may subsequently transport from coming in contact with CEM, the means of conveyance must be cleaned and disinfected.

PART 75—COMMUNICABLE DISEASES IN HORSES, ASSES, PONIES, MULES, AND ZEBRAS

Accordingly, Part 75, Title 9, Code of Federal Regulations, is amended as follows:

1. A new heading is added after § 75.4 and prior to § 75.5 to read *"Contagious Equine Metritis (CEM)."*

2. In § 75.5, new paragraphs (l) and (m) are added to read:

§ 75.5 Definitions.

* * * * *

(l) *Breeding animal.* Any mare or stallion more than 731 days old on the date of interstate movement.

(m) *Artifical insemination.* The collection of semen from a stallion through use of an artifical vagina and the introduction of semen collected by that means into the female reproductive organs of a mare without sexual contact.

3. In § 75.7, a new paragraph (b) is added to read:

§ 75.7 Areas quarantined.

* * * * *

(b) Notice is hereby given that because of the existence of CEM in various breeds of horses in certain areas of Missouri and because of the nature and extent of such disease, the following areas are hereby quarantined:

(1) *Missouri.*

(i) *Boone County.*

(A) The premises of Barr Trak Farm, Inc., located in Cedar Township in the west one-half of sec. 16, T. 47S., R. 13 W.

(B) The premises of William B. Goodson located in Perche Township in the southwest one-fourth of sec. 13, and the east one-half of the southeast one-fourth of sec. 14, T. 49 N., R. 14 W.

(ii) *Callaway County.* The premises of Carl Block located in sec. 34, T. 48 N., R. 11 W.

4. The heading of § 75.8 is amended to read:

§ 75.8 Restrictions on interstate movement from or through Kentucky.

5. A new § 75.9 is added to read:

§ 75.9 Restrictions on interstate movement from or through Missouri.

(a) Except as provided in paragraph (b) of this section, no animal shall be moved interstate from or thorough any quarantined area specified in § 75.7(b) of this part except in accordance with the following conditions:

(1) A gelding may be moved interstate without restriction;

(2) A weanling or yearling may be moved interstate if accompanied by a certificate;

(3) A breeding animal which is not an affected or exposed animal may move interstate from a quarantined area for other than breeding purposes if accompanied by a certificate; or

(4) A breeding animal which is not an affected or exposed animal may be moved interstate from a quarantined area for breeding purposes if such breeding will be performed only by artifical insemination in the presence of and certified to by a State or Veterinary Services Inspector and if such animal is accompanied by a certificate which contains, in addition to the information required in § 75.5(d), the certification by the State or Veterinary Services Inspector that the breeding of the animal was properly performed by artifical insemination.

(5) A mare bred after February 1, 1978, on a known infected premises may move from the quarantined area if it has been determined by a State or Veterinary Services Inspector through epidemiological investigation that she is not an affected or exposed animal and she is accompanied by a certificate;

(6) A mare not bred on a known infected premises may move from the quarantined area if it has been determined by a State or Veterinary Services Inspector through epidemiological investigation that she is not an affected or exposed animal and she is accompanied by a certificate;

(7) A mare or stallion bred on a premises which is not a known infected premises may move from a quarantined area if it has been determined by a State or Veterinary Services Inspector through epidemiological investigation that the animal is not an affected or exposed animal and if the animal is accompanied by a certificate; or

(8) An animal which is not an affected or exposed animal may move interstate through the quarantined area if accompanied by a certificate and if moved through such area without contact with other animals while in such area.

(b) *Movement of animals for immediate slaughter.*

(1) No affected or exposed animal shall be moved interstate except for immediate slaughter directly to a Federally inspected slaughtering establishment operated under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) or to a State-inspected slaughtering establishment which has inspection by a State inspector at the time of slaughter and only if accompanied by a permit.

(2) An animal other than an affected or exposed animal may be moved interstate for immediate slaughter only if it complies with all of the provisions for movement of affected or exposed animals for slaughter in subparagraph (b)(1) of this section.

(c) *Cleaning and disinfection.* Any means of conveyance used to transport an affected or exposed animal interstate shall be thoroughly cleaned and disinfected after such movement in accordance with the provisions of §§ 71.6, 71.7, 71.10, 71.11, and 71.12 of the regulations in this subchapter.

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

In view of the nature of the disease and circumstances under which it is disseminated and in order to prevent the interstate spread of the disease, it is necessary to quarantine portions of the State of Missouri and to permit the interstate movement of certain animals only under the above specified conditions. These amendments must be made effective immediately to accomplish their purpose in the public interest.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register.**

Further, this final rule has not been designated as "significant," and is being published in accordance with the emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by Dr. J. K. Atwell, Assistant Deputy Administrator, APHIS, VS, that the emergency nature of this final rule warrants publication without opportunity for public comment and preparation of an impact analysis statement at this time.

This final rule will be scheduled for review under provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Done at Washingotn, D.C., this 8th day of May, 1979.

Pierre A. Chaloux,

Deputy Administrator, Veterinary Services.

[FR Doc. 79–14974 Filed 5–14–79; 8:45 am]

BILLING CODE 3410–34–M

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9 CFR Part 82

Exotic Newcastle Disease and Psittacosis or Ornithosis in Poultry; Area Released From Quarantine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to release a portion of Orange County in California from the areas quarantined because of exotic Newcastle disease. Surveillance activity indicates that exotic Newcastle disease no longer exists in the area released from quarantine.

EFFECTIVE DATE: May 8, 1979.

FOR FURTHER INFORMATION CONTACT: Dr. M. A. Mixson, USDA, APHIS, VS, Federal Building, Room 748, Hyattsville, MD 20782, 301–436–8073.

SUPPLEMENTARY INFORMATION: This amendment releases a portion of Orange County in California from the areas quarantined because of exotic Newcastle disease under the regulations in 9 CFR Part 82, as amended. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles from quarantined areas, as contained in 9 CFR Part 82, as amended, will no longer apply to the area released.

PART 82—PSITTACOSIS OR ORNITHOSIS IN POULTRY

Accordingly, Part 82, Title 9, Code of Federal Regulations, is hereby amended in the following respect:

In § 82.3(a)(1), relating to the State of California, paragraph (viii) relating to Orange County is deleted.

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

The amendment relieves certain restrictions no longer deemed necessary to prevent the spread of exotic Newcastle disease. It should be made effective immediately in order to permit affected persons to move poultry, mynah, psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles, interstate from such area without unnecessary restrictions. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register.**

Further, this final rule has not been designated as "significant," and is being published in accordance with the emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by J. K. Atwell, Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, that the emergency nature of this final rule warrants publication without opportunity for public comment or preparation of an impact analysis statement at this time.

This final rule implements the regulations in Part 82. It will be scheduled for review in conjunction with the periodic review of the regulations in that Part required under the provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Done at Washington, D.C., this 8th day of May 1979.

Pierre A. Chaloux,
Deputy Administrator, Veterinary Services.

[FR Doc. 79–14975 Filed 5–14–79; 8:45 am]
BILLING CODE 3410–34–M

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9 CFR Part 82

Exotic Newcastle Disease and Psittacosis or Ornithosis in Poultry; Area Released From Quarantine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to release a portion of Macomb County in Michigan from the areas quarantined because of exotic Newcastle disease. Surveillance activity indicates that exotic Newcastle disease no longer exists in the area released from quarantine. No areas in the State of Michigan remain under quarantine.

EFFECTIVE DATE: May 9, 1979.

FOR FURTHER INFORMATION CONTACT: Dr. M. A. Mixson, USDA, APHIS, VS, Federal Building, Room 748, Hyattsville, MD 20782, 301–436–8073.

SUPPLEMENTARY INFORMATION: This amendment releases a portion of Macomb County in Michigan from the areas quarantined because of exotic Newcastle disease under the regulations in 9 CFR Part 82, as amended. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles from quarantined areas, as contained in 9 CFR Part 82, as amended, will no longer apply to the area released.

Accordingly, Part 82, Title 9, Code of Federal Regulations, is hereby amended in the following respect:

§ 82.3 [Amended]

In § 82.3(a), paragraph (7), relating to the State of Michigan is deleted.

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

The amendment relieves certain restrictions no longer deemed necessary to prevent the spread of exotic Newcastle disease. It should be made effective immediately in order to permit affected persons to move poultry, mynah, psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts, thereof, and certain other articles, interstate from such area without unnecessary restrictions. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register.**

Further, this final rule has not been designated as "significant," and is being published in accordance with the emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by J. K. Atwell, Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, that the emergency nature of this final rule warrants publication without opportunity for public comment or preparation of an impact analysis statement at this time.

This final rule implements the regulations in Part 82. It will be scheduled for review in conjunction with the periodic review of the regulations in that Part required under the provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Done at Washington, D.C., this 9th day of May 1979.

M. T. Goff,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 79-15093 Filed 5-14-79; 8:45 am]

BILLING CODE 3410-34-M

9 CFR Part 91

Inspection and Handling of Livestock for Exportation; Mexican and Canadian Ports of Embarkation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the animal export regulations by deleting the provisions relating to certain Mexican and all Canadian border ports of embarkation. These border ports of embarkation are no longer necessary for the exportation of animals to Mexico and Canada because both countries have ports of entry and require inspection of animals prior to their importation into their respective countries, and this country inspects such animals at their point of origin.

These amendments remove the requirements that animals be exported to Mexico and Canada through specified border ports of embarkation and correct oversights and typographical errors in the present export regulations.

EFFECTIVE DATE: May 15, 1979.

FOR FURTHER INFORMATION CONTACT: Dr. H. A. Waters, USDA, APHIS, VS, Room 826, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8383.

SUPPLEMENTARY INFORMATION: On January 30, 1979, the Animal and Plant Health Inspection Service published a proposed rule in the **Federal Register** (44 FR 5896-5899) proposing to amend certain portions of Part 91. Interested persons were given until April 2, 1979, to submit data, views, and arguments regarding the proposed rule. No written comments were received.

It does not appear that further public participation in this rulemaking proceeding would make additional information available to the Department.

These amendments relieve certain unnecessary restrictions presently imposed and should be made effective promptly to be of maximum benefit to affected persons. Therefore, good cause is found for making the amendments effective less than 30 days after publication in the **Federal Register.**

Done at Washington, D.C., this 8th day of May 1979.

Note.—This final rule has been reviewed under the USDA criteria established to implement E.O. 12044, "Improving Government Regulations", and has not been designated "significant." An approved Final Impact Analysis Statement has been prepared and is available from Program Services Staff, Room 870, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8695.

E. A. Schilf,

Acting Deputy Administrator, Veterinary Services.

1. In § 91.3, the second sentence of paragraph (a), is amended; (a)(3) is amended; (a)(4) is deleted; paragraph (b) is amended; a sentence is added to the end of (c)(1), and the first two sentences of (c)(3) are amended as follows:

§ 91.3 Ports of embarkation and export inspection facilities.

(a) * * * All animals, except animals being exported to Mexico or Canada, shall be exported through said ports or through ports designated in special cases under paragraph (b) of this section:

* * * * *

(3) *Border ports.* Brownsville, Laredo, Eagle pass, Del Rio, and El Paso, Texas.

(4) [Deleted]

* * * * *

(b) In special cases, other ports may be designated as ports of embarkation by the Deputy Administrator, with the concurrence of the Director of Customs, when the exporter can show to the satisfaction of the Deputy Administrator that the animals to be exported would suffer undue hardship if they are required to be moved to a port of embarkation listed in § 91.3(a). Such ports shall be designated only if the inspection facilities are approved as meeting the requirements of paragraph (c) of this section.

* * * * *

(c) * * *

(1) *Materials.* * * * The facility shall have a roof adequate to protect the animals from inclement weather over at least three-fourths of the pens and alleys and over all of the inspection area.

* * * * *

(3) *Inspection implements.* The facility shall have a separate area available for inspection and identification of the animals. Pens and animal restraining devices shall be provided in this area which are sufficient for the inspection and identification of each animal. * * *

2. In § 91.4, paragraphs (a), (b), and (d) are revised. Paragraph (c) is amended by changing the reference to "§ 915" to read "§ 91.5", and the last sentence (including footnote 3) is amended as set forth below, and in paragraph (e) the first sentence is amended as set forth below:

§ 91.4 General export requirements.

(a) All animals intended for exportation to a foreign country, except animals intended for exportation to Mexico or Canada, shall be accompanied from the State of origin of the export movement to the port of embarkation by an origin health certificate. All animals intended for exportation to Mexico or Canada shall be accompanied from the State of origin of the export movement to the border of the United States by an origin health certificate. The origin health certificates shall certify that the animals were inspected within the 30 days prior to the date of the movement of the animals for export, and were found to be sound, healthly, and free from evidence of communicable disease and exposure thereto. The origin health certificates shall be endorsed by an authorized Veterinary Services veterinarian in the State of origin. The origin health certificates shall individually identify the animals in the shipment as to species, breed, sex, and age, and if applicable shall also show registration name and number, tattoo markings, or other natural or acquired markings.

(b) *Inspection.* All animals in each export shipment, except animals intended for export to Mexico or Canada, shall have been inspected, tested, or treated in the manner prescribed in this Part prior to the movement of the export shipment to the export inspection facility. All animals in each export shipment intended for export to Mexico or Canada shall have been inspected, tested, or treated in the manner prescribed in this Part prior to the movement of the animals from the State of origin. The Deputy Administrator may, upon request of the appropriate animal health official of the country of destination, waive the tuberculosis and brucellosis tests referred to in §§ 91.5(a) (1) and (2), 91.5(b), and 91.5(c) of this Part when he finds such tests are not necessary to prevent the exportation of diseased animals from the United States.

* * * * *

(c) *Testing.* * * * The test for brucellosis shall be conducted in a cooperating State-Federal laboratory [3] in accordance with the Recommended Brucellosis Eradication Uniform Methods and Rules.[1]

(d) *Movement in cleaned and disinfected carriers or containers.* The origin health certificate accompanying animals shall be accompanied by a statement from the issuing accredited

[1] * * *

[2] * * *

[3] A list of cooperating State-Federal laboratories may be obtained from the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, Hyattsville, Md. 20782.

veterinarian or inspector that the means of conveyance or container has been cleaned and disinfected since last used for animals with a disinfectant approved under § 71.10 of this Chapter, prior to loading, or that the carrier or container has not previously been used in transporting animals.

(e) *Clean and disinfected facilities for unloading animals.* Animals intended for exportation to Mexico or Canada or enroute to a port of embarkation shall be unloaded only into a facility which shall have been cleaned and disinfected with a disinfectant approved under § 71.10 of this Chapter, under the supervision of an inspector or an accredited veterinarian prior to such unloading. * * *

3. Section 91.5(a)(2) is amended to read:

§ 91.5 Specific export requirements.

(a) * * *

(2) *Brucellosis.* All cattle over six months of age shall be negative to a test for brucellosis conducted as prescribed in "Standard Agglutination Test Procedures for the Diagnosis of Brucellosis" [4] or "Supplemental Test Procedures for the Diagnosis of Brucellosis"; [4] except, that such tests are not required for official vaccinates of dairy breeds under 20 months of age, official vaccinates of beef breeds under 24 months of age, or steers and spayed heifers.

4. Section 91.6(a) is amended to read as follows, and (d) is deleted.

§ 91.6 Inspection of animals for export.

(a) All animals offered for exportation to any foreign country, except Mexico or Canada, shall be inspected by a Veterinary Services veterinarian at an export inspection facility at a port designated in § 91.3(a), or at a port or inspection facility designated by the Deputy Administrator in a special case under § 91.3(b).

* * * * *

(d) [Deleted]

(Sec. 10, 26 Stat. 417; sec. 4, 23 Stat. 32, as amended; sec. 5, 23 Stat. 32, as amended; sec. 11, 38 Stat. 734, as amended; sec. 1, 32 Stat. 791, as amended; sec. 3, 76 Stat. 130; sec. 11, 76 Stat. 132; sec. 12, 34 Stat. 1263, as amended; sec. 13, 34 Stat. 1263, as amended; sec. 14, 34 Stat. 1263, as amended; sec. 18, 34 Stat. 1263, as amended; sec. 1, 26 Stat. 833; as amended; sec. 2, 26 Stat. 833, as amended; [21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, 618; 46 U.S.C. 466a, 466b]; 37 FR 28464, 28477; 38 FR 19141.)

[FR Doc. 79-14797 Filed 5-14-79; 8:45 am]

BILLING CODE 3410-34-M

[4] * * *

9 CFR Part 92

Bird Identification

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document deletes the requirement for individual identification of birds prior to their importation into the United States; requires identification of all psittacine birds during quarantine; and requires records of such identification to be maintained by the quarantine facility operator for a period of 12 months following the date of release of only psittacine birds from quarantine. At this time it appears that the individual identification of psittacine birds only at the quarantine facility will be necessary as an additional aid to prevent the introduction of exotic Newcastle disease into the United States. The intended effect of this action is to require the individual identification of all psittacine birds and a record of such birds legally imported into the United States so that they may be differentiated from birds smuggled into the United States and to aid in the tracing of such birds moved into the United States.

EFFECTIVE DATE: May 15, 1979.

FOR FURTHER INFORMATION CONTACT: Dr. George P. Pierson, USDA, APHIS, VS, Import-Export Staff, Room 817, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782, 301–436–8170.

SUPPLEMENTARY INFORMATION: On April 18, 1978, there was published in the **Federal Register** (43 FR 16346–16347), a proposed amendment to the regulations (9 CFR 92) which would delete the requirement for individual identification of birds prior to their importation into the United States and would substitute therefor the requirement that such birds be identified by the quarantine facility operator within 72 hours of the time the birds enter the quarantine facility using identification devices supplied by the Department at cost, upon request to the Deputy Administrator. Additionally, the quarantine facility operator would be required to make and maintain for 12 months following the release of the birds from quarantine a record of birds so identified. It was further proposed that birds imported through a USDA quarantine facility would also be so identified and that the Department would make and maintain the same records required by a private quarantine facility operator.

A 60-day comment period was provided which expired June 20, 1978. A total of 13 comments were received by the Department, which are summarized as follows:

Six of the comments received were from bird quarantine facility operators, and one each was received from The American Federation of Aviculture, International Bird Institute, Virginia Poultry Federation, Inc., The Humane Society of the United States, Environmental Defense Fund, California Department of Health and a Department employee.

A summary of relevant comments received and the Department's response to these comments is as follows:

1. Four of the comments received endorsed the proposal as written.

2. Five comments objected to the identification of all birds, and particularly finches and other small delicate birds. These objections were based on increased operating costs, the necessity to handle small birds which may cause injury and stress, the additional time required to identify such birds and record those birds released from quarantine, the fact that velogenic viscerotropic Newcastle disease among finches and other small species of birds is significantly less than among psittacine birds, and the fact that smuggling of small type birds is not a problem as compared to smuggling of psittacine birds.

3. Three comments stated that individual identification of the birds should not be required within 72 hours of placement of the birds into the quarantine facility, but should only be required prior to their release from quarantine.

4. Four comments stated that birds would be injured by the legbands catching on the cage or other objects or by self-inflicted injury resulting from efforts to remove the identification device.

5. Four comments pointed out that individual identification is not required to be retained on birds after their release from quarantine.

6. Two comments stated that individual identification devices should be coded to identify the quarantine facility in addition to the individual serial numbering required on each device.

7. One comment received stated that only birds from Central America should be identified; one stated that recordkeeping would be expensive; one stated that it is not necessary to record both common and scientific names; and one stated that most smuggling only involved birds of the psittacine family.

8. One comment suggested that present regulations be retained without change, and a second comment suggested that record retention should be required for a period of 2 or 3 years.

After due consideration of all the comments received, the Department has decided to require identification of only psittacine birds and, as provided in the proposal, such identification is to be made within 72 hours of the arrival of such birds at a quarantine facility. The Department believes that identifying small birds may cause injury and stress on the birds and may require great amounts of time to identify such birds. Further, the current information which the Department has available indicates that, unlike psittacine birds, non-psittacine birds do not present a substantial threat to introduce exotic Newcastle disease into the United States or to be smuggled into the United States, so that they should be required to be identified. However, the Department will be continually investigating this situation, and if such birds are determined to become a significant threat, the Department will seek to require the identification of such birds. Additionally, the Department believes that reguiring psittacine birds to be identified at the quarantine facility is more effective to insure that the birds be identified while in quarantine rather than having identification numbers applied prior to presentation for entry.

In response to comments received concerning the potential danger of injury resulting from the application of identification devices to birds, as noted above the identification requirements will only apply to psittacine birds. Due to their size, psittacine birds will be less likely to be injured by identification devices than smaller birds. While no effective identification device presently exists which would guarantee that use of the device could not injure the bird, the Department would only approve those devices which would appear to present the least risk to injure a bird and which would be effective in identifying the bird. Further, the final rule indicates that such identification devices may be legbands approved by the Deputy Administrator, Veterinary Services, upon written request to him. The Department believes that these present the least likelihood to injure the bird and still be effective in identifying the birds. However, the regulations also allow for the use of other types of identification devices upon written request to and upon approval of the Deputy Administrator of Veterinary Services. This would permit the utilization of a similar effective and safe identification device by an importer in lieu of legbands.

The Department believes that the birds should be identified as soon as possible at the time the birds enter the quarantine facility rather than at the time the birds are released from the facility. This will enable the Department to keep better track of the birds so as to insure against the unlawful removal of the birds from quarantine.

The proposed rule indicated that identifying devices used to identify birds would be supplied to the quarantine facility operator at cost upon request to the Deputy Administrator. The Department has determined that the identifying devices used to identify psittacine birds in the approved quarantine facility can be purchased by the quarantine facility operator directly from the manufacturer with greater speed and at no expense to the Department. Only identification devices approved in advance by the Deputy Administrator shall be used. It should be noted that with respect to USDA quarantine facilities, the Department will provide the identification devices at cost to the importer since USDA is the quarantine facility operator at such facilities.

The suggestions received that the quarantine facility code be required on the identification device is adopted in the final rule. This should aid in tracing the movement of the birds from the time they enter the quarantine station.

In response to the comment received that identification devices will be removed from birds after they are released from quarantine, owners of such birds are encouraged to retain such devices in place permanently for the purpose of identification and tracing to origin should this be required.

In response to the comment received which suggested that birds from Central America only be identified, birds from other countries present a similar threat of disease introduction as do birds from Central America. Therefore, this suggestion was not adopted.

In response to the comment received that recordkeeping will be expensive, the Department admits that there is a cost in maintaining any record. However, such records are necessary to trace the movement of birds into the United States and to account for birds which enter the United States through quarantine facilities. Therefore, such records will be required.

The comment received that objected to the recording of both common and scientific names of birds imported was not adopted since this information is believed to be necessary to identify birds in a particular shipment as well as to effectuate the provisions of section 7 of the Endangered Species Act (16 U.S.C. 1536) which mandates that Federal agencies utilize their authorities in furtherance of the purposes of that Act. Requiring such information should help determine whether a bird being imported is subject of the provisions of the Endangered Species Act.

The comment received which suggested that present regulations be retained without change is rejected since the identification requirements of these regulations have proven to be impractical and unsatisfactory. Likewise, the suggestion that records of identification devices applied be retained for a 2 or 3 year period is rejected because to require the retention of such records for such a period is believed to be unduly burdensome on the importer.

These final rules impose identification requirements on psittacine birds. These rules should enable the Department to keep better track of birds entering the United States through USDA or approved quarantine facilities.

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

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

§ 92.5 [Amended]

1. Section 92.5(c) is amended by deleting the phrase "such birds were individually identified by serially numbered legbands (or by other suitable means of identification approved by the Deputy Administrator, Veterinary Services, upon request to him) and " appearing after the first semicolon in the first sentence in said section.

§ 92.11 [Amended]

2. The following sentences are added between the first and second sentences of § 92.11(e): "At a USDA quarantine facility each psittacine bird shall be individually identified by the Department within 72 hours of the entry of the bird into the bird quarantine facility with a serially numbered legband which has been coded to the quarantine facility or by other suitable means of identification. The identification device must be approved by the Deputy Administrator, Veterinary Services, before it shall be used to identify birds under this section. Such

means of identification shall be supplied by the Department at cost to the importer. The Department shall make an identification record at the time such bird is so identified containing the species of the bird, including the common and scientific name, and the number of the identification device placed on the bird. The daily log and the identification record shall be maintained for 12 months following the date of the release of the bird from quarantine."

3. Section 92.11(f)(3)(ii)(E) is amended by deleting the period at the end of the first sentence of the section and adding the following in lieu thereof: "; and it shall be the responsibility of the facility operator to identify individually each psittacine bird within 72 hours of the entry of the bird into the quarantine facility with a serially numbered legband which has been coded to the quarantine facility or by other suitable means of identification. Any identification device must be approved by the Deputy Administrator, Veterinary Services, upon written request to him, before it shall be used to identify birds under this section. Such means of identification shall be supplied by the facility operator, and the facility operator shall insure that each bird is so identified at the time the bird is released from the facility."

4. Section 92.11(f)(3)(iii) is amended by deleting the last sentence of said section and inserting in lieu thereof the following:

The operator of the facility shall also make an identification record, at the time each psittacine bird is identified, containing the species of the bird, including the common and scientific name and the number of the identification device placed on each psittacine bird. The daily log and the identification record shall be maintained for 12 months following the date of release of the bird from quarantine and shall be made available to Veterinary Services personnel upon request.

(Sec. 2, 32 Stat. 792, as amended, and sec. 4, 76 Stat. 130 (21 U.S.C. 111 and 134c).)

This final rule has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations." A determination has been made that this action should not be classified "significant" under those criteria. A final Impact Statement has been prepared and is available from Program Services Staff, Room 870, 6505 Belcrest Road, Federal Building, Hyattsville, MD 20782. 301–436–8695.

Note.—The recordkeeping and reporting requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

Done at Washington, D.C., this 10th day of May 1979.

Pierre A. Chaloux,

Deputy Administrator, Veterinary Services.

[FR Doc. 79-15116 Filed 5-14-79; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL RESERVE SYSTEM

12 CFR Part 265

Rules Regarding Delegation of Authority

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: In order to expedite and facilitate the performance of certain of its functions, the Board of Governors has delegated to the Secretary of the Board authority to permit member banks to waive the penalty for early withdrawal of a time deposit in § 217.4(d) of Regulation Q for depositors suffering emergency-related losses in areas declared an emergency area by the President.

EFFECTIVE DATE: Immediately.

FOR FURTHER INFORMATION CONTACT: Paul S. Pilecki, Attorney, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202/452–3281).

SUPPLEMENTARY INFORMATION: Section 217.4(d) of Regulation Q (12 CFR § 217.4(d)) provides that where a time deposit, or any portion thereof, is paid before maturity, a member bank may pay interest on the amount withdrawn at a rate not to exceed that currently prescribed for a savings deposit and that the depositor shall forfeit three months of interest payable at such rate. The Board of Governors has amended its Rules Regarding Delegation of Authority to authorize the Secretary of the Board to permit member banks to waive the early withdrawal penalty in those situations in which the President of the United States, pursuant to section 301 of the Disaster Relief Act of 1974 (42 U.S.C. § 5141) and Executive Order No. 11795 of July 11, 1974, has designated an area an emergency area. The Board regards a Presidential declaration of an emergency area as recognition by the Federal government that loss and hardship of major proportions has occurred and under such circumstances believes it appropriate to provide an additional measure of assistance to emergency victims by temporarily suspending the Regulation Q early withdrawal penalty. The Board previously has authorized the Secretary to permit member banks to waive the early withdrawal penalty in connection with Presidentially-declared major disasters. Pursuant to this delegation, a waiver of the early withdrawal penalty will be limited in effectiveness to depositors suffering emergency-related losses in a geographical area designated an emergency area by a Presidential declaration.

The provisions of § 553 of Title 5, United States Code, relating to notice and public participation and deferred effective date are not followed in connection with this amendment because the change involved therein is procedural in nature and does not constitute a substantive rule subject to the requirements of such section.

Effective April 26, 1979, § 265.2(a)(18) is amended to read as follows:

§ 265.2 Specific functions delegated to Board employees and Federal Reserve Banks.

* * * * *

(2) The Secretary of the Board (or, in the Secretary's absence, the Acting Secretary) is authorized:

* * * * *

(18) Under the provisions of section 19(j) of the Federal Reserve Act (12 U.S.C. § 371b) and §§ 217.4 (a) and (d) of Regulation Q (12 CFR §§ 217.4 (a) and (d)) to permit member banks to waive the penalty for early withdrawal of a time deposit in § 217.4(d) (Regulation Q), if all of the following conditions are met:

(i) The President of the United States declares an area a major disaster area or an emergency area pursuant to section 301 of the Disaster Relief Act of 1974 (42 U.S.C. § 5141) and Executive Order No. 11795 of July 11, 1974.

(ii) A waiver is limited in effectiveness to depositors suffering disaster or emergency-related losses in the officially designated disaster or emergency area.

(iii) The appropriate Reserve Bank recommends approval.

(iv) All relevant divisions of the Board's staff recommend approval.

By order of the Board of Governors of the Federal Reserve System, April 26, 1979.

Theodore E. Allison,

Secretary of the Board.

[Docket No. R-0223]

[FR Doc. 79-15117 Filed 5-14-79; 8:45 am]

BILLING CODE 6210-01-M

12 CFR Part 217

Interest on Deposits; Temporary Suspension of Early Withdrawal Penalty

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Temporary suspension of the Regulation Q penalty normally imposed upon the withdrawal of funds from time deposits prior to maturity

SUMMARY: The Board of Governors of the Federal Reserve System has suspended the Regulation Q penalty for the withdrawal of time deposits prior to maturity from member banks for depositors affected by the severe storms beginning on or about March 29, 1979, in the State of Iowa.

EFFECTIVE DATE: April 6, 1979.

FOR FURTHER INFORMATION CONTACT: Paul S. Pilecki, Attorney, Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202/452–3281).

SUPPLEMENTARY INFORMATION: On April 6, 1979, pursuant to section 301 of the Disaster Relief Act of 1974 (42 U.S.C. § 5141) and Executive Order 11795 of July 11, 1974, the President, acting through the Administrator of the Federal Disaster Assistance Administration, designated the following counties of the State of Iowa an emergency area: Madison, Page, Taylor, Union and Warren. The Board regards the President's action as recognition by the Federal government that an emergency of major proportions has occurred. The President's designation enables victims of the disaster to qualify for special emergency financial assistance. The Board believes it appropriate to provide an additional measure of assistance to victims by temporarily suspending the Regulation Q early withdrawal penalty.[1] The Board's action permits a member bank, wherever located, to pay a time deposit before maturity without imposing this penalty upon a showing that the depositor has suffered property or other financial loss in the emergency area as a result of the severe storms. A member bank should obtain from a depositor seeking to withdraw a time deposit pursuant to this action a signed statement describing fully the emergency-related loss. This statement should be approved and certified by an officer of the bank. This action will be retroactive to April 6, 1979, and will remain in effect until 12 midnight September 30, 1979.

Section 19(j) of the Federal Reserve Act (12 U.S.C. § 371b) provides that no member bank shall pay any time deposit before maturity except upon such conditions and in accordance with such rules and regulations as may be prescribed by the Board. The Board has determined it to be in the overriding public interest to suspend the penalty provision in § 217.4(d) of Regulation Q for the benefit of depositors suffering emergency-related losses within those geographical areas of the State of Iowa officially designated an emergency area by the President. The Board, in granting this temporary suspension, encourages member banks to permit penalty-free withdrawal before maturity of time deposits for depositors who have suffered emergency-related losses within the designated areas.

In view of the urgent need to provide immediate assistance to relieve the financial hardship being suffered by persons directly affected by the severe damage and destruction occasioned by the storms and tornadoes in the designated counties of Iowa, the Board finds that good cause exists for dispensing with notice and public participation referred to in section 553(b) of Title 5 of the United States Code with respect to this action and that public procedure with regard to this action would be contrary to the public interest. Because of the need to provide assistance as soon as possible and because the Board's action relieves a restriction, the Board finds that there is good cause to make the action effective immediately.

By order of the Board of Governors, April 26, 1979.

Theodore E. Allison,
Secretary of the Board.

[Regulation Q, Docket No. R–0222]
[FR Doc. 79–15118 Filed 5–14–79; 8:45 am]
BILLING CODE 6210–01–M

[1] Sec. 217.4(d) of Regulation Q provides that where a time deposit, or any portion thereof, is paid before maturity, a member bank may pay interest on the amount withdrawn at a rate not to exceed that currently prescribed for a savings deposit and that the depositor shall forfeit 3 months of interest payable at such rate.

CIVIL AERONAUTICS BOARD

14 CFR Part 302

Rules of Practice in Economic Proceedings

Adopted by the Civil Aeronautics Board at its office in Washington, D.C.

AGENCY: Civil Aeronautics Board.

ACTION: Editorial Amendment.

SUMMARY: The CAB makes clear that violations of any of its rules may be the subject of enforcement proceedings, by deleting the word "economic" from the phrase "economic enforcement proceedings" in its rules of practice (14 CFR Part 302).

DATES: Effective: June 4, 1979. Adopted: May 9, 1979.

FOR FURTHER INFORMATION CONTACT: David Schaffer, Office of the General Counsel, Rules and Legislation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202–673–5442.

SUPPLEMENTARY INFORMATION: In Part 302 (14 CFR Part 302), Board proceedings are called "Economic enforcement proceedings." Inclusion of the word "economic" is a holdover from the time when the Board had safety, as well as economic, responsibilities. Now it is no longer necessary to retain this word, and its continued inclusion is misleading because the Board issues, in addition to regulations labeled "Economic", others labeled "Special", "Procedural", and "Organization." Enforcement proceedings may be conducted regarding any Board regulations according to their terms. In fact, § 300.20 (14 CFR Part 300.20) authorizes the Board to conduct enforcement proceeding to enforce its rules of conduct. The word "economic" is therefore being deleted to make clear that enforcement proceedings under Part 302 may encompass violations of any rules, including rules of conduct.

We are also taking this opportunity to rewrite §§ 302.200 and 302.201, 302.202, 302.210, 302.211 and 302.215(a) in clearer language.

This editorial amendment is issued under the delegation of authority from the Board to the General Counsel in 14 CFR 385.19. Procedures for review of this amendment are set forth in Subpart C of Part 385 (14 CFR §§ 385.50 through 385.54).

The Board hereby amends 14 CFR Part 302, *Rules of Practice in Economic Proceedings*, as follows:

1. Part 302 is renamed by replacing the word "economic" with the word "Board" so that it reads:

PART 302—RULES OF PRACTICE IN BOARD PROCEEDINGS

2. The table of contents is amended by deleting the word "economic" from the title of Subpart B so that it reads:

* * * * *

Subpart B—Rules Applicable to Enforcement Proceedings

* * * * *

3. In § 302.3, paragraph (c) is amended so that it reads:

§ 302.3 Filing of documents.

* * * * *

(c) *Number of copies.* Unless otherwise specified, an executed original and nineteen (19) true copies of each document required or permitted to be filed under these rules shall be filed with the Docket Section, except that an original and five (5) copies of third party complaints, answers, documents dealing with discovery, and motions addressed to an administrative law judge may be filed in proceedings under Subpart B—Rules Applicable to Enforcement Proceedings. In any route proceeding that affects a point in Alaska, the person filing shall send an additional copy to: Civil Aeronautics Board, 701 C Street, Box 27, Anchorage, Alaska 99513. The copies need not be signed but the name of the person signing the document, as distinguished from the firm or organization he or she represents, shall also be typed or printed on all copies below the space provided for signature.

* * * * *

4. Subpart B is renamed by deleting the word "economic" in the title so that it reads:

Subpart B—Rules Applicable to Enforcement Proceedings

5. In § 302.200, paragraph (a) is amended so that it reads:

§ 302.200 Applicability of this subpart.

(a) *In general.* This subpart contains the specific rules that apply to Board proceedings to enforce the act and the rules, regulations, orders and other requirements issued by the Board. Subpart A of this part contains other rules that apply to these proceedings.

* * * * *

6. § 302.201 is amended so that it reads:

§ 302.201 Formal complaints.

Any person may make a formal complaint to the Board about any violation of the economic regulatory provisions of the act or of the Board's rules, regulations, orders, or other requirements. Every formal complaint shall conform to the requirements of § 302.3, concerning the form and filing of documents. The filing of a complaint shall result in a formal enforcement proceeding only if the Director of the Bureau of Consumer Protection issues a notice instituting an enforcement proceeding as to all or part of the complaint under § 302.206(a) or the Chief Administrative Law Judge does so under § 302.206(b). A formal complaint may be amended at any time before service of an answer to the complaint. After service of an answer but before institution of an enforcement proceeding, the complaint may be amended with the permission of the Director of the Bureau of Consumer Protection. After institution of an enforcement proceeding, the complaint may be amended only on grant of a motion filed under § 302.18.

7. § 302.202 is amended so that it reads:

§ 302.202 Subcription and verification.

Every formal complaint, supplemental complaint, answer, or other pleading filed in an enforcement proceeding shall be signed by the party filing it, or by a duly authorized officer, agent or attorney of the party. The person signing the pleading shall also verify it under oath or under penalty of perjury, stating that he has read the pleading and the attached exhibits, if any, and knows their contents, and that the contents are true or, if stated on information and belief, that he believes them to be true. If the pleading is signed or verified by anyone other than the party filing it or an officer or attorney of the party, the reason must be stated and that person's power of attorney or other authority to sign or verify the pleading must be filed with the pleading.

8. § 302.210 is amended so that it reads:

§ 302.210 Parties.

The parties to an enforcement proceeding shall be the Bureau of Consumer Protection, the respondent, any person whose formal complaint alleged violations that were later covered by the notice of enforcement, and any other person permitted to intervene under § 302.15.

9. § 302.211 is amended so that it reads:

§ 302.211 Prehearing conference.

A prehearing conference may be held in an enforcement proceeding whenever the Board or the administrative law judge believes that the fair and expeditious disposition of the proceeding requires one. If a prehearing conference is held, it shall be conducted in accordance with § 302.23.

10. In § 302.215, paragraph (a) is amended so that it reads:

§ 302.215 Offers of settlement.

(a) Any respondent to an enforcement proceeding may submit offers of settlement at any time before final decision. Every settlement offer shall be submitted in writing to the Director of the Bureau of Consumer Protection, who will promptly advise the respondent whether the offer is acceptable to the Bureau. Whenever the Director finds the offer acceptable as a basis for terminating all or part of the proceeding, he will transmit the offer to the presiding administrative law judge, serving all parties to the proceeding. The administrative law judge shall consider the views of all parties and, if the offer appears to be in the public interest, shall issue an initial decision in accordance with § 302.27 approving the offer. If the Director of the Bureau of Consumer Protection finds the offer unacceptable or the administrative law judge determines that it is not in the public interest, no interlocutory review will be permitted except in extraordinary circumstances and with the consent of the Director or the administrative law judge, as appropriate. The submission of an offer of settlement shall not alter or delay the course of the proceeding unless so ordered by the administrative law judge or the Board.

* * * * *

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

By the Civil Aeronautics Board.

Gary J. Edles,

Acting General Counsel.

[Regulation PR-205; Amdt. 56]

[F.R. Doc. 79-15160 Filed 5-14-79; 8:45 am]

BILLING CODE 6320-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1203

Establishment of NASA Information Security Program Committee

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This revision is necessary to comply with the provisions of Section 5-404(b), Executive Order 12065, "National Security Information," dated July 3, 1978. The purpose of the revision is to establish the NASA Information Security Program Committee as a part of the permanent administrative structure of NASA pursuant to E.O. 12065 and the provisions of the National Aeronautics and Space Act of 1958 as amended (42 U.S.C. 2451 et seq.).

EFFECTIVE DATE: May 15, 1979.

ADDRESS: Director, Security Division, National Aeronautics and Space Administration, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Ben B. Pagac, Security Division, Telephone (202) 755-3400, National

Aeronautics and Space Administration, Washington, D.C. 20546.

SUPPLEMENTARY INFORMATION: This regulation involves a national security function and is exempt from the procedures of 5 U.S.C. 553.

1. In 14 CFR Chapter V, Part 1203, Subpart G is redesignated as Subpart I and revised to read as follows:

Subpart I—NASA Information Security Program Committee

Sec.
1203.900 Establishment.
1203.901 Responsibilities.
1203.902 Membership.
1203.903 Ad hoc committees.
1203.904 Meetings.

Authority: 42 U.S.C. 2473

Subpart I—NASA Information Security Program Committee

§ 1203.900 Establishment.

Pursuant to Executive Order 12065, "National Security Information" and the National Aeronautics and Space Act of 1958, as amended, there is established a NASA Information Security Program Committee (hereinafter referred to as the Committee) as part of the permanent adminstrative structure of NASA. The Director, DOD Affairs Division, is designated to act as the Chairperson of the Committee. The Chief, Classification Management and Physical Security Branch, Security Division, is designated to act as the Committee Executive Secretary.

§ 1203.901 Responsibilities.

(a) The Chairperson reports to the Administrator concerning the management and direction of the NASA Information Security Program as provided for in Subpart B of this part. In this connection, the Chairperson is supported and advised by the Committee.

(b) The Committee shall act on all appeals from denials of declassification requests and on all suggestions and complaints with respect to administration of the NASA Information Security Program as provided for in Subpart B of this part.

(c) The Executive Secretary of the Committee shall maintain all records produced by the Committee, its subcommittees, and its ad hoc panels.

(d) The Security Division, NASA Headquarters, will provide staff assistance and support services for the Committee.

§ 1203.902 Membership.

The Committee will be comprised of the Chairperson, Executive Secretary, and one member designated by each of the following NASA officials:

(a) Associate Administrators for:

(1) Aeronautics and Space Technology,

(2) Space Science,

(3) Space and Terrestrial Applications,

(4) Space Transportation Systems,

(5) Space Tracking and Data Systems,

(6) Management Operations,

(7) External Relations.

(b) Assistant for Special Projects.

(c) General Counsel.

§ 1203.903 Ad hoc committees.

The Chairperson is authorized to establish such ad hoc panels or subcommittees as may be necessary in the conduct of the Committee's work.

§ 1203.904 Meetings.

(a) Meetings will be held at the call of the Chairperson.

(b) Records of the minutes of each meeting will be made and maintained by the Executive Secretary.

Subpart 1203.G [Reserved]

2. Subpart 1203.G is reserved.

Robert Frosch,
Administrator.

[FR Doc. 79-15119 Filed 5-14-79; 8:45 am]
BILLING CODE 7510-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

Prohibited Trade Practices and Affirmative Corrective Actions; Huk-A-Poo Sportswear, Inc., et al.

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, among other things, requires two New York City wearing apparel manufacturers to cease establishing, maintaining or enforcing resale price agreements; suggesting retail prices or issuing price lists for a three-year period; pre-ticketing products with recommended retail prices; soliciting the identity of non-conformers and taking any adverse action against them. Additionally, the companies are required to reinstate customers who were terminated since January 1, 1974 for failing to maintain suggested prices; and keep records regarding reinstatement requests for five years.

DATES: Complaint and order issued April 25, 1979.[1]

FOR FURTHER INFORMATION CONTACT: Leroy Richie, Director, 8R, New York Regional Office, Federal Trade Commission, 2243-EB Federal Bldg., 26 Federal Plaza, New York, N.Y. 10007. (212) 264-1207.

SUPPLEMENTARY INFORMATION: On Friday, February 16, 1979, there was published in the **Federal Register**, 44 FR 10074, a proposed consent agreement with analysis In the Matter of Huk-A-Poo Sportswear, Inc., a corporation, and Pranx Fashions, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart-Coercing and Intimidating: § 13.350 Customers or prospective customers; § 13.358 Distributors. Subpart-Combining or Conspiring: § 13.395 To control marketing practices and conditions; § 13.425 To enforce or bring about resale price maintenance; § 13.430 To enhance, maintain or unify prices; § 13.497 To terminate or threaten to terminate contracts, dealings, franchises, etc. Subpart-Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533-45 Maintain records; 13.533-65 Renegotiation and/or amendment of contracts. Subpart-Cutting Off Supplies or Service: § 13.610 Cutting off supplies or service; § 13.655 Threatening disciplinary action or otherwise. Subpart-Discriminating Between Customers: § 13.685 Discriminating between customers; 13.685-10 Federal Trade Commission Act. Subpart-Maintaining Resale Prices: § 13.1145 Discrimination; 13.1145-5 Against price cutters; 13.1145-45 In favor of price maintainers; § 13.1155 Price schedules and announcements; § 13.1160 Refusal to sell; § 13.1165 Systems of espionage; 13.1165-80 Requiring information of price cutting.

[1] Copies of the Complaint and Decision and Order filed with the original document.

(Sec. 6, 38 Stat. 721; (15 U.S.C. 46). Interprets or applies sec. 5, 38 Stat. 719, as amended; (15 U.S.C. 45))

Carol M. Thomas,
Secretary.

[Docket No. C-2962]
[FR Doc. 79-15128 Filed 5-14-79; 8:45 am]
BILLING CODE 6750-01-M

16 CFR Part 13

Prohibited Trade Practices and Affirmative Corrective Actions; GAC Corp., et al.

AGENCY: Federal Trade Commission.

ACTION: Modification of order to cease and desist.

SUMMARY: This order modifying an Order to Cease and Desist issued on July 23, 1974, requires incorporation of the terms of the 1974 order within any GAC plan of reorganization under provisions of the Bankruptcy Act confirmed by the Bankruptcy Court. Upon such confirmation, the modified order requires the company to establish a $10,000,000 accrual Reserve Fund to be used to defray costs of building individual septic tanks or wells in the northern section of Golden Gate Estates, and to reimburse those whose land is found to be unsuitable for homesites. Because of GAC's poor financial condition, the company is only required to develop a portion of Golden Gate Estates, rather than the entire subdivision, as previously mandated; and is provided with additional time in which to fulfill its contractual obligations to land owners. The modified order further requires GAC to provide financial compensation or alternate homesites to those owning property in the area to be left undeveloped.

DATES: Decision issued July 23, 1974. Modifying order issued April 17, 1979.

FOR FURTHER INFORMATION CONTACT: FTC/P, Albert H. Kramer, Washington, D.C. 20580. 202-523-3727.

SUPPLEMENTARY INFORMATION: In the Matter of GAC Corporation, GAC Properties, Inc., and GAC Properties, Inc. of Arizona, corporations and their subsidiaries. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, appears at 39 FR 34021, and remains unchanged.

(Sec. 6, 38 Stat. 721; (15 U.S.C. 46). Interprets or applies sec. 5, 38 Stat. 719, as amended; (15 U.S.C. 45))

The order modifying order to cease and desist, is as follows:

[Docket No. C-2523]

Order Modifying Order To Cease and Desist

The Commission on February 13, 1979, issued its order to show cause why this proceeding should not be reopened and its order of July 23, 1974 (hereafter sometimes referred to as "the Commission Order of 1974"), modified.

Respondents having filed an answer consenting to the proposed changes of the Commission Order of 1974, and the Commission having considered the comments filed by interested persons,

Now, therefore, it is hereby ordered, That the aforesaid order to cease and desist be, and it hereby is, modified in accordance with the show cause order subject to, and contingent upon, satisfaction of all of the following conditions:

(1) The incorporation of the terms of the Commission Order of 1974, as modified, within any plan of reorganization of the respondent confirmed by the bankruptcy Court in the aforesaid Chapter X proceedings (hereafter referred to as the "plan of reorganization") such incorporation to be without any alterations, substitutions, changes or deletions of the Commission Order of 1974, as modified;

(2) The incorporation of an express provision within any plan of reorganization of the respondent confirmed by the Bankruptcy Court in the aforesaid Chapter X proceedings that the reorganized company which is created thereby shall be subject to the requirements of the Commission Order of 1974, as modified;

(3) The incorporation of an express provision within any plan of reorganization of the respondent, confirmed by the Bankruptcy Court in the aforesaid Chapter X proceedings, that the reorganized company shall stipulate and agree to the enforcement as provided by law, including, but not limited to, as provided under Section 45(1), Title 15, United States Code. *Provided further,* That nothing contained in the order modifying the Commission Order of 1974, and no action taken by the Bankruptcy Court in the aforesaid Chapter X proceedings, shall in any way restrict the right of any lot purchaser or title holder who chooses to reject the alternatives provided in the Commission Order of 1974, as modified, from filing any claim he or she may otherwise have against the respondent in the aforesaid Chapter X proceedings; however, the acceptance of any of the alternatives provided shall act as a bar to the filing of any other claims relating to the same land of the lot purchaser or titleholder or the contract applicable thereto prior to confirmation of the plan of reorganization.

Upon full satisfaction of all of the above conditions, the Commission Order of 1974 shall be modified, without necessity of further action by the Commission, as follows:

Order

For purposes of this Order the following definitions shall be applicable:

"Land" shall mean real property subdivided into parcels without any house or building constructed thereon, but shall not include anything defined below as "other real property."

"Other real property" shall mean a house or building constructed for residential purposes and the land upon which it is situated, including land upon which, pursuant to a purchase agreement or contract, a house or building is to be constructed within 12 months and with respect to which no consideration will pass to respondents until closing other than moneys held in escrow or a minimal earnest money deposit.

"Consumer" shall mean a natural person to whom respondents offer to sell or sell land or other real property; *Provided, however,* That the term "consumer" shall not include a natural person who purchases land in a single transaction for a sum in excess of $50,000.

As used in this Section of the Order, a requirement to cease and desist from representing or misrepresenting shall unless otherwise indicated, include representing or misrepresenting directly or by implication, and by any manner or means.

It is ordered, That respondents GAC Corporation, GAC Properties, Inc. and GAC Properties, Inc., of Arizona, corporations, and their officers, and their subsidiaries and the said subsidiaries' officers, and respondents' successors, assigns, agents, representatives and employees, directly or through any corporate or other device in connection with the advertising, offering for sale, or sale of land and other real property to consumers in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. (a) Failing to disclose, clearly and conspicuously, in any written or oral invitation or other initial communication to consumers concerning any event or activity, including but not limited to dinner parties or other gatherings, contests, awards of free or low cost gifts or vacations, and sightseeing tours, or for any other goods or services, which invitation or communication is in any manner a part of a plan or procedure to sell land, the following statement:

"The purpose of [the event or activity] is to attempt to sell you land presently undeveloped in [name of State in which land is located]."

(b)(i) If the invitation or communication is in writing, such disclosure shall be in writing and shall be made clearly and conspicuously and in conjunction with the invitation or communication; (ii) if the invitation or communication is oral and delivered in person, such disclosure shall be both oral and in writing and shall be made clearly and conspicuously and in the conjunction with the invitation or communication; and (iii) if the invitation or communication is made by telephone, such disclosure shall be made orally and clearly and conspicuously in conjunction with the telephone invitation or communication and in writing by mail to be received by the prospective purchaser at least 24 hours prior to the event or activity: *Provided, however,* With respect to subpart (iii) above, that if the event or activity is a sales presentation to be conducted in the home of the consumer, such written disclosure may be made at any time prior to the sales presentation, but in no event shall such disclosure be made later than the

introductory remarks of the salesman; and further provided, with respect to subpart (iii) above that if the invitation or communication is received at a place other than the consumer's residence or place of employment, such written disclosure may be made at any time prior to the consumer's attendance at the sales presentation.

2. Misrepresenting the true nature and purpose of any event or activity, including but not limited to dinner parties or other gatherings, contests, awards of free or reduced gifts or vacations, and sightseeing tours.

3. Failing to furnish the purchaser with a fully completed copy of the contract at the time of its signing by the purchaser, which is in the same language as that principally used in the oral sales presentation, if any, and which shows the date of the transaction and contains the name and address of the respondent: *Provided, however,* That a foreign language copy of the contract need not be furnished if the purchaser is literate in the English language: *And further provided,* That the contract need not at this time contain the signature of respondents.

4. Failing to set forth as the title of any contract for the purchase of land, in boldface type, the following language: "Contract for Deed for the Purchase of Land."

5. (a) Failing to print clearly and conspicuously in 12-point boldface type on the top half of the first page of all contracts for the sale of land, in addition to that language required by Paragraph 4 above, the following:

"This is a contract by which you agree to purchase land. You have 10 days in which to determine whether to continue this contract cancel it with full refund. See the attached notice of cancellation form for an explanation of this right. Use this time to examine with care the property report (sometimes called a public offering statement) which must be given to you at or before the time you sign this contract.

The future value of this land, like all undeveloped real estate, is uncertain. It is unlikely that a purchaser will be able to resell his land without substantial community development and population growth, which may not occur for a number of years after you have completed your contract payments, if at all. It is suggested that you have both this contract and the property report reviewed by a lawyer, realtor or other qualified professional."

(b) In addition, there shall appear, in the form and place described in subparagraph (a) such of the following statements as are applicable:

(i) For contracts for the sale of lots to which respondents are not obligated to make a central sewer system available at the time title passes to the purchaser, add the following, including the second and third sentence only where applicable:

"A central sewer system will not be available when you have completed your contract payments. Installation of septic tank would be at your expense. However, the use of a septic tank on your lot is contingent on passing a soil test and approval by governmental authorities."

(ii) For contracts for the sale of lots to which respondents are not obligated to make a central water system available at the time title passes to the purchaser, add the following, including the second sentence only where applicable:

"A central water system will not be available when you have completed your contract payments. Installation of a well would be at your expense."

(iii) For contracts for the sale of lots to or on which respondents are not obligated to provide any improvements, add the following in lieu of any of the above:

"This completely undeveloped land is being sold "as is." No improvements are planned for this subdivision. Your lot is probably inaccessible by conventional means of transportation, and has no use in the present or in the forseeable future."

6. Failing to include in any contract for the sale of land a provision whereby the seller agrees not to create during the contract term, without the express written permission of the purchaser, by sale, lease, or any other means, any restriction, easement or reservation of any kind which can substantially limit the purchaser's use or enjoyment of his lot after the maturity date of said contract.

7. Including in any contract for the sale of land, or in any document shown or provided to purchasers or prospective purchasers of land, whether or not signed by such purchasers or prospective purchasers, language stating expressly or by implication:

(a) That no express or implied representations have been made in connection with the sale of respondents' land, or that any particular representation has not been made in connection therewith; and

(b) That the purchaser has had an opportunity to examine or understand any property report, offering statement or similar document required by state or federal law to be made available to him; provided, however, that such language may be included when authorized by the Interstate Land Sales Full Disclosure Act, presently codified at 15 U.S.C. 1701–20 (1970).

8. Changing a contract in any respect after signature by the purchaser unless such change is made by mutual agreement in writing, and unless it is clearly and conspicuously disclosed to the purchaser that he can refuse to accept such change and in lieu thereof receive a full refund of all moneys paid under the contract.

9. Making any Statement or representation concerning the rights or obligations of respondents or the purchaser which differs in any material respect from the rights or obligations of the parties as stated in the contract.

10. (a) Representing that respondents will provide, or that respondents' subdivisions will have available, any recreational facility, improvement (roads or drainage) or utility (central sewage and water systems, electricity, or telephone service), unless respondents' contracts at the time of the representation contain a legal obligation on the part of respondents to provide or make available (i) said recreational facilities and improvements at a date certain, not later than 12 years from the date of purchase, set out clearly and conspicuously in the contract; (ii) said utilities within 90 days after respondents' receipt of written notification of the issuance of a building permit: *Provided,* That, if so represented, the time for installation of central water and sewer systems may be stated in the contract in terms of population density rather than as a specific date or time; and (iii) without, in the case of improvements or utilities, any cost to the purchaser in excess of the purchase price stated in the contract, except hook-up or installation charges for utilities as estimated in the contract on a current cost basis, subject to future local adjustments in accordance with regulations of and tariffs filed with appropriate public authorities.

(b) Failing to express the aforesaid contractual obligation set out in subparagraph (a) above in the contract with the purchaser in the following manner:

(i) An adequate description of each improvement, utility or recreational facility to be provided;

(ii) A provision that in the event any of the improvements, utilities or recreational facilities specified in the contract are not available to the lot which is the subject of the contract or are not completed within six months of the time provided in the contract, respondents will immediately, upon the expiration of said six-month period, provide the purchaser by certified mail, return receipt requested, with notice of such unavailability of or failure to complete the aforesaid improvements, utilities or recreational facilities and of the purchaser's right to exercise within 30 days of receipt of said notice his option to receive an exchange or to cancel and receive a full refund as set out in subparagraph (iii) below;

(iii) An option to the purchaser stated substantially as follows:

In the event that any of the improvements, utilities or recreational facilities specified by the seller in this contract are not available to the lot which is the subject of this contract or are not completed within six months of the time provided in this contract, the buyer may elect, at his option, to (1) receive an exchange acceptable to the buyer of the contracted-for homesite property for another of at least equal price, equivalent size, with equivalent zoning classification and same promised improvements and utilities, and located in the same general geographic area of the subdivision, or (2) cancel this contract and receive from the seller a full refund of all moneys paid under the contract. To exercise this option, the buyer must give notice to the seller by registered or certified mail within 30 days after receipt of notice from the seller of such unavailability of or failure to complete the aforesaid improvements, utilities or recreational facilities. Where the buyer has received a deed or other evidence of interest in the contracted-for property other than this contract, the buyer must, as a condition of obtaining an exchange or a refund hereunder, reconvey to the seller such evidence of interest in the title to such property by

General Warranty Deed in recordable form. In the event only the contract has been recorded in the Public Records, the buyer must quit claim in recordable form his interest to the seller to remove any clouds on the title to said property.

(c) Failing to make the exchange or refund requested by a purchaser under the terms of this Paragraph of the Order within 60 days of receipt of notification from the purchaser.

(d) Soliciting or obtaining the purchaser's assent to or otherwise imposing any condition, waiver or limitation upon the right of a purchaser to an exchange or a refund as set forth in this Paragraph of the Order: *Provided, however,* That respondents may require purchasers to request an exchange or a refund within a stated time period of not less than 30 days after receipt by the purchaser of the notice required by subparagraph (b)(ii) above.

11. (a) Failing to furnish each purchaser of land, at the time he signs the contract, with a completed form in duplicate, captioned "Notice of Cancellation," which shall contain in boldface type of a minimum size of 10 points the following statement:

Notice of Cancellation

_____

(Date of transaction) _____

_____

(Print purchasers' names) _____

You may cancel this transaction, without any penalty or obligation, at any time prior to midnight of the tenth (10th) day after the above date.

If you cancel, any payments made by you under the contract will be refunded within ten (10) business days following receipt by the seller of your cancellation notice.

To cancel this transaction, mail or deliver a signed copy of this cancellation notice or any other written notice, or send a telegram, to *(name of respondent),* at *(address of respondent's place of business)* not later than midnight of

(Date) _____

I (we) hereby cancel this transaction. (Each purchaser must sign this notice).

_____

(Date) _____

(Purchasers' signatures) _____

(b) Failing, before furnishing copies of the "Notice of Cancellation" to the purchaser, to complete both copies by entering the name of the respondent, the address of the respondent's place of business, the date of the transaction, and the date, not earlier than the tenth day following the date of the transaction, by which the purchaser may give notice of cancellation.

12. Failing, in any instance where a timely notice of cancellation as required by Paragraph 11 above is received, and said notice is not properly signed, and respondents do not intend to honor the notice, immediately to notify the purchaser by certified mail, return receipt requested, enclosing the notice, informing the purchaser of his error, and stating clearly and conspecuously that a notice signed by each purchaser must be mailed by midnight of the third day following the purchaser's receipt of said mailing if such purchasers are to obtain a refund.

13. Failing or refusing to honor any signed and timely notice of cancellation by a purchaser, including any such notice received in accordance with Paragraph 12 above, and within ten business days after the receipt of such notice, to (i) refund all payments collected under the contract, and/or (ii) cancel and return any negotiable instrument executed by the purchaser and retained by respondents in connection with the contract.

14. Negotiating, transferring, selling or assigning any note or other evidence of indebtedness of a purchaser of land to a finance company or other third party prior to midnight of the fifteenth business day following the day the contract was signed.

15. Whenever the signature of a prospective purchaser of land is solicited during the course of a sales presentation, failing to inform each purchaser orally, prior to or at the time he signs the contract, of his right to cancel as provided for in Paragraph 11 above.

16. Requiring the purchaser to make a personal inspection of his lot, the subdivision in which it is located, or any other property, as a condition precedent to the cancellation of any contract or the refund of any moneys paid thereunder, unless respondents (a) allow such purchaser two business days following the date of inspection within which to cancel, and (b) provide the purchaser at the time of inspection with a notice which clearly and conspicuously states (i) that the purchaser has two business days within which to cancel, (ii) that, in order to cancel, the purchaser must give respondents written notification by registered or certified mail of his desire to cancel, (iii) the final date by which the purchaser must mail such notice of cancellation, and (iv) the address where such notice must be sent: *Provided, however,* That nothing in this Paragraph of the Order shall permit respondents to condition any other cancellation rights provided for in this Order on the purchaser's inspection of any property.

17. Failing to comply with § 226.9 of Regulation Z, 12 CFR 226.9, or its successor regulation.

18. Failing to disclose, clearly and conspicuously, in all promotional materials and advertisements relating to the sale of land, the following statement: "Since land values are uncertain, you should consult a qualified professional before purchasing." *Provided, however,* That the above statement shall not be required in the following: (a) Billboards;

(b) Radio and television advertisements of ten seconds or less;

(c) The following advertisements when limited to soliciting requests for information through the mail: (i) Magazine advertisements of ¼ page or less in size;

(ii) Newspaper advertisements of ⅛ page or less in size;

(iii) Radio advertisements of more than ten seconds but not more than 45 seconds in duration.

19. Representing: (a) That the purchase of a lot in one of respondents' subdivisions is a way to insure financial security or to become wealthly;

(b) That real estate is a good or safe investment, or that the purchase of a lot in one of respondents' subdivisions is a good or safe investment;

(c) That land is becoming scarce; or

(d) That the value of any land, including lots being offered for sale or previously sold by respondents, has increased, or will or may increase, or that purchasers have made, or will or may in the future make, a profit by reason of having purchased respondents' land.

20. Misrespresenting the past, present or future sales price of lots in respondents' subdivisions.

21. Making any representation in connection with the sale of land which in any manner refers to or concerns, directly or by implication, investment in stocks, insurance, banks, or any other form of investment other than respondents' land.

22. (a) Directly stating that airports, Walt Disney World, tourism or industry may or will increase the price or value of any land or other real property sold or being offered for sale by respondents.

(b) Representing data or statistics concerning the growth or development of any geographic area or the business or industry in any geographic area, unless such representations are true and respondents have at the time of making such representations, and maintain for three years thereafter, adequate substantiation for such representations: *Provided, however,* That in the event such substantiation consists of data or statistics compiled by any governmental agency which are readily available to respondents, respondents need not retain such substantiation in their possession.

23. (a) Representing in any written promotional or advertising materials relating to the sale of respondents' land, including written materials prepared for use by respondents' salesmen in oral sales presentations, that the population of any geographic area other than respondents' subdivisions has increased, is increasing, or will increase unless respondents have, at the time of making such representation, and maintain for three years thereafter, a valid study or report which demonstrates that respondents' subdivisions within such geographic area or in the general vicinity thereof will materially benefit from said population increase.

(b) Making any representation concerning the population of any geographic area, including the representations referred to in subparagraph (a) above, unless such is the fact and unless respondents have at the time of making such representation, and maintain for three years thereafter, substantiating data which shall consist of a valid census or other valid report or study: *Provided, however,* That in the event such substantiation consists of data or statistics compiled by any governmental agency which are readily available to respondents, respondents need not retain such substantiation in their possession.

24. Representing that respondents will buy back lots from or resell lots for purchasers, unless such is the fact.

25. Representing that respondents will provide, or that respondents' subdivisions will have available, any recreational facility, without clearly disclosing in immediate conjunction therewith and with the same conspicuousness as such representation (a) the year by which such recreational facility will be completed, and (b) the current approximate cost to purchasers and to their families of membership in and use of such facilities; or misrepresenting the recreational facilities available at respondents' subdivision generally or from individual lots therein.

26. Representing that waterfront property provides access by boat to the Atlantic Ocean, Gulf of Mexico, or any other body of water, or that canals are navigable or can be used for any recreational activity, unless such is the fact and unless all significant qualifications pertaining to such access, navigability or use are clearly disclosed in immediate conjunction therewith and with the same conspicuousness as such representation.

27. Representing that Golden Gate: (a) has shopping facilities or stores without clearly disclosing in immediate conjunction therewith and with the same conspicuousness as such representation the nature or extent of these facilities;

(b) has resort facilities without clearly disclosing in immediate conjunction therewith and with the same conspicuousness as such representation that Golden Gate does not have beaches or fishing and boating facilities, unless the contrary is in fact true.

28. Representing: (a) That River Ranch Acres or Remuda Ranch Grants will be developed in any manner;

(b) That all purchasers of lots in River Ranch Acres or Remuda Ranch grants can make substantial use of their lots in the present or in the future; or

(c) That purchasers of land have the right to lease to third persons or otherwise have any rights of enjoyment or possession during the contract term in the lots which they have agreed to purchase, unless such is the fact.

29. Assigning similar names to new subdivisions in which the facilities, improvements, and utilities available in such subdivisions are not substantially identical.

30. (a) Making any representation concerning Cape Coral or any other homesite subdivision at a sales presentation at which one or more lots not located in a homesite subdivision are being offered for sale; or

(b) Making any representation concerning any improvement, utility or recreational facility at one subdivision at a sales presentation for another subdivision at which respondents have not provided and are not obligated to provide similar improvements, utilities, or recreational facilities unless respondents disclose in immediate conjunction therewith and with the same conspicuousness as such representation that similar improvements, utilities, or recreational facilities will not be provided at the subdivision to which the advertisement or sales presentation is directed.

31. Misrepresenting the amount, proportion or magnitude of roads or canals completed or under construction in any subdivision.

32. Misrepresenting the qualities, characteristics, location or state of present or planned development of any subdivision or portion thereof.

33. Making any statement or representation concerning the proximity of any city or place to a subdivision or a part thereof without clearly disclosing in immediate conjunction therewith and with the same conspicuousness as such representation the approximate distance in road miles from the geographic center of the subdivision or part thereof to the other city or place referred to.

34. Making any statement or representation concerning the purchase price of land without clearly disclosing in immediate conjunction therewith and with the same conspicuousness as such statement or representation the nature and estimated amount of any additional payments, including but not limited to payments for property taxes, which must be made by the purchaser to respondents or to any third party in order to purchase such land.

35. Representing that central sewage and/or water systems will be available in a subdivision when a given level of population density is reached unless it is clearly disclosed in immediate conjunction therewith and with the same conspicuousness as such representation that purchasers will be required to install, at their own expense, wells and septic tanks until said level of population density is reached.

36. (a) Representing that free or low cost transportation to or accommodations at respondents' subdivisions will be provided unless such is the fact and without clearly disclosing in immediate conjunction therewith and with the same conspicuousness as such representation all conditions or limitations applicable thereto.

(b) Failing to provide the aforesaid transportation or accommodations on the date or within the time period stated or agreed upon: *Provided, however,* That it shall not be a violation of this Paragraph of the Order if such transportation or accommodations are not available due to conditions beyond the control of respondents.

(c) In the event the aforesaid transportation or accommodations are not provided on the date or within the time period stated or agreed upon, failing within 30 days to offer to refund and, upon request by the purchaser, to refund all moneys paid (i) under a contract entered into prior to said failure to provide such transportation or accommodations, and (ii) toward such transportation or accommodations: *Provided, however,* That respondents shall not be required to make refunds under subpart (i) above if such transportation or accommodations are not available due to conditions beyond the control of respondents.

37. Making any statement concerning any credit, refund or other monetary benefit or remuneration to purchasers or prospective purchasers unless such is the fact and without clearly disclosing in immediate conjunction therewith and with the same conspicuousness as such statement all conditions and limitations applicable to such credit, refund, benefit, or remuneration.

38. Referring to any instrument or document as a "credit check" or otherwise representing that a credit toward a purchaser's account is an actual payment to the purchaser in the form of cash, check, or other negotiable instrument.

39. Representing that persons being solicited to purchase respondents' land are being asked to take the first step, or are reserving the land, or are not making a final decision, or are not buying the land; or otherwise misrepresenting the legal signficance of signing a contract.

40. Representing that prospective purchasers must sign a contract immediately in order to assure purchasing property in a choice location, or that property similar to that being offered for sale may not or will not be available or available at the same price in the foreseeable future, unless such is the fact.

41. In connection with the sale of land: (a) Representing that increasing the amount of the monthly payment will speed up passage of title, unless such is the fact;

(b) Representing that increasing the amount of the monthly payment will speed up completion of improvements; or

(c) Misrepresenting the benefits to be obtained by increasing the amount of the monthly payment or by completing payment of the purchase price prior to the date the final payment is due under the contract.

42. Representing that any document, sales presentation, advertisement or promotional material has been filed with or approved by any State, the Federal Department of Housing and Urban Development, the Armed Forces, or any other governmental agency, unless such is the fact; or representing that governmental regulation means that respondents' representations are true, complete, or should be relied upon; or representing that respondents are affiliated in any manner with the Armed Forces of the United States or any government or governmental agency.

43. Including in any contract or other document any waiver, limitation or condition on the right of a purchaser to cancel a transaction or receive a refund under any provision of this Order, except as such waiver, limitation or condition is by this Order expressly allowed: *Provided, however,* That this Paragraph shall not be construed as prohibiting respondents from conditioning the purchaser's right to cancel and receive a refund under any provision of this Order on the purchaser's relinquishing and, where appropriate, reconveying to respondents his interest in the land which is the subject of the transaction being cancelled.

44. Misrepresenting the right of a purchaser to cancel a transaction or receive a refund under any provision of this Order or any applicable statute or regulation.

45. Making any representation or taking any action which is inconsistent with or detracts from the effectiveness of this Order.

It is further ordered, That respondents, upon receipt of a complaint from a purchaser alleging facts that indicate this Order may have been violated and requesting a refund or cancellation of the purchaser's contract,

refund all moneys paid by such purchaser where respondents determine, after a good faith investigation, that one or more of the paragraphs in Section I of this Order have been violated in connection with such purchaser's transactions with respondents: *Provided, however,* That in the event respondents refund any money pursuant to this Paragraph of the Order, the sole fact of such refund shall not be admissible against respondents in any proceeding brought to recover penalties for alleged violation of any other Paragraph of this Order: *And further provided,* That this Paragraph shall not be applicable to transactions in which the contract was entered into prior to the date this Order became final.

II.

It is further ordered, In connection with the refund of moneys forfeited under contracts in default prior to the date this Order becomes final:

A. That respondent compile a list of the last known name and address of all persons entering into contracts for the purchase of respondent's land who defaulted on said contracts and forfeited monies paid in excess of the sum of the downpayment plus an amount equal to 30 standard monthly payments as stated in the contract, said list to contain all such forfeitures from July 1, 1968 to October 11, 1974: *Provided, however,* That for contracts which were entered into or amended as a result of an exchange by which land purchased pursuant to a single contract was exchanged for land with a higher total price, the terms of the original contract entered into by the purchaser prior to such exchange shall be used to compute the sum of the downpayment and an amount equal to 30 standard monthly payments.

B. That the refund payments due to purchasers pursuant to this section shall be scheduled by the Co-Trustees and shall be provided for in a confirmed plan or reorganization as general unsecured claims entitled to payment at no less a rate or preference than any other general unsecured claims, including claims of bond and debenture holders. All such purchasers shall be notified of the disposition of their claims in conjunction with the notices and plan materials required to be mailed to creditors under Bankruptcy Rule 10–303(e). Upon the return of any notices undelivered, the purchasers affected shall receive notice as directed by the Bankruptcy Court pursuant to Bankruptcy Rule 10–405, fixing a time not less than five (5) years after the final decree closing the estate within which such purchasers may claim the distribution provided for them under the Plan. Upon the expiration of such period, any distribution unclaimed by such purchasers shall revert to the reorganized company, but the fair market value as of such date shall be added to the accrual Reserve Fund provided for under Section III of the Commission Order of 1974, as herein modified.

C. Respondents shall maintain, for a period of five (5) years after the date of the confirmation of the plan of reorganization all records which disclose respondent's compliance with this section of the order, as modified.

III.

It is further ordered, In connection with lot purchasers or titleholders holding contracts for or title to parcels of land in Golden Gate Estates (for purpose of this section, "titleholders" shall not include persons who acquired such title from Collier County, Florida by tax deed):

A. That respondent shall make available to each lot purchaser or titleholder of parcels of land in Golden Gate Estates which are *South* of Stewart Boulevard the choice of one of the following alternatives:

1. Each lot purchaser or title holder may choose to deed his property to respondent upon the Co-Trustees' scheduling his or her claim for all principal and interest paid to respondent and the provision for such claims as unsecured claims in a confirmed plan of reorganization. Claims hereunder shall be allowed in full, or in *pro rata* amounts totalling not more than $18,000,000 which is the maximum amount of claims that will be allowed under this paragraph. Claims under this paragraph shall be treated as follows:

a. Payments made by lot purchasers or titleholders subsequent to December 12, 1975 shall be granted priority status and, in the event of a successful reorganization plan, shall be paid in cash;

b. The remainder of claims under this paragraph shall be allowed *pro rata* after deducting the claims paid under subparagraph (a) of this paragraph from the allowable maximum of $18,000,000 as general unsecured claims entitled to payment at no less a rate or preference than any other general unsecured claims including claims of bond and debenture holders.

2. Each lot purchaser or titleholder may choose an exchange into River Ranch Acres, on a two-for-one basis, so that each lot purchaser or titleholder will receive double the acreage in River Ranch Acres as is presently owned in Golden Gate Estates. The selection of this alternative shall be limited to the inventory of land in River Ranch Acres owned by respondent as of May 1, 1978, depleted only by the acreage used by respondent to comply with Section IV of this Order. In the event a lot purchaser or titleholder who has elected this alternative is unable to receive the double acreage in River Ranch Acres as provided by this paragraph, respondent shall notify each such lot purchaser or titleholder in writing within thirty (30) days after such fact becomes known to respondent that the lot purchaser or titleholder must select one of the remaining alternatives in this Section.

Each lot purchaser or titleholder who chooses this option shall remain obligated for any sums remaining due on an existing contract.

3. Each single parcel lot purchaser or titleholder, such lot comprising approximately 1¼ acres, may choose an exchange for a developed homesite lot (which for purposes of this Order shall be deemed to include improvements consisting of paved streets and drainage, with central water and sewage service to the property line of such homesite; standard electrical service shall be available, at nominal charge, to each homesite within 180 days of the issuance of a building permit) in the Poinciana subdivision with the lot purchaser or titleholder to pay development costs of $2,300. The development costs to be paid by the lot purchaser or titleholder shall be in addition to any sums due under any existing contract with respondent. The development costs may be paid, at the option of the lot purchaser or titleholder, either in a lump sum or in deferred payments over not more than seven (7) years at the rate of 7.5 percent interest per annum. Although development costs may be payable over a seven (7) year period, the homesites shall be developed by respondent over a three (3) year period commencing immediately upon confirmation of a plan of reorganization. If the development costs are paid in a lump sum, respondent shall immediately issue a deed to the homesite and cause to be issued a policy of title insurance, subject only to the respondent's inventory of completed homesites in the Poinciana subdivision at the time the development costs are paid in a lump sum.

4. Each multi-parcel lot purchaser or titleholder may choose an exchange for each 2½ acre lot in Golden Gate Estates to one developed homesite lot in the Poinciana subdivision at no additional cost to the lot purchaser or titleholder except for a charge of $1,150 for water and sewer betterment fees. The water and sewer betterment fees shall be in addition to any sums due under any existing contract with respondent. The betterment fees may be paid, at the option of the lot purchaser or titleholder, either in a lump sum or in deferred payments over not more than seven (7) years at the rate of 7.5 percent interest per annum. Although such betterment fees may be payable over a seven (7) year period, the homesite shall be developed over a three (3) year period commencing immediately upon confirmation of a plan of reorganization. If such betterment fees are paid in a lump sum, respondent shall immediately issue a deed to the homesite and cause to be issued a policy of title insurance, subject only to the respondent's inventory of completed homesites in the Poinciana subdivision at the time the betterment fees are paid in a lump sum. After selecting this option of one developed homesite lot in the Poinciana subdivision, each multiparcel lot purchaser or titleholder may choose other alternatives in this section in exchange for any remaining lands in excess of the 2½ acre lot exchanged pursuant to this paragraph.

5. Each lot purchaser or titleholder may choose an exchange toward the land portion only of a "Housing Construction Package" at any on-going development project of the respondent, each lot purchaser or titleholder being entitled to full credit for all paid-in principal and interest, limited, however, to payments made to respondent on not more than one 2½ acre parcel of Golden Gate Estates per exchanging lot purchaser or titleholder. If a lot purchaser or titleholder has two or more Golden Gate Estates parcels, he or she may choose two or more "Housing Construction Packages" or one or more packages for each 2½ acres and choose other alternatives in this section in exchange for the remaining land. Lot purchasers or titleholders choosing this option shall have

five (5) years from the date of confirmation of a plan of reorganization within which to contract for a housing construction package at the terms (including price) and conditions being offered by the respondent at the time such contract is executed.

B. For all lot purchasers or titleholders of parcels of land in Golden Gate Estates *North* of Stewart Boulevard, respondent shall on the date of confirmation of a plan of reorganization establish an accrual Reserve Fund in the amount of $10,000,000. This Reserve Fund shall be maintained by respondent for a period of five (5) years following confirmation of a plan of reorganization or until the Reserve Fund has been depleted or exhausted, whichever event occurs first. After the fifth year, the funds under Section II which revert to the accrual Reserve Fund shall be immediately available for use under this section to pay any claim filed prior to the expiration of the five (5) year period. All claims payable under this section shall be paid in full on a first come, first served basis.

1. At any time after the date of confirmation of a plan of reorganization of the respondent, and no later than five (5) years after such date, each lot purchaser or titleholder of parcels of land in Golden Gate Estates *North* of Stewart Boulevard may, at his own expense, have a test or tests made to determine the percolation of his lot and/or the availability of an adequate supply of potable water. The lot purchaser or titleholder shall then provide respondent with such test report or reports, prepared by a Registered Professional Engineer or Registered Analytical Laboratory, certifying the failure of the lot to pass a percolation test or the inability to obtain potable water. For purposes of this order, "potable water" shall be defined as drinkable water that poses no threat to health by exceeding the maximum contaminant levels set by regulations of the U.S. Environmental Protection Agency under the Safe Water Drinking Act, as provided in 40 CFR Part 141 as of the date of this Order modifying the Commission Order of 1974, for inorganic and organic chemicals and coliform bacteria, and complies with all other applicable Federal, state and local standards for individual water supply systems.

2. With respect to any lot or parcel of land requiring expenditures for remedial work for percolation of less than $2,500, the first $1,000 of the expenditures for remedial work, which amount shall include the cost of having the test or tests made, shall be the responsibility of the lot purchaser or titleholder. Each lot purchaser or titleholder shall present to respondent a test report or reports certified by a Registered Professional Engineer that the remedial work will exceed $1,000 but not be more than $2,500. Within thirty (30) days after receipt of the certified report or reports from the lot purchaser or titleholder, respondent shall at its option:

a. Pay the excess of $1,000 to the lot purchaser or titleholder and charge such payment to the Reserve Fund; or

b. Request that the lot purchaser or titleholder pay to respondent the actual cost of doing the work, but not more than $1,000, less the cost of the test or tests paid by the lot purchaser or titleholder, and subsequently do the remedial work itself within sixty (60) days and charge the Reserve Fund with the difference, if any, between $1,000 and the actual cost of doing the work. Such charge to the Reserve Fund shall not exceed $1,500.

3. With respect to any lot or parcel of land requiring expenditures for remedial work for percolation in excess of $2,500, each lot purchaser or titleholder shall present to respondent a test report or reports certified by a Registered Professional Engineer that the remedial work will exceed $2,500. Within thirty (30) days after receipt of the certified report or reports from the lot purchaser or titleholder, respondent shall:

a. Exchange the lot purchaser or titleholder into a Golden Gate Estates land parcel *North* of Stewart Boulevard of equal size as the lot purchaser's or titleholder's existing parcel and provide the lot purchaser or titleholder with a Registered Professional Engineer's certificate certifying the percolation of such lot in its existing state without remedial work and the availability of an adequate supply of potable water in a well existing on such parcel as of the date of exchange; or

b. If respondent has no lots with adequate percolation and with an adequate supply of potable water available to offer under subparagraph (a) of this paragraph, respondent may do remedial work for a cost of not more than $3,000 per lot (including well-drilling) on available inventory of land *North* of Stewart Boulevard in order to certify both percolation and the availabilty of an adequate supply of potable water in an existing well on such parcel. Thereafter, respondent may charge a lot purchaser or titleholder exchanged into such lot the actual cost of the remedial percolation work or $1,000, whichever is less (minus the amount paid by such lot purchaser or titleholder for remedial percolation work on the parcel to be exchanged by such lot purchaser or titleholder) and the actual cost of well-drilling or $500, whichever is less (unless the lot purchaser or titleholder has previously had a well drilled on his former lot, in which case no charge shall be made for well-drilling). Respondent may thereafter charge one-half (½) the cost of remedial work and the full cost of well-drilling up to $500, less the amount received from the lot purchaser or titleholder, to the Reserve Fund; or

c. If no parcels in respondent's inventory remain which qualify for exchange under subparagraphs (a) or (b) above, refund to the lot purchaser or titleholder, in cash, from the Reserve Fund all principal paid in to respondent. In conjunction with the offer of such refund, or if no funds are available for such refund, respondent shall also offer the lot purchaser or titleholder, in lieu thereof, the choices provided in subparagraphs (A) (3)–(5) of this Section.

In the event of a lot exchange or cash refund pursuant to this paragraph, the lot purchaser or titleholder shall be required to deed his or her property to respondent.

4. With respect to any lot purchaser or titleholder who provides respondent with certification of the inability to obtain an adequate supply of potable water, respondent shall:

a. Perform such remedial work as is necessary to obtain an adequate supply of potable water, including the deepening or shallowing of the existing well or the drilling of an additional well on the same site. The cost of such work shall be borne by the respondent, but no more than $500 of the cost of such work may be charged to the Reserve Fund;

b. If the remedial work under subparagraph (a) of this paragraph cannot be performed for less than $500 or if an adequate supply of potable water is not produced thereby, exchange the lot purchaser or titleholder into a Golden Gate Estates land parcel *North* of Stewart Boulevard of equal size as that of the lot purchaser or titleholder and provide a certificate of a Registered Professional Engineer that the parcel passes a percolation test in its existing state without remedial work and that an adequate supply of potable water is available in a well existing on such parcel as of the date of the exchange. If the lot purchaser or titleholder has not had a well drilled, respondent may, as part of the exchange, require a payment of not more than $500 from the lot purchaser or titleholder to cover the actual cost of drilling the well.

c. If respondent has no lots with adequate percolation and with an adequate supply of potable water available to offer under subparagraph (b) of this paragraph, it may do remedial work for a total cost of not more than $3,000 per lot (including well-drilling) on available inventory *North* of Stewart Boulevard in order to certify both the percolation and availability of an adequate supply of potable water in a well existing on such parcel as of the date of exchange. Thereafter, respondent may charge a lot purchaser or titleholder exchanged into such parcel the cost of the remedial percolation work or $1,000, whichever is less (minus the amount paid by such lot purchaser or titleholder for remedial percolation work on the parcel to be exchanged by such lot purchaser or titleholder). Respondent may thereafter charge the Reserve Fund for one-half (½) the actual cost of the remedial work and the full cost of well-drilling up to $500, less the payment received from the lot purchaser; or

d. In the event that the remedial work or exchanges required by subparagraphs (a)–(c) of this paragraph cannot be performed as specified therein, refund to the lot purchaser or titleholder, in cash, from the Reserve Fund, all principal paid in to respondent. In conjunction with the offer of such refund, or if no funds are available for such refund, respondent shall also offer the lot purchaser or titleholder, in lieu thereof, the choices provided in subparagraphs (A) (3)–(5) of this Section.

C. The appropriate letter, as set forth in Appendices (1) or (2) of this Order modifying the Commission Order of 1974, shall be sent by respondent to all persons holding contracts for or title to land in Golden Gate Estates along with the claims bar order to be entered by the Bankruptcy Court fixing the claims deadline for claims relating to Golden Gate Estates. Respondent shall take all reasonable measures to obtain the current mailing address of such persons, including

obtaining current addresses from the tax rolls of Collier County, Florida for the Golden Gates Estates subdivision.

D. Respondent shall, on the date the Commission accepts the Order provisionally modifying the Commission Order of 1974, immediately establish an accrual fund in the amount of $200,000 to be used, as directed by the Federal Trade Commission or its representative, to notify by any means, including advertising by newspaper, magazine or television, persons holding contracts for or title to land in Golden Gate Estates of the options provided in this Section, and persons entitled to refunds under Section II of the Commission Order of 1974, as modified. No charges for mailing letters under paragraph (C) of this Section shall be charged to this fund. The amount required to be available under this paragraph shall remain available until five (5) years after the date of confirmation of a plan of reorganization or until exhausted, or until released by the Commission, whichever first occurs. Any funds charged to the fund established by this paragraph shall be subsequently charged to the accrual Reserve Fund established pursuant to paragraph (B) of this Section. If the accrual Reserve Fund is exhausted before the fund established in this paragraph is exhausted, no further funds will be available under this paragraph.

E. Respondent shall maintain, for a period of seven (7) years after the date of confirmation of a plan of reorganization, all records which disclose respondent's compliance with this Section of the Order, as modified.

IV.

For purposes of this section of the Order, the following definitions shall be applicable:

When used in reference to land at Remuda Ranch Grants or River Ranch Acres, "lot" shall mean a parcel of land approximately 1¼ acres in size, and "lots" shall mean a parcel or parcels of land purchased pursuant to a single contract with respondent GAC Properties Inc. or its predecessor Gulf American Corporation, the total acreage of which is a multiple of the approximately 1¼ acre parcel comprising a lot.

It is further ordered, In connection with the exchange of land purchased in Remuda Ranch Grants and River Ranch Acres:

A. That respondents compile a list containing the last known name and address of the purchaser and date of purchase for each contract for the purchase of a lot or lots in Remuda Ranch Grants or River Ranch Acres where the purchaser is either deeded or has an outstanding contract not in default, said list to be arranged in chronological order by subdivision and grouped according to the number of lots purchased.

B. That respondents send a letter as set out in Appendix A or B, as applicable, within six (6) months of the date this Order becomes final and thereafter in accordance with Paragraph G below, by certified mail, return receipt requested, to the following of the purchasers referred to in Paragraph A above: (1) All purchasers whose date of purchase is January 1, 1969 or later; (2) all purchasers of 3 or more lots whose date of purchase is prior to January 1, 1969; and (3) as many purchasers of 1 or 2 lots whose date of purchase is prior to January 1, 1969 as the inventory of lots set aside for this exchange offer will permit, in accordance with the schedule set out in subparagraph E(6) below.

C. That respondents enclose together with the letter referred to in Paragraph B above the following material:

1. A notice of acceptance form as set out in Appendix C;

2. A document listing (a) the contract number and date of purchase for the lot or lots in which the purchaser's interest will be relinquished if the exchange offer is accepted, and (b) the legal and/or other adequate description and approximate size concerning both the lot or lots being offered in exchange and the lot or lots in which the purchaser's interest will be relinquished if the exchange offer is accepted;

3. The applicable property report for the lot or lots being offered in exchange; and

4. A map or maps showing the location in the subdivision and, where available, the block or unit of the lot or lots being offered in exchange.

D. That with respect to any letter referred to in Paragraph B above which is returned to respondents undelivered, respondents, within 60 days of receipt of such undelivered letter, shall take measures which are reasonably calculated to obtain the current address of the purchaser and shall deliver said letter to him: *Provided, however,* That in the event respondents are unable to deliver such letter within said 60-day period, said offer of exchange shall be deemed rejected by the purchaser for purposes of this Order.

E. That respondents, upon receipt of a notice of acceptance of the exchange offer provided for in this section of the Order, shall exchange the lot or lots purchased in Remuda Ranch Grants and/or River Ranch Acres for land in certain of respondents' other subdivisions according to the following schedule:

1. Remuda Ranch Grants—date of purchase January 1, 1969 or later:

(a) A purchaser of 3 or more lots may exchange such lots for lots in Cape Coral which had, or would have had if offered for sale, a selling price on July 1, 1973 equal to or greater than the purchase price of his lots as stated in the contract of purchase: *Provided, however,* That no such pruchaser shall be offered less than 2 adjacent Cape Coral lots (1 homesite) in exchange for the lots he has purchased.

(b) A purchaser of 1 or 2 lots may exchange such lots for 1 homesite lot in Golden Gate Estates.

2. River Ranch Acres—date of purchase January 1, 1969 or later:

(a) A purchaser of 3 or more lots may exchange such lots for lots in Cape Coral which had, or would have had if offered for sale, a selling price on July 1, 1973 equal to or greater than the purchase price of his lots as stated in the contract of purchase: *Provided, however,* That no such purchaser shall be offered less than 2 adjacent Cape Coral lots (1 homesite) in exchange for the lots he has purchased.

(b) A purchaser of 1 or 2 lots may exchange such lot or lots for 1 homesite lot in River Ranch Shores.

3. Date of purchase prior to January 1, 1969:

(a) Remuda Ranch Grants—A purchaser of 3 or more lots may exchange such lots for lots in Gloden Gate Estates which had, or would have had if offered for sale, a selling price on July 1, 1973 equal to or greater than the purchase price of his lots as stated in the contract of purchase; *Provided, however,* That no such purchaser shall be offered less than 1 Golden Gate Estates lot in exchange for all the lots he has purchased.

(b) River Ranch Acres—A purchaser of 3 or more lots may exchange such lots for lots in Cape Coral which had, or would have had if offered for sale, a selling price on July 1, 1973 equal to or greater than the purchase price of his lots as stated in the contract of purchase; *Provided however,* That no such purchaser shall be offered less than 2 adjacent Cape Coral lots (1 homesite) in exchange for the lots he has purchased.

(c) Remuda Ranch Grants and River Ranch Acres—A purchaser of 1 or 2 lots may exchange lot or lots for 1 lot to be located in either Golden Gate Estates or River Ranch Shores at the discretion of respondents, subject to the inventory of lots set aside for the exchange offer as provided for in subparagraph 4 below.

4. For purposes of the exchange offer provided for in that section, respondents shall make available 3,429 lots in Golden Gate Estates, 7,058 lots in River Ranch Shores, and enough lots in Cape Coral to meet the demands of subparts 1(a), 2(a), and 3(b) above: *Provided, however,* That in the event respondents' inventory of lots in Cape Coral should prove insufficient to meet the demands of the exchange offer provided for in this section, lots in Poinciana shall be substituted: *And further provided,* That in the event any governmental regulation prevents the use of any portion of Golden Gate Estates as provided for in this section of the Order, respondents may offer to the applicable purchasers an alternative exchange, acceptable to the Commission, of a homesite lot in another subdivision.

5. (a) The lots in Golden Gate Estates to be offered in exchange pursuant to this section of the Order shall be developed in accordance with Section III above.

(b) The lots in Cape Coral, River Ranch Shores, and Poinciana to be offered in exchange pursuant to this section of the Order shall be developed in accordance with the most recent applicable property report on file on the date this Order becomes final with the Office of Interstate Land Sales Registration of the U.S. Department of Housing and Urban Development: *Provided, however,* That in the event no property report is on file with the Office of Interstate Land Sales Registration with respect to any lot in Cape Coral, River Ranch Shores, or Poinciana which is being offered in exchange pursuant to this section of the Order, such lot shall be developed in accordance with the most recent applicable property report or offering statement on file with the State of Florida.

6. For purposes of the exchange offer set out in subpart 3(c) above, such exchanges

shall be made until the inventory of lots in Golden Gate Estates and River Ranch Shores set out in subparagraph 4 above is exhausted, subject to the following conditions:

(a) the exchanges shall be offered to all purchasers of 2 lots prior to being offered to purchasers of 1 lot; and

(b) the exchanges shall be offered to purchasers by date of purchase in reverse chronological order (most recent purchase exchanged first).

F. That in the event a purchaser fails to mail a notice of acceptance to respondents within 60 days of his receipt of the letter referred to in Paragraph B above, then for purposes of this Order such purchaser shall be deemed to have rejected the exchange offer.

G. That within 120 days of the initial exchange offer set out in Paragraph B above, respondents shall offer all lots referred to in subparagraph E(4) above for which an exchange offer has been rejected to the next purchasers eligible to receive said exchange offer in accordance with subparagraph E(6) above; and respondents shall thereafter continue, at intervals not to exceed 120 days, to offer all lots for which an exchange offer has been rejected to the next eligible purchasers until either all the aforesaid lots have been exchanged or the list of purchasers eligible to receive the exchange offer has been exhausted.

H. That the ten-day right of cancellation provided for in Paragraphs 6 through 10 of Section I of this Order shall not be applicable to lots exchanged pursuant to this section of the Order.

I. That respondents may condition the exchange offer under this section of the Order on the purchaser's execution of a quit-claim deed and/or other documents necessary to release his interest in the lot or lots being given up in exchange, such document or documents to be prepared by respondents.

J. That respondents maintain, for three years after the final exchange is made pursuant to this section of the Order records which are adequate to disclose respondents' compliance with this section of the Order, such records to be furnished by respondents to the Federal Trade Commission upon request.

K. That it shall be deemed full compliance with the provisions of this section if respondent (1) sends a letter, as set forth in Appendices (3) or (4), as appropriate, to the Order modifying the Commission Order of 1974, within ninety (90) days after a plan of reorganization has been confirmed by the Bankruptcy Court, by certified mail, return receipt requested, to the lotholders or titleholders who remain entitled to an exchange under Section IV of the Commission Order of 1974, such mailing to continue until 924 Remuda Ranch Grants lot purchasers or titleholders and 3,858 River Ranch Acres lot purchasers or titleholders acknowledge receipt thereof; and (2) provides the lot purchaser or titleholder with the option selected. Each such lot purchaser or titleholder shall be offered the choice of the following options:

(1) For those in River Ranch Acres, additional unimproved land in River Ranch Acres equal to their present acreage in size; for those in Remuda Ranch Grants, an exchange into River Ranch Acres, on a two-for-one basis, so that each lot purchaser or titleholder will receive double the acreage in River Ranch Acres as is presently owned in Remuda Ranch Grants; subject only to the availability of respondent's inventory of such land as of May 1, 1978. For those already holding title to or contracts for land in River Ranch Acres, the additional acreage offered hereunder shall be contiguous to the extent possible. Offers of land under this section shall take priority over exchanges offered under Section III of the Commission Order of 1974, as modified.

(2) An exchange to a homesite lot in the Poinciana subdivision under the conditions as set forth in Section III(A)(3)–(4) of the Commission Order of 1974, as modified.

(3) An exchange to a Housing Construction Package at any on-going GAC development project under the conditions as set forth in Section III(A)(5) of the Commission Order of 1974, as modified.

In the event any lot purchaser or titleholder who acknowledges receipt of a letter mailed pursuant to this section has not responded within sixty (60) days, such recipient shall be deemed to have rejected the alternatives provided by this section.

L. Respondent shall maintain, for a period of five (5) years after the date of confirmation of the plan of reorganization, all records which disclose respondent's compliance with this section of the Order, as modified.

V

For purposes of this section of the Order, the following definition shall be applicable:

"Residential property" shall mean land located in a subdivision in which the majority of lots are sold or offered for sale for use as homesites.

It is further ordered:

A. (1) That respondents shall include the following language, or words of similar import and meaning, in all installment contracts for the sale of residential property to consumers which are entered into after the date this Order becomes final, and shall make refunds in accordance therewith:

In the event of Buyer's default, Seller shall refund to Buyer within 180 days of the date of default principal payments (not interest, finance charges or taxes) made pursuant to this contract in accordance with the following schedule of refunds:

a. If Buyer's total principal payments do not exceed 30% of the cash price, Buyer shall not receive any refund whatsoever.

b. If Buyer's total principal payments exceed 30% but are less than 66⅔% of the cash price, Buyer shall receive a refund of two-thirds of all principal payments made in excess of 30% of the cash price.

c. If Buyer's total principal payments are in excess of 66⅔% of the cash price, Buyer shall receive a refund of one-half of all principal payments made in excess of 66⅔% of the cash price, together with and in addition to all sums refundable to Buyer under subpart B above.

(2) That in the event the rate of default for all contracts for the sale of respondents' land to consumers in which the amount of principal paid exceeds 30% of the cash price due thereunder, which are entered into during the ten-year period after the date this Order becomes final, does not exceed by more than ten percent the rate of default, computed in the same manner, for all such contracts for the three-year period immediately preceding the date this Order becomes final, the following schedule of refunds shall be included by respondents in all installment contracts for the sale of residential property to consumers which are entered into more than 90 days after the expiration of said ten-year period, in lieu of the schedule of refunds set out in subparagraph A(1) above:

a. If Buyer's total principal payments do not exceed 30% of the cash price, Buyer shall not receive any refund whatsoever.

b. If Buyer's total principal payments exceed 30% of the cash price, Buyer shall receive a refund of 75% of all principal payments made in excess of 30% of the cash price.

(3) That respondents submit to the Federal Trade Commission, within 90 days after the date this Order becomes final, data disclosing the rate of default referred to in subparagraph A(2) above for the three-year period immediately preceding the date this Order becomes final, and documentation in support thereof.

B. That respondents shall include the following language, or words of similar import and meaning, in all installment contracts for the sale of land other than residential property to consumers which are entered into after the date this Order becomes final, and shall make refunds in accordance therewith:

In the event of Buyer's default, Seller shall refund to Buyer within 180 days of the date of default principal payments (not interest, finance charges or taxes) made pursuant to this contract in accordance with the following schedule of refunds:

1. If Buyer's total principal payments do not exceed 30% of the cash price, Buyer shall not receive any refund whatsoever.

2. If Buyer's total principal payments exceed 30% of the cash price, Buyer shall receive a refund of 75% of all principal payments made in excess of 30% of the cash price.

C. That respondents may condition their payment of refunds under this section of the Order on the purchaser's execution of a quit-claim deed and/or other documents necessary to release his interest in the land purchased from respondents pursuant to the contract in default, such document or documents to be prepared by respondents.

D. That in the event the Federal Trade Commission promulgates a valid Trade Regulation Rule applicable to respondent's sale of land to consumers which regulates the amount or percentage of moneys paid by a purchaser which may be retained by the seller in the event of the purchaser's default, then this section of the Order shall be deemed modified by said Trade Regulation Rule: *Provided, however,* That this Paragraph shall not be construed as waiving or in any

way limiting respondents' legal rights or standing to challenge or otherwise contest such a Trade Regulation Rule.

VI

It is further ordered:

(a) That in the event respondents fail to correct any default under a contract entered into prior to the effective date of this Order within six months after receiving notice in writing from the purchaser of said default, respondents shall, within ten days after completion of said six-month period, notify the purchaser that, at his option, he may receive a refund of all moneys paid under the contract or an exchange acceptable to him of the contracted-for property for another of at least equal price, equivalent size, with equivalent zoning classification and same promised improvements and utilities, and located in the same general geographic area of the subdivision.

Provided, however, That respondent shall not be considered in default of any contract hereunder if all contractual obligations covered by this section are assumed by the company in a plan of reorganization confirmed by the Bankruptcy Court and such obligations are performed within the dates provided in the confirmed plan of reorganization but no later than 1985.

(b) That respondents shall make the exchange or refund requested by the purchaser under the terms of Paragraph (a) above within 60 days of receipt of the purchaser's acceptance of said exchange or refund: *Provided, however,* That in the event the purchaser has received a deed or other evidence of interest in the contracted-for property other than the contract, the purchaser must, as a condition of obtaining such refund or exchange, reconvey to the seller such evidence of interest by General Warranty Deed in recordable form: *And further provided,* That in the event only the contract has been recorded in the Public Records, the purchaser must quit-claim in recordable form his interest to the seller to remove any clouds on the title to such property.

VII.

It is further ordered:

(a) That respondents herein deliver, by hand or by certified mail, a copy of Sections I and VI through X of this Order to each of their present or future salesmen, independent brokers, and employees who sell or promote the sale of land or other real property to consumers, and all others so engaged;

(b) That respondents provide each person so described in Paragraph (a) above with a form, returnable to respondents, clearly stating his intention to be bound by and to conform his sales practices to the requirements of this Order;

(c) That respondents inform each person described in Paragraph (a) above that respondents shall not use any such party, or the services of any such party, unless such party agrees to and does file notice with respondents that it will be bound by the provisions contained in this Order;

(d) That in the event such party will not agree to so file notice with respondents and to be bound by the provisions of this Order, respondents shall not use such party, or the services of such party;

(e) That respondents so inform the persons described in Paragraph (a) above that respondents are obligated by this Order to discontinue dealing with those persons who engage on their own in the acts or practices prohibited by this Order;

(f) That respondents institute a program of continuing surveillance adequate to reveal whether the sales practices of each of said persons described in Paragraph (a) above conform to the requirements of this Order; and

(g) That respondents discontinue dealing with any person described in Paragraph (a) above, revealed by the aforesaid program of surveillance, who engages on his own in the acts or practices prohibited by this Order: *Provided, however,* That violation of any provision of this Order by present or future employees of independent brokers shall not be deemed a violation of this Order by respondents unless respondents, upon knowledge of such violation, fail to take, within a reasonable time, corrective action to insure that such act or practice is terminated: *And further provided,* That in the event remedial action is taken, the sole fact of such dismissal or termination shall not be admissible against respondents in any proceeding brought to recover penalties for alleged violation of any other paragraph of this Order.

VIII.

It is further ordered:

(a) That in the event the Interstate Land Sales Full Disclosure Act, presently codified at 15 U.S.C. 1701–20 (1970), or any regulation promulgated pursuant thereto by the Office of Interstate Land Sales Registration of the U.S. Department of Housing and Urban Development, requires an act or practice which is prohibited by any provision of this Order, such Order prohibition shall be inoperative.

(b) That in the event any provision of this Order requires an act or practice which is prohibited by the Interstate Land Sales Full Disclosure Act, presently codified at 15 U.S.C. 1701–20 (1970), or any regulation promulgated pursuant thereto by the Office of Interstate Land Sales Registration of the U.S. Department of Housing and Urban Development, such Order requirement shall be inoperative.

IX.

It is further ordered, That this Order shall become effective in accordance with standard Commission procedure: *Provided, however,* That all written advertising and promotional materials, and form contracts, which must be filed with and accepted for dissemination by state or federal agencies, shall not be subject to the provisions of this Order, except for those provisions which prohibit or limit the use of any statement, representation, or misrepresentation, for a period of six months from the date this Order becomes final or until said acceptance for dissemination is obtained from all applicable state or federal agencies, whichever occurs first: *And further provided,* That until said six-month period expires or said acceptance for dissemination is obtained, whichever occurs first, respondents shall file with the Federal Trade Commission monthly reports detailing respondents' progress toward obtaining the aforementioned acceptance for dissemination by the applicable state or federal agencies.

X.

It is further ordered, That respondent corporations shall forthwith distribute a copy of this Order to each of their operating divisions engaged in the sale of land or other real property to consumers.

It is further ordered, That respondents herein shall, within six months after the date of confirmation of a plan of reorganization, and annually for five (5) years thereafter, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this Order.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondents, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this Order.

Federal Trade Commission, Bureau of Consumer Protection

Appendix 1

Dear Golden Gate Estates Customer: As you probably know, GAC Properties, Inc. (formerly Gulf American Corporation) is in bankruptcy. In an effort to protect your intersts, as much as possible, the Federal Trade Commission has entered into a new agreement with GAC which gives you a chance to select one of five choices. GAC's records indicate your land is located *south* of Stewart Boulevard in Golden Gate Estates. Stewart Boulevard is five (5) miles south of Alligator Alley (Florida State Road 858) and is one of the main east-west roads in Golden Gate Estates.

In deciding which choice you should make, you should be aware that most of the land *south* of Stewart Boulevard in Golden Gate Estates is subject to *excessive flooding during Florida's "wet season" and brush fires during the "dry season."* Furthermore, *Golden Gate Estates will not be developed beyond the limited improvements (roads and canals) that have already been made.* Note that there is no central water and sewer system. Telephone and electrical hookups may be very expensive.

The new agreement gives you the right to select one of the following choices:

Choice No. 1: You can deed back your property in Golden Gate Estates to GAC and the GAC Trustees will have a claim scheduled for you in the Bankruptcy Court for all of the principal and interest you have paid to GAC on your contract. If you made payments to GAC after December 12, 1975, these payments will be refunded to you in cash. The balance of your payments will be scheduled as unsecured claims to be shared on a *pro rata basis* with other purchasers of property *south* of Stewart Boulevard from a

maximum amount of $18 million in claims, less the cash payments refunded. The unsecured claims may not be paid in cash but could be paid by the delivery of stock in the reorganized company.

Choice No. 2: You can deed back your property in Golden Gate Estates to GAC and the company will deed to you twice as much land in River Ranch Acres. The parcels deeded to you in River Ranch Acres might not be next to one another. *The land in River Ranch Acres will not be developed in any way and in most areas there are no roads.* If you are still paying for your property in Golden Gate Estates and you select this choice, you will still have to make the payments due on your existing contract.

There is no sure way of knowing whether land in River Ranch has any significant value now, or will ever have any significant value. There have been no sales of this land in the last few years. The land is *not* suitable for homesite use in its present condition.

Please Note: There is limited land available in River Ranch Acres. If you select this choice and there is no land available, you wil be notified and given a chance to select one of the other choices in this letter.

Choice No. 3: You can exchange each 1¼ acres of your property in Golden Gate Estates for a fully developed homesite lot in Poinciana. Poinciana is a GAC homesite subdivision in central Florida. A brochure describing Poinciana has been sent to you by GAC. If you select this choice, GAC will select a lot for you, and you must pay development costs of $2,300 which may be paid at one time or paid over a seven (7) year period at 7½% ANNUAL PERCENTAGE RATE. GAC advises that payment over seven (7) years will require 84 consecutive monthly payments of $35.38 each, your FINANCE CHARGE will be $671.92 on the $2,300 amount financed, and your total of payments will be $2,971.92. In addition, regardless of whether you pay at one time or over a seven (7) year period, you will be required to pay annual property taxes plus a monthly association maintenance fee which is presently $10 per month. This association maintenance fee is a standard condition of all contracts and deeds in the Poinciana subdivision. GAC also pays annual property taxes and association maintenance fees on the property its owns in Poinciana. Of course, you will still have to pay any amount due on your existing contract.

If you pay the development costs of $2,300 all at once, you will immediately be given full title to a developed homesite lot in Poinciana, unless GAC does not have enough developed lots immediately available. GAC has over 1,000 fully developed lots available right now.

If you choose to spread your payments over time, you will not receive a deed until you are finished making all payments.

Before taking this option, you should understand that your ability to resell land in Poinciana, without a house built on the property, is uncertain at this time.

Take this option only if you want homesite property for residential use, not as an investment.

Choice No. 4: You can exchange each 2½ acres of your property in Golden Gate Estates for a fully developed homesite lot in Poinciana which will be selected for you by GAC for an additional payment of $1,150 for water and sewer betterment fees.

This payment will be in addition to any money still due on your existing contract with GAC. You may pay this additional $1,150 at one time or it may be paid over a seven (7) year period at 7½% ANNUAL PERCENTAGE RATE. GAC advises that payment over seven (7) years will require 84 consecutive monthly payments of $17.64 each, your FINANCE CHARGE will be $331.76 on the $1,150 amount financed, and your total of payments will be $1,481.76. In addition, regardless of whether you pay at one time or over a seven (7) year period, you will be required to pay annual property taxes plus a monthly association maintenance fee which is presently $10 per month. This association maintenance fee is a standard condition of all contracts and deeds in the Poinciana subdivision. GAC also pays annual property taxes and association maintenance fees on the property it owns in Poinciana.

If you pay the development costs of $1,150 all at once, you will immediately be given full title to a developed homesite lot in Poinciana, unless GAC does not have enough developed lots immediately available. GAC has over 1,000 fully developed lots available right now.

If you choose to spread your payments over time, you will not receive a deed until you are finished making all payments.

Before taking this option, you should understand that your ability to resell land in Poinciana, without a house built on the property, is uncertain at this time.

Take this option only if you want homesite property for residential use, not as an investment.

Choice No. 5: You can exchange your land for a GAC "Housing Construction Package." All of the principal and interest you have paid to GAC, limited to payments made on no more than 2½ acres, will be credited to the land portion only of your "Housing Construction Package." A brochure describing GAC's present "Housing Construction Package" has been sent to you by GAC. If you select this choice, you have up to five (5) years within which to contract with GAC for a "Housing Construction Package", at the terms (including price) and conditions being offered by GAC at the time such contract is executed.

If you are still making payments on your property, you have two (2) choices if you take this option for a housing package.

—You can stop making your payments. You will lose your land, but you will have a full credit for all the money you have paid if and when you sign a contract for a housing package. Or . . .

—You can continue to make your payments and hold onto your property. Later, if you wish, you can exchange your property for a housing package with a full credit for all the money you have paid.

If you have already fully paid for your property, you will keep it until you decide whether to exchange for a housing construction package.

This option is offered only for those who, within the next five years, want a home in Florida. As a residential investment, the value of this option is highly speculative.

To accept one of the choices listed as 1 through 5 above, you must sign and return to GAC the enclosed NOTICE OF ACCEPTANCE to be received no later than July 1, 1979.

Each of these choices is more fully explained in Section III of the Federal Trade Commission's "SHOW CAUSE ORDER" which is being mailed to you. *You should read this carefully.*

Right To File a Claim

If you don't want to make any of the above choices, you may file a claim for whatever rights you think you have against GAC. The Trustees will still have a right to object to your claim. If such objection is filed, a hearing on the objection would be held before the Bankruptcy Court in Miami and you, or your lawyer, would then be required to prove your claim. As stated in the CLAIMS BAR ORDER which is also being mailed to you, your claim will have to be filed with the Bankruptcy Court, P.O. Box 010230, Miami, Florida 33101 to be received no later than July 1, 1979. If you are unable to obtain Official Bankruptcy Form No. 15 (Proof of Claim) from a bankruptcy court, an office supply or a stationery store in your area, you may call GAC at its toll free number given below, and request a form which they will send to you.

If you have any doubts concerning this matter, the FTC recommends that you speak to an attorney to help you decide what to do. The FTC makes no recommendation whatsoever as to whether you should accept one of the choices offered under the FTC Order or whether you should file a claim instead. *You,* and *only you,* can decide whether you are better off filing a claim or accepting one of the choices under the FTC Order.

If you have any questions regarding this letter, you may direct such questions to GAC by calling its toll free number (800–327–8776) or by writing to the Federal Trade Commission/PC, Bureau of Consumer Protection, Compliance Division, Washington, D.C. 20580.

By direction of the Commission.

Notice of Acceptance

Contract Number_____

I accept the following offer described in the letter sent to me by the Federal Trade Commission:

		Check One
Choice No. 1:	Trustees may schedule my claim and I will deed my property to GAC	____
Choice No. 2:	I will deed my Golden Gate Estates property to GAC in exchange for double acreage in River Ranch Acres	____
Choice No. 3:	I will pay the $2,300 extra costs for a developed homesite in Poinciana	____
Choice No. 4:	I will pay the $1,150 extra water and sewer betterment fees for a developed homesite in Poinciana	____
Choice No. 5:	Within five (5) years, I have a right to contract for a GAC "Housing Construction Package"	____

Date _____

Purchaser's Signature _____

Purchaser's Signature _____

Remember: This Notice of Acceptance must be received no later than July 1, 1979 by: GAC Corporation, 201 Alhambra Circle, Coral Gables, Florida 33134.

Federal Trade Commission, Bureau of Consumer Protection

Appendix 2

Dear Golden Gate Estates Customer: As you probably know, GAC Properties, Inc. (formerly Gulf American Corporation) is in bankruptcy. In an effort to protect your interests, as much as possible, the Federal Trade Commission has entered into a new agreement with GAC. GAC's records indicate your land is located *north* of Stewart Boulevard in Golden Gate Estates. Stewart Boulevard is five (5) miles south of Alligator Alley (Florida State Road 858) and is one of the main east-west roads in Golden Gate Estates.

You should be aware that *Golden Gate Estates will not be developed beyond the limited improvements (roads and canals) that have already been made by GAC.* Collier County is now responsible for the maintenance of all roads and canals in Golden Gate Estates. Note there is no central water and sewer system. Telephone and electrical hookups may be very expensive in some isolated areas.

For lot purchasers *north* of Stewart Boulevard, GAC has agreed to establish an accrual Reserve Fund in the amount of $10 million to be used over a period of five (5) years. All claims payable from this Reserve Fund shall be paid on a first come basis.

The purpose of this Reserve Fund is to help make sure that your property in Golden Gate Estates is suitable for homesite building. This means you should be able to install an adequate system for the disposal of sewage and have an adequate supply of potable water. The costs for obtaining electrical service to the property must be paid by the lot owner.

Under this agreement, *after reorganization,* you may, *at your expense,* have a test or tests made to determine the percolation of your land (suitability for installation of a septic tank system) and the availability of an adequate supply of potable water. The test or tests should be certified by a Registered Professional Engineer or Registered Analytical Laboratory. If the results of the test or tests indicate that the land failed to pass a percolation test or that there is no adequate supply of potable water available, these certified reports should be submitted to GAC.

Percolation Test

If your land fails to pass a percolation test, your certified report should disclose the reason for the failure, the remedial work suggested, and the estimated costs to perform the remedial work. You will be required to pay for the first $1,000 of remedial work which includes the amount you have paid for the test or tests.

If the remedial work is more than $1,000, but not more than $2,500, GAC, at its option, may: (1) pay you the excess of $1,000 or (2) request that you pay to GAC the actual cost of doing the work, up to, but not to exceed $1,000, and thereafter do the remedial work itself within sixty (60) days.

If the remedial work is more than $2,500, GAC must, within thirty (30) days after receiving such certified report or reports, exchange you into another parcel of land of equal size to your existing parcel of land and provide you with a certificate certifying the percolation of such land in its existing state without remedial work and the adequate availability of potable water as of the date of the exchange.

If GAC has no lots in its inventory which can percolate without remedial work, it may do the remedial work in order to certify both the percolation and availability of potable water and charge you for the remedial work for percolation up to $1,000 and charge you up to $500 for well drilling, less any amounts you have paid for remedial work and well drilling on your former land.

If GAC has no lots in its inventory with which to make an exchange, you will be offered a cash refund of all principal paid to GAC. When GAC makes this offer, you will also be given the choice of exchanging for land in various other GAC subdivisions with full credit for the principal and interest you have paid the company. GAC will give you full details of these various options at the time you qualify for a cash refund.

In the event of a lot exchange or refund, you will be required to deed back your land to GAC.

Potable Water Test

If you have drilled a well and your test report certifies that there is no adequate supply of potable water (as defined in the new agreement) available, GAC will have to perform such remedial work, including deepening or shallowing an existing well or drilling an additional well on the same land, and such costs shall be paid by GAC. However, if the cost of remedial work exceeds $500, GAC may exchange you into another parcel of land of equal size to your existing parcel of land and provide you with a certificate certifying the percolation of such land in its existing state without remedial work and certifying that there is an adequate supply of potable water available as of the date of the exchange.

If GAC has no lots in its inventory which can percolate with an adequate supply of potable water available without remedial work, GAC may do the remedial work in order to certify both the percolation and availability of an adequate supply of potable water and charge you for the remedial percolation work up to $1,000 and $500 for well drilling, less any amounts you have paid for such remedial percolation work and well drilling on your former land.

If GAC, has no lots in its inventory with which to make an exchange, you will be offered a cash refund of all principal paid to GAC. When GAC makes this offer, you will also be given the choice of exchanging for land in various other GAC subdivisions with full credit for the principal and interest you have paid the company. GAC will give you full details of these various options at the time you qualify for a cash refund.

In the event of a lot exchange or cash refund, you will be required to deed back your land to GAC.

Right to File a Claim

If you don't want to make any of the above choices, you may file a claim for whatever rights you think you have against GAC. The Trustees will still have a right to object to your claim. If such objection is filed, a hearing on the objection would be held before the Bankruptcy Court in Miami and you, or your lawyer, would then be required to prove your claim. As is stated in the CLAIMS BAR ORDER which is also being mailed to you, your claim will have to be filed with the Bankruptcy Court, P.O. Box 010230, Miami, Florida 33101 to be received no later than July 1, 1979. If you are unable to obtain Official Bankruptcy Form No. 15 (Proof of Claim) from a bankruptcy court, an office supply or a stationery store in your area, you may call GAC at its toll free number given below, and request a form which they will send to you.

If you have any doubts concerning this matter, the FTC recommends that you speak to an attorney to help you decide what to do. The FTC makes no recommendation whatsoever as to whether you should accept one of the choices offered under the FTC Order or whether you should file a claim instead. *You,* and *only you,* can decide whether you are better off filing a claim or accepting one of the choices under the FTC Order.

You should also be aware that the government of Collier County is opposed to uncontrolled development in Golden Gate Estates. In comments filed with the FTC, the county says that the roads and canals are deteriorating. The county also says that it may not spend the money necessary to maintain these structures.

If the county does decide to perform necessary maintenance the county says it may try to put the tax burden for maintenance in Golden Gate Estates on lotowners there. If the county can legally do this, taxes in Golden Gate Estates might rise.

The county is also concerned about pollution from septic tanks. The county says that if too many people try to put septic tanks in Golden Gate Estates, the county may find it necessary to make it harder to get a building permit.

The FTC cannot be sure what the county will or will not do to provide maintenance for Golden Gate Estates or to control its development.

If you have any questions regarding this letter, you may direct such questions to GAC by calling this toll free number (800–327–8776) or by writing to the Federal Trade Commission/PC, Bureau of Consumer Protection, Compliance Division, Washington, D.C. 20580.

By direction of the Commission.

Federal Trade Commission, Bureau of Consumer Protection

Appendix 3

Dear Remuda Ranch Grants Customer: As you probably know, GAC Properties, Inc. (formerly Gulf American Corporation) is in

bankruptcy. In an effort to protect your interests, as much as possible, the Federal Trade Commission has entered into a new agreement with GAC which gives you a chance to select one of three choices.

In deciding which choice you should make, you should be aware that *Remuda Ranch Grants will not be developed in any way. Most of the land in Remuda Ranch Grants is under water. In most areas there are no roads.*

Choice No. 1: You can deed back your land in Remuda Ranch Grants to GAC and the company will deed to you twice as much land in River Ranch Acres. *The land in River Ranch Acres will not be developed in any way and in most areas in River Ranch Acres there are no roads.* The parcels deeded to you might not be next to one another. If you are still paying for your property in Remuda Ranch Grants and you select this choice, you will still be required to make payments due on your existing contract.

There is no way of knowing whether land in River Ranch has any significant value now, or will ever have any significant value. There have been no sales of this land in the last few years. The land is *not* suitable for homesite use in its present condition.

Choice No. 2: You can exchange each 1¼ acres of your property in Remuda Ranch Grants for a fully developed homesite lot in Poinciana. Poinciana is a GAC homesite subdivision in central Florida. A brochure describing Poinciana has been sent to you by GAC. If you select this choice, GAC will select a lot for you, and you must pay development costs of $2,300 which may be paid at one time or paid over a seven (7) year period at 7½% ANNUAL PERCENTAGE RATE. GAC advises that payment over seven (7) years will require 84 consecutive monthly payments of $35.38 each, your FINANCE CHARGE will be $671.92 on the $2,300 amount financed, and your total of payments will be $2,971.92. In addition, regardless of whether you pay at one time or over a seven (7) year period, you will be required to pay annual property taxes plus a monthly association maintenance fee which is presently $10 per month. This association maintenance fee is a standard condition of all contracts and deeds in the Poinciana subdivision. GAC also pays annual property taxes and association maintenance fees on the property it owns in Poinciana. Of course, you will still have to pay any amount due on your existing contract.

If you pay the development costs of $2,300 all at once, you will immediately be given full title to a developed homesite lot in Poinciana, unless GAC does not have enough developed lots immediately available. GAC has over 1,000 fully developed lots available right now.

If you choose to spread your payments over time, you will not receive a deed until you are finished making all payments.

Before taking this option, you should understand that your ability to resell land in Poinciana, without a house built on the property, is uncertain at this time.

Take this option only if you want homesite property for residential use, not as an investment.

Choice No. 3: You can exchange each 2½ acres of your property in Remuda Ranch Grants for a fully developed homesite lot in Poinciana which will be selected for you by GAC for an additional payment of $1,150 for water and sewer betterment fees.

This payment will be in addition to any money still due on your existing contract with GAC. You may pay this additional $1,150 at one time or it may be paid over a seven (7) year period at 7½% ANNUAL PERCENTAGE RATE. GAC advises that payment over seven (7) years will require 84 consecutive monthly payments of $17.64 each, your FINANCE CHARGE will be $331.76 on the $1,150 amount financed, and your total of payments will be $1,481.76. In addition, regardless of whether you pay at one time or over a seven (7) year period, you will be required to pay annual property taxes plus a monthly association maintenance fee which is presently $10 per month. This association maintenance fee is a standard condition of all contracts and deeds in the Poinciana subdivision. GAC also pays annual property taxes and association maintenance fees on the property it owns in Poinciana.

If you pay the development costs of $1,150 all at once, you will immediately be given full title to a developed homesite lot in Poinciana, unless GAC does not have enough developed lots immediately available. GAC has over 1,000 fully developed lots available right now.

If you choose to spread your payments over time, you will not receive a deed until you are finished making all payments.

Before taking this option, you should understand that your ability to resell land in Poinciana, without a house built on the property, is uncertain at this time.

Take this option only if you want homesite property for residential use, not as an investment.

Choice No. 4: You can exchange your land for a GAC "Housing Construction Package". All of the principal and interest you have paid to GAC, limited to payments made on no more than 2½ acres, will be credited to the land portion only of your "Housing Construction Package". A brochure describing GAC's present "Housing Construction Package" has been sent to you by GAC. If you select this choice you have up to five (5) years within which to contract with GAC for a "Housing Construction Package", at the terms (including price) and conditions being offered by GAC at the time such contract is executed.

If you are still making payments on your property, you have two (2) choices if you take this option for a housing package.

You can stop making your payments. You will lose your land, but you will have a full credit for all the money you have paid if and when you sign a contract for a housing package. Or . . . .

You can continue to make your payments and hold onto your property. Later, if you wish, you can exchange your property for a housing package with a full credit for all the money you have paid.

If you have already fully paid for your property, you will keep it until you decide whether to exchange for a housing construction package.

This option is offered *only for those who, within the next five years, want a home in Florida. As a residential investment, the value of this option is highly speculative.*

To accept one of the choices listed in this letter, you must sign and return to GAC the enclosed NOTICE OF ACCEPTANCE no later than sixty (60) days after you have received this letter. If you do not answer in sixty (60) days, you will be deemed to have rejected the choices offered to you by this letter.

Each of these choices is more fully explained in Section IV of the Federal Trade Commission's "SHOW CAUSE ORDER" which is being mailed to you along with this letter. *You should read this carefully.*

If you have any questions regarding this letter, you may direct such questions to GAC by calling its toll free number (800–327–8776) or by writing to the Federal Trade Commission/PC, Bureau of Consumer Protection, Compliance Division, Washington, D.C. 20580.

By direction of the Commission.

Notice of Acceptance

Contract Number_____

I accept the following offer described in the letter sent to me by the Federal Trade Commission:

		Check One
Choice No. 1:	I will deed my Remuda Ranch Grants property to GAC in exchange for double acreage in River Ranch Acres	____
Choice No. 2:	I will pay the $2,300 extra costs for a developed homesite in Poinciana	____
Choice No. 3:	I will pay the $1,150 extra water and sewer betterment fees for a developed homesite in Poinciana	____
Choice No. 4:	Within five (5) years, I have a right to contract for a GAC "Housing Construction Package"	____

Date _____

Purchaser's Signature_____

Purchaser's Signature_____

Remember: This Notice of Acceptance must be returned within sixty (60) days after receipt of this letter to: GAC Corporation, 201 Alhambra Circle, Coral Gables, Florida 33134.

Federal Trade Commission, Bureau of Consumer Protection

Appendix 4

Dear River Ranch Acres Customer: As you probably know, GAC Properties, Inc. (formerly Gulf American Corporation) is in bankruptcy. In an effort to protect your interests, as much as possible, the Federal Trade Commission has entered into a new agreement with GAC which gives you a chance to select one of three choices.

In deciding which choice you should make, you should be aware that *River Ranch Acres will not be developed in any way. In most areas in River Ranch Acres there are no roads.*

Choice No. 1: You can get added unimproved land in River Ranch Acres which will double your holdings. Wherever possible, the additional acreage will be next to your present land. If you are still paying for your property in River Ranch Acres and you select this choice, you will still be

required to make the payments due on your existing contract.

There is no sure way of knowing whether land in River Ranch has any significant value now, or will ever have any significant value. There have been no sales of this land in the last few years. The land is *not* suitable for homesite use in its present condition.

Choice No. 2: You can exchange each 1¼ acres of your property in River Ranch Acres for a fully developed homesite lot in Poinciana. Poinciana is a GAC homesite subdivision in central Florida. A brochure describing Poinciana has been sent to you by GAC. If you select this choice, GAC will select a lot for you, and you must pay development costs of $2,300 which may be paid at one time or paid over a seven (7) year period at 7½ percent ANNUAL PERCENTAGE RATE. GAC advises that payment over seven (7) years will require 84 consecutive monthly payments of $35.38 each, your FINANCE CHARGE will be $871.92 on the $2,300 amount financed, and your total of payments will be $2,971.92. In addition, regardless of whether you pay at one time or over a seven (7) year period, you will be required to pay annual property taxes plus a monthly association maintenance fee which is presently $10 per month. This association maintenance fee is a standard condition of all contracts and deeds in the Poinciana subdivision. GAC also pays annual property taxes and association maintenance fees on the property it owns in Poinciana. Of course, you will still have to pay any amount due on your existing contract.

If you pay the development costs of $2,300 all at once, you will immediately be given full title to a developed homesite lot in Poinciana, unless GAC does not have enough developed lots immediately available. GAC has over 1,000 fully developed lots available right now.

If you choose to spread your payments over time, you will not receive a deed until you are finished making all payments.

Before taking this option, you should understand that your ability to resell land in Poinciana, without a house built on the property, is uncertain at this time.

Take this option only if you want homesite property for residential use, not as an investment.

Choice No. 3: You can exchange each 2½ acres of your property in River Ranch Acres for a fully developed homesite lot in Poinciana which will be selected for you by GAC for an additional payment of $1,150 for water and sewer betterment fees.

This payment will be in addition to any money still due on your existing contract with GAC. You may pay this additional $1,150 at one time or it may be paid over a seven (7) year period at 7½ percent ANNUAL PERCENTAGE RATE. GAC advises that payment over seven (7) years will require 84 consecutive monthly payments of $17.64 each, your FINANCE CHARGE will be $331.76 on the $1,150 amount financed, and your total of payments will be $1,481.76. In addition, regardless of whether you pay at one time or over a seven (7) year period, you will be required to pay annual property taxes plus a monthly association maintenance fee which is presently $10 per month. This association maintenance fee is a standard condition of all contracts and deeds in the Poinciana subdivision. GAC also pays annual property taxes and association maintenance fees on the property it owns in Poinciana.

If you pay the development costs of $1,150 all at once, you will immediately be given full title to a developed homesite lot in Poinciana, unless GAC does not have enough developed lots immediately available. GAC has over 1,000 fully developed lots available right now.

If you choose to spread your payments over time, you will not receive a deed until you are finished making all payments.

Before taking this option, you should understand that your ability to resell land in Poinciana, without a house built on the property, is uncertain at this time.

Take this option only if you want homesite property for residential use, not as an investment.

Choice No. 4: You can exchange your land for a GAC "Housing Construction Package". All of the principal and interest you have paid to GAC, limited to payments made on no more than 2½ acres, will be credited to the land portion only of your "Housing Construction Package". A brochure describing GAC's present "Housing Construction Package" has been sent to you by GAC. If you select this choice, you have up to five (5) years within which to contract with GAC for a "Housing Construction Package", at the terms (including price) and conditions being offered by GAC at the time such contract is executed.

If you are still making payments on your property, you have two (2) choices if you take this option for a housing package.

You can stop making your payments. You will lose your land, but you will have a full credit for all the money you have paid if and when you sign a contract for a housing package. Or. . . .

You can continue to make your payments and hold onto your property. Later, if you wish, you can exchange your property for a housing package with a full credit for all the money you have paid.

If you have already fully paid for your property, you will keep it until you decide whether to exchange for a housing construction package.

This option is offered *only for those who, within the next five years, want a home in Florida. As a residential investment, the value of this option is highly speculative.*

To accept one of the choices listed in this letter, you must sign and return to GAC the enclosed NOTICE OF ACCEPTANCE no later than sixty (60) days after you have received this letter. If you do not answer in sixty (60) days, you will be deemed to have rejected the choices offered to you by this letter.

Each of these choices is more fully explained in Section IV of the Federal Trade Commission's "SHOW CAUSE ORDER" which is being mailed to you along with this letter. *You should read this carefully.*

If you have any questions regarding this letter, you may direct such questions to GAC by calling its toll free number (800–327–8776) or by writing to the Federal Trade Commission/PC, Bureau of Consumer Protection, Compliance Division, Washington, D.C. 20580.

By direction of the Commission.

Notice of Acceptance

Contract Number_____

I accept the following offer described in the letter sent to me by the Federal Trade Commission:

		Check One
Choice No. 1:	I choose to have my River Ranch Acres holdings doubled in acreage	____
Choice No. 2:	I will pay the $2,300 extra costs for a developed homesite in Poinciana	____
Choice No. 3:	I will pay the $1,150 extra water and sewer betterment fees for a developed homesite in Poinciana	____
Choice No. 4:	Within five (5) years, I have a right to contract for a GAC "Housing Construction Package"	____

Date _____
Purchaser's Signature_____
Purchaser's Signature_____

Remember: This NOTICE OF ACCEPTANCE must be returned within sixty (60) days after receipt of this letter to: GAC Corporation, 201 Alhambra Circle, Coral Gables, Florida 33134.

By the Commission.

Carol M. Thomas,
Secretary.

[Docket No. C–2523]
[FR Doc. 79–15127 Filed 5–14–79; 8:45 am]
BILLING CODE 6750–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

Delegation of Authority to the Director of the Division of Market Regulation

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its regulations to delegate authority to the Director of the Division of Market Regulation to approve amendments to joint industry plans filed by self-regulatory organizations, which plans have been previously approved by the Commission.

EFFECTIVE DATE: May 9, 1979.

FOR FURTHER INFORMATION CONTACT: Brandon Becker, Division of Market Regulation, Securities and Exchange Commission, Room 321, 500 North Capitol Street, Washington, D.C. 20549, (202) 755–8749.

SUPPLEMENTARY INFORMATION: The Commission finds, in accordance with the Administrative Procedure Act ("APA") (5 U.S.C. 553(b)(3)(B)), that the foregoing amendment relates solely to

agency organization, procedure or practice and that notice and procedure pursuant to the APA are therefore not necessary and that such amendment shall be adopted, effective immediately.

Accordingly, 17 CFR Chapter II is amended by adding a new paragraph (a)(29) to § 200.30–3 reading as follows:

§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(29) To issue supplemental orders modifying the terms upon which self-regulatory organizations are authorized to act jointly in planning, developing, operating or regulating facilities of a national market system in accordance with the terms of amendments to plans which plans have been previously approved by the Commission under Section 11A(a)(3)(B) of the Securities Exchange Act of 1934.

(Pub. L. 87–592, 76 Stat. 394 (15 U.S.C. 78d–1, 78d–2).)

By the Commission.

George A. Fitzsimmons,
Secretary.

May 9, 1979.

[Release No. 34–15806]
[FR Doc. 79–15079 Filed 5–14–79; 8:45 am]
BILLING CODE 8010–01–M

17 CFR Part 240

New Rule Designating Financial Responsibility Rules for Purposes of the Securities Investor Protection Act of 1970

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting a new rule in conjunction with the 1978 amendments to the Securities Investor Protection Act of 1970 ("SIPA"). The new rule designates "financial responsibility rules" for purposes of the SIPA.

EFFECTIVE DATE: Immediately May 11, 1979.

FOR FURTHER INFORMATION CONTACT: Gregory N. Smith, Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. (202) 755–7484.

SUPPLEMENTARY INFORMATION: Section 16 of the Securities Investor Protection Act Amendments of 1978 (15 U.S.C. 78aaa) amended Section 3(a) of the Securities Exchange Act of 1934 by adding a new paragraph defining "financial responsibilities 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."

That term is relevant to two sections of SIPA. Under Section 5 of SIPA, the court may enter a protective decree on behalf of customers of a broker-dealer if the court finds, among other things, that the debtor broker-dealer is not in compliance with applicable requirements under the Securities Exchange Act or rules of the Commission or of any self-regulatory organization with respect to financial responsibility or if the debtor broker-dealer is unable to make such computations as may be necessary to establish compliance. Section 13 of SIPA refers to financial responsibilities rules in connection with inspections of broker-dealers which are members of the Securities Investor Protection Corporation ("SIPC").

New Rule 3a40–1 under the Securities Exchange Act [1] designates as "financial responsibility rules" all rules and regulations adopted by the Commission pursuant to Sections 8, 15(c)(3), 17(a) or 17(e)(1)(A) of the Securities Exchange Act, all rules and regulations adopted by the Commission relating to hypothecation or lending of customer securities, all rules adopted by self-regulatory organizations relating to capital, margin, recordkeeping, hypothecation, or lending requirements, and any other rule adopted by the Commission or a self-regulatory organization relating to the protection of funds or securities. The Commission's intention in paragraph (d) of the new rule is not to sweep into coverage all of its rules or those of the self-regulatory organizations which indirectly protect funds or securities but only rules which are akin to those specified in paragraphs (a) through (c) and which are cutomarily described as "financial responsibility" rules.

The Commission has determined that this new rule should be effective immediately upon publication in the **Federal Register** pursuant to 5 U.S.C. 553(d). The Commission finds good cause for making the rule effective immediately in that the rule clarifies the power of SIPC pursuant to Section 5 of SIPA to seek protective decrees, clarifies the power of the self-regulatory organizations in connection with inspections, and requires no modification of conduct by the public. Moreover, the rule was proposed for comment more than 30 days before adoption. Only one comment letter, which was favorable to the proposed rule, was received.

[1] The rule was proposed in Securities Exchange Act Release No. 15452 (January 2, 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 adopts new Rule 3a40–1 designating "financial responsibility rules" for purposes of customer protection under SIPA as set forth below.

It appears to the Commission that no burden will be imposed on competition by adoption of the above mentioned rule. 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 designate financial responsibility rules.

Text of the Rule

Accordingly, 17 CFR Part 240 is amended by adding § 240.3a40–1 reading 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 shall include:

(a) Any rule adopted by the Commission pursuant to Sections 8, 15(c)(3), 17(a) or 17(e)(1)(A) of the Securities Exchange Act of 1934;

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

(c) Any rule adopted by any self-regulatory organization relating to capital, margin, recordkeeping, hypothecation or lending requirements; and

(d) Any other rule adopted by the Commission or any self-regulatory organization relating to the protection of funds or securities.

By the Commission.

Dated: May 4, 1979.

George A. Fitzsimmons,
Secretary.

[Release No. 34–15777]
FR Doc. 79–15142 Filed 5–14–79; 8:45 am]
BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 159

Final Countervailing Duty Determination; Viscose Rayon Staple Fiber From Sweden

AGENCY: U.S. Customs Service, Treasury Department.

ACTION: Final Countervailing Duty Determination.

SUMMARY: This notice is to inform the public that a countervailing duty investigation has resulted in a final determination that the Government of Sweden has given benefits considered to be bounties or grants within the meaning of the countervailing duty law on the manufacture or exportation of viscose rayon staple fiber from Sweden.

EFFECTIVE DATE: May 15, 1979.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229, telephone (202) 566–5492.

SUPPLEMENTARY INFORMATION: On January 31, 1979, a "Preliminary Countervailing Duty Determination" was published in the **Federal Register** (44 FR 6245). That notice stated that it had been preliminarily determined that bounties or grants within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303) (referred to as the "Act") are being paid or bestowed, directly or indirectly, by the Government of Sweden upon the manufacture or exportation of viscose rayon staple fiber. Further information has been obtained since that time regarding the various programs under consideration.

The imports from Sweden covered by this investigation are classified under item numbers 309.4320 and 309.4325, Tariff Schedules of the United States Annotated (TSUSA). Both regular and high-wet modulus ("modal") viscose rayon staple fiber are included within the scope of this investigation.

The programs considered in this investigation are discussed below:

A. The program under which the Government of Sweden provides funds to producers of merchandise to encourage the continued employment of older workers in certain regions of the country was preliminarily determined to constitute a bounty or grant. The sole Swedish producer of the investigated merchandise, Svenska Rayon AB ("Svenska"), was determined to be eligible to participate in this program. Its objective is to reduce the number of dismissals faced by workers over the age of 50 who have greater difficulty than younger workers in finding substitute employment when laid off. It is not a program in any way related to the exportation of the merchandise produced by the company.

In order to qualify under this plan a company must agree that it will not dismiss any workers, regardless of age, during the period in which it is accepting government compensation, or that it will withdraw any pending dismissals. The company must then establish the number of employees over age 50 on its payroll and the estimated number of working hours of these workers during the period for which funds are sought. A government agency determines monthly the actual number of hours worked by the older workers and compensation is paid based on a fixed hourly rate for such employees. Total compensation cannot exceed a maximum allowable percentage of the company's total labor costs.

The costs involved in not laying off redundant workers will vary from company to company, and the compensation provided by the Government of Sweden is not always sufficient to induce companies to take part in the program. However, Svenska has elected to participate. The costs incurred in maintaining redundant, older workers on the payroll have been calculated, and in December 1978 these costs exceeded the payments received by the company.

Accordingly, it is hereby determined that a bounty or grant is paid or bestowed within the meaning of section 303 of the Act on the manufacture or exportation of viscose rayon staple fiber (both regular and modal) by reason of this program. Because payments received under this program are currently offset by the extra expenses borne by Svenska, however, the rate of countervailing duty that applies to the product as a result is zero. However, a change in business conditions may alter this balance. The Swedish producer will, therefore, be requested to supply periodic, current information in order to enable Treasury to determine whether any net countervailable benefit is being received. If so, appropriate countervailing duties would then be assessed on the subject merchandise.

B. Interest-free loans provided by the Government of Sweden to Svenska for the acquisition of machinery and equipment for the production of modal fiber not exported to the United States were preliminarily determined not to constitute a bounty or grant. At that time, it was stated that further information would be obtained regarding these loans.

The interest-free loans are provided under programs broadly defined to aid national economic security. Modal fiber represents a technological advance over regular fiber, the currently prevalent form of viscose rayon staple fiber. The preliminary determination implied that a countervailable benefit would exist only if an indirect benefit was conferred on the production or export of the regular fiber which is, in fact, currently exported to the United States. However, as discussed below, a countervailable benefit also exists if a benefit is conferred on the production and exportation of modal fiber.

The development of modal fiber production capacity began in 1975. The government provided loans for up to 75 percent of approved capital expenditures, and adopted procedures to ensure that the funds thus supplied were used solely for the purpose for which intended. The modal fiber facility is a physically separate unit of Svenska's operation, and shares only general supporting facilities with the regular fiber production line. Thus, the question of whether any indirect benefit is conferred upon the latter centers on the dual notions of fungibility of money and the potential of conversion of the modal production line to regular fiber.

With regard to fungibility, it has been determined in a previous investigation that the mere provision of capital to a company producing a number of goods does not necessarily constitute a bounty or grant on the production or export of particular products. (See *Papermaking Machinery from Finland*, February 20, 1979, 44 FR 10451). It is necessary to ascertain how closely related to the purpose for which the funds are provided are the products or operations being analyzed in order to resolve this issue. In the instant case, both regular and modal fiber are "viscose rayon staple fiber," but the latter is of better quality and is more expensive to produce. The finer merchandise can usually be used in the place of the lower quality one, but purchasers who would normally use regular fiber would not substitute modal for regular fiber merely because it is possible to do so. On the other hand, textile production that requires modal fiber could not use regular fiber and yield the same final product. Therefore, the payments limited and solely applied to modal production should not be considered as a benefit to production of regular fiber. Further, there is no way to measure the effect of "fungible" money for the many products

some companies make. Thus, from an administrative, as well as a commercial, point of view, it seems impossible accurately to quantify any indirect benefits for a particular product merely because another was directly benefited.

Notwithstanding this conclusion concerning the lack of a benefit to regular fiber, as such, the benefits provided for acquiring modal fiber *machinery* might have been considered a benefit applicable to regular fiber production, if it had been shown that modal machinery could easily be adapted to the production of regular fiber. However, conversion appears to be impractical from both the commercial and technical points of view. Therefore, it would be improper to allocate portions of the benefits associated with the production of modal fiber to the production of regular fiber.

Accordingly, the benefit derived from the interest-free loans must be associated solely with the production of modal fiber. When a purely domestic (rather than an export) subsidy is involved, as is the case here, a countervailable benefit is deemed to exist only if a preponderance of production is exported, unless the *ad valorem* benefit is so large that trade distortion is likely to result. Even though virtually no modal fiber was exported by Svenska to the United States in 1978, the company did export the bulk of its total production of modal fiber to other countries, thus satisfying the preponderance criterion cited above. Accordingly, since a preponderance of production is exported, it is determined that a bounty or grant is paid or bestowed within the meaning of section 303 of the Act on the manufacture or exportation of modal viscose rayon staple fiber by reason of the interest-free loans. However, it is also determined this program confers no benefit on the manufacture or exportation of regular viscose rayon staple fiber.

The true benefit associated with the interest-free loans must be evaluated in light of the terms of these loans. When this is done, it appears that the loans will never be paid and, therefore, should be considered an outright grant to Svenska. The current, *ad valorem* benefit associated with the grants received to date is calculated by spreading their total amount over 10 years (which is the minimum period designated by the Government of Sweden for writing off the grants) and then dividing this figure by the total production of modal fiber in 1978. This yields an *ad valorem* benefit of 8.6 percent on the modal fiber. The Department will adjust this figure should it become necessary to do so.

C. The grant of funds through a government program devised to stockpile raw materials and maintain extra production capacity for national defense purposes was preliminarily determined not to constitute a bounty or grant. More information regarding this plan was obtained before making this final determination.

The Government of Sweden, in response to its perceived need to maintain adequate defense in both the military and economic fields, has established a plan whereby strategic stockplies and minimum production capacity deemed essential to national security are maintained. Among the numerous products included in this plan is the subject mechandise. The company is paid only for the extra expenses it incurs by cooperating with its government's plan. Machinery is maintained in storage for possible future need and fiber itself is kept in a rotating stockpile in order to ensure its freshness. Strategic stockpiles are set at a given level and may not be used for commerical purposes and, in the same manner, commerical inventories may not be used by the company to meet its defense obligations. Given this strict management of the government program and the fact that Svenska receives no net benefit owing to its participation, this program is determined not to constitute a bounty or grant.

Interested parties were invited to submit relevant data, views, or arguments orally or in writing with respect to the preliminary determinations. Such data, views or arguments have been taken into account in rendering this determination.

Accordingly, notice is hereby given that viscose rayon staple fiber which is imported directly or indirectly from Sweden, if entered, or withdrawn from warehouse, for consumption on or after May 15, 1979, will be subject to the payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated to have been paid or bestowed. Since it has been determined that no bounty or grant is presently being paid or bestowed with respect to regular fiber, imports of such merchandise from Sweden shall be subject to a zero rate countervailing duty.

In accordance with section 303 of the Act and until further notice, the net amount of such bounties or grants on the f.o.b. value of the modal fiber has been ascertained and determined to be 8.6 percent. Therefore effective on or after (publication date of this notice), and until further notice, upon the entry, or withdrawal from warehouse, for consumption of such modal viscose rayon staple fiber imported directly or indirectly from Sweden, which benefit from these bounties or grants, there shall be collected, in addition to any other duties estimated or determined to be due, countervailing duties in the amount ascertained in accordance with the above declaration. To the extent that it can be established to the satisfaction of the Commissioner of Customs that imports of modal fiber from Sweden are benefiting from a bounty or grant smaller than the amount which otherwise would be applicable under the above declaration, the smaller amount so established shall be assessed and collected.

Any merchandise subject to the terms of this order shall be deemed to have benefitted from a bounty or grant, if such bounty or grant has been or will be credited or bestowed, directly or indirectly, upon the manufacture, production or exporation of viscose rayon staple fiber from Sweden.

The table in § 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting after the last entry for "Sweden", the words "viscose rayon staple fiber" in the column headed "Commodity", the number of this Treasury Decision in the column headed "Treasury Decision" and the words "Bounty Declared-Rate" in the column headed "Action."

(R.S. 251, as amended, secs. 303, as amended, 624, 46 Stat. 687, as amended, 759 (19 U.S.C. 66, 1303, 1624)).

This final determination is published pursuant to section 303(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(a)).

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order 190 (Revision 15) March 16, 1978, the provisions of Treasury Department Order No. 165, Revised, November 2, 1954, and § 154.47 of the Customs Regulations (19 CFR 159.47), insofar as they pertain to the issuance of a final contervailing duty determination by the Commissioner of Customs, are hereby waived.

David R. Brennan,

Acting General Counsel of the Treasury.

May 8, 1979.

[T.D. 79-141]

[FR Doc. 79-15126 Filed 5-14-79; 8:45 am]

BILLING CODE 4810-22-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

21 CFR Part 14

Bacterial Vaccines and Toxoids Panel; Deletion From List of Standing Advisory Committees

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) announces the termination of the Panel on Review of Bacterial Vaccines and Toxoids and amends the regulations to delete it from the list of standing advisory committees. The Panel was terminated because it had completed its work.

EFFECTIVE DATE: May 15, 1979.

FOR FURTHER INFORMATION CONTACT: Jack Gertzog, Bureau of Biologics (HFB–5) Food and Drug Administration, Department of Health, Education, and Welfare, 8800 Rockville Pike, Bethesda, Md. 20014, 301–443–5455.

SUPPLEMENTARY INFORMATION: The Panel's functions were to review and evaluate available data concerning the safety, effectiveness, and adequacy of labeling for bacterial vaccines and toxoids. The Panel has completed its report and will submit its conclusions and recommendations on the safety, effectiveness, and labeling of these products to the Commissioner of Food and Drugs in the near future. These conclusions and recommendations will be published in a future issue of the **Federal Register.**

Accordingly, the purpose of the Panel has been served, and the Panel is no longer needed. On April 16, 1979, the charter for the Panel expired.

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 (21 CFR 5.1), Part 14 is amended in § 14.100 *List of standing advisory committees* by deleting paragraph (b)(1)(ii) *Bacterial Vaccines and Toxoids Panel* 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,** (May 15, 1979).

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

Dated: May 8, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79–14917 Filed 5–14–79; 8:45 am]

BILLING CODE 4110–03–M

21 CFR Part 14

Viral Vaccines and Rickettsial Vaccines Panel; Deletion from List of Standing Advisory Committees

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) announces the termination of the Panel on Review of Viral Vaccines and Rickettsial Vaccines and amends the regulations to delete it from the list of standing advisory committees. The Panel was terminated because it had completed its work.

EFFECTIVE DATE: May 15, 1979.

FOR FURTHER INFORMATION CONTACT: Jack Gertzog, Bureau of Biologics (HFB–5), Food and Drug Administration, Department of Health, Education, and Welfare, 8800 Rockville Pike, Bethesda, MD. 20014, 301–443–5455.

SUPPLEMENTARY INFORMATION: The Panel's functions were to review and evaluate available data concerning the safety, effectiveness, and adequacy of labeling for viral vaccines and rickettsial vaccines. The Panel has submitted its conclusions and recommendations on the safety, effectiveness, and labeling of these products to the Commissioner of Food and Drugs. These conclusions and recommendations will be published in a future issue of the **Federal Register.**

Accordingly, the purpose of the Panel has been served, and the Panel is no longer needed. On April 16, 1979, the charter for the Panel expired.

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 (21 CFR 5.1), Part 14 is amended in § 14.100 *List of standing advisory committees* by deleting paragraph (b)(1)(iii) *Viral Vaccines and Rickettsial Vaccines Panel* 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,** (May 15, 1979).

Dated: May 8, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79–14914 Filed 5–14–79; 8:45 am]

BILLING CODE 4110–03–M

21 CFR Part 73

Listing of Color Additives Exempt From Certification; Ferric Ammonium Ferrocyanide

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) revises the specifications for ferric ammonium ferrocyanide by increasing tolerances for water soluble cyanide, total cobalt, and total nickel, as proposed in the **Federal Register** of August 15, 1978 (43 FR 36110). After considering a comment received in response to the proposal, the agency is also revising the total iron specification of the additive.

DATES: Effective June 15, 1979; objections by June 14, 1979.

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

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Bureau of Foods (HFF–334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202–472–5740.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 15, 1978 (43 FR 36110), FDA proposed to amend the specifications for ferric ammonium ferrocyanide by increasing the tolerances for water soluble cyanide, total cobalt, and total nickel and adding specifications for water soluble cobalt and water soluble nickel. These proposed revisions were clarifications of the regulation published on July 29, 1977 (42 FR 38562) for use of ferric ammonium ferrocyanide in externally applied drugs and cosmetics, including those intended for use in the area of the eye. These proposed revisions were in response to supplementary letters to an objection and a subsequent citizen petition (8CP0138), submitted by manufacturers of the color additive.

Data submitted in support of the revised cobalt and nickel specifications are on file at the office of the Hearing Clerk, FDA, address given above, and may be seen from 9 a.m. to 4 p.m., Monday through Friday. These data indicate that there are no detectable levels of water soluble cobalt or water soluble nickel in samples of ferric

ammonium ferrocyanide spiked with up to 200 parts per million (ppm) of both cobalt and nickel. Thus, the proposed tolerances for water soluble cobalt and water soluble nickel are superfluous and have been deleted.

In response to the proposal, one comment was received from the manufacturer. The manufacturer requested a broader specification for total iron in ferric ammonium ferrocyanide than the one published in the July 1977 regulation. This request was based on the variability in water content in samples of the color additive. The agency has evaluated this request and concludes that a better alternative would be to correct for the weight of volatile material in the sample in determining the total iron value. This would be consistent with the total iron specification for ferric ferrocyanide as published in the **Federal Register** of November 21, 1978 (43 FR 54235).

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 706(b), (c), and (d), 74 Stat. 399–403 as amended (21 U.S.C. 376(b), (c), and (d))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 73 is amended in § 73.1298 by revising paragraph (b) to read as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

§ 73.1298 Ferric ammonium ferrocyanide.

* * * * *

(b) *Specifications.* Ferric ammonium ferrocyanide shall conform to the following specifications and shall be free of impurities other than those named to the extent that the other impurities may be avoided by good manufacturing practice:

Oxalic acid or its salts, not more than 0.1 percent.
Water soluble matter, not more than 3 percent.
Water soluble cyanide, not more than 10 parts per million.
Volatile matter, not more than 4 percent.
Lead (as Pb), not more than 20 parts per million.
Arsenic (as As), not more than 3 parts per million.
Nickel (as Ni), not more than 200 parts per million.
Cobalt (as Co), not more than 200 parts per million.
Mercury (as Hg), not more than 1 part per million.
Total iron (as Fe corrected for volatile matter), not less than 33 percent and not more than 39 percent.

* * * * *

Any person who will be adversely affected by the foregoing order may at any time on or before June 14, 1979, file with the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, written objections to this order. Objections shall show how the person filing will be adversely affected by the order, specify with particularity the provisions of the order deemed objectionable, and state the grounds for the objections. Objections shall be filed in accordance with the requirements of § 71.30 (21 CFR 71.30). If a hearing is requested, the objections shall state the issues for the hearing, shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections if a hearing is held. Four copies of all documents shall be filed and should be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received objections may be seen in the Hearing Clerk's office from 9 a.m. to 4 p.m., Monday through Friday.

Effective date: This regulation is effective June 15, 1979, except as to any provisions that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be announced by publication in the **Federal Register.**

(Sec. 706 (b), (c), and (d), 74 Stat. 399–403 as amended (21 U.S.C. 376 (b), (c) and (d)).)

Dated: May 7, 1979.

William F. Randolph,
Acting Associate Commissioner for Regulatory Affairs.

[Docket No. 77C–0208]
[FR Doc. 79–14919 Filed 5–14–79; 8:45 am]
BILLING CODE 4110–03–M

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21 CFR Part 131

Standard of Identity for Dry Cream; Confirmation of Effective Date of Amendment to Final Regulation

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document confirms the effective date of an amendment to the final regulation of May 9, 1978, which established a standard of identity for dry cream. The amendment makes the description of dry cream consistent with descriptions of related products.

DATES: Voluntary compliance may have begun February 20, 1979; mandatory compliance for all products initially introduced into interstate commerce begins July 1, 1979.

FOR FURTHER INFORMATION CONTACT: Eugene T. McGarrahan, Bureau of Foods (HFF–415), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202–245–1155.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 9, 1978 (43 FR 19834), the Food and Drug Administration issued a final regulation that established standards of identity for lowfat dry milk, dry whole milk, and dry cream (21 CFR 131.123, 131.147, and 131.149, respectively) and amended the standards of identity for nonfat dry milk and nonfat dry milk fortified with vitamins A and D (21 CFR 131.125 and 131.127, respectively) based on the recommended international standards for these foods. In the **Federal Register** of January 19, 1979 (44 FR 3964), the agency confirmed the effective date of that final regulation and amended the description for dry cream to provide for the manufacture of dry cream by dry-blending dry cream with other dry milk products. The amendment also makes the description of dry cream in § 131.149(a) consistent with the descriptions for lowfat dry milk in § 131.123(a) and dry whole milk in § 131.147(a) and allows flexibility without restricting future manufacturing processes for dry cream.

The January 19, 1979 document announced that any person who would be adversely affected by the amendment could file, on or before February 20, 1979, written objections to the amendment to the final regulation and request a hearing on the stated objections. No objections were received.

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 of Food and Drugs (21 CFR 5.1), notice is given that no objections were received. Compliance with the amendment to the final regulations may have begun on February 20, 1979, and all products initially introduced into interstate commerce on or after July 1, 1979 shall fully comply.

Dated: May 7, 1979.

William F. Randolph,
Acting Associate Commissioner for Regulatory Affairs.

[Docket No. 77N–0119]
[FR Doc. 79–14921 Filed 5–14–79; 8:45 am]
BILLING CODE 4110–03–M

21 CFR Parts 182 and 186

Substances Generally Recognized as Safe and Indirect Food Substances Affirmed as Generally Recognized as Safe; Hydrogenated Fish Oil

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) affirms the generally recognized as safe (GRAS) status of hydrogenated fish oil as an indirect human food ingredient. The safety of this ingredient has been evaluated under the agency's comprehensive review of substances considered to be GRAS or subject to a prior sanction.

EFFECTIVE DATE: June 14, 1979.

FOR FURTHER INFORMATION CONTACT: Corbin I. Miles, Bureau of Foods (HFF–335), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, D.C. 20204, 202–472–4750.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 14, 1978 (43 FR 30300), FDA proposed to affirm the GRAS status of hydrogenated fish oil for use as an indirect human food ingredient. The proposal was based on safety information developed by the Select Committee on GRAS Substances and was published as part of the agency's review of the safety of GRAS and prior-sanctioned food ingredients.

Under § 170.35 (21 CFR 170.35), concerning the affirmation of GRAS food ingredients, copies of the scientific literature review on fish oils and the report of the Select Committee on GRAS Substances on hydrogenated fish oil have been made available for public review in the office of the Hearing Clerk (address above). Copies of these documents have also been made available for public purchase from the National Technical Information Service as announced in the proposal.

In addition to proposing to affirm the GRAS status of hydrogenated fish oil, FDA advised in the July 1978 proposal that it was unaware of any prior-sanctioned food ingredient use for this ingredient other than for the proposed condition of use. Persons asserting additional or extended uses, in accordance with approvals granted by the U.S. Department of Agriculture or FDA before September 6, 1958, were given notice to submit proof of the sanction so that the safety of the prior-sanctioned use could be determined. That notice was also an opportunity to have prior-sanctioned uses of hydrogenated fish oil approved by issuance of an appropriate regulation under Part 181—Prior-Sanctioned Food Ingredients (21 CFR Part 181), provided the prior-sanctioned use could be affirmed as safe on the basis of currently available data. Notice was also given that failure to submit proof of an applicable prior sanction in response to the proposal would constitute a waiver of the right to assert the sanction at any future time.

No reports of a prior-sanctioned use for hydrogenated fish oil were submitted in response to the proposal. Therefore, in accordance with that proposal, any right to assert a prior sanction for a use of hydrogenated fish oil under conditions different from those set forth in this regulation has been waived.

No written comments were received in response to the agency's proposal and supporting data and information on hydrogenated fish oil. Several verbal inquiries were made, however, requesting further information regarding direct food uses of this ingredient. In accordance with the proposal, these parties were told that hydrogenated fish oils are not approved for direct food use in the United States and that a food additive petition, in accordance with section 409(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(b)) and § 171.1 (21 CFR 171.1), must be submitted for such use.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Parts 182 and 186 are amended as follows:

§ 182.70 [Amended]

1. Part 182 is amended in § 182.70 *Substances migrating from cotton and cotton fabrics used in dry food packaging* by deleting the listing entry for "fish oil (hydrogenated)."

2. Part 186 is amended by adding new § 186.1551 to read as follows:

§ 186.1551 Hydrogenated fish oil.

(a) Hydrogenated fish oil (CAS Reg. No. 8016–14–6) is a class of oils produced by partial hydrogenation of oils expressed from fish, primarily menhaden, and secondarily herring or tuna. Hydrogenation of fish oils uses catalysts composed of either elemental nickel, elemental copper, or a mixture of these elements. The crude hydrogenated fish oil is further processed by alkali refining, bleaching, and deodorization by steam stripping.

(b) Hydrogenation of fish oils results in a final product with a melting point greater than 32° C as determined by Section Cc 1–25, Official and Tentative Methods of the American Oil Chemists' Society method (1964) [1] or equivalent. The product has an approximate fatty acid composition of 30 to 45 percent saturated fatty acids, 40 to 55 percent monoenoic fatty acids, 7 to 15 percent dienoic fatty acids, 3 to 10 percent trienoic fatty acids, and less than 2 percent tetraenoic or higher polyenoic fatty acids. The approximate percentages of total fatty acids by carbon chain length are 15 to 30 percent each of C_{16}, C_{18}, C_{20}, C_{22}, less than 10 percent C_{14} or lower carbon chain length, and less than 1 percent C_{24} or higher carbon chain length fatty acids.

(c) The ingredient is used as a constituent of cotton and cotton fabrics used for dry food packaging.

(d) The ingredient is used at levels not to exceed good manufacturing practice in accordance with § 186.1(b)(1).

(e) Prior sanctions for this ingredient different from the use established in this section do not exist or have been waived.

Effective Date. This regulation shall be effective June 14, 1979.

(Secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a)).)

Dated: May 8, 1979.

William F. Randolph,
Acting Associate Commissioner for Regulatory Affairs.

[Docket No. 78N–0152]
[FR Doc. 79–15071 Filed 5–14–79; 8:45 am]
BILLING CODE 4110–03–M

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Trimethoprim and Sulfadiazine Tablets

AGENCY: Food and Drug Administration.

ACTION: Final Rule.

SUMMARY: The Food and Drug Administration (FDA) amends the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Diamond Laboratories, Inc., providing for safe and effective use of a combination antibacterial drug for treating infections of dogs.

EFFECTIVE DATE: May 15, 1979.

FOR FURTHER INFORMATION CONTACT: Henry C. Hewitt, Bureau of Veterinary Medicine (HFV–114), Food and Drug Administration, Department of Health,

[1] Copies may be obtained from: American Oil Chemists' Society, 508 S. 6th St., Champaign, IL 61820.

Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: Diamond Laboratories, Inc., c/o Syntex Agribusiness, Inc., 3401 Hillview Ave., Palo Alto, CA 94304, filed NADA 115–578 providing for use of trimethoprim-sulfadiazine tablets in dogs for control of bacterial infection during treatment of acute urinary tract infections, acute bacterial complications of distemper, acute respiratory tract infections, acute alimentary tract infections, wound infections, and abscesses. This approval covers use of tablets containing both 120 milligrams (mg) (20 mg trimethoprim and 100 mg sulfadiazine) and 480 mg (80 mg trimethoprim and 400 mg sulfadiazine).

This product is identical to one approved for Burroughs Wellcome Co. in NADA 95–614. Data and information supporting NADA 95–614 are used to support approval of NADA 115–578, under authorization from Burroughs Wellcome Co.

In accordance with the provisions of Part 20 (21 CFR Part 20) promulgated under the Freedom of Information Act (5 U.S.C. 552) and § 514.11(e)(2)(ii) of the animal drug regulations (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application is available for public examination at the office of the Hearing Clerk (HFA–305), Rm. 4–65, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.83), Part 520 is amended in § 520.2610 by revising paragraph (b) to read as follows:

§ 520.2610 Trimethoprim and sulfadiazine tablets.

* * * * *

(b) *Sponsor.* See Nos. 000081 and 013947 in § 510.600(c) of this chapter.

* * * * *

Effective date. This regulation is effective May 15, 1979.

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

Dated: May 4, 1979.

Terence Harvey,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 79-15075 Filed 5-14-79; 8:45 am]

BILLING CODE 4110-03-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

24 CFR Part 1915

Communities With No Special Hazard Areas for the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Final Rule.

SUMMARY: The Federal Insurance Administrator, after consultation with local officials of the communities listed below, has determined, based upon analysis of existing conditions in the communities, that these communities would not be inundated by the 100-year flood. Therefore, the Administrator is converting the communities listed below to the Regular Program of the National Flood Insurance Program without determining base flood elevations.

EFFECTIVE DATE: Date listed in fourth column of List of Communities with No Special Flood Hazards.

FOR FURTHER INFORMATION CONTACT: Mr. Richard W. Krimm, National Flood Insurance Program (202) 755–5581 or Toll Free Line 800–424–8872, Room 5270, 451 Seventh St., S.W., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: In these communities, there is no reason not to make full limits of coverage available. The entire community is now classified as zone C. In a zone C, insurance coverance is available on a voluntary basis at low actuarial nonsubsidized rates. For example, under the Emergency Program in which your community has been participating the rate for a one-story 1–4 family dwelling is $.25 per $100 of coverage. Under the Regular Program, to which your community has been converted, the equivalent rate is $.01 per $100 coverage. Contents insurance is also available under the Regular Program at low actuarial rates. For example, when all contents are located on the first floor of a residential structure, the premium rate is $.05 per $100 of coverage.

In addition to the less expensive rates, the maximum coverage available under the Regular Program is significantly greater than that available under the Emergency Program. For example, a single family residential dwelling now can be insured up to a maximum of $185,000 coverage for the structure and $60,000 coverage for contents.

Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program.

The effective date of conversion to the Regular Program will not appear in the Code of Federal Regulations except for the page number of this entry in the **Federal Register.**

The entry reads as follows:

§ 1915.8 List of communities with no special flood hazard areas.

State	County	Community name	Date of conversion to regular program
California	Los Angeles	City of Bellflower	April 30, 1979.
California	Los Angeles	City of San Marino	April 30, 1979.

(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); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963.)

Issued: May 4, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[Docket No. 5481]

[FR Doc. 79-15087 Filed 5-14-79; 8:45 am]

BILLING CODE 4210-23-M

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Approval of Supplements to Maryland State Plan

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This notice announces completion of the three remaining developmental steps in the Maryland State Plan's developmental schedule as published in the **Federal Register** of July 5, 1973 (38 FR 17834) and amended on October 15, 1976 (41 FR 45564). Approved are the review and appeal procedures used by the Maryland program. Also approved are the amended developmental step requiring the inspection and enforcement of agriculture standards by the Maryland Division of Labor and Industry and the developmental step requiring that the State conduct an occupational health study.

EFFECTIVE DATE: May 15, 1979.

FOR FURTHER INFORMATION CONTACT: Dennis Lubow, Office of State Programs, Occupational Safety and Health Administration, Room N–3101, 3rd Street and Constitution Avenue, NW., Washington, D.C. 20210. Phone: 202–653–5373.

SUPPLEMENTAL INFORMATION:

Background

Part 1953 of Title 29, Code of Federal Regulations, provides procedures under Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter called the Act) for review of changes and progress in the development and implementation of State plans which have been approved in accordance with Section 18(c) of the Act and 29 CFR Part 1902. On July 5, 1973, a notice was published in the **Federal Register** (38 FR 17834) of the approval of the Maryland Plan and the adoption of Subpart O of Part 1952 containing the decision and describing the plan. By letters dated August 31, 1976, July 29, 1977, July 19, 1978, August 31, 1978, and September 5, 1978, from Harvey A. Epstein, Commissioner of the Maryland Division of Labor and Industry, to David H. Rhone, Regional Administrator, the State of Maryland submitted developmental change supplements.

Following regional review, the supplements were forwarded to the Assistant Secretary for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary) for determination as to whether they should be approved. The supplements are described below:

Description of Supplements

1. *Review and Appeal Procedures.* In accordance with the requirement of the developmental step set forth in 29 CFR 1952.213(g), on August 31, 1976, the State of Maryland submitted a supplement to its plan concerning the State's review procedures. The plan change revised the procedures for formal and informal conferences so that no informal conference would be held following receipt of a notice of contest. By subsequent letter dated August 31, 1978, the State submitted a plan change assuring participation of the inspector in any settlement agreement, and required mandatory follow-up of any such agreement.

On July 19, 1978, the State transmitted to OSHA a draft amendment to the Maryland OSH legislation, with an assurance that the Division of Labor and Industry would recommend enactment of the amendment by the State legislature. Existing State law provides that after a contested case is heard and decided by a hearing examiner, the affected employer, employee or employee representative may request a review of the proceedings by the Commissioner of Labor and Industry, who may issue an order affirming, modifying, or vacating the citation and penalty, or directing other appropriate relief. The amendment would authorize the Commissioner to conduct such review on his own motion.

2. *Enforcement of Agricultural Standards.* The decision initially approving the Maryland State Plan provided that agricultural standards would be enforced by the Maryland Department of Agriculture by agreement with the Division of Labor and Industry. By a letter dated April 29, 1975, the designated agency indicated that the agreement with the Department of Agriculture had been terminated and that agricultural standards were being enforced by the Division of Labor and Industry. This change was put out for public comment in the **Federal Register** of January 28, 1976 (41 FR 4035), and the original developmental step providing for the enforcement of agricultural standards by the Maryland Department of Agriculture was amended in the **Federal Register** of October 15, 1976 (41 FR 45563). The revised step required enforcement of agricultural standards by the Maryland Division of Labor and Industry. Subsequent monitoring by the Occupational Safety and Health Administration (OSHA) has found State enforcement of agricultural standards to be adequate.

3. *Occupational Health Study.* In accordance with the requirement of the developmental step set forth in 29 CFR 1952.213(a), the State of Maryland submitted an occupaional health study conducted by the Johns Hopkins University School of Hygiene and Public Health on January 12, 1973. The State occupational health plan was subsequently approved in the **Federal Register** of October 15, 1976 (41 FR 45563).

Location of the Plan and its Supplements for Inspection and Copying

Copies of the supplements, along with the approved plan, may be inspected and copied during normal business hours at the following locations; Office of the Director of Federal Compliance and State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 3rd Street and Constitution Avenue, N.W., Washington, D.C., 20210; Technical Data Center, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2439, 3rd Street and Constitution Avenue, N.W., Washington, D.C. 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, Room 2100, Gateway Center, Philadelphia, Pennsylvania 19104; and the Office of the Commissioner, Division of Labor and Industry, 203 East Baltimore Street, Baltimore, Maryland 21202.

Public Participation: No public comments or requests for a hearing were received in response to the January 28, 1976, **Federal Register** notice (41 FR 4035). Under § 1952.2(c) of this chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable law. The Assistant Secretary finds that the Maryland plan supplements described above are consistent with commitments contained in the approved plan and amendments which were previously made available for public comment. Accordingly, it is found that further public comment and notice is unnecessary.

Decision: After careful consideration, the Maryland plan supplements outlined above are approved under Part 1953. This decision incorporates the requirements of the Act and implementing regulations applicable to State plans generally. Section 1952.214 of 29 CFR is accordingly amended to

reflect the completion of three developmental steps by adding paragraphs (m), (n), and (o) to the list of completed developmental steps as follows:

§ 1952.214 Completed developmental steps.

* * * * *

(m) In accordance with 29 CFR 1952.213(a), the State submitted an occupational health study, and the State's occupational health plan is being implemented.

(n) In accordance with 29 CFR 1952.213(g), the State established a staff of hearing examiners and review procedures.

(o) In accordance with 29 CFR 1952.213(k), agricultural standards are being enforced by the Maryland Department of Labor and Industry.

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

Signed at Washington, D.C. this 8th day of May, 1979.

Eula Bingham,

Assistant Secretary of Labor.

[FR Doc. 79-15164 Filed 5-14-79; 8:45 am]

BILLING CODE 4510-26-M

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29 CFR Part 1952

Approval of Supplements to Maryland State Plan

AGENCY: Occupational Safety and Health Administration.

ACTION: Final rule.

SUMMARY: Various supplements to the Maryland State Plan are approved. Supplements representing completion of developmental steps include: an updated compliance manual; amended rules and regulations for standard-setting procedures and for the adoption of standards; amended regulations for the modification, revocation and renewal of variances; a public sector plan and a public sector self-inspection compliance manual; and a review of job qualifications. Other supplements being approved are a safety inspection scheduling system and a change which eliminates elevator inspections from coverage under the Maryland plan. The compliance manual was made available for public comment in a **Federal Register** notice published June 15, 1976 (41 FR 24154). Other supplements were put out for public comment in the **Federal Register** of January 28, 1976 (41 FR 4035).

EFFECTIVE DATE: May 15, 1979.

FOR FURTHER INFORMATION CONTACT: Dennis Lubow, Office of State Programs, Occupational Safety and Health Administration, Room N–3101, 3rd Street and Constitution Avenue, N.W., Washington, D.C. 20210, (202) 653–5373.

SUPPLEMENTARY INFORMATION:

Background

Part 1953 of Title 29, Code of Federal Regulations, provides procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter called the Act) for review of changes and progress in the development and implementation of State plans which have been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On July 5, 1973, a notice was published in the **Federal Register** (38 FR 17834) of the approval of the Maryland Plan and the adoption of Subpart O of Part 1952 containing the decision and describing the plan. By letters dated August 21, 1975; September 26, 1975; October 2, 1975; October 21, 1975; October 24, 1975; January 9, 1976; February 3, 1976; March 16, 1976; April 21, 1976; December 6, 1976; July 29, 1977; September 26, 1977; January 10, 1978; and August 31, 1978; from Harvey A. Epstein, Commissioner of the Maryland Department of Labor and Industry, to David H. Rhone, Regional Administrator, the State of Maryland submitted State initiated and developmental change supplements.

Following regional review, the supplements were forwarded to the Assistant Secretary for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary) for determination as to whether they should be approved. The supplements are described below.

Description of the Supplements

1. *Compliance Manual.* In accordance with the requirement of the developmental step set forth in 29 CFR 1952.213(b), on April 21, 1976, the State of Maryland submitted a supplement to its plan concerning the State's Compliance Operations Manual. Upon review by OSHA, a number of problems were found and transmitted to the State. Those problems dealt with advance notice of inspections, imminent danger procedures, repeat and failure to abate violations, variance procedures and exclusion of certain working conditions covered under Federal law. The State submitted changes to its compliance manual by letters dated December 6, 1976; July 29, 1977; December 8, 1977; and January 10, 1978. These plan changes corrected the defects found in the Maryland occupational safety and health program's compliance manual. The Compliance Manual consists of two parts. Part I, "Administrative Procedure," contains instructions pertaining to such matters as preparing citations, classification of violations, proposing penalties, and procedures for handling workplace safety and health complaints, accident investigations, and follow-up inspections. Part II, "Field Operations," concerns procedures for the conduct of inspections and covers such matters as advance notice, preparation for inspections, opening and closing conferences, inspection of construction sites, and imminent danger procedures. The manual also contains procedures for consultation services which are rendered by the designated agency.

2. *Standard-Setting Procedures.* In accordance with the requirement of the developmental step set forth in 29 CFR 1952.213(e), the designee has promulgated rules and regulations for standard-setting procedures. On June 1, 1974, Maryland promulgated various rules and regulations pursuant to the Maryland Occupational Safety and Health Act of 1973. By an additional letter dated August 21, 1975, the State submitted a supplement to its plan which provided for participation of any interested person in the promulgation, modification or revocation of any standard.

3. *Adoption of Standards.* By a letter dated September 26, 1975, from Harvey A. Epstein to David H. Rhone, the State of Maryland submitted changes to its plan indicating that the State would adopt and promulgate "at least as effective as" standards within six months of new or revised Federal standards. Revisions to Federal standards will be considered by the Maryland Occupational Safety and Health Advisory Board and "at least as effective as" standards will be adopted by the Commissioner of the Division of Labor and Industry within six months of promulgation of Federal standards revision. By an additional letter dated January 9, 1976, the State gave additional assurances that emergency standards would be promulgated.

4. *Review of Job Qualifications.* In accordance with the requirement of the developmental step set forth in 29 CFR 1952.213(j), the State of Maryland conducted a review of job qualifications of State plan personnel. This review was completed and by letters dated October 2, 1975, and October 24, 1975, the State submitted updated job specifications to replace Appendix E of the original approved plan. The U.S. Civil Service Commission reviewed the submissions and, by a letter dated June 10, 1977, confirmed that the Maryland Division of Labor and Industry was in substantial

conformity with the intergovernmental merit system standards.

5. *Public Employee Program.* In accordance with the requirement of the developmental step set forth in 29 CFR 1952.213(m), the State of Maryland submitted by a letter dated October 21, 1975, from Harvey A. Epstein to David H. Rhone, a supplement providing for an occupational safety and health program for public employees. The program included provisions for the inspection of places of public employment by the Department of Labor and Industry in the same manner as the private sector, and for the issuance of citations and orders requiring the abatement of hazards. No monetary penalties are provided in the public sector. State agencies and political subdivisions may establish self-inspection programs subject to the approval of the Commissioner of Labor and Industry. The self-inspection programs are a supplement to, not a substitute for, a fully effective enforcement program conducted by the Department of Labor and Industry. The designated agency in Maryland retains the authority and responsibility to conduct inspections and other compliance activity with respect to workplaces having self-inspection programs so as to assure coverage as effective as that provided workplaces in the private sector. Assurances have been given by the State that regular random inspections will be made by the Department of Labor and Industry at all public sector workplaces. Assurances have also been given that the Department of Labor and Industry will respond in a manner identical to private sector coverage to all public sector employee complaints, and to all reports of fatalities and accidents involving public employees. All complaints of discrimination against employees will be handled by the Department of Labor and Industry in the same manner as in the private sector. A Public Sector Self-Inspection Compliance Manual was submitted on March 16, 1976, with amendments submitted on April 29, 1976. Additional clarification and assurances were given in letters dated March 4, 1977; March 28, 1977; May 18, 1977; December 8, 1977; January 2, 1979; and January 22, 1979. Because the effectiveness of certain features of the program have not yet been fully tested, notably the lack of monetary sanctions and the self-inspection program, the Assistant Secretary's continued approval of the Maryland Public Sector Plan is subject to the results of Federal OSHA monitoring of actual operations.

6. *Variances.* On June 1, 1974, Maryland promulgated various rules and regulations pursuant to the Maryland Occupational Safety and Health Act of 1973. The State was informed of deficiencies found by OSHA review with regard to the regulations concerning modification, revocation and renewal of variance orders. By a letter dated September 26, 1977, the State submitted an amendment to its rules and regulations which contained satisfactory provisions alleviating the deficiencies. The Maryland variance regulations now provide that an employer seeking a variance must meet a burden of proof similar to that required for the granting of a Federal variance. Affected employees and other interested persons must be notified and provided an opportunity to participate; a hearing may be requested by the employer or employees. Variances are to have only future effect and may be modified or revoked in the manner prescribed for their issuance.

7. *Safety Inspection Scheduling System.* By a letter dated August 21, 1975, the State of Maryland submitted a revised system of scheduling safety inspections. Scheduling was to consist of two parts: Target Health Industry Programming and General Scheduling. Upon review by OSHA, there was found to be insufficient documentation justifying the State's target industry program and a lack of detail in describing the method of general scheduling. By an additional letter dated February 3, 1976, the State submitted further documentation which justified its safety inspection scheduling. Subsequent semi-annual evaluation reports have shown the State to be adequately scheduling safety inspections.

8. *Elevator Inspections.* The decision approving the Maryland State plan provided that the State would conduct elevator inspections. By a letter dated April 18, 1978, the State announced that all elevator inspection activity was being deleted from coverage under the State plan effective July 1, 1978. On August 31, 1978, the State submitted a supplement to its plan which removed all elevator inspections from the Maryland plan.

Location of the Plan and its Supplements for Inspection and Copying

Copies of the supplements, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Director of Federal Compliance and State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 3rd Street and Constitution Avenue, N.W., Washington, D.C. 20210; Technical Data Center, Occupational Safety and Health Administration, U.S. Department of Labor, Rm N2439, 3rd Street and Constitution Avenue, N.W., Washington, D.C. 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, Room 2100, Gateway Center, Philadelphia, Pennsylvania 19104; and the Office of the Commissioner, Division of Labor and Industry, 203 East Baltimore Street, Baltimore, Maryland 21202.

Public Participation

No public comments or requests for a hearing were received in response to the January 28, 1976, and June 15, 1976, **Federal Register** notices. Under § 1953.2(c) of this chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable law. The Assistant Secretary finds that the Maryland plan supplements described above are consistent with commitments contained in the approved plan and amendments which were previously made available for public comment. Accordingly, it is found that further notice and public comment is unnecessary.

Decision

After careful consideration, the Maryland plan supplements outlined above are approved under Part 1953. This decision incorporates the requirements of the Act and implementing regulations applicable to State plans generally. In addition, 29 CFR 1952.214 is amended to reflect the completion of five developmental steps by adding paragraphs (h), (i), (j), (k), and (l) to the list of completed developmental steps as follows:

§ 1952.214 Completed developmental steps.

* * * * *

(h) In accordance with 29 CFR 1952.213(b), Maryland completed development of a Compliance Manual.

(i) In accordance with 29 CFR 1952.213(e), the State has promulgated acceptable standard-setting procedures.

(j) In accordance with 29 CFR 1952.213(h), Maryland promulgated acceptable variance procedures and emergency temporary standard-setting procedures.

(k) In accordance with 29 CFR 1952.213(j), review of the job qualifications of State personnel was conducted by the State.

(l) In accordance with 29 CFR 1952.213(m), the State of Maryland has developed and implemented a safety and health program for public employees.

Signed in Washington, D.C., this 8th day of May 1979.

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

Eula Bingham,

Assistant Secretary of Labor.

[FR Doc. 79–15165 Filed 5–14–79; 8:45 am]

BILLING CODE 4510–26–M

VETERANS ADMINISTRATION

38 CFR Part 3

Pension and Parents' Dependency and Indemnity Compensation Rate Increases

AGENCY: Veterans Administration.

ACTION: Notice of Pension and Parents' DIC Rate Increases.

SUMMARY: The Veterans' and Survivors' Pension Improvement Act of 1978, Pub. L. 95–588, 92 Stat. 2497, provides that whenever there is a cost-of-living increase under section 215(i) of Title II of the Social Security Act, the Veterans Administration shall, effective on the date the cost-of-living increase becomes effective, increase by the same percentage (1) the maximum annual rates of pension authorized by Pub. L. 95–588, (2) the maximum annual income limitations applicable to the pension programs in effect on June 30, 1960, and December 31, 1978, (3) the amount of the exclusion of a veteran's spouse's income in determining a couple's countable income under the provisions of the pension program in effect on December 31, 1978, and (4) the maximum annual income limitations and rate formulae applicable to parents' dependency and indemnity compensation (DIC). The Social Security Administration reports that the cost-of-living increase will be 9.9 percent and the aforementioned rates and income limitations are being increased by that percentage.

EFFECTIVE DATE: These increases will be effective June 1, 1979, the effective date of the Social Security cost-of-living increase.

FOR FURTHER INFORMATION CONTACT: T. H. Spindle (202–389–3005).

The increased rates and income limitations are set forth below.

Approved: May 4, 1979.

By direction of the Administrator.

Rufus H. Wilson,

Deputy Administrator.

Note.—On Thursday, March 8, 1979 (44 FR 12694) the Veterans Administration published proposed rules that would amend 38 CFR Part 3. When the proposed rules are made final the increased rates and income limitations will be changed to reflect the rates and limitations set forth in this document.

Maximum Annual Rates of Pension Payable on June 1, 1979, Under Pub. L. 95–588

(1) *Veterans permanently and totally disabled (38 U.S.C. 521):*
(a) Veteran with no dependents, $3,902.
(b) Veteran with one dependent, $5,112.
(c) For each additional dependent, $660.
(2) *Veterans in need of aid and attendance:*
(a) Veteran with no dependents, $6,243.
(b) Veteran with one dependent, $7,453.
(c) For each additional dependent, $660.
(3) *Veterans who are housebound:*
(a) Veteran with no dependents, $4,770.
(b) Veteran with one dependent, $5,980.
(c) For each additional dependent, $660.
(4) *Two veterans married to one another—combined rates:*
(a) Neither veteran in need of aid and attendance or housebound, $5,112.
(b) Either veteran in need of aid and attendance, $7,453.
(c) Both veterans in need of aid and attendance, $9,794.
(d) Either veteran housebound, $5,980.
(e) Both veterans housebound, $6,848.
(f) One veteran housebound and one veteran in need of aid and attendance, $8,321.
(g) For each child, $660.
(5) *Surviving spouses (38 U.S.C. 541):*
(a) Surviving spouse alone, $2,615
(b) Surviving spouse and one child, $3,425.
(c) For each additional child, $660.
(6) *Surviving spouses in need of aid and attendance:*
(a) Surviving spouse alone, $4,183.
(b) Surviving spouse with one child, $4,993.
(c) For each additional child, $660.
(7) *Surviving spouses who are housebound:*
(a) Surviving spouse alone, $3,196.
(b) Surviving spouse and one child, $4,006.
(c) For each additional child, $660.
(8) *Child not in custody of veteran's surviving spouse, or child if no living surviving spouse of the veteran. (38 U.S.C. 542):*
(a) Child alone, $660.
(b) Each additional child, $660.
(c) Limitation on amount payable to child in custody of person legally responsible for support, $660.

Maximum Annual Income Limitations, Effective June 1, 1979, Applicable to Persons in Receipt of Pension Under the Pension Laws in Effect on December 31, 1978

(1) Veteran or surviving spouse with no dependents, $4,438.
(2) Veteran or surviving spouse with one or more dependents, $5,968.
(3) Child (no entitled veteran or surviving spouse), $3,626.
(4) Amount of spouse's income exclusion (see 38 CFR 3.262(b)(2)), $1,413.

Maximum Annual Income Limitations Effective June 1, 1979, Applicable to Persons in Receipt of Pension Under the Pension Laws in Effect on June 30, 1960

(1) Veteran or surviving spouse without dependents, $3,884.
(2) Veteran or surviving spouse with one or more dependents, $5,603.

Parents' DIC Maximum Annual Income Limitations and Rate Formula Effective June 1, 1979

(1) *One parent.* Except as provided in paragraph (2), if there is only one parent the monthly rate of DIC paid to such parent shall be $179 reduced on the basis of the parent's annual income according to the following formula:

For Each $1 of Annual Income

The $179 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	$0	$800
.03	800	900
.04	900	1,000
.06	1,000	1,200
.07	1,200	1,500
.08	1,500	4,438

No DIC is payable under this paragraph if annual income exceeds $4,438.

(2) *One parent who has remarried.* If there is only one parent and the parent has remarried and is living with the parent's spouse, DIC shall be paid under paragraph (1) or under paragraph (4), whichever shall result in the greater benefit being paid to the veteran's parent. In the case of remarriage, the total combined annual income of the parent and the parent's spouse shall be counted in determining the monthly rate of DIC.

(3) *Two parents not living together.* The rates in this paragraph apply to (1) two parents who are not living together, or (2) an unremarried parent when both parents are living and the other parent has remarried. The monthly rate of DIC paid to each such parent shall be $126, reduced on the basis of each parent's annual income, according to the following formula:

For Each $1 of Annual Income of Each Parent

The $126 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	$0	$800
.02	800	1,000
.04	1,000	1,100
.05	1,100	1,400
.06	1,400	2,000
.07	2,000	2,700
.08	2,700	4,438

No DIC is payable under this paragraph if annual income exceeds $4,438.

(4) *Two parents living together or remarried parents living with spouses.* The rates in this paragraph apply to (1) each parent living with another parent; and (2) each remarried parent, when both parents are alive. The monthly rate of DIC paid to such parents will be $120, reduced on the basis of

the combined annual income of the two parents living together or the remarried parent or parents and spouse or spouses, as computed under the following formula:

For Each $1 of Combined Annual Income

The $120 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	$0	$1,000
.02	1,000	1,700
.03	1,700	2,300
.04	2,300	3,300
.05	3,300	5,968

No DIC is payable under this paragraph if combined annual income exceeds $5,968.

The rates in paragraph (4) are also applicable in the case of one surviving parent who has remarried, computed on the basis of the combined income of the parent and spouse, if this would be a greater benefit than that specified in paragraph (1) for one parent.

(5) The monthly rate of DIC payable to a parent shall be increased by $94 if such parent is (a) a patient in a nursing home, or (b) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

(6) The monthly rate of DIC payable to any parent shall not be less than $5.

[FR Doc. 79-14990 Filed 5-14-79; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

41 CFR Part 114-50

Uniform Relocation Assistance and Real Property Acquisition Policies

AGENCY: Office of the Secretary, Interior.

ACTION: Final regulation.

SUMMARY: This regulation amends Departmental regulations pertaining to implementation and administration of Pub. L. 91-646 (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970) activities. Under the regulations, whenever the acquisition of real property will result in the displacement of any person, business, or farm operation moving expenses with certain exceptions, may be allowed. One non-allowable moving expense is for improvements to the replacement site, except when those improvements are required by law. This document removes that condition and allows the Department to exclude payments for such improvements even though they may have been required by law.

EFFECTIVE DATE: May 15, 1979.

FOR FURTHER INFORMATION CONTACT: James O. Wyatt, Chief, Division of Property Management, Office of Administrative and Management Policy (PM/PAM), Room 5310, Department of the Interior, Washington, D.C. 20240, (202) 343-3185.

SUPPLEMENTARY INFORMATION: This action is being taken to achieve uniformity in program administration with other federal agencies with substantial Pub. L. 91-646 programs. Such program uniformity is mandated by Pub. L. 91-646.

Note.—The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14. The primary author of this document is George Sandberg, Real Property Officer, Office of Administrative and Management Policy, telephone number (202) 343-3185.

Dated: May 4, 1979.

William L. Kendig,

Acting Deputy Assistant Secretary of the Interior.

41 CFR Part 114-50 is amended as follows:

Subpart 114-50.6—Moving and Related Expenses

Amend § 114-50.601-2(c) to read as follows:

§ 114-50.601-2 Nonallowable moving expenses and losses.

* * * * *

(c) Improvements to the Replacement Site.

* * * * *

(5 U.S.C. 301, and section 213 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894, 1900 (42 U.S.C. 4601, 4633).)

[FR Doc. 79-15149 Filed 5-14-79; 8:45 am]

BILLING CODE 4310-10-M

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Poverty Guidelines; Maximum Income Levels

AGENCY: Legal Services Corporation.

ACTION: Final Rule; revised Appendix.

SUMMARY: The Legal Services Corporation is required by law to establish maximum income levels for individuals eligible for legal assistance. This document revises specified income levels to reflect amendments to the Official Poverty Threshold as defined by the Office of Management and Budget.

EFFECTIVE DATE: May 15, 1979.

FOR FURTHER INFORMATION CONTACT: Barbara Allen, Legal Services Corporation, 733 15th Street, NW., Suite 700, Washington, D.C. 20005, 202-376-5113.

SUPPLEMENTARY INFORMATION: Section 1007(a)(2) of the Legal Services Corporation Act, 42 U.S.C. 2996f(a)(2), requires the Corporation to establish maximum income levels for individuals eligible for legal assistance, and the Act provides that income shall be taken into account along with other specified factors. Section 1611.3(b) of Corporation Regulations establishes a maximum income level equivalent to one-hundred and twenty-five percent (125%) of the Official Poverty Threshold as defined by the Office of Management and Budget. That definition was revised on May 7, 1979. 44 FR 26745-46 (May 7, 1979). The revised figures equivalent to 125% of the Official Poverty Threshold are as follows:

Appendix A to part 1611 is revised to read as follows:

Legal Services Corporation Poverty Guidelines

[For All States Except Alaska and Hawaii]

Size of family unit	Non-farm family	Farm family
1	$4,250	$3,638
2	5,525	4,800
3	7,000	5,963
4	8,375	7,125
5	9,750	8,288
6	11,125	9,450
For family units with more than six members, add $1,375 for each additional member in a non-farm family and $1,163 for each additional member in a farm family.		
For Alaska		
1	5,338	4,563
2	7,050	6,013
3	8,763	7,463
4	10,475	8,913
5	12,188	10,363
6	13,900	11,813
For each family unit with more than six members, add $1,713 for each additional member in a non-farm family and $1,450 for each additional member in a farm family.		
For Hawaii		
1	4,913	4,188
2	6,488	5,525
3	8,063	6,863
4	9,638	8,200
5	11,213	9,538
6	12,788	10,875
For family units with more than six members, add $1,575 for each additional member in a non-farm family and $1,338 for each additional member in a farm family.		

Stephen S. Walters,

Acting General Counsel, Legal Services Corporation.

[FR Doc. 79-15130 Filed 5-14-79; 8:45 am]

BILLING CODE 6820-35-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 26

Public Entry and Use; Chassahowitzka National Wildlife Refuge Florida

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Special regulations.

SUMMARY: The Service proposes to restrict boat speeds in designated areas within the boundaries of the Chassahowitzka National Wildlife Refuge to minimize potential harm to manatees. The intent is to make boating on the Chassahowitzka River consistent with the primary purposes for which the refuge was established.

DATES: The regulations will be effective from the date of publication through August 15, 1979. Enforcement will not begin until appropriate signs have been posted.

FOR FURTHER INFORMATION CONTACT: John C. Oberheu, Area Office, U.S. Fish and Wildlife Service, 900 San Marco Boulevard, Jacksonville, Florida 32207. Telephone (904) 791–2267.

SUPPLEMENTARY INFORMATION: The primary author of this document is John C. Oberheu.

Background

Recent observations and surveys by the U.S. Fish and Wildlife Service have shown that limited numbers of manatees utilize the Chassahowitzka River during the months of April through July. The reaches of the river most frequently used by these endangered animals are within the boundaries of the Chassahowitzka National Refuge. The river is used by fishermen and pleasure boaters for access to the open waters of the Gulf. Research by the National Fish and Wildlife Laboratory has shown that boat-related accidents are responsible for 34 percent of those manatee mortalities where cause of death could be determined. When given adequate time, manatees can move out of the path of approaching boats and thereby avoid being struck. Therefore, to minimize the risk of manatee mortality from collision with boats or boat propellers, boat speeds will be restricted to "Slow Speed/Minimum Wake" in the Chassahowitzka River from the east boundary of the refuge downstream to the Hernando County line, a distance of about 2 miles. Maps delineating the restricted areas are available at the Refuge Headquarters. The restriction zone will be conspicuously posted with signs.

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer certain areas for public recreation (as an appropriate incidental or secondary use), only to the extent that it is practicable and not inconsistent with the primary objectives for which the refuge was established. In addition, the Refuge Recreation Act required (1) that any recreational use permitted will not interfere with the primary purpose for which the refuge was established; and (2) that funds are available for the development, operation, and maintenance of the permitted forms of recreation.

Discussion

The recreational use authorized by these regulations will not interfere with the primary purposes for which the Chassahowitzka National Wildlife Refuge was established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976, and the Refuge Manager's analysis of compatibility dated March 30, 1979. Funds are available for the administration of the recreational activities permitted by these regulations.

The provisions for these special regulations supplement the regulations which cover boating on National Wildlife Refuge areas which are set forth in Title 50, Code of Federal Regulations, § 27.32. Part 27 of 50 CFR provides that U.S. Coast Guard Regulations, Titles 33 and 46 CFR, are also applicable on navigable waters.

A public meeting was held in the town of Chassahowitzka on March 20, 1979, to inform the public about the proposed regulations, and to seek public views regarding them. The 45 persons attending questioned the necessity for restrictions since no manatee mortality from boat collision has been documented in the Chassahowitzka River. It was explained that boat strikes have been documented. Though hazards to manatees in the refuge are no greater than for other waters frequented by similar numbers of manatees, refuge habitat must provide greater security, especially for endangered species. The Service is compelled by law to permit only those public uses that do not conflict with refuge objectives, in this instance, protection of an endangered wildlife species.

Several individuals questioned whether the regulations would apply in case of emergencies involving foul weather or risk to human life. An exception has been added to the regulations to accommodate any such emergency.

The proposed regulations have been coordinated with the Florida Department of Natural Resources, the Florida Game and Fresh Water Fish Commission, the U.S. Army Corps of Engineers and the U.S. Coast Guard. Several suggestions of the Coast Guard have been incorporated in the definition of "Slow-Speed/Minimum Wake".

As provided by 50 CFR 26.33, the Service hereby issues the following regulations:

§ 26.34 Special regulations concerning public access, use and recreation for Chassahowitzka National Wildlife Refuge, Florida.

Beginning on May 15, 1979 and continuing through August 15, 1979, all power boats will be restricted to SLOW SPEED/MINIMUM WAKE on the main channel of the Chassahowitzka River between the east refuge boundary and the Hernando County line. The restricted area will be posted with signs reading "MANATEE PROTECTION AREA, SLOW SPEED—MINIMUM WAKE." This speed restriction may be exceeded if it is reasonably necessary to prevent the loss of human life due to weather conditions or other reasonably unforeseen circumstances. Maps showing the restricted area are available from the Refuge Manager.

For the purpose of this regulation, the term "SLOW SPEED—MINIMUM WAKE" is defined as any through-the-water speed (not over-the-bottom speed) less than 8 MPH and slow enough that the boat is neither "planing" nor moving with an elevated bow. Through-the-water speed is created by a boat's power and is independent of any movement caused by water currents. A boat that is "on plane" is not at slow speed. A boat that has slowed until it is "off plane" but is still moving with an elevated bow is making an exaggerated wake, not "minimum wake." When the moving position of a shallow-draft boat is similar to its normal resting position, it is moving at "slow speed" *and* "minimum wake."

The provisions of this regulation supplement the regulations which govern public access, use and recreation on wildlife refuges generally, which are set forth in Title 50, Code of Federal Regulations Part 26. The public is invited to offer suggestions and comments at any time.

Dated: May 7, 1979.

John C. Oberheu,

Acting Area Manager.

[FR Doc. 79-15129 Filed 5-14-79; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 44, No. 95
Tuesday, May 15, 1979

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

DEPARTMENT OF AGRICULTURE

Food Safety and Quality Service

[9 CFR Part 318]

Substances Used in Preparation of Bacon

AGENCY: Food Safety and Quality Service USDA.

ACTION: Notice.

SUMMARY: Action with respect to a final rule to require bacon to be prepared with 40 parts per million (ppm) sodium nitrite or 49 ppm potassium nitrite, 0.26 percent potassium sorbate, and 550 ppm sodium ascorbate or sodium erythorbate (isoascorbate), will not be taken without a further publication in the **Federal Register.**

EFFECTIVE DATE: May 15, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Irwin Fried, Acting Director, Meat and Poultry Standards and Labeling Division, Compliance, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–6042.

SUPPLEMENTARY INFORMATION: On May 16, 1978, 43 FR 21007 the Department proposed to amend the Federal meat inspection regulations by requiring that 40 parts per million (ppm) of sodium nitrite or an equivalent amount of potassium nitrite (49 ppm) be added to bacon and by requiring that 0.26 percent potassium sorbate by weight of bacon be added to bacon. On September 1, 1978, 43 FR 39119, the proposal was amended to propose to require (in addition to the substances specified in the first proposal) that 550 ppm sodium ascorbate or sodium erthorbate (isoascorbate) be added to bacon. If promulgated as a final rule, the provisions of the proposal, as amended, would supersede the current provisions requiring that bacon contain 120 ppm sodium nitrite or an equivalent amount of potassium nitrite (148 ppm), and 550 ppm sodium ascorbate or sodium erthorbate (isoascorbate).

The document of May 16, 1978, provided that, if additional studies and other available information substantiate the findings that bacon produced under the conditions specified in the proposal, as amended, is free of botulinal hazard and does not contain confirmable levels of nitrosamines, "this proposal will become a final rule at a maximum of one year from the date of this publication." Numerous persons have questioned whether this indicated that the proposed rule would become effective without publication of an additional document.

The document was not intended to reflect that the proposal would become effective as a final rule without a further publication in the **Federal Register.** This matter was clarified by the document of September 1, 1978, which provided that "action will be taken to promulgate this proposal as a final rule if at all possible within a maximum of one year from May 16, 1978."

In all likelihood, the additional studies referred to above will not be completed by May 16, 1979. Accordingly, it does not appear that action with respect to a final rule will be taken by that date.

Done at Washington, D.C. on May 11, 1979.

Donald L. Houston,
Acting Administrator, Food Safety and Quality Service.

[FR Doc. 79-15249 Filed 5-14-79; 8:45 am]
BILLING CODE 3410-37-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 155]

Canned Vegetables; Proposed Establishment of Standards of Identity and Quality for Asparagus

AGENCY: Food and Drug Administration.

ACTON: Reopening of Comment Period.

SUMMARY: The agency is reopening the comment period on a proposed rule that would amend the standard of identity for "certain other canned vegetables" to delete those provisions applicable to canned asparagus and to establish separate standards of identity and quality for this food based on consideration of international standards for canned asparagus. This action is based upon requests from the Canners League of California and the National Food Processors Association.

DATE: Comments by September 14, 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 INFORMATIN CONTACT: F. Leo Kauffman, Bureau of Foods (HFF–414), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202–245–1164

SUPPLEMENTARY INFORMATION: A proposal to establish standards of identity and quality for canned asparagus (21 CFR 155.110) was published in the **Federal Register** of December 15, 1978 (43 FR 58580). Comments were to be filed by February 13, 1979.

Subsequently, the FDA received requests from the Canners League of California (CLC) and the National Food Processors Association (NFPA) for an extension of the comment period. Both associations stated that the additional time is needed to give them the opportunity to study the implications of the proposal and to permit adequate testing of its impact on this year's asparagus pack.

The NFPA stated that several of its canner members have indicated that the changes proposed in the standards would cause substantial hardship to the industry. It stated that initial review of the data from past years' asparagus packs indicated that a large portion of the pack could not meet several of the provisions of the proposed quality standard. The NFPA stated that although some data already exist to demonstrate that the proposed regulation will cause undue hardship, it is evident that it and its member asparagus canners will need additional time to gather data to demonstrate the "unacceptability" of the proposed regulation. The NFPA requested that the comment period be extended until September 14, 1979 to allow time to develop data during the 1979 pack season which runs from March until August.

The CLC indicated that because that because the proposal represents a new standard an additional 6 months will allow its member canners to review the

proposal with more precision during the upcoming asparagus season.

The FDA concludes that CLC and NFPA have given sufficient grounds to support the need for additional time to comment on the proposal. 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 Commission of Food and Drugs (21 CFR 5.1), the comment period on the proposal to establish standards of identity and quality for canned asparagus is reopened and extended to September 14, 1979.

Interested persons may on or before September 14, 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 submittted, 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: May 7, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[Docket No. 78N–0103]

[FR Doc. 79–14913 Filed 5–14–79; 8:45 am]

BILLING CODE 4110–03–M

[21 CFR Part 163]

Cocoa Butters: Advance Notice of Proposed Rulemaking; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The agency is extending the comment period on an advance notice of proposed rulemaking that invited interested persons to review the Codex Alimentarius Commission (Codex) "Recommended International Standard for Cocoa Butters" and to comment on the desirability and need for a U.S. standard for this food. This action is based upon a request from the Chocolate Manufacturers Association (CMA).

DATE: Comments by May 24, 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: P. G. Harrill, Bureau of Foods (HFF–411) Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202–245–1164.

SUPPLEMENTARY INFORMATION: An advance notice of proposed rulemaking that invited interested persons to review the Codex Alimentarius Commission (Codex) "Recommended International Standard for Cocoa Butters" and to comment on the desirability and need for a U.S. standard for this food was published in the **Federal Register** on February 23, 1979 (44 FR 10740). Comments were to be filed by April 24, 1979.

Subsequently, the Food and Drug Administration (FDA) received a request from CMA for a 30-day extension of the comment period. The association stated that the additional time is needed because it will be holding several meetings at which cocoa butters will be discussed in April and May 1979. Information received at these meetings will enable CMA to give FDA a more constructive comment on the Codex standard for cocoa butters.

FDA concludes that CMA has given sufficient grounds to support the need for additional time to comment on the notice. 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 of Food and Drugs (21 CFR 5.1), the comment period on the advance notice of proposed rulemaking for cocoa butters is extended to May 24, 1979.

Interested persons may, on or before May 24, 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 advance notice of proposed rulemaking. 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: May 8, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[Docket No. 78N–0361]

[FR Doc. 79–14918 Filed 5–14–79; 8:45 am]

BILLING CODE 4110–03–M

[21 CFR Part 182]

Corn Silk; Removal From GRAS Status as a Direct Human Good Ingredient

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) proposes to remove the generally recognized as safe (GRAS) status of corn silk as a direct human food ingredient because of insufficient information concerning its identify and its safety as a human food ingredient. The safety of this substance has been evaluated as part of the agency's comprehensive safety review of all GRAS ingredients. The proposal would delete corn silk from the list of direct food substances that are GRAS.

DATE: Coments on or before July 16, 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: Corbin I. Miles, Bureau of Foods (HFF–335), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202–472–4750.

SUPPLEMENTARY INFORMATION: FDA is conducting comprehensive safety review of human food ingredients classified as GRAS or subject to a prior sanction. The agency has issued several notices and proposals initiating this review (see the **Federal Register** of July 26, 1973 (38 FR 20040)). As part of this review, the safety of corn silk has been evaluated. In accordance with the provisions of § 170.35 (21 CFR 170.35), FDA proposes to remove this ingredient from GRAS status.

Corn silk (Zea) consists of fresh styles and stigmas Zea mays Linn. (fam. Gramineae). It is found on all continents except Antarctica and occurs as masses of slender filaments whose color ranges from purplish red through pink, reddish oranges, brown, and yellowish brown to greenish yellow. Each filament is approximately 10 to 20 centimeters (cm) in length and 400 microns in diameter, and consists of a long (up to 30 cm) style and a slender, short (up to 3 millimeter (mm)) bifid stigma. This filamentous meterial is processed to yield the corn silk that is added directly to food. No information is available, however, regarding the process or solvent(s) that are used to manufacture commercial corn silk, and the composition of the dervied product. Analyses have indicated that the silk of corn is

composed of a variety of substances, most of which have not been characterized.

Corn silk is listed in § 182.20 (21 CFR 182.20) among the essential oils, oleoresins (solvent-free), and natural extractives (including distillates) of plants that are GRAS for their intended use, under regulations published in the **Federal Register** of June 10, 1961 (26 FR 5221). Reports indicate that corn silk is an ingredient of maple, nut, and root beer flavors. Foods in which it is used include baked goods, candy, ice cream, and ices, as well as nonalcoholic beverages.

The agency surveyed a respresentative cross-section of food manufacturers to determine the specific foods in which corn silk was used and the levels of usage. Information obtained from surveys of consumption was combined with the manufacturing information to estimate consumer exposure to corn silk added to food. The total amount of corn silk used in food in 1970 was reported to be 675 pounds.

Corn silk has been the subject of a search of the scientific literature from 1920 to the present. The criteria used in the search were chosen to discover any articles that considered (1) chemical toxicity, (2) occupational hazards, (3) metabolism, (4) reaction products, (5) degradation products, (6) any reported carcinogenicity, teratogenicity, or mutagenicity, (7) dose response, (8) reproductive effects, (9) histology, (10) embryology, (11) behavioral effects, (12) detection, and (13) processing. Thirty-eight articles were reviewed, and 18 particularly pertinent reports have been summarized in a scientific literature review.

The scientific literature review shows the following information as summarized in the report of the Select Committee on GRAS Substances (the Select Committee), chosen by the Life Sciences Research Office of the Federation of American Societies for Experimental Biology:

It is not possible to relate the few biological studies reported in the literature for various extracts or components of the silk of corn to possible consequences of using commercial corn silk in foods because of the absence of any information concerning the nature and composition of the commercial product. However, it is to be noted that administration of extracts or components of the silk of corn have been found to have no biological effects under some conditions and to elicit biological responses under others.

Dzhamalieva intubated two dogs (breed and sex not indicated) with aqueous infusions of corn silk. The infusions were prepared by placing 3, 5, 10, or 20 g samples of corn silk (age and moisture not indicated) in 100 ml of water, autoclaving for 30 minutes, and filtering to provide what were regarded as 3, 5, 10, and 20 percent infusions of corn silk. One dog received 163 ml of the 10 percent infusion (20 ml per kg body weight) and the second the equivalent of 44 ml per kg. No disturbances in the dogs' behavior were noted after five hours.

Thereafter, both dogs received an additional 60 ml per kg without adverse effects and they continued to be normal, with small weight gains, 10 days after intubation of the corn silk infusion was terminated. Total dose of the 10 percent infusion was 223 ml for one dog, 104 ml for the other. Parenteral studies were also conducted on guinea pigs and rabbits. Four guinea pigs injected subcutaneously with a single dose of 7 to 10 ml of the 20 percent infusion (17 to 25 ml per kg body weight) followed by a similar dose after four days, showed no adverse effects when observed over a period of 12 days. Similarly, five rabbits given single intravenous doses of 5 ml per kg body weight of the 20 percent corn silk infusion, repeated after five hours, showed no ill effects when observed over a period of 10 days. It was also observed that none of the corn silk infusions exerted any *in vitro* bactericidal or bacteriostatic effect on *Staphylococcus, Streptococcus* and a number of other pathogenic microorganisms.

Wastl studied the effects of corn silk extract on 12 normal, adult rats and on 28 adult rats with experimentally induced hypertension. Some animals in both groups were white Wistar and others were a piebald strain, not otherwise identified. The method of preparing the corn silk extract was not described but, in context, it appears that it was an aqueous or aqueous alcohol extract, subsequently dried. A dilute aqueous solution of the dried material was injected intraperitoneally for four consecutive days in daily doses of 0.1 mg of dried corn silk extract per kg body weight. Daily blood pressure measurements were made on each of four consecutive days prior to the dosing with corn silk extract, on each of the four consecutive experimental days, and on each of four consecutive days following the last dose. No effect on the blood pressure of normal rats was observed, but a decrease of 17 to 82 percent was observed in the hyertensive animals. Water injection under the same conditions had no effect on the blood pressure of either the normal or hypertensive rats. Blood pressure of the hypertensive rats injected with corn silk extract returned to pretreatment levels by the second day following cessation of the treatment. There was no evidence of adverse effects in any of the treated animals. The author indicated that the same blood pressure reducing effect on hypertensive animals could be elicited by oral administration of the corn silk extract.

Starks *et al.* and subsequently McMillian *et al.* found aqueous extracts of corn silk to contain a feeding stimulant for corn earworm larvae. The active principle was not identified but it was found to be heat stable, water soluble, and insoluble in organic solvents.

Corn silk and corn silk fluid extract have apparently long been among the folk medicines believed to be helpful in such disorders as diabetes, gout, edema, obesity, and kidney stones, but the therapeutic values attributed to these materials are essentially without proof.

Qualified scientists of the Select Committee have carefully evaluated all the available safety information on corn silk. In the Select committee's opinion:

The silk of the corn contains a wide variety of compounds, many present in very small amounts; included are sugar, tannins, saponins, flavones, glucosides, fats, alkaloids, and various aromatic components of the essential oil fraction. The composition of the commercial product (corn silk) that is added to foods will obviously depend on the procedures used for extraction of the silk of corn and the subsequent concentration and fractionation of the extract. The Select Committee has not been able to obtain any information concerning the method of preparation of the commercial product or its composition, or to find any reports of biological studies on the commercial product. In the absence of such information, it is not possible to related the few reported biological studies on corn silk extracts and components to the possible consequences of using corn silk as a food ingredient.

There are no known specifications for food-grade corn silk. Considering the origin of the product, specifications are needed to establish limits for possible variations in its composition and for the presence of incidental contaminants such as pesticidal chemicals.

Consequently, the Select Committee concludes that, in view of the lack of information on the identity of the product used in foods and of relevent biological studies concerning it, there is

insufficient data upon which to base an evaluation of corn silk when it is used as a food ingredient. Based upon its own evaluation of all information available on the ingredient, FDA agrees with this conclusion.

Subsequent inquiries of food manufacturers also failed to produce the necessary identity and toxicity information on the corn silk product that is added to food. Because this information is not available, the safety of corn silk as a direct human food ingredient cannot be ascertained. Consequently, affirming corn silk as GRAS would not be in the public interest, and FDA therefore concludes that corn silk should be removed from GRAS status. Future consideration for the use of this ingredient in food can be obtained in several ways. The agency will consider the GRAS status of corn silk if information concerning the identity of the extractive added to food and adequate biological studies on the extractive are submitted as comments on this proposal. Alternatively, consideration for its use can be obtained through petition procedures as outlined in § 170.35 or 171.1 (21 CFR 170.35 or 171.1).

Copies of the scientific literature review of corn silk and the report of the Select Committee are available for review at the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, and may be purchased from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, as follows:

Title and order number	Price code	Price [1]
Corn silk: scientific literature review (PB–234–900/AS)	AO3	$4.50
Corn silk: Select Committee report (PB–278–158/AS)	AO2	4.00

[1] Price subject to change.

This proposed action does not affect the current use of corn silk in pet food or animal feed.

§ 182.20 [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), it is proposed that Part 182 be amended in § 182.20 *Essential oils, oleoresins (solvent-free), and natural extractions (including distillates)* by deleting the entry for "Corn silk."

FDA is unaware of any prior sanction of the use of this ingredient in food. Any person who intends to assert or rely on such a sanction shall submit proof of its existence in response to this proposal. The proposed regulation will constitute a determination that the excluded uses would result in adulteration of the food in violation of section 402 of the act (21 U.S.C. 342), and the failure of any person to come forward with proof of an applicable prior sanction in response to this proposal constitutes a waiver of the right to assert or rely on the sanction later. This notice also constitutes a proposal to establish a regulation under Part 181 (21 CFR Part 181), incorporating the same provisions, if such a regulation is determined to be appropriate as a result of submission of proof of an applicable prior sanction in response to this proposal.

Interested persons may, on or before July 16, 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.

Dated: May 8, 1979.

William F. Randolf,

Acting Associate Commissioner for Regulatory Affairs.

[Docket No. 79N–0088]

[FR Doc. 79–15073 Filed 5–14–79; 8:45 am]

BILLING CODE 4110–03–M

[21 CFR Part 184]

Amoniated Glycyrrhizin; Proposed Affirmation of GRAS Status as Direct Human Food Ingredient With Specific Limitations; Amendment

AGENCY: Food and Drug Administration.

ACTION: Amendment of Proposed Rule.

SUMMARY: The Food and Drug Administration (FDA) amends an earlier proposal to affirm the generally recognized as safe (GRAS) status of licorice, glycyrrhiza, ammoniated glycyrrhizin. In light of new data and information received by the agency, this proposal amends the earlier GRAS affirmation proposal to emphasize that ammoniated glycyrrhizin is GRAS only for historical uses as a flavor agent to produce licorice flavor in certain foods and when used as a surfaceactive agent in nonalcoholic beverages. The proposal is also amended by adding additional food categories for use of ammoniated glycyrrhizin, but eliminating the "all other foods" category.

DATE: Comments on or before July 16, 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: Corbin I. Miles, Bureau of Foods (HFF–335), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202–472–4750.

SUPPLEMENTARY INFORMATION: FDA is conducting a comprehensive safety review of human food ingredients classified as GRAS or subject to a prior sanction. Under this review, the agency issued a proposed GRAS affirmation regulation in the **Federal Register** of August 2, 1977 (42 FR 39117) for limited uses of licorice, glycyrrhiza, and ammoniated glycyrrhizin in food. That proposal also summarized the available safety information regarding the identity, manufacture, and uses of these food ingredients.

The Select Committee on GRAS Substances, chosen by the Life Sciences Research Office of the Federation of American Societies for Experimental Biology, evaluated available safety information for these ingredients and concluded that the consumption of licorice, glycyrrhiza, and ammoniated glycyrrhizin at current levels (i.e., those reported for 1970) posed no hazard to the public health, but that it was not possible to evaluate the safety of increased consumption of these ingredients. The agency agreed with the Select Committee's findings and concluded that specific limitations on the use of the ingredients were required to prevent increased consumption. FDA therefore proposed that licorice, glycyrrhiza, and ammoniated glycyrrhizin be affirmed as GRAS with specific limitations on their use in food.

However, new information and comments on the August 2, 1977 proposal indicate that one of the ingredients, ammoniated glycyrrhizin, has recently been used to achieve additional functional effects. It is reported to be used as a sweetener, synergist for sucrose, and flavor enhancer for nonlicorice-flavored foods. When the ingredient is used as flavor

enhancer or sweetener synergist, reported levels of use are too low to produce a distinct licorice flavor. Authorization for these effects, however, was not intended by the proposal.

The proposal's intent was to permit the use of ammoniated glycyrrhizin as a flavor ingredient primarily to impart a licorice flavor to food. This use would be self-limiting, as evidenced by the relatively few foods containing such a flavor. However, use of ammoniated glycyrrhizin as a sweetener, flavor enhancer, or sweetening synergist would not be similarly self-limiting and could result in food use not contemplated by the proposal. Should this occur, it could greatly expand expected consumption of the ingredient, a condition that cannot be supported by existing safety data. Therefore, based upon this new information, FDA concludes that the ammoniated glycyrrhizin provisions of the August 2, 1977 GRAS affirmation proposal need to by amended so that expanded use of the ingredient, beyond those contemplated by this proposal, cannot take place without additional safety data.

The proposed rule would have permitted ammoniated glycyrrhizin to be used as a flavor agent at a maximum level, as served, of 0.4 percent in chewing gum, 0.24 percent in soft candy, and 0.17 percent in "all other food categories," as well as a suface-active agent in all food categories except chewing gum and soft candy. However, after assessing this new information, FDA concludes that ammoniated glycyrrhizin should be GRAS for use only as an agent to produce licorice flavor and as a surface-active agent in only those food categories reported during the National Academy of Sciences/National Research Council survey of food manufacturers. This amended proposal has therefore adopted these changes.

Although FDA is further limiting the technical effect and food categories of use for ammoniated glycyrrhizin in this amended proposal, the agency will evaluate the safety and effectiveness of nonlicorice flavoring uses of this ingredient, if data are submitted showing the actual levels of use of this ingredient in nonlicorice-flavored foods, the functional effect achieved, the foods in which it is used, and evidence of history of such uses in food. The agency solicits these data, which may result in inclusion of such uses in the final regulation, as comments to this amended proposal. Alternatively, any person wishing to use ammoniated glycyrrhizin in food under conditions different from those listed in this proposed amendment may later submit a GRAS affirmation or food additive petition as described in § 170.35 or 171.1 (21 CFR 170.35 or 171.1).

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under the authority delegated to the Commissioner (21 CFR 5.1), the proposal of August 2, 1977 (42 FR 39119) to amend Parts 182 and 184 is amended in proposed § 184.1408 by revising paragraph (b)(3) to read as follows:

§ 184.1408 Licorice.

* * * * *

(b) * * *

(3) The ingredient is used in food in accordance with § 184.1(b)(2) under the following conditions:

Maximum Usage Levels Permitted

Food (as served)	Percent	Function
Baked goods, § 170.3(n)(1) of this chapter	0.01	Flavor agent, § 170.3(o)(12) of this chapter to produce licorice flavor only.
Alcoholic beverages, § 170.3(n)(2) of this chapter	0.006	Do.
Nonalcoholic beverages, § 170.3(n)(3) of this chapter	0.01	Flavor agent, § 170.3(o)(12) of this chapter to produce licorice flavor only.
Do.	0.002	Surface-active agent, § 170.3(o)(29) of this chapter.
Chewing gum, § 170.3(n)(6) of this chapter	0.4	Flavor agent, § 170.3(o)(12) of this chapter to produce licorice flavor only.
Confections and frostings, § 170.3(n)(9) of this chapter	0.06	Do.
Frozen dairy desserts, § 170.3(n)(20) of this chapter	0.01	Do.
Gelatins and puddings, § 170.3(n)(22) of this chapter	0.01	Do.
Hard candy, § 170.3(n)(25) of this chapter	0.13	Do.
Soft candy, § 170.3(n)(38) of this chapter	0.24	Do.

Interested persons may, on or before July 16, 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.

Dated: May 8, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[Docket No. 77N–0034]

[FR Doc. 79–15070 Filed 5–14–79; 8:45 am]

BILLING CODE 4110–03–M

[21 CFR PARTS 182, 184, and 186]

Cellulose Derivatives; Affirmation of GRAS Status as Direct and Indirect Human Food Ingredients; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Extension of Comment Period.

SUMMARY: The agency extends the comment period on its proposal to affirm the generally recognized as safe (GRAS) status of cellulose derivatives as direct and indirect human food ingredients. This action is taken in response to a request for extension of the comment period.

DATE: Written comments by June 25, 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: Corbin I. Miles, Bureau of Foods (HFF–335), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, D.C. 20204, 202–472–4750.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 23, 1979 (44 FR 10751), the Food and Drug Administration proposed to affirm the GRAS status of cellulose derivatives as direct and indirect human food ingredients. Interested persons were invited to submit comments on the proposal by April 24, 1979.

On March 19, 1979, a letter was received from the Dow Chemical Co. The firm requested an extension of the comment period for the GRAS

affirmation proposal for cellulose derivatives for an additional 60 days, to June 25, 1979, to allow sufficient time to prepare comments on the proposed rule.

The agency considers the opportunity to comment on GRAS affirmation proposals to be an important part of the GRAS review process. It has decided that an extension of the comment period for this proposal would be appropriate, and that the additional time should be extended to all interested parties.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), the comment period for the GRAS affirmation proposal for cellulose derivatives is extended for an additional 60 days.

Accordingly, interested persons may, on or before June 25, 1979, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, written comments (preferably four copies and identified with the Hearing Clerk docket number found in brackets in the heading of this document) regarding the proposal. The envelope containing the comments should be prominently marked "Cellulose Derivatives." Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 8, 1979.

William F. Randolph,
Acting Associate Commissioner to Regulatory Affairs.

[Docket No. 78N-0144]
[FR Doc. 79-15074 Filed 5-14-79; 8:45 am]
BILLING CODE 4110-03-M

[21 CFR Parts 182 and 184]

Glycerophosphates; Proposed Affirmation and Deletion of GRAS Status

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administation (FDA) proposes to affirm calcium glycerophosphate as generally recognized as safe (GRAS) as a direct human food ingredient and to delete manganese and postassium glycerophosphates from the GRAS list. The safety of these ingredients and magnesium glycerophosphate has been evaluated under the comprehensive safety review being conducted by the agency.

DATE: Comments on or before July 16, 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: Corbin I. Miles, Bureau of Foods (HFF–335), Food and Drug Adminmistration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202–472–4750.

SUPPLEMENTARY INFORMATION: A comprehensive study of human food ingredients classified as generally recognized as safe (GRAS) or subject to a prior sanction is being conducted by FDA. The Commissioner of Food and Drugs has issued several notices and proposed regulations, published in the **Federal Register** of July 26, 1973 (38 FR 20040), initiating this review, under which the safety of calcium, magnesium, manganese, and potassium glycerophosphates has been evaluated. In accordance with the provisions of § 170.35 (21 CFR 170.35), the Commissioner proposes to affirm the GRAS status of calcium glycerophosphate as a direct human food ingredient and to delete manganese and potassium glycerophosphates from the GRAS list.

Glycerophosphates are the salts of glycerophosphoric acid which occurs in three isomeric forms: the β-glycerophosphoric acid and the D(+) and L(−) forms of the α-glycerophosphoric acid. The salts are prepared by neutralizing glycerophosphoric acid with the appropriate metallic hydroxide. Commercial preparations of the glycerophosphates are a mixture of the three isomers.

Calcium glycerophosphate (§ 182.5201 (21 CFR 182.5201)), manganese glycerophosphate (§ 182.5455 (21 CFR 182.5455)), and potassium glycerophosphate (§ 182.5628 (21 CFR 182.5628)) are listed as GRAS for use as nutrients and/or dietary supplements by regulation published in the **Federal Register** of January 31, 1961 (26 FR 938). Calcium glycerophosphate and magnesium glycerophosphate are listed in § 181.29 (21 CFR 181.29) as specific prior-sanctioned food ingredients for use as stabilizers in the manufacture of food-packaging materials. Calcium and magnesium glycerophosphates are also listed in § 175.300(b)(3)(xxxiii) (21 CFR 175.300(b)(3)(xxxiii)) as miscellaneous materials employed in the production of resinous and ploymeric coatings for food-contact use. In addition, magnesium glycerophosphate is listed in § 175.105 (21 CFR 175.105) for use as a component of adhesives.

A representative cross-section of food manufacturers was surveyed to determine the specific foods in which various glycerophosphates are used and the levels of usage. No reports were received indicating that glycerophosphate salts other than calcium glycerophosphate are added to foods. Calcium glycerophosphate is reportedly used in pudding mixes at a level equivalent to 0.12 to 0.85 gram (g) per serving.

Between 1965 and 1973, imports of glycerophosphoric acid and its derivatives (including calcium, magnesium, and manganese salts) ranged from 30,800 to 59,400 pounds per year. No trend in increasing or decreasing usage was apparent. If all of these imports were added directly to foods, the per capita daily consumption would be less than 0.4 milligram (mg). The agency therefore believes that glycerophosphates as direct food ingredients do not contribute significantly to the intake of calcium, manganese, or potassium and that only trace amounts of calcium and magnesium glycerophosphates could migrate to food from packaging material.

Glycerophosphates have been the subject of a search of the scientific literature from 1920 to the present. The criteria used in the search were chosen to discover any articles that considered (1) chemical toxicity, (2) occupational hazards, (3) metabolism, (4) reaction products, (5) degradation products, (6) any reported carcinogenicity, teratogenicity, or mutagenicity, (7) dose response, (8) reproductive effects, (9) histology, (1) embryology, (11) behavioral effects, (12) detection, and (13) processing. A total of 421 abstracts on glycerophosphates were reviewed and 21 particularly pertinent reports from the literature survey have been summarized in a scientific literature review.

The scientific literature review shows, among other studies, the following information as summarized in the report of the Select Committee on GRAS Substances (the Select Committee), chosen by the Life Sciences Research Office of the Federation of American Societies for Experimental Biology:

While several feeding studies have reported the use of glycerophosphates as antirachitic agents, no reports of acute oral toxicity, few feeding studies, and no reports of teratogenicity, mutagenicity, and carcinogenicity testing specifically designed to demonstrate the safety of using glycerophosphates in food have been found by the Select Committee in its search of scientific reference material.

The *in vitro* Hydrolysis of glycerophosphate by cat and dog intestinal enzymes suggested that orally administered glycerophosphates would be largely hydrolyzed to glycerol and phosphate before absorption. Other reports of the Select Committee have considered the health aspects of glycerol and certain phosphates as food ingredients. Oral doses of 0.3 to 1.2 g of calcium glycerophosphate were reported as a medical use to provide calcium and phosphorus dietary supplements.

Anghileri reported on the fate in the rate of the following intravenously administered β-glycerophosphate: ^{51}Cr, ^{64}Cu, ^{56}Mn, ^{140}La, ^{65}Zn, and ^{85}Sr. Most of the radioactivity was accumulated in the liver, kidney, and spleen; the main excretory route was via the urine. All compounds tested had similar patterns of cation distribution and excretion.

The efficacy of calcium glycerophosphate as a dietary calcium supplement to rachitogenic diets was greater than calcium carbonate, dicalcium phosphate, tricalcium phosphate and calcium lactate when fed to weanling female mice. The α- and β-glycerophosphates of sodium, calcium and magnesium were comparable to monocalcium phosphate as antirachitic agents in rats. The subcutaneous injection of 0.1 to 0.5 g of potassium glycerophosphate into guinea pigs (estimated dose of 0.1 to 0.5 g per kg body weight) resulted in an increase in blood glycerophosphatase activity within 30 minutes.

The addition of calcium glycerophosphate (50 mg per kg) to a high cholesterol diet (0.5 g per kg per day) resulted in an earlier onset of hypercholesterolemia and higher aortic cholesterol levels in experimental than in control rabbits receiving cholesterol to produce atherosclerosis. The addition of glycerin to the high cholesterol diet produced similar results. In another study involving rabbits fed a high cholesterol (0.5 g per kg body weight per day) diet, the addition of calcium glycerophosphate (0.1 g per kg body weight per day) resulted in a higher serum level of esterified cholesterol but no effect on free cholesterol in blood.

In a five-month feeding study of a mixture of α- and β-isomers of calcium glycerophosphate (200 mg per kg), treated rabbits had a slightly increased blood cholesterol level, a decreased blood protein-bound cholesterol level, and an increase in the deposition of total lipids and cholesterol in liver, lung and kidney tissues. No atherosclerotic changes were noted in blood vessels, although changes in other organs suggested experimental atherosclerosis to the author.

Calcium glycerophosphate (50 mg per kg per day) was reported to decrease the respiration rate in rabbit brain, liver and heart muscle after a five-month feeding period with or without the addition of cholesterol to the diet. Cera and Bellini reported that the absorption of neutral fats in rats is enhanced by the addition of sodium glycerophosphate to the fat.

The only reported study concerned with the effects of glycerophosphate on reproduction and/or teratology is that of Landauer and Sopher. Using fertilized chicken eggs, they reported that sodium DL-α-glycerophosphates inhibited the teratogenic effects of 3-acetylpyridine and 6-aminoni-cotinamide, but potentiated the teratogenic effects of acetazolamide and insulin.

Bowen reported that the feeding of 1 percent calcium β-glycerophosphate (a 75:25 mixture of the β-isomer and α-isomers) in a cariogenic diet to monkeys for 30 months resulted in a marked decrease in the incidence of caries. The effectiveness of calcium and sodium α- or β-glycerophosphate as an anticaries agent in rats fed a cariogenic diet was reported by Regolati and Hotz. In this study calcium glycerophosphate at a level of 0.6 percent phosphorus added to the diet caused reduced feed and water intake and retarded growth in weanling rats. The daily intake of calcium glycerophosphate tetrahydrate was about 3 g per kg body weight. Federov reported that calcium glycerophosphate was an active anticaries toothpaste component when tested in rats fed a cariogenic diet.

The intravenous administration of sodium β-glycerophosphate to rabbits with fractured right radii resulted in accelerated healing and larger callouses as compared to control animals. These authors reported that administration of the following doses did not elicit any adverse effect: the intravenous administration of 100 mg (50 per kg body weight) into a rabbit daily for 55 days, and 10 daily intravenous injections of 10 g to a 17 kg dog. However, the intrapertioneal administration of 1.5 to 3 g per kg for two to five days to rabbits was fatal.

In a review of some of the general pharmacological effects of sodium glycerophosphate, Velazquez noted its uterine spasmolytic and respiratory stimulatory properties. Aragon also demonstrated the spasmolytic action of sodium-β-glycerophosphate on uterine smooth muscle. A hypoglycemic effect of subcutaneously injected sodium-β-glycerophosphate in rabbits was reported by Fernandez and Aguilar. The mechanism the authors proposed was that of insulin reinforcement attributable to the phosphoric acid moiety as an activator of glycolysis.

The simultaneous administration of sodium glycerophosphate with aureomycin to rats and guinea pigs resulted in a two to threefold increase in serum levels of the drug when compared to controls. Citric acid, trisodium citrate, malic acid, tartaric acid, tricarballylic acid, monosodium phosphate, malonic acid, pyruvic acid, and lactic acid produced larger increases, but calcium glycerophosphate did not produce an increase. The "Lamson glucose effect" (intraperitoneal injection of certain solutions into an animal just awakening from barbiturate-induced sleep causes the animal to return to sleep) also was induced with β-glycerophosphate in guinea pigs. Sodium-β-glycerophosphate, intravenously administered, was reported to enhance the hypertensive effects of epinephrine; similar doses of sodium-α-glycerophosphate did not.

Qualified scientists of the Select Committee have carefully evaluated all of the available safety information on glycerophosphate salts. In the Select Committee's opinion,

The glycerophosphate salts that are considered to be GRAS could provide absorbable sources of glycerol, phosphate, and their respective cations. However, glycerophosphates are not now widely used in foods. The Select Committee believes that the the level of consumer exposure is very low and that use under limitations as a nutrient or dietary supplement will not present a hazard to the public. In previous evaluations of glycerol and certain phosphates no evidence was found of a hazard to the public from the hyrolysis products of the glycerophosphates.

The Select Committee concludes that there is no evidence in the available information on calcium glycerophosphate, potassium glycerophosphate, and manganese glycerophosphate that demonstrates, or suggests reasonable grounds to suspect, a hazard to the public when they are used as nutrient supplements or as they might reasonably be expected to be so used in the future. There is no evidence in the available information on calcium glycerophosphate and magnesium glycerophosphate that demonstrates, or suggests reasonable grounds to suspect, a hazard to the public when they are used in food packaging materials as now practiced or as they might be expected to be used for such purposes in the future. Based upon his own evaluation of all available information on the

calcium, magnesium, manganese, and potassium salts of glycerophosphoric acid, the Commissioner agrees with this conclusion and therefore finds that no change in the present GRAS status of calcium glycerophosphate is justified. Because no information was submitted on current food uses for manganese and potassium glycerophosphates in response to the survey of food manufacturers, the Commissioner concludes that insufficient data and information are available to affirm the GRAS status of these ingredients. The Commissioner proposes, therefore, to delete manganese and potassium glycerophosphate as GRAS direct human food ingredients unless information is provided that includes human food uses (levels of addition, intended technical effects, and food to which the substance is added) of both ingredients. This information should be submitted as comments on this proposal during the comment period.

Copies of the scientific literature review of glycerophosphates, and the report of the Select Committee are available for review at the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, and may be purchased from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, as follows:

Title and order number	Price code	Price [1]
Glycerophosphates: scientific literature review (PB–228–543/AS)	A04	$5.25
Glycerophosphates: Select Committee report (PB–265–506/AS)	A02	4.00

[1] Price subject to change.

The prior-sanctioned use of calcium or magnesium glycerophosphate as a stabilizer in packaging materials is not affected by this proposal. This proposal also does not affect the present use of the glycerophosphate salts for pet food or animal feed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner (21 CFR 5.1), it is proposed that Parts 182 and 184 be amended as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

§§ 182.5201, 182.5455, 182.5628 [Deleted]

1. By deleting § 182.5201 *Calcium glycerophosphate,* § 182.5455 *Manganese glycerophosphate,* and § 182.5628 *Potassium glycerophosphate.*

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

2. In Part 184 by adding new § 184.1201 to read as follows:

§ 184.1201 Calcium glycerophosphate.

(a) Calcium glycerophosphate ($C_3H_7CaO_6P$, CAS Reg. No. 27214–00–2) is a fine, white, odorless, almost tasteless, slightly hydroscopic powder. It is prepared by neutralizing glycerophosphoric acid with calcium hydroxide or calcium carbonate. The commercial product is a mixture of calcium β– and D and L–α–glycerophosphates.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 2d Ed. (1972), which is incorporated by reference.[1]

(c) The ingredient is used as a nutrient supplement as defined in § 170.3(o)(20) of this chapter.

(d) The ingredient is used in food at levels not to exceed good manufacturing practice in accordance with § 184.1(b)(1). Current good manufacturing practice results in a maximum levels, as served, of 0.4 percent for gelatins, puddings, and fillings as defined in § 170.3(n)(22) of this chapter.

The Commissioner hereby gives notice that he is unaware of any prior sanction for the use of these ingredients in food under conditions different from those proposed herein or those listed in Part 181 (21 CFR Part 181). Any person who intends to assert or rely on such a sanction shall submit proof of its existence in response to this proposal. The regulations proposed above will constitute a determination that excluded uses would result in adulteration of the food in violation of section 402 of the act, and the failure of any person to come forward with proof of such an applicable prior sanction in response to this proposal constitutes a waiver of the right to assert or rely on the sanction at any later time. This notice also constitutes a proposal to establish a regulation under Part 181 incorporating the same provisions, if such a regulation is determined to be appropriate as a result of submission of proof of such an applicable prior sanction in response to this proposal.

Interested persons may, on or before July 16, 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.

Dated: May 8, 1979.

William F. Randolph,
Acting Associate Commissioner for Regulatory Affairs.

[Docket No. 78–0335]
[FR Doc. 79–15073 Filed 5–14–79; 8:45 am]
BILLING CODE 4110–03–M

[1] Copies may be obtained from the National Academy of Sciences, 2101 Constitution Ave. NW., Washington, DC 20037.

DEPARTMENT OF DEFENSE

Office of the Secretary

[32 CFR Part 214]

Environmental Effects in the United States of DoD Actions, DoD Directive 6050.[1]

AGENCY: Office of the Secretary of Defense.

ACTION: Proposed rule.

SUMMARY: This rule establishes Department of Defense (DoD) policies and procedures to supplement the Council on Environmental Quality (CEQ) Regulations For Implementing the Procedural Provisions of the National Environmental Policy Act, November 29, 1978 (40 CFR Parts 1500–1508). The CEQ regulations provide that Federal agencies shall adopt implementing procedures by July 30, 1979. This rule provides implementing procedures and guidance to the DoD components and assigns responsibilities as required by the CEQ regulation.

DATES: Comments must be received on or before June 14, 1979.

ADDRESSES: Office of the Deputy Assistance Secretary of Defense (Energy, Environment and Safety), The Pentagon, Room 3D 823, Washington, D.C. 20301.

FOR FURTHER INFORMATION CONTACT: Colonel C. D. Sadler, USA, Telephone: 695–0221.

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA. 19120 Attention: Code 301.

Accordingly, it is proposed to publish a revision to 32 CFR Part 214, reading as follows:

Sec.
214.1 Reissuance and purpose.
214.2 Applicability and scope.
214.3 Definitions.
214.4 Policy.
214.5 Responsibilities.
Enclosure 1, DoD Implementing Procedures.

Authority: 42 U.S.C. 4321 et seq., Executive Order 11514 as amended by EO 11991.

§ 214.1 Reissuance and purpose.

This Part implements the Council on Environmental Quality (CEQ) regulations (National Environmental Policy Act Regulations, 43 FR 55978 (1978)) and provides policy and procedures to enable Department of Defense (DoD) officials to be informed of and take into account environmental considerations when authorizing or approving major DoD actions that significantly affect the environment in the United States. The Council on Environmental Quality regulations implement the procedural provisions, section 102(2), of the National Environmental Policy Act (of 1969, as amended (Pub. L. 91–190, 42 U.S.C. 4321 et. seq.)), and Executive Order 11514, as amended (35 FR 4247 (1970)), amended by Executive Order 11991, 42 FR 26967 (1977).

§ 214.2 Applicability and scope.

(a) The provisions of this part apply to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, Unified and Specified Commands, and the Defense Agencies (hereinafter referred to as "DoD Components").

(b) The provisions of this part are limited to DoD actions with environmental effects in the United States.

§ 214.3 Definitions.

(a) *United States* means all states, territories, and possessions of the United States; and all waters and airspace subject to the territorial jurisdiction of the United States. The territories and possessions of the United States include the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

(b) Other terms used in this part are defined in Part 1508 of the CEQ regulations.

§ 214.4 Policy.

(a) The Department of Defense must act with care to assure that, in carrying out its mission of providing for the national defense, it does so in a manner consistent with national environmental policies. Care must be taken to assure, consistent with other considerations of national policy and with national security requirements, that all practical means and measures are used to protect, restore, and enhance the quality of the environment, to avoid or minimize adverse environmental consequences, and to attain the objectives of:

(1) Achieving the fullest possible use of the environment without degradation, or undesirable and unintended consequences;

(2) Preserving important historic, cultural, and natural aspects of our national heritage and maintaining where possible an environment that supports diversity and variety of individual choice;

(3) Achieving a balance between resource use and development within the sustained carrying capacity of the ecosystem involved; and

(4) Enhancing the quality of renewable resources and working toward the maximum attainable recycling of depletable resources.

(b) The Department of Defense shall:

(1) Assess environmental consequences of DoD actions that affect the environment in accordance with enclosure 1 and Part 1508 of the CEQ regulations.

(2) Use a systematic, interdisciplinary approach that will insure the integrated use of the natural and social sciences, and environmental considerations, in planning and decision-making where there is a potential for significant environmental impact;

(3) Insure that presently unmeasured environmental amenities are considered in the decision-making process;

(4) Consider reasonable alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of resources; and

(5) Make available to states, counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment.

§ 214.5 Responsibilities.

(a) The Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) shall:

(1) Serve as responsible official for all DoD environmental matters within the United States;

(2) Modify or supplement the enclosures of this part, as required.

(3) Provide assistance in the preparation of environmental assessments and statements and assign, in consultation with the Defense Department Secretary's principal staff assistants concerned and the Defense Agencies' directors, lead agency responsibility in preparing environmental documentation when more than one DoD component is involved.

(4) Direct the preparation of environmental documents for specific actions when required;

(5) Provide, when appropriate, consolidated Department of Defense comments requested by other Federal agencies on draft and final environmental impact statements;

(6) Review issuances of the Office of the Secretary of Defense that have environmental implications;

(7) Maintain liaison with the Council on Environmental Quality, the Environmental Protection Agency, the Office of Management and Budget, other Federal agencies, and State and local groups, with respect to environmental analyses for DoD actions affecting the environment in the United States.

(b) The General Counsel, DoD, shall provide advice and assistance concerning the requirements of this part.

(c) The heads of the DoD Components shall:

(1) Assess environmental consequences of proposed and continuing program and actions within their respective DoD component;

(2) Prepare and process environmental documents as required by this part.

(3) Integrate environmental considerations into their decision-making processes.

(4) Insure that regulations and other major policy issuances are reviewed for consistency with the requirements of this part;

(5) Provide comments on environmental impact statements for actions within their area of expertness or concern;

(6) Designate a single point of contact for matters pertaining to this part.

Enclosure 1—DOD Implementing Procedures

A. *General*

1. Section 1507.3, Council on Environmental Quality Regulations (National Environmental Policy Act Regulations, 43 FR 55978 (1978)) directs that Federal agencies shall adopt procedures to supplement the CEQ Regulations. This enclosure provides detailed DoD implementing procedures to supplement the CEQ Regulations.

2. The provisions of this part must be read together with those of the CEQ

Regulations and the Act as a whole when applying the NEPA process.

3. This enclosure is organized sequentially from early planning to final implementation of an action. Section references throughout this enclosure refer to the appropriate section in the CEQ Regulations.

B. *Planning Consideration*

1. *Early Planning.* DoD Components shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts.

2. *Lead Agency.* To determine the lead agency for actions in which more than one DoD Component is involved or another federal agency is involved, DoD Components shall apply the criteria defined in Sections 1501.5 and 1501.6. If there is disagreement, DoD Components shall forward a request for lead agency determination to ASD (MRA&L).

a. The ASD (MRA&L) will determine lead agency responsibility among DoD Components.

b. In those cases involving a DoD Component and another Federal agency, the ASD (MRA&L) will attempt to resolve the differences. If unsuccessful, the ASD (MRA&L) will file the request with the Council for determination.

3. *Assistance to Applicants.* Section 1501.2(d) provides for advising private applicants or other non-federal entities when DoD involvement is reasonably foreseeable. Actions involving applications by private persons or state and local agencies are limited within the DoD and pertain primarily to permits, leases, and related actions concerning the use of DoD lands and property.

a. The following are types of actions initiated by private persons, state or local agencies, and other non-DoD entities for which DoD involvement may be reasonably foreseeable.

(1) Easements and right-of-ways on DoD lands

(2) Graziang and timber leases

(3) Permits, licenses, use agreements or other grants of real property for use by non-DoD entities.

b. Public notices or other means used to inform or solicit applicants for permits, leases, or related actions will describe the studies or information foreseeably required for later DoD Component action and will advise of the assistance available to applicants by the DoD Component.

c. When DoD owned land is leased or otherwise provided to non-DoD entities, the DoD Component will initiate the NEPA process as early as possible and will ensure that appropriate consideration is given to environmental conservation factors such as waste disposal, necessary mitigation and long term restoration measures.

4. *Determination of Requirement for EIS.* The first step in applying the NEPA process is to determine whether to prepare an environmental impact statement. Early determination will help ensure that necessary environmental documentation is prepared and integrated with the decisionmaking process. In determining whether to prepare an environmental impact statement, a DoD Component will determine whether the proposal is one which:

a. Normally requires an environmental impact statement, or

b. Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion), or

c. Normally requires an environmental assessment but not necessarily an environmental impact statement.

5. *Actions That Normally Require an EIS.* DoD Components will determine if a proposal is one that normally requires an environmental impact statement. In some cases, it will be readily apparent that a proposed action will have a significant impact on the environment. In that event, an environmental assessment is not required and the DoD Component will begin preparation of the environmental impact statement. To assist in determining those actions that normally do require the preparation of an environmental impact statement, the following criteria and categories of actions are provided:

a. *Criteria.* The criteria used to determine those categories of actions that normally do require an environmental impact statement include:

(1) Potential for significant degradation of environmental quality.

(2) Significant real estate alteration.

(3) Potential for threat or hazard to the public.

(4) Similarity to previous actions determined to require an environmental impact statement.

b. *Categories of Actions.* The following categories of actions normally do require an environmental impact statement.

(1) Construction of major defense installations.

(2) Demilitarization of chemical warfare agents.

(3) Large dredging projects.

(4) Development of major weapons systems involving site specific or fixed deployment.

(5) Major land acquisition or disposal actions that significantly change land use.

(6) Redeployment of division or equivalent sized units during peacetime.

c. In any case involving actions that normally do require an environmental impact statement, a DoD Component may prepare an environmental assessment to determine if an environmental impact statement is required.

6. *Categorical Exclusion.* The CEQ Regulations provide for the categorical exclusion (Section 1508.4) of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. Full implementation of this concept will help DoD Components to avoid unnecessary or duplicative effort and concentrate resources on significant environmental issues.

a. *Criteria.* The criteria used for determination of those categories of actions that normally do not require either an environmental impact statement or an environmental assessment include:

(1) Minimal or no effect on evnironmental quality.

(2) No significant change to existing environmental conditions.

(3) No significant cumulative environmental impact.

(4) Social and economic effects only.

(5) Similarity to actions previously assessed to have no significant environmental impact.

b. *List of Categorical Exclusion.* Categories of actions that have been determined by DoD to have no significant effect on the human environment and are, therefore, categorically excluded from the preparation of environmental impact statements and environmental assessments are identified in Annex A to this enclosure.

c. *Changes to the List of Categorical Exclusion.* (1) The DoD List of Categorical Exclusion will be continually reviewed and refined as additional categories are identified and experience is gained in the categorical exclusion process. DoD Components may, at any time, recommend additions or changes to the DoD List of Categorical Exclusion.

(2) DoD Components are encouraged to develop, in their regulations implementing this part additional categories of exclusion necessary to meet their unique operational and mission requirements. Categories of

exclusion identified by one DoD Component which may be applicable to other DoD Components will be submitted to ASD for review.

d. *Extraordinary Circumstances.* The determination of whether a proposal can be categorically excluded is a three step process in which the DoD Component will:

(1) Determine the scope of the proposal and identify elements that may effect the environment.

(2) Determine if the proposal is encompassed by one of the categories of actions on either the DoD or DoD Component lists of categorical exclusion.

(3) Determine if there are extraordinary circumstances that may have a significant environmental impact. If extraordinary circumstances that may have a significant environmental impact do exist, an environmental assessment will be prepared. Extraordinary circumstances that may have a significant environmental impact include:

(a) Greater scope or size than normally experienced for a particular category of action.

(b) Actions in highly populated or congested areas.

(c) Potential for degradation, even though slight, of already existing poor environmental conditions.

(d) Employment of unproven technology.

(e) Presence of endangered species, archeological remains, or other protected resources.

(f) Use of hazardous or toxic substances.

e. *Documentation.* DoD Components will prepare and maintain an administrative record of each proposal that is determined to be categorically excluded from the preparation of an environmental impact statement or an environmental assessment.

7. *Actions That Normally Require and Environmental Assessment.* When a proposal is not one that normally requires an environmental impact statement and does not qualify for categorical exclusion, the DoD Component will determine if an environmental assessment is required. To assist in the determination of whether to prepare an environmental assessment, the following criteria and categories of actions are provided:

a. *Criteria.* The criteria used to determine those categories of actions that normally require an environmental assessment but not necessarily an environmental impact statement include:

(1) Potential for minor degradation of environmental quality.

(2) Potential for cumulative impact on environmental quality.

(3) Presence of hazardous or toxic substances.

(4) Potential for violation of pollution abatement laws.

(5) Potential for impact on protected resources.

b. *Categories of Actions.* The following categories of actions normally require the preparation of an environmental assessment. DoD Components may identify other categories of actions that normally require an environmental assessment.

(1) Field training exercises on non-DoD lands.

(2) Major (over $500,000) military construction.

(3) Wetland construction.

(4) Disposal of hazardous or toxic wastes.

(5) Cumulative use of pesticides.

(6) Preparation of regulations, directives, manuals, or other guidance that have a potential for significant impact on the environment.

(7) Significant changes to established installation land use.

(8) Major weapons system development and acquisition.

(9) Development of installation master plans.

(10) Real estate withdrawals of federal property.

(11) Disposal of DoD real estate.

C. *Environmental Assessment Phase*

1. *When to Prepare.* DoD Components will begin preparation of an environmental assessment as early as possible after the determination that an assessment is required. DoD Components may prepare an environmental assessment at any time to assist planning and decisionmaking.

2. *Content and Format.* The environmental assessment is a concise public document to determine whether to prepare an environmental impact statement, aiding in compliance with the Act when no environmental impact statement is necessary, and facilitating preparation of a statement when one is necessary. Preparation of an environmental assessment generally will not require extensive research or lengthy documentation. The environmental assessment shall contain brief discussions of the following:

a. Purpose and need for the proposed action.

b. Description of the proposed action.

c. Alternatives considered.

d. Environmental impact of the proposed action and alternatives.

e. Listing of agencies and persons consulted.

f. Conclusion of whether to prepare an environmental impact statement.

3. *Public Participation.* DoD Components shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing environmental assessments. In determining "to the extent practicable," DoD Components will consider:

a. Magnitude of the proposal.

b. Likelihood of public interest.

c. Need to act quickly.

d. Likelihood of meaningful public comment.

e. National security classification issues.

f. Need for permits.

g. Statutory authority of environmental agencies regarding the proposal.

4. *Finding of No Significant Impact.* If a DoD Component determines on the basis of the environmental assessment not to prepare an environmental impact statement, the DoD Component shall prepare a finding of no significant impact in accordance with Section 1501.4(e) and make the finding of no significant impact available to the public as specified in Section 1506.6. A finding of no significant impact is not required when the decision not to prepare an environmental impact statement is based on categorical exclusion.

5. *Notice of Intent.* When a DoD Component decides to prepare an environmental impact statement, it shall publish a notice of intent in the **Federal Register.** The notice of intent shall be published before initiation of the scoping process.

D. *Environmental Impact Statement Phase*

1. *Scoping.* After determination that an environmental impact statement will be prepared and publication of the notice of intent, the DoD Component will initiate the scoping process in accordance with Section 1501.7.

2. *Preparation.* Based on the scoping process, the DoD Component will begin preparation of the environmental impact statement. Detailed procedures for preparation of the environmental impact statement are provided in Part 1502, CEQ Regulations.

3. *Supplemental Environmental Impact Statements.* DoD Components may at any time supplement a draft or final environmental impact statement. DoD Components shall prepare a supplement to either the draft or final environmental impact statement when required under the criteria set forth in

Section 1502.9(c). DoD Components will prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of scoping) as a draft or final statement and will introduce the supplement into their formal administrative record.

4. *Information on the NEPA Process.* Information or status reports on environmental impact statements and other elements of the NEPA process shall be provided to interested persons upon request.

a. Each DoD Component shall designate in its regulation implementing this part—where interested persons can get information.

b. For those actions related to the Office of the Secretary of Defense, information is available by writing the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics), Washington, D.C. 20301.

5. *Circulation of Environmental Impact Statements.* DoD Components shall circulate draft and final environmental impact statements as prescribed in paragraph 1502.19. In addition, DoD Components shall provide one copy of each draft and each final statement to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics).

6. *Classified Material.* It may be necessary for DoD Components to include classified material in environmental documentation. Classified environmental impact statements shall be prepared, safeguarded, and disseminated in accordance with Executive Order 12065 as implemented by DoD Regulation 5200.1–R [32 FR 159]. The requirements for circulation (section 1502.19) and public involvement (Section 1506.6) do not apply to classified environmental documents except where circulation and involvement can be accomplished in accordance with the provisions of DoD Regulation 5200.1–R. When feasible, environmental documents shall be organized in such a manner that classified portions can be included as annexes so that unclassified portions can be made available to the public in the normal manner.

E. *Pre-Implementation Actions*

1. *Decisionmaking.* DoD Components shall ensure that decisions are made in accordance with the policies and procedures of the Act and that the NEPA process is integrated into the decisionmaking process. Because of the size and diversity of the Department of Defense, it is not feasible to describe in this part the decisionmaking process for each of the various DoD programs. Proposals and actions may be initiated at any level down to and including the installations. Similarly, review and approval authority may be exercised at various levels depending on the nature of the action, available funding, and statutory authority. DoD Components may provide further guidance, commensurate with their programs and organization, for integration of environmental considerations into the decisionmaking process. In accordance with Section 1505.1, such guidance shall include the following procedures:

a. As a minimum, DoD Components shall consider environmental effects at the following major decision points.

(1) Decision by initiating organization or agency to forward a proposal to the approval authority.

(2) Decision by any intermediate review authority to forward a proposal to the approval authority.

(3) Decision by approval authority to implement a proposal.

b. Relevant environmental documents, comments, and responses shall be made part of the record in formal rulemaking or adjudicatory proceedings.

c. Relevant environmental documents, comments, and responses shall accompany a proposal through existing DoD Component review processes so that DoD Component decisionmakers use the environmental documents in making decisions.

d. The alternatives considered by the decisionmaker shall encompass the range of alternatives discussed in relevant environmental documents. The decisionmaker shall consider the alternatives described in the environmental impact statement.

2. *Record of Decision.* In those cases requiring environmental impact statements, DoD Components at the time of their decision or, if appropriate, their recommendation to Congress, shall prepare a concise public record of decision. The record of decision is not intended to be an extensive, detailed document for the purpose of justifying the decision. Rather, it is a concise document that sets forth the decision and describes the alternatives and relevant factors considered as specified in section 1505.2. The record of decision will normally be less than three pages in length.

3. *Mitigation.* Throughout the NEPA process, DoD Components shall consider mitigation measures to avoid or minimize environmental harm. Mitigation measures or programs will be identified, when appropriate, in the environmental impact statement and made available to decisionmakers. Mitigation and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the DoD Component.

4. *Monitoring.* If a DoD Component determines that monitoring is applicable for established mitigation, a monitoring program will be adopted to assure the mitigation measures are accomplished. DoD Components shall provide monitoring information, upon request, as specified in Section 1505.3. This does not, however, include standing or blanket requests for period reporting.

5. *Emergencies.* In the event of an emergency, DoD Components may be required to take immediate action with significant environmental impact. DoD Components shall notify the ASD (MRA&L) of the emergency action at the earliest possible time so that the ASD (MRA&L) may consult with the Council. In no event, shall DoD Components delay an emergency action necessary to the preservation of national security or preservation of human life for the purpose of complying with the provision of this directive or the CEQ Regulations.

Annex A—DOD List of Categorical Exclusion

1. Preparation of regulations, directives, manuals, or other guidance that implement, without substantial change, the regulations, directives, manuals, or other guidance of higher headquarters or another federal agency.

2. Preparation of regulations, directives, manuals, and other guidance related to actions which qualify for categorical exclusion.

3. Training activities and training exercises conducted on DoD installations in accordance with established procedures and land use designations.

4. Procurement activities that provide goods and services for routine installation operations and support.

5. Routine installation maintenance and groundskeeping activities.

6. Minor construction conducted in accordance with approved installation master plans that does not significantly alter land use and provided that the operation of the project when completed would not of itself have a significant environmental impact.

7. Routine operation of ships, aircraft and mobile equipment in accordance with prescribed service regulations.

8. Reduction in force resulting from workload adjustments, reduced personnel or funding levels, skill imbalances, or other similar causes.

9. Studies that involve no commitment of resources other than manpower and funding.

H. E. Lofdahl

Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

May 10, 1979.

[DoD Directive 6050.1]

[FR Doc. 79-15089 Filed 5-14-79; 8:45 am]

BILLING CODE 3810-70-M

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 65]

Proposed Delayed Compliance Order for the City of Dover, Ohio, Municipal Power Plant

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed Rule.

SUMMARY: U.S. EPA proposes to issue an Administrative Order to the City of Dover, Ohio. The Order requires the City to bring boiler #4 at the Municipal Power Plant (the source) into compliance with Regulations AP-3-07 and AP-3-11, part of the federally approved Ohio State Implementation Plan (SIP). Because the City is unable to comply with these regulations at this time, the proposed Order would establish an expeditious schedule requiring final compliance by July 1, 1979. Source compliance with the Order would preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act (the Act) for violation of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on U.S. EPA's proposed issuance of the Order.

DATES: Written comments must be received on or before June 14, 1979. Notice and requests for a public hearing must be received on or before May 30, 1979. All requests for a public hearing should be accompanied by a statement of why the hearing would be beneficial and a text or summary of any proposed testimony to be offered at the hearing. If there is significant public interest in a hearing, it will be held after twenty-one days prior notice of the date, time, and place of the hearing has been given in this publication.

ADDRESSEES: Comments and requests for a public hearing should be submitted to Director, Enforcement Division, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. Material supporting the Order and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur E. Smith, Jr., Attorney, Enforcement Division, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, at (312) 353-2082.

SUPPLEMENTARY INFORMATION: The City of Dover, Ohio, owns and operates the Municipal Power Plant. The proposed Order addresses emissions from Boiler #4 at this facility, which is subject to Ohio AP-3-07 and AP-3-11 of the Ohio Implementation Plan. The regulations limit the emissions of particulate matter and are part of the federally approved Ohio State Implementation Plan. The Order requires final compliance with the regulations by July 1, 1979, and the source has consented to its terms.

The proposed Order satisifies the applicable requirements of Section 113(d) of the Act. If the Order is issued, source compliance with its terms would preclude further U.S. EPA enforcement action under Section 113 of the Act against the source for violations of the regulations covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provisions of the Act (Section 304) would be similarly precluded.

Comments received by the date specified above will be considered in determining whether U.S. EPA should issue the Order. Testimony given at any public hearing concerning the Order will also be considered. After the public comment period and any public hearing, the Administrator of U.S. EPA will publish in the **Federal Register** the Agency's final action on the Order in 40 CFR Part 65.

Dated: April 23, 1979.

John McGuire,

Regional Administrator, Region V.

1. In consideration of the foregoing, it is proposed to amend 40 CFR Chapter I, as follows:

PART 65—DELAYED COMPLIANCE ORDERS

§ 65.400 [Amended]

By adding an entry to the table § 65.400, *Federal Delayed Compliance Orders issued under Section 113(d)(1), (3), and (4) of the Act,* to reflect approval of the following order.

2. The order reads as follows:

U.S. Environmental Protection Agency
Region V

Order No. ———

In the matter of City of Dover, Dover Municipal Power Plant, Dover, Ohio. Proceeding pursuant to Section 113(d) of the Clean Air Act, as Amended (42 U.S.C. Section 7413(d)).

The ORDER is issued this date pursuant to Section 113(d) of the Clean Air Act, as amended, 42 U.S.C. Section 7401 *et seq.* (Act). This ORDER contains a schedule for compliance, interim control requirements, and monitoring and reporting requirements. Public notice, opportunity for a public hearing, and thirty days notice to the State of Ohio have been provided pursuant to Section 113(d)(1) of the Act.

Findings

1. On January 12, 1978, the United States Environmental Protection Agency (U.S. EPA) issued a Notice of Violation, pursuant to Section 113(a)(1) of the Act, to the City of Dover, notifying the City of Dover that Boiler #4 was in violation of Ohio AP-3-11, a part of the applicable Implementation Plan defined in Section 110(d) of the Act. This finding was based upon emission factor calculations derived from data submitted to U.S. EPA by the subject facility. In addition, Boiler #4 was found to be in violation of Ohio AP-3-07, a part of the applicable Implementation Plan. This finding was based on visible observations made on May 19, 1977, and December 6, 1977.

2. The Dover Municipal Power Plant has a total of four boilers identified as Boilers #1, #2, #3, and #4. Boiler #4 is the newest and largest of the boilers, provides power for the largest generator, and is the principal source of steam in the plant.

3. In satisfaction of Section 113(a)(4) of the Act, opportunity to confer with the Administrator's delegate was given to the City, and on March 6, 1978, a conference was held.

4. It has been determined that the City is unable to immediately comply with the applicable Implementation Plan.

After a thorough investigation of all relevant facts, including public comment, it is determined that the schedule for compliance set forth in this ORDER is as expeditious as practicable, and that the terms of this ORDER comply with Section 113(d) of the Act. Therefore, it is hereby ORDERED:

Order

I. That the City of Dover will comply with the Ohio Implementation Plan regulations AP-3-07 and AP-3-11 in accordance with the following schedule on or before the dates specified therein.

In regard to the Dover Municipal Power Plant Boiler #4:

1. Achieved—The City of Dover shall submit final control plans to U.S. EPA.

2. Achieved—The City of Dover shall award contracts for the control equipment for Boiler #4.

3. Achieved—The City of Dover shall initiate on-site construction for the control equipment for Boiler #4.

4. July 1, 1979—The City of Dover shall complete on-site construction and achieve final compliance with Ohio Implementation Plan regulations AP–3–07 and AP–3–11 for Boiler #4.

5. Within 2 months after July 1, 1979—Pursuant to Sections 113(a) and 114, the City of Dover shall demonstrate that Boiler #4 operates in compliance with Ohio Implementation Plan regulations AP–3–07 and AP–3–11.

II. That the City of Dover, Boiler #4 shall use the best practicable interim system of emission reduction so as to minimize particulate emissions; avoid any imminent and substantial endangerment to the health of persons; comply with the requirements of the applicable implementation plan insofar as it is able to; and, comply with the following interim requirements:

A. The City shall operate amd maintain existing control equipment to maximize reliability and efficiency during the interim period preceding final compliance.

B. After July 10, 1978, all boiler controls shall be set for the most efficient opertion at the upper 25 percent of boiler capacity to minimize particulate emmissions from the boiler.

C. The City shall operate and maintain the boiler to minimize particulate matter emissions during the interim period preceding final compliance.

D. The City shall submit to U.S. EPA operation and maintenance procedures within one month of the effective date of this Order detailing the practices followed to maintain reliability and efficiency of the boiler and control equipment.

III. That the City of Dover, Boiler #4, shall comply with the following emission monitoring and reporting requirements:

A. *Emission Monitoring*

Pursuant to Sections 113(a) and 114, the City shall install a continuous monitoring system for the measurement of opacity at all stacks venting flue gas generated by Boiler #4 not later than July 1, 1979. The continuous monitoring system shall be installed, calibrated, maintained, and operated in accordance with the procedures set forth in Appendix B of 40 CFR Part 60. Data recorded by the monitoring system shall be retained by the City for a period of two years after it is obtained.

B. *Reporting Requirements*

1. No later than fifteen days after any date for achievement of an incremental step for final compliance, specified in this ORDER, the City of Dover shall notify U.S. EPA in writing of its compliance, or noncompliance and reasons therefore, with the requirement. If delay is anticipated in meeting any requirement of this ORDER, the City of Dover shall immediately notify U.S. EPA in writing of the anticipated delay and reasons therefore. Notification to U.S. EPA of an anticipated delay does not excuse delay.

2. Beginning three months after the date for achievement of the first increment of progress specified in this Order, the City shall submit a status report to U.S. EPA detailing the progress made during that quarter. These reports shall be submitted quarterly until the schedule for compliance has been completed.

3. The City shall notify U.S. EPA in writing at least thirty (30) days in advance of performing the stack test required to demonstrate compliance.

4. Pursuant to Sections 113(a) and 114, a quarterly report shall be sent to the U.S. EPA after July 1, 1979, reporting all 6-minute data averages (reduced as specified in 40 CFR 60.13(h)) in excess of 20 percent.

5. All submittals and notifications to U.S. EPA pursuant to this ORDER shall be made to Chief, Compliance Section, Enforcement Division, U.S. EPA, 230 South Dearborn, Chicago, Illinois 60604. A copy of all submittals and notifications shall be sent to the Southeast District, Ohio EPA, 2195 Front Street, Logan, Ohio 43138.

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

V. The City of Dover is hereby notified that its failure to achieve final compliance by July 1, 1979, at Boiler #4 may result in a requirement to pay a noncompliance penalty under Section 120. In the event of such failure, the City of Dover will be formally notified, pursuant to Section 120(b)(3) and any regulations promulated thereunder, of its noncompliance.

VI. This ORDER is effective upon final publication in the **Federal Register**.

Date————.

————————————.

Administrator, U.S. Environmental Protection Agency.

Waiver of Rights to Challenge Order

Although the City of Dover does not admit any violation of AP–3–07 and AP–3–11, the City, by the duly authorized undersigned, hereby consents to the provisions of this ORDER and waives any and all rights under any provisions of law to challenge this ORDER.

Date————.

————————————.

(Signature of authorized representative of source)

[FRL 1222-8]

[FR Doc. 79-15032 Filed 5-14-79; 8:45 am]

BILLING CODE 6560-01-M

[40 CFR Part 256]

Guidelines for Development and Implementation of State Solid Waste Management Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental Notice of Proposed Rulemaking.

SUMMARY: In response to a recent petition, EPA is soliciting public comment on one issue relating to proposed guidelines for state solid waste plans under § 4002(b) of the Resource Conservation and Recovery Act. The issue is whether the guidelines should require notice and a hearing opportunity before a disposal facility is included in the "open dump" inventory. EPA proposed these guidelines on August 28, 1978 and intends to finalize them by the end of June.

DATE: Written public comments should be submitted to the person named below by June 14, 1979.

ADDRESS: Written public comments should be submitted to: Ms. Susan Absher, Office of Solid Waste (WH–564), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Absher (202) 755–9125.

SUPPLEMENTARY INFORMATION:

I. Purpose

On August 28, 1978, EPA proposed Guidelines for the Development and Implementation of State Solid Waste Managment Plans (43 FR 38534) under section 4002(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (the Act). On April 24, 1979, the National Solid Waste Managment Association (NSWMA) filed a petition under section 7004(a) of the Act asking that EPA publish regulations setting forth procedures for notice and a hearing which must precede the inclusion of a disposal facility in the "open dump" inventory. If EPA promulgates the regulations requested by NSWMA, such regulations will be directed to the states under authority of section 4002(b). Therefore, NSWMA's petition for rulemaking is being considered as part of the ongoing rulemaking for the section 4002(b) guidelines.

Public comment on this issue will be beneficial because it was not fully explored in the August 28 proposal or the public comments which followed. Because EPA is under court order to promulgate the section 4002(b) guidelines by June 30, 1979, EPA is providing only a 30-day comment period. Due to the court order, EPA will be unable to extend the public comment period deadline. EPA believes that such a period is fully adequate because only one basic legal issue is involved.

The petition filed by NSWMA argues that some form of notice and hearing is required by the Act, the Administrative Procedure Act and/or the United States Constitution before a disposal facility may be included in the "open dump" inventory under the Act. EPA is attaching NSWMA's petition to this notice to give the public an opportunity to examine the complete argument.

It should be noted that today's action bears only upon Subtitle D of the Act,

which covers State solid waste programs. This supplemental notice does not relate to EPA's hazardous waste proposals (Subtitle C) of December 18, 1978 (43 FR 58946).

II. EPA's Current Position

While EPA will actively consider the NSWMA petition and the comments generated by this supplemental notice, EPA's current position is that nothing in Federal statutory or Constitutional law requires notice and hearing before a facility is listed on the open dump inventory. EPA's position is based upon its interpretation of the role which the open dump inventory plays in the administration of the Act.

Under section 4004 of the Act, EPA is to promulgate criteria for determining which solid waste disposal facilities should be classified as sanitary landfills and which should be classified as open dumps. Those criteria are to serve as the basis for each state's inventory that identifies "open dumps." EPA believes that the states should conduct this inventory, as the first stage in their solid waste management planning effort, because they will ultimately be responsible for taking any enforcement action against unacceptable sites.

Under Section 4005(b) EPA is responsible for publishing an inventory of "open dumps." The inventory performs two functions: (1) It provides information to Congress, the states and the public about the dimensions of the environmental problem presented by non-hazardous wastes; and (2) it identifies for the states the set of disposal sites which should be the focus of their solid waste management planning effort.

NSWMA's arguments apparently stem from confusion that has arisen over the relationship between the section 4005(b) inventory and the Federal prohibition of open dumping contained in section 4005(c) of the Act.[1] EPA believes that this prohibition and the inventory perform different functions in the statutory scheme.

The section 4005(c) prohibition covers environmentally damaging acts, wherever they may occur. Such acts may occur at existing solid waste disposal facilities, however classified, or at locations not within the site classification scheme (e.g. along a highway.) The purpose of the section 4005(c) prohibition is to give states and citizens, through the citizen suit provision in section 7002, a means for taking action against environmentally damaging acts that violate Federal criteria. There is no provision in the Act for Federal enforcement of the prohibition.

The section 4005(b) inventory was not designed to constitute the first step in the enforcement of the section 4005(c) prohibition. The inventory is an informational planning tool which identifies priorities for state planning programs. Inclusion on the list does not constitute an administrative determination by EPA that a facility is engaging in illegal acts. The issue of whether a person is engaging in open dumping is a question for the Federal courts to resolve after full consideration of all legal and factual matters related to the individual case. Information generated from the inventory could be used in such suits, but its admissibility and weight would be a question for the court to determine. The focus in such a suit would be on the acts of the alleged dumper. The location of the dumping activity would be a relevant concern for the court, but the site's particular status in the state planning inventory scheme would not be determinative of whether open dumping acts had occurred.

Under EPA's current interpretation, the inventory is essentially an informational exercise and inclusion on the list does not invoke any particular legal sanctions against the facility or involve any deprivation of individual rights. Thus, a federal hearing would not be required as a matter of Federal statute or Constitutional law. There may be a right to a hearing before enforcement action could be taken by the state, but that is a matter to be resolved in the context of state laws and regulations.

The NSWMA petition also suggests, in the alternative, that notice and opportunity for public comment should precede EPA's publication of the inventory. This argument is also based on a misunderstanding of EPA's role in the state planning process. EPA establishes general definitions and guidelines which aid in the development of state programs. It is then up to the states to implement that program. In publishing the inventory of "open dumps," EPA is merely reporting to the public on the states' actions in the first stage of their planning programs. The inventory is conducted by the states, and EPA will publish the lists it receives from the states without assessing the validity of the classifications made by the states. In such a context a notice and comment period at the Federal level would be superfluous. Moreover, to add a Federal lawyer of review would defeat the Congressional intent that the inventory be published promptly and that the implementation of Subtitle D of the Act be left to the states.

EPA has accordingly reached the tentative conclusion that neither hearings nor public comment proceedings are necessary for the publication of the open dump inventory. In addition to soliciting public comment on EPA's position and the arguments advanced in the NSWMA petition, EPA would also be interested in public comment, particularly from the states, concerning administrative problems that may arise with either EPA's current approach or NSWMA's proposed approach.

Dated: May 9, 1979.

Thomas C. Jorling,

Assistant Administrator for Water and Waste Management.

April 24, 1979.

The Honorable Douglas M. Costle,
Administrator
United States Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Dear Mr. Costle: I am transmitting to you with this letter a Petition for Rulemaking Under the Solid Waste Disposal Act, Section 7004(a), pertaining to the conduct of the inventory of solid waste land disposal facilities required under Section 4005(b) of the act. Specifically, our petition asks you to publish regulations setting forth procedures for notice and public hearing prior to the listing of a site as an "open dump" under the meaning of the Act.

NSWMA contends that this opportunity for "due process" is a matter of constitutional right, notwithstanding the opinion given informally to us by EPA that inclusion of any site on a list of open dumps does not, in and of itself, constitute a prohibition or trigger an enforcement action. Arguments to support our contention are included in the petition.

Lest our intentions be misinterpreted, let me state unequivocally that we support the objectives of RCRA including termination of the practice of open dumping of solid wastes. We are not confident, however, that the inventory of disposal sites under Subtitle D as now conceived will accomplish this objective. Not only has the task become much more complicated and the sites to be examined more numerous than originally anticipated, but also the resources and time in which to conduct the inventory have been severely constrained. As a result, we are concerned that the inventory will be conducted superficially or incompletely, perhaps by persons with inadequate training and experience.

Our petition therefore requests that EPA provide a mechanism through administrative regulation whereby disposal site operators have an opportunity to receive due process before any site is listed in the inventory of open dumps.

We trust you will act expeditiously on this matter since the date for the publication of the Sanitary Landfill Criteria and the

[1] Section 4005(c) states, "Any solid waste management practice or disposal of solid waste or hazardous waste which constitutes the open dumping of solid waste or hazardous waste is prohibited * * *".

beginning of the investigation is fast approaching.

Sincerely yours,

Eugene J. Wingerter,

Executive Director.

To: The Honorable Douglas M. Costle, Administrator, United States Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Petition For Rulemaking Under the Solid Waste Disposal Act

April 10, 1979.

Submitted by National Solid Wastes Management Association On Behalf of Its Member Companies

Introduction

On behalf of its member companies, the National Solid Wastes Management Association (NSWMA) hereby petitions the United States Environmental Protection Agency (EPA), pursuant to Section 7004(a) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, (SWDA), 42 U.S.C. 6974(b), and Section 4(e) of the Administrative Procedures Act (APA), 5 U.S.C. 553(e), to publish regulations setting forth its procedures for notice and opportunity for hearing prior to publication of its inventory list designating solid management facilities (SWMF's) as either "open dumps" or "sanitary landfills," as required by Section 4005(b) of the SWDA, 42 U.S.C. 6945.

On February 6, 1978, the EPA published proposed criteria for classifying an SWMF an open dump or a sanitary landfill, as required by Section 4004 of the SWDA. 43 FR 4941 (Feb. 6, 1978). EPA is currently under a judicial, as well as a legislative, mandate to finalize those criteria by July 31, 1979, and complete the open dump/sanitary landfill inventory (hereinafter inventory) by July 31, 1980.

In the preamble to its open dump/sanitary landfill classification criteria (hereinafter criteria) at page 4944, the EPA states that any SWMF failing to met the criteria will be designated in the inventory as an open dump and will be subject to regulatory action in states with solid waste management plans approved by EPA under Section 4003 of the SWDA. The EPA also states that such an SWMF will come within the prohibition against open dumping contained in Section 4005, and, therefore, it will be subject to enforcement actions through suits brought by any citizen under Section 7002 of the SWDA, 42 U.S.C. 6972, or suits brought by the EPA under Section 7003 of the SWDA, 42 U.S.C. 6973.

Pursuant to Section 7004(b) of the SWDA, the EPA has promulgated regulations providing guidance for insuring public participation in all regulatory actions under the SWDA. 40 CFR Part 25. 44 FR 10285 (Feb. 16, 1979). However, these regulation do not contain any provisions setting forth the required procedures for notice and opportunity for hearing prior to designating any SWMF as an open dump. Nor has EPA published any other regulations setting forth such required procedures.

NSWMA submits that any action by the EPA to classify an SWMF as an open dump or sanitary landfill, and include that SWMF in its inventory list, must be preceded by notice to the SWMF owner/operator, and he must be afforded an opportunity for a hearing prior to publication of any such inventory list. As discussed in more detail below, NSWMA believes that such notice and opportunity for hearing is required by the Fifth Amendment to the Constitution of the United States, and Sections 4, 7, 8 and 9 of the APA. U.S. Const. Fifth Amendment and 5 U.S.C. 553, 556, 557 and 558. Finally, NSWMA also believes that such notice and opportunity for a hearing is required by Section 7004(b) of the SWDA. 42 U.S.C. 6974(b).

1. *The APA Mandates That EPA Provide An SWMF Owner/Operator With Notice And Opportunity For Hearing Before Designating The SWMF As An Open Dump.*

a. *The APA Requires The EPA To Afford An SWMF Owner/Operator An Opportunity For An "Adjudicatory Hearing" Before Designation As An Open Dump.* Section 9 of the APA, 5 U.S.C. 558, requires the EPA to provide all its licensees with an opportunity for an adjudicatory hearing in conformance with Sections 7 and 8 of the APA, 5 U.S.C. 556 and 557, prior to the initial issuance, denial, revocation, or modification of a license. *Marathon Oil Co.* v. *EPA*, 564 F.2d 1253, 12 ERC 1098 (9th Cir. 1977); and *U.S. Steel* v. *Train*, 556 F.2d 822, 10 ERC 1001 (7th Cir. 1977). NSWMA submits that the EPA, in the act of inventorying all SWMF's and listing them as open dumps or sanitary landfills as required by Section 4005 of the SWDA, is performing a licensing procedure as that term is defined by Section 2(e) of the APA. 5 U.S.C. 551(8) and (9). *New York Pathological and X-Ray Laboratories, Inc.* v. *Immigration and Naturalization Service*, 523 F.2d 79 (2d Cir. 1975); and *Blackwell College of Business* v. *U.S. Attorney General*, 454 F.2d 928 (2d Cir. 1971). *See also, Dow Chemical Co.* v. *Consumer Product Safety Commission*, F. Supp. (E.D. La. 1978).* Therefore, prior to being listed as an open dump pursuant to Section 4005 of the SWDA, every SWMF owner/operator is entitled to notice and opportunity for an adjudicatory hearing as required by Sections 7, 8 and 9 of the APA.

b. *At a Minimum, the APA Requires the EPA to Publish Notice Of Any Proposed Inventory List and Allow for Public Comment/Hearings Before Finalizing any Such List.* In the alternative, and without waiving any right of its member companies to assert entitlement to notice and opportunity for an adjudicatory hearing pursuant to Sections 7, 8 and 9 of the APA, the NSWMA also submits that, at a minimum, Section 4 of the APA, 5 U.S.C. 553, requires the EPA to publish notice of any proposed inventory list in the **Federal Register** and afford an opportunity for public comment/hearing thereon before finalizing any such list. *Buckeye Power Co.* v. *EPA*, 481 F.2d 162, 5 ERC 1611 (6th Cir. 1973).

2. *Public Participation Through Notice and Opportunity To Comment On Any Proposed Inventory List Is Mandated by Section 7004(b) of the SWDA.* Section 7004(b) of the SWDA states, *inter alia*, that the EPA shall provide for "public participation in the development, revision, implementation and enforcement of any regulation, guideline, information or program under this Act." With respect to any determination regarding any proposed inventory list under Section 4005(b), in order to comply with this mandate, prior notice and an opporunity to comment must be afforded the public before proceeding to finalize any such list. *Cf.*, 40 CFR 25.10(a).

3. *In Order To Afford An SWMF Owner/Operator Effective Procedural Due Process Mandated By The Fifth Amendment Of The U.S. Constitution, The EPA Must Issue Notice And Provide Opportunity For A Hearing With Right Of Cross Examination Before Designating An SWMF As An Open Dump.* NSWMA submits that any failure by the EPA to afford any SWMF operator notice and opportunity for a hearing before designating his facility as an open dump will not only be violative of the APA and the SWDA, but also will constitute a denial of his procedural due process rights guaranteed by the Fifth Amendment. Clearly, each SWMF owner/operator has a vested property interest in his facility which will undeniably be jeopardized by any action by the EPA in designating it as an open dump. As stated by the EPA in its preamble to the criteria, such an SWMF will be subject to state and federal enforcement actions, as well as potential citizen's suits. Consequently, before such a designation may occur, "some kind of prior hearing is paramount." *Board of Regents of State Colleges* v. *Roth*, 408 U.S. 564, 570 (1972).**

* The EPA has disclosed to NSWMA that it intends to ask the states to perform the field inventory for it, and that it will accept *pro forma* any state designation of an SWMF as an open dump or sanitary landfill. NSWMA submits that the EPA's interpretation of its responsibilites under Section 4005 is untenable. The EPA's responsibilities under Section 4005 to inventory and publish a list of SWMF's which are open dumps or sanitary landfills constitute nondelegatable duties. Nowhere in Section 4005 (or anywhere else in the SWDA) is it stated that the EPA may delegate these responsibilities to the states or to anyone else. This is not, or course, to say that the data for that determination may not be gathered by the states, or by anyone else acting as a contractor for EPA. Nevertheless, for purposes of the Section 4005 prohibition against open dumping and the inventory required therein, the EPA is the ultimate decision maker who must weigh and balance the facts from the threshold. The EPA is not bound by law to accept the state's designation. As stated in this petition, the EPA is required to offer an SWMF owner/operator an opportunity to be heard regarding any such decision. *Consolidation Coal Co.* v. *EPA*. F.2d , 9ERC 1056 (4th Cir. 1976); and *Decision of General Counsel On Matters Of Law Pursuant to 40 CFR 125.36(m)*, No. 14 (May 21, 1975).

** In recent public meetings between the EPA and the NSWMA, the EPA had indicated that, as it now interprets the SWDA, the prohibition against open dumping in Section 4005(c) will not result in any SWMF designated by it as an open dump being placed in jeopardy of suits under Sections 7002 or 7003 for injunctive relief or damages, etc. NSWMA does not feel as confident as EPA that this interpretation will be sustained by the courts. As pointed out in those public meetings, the language in Sections 4005(c), 7002 and 7003 may be sufficiently broad enough to lead a court to rule contrary to EPA's interpretation. Regardless, an SWMF owner/operator will sustain sufficient economic damages by being included on that list (whether or not such suits may be filed) merely by losing business as a

Footnotes continued on next page

The type of hearing required will, of course, depend upon the circumstances, *Board of Regents* v. *Roth, supra*, at p. 570, n.8. Nevertheless, it is clear that "what is required in all instances * * * is 'the reality of an opportunity to submit an effective presentation.' " *Appalachian Power Co.* v. *EPA*, 477 F.2d 142, 5 ERC 1222, 1228 (4th Cir. 1973). In circumstances such as the inventory, where the issues are complex and the impact upon the SWMF owner/operator is rather substantial, the right of cross examination must be afforded. *Appalachian Power Co.* v. *EPA, supra;* and *International Harvester* v. *Ruckelshaus*, F.2d , 4 ERC 2041 (D.C. Cir. 1973).

Conclusion

Based upon the legislative and judicial authorities cited in this petition, the EPA must grant the petition and promulgate the requred regulations "within a reasonable time following receipt" of this petition. SWDA, Section 7004(a). 42 U.S.C. 6974(a). Since the inventory is scheduled to begin on or near July 31, 1979, it would appear that the regulations petitioned herein must be promulgated not later than July 30, 1979.

The NSWMA recognizes the EPA is under court order to finalize its Section 4004 regulations and commence its inventory by July 31, 1979. The NSWMA stands ready to assist the EPA in promulgating the regulations sought in this petition in any way requested. We hope to be meeting, in the near future, with members of your agency responsible for the Section 4004–4005 program to discuss approaches to expediting promulgation of the regulations sought by this petition.

[FRL 1235–8]
[FR Doc. 79–15147 Filed 5–14–79; 8:45 am]
BILLING CODE 6560–01–M

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 76]

Cable Television Syndicated Program Exclusivity Rules; Inquiry Into the Economic Relationship Between Television Broadcasting and Cable Television

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rulemaking in Dockets 21284 and 20988.

SUMMARY: Commission considers elimination of the cable television distant signal carriage rules and syndicated program exclusivity rules and denies petitions for rulemaking on a cable television retransmission consent proposal and on regulatory restrictions on cable carriage of television signals distributed by satellite.

DATES: Comments must be received on or before July 17, 1979, and reply comments on or before August 16, 1979.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Bill Johnson or Steve Bailey, Cable Television Bureau (202) 632–6468.

SUPPLEMENTARY INFORMATION:

In the matter of cable television syndicated program exclusivity rules and an inquiry into the economic relationship between television broadcasting and cable television; notice of Proposed Rule Making.

Adopted: April 25, 1979.

Released: May 7, 1979.

By the Commission: Commissioners Ferris (Chairman), Fogarty and Brown issuing separate statements; Commissioner Lee dissenting and issuing a statement; Commissioners Quello and Washburn issuing a joint separate statement; Commissioner Washburn issuing a concurring statement.

1. With this *Notice* we are commencing a proceeding that looks toward a complete re-evaluation of those of our rules that restrict cable television carriage of distant television broadcast stations' signals or syndicated programs constituting part of such signals.

2. This *Notice of Proposed Rule Making* is adopted in conjunction with our *Report in Docket 20988*, FCC 79–242, —— FCC2d ——, (hereafter *Syndicated Exclusivity Report)* and *Report in Docket 21284*, FCC 79–241, —— FCC2d ——, (hereinafter *Economic Inquiry Report*). Those Reports are incorporated by reference here and, with the discussion that follows, constitute the premises for our conclusion that the distant signal and program exclusivity limits should be deleted from our rules.

Introduction

3. The Commission has been either directly or indirectly regulating the carriage of television broadcast signals by cable systems since 1962.[1] The Commission began exercising direct jurisdiction over cable television signal carriage in 1966.[2] The signal carriage rules were revised in major respects in 1972,[3] and a number of less extensive revisions were made over the course of the next seven years.[4] The rules affecting signals carried on cable now in force are of the following types:

—rules that mandate carriage of particular signals,

—rules that limit the carriage of distant commercial signals or noncommercial educational signals,

—rules that require the deletion of particular network or syndicated programs from signals that are carried, and

—rules that require deletion of particular sports programs from signals that are carried.

4. The need for these rules has been widely questioned and the economic facts underlying them challenged. Accordingly, in November of 1976 we issued our *Notice of Inquiry in Docket 20988* commencing a detailed review of the rules that limit cable television carriage of syndicated programs on distant signals.[5] We followed this in June of 1977, with our *Notice of Inquiry in Docket 21284* which commenced a more general review of the economics of the relationship between television broadcasting and cable television.[6]

5. We have also received petitions for rule making from the National Cable Television Association (RM–2721 and RM–2919) requesting the elimination of Commission signal carriage regulation, from the National Telecommunications and Information Administration of the Department of Commerce (RM–3324) proposing changes in the syndicated exclusivity rules and the imposition of a requirement that new or expanded cable television operations only be permitted to carry distant signals with the consent of the originating station, and from the National Association of Broadcasters (RM–3346) asking that we take some type of regulatory action with respect to what is described as the "superstation

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result of the adverse publicity which will arise therefrom. This has been deemed sufficient jeopardy to give rise to a right to a hearing. *See, Dow Chemical Co.* v. *Consumer Product Safety Commission*, F.Supp. (E.D. La. 1978).

[1] *Carter Mountain Transmission Corp.*, FCC 62–177, 32 FCC 459 (1962).

[2] *Second Report and Order In Dockets 14895, 15233, and 15971*, FCC 66–220, 2 FCC 2d 725 (1966).

[3] *Cable Television Report and Order*, FCC 72–108, 36 FCC 2d 143 (1972).

[4] *See, e.g., First Report and Order in Docket 19995*, FCC 75–413, 52 FCC 2d 519, (1975) (revising network nonduplication rules); *Report and Order in Docket 20487*, FCC 75–1409, 57 FCC 2d 625 (1975) (revising "leapfrogging" rules); *First Report and Order in Docket 20553*, FCC 76–189, 58 FCC 2d 442 (1976) (exempting "specialty" stations from the signal carriage limitations); *Report and Order in Docket 20496*, FCC 77–480, 65 FCC 2d 218 (1977) (authorizing wider carriage of UHF stations signals); *Second Report and Order in Docket 20561*, FCC 78–288, 68 FCC 2d 18 (1977) (exempting cable television systems with fewer than 1,000 subscribers from the signal carriage limitations).

[5] *Notice of Inquiry in Docket 20988*, FCC 76–1025, 61 FCC 2d 746 (1976).

[6] *Notice of Inquiry in Docket 21284*, FCC 77–407, 65 FCC 2d 9 (1977).

problem." [7] The rule making petitions and the two Inquiry proceedings all relate to the same general subject matter and will therefore be considered together. We do not propose to consider in this proceeding any changes in the network nonduplication, manadatory carriage, or sports blackout rules. Each of these may warrant review on its own merits but since different considerations are involved, we believe it administratively efficient to consider these rules separately.

6. The discussion below is organized into the following sections:

—description of the broadcast, cable and programming industries;

—basis for regulation;

—results of Inquiries;

—alternative proposals and considerations:

National Telecommunications and Information Administration petition

National Association of Broadcasters petition

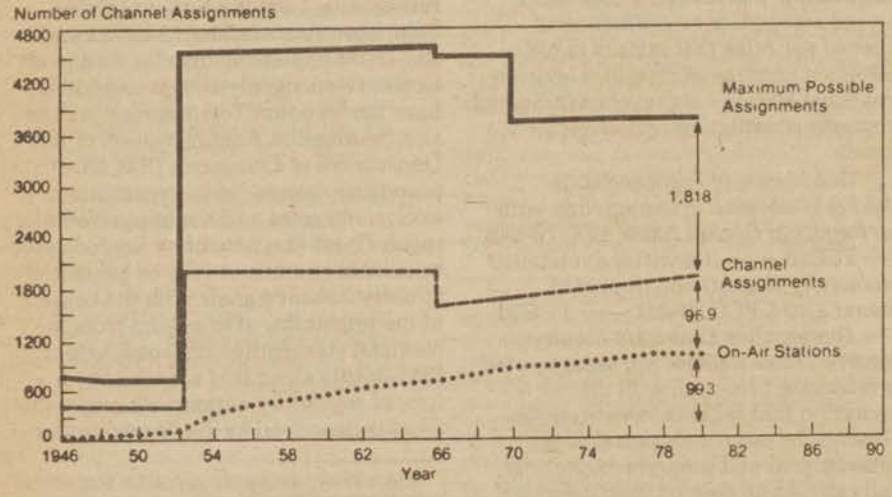
—conclusions.

Description of the Broadcast, Cable, and Programming Industries

7. The Commission's regulation of both broadcasting and cable television is ultimately concerned with the quantity and quality of video and telecommunications service that the public receives and not—apart from the effect upon consumers—with shifting or safeguarding revenues or profits, or with the success or failure of any particular firm, industry, or technology. While it is the individual consumer with whom we are concerned, it is, of course, the business firm, broadcast licensee, cable system, and program producer and distributor, which supply the consumer and whose incentives and abilities to supply the consumer are affected by our rules. Thus, we take as our starting point a brief description of the groups involved.

8. *Broadcast Television:* The Commission has assigned 1,962 channels in 883 communities for television broadcast use. Of these assignments, 731 are in the VHF band and 1,231 are in the UHF band. Approximately one-third (702) of the assignments are reserved for noncommercial uses.[8] Because the table of assignments is "unsaturated" it does not exhaust all of the available spectrum space. The following graph shows the relationship between on-air stations and the existing and theoretically feasible assignments: [9]

Television Channel Assignments and On-Air Stations, 1946-1979



[7] The term "superstation" is generally applied to a station whose signal is distributed by space satellite to cable television systems. It might also include any station whose signal is widely distributed on cable television systems outside its local service area.

[8] 47 CFR § 73.606(b) as of March 1, 1979. Excluded are the channels not presently available for use due to sharing with land mobile services.

[9] As to the unsaturated nature of The Table of Assignments, see *Sixth Report and Order in Dockets 8736 et al.*, 41 FCC 148, 169 paragraph 68 (1952). The major changes reflected on the graph are the addition of the UHF channels in 1952, the reallocation of channel 37 for radio astronomy use in 1966, and of channels 70–83 for land mobile services in 1970. The number of channels shown on the graph as possible but not yet assigned is based on a theoretical calculation that, using present assignment standards, 55 channel assignments can be made on each of the 55 UHF channels and that space for an additional 24 VHF channel assignments could be found. Many of these channels would, of course, be in very sparsely populated areas of the country.

9. In accordance with priorities established when the allocations plan was adopted, larger communities received the greatest number of channels with the smaller communities receiving only one channel. As summarized in the initial allocations decision, channels were assigned as follows:[10]

Population of central city	Number of channels
1,000,000 and above	6 to 10.
250,000 to 1,000,000	4 to 6.
50,000 to 250,000	2 to 4.
Under 50,000	1 to 2.

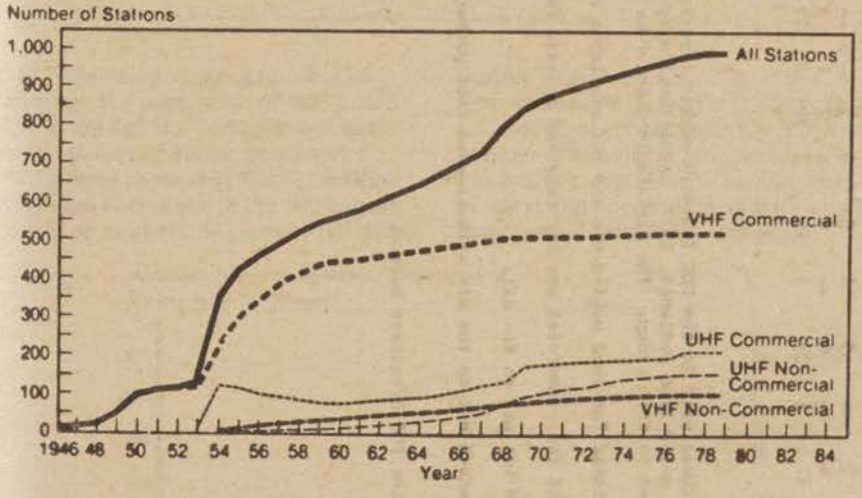
The Table of Assignments reflects the interference avoidance standards, social priorities and range of available technological alternatives in 1952. There is no assumption that all assignments are economically viable. For example, a VHF channel is assigned in one instance to a town with a population of only 629.[11]

10. There are now some 993 television stations on the air: 516 VHF commercial, 212 UHF commercial, 102 VHF noncommercial and 158 UHF noncommercial.[12] A total of 1061 stations have been authorized including 68 stations with construction permits that are not yet operational. The chart at page 7A sets forth the existing situation by market size and in comparison with the allocations available.

11. Of the operating commercial licensees, 602 have primary affiliations with one or more of the three national television networks (ABC, CBS, NBC). Fifty-nine of these stations are satellites—that is, stations on allocated channels that primarily rebroadcast the programming of a commonly owned station and originate little programming locally.[13] Of the other commercial stations 76 are independent, 36 are specialty stations (primarily religious or non-English language as defined in 46 CFR § 76.5(kk) of the rules), and four are subscription television stations.[14]

12. Since the Commission first commenced licensing TV stations there has been a steady growth in the number of stations operating. There was, however, considerable difficulty with operations in the UHF band during the middle 1950's when a number of such stations commenced operation but proved unviable. Broadcast station growth since 1946 is reflected in the following graph:

VHF and UHF On-Air Television Stations, 1946-1979
(As of January 1 Each Year)



[10] *Sixth Report and Order in Dockets 8736 et al.*, 41 FCC 148, 169 paragraph 68 (1952).

[11] This town, Goldfield, Nevada, was apparently the smallest town to which a channel allocation was made. *See Sixth Report and Order, supra*, dissenting opinion of Commissioner Jones at page 608.

[12] As of March 1, 1979. Monthly report of the FCC Broadcast Bureau License Division. Stations using commercial assignments for noncommercial purposes are counted as commercial stations in this report.

[13] Technically speaking a "satellite" station is one that has been exempted from those of the Commission's rules that prohibit common ownership of two or more television stations with overlapping service areas. *See* Section 47 CFR § 73.636 note 9.

[14] The nine stations in Puerto Rico are included in the independent total.

Use of Television Channels Summarized as of December 31, 1978

Channel Status	Market Designations a/																					
	1-50		51-100		Total 1-100		101-150		151-200		Total 101-200		Total 1-200		201-605		Total U.S. b/		Commonwealth and Possession 606-622			
	V	U	V	U	V	U	V	U	V	U	V	U	V	U	V	U	V	U	V	U		
Commercial Channels																						
Total Allocated c/	160	182	107	145	267	327	105	94	60	75	165	169	432	497	144	139	576	636	12	23		
Licensed d/	160	71	107	55	267	126	102	34	55	16	157	50	424	176	75	25	499	201	10	1		
Construction Permit e/	--	26	--	13	--	39	--	3	1	3	1	6	1	45	4	4	5	49	1	--		
Application	--	42	--	9	--	51	--	14	2	9	2	23	1	76	9	14	10	90	--	1		
Vacant	--	43	--	68	--	111	3	43	2	47	5	90	6	200	56	96	62	296	1	21		
Non-Commercial Channels																						
Total Allocated c/	28	98	20	77	48	175	20	54	15	45	35	99	83	274	52	290	135	564	6	7		
Licensed d/	26	55	19	31	45	86	15	20	11	11	26	31	71	117	31	48	102	165	4	--		
Construction Permit e/	1	2	--	3	1	5	2	1	--	--	2	1	3	6	3	4	6	10	--	--		
Application	--	4	--	4	--	8	1	2	1	2	2	4	2	12	2	2	4	14	--	--		
Vacant	1	37	1	39	2	76	2	31	3	32	5	63	7	139	16	236	23	375	2	7		

a/ The market designations are those used in the FCC industry market reports of television broadcast financial data. The markets numbered 1-209 are in approximate Arbitron rank by prime-time audience, 1977. Additional markets numbered 210-605 are listed alphabetically by states; the markets in Alaska and Hawaii are included in this group. The markets in Guam, Puerto Rico and the Virgin Islands are numbered 606-622.

b/ Excludes 25 UHF Channels assigned for land mobile use and not available until further FCC action.

c/ VHF and UHF Channels allocated for commercial use but reserved or used for non-commercial use are included with non-commercial channels.

d/ May include stations licensed but not on the air.

e/ May include stations not licensed but on the air with program test authority.

Source: Preliminary report by the FCC Broadcast Bureau.

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7A

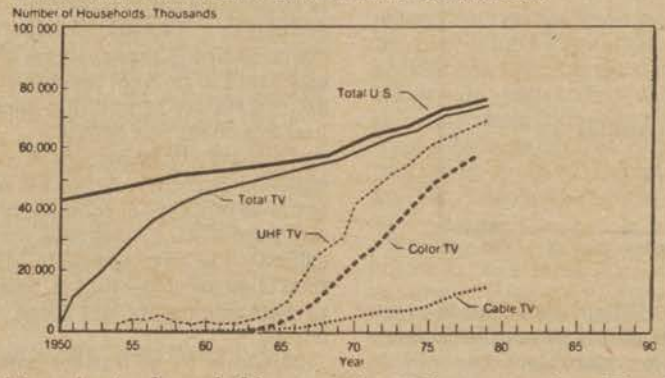
13. Room for additional stations is still available. There are, for example, 131 television markets with four or more assigned channels. In 90 of these markets the fourth commercial allocation is unoccupied. There are now on file approximately 233 applications for new stations, including competing applications for the same channel as well as noncommercial educational stations. In addition, there are 61 applications pending to operate subscription television stations, some of which propose to convert existing advertiser supported stations to subscription use.

14. Existing stations are supplemented and their service areas extended by the operations of 3569 television translators, 2382 VHF and 1187 UHF.[15]

15. There are approximately 73.9 million homes in the United States that are supplied service by these television stations—97 percent of all households. Television set usage per home averages over six hours per day.[16] Some estimates place the public investment in television receivers as in excess of $38 billion.[17]

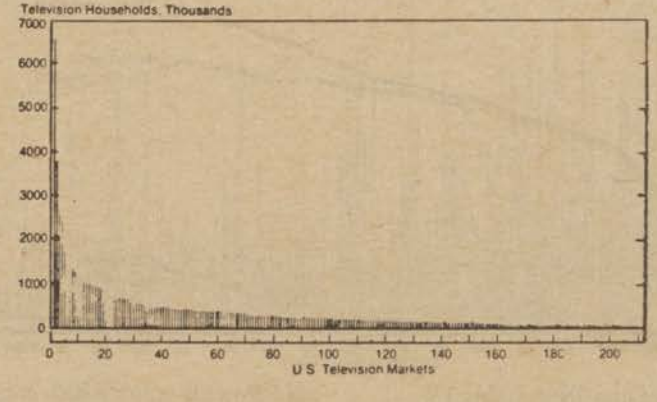
16. The number of television households increased rapidly during the 1950's and has continued to increase with population increases and as the population per household has decreased. Household growth in comparison with growth in TV, UHF equipped, color equipped, and cable television receiving households is shown below:[18]

Growth of Television UHF, Color, Cable TV Total TV, and Total U.S. Households, 1950-1979



17. Television viewing households, reflecting the population of the United States, are heavily concentrated in a small number of major urban areas. Thirty-three percent of the 73.9 million television homes are in the ten largest television markets, 86 percent fall within the 100 largest markets. The three largest markets (New York, Los Angeles, and Chicago) contain roughly the same number of television households as the 123 smallest markets.[19] The distribution of television households by market size is reflected in the following graph:

Distribution of Television Households in U.S. Television Markets



18. According to estimates from the Television Bureau of Advertising, approximately $8.97 billion was spent for television advertising during 1978, representing an 18 percent increase over 1977. It is estimated that television advertising expenditures will have increased 29.4 percent by 1980 to $11.61 billion.[20]

19. The most recent available information from the official broadcast station financial reports to the Commission indicate 1977 television advertising expenditure of $6.84 billion which represents, after subtraction of commissions paid to advertising and representative agencies, some $5.9 billion in television network and station revenues.[21] Average revenues per television household were approximately $82 in 1977.

20. As indicated graphically below, television gross advertising revenues have been increasing consistently and substantially in recent years. In only one year (1971) in the last twenty years have

[15] Translators are stations that rebroadcast the programming of another station and generally originate no local programming. Unlike satellite stations, they need not be on assigned channels, are subject to having their operations terminated if they interfere with existing or new stations on allocated channels, and are subject to somewhat less stringent technical requirements than regular stations. *See* Section 74, Subpart G.

[16] A.C. Nielsen.

[17] Report of the Television Broadcasting Service Working Group of the Broadcast Bureau in preparation for the 1979 World Administrative Radio Conference, page 4, June 1, 1976.

[18] Information on this graph comes from Arbitron Television, Advertising Research Foundation, NBC Corporate Planning Department, National Association of Broadcasters, U.S. Bureau of the Census, and Television Digest. UHF set penetration estimates are based to some extent on audience survey reports of ability to receive a UHF signal as well as on the TV set's capacity to receive UHF signals. Due to limitations in source material, estimates for TV households from 1969 to 1974 include Hawaii but not Alaska; for 1975 neither Alaska nor Hawaii; and for 1976–1979, Alaska but not Hawaii.

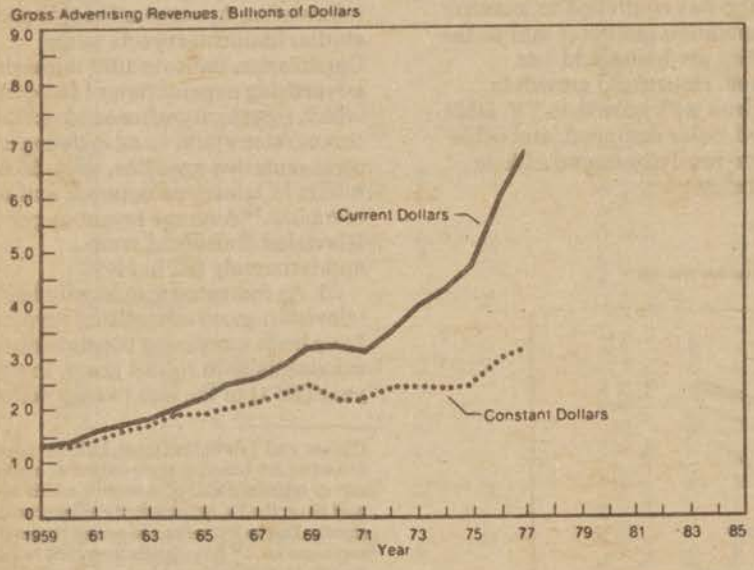
[19] The data here and in the following graph is from The Arbitron Company, *Television Markets and Rankings Guide*, 1977–78. The term market as used here refers to an Arbitron defined "area of dominant influence" which defines an area that generally consists of the counties in which the home market stations receive a majority of viewing. The term "television market" has many other meanings depending on the precise concept that is being discussed. For example, a market for purposes of the cable television rules is generally one or more 35-mile radius zones around a station or group of stations (47 CFR § 76.5 (g) and (1)).

[20] *Broadcasting*, April 2, 1979, page 60; *Television Digest*, April 2, 1979, page 6. According to annual reports to the Securities and Exchange Commission (Form 10–K), in 1978 revenues from the broadcast interests (including radio) of ABC, CBS, and NBC rose 20 percent (to $1,546.6 million), 12.5 percent (to $1,327.5 million), and 11 percent (to $1,214.8 million), respectively, above 1977 revenues. Their respective pre-tax profits reported were $310.9 million (up 14 percent), $225.7 million (up 3.6 percent), and $122.1 million (down 20 percent). NBC attributed its decline in pre-tax profits to the most ambitious campaign of program development ever undertaken. *See Broadcasting*, issues Mar. 26, 1979 (ABC), Feb. 19, 1979 (CBS), and Mar. 12, 1979 (NBC).

[21] FCC, TV Broadcast Financial Data—1977, released August 14, 1978, Mimeo No. 3686. Since 1969, Commissions paid to advertising agencies have averaged 16 percent of advertising expenditures and revenues from sources other than advertising have averaged 3 percent of gross revenues. The Television Bureau of Advertising estimates include the cost of producing commercials and are thus not comparable to those provided by the FCC financial reports.

revenues not increased. This was the first year following the ban on cigarette advertising.[22] After discounting for the effects of inflation, gross advertising revenues increased 144.7 percent from 1959 to 1977.[23] That is, gross advertising revenues in 1977, after adjusting for inflation were 2.4 times larger than in 1959. Without removing inflation effects, 1977 revenues were 5.1 times as large as in 1959. Between 1967 and 1977 the growth in constant dollars was $1.51 billion or a compound annual rate of approximately 4 percent above the rate of inflation.

Gross Advertising Revenues, 1959-1977, in Current and Constant Dollars



21. Total pre-tax profits for the television broadcasting industry were $1.40 billion in 1977, consisting of $406.1 million (29%) from network operations, $149.3 million (11%) from the 15 network owned stations, and $845.7 million (60%) from all other commercial stations in the industry. Thirteen percent of all stations reporting showed no profits, including 32 percent of all independent UHF stations and 20 percent of all stations outside of the 100 largest television markets. Thirty-nine percent earned profits of over $1,000,000; 77% earned profits in excess of $100,000.[24]

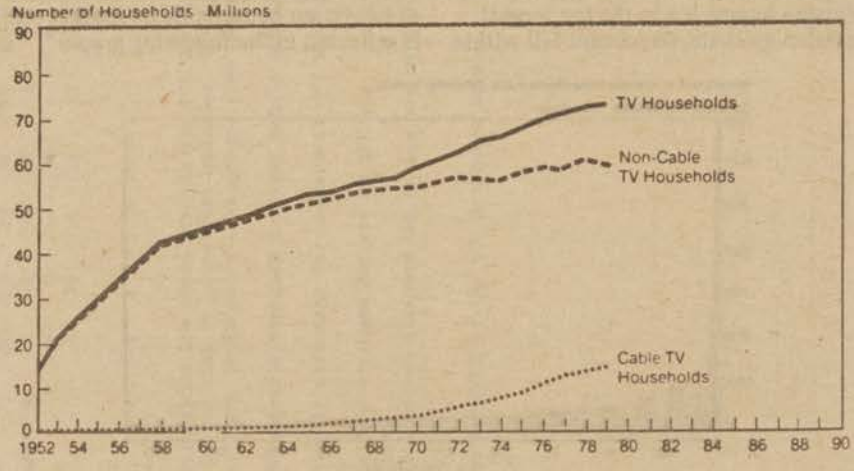
22. *Cable Television:* In contrast to broadcast television, where there is a central federal allocations plan to determine the distribution of facilities, cable television operations are franchised at the state or local level and have developed in response to consumer demands for better television reception and increased choice of television programming or, more probably, some combination of these.

23. Although the first cable television systems commenced operation in the late 1940's, the industry as a whole grew slowly at first and the million subscriber mark was not passed until about 1964. At approximately that point industry growth rates increased dramatically with the second million subscribers being connected in only three more years. Since that time, the number of systems commencing operation each year has varied with changing economic and regulatory conditions but the growth in absolute numbers of subscribers has been steady.

24. There are now some 3997 cable television systems in existence serving 9895 separate communities. Applications to commence cable television operations are pending in an additional 570 communities. These systems are estimated to provide service to some approximately 14.1 million households—perhaps 40 million people. Approximately 19 percent of all TV households receive cable TV service. Some 28 million households, or about one-third of all households, are estimated to have access to cable television service—that is, there is cable in their community and wires pass their homes.[25]

25. Cable TV subscriber growth in comparison to the growth in total TV households is shown on the following graph:

Growth of Television and Cable Television



The dashed line "Non-Cable TV Households" in addition expresses the fact that annual growth in television households has, until recently, generally exceeded the growth in CATV households. This point is made also in the following graph which compares annual increases in TV and cable TV households:

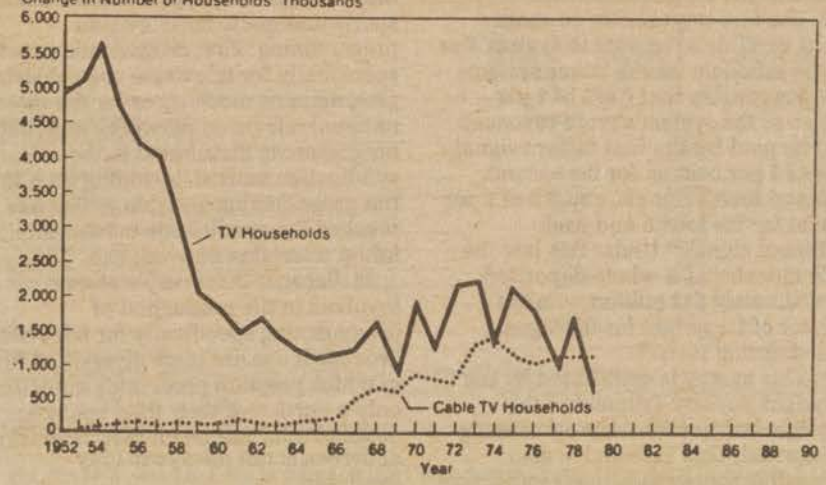
[22] The ban took effect on January 2, 1971. It is perhaps of some significance that the basic cable television rules that are being reconsidered in this proceeding were developed and adopted during the period in which the broadcast financial downturn was being experienced.

[23] The Gross National Product implicit price deflator has been used here to express revenues in terms of 1959 dollars. Note, however, that it may not be ideal for measuring purchasing factors peculiar to the television broadcasting industry.

[24] Profit information from the reports made to the Commission should be used with care due to the differences in accounting and reporting methodology.

[25] Cable Addenda to *Television Factbook*, No. 48, April 9, 1979.

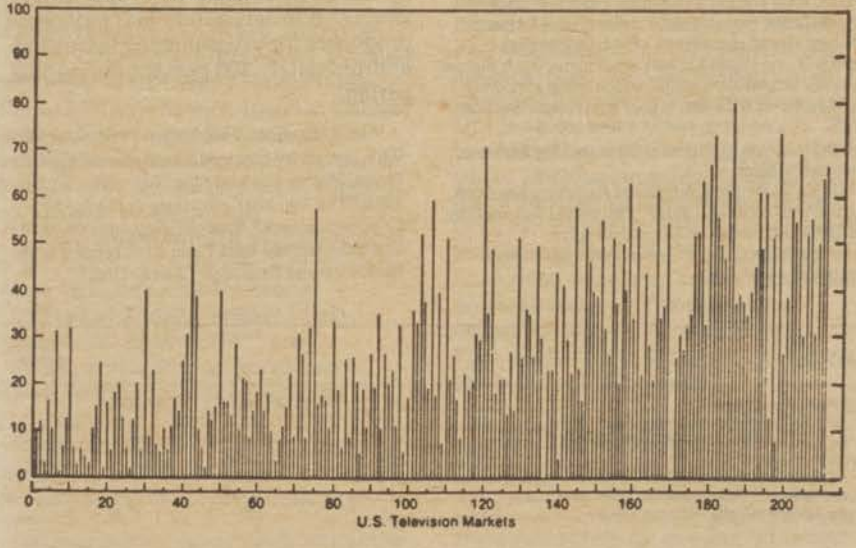
Change in Number of Television and Cable Television Households



26. Because cable television growth is strongly influenced by factors relating to terrain and the quality and availability of local television service, cable growth patterns have been uneven and the progression of development has been the opposite of the growth of television broadcasting. Broadcasting began with the largest markets and greatest population concentration; cable began with the more isolated markets that had no broadcast service. Where local television service is the most difficult to obtain by ordinary home reception means but can easily be made available by a cable television system, cable growth has been the most rapid. As a result cable penetration varies from less than one percent, for example in the Las Vegas, Nevada market, to as much as 80 percent in the Palm Springs, California market.[26] As shown below, cable television has had the most penetration in smaller markets where broadcast service over-the-air is limited and where the costs per subscriber of cable construction tend to be lower.

[26] The term market as used here is defined by Arbitron as "Area of Dominant Influence." See note 19, *supra*. Cable subscriber counts are taken from FCC Form 324 information as of December 31, 1977; television household counts are from *Television Markets and Rankings Guide*, 1977–1978.

Distribution of Cable Television Subscribers in Television Markets



27. Cable television systems typically have the technical capacity to deliver between 12 and 20 channels of television programming. Higher channel capacity is also well within the present state of the art. The service delivered on these channels consists largely of television broadcast signals although a variety of nonbroadcast services, including automated time and weather, news and stockmarket ticker services, information or entertainment programming produced in the community or purchased by the cable operator, also are provided. Public, educational, government and leased access programming may also be distributed. In recent years the distribution of subscription or pay cable programming—mostly sports and recent feature films for which a separate channel or program charge is made—has emerged as an important cable service. It was not until 1973 that significant numbers of pay cable subscribers were first obtained. However, subscriber growth since that time has been rapid with subscribership increasing from some 16,000 subscribers in March of 1973 to approximately 3,430,000 at present.[27]

28. Domestic space satellite communications systems have contributed significantly to expanding the supply of programming available to

[27] *TVC*, February 15, 1979, page 38.

cable systems. At this point the cable television industry is one of the principal users of domestic satellite communications. The first satellite ground station was authorized by the Commission for cable television system use in August of 1975.[28] In December 1976 the commission decided to allow cable television system operators to use smaller, less expensive satellite receiving stations, further facilitating cable television use of satellite communications.[29] Some 1300 earth stations have been licensed by the Commission to receive and distribute video programming. Over half of these were granted for the purpose of delivering programming for cable television system use.

29. Included in the material presently distributed by satellite are the pay cable television services of five different suppliers, three channels of religious programming, five channels of broadcast programming either on a full or part time basis, and a channel of sports and entertainment programming that is available for use on either a pay or regular cablecast basis. A consortium of cable television companies now makes available live gavel-to-gavel coverage of the U.S. House of Representatives and two program services specifically directed to children are also available.

30. Cable television operating revenues for 1977 totaled $1.2 billion. The average monthly regular subscriber rate was $6.85. Total assets had a book value of $2.45 billion, pre-tax net income reached $133.7 million and pay cable service yielded revenues of $85.8 million or 7 percent of total revenues.[30]

31. Until January 1, 1978, cable television system operators were under no obligation to pay copyright license fees for the television broadcast signals they carried.[31] With the passage of the new copyright law [32] cable operators are subject to copyright liability for such signals but need not negotiate copyright licenses for individual programs carried if they comply with the terms of the compulsory licensing system included in the new law. Under this system, the cable operator deposits with the Register of Copyrights a percentage of his gross receipts in accordance with a schedule included in the statute. This money is then disbursed by the Copyright Royalty Tribunal to the owners of the programs carried.

32. The fees payable are to some extent variable according to system size but the schedule for the larger systems provides roughly that 0.675 of 1 per centum of the system's gross revenues must be paid for the first distant signal, 0.425 of 1 per centum for the second, third and fourth signals, and 0.2 of 1 per centum for the fourth and each additional signal.[33] Under this law the cable industry as a whole deposited approximately $12 million with the Register of Copyright for the signals carried during 1978.[34]

33. This money is distributed by the Copyright Royalty Tribunal to the copyright holders whose programming was carried. This Tribunal is also responsible for revising the fee structure as changes are made in the Commission's rules and in certain other circumstances.

34. *The Television Program Production Industry.* On the average only about ten percent of the programming broadcast by commercial television stations in the United States is produced locally. About 75 percent of all programming is either sports or other entertainment programming.[35]

35. While it is difficult to briefly capsulize the status and structure of the organizations that create and supply programming for broadcast use, the programming can be roughly divided into the following types: feature films, sports and made for television programming. That programming made specifically for television use consists of programming made by or for the three national television networks and that programming distributed in the syndication market, including both first-run programming and that which has reached the syndication market after initial television network use.

36. Because most corporations involved in the production of programming specifically for television broadcast use are large diversified firms in which program production constitutes only a portion of their total business, detailed information on their television activities is not always readily available.

37. However, in order to develop a general idea of the financial trends within the industry, we have analyzed the broadcast revenues of ten of the largest publicly owned companies involved in program production.

38. It was found that the percentage of industry-wide programming revenues obtained by these ten companies remained relatively stable from 1971 to 1977 and that tv program revenues grew by approximately 130 percent. The 1971 to 1977 comparisons for the ten companies are shown on the table that appears on the following page.[36]

39. It appears from financial information filed with the Commission by the three national networks and television broadcasters that payments to producers for programming increased approximately 100 percent during this period.

[28] *Florida Cablevision*, FCC 75-95, 54 FCC 2d 881 (1975).

[29] *American Broadcasting Companies, Inc.* FCC 76-1169, 62 FCC 2d 901 (1977).

[30] FCC News release, December 26, 1977, mimeo. no. 10768.

[31] *Fortnightly Corporation v. United Artists Television*, 392 U.S. 3290 (1968); *Teleprompter Corp. v. CBS, Inc.*, 415 U.S. 394 (1974).

[32] General Revision of the Copyright Law, P.L. 94-553, 17 U.S.C. §§ 101 *et seq.* (1976).

[33] To be more precise, these are the fees paid by a system with annual gross subscriber revenues of over $320,000 (roughly 3800 subscribers) for each "distant signal equivalent." Each independent station is one distant signal equivalent. Each distant network or noncommercial educational station is one quarter of a distant signal equivalent. Section 111(f).

[34] Information obtained from Licensing Division, Copyright Office.

[35] FCC, *Television Broadcast Programming Data*, April 27, 1978, Memo. 99127. The actual figures from the 1977 composite week are 9.3% local programming and 24.6% non-entertainment/non-sports programming.

[36] Identification of ten largest program producers was derived by cross-referencing several sources: Owen, Beebe, and Manning, *Television Economics*, 1974; "The Top 100 Companies in Electronic Communications," *Broadcasting*, June 26, 1978 p. 31; and data derived from Form 10-K reports to the Securities and Exchange Commission.

	1971	1977	Percent growth
Total Production Costs*	$1,488,000	$2,878,000	93
As Percent of Total Broadcast Expenses	63%	64%	
As Percent of Total Broadcast Revenues	54%	49%	
Cost of Packaged Programs**	$747,000	$1,482,000	98
As Percent of Total Broadcast Expenses	32%	33%	
As Percent of Total Broadcast Revenues	27%	25%	
As Percent of Total Production Costs	50%	51%	

*Total production costs of all three networks and all television stations includes all expenses of programming both internal and external, including the salaries of employees engaged in production.

**Cost of packaged programs includes the expenses of purchasing TV programs from outside producers only.

Revenue Data From 10 Major Publicly Owned Television Program Producers

TV program producer (parent)	TV program revenues, 1971 (in millions of dollars)	Total corporation revenues, 1971 (in millions of dollars)	TV revenues as percent of corporation revenues, 1971	TV program revenues, 1977 (in millions of dollars)	Total corporation revenues, 1977 (in millions of dollars)	TV revenues as percent of corporation revenues, 1977	Percent growth in TV program revenues, 1971–77
Universal Television (MCA, Inc.)	$123.5	$333.7	37	$292.9	877.6	33	137
Columbia Pictures Industries, Inc	46.4	233.2	20	104.4	298.3	35	125
Paramount (Gulf & Western)	44.0	1,566.3	3	82.0	3,642.9	2	86
Warner Communications	[1]33.6	373.8	[1]9	99.6	1,144.0	9	196
20th Century Fox	28.3	176.8	16	47.9	506.7	9	69
United Artists TV (Transamerica)	18.5	1,643.5	1	[2]41.0	3,209.9	1	122
MGM TV (Metro-Goldwyn-Mayer)	13.3	169.4	8	28.4	288.5	10	114
Viacom Internat'l Inc	13.2	20.9	63	22.7	58.4	39	72
Hanna-Barbera Prod. (Taft)	20.7	48.8	22	[3]32.9	138.3	24	207
Walt Disney Productions	8.0	175.6	5	22.8	629.8	4	185
Totals	[4]339.5	4,742.0	7	[4]774.6	10,794.4	7	128

[1] Estimated based on 1977 Percentages of Revenues derived from TV Program Production.
[2] Transamerica Reported Revenues of $82 million for TV program Production during 1977–78 Combined. An estimate of fifty percent was allocated to 1977.
[3] Includes revenues from distribution.
[4] The major publicly-owned program producers received approximately 45% of the expenditures for TV program production in 1971 and 52% in 1977.

40. We also surveyed the number of television series programs available for use in 1971 as compared with 1977 and found major increases in the numbers of programs available.

Old and New Television Series Available 1971 and 1978

Length of episode	Old series			New series		
	1971	1978	Growth	1971	1978	Growth
1 Hour or Longer Series	919	1,820	98%	77	274	256%
½ Hour Series	1,397	2,296	64%	105	241	130%
¼ Hour or Shorter Series	451	753	67%	14	41	193%

Source: *Series, Serials, and Packagers*, Broadcast Information Bureau, Inc., Summer-Fall, 1971 and 1978.

41. Two types of programs, feature films and sports, although they derive considerable economic support from television uses, are primarily created for nonbroadcast purposes. The major producers of feature films are well known and include Allied Artists Pictures Corporation, Avco Embassy Pictures Corporation, Columbia Pictures Industries, Walt Disney Productions, Metro-Goldwyn-Mayer, Inc., Paramount Pictures Corporation, Twentieth Century-Fox Film Corporation, United Artists Corporation, Universal Pictures, and Warner Brothers, Inc.

42. 1978 represented a very good year for the motion picture industry as a whole, with box office receipts estimated at $2,653.1 million, their highest level in 17 years.[37]

43. The remaining major source of television broadcast programming is sports events. In addition to the major professional sports—baseball, football, basketball, and hockey—there are innumerable other professional and nonprofessional events broadcast. Of all regular season games of Major League Baseball, the National Football League, the National Basketball Association, and the National Hockey League, roughly half are telecast. Information is most readily available on the broadcasting of professional football and baseball games. That information suggests that, like other suppliers of broadcast programming, sports teams and leagues have been receiving increased broadcast revenues in recent years. Baseball broadcast rights (including radio), for example, grew from $37,800,000 in 1970 to an estimated $54,500,000 for 1979.[38] Football rights have risen rapidly in recent years with professional teams and colleges estimated to receive more than $200,000,000 from broadcasting during the past football season.[39]

[37] Between 1946 and approximately 1971 feature film box office revenues, in terms of constant dollars, were declining. Since 1971 revenues have increased from approximately $1.35 billion to the present $2.65 billion. Data from Motion Picture Association of America.

[38] "Baseball rights: a slow, rising curve," *Broadcasting*, March 12, 1979, p. 115.

[39] "Football price goes right out of the stadium," *Broadcasting*, August 7, 1978, p. 36. These revenues, which results from the signing of new multi-year broadcast contracts, are estimated to be a 142% increase over 1977 broadcast revenues.

Basis for Regulation

44. The competitive juxtaposition of these important elements of our economy's communications sector has produced numerous demands on the Congress and this Commission for the imposition of economic regulation. Broadcasters have sought limitations on both the broadcast and nonbroadcast activities of cable television systems.[G1] both the broadcast and nonbroadcast activities of cable television systems.[40] Program suppliers have pressed the Congress for changes in the copyright law and the Commission for copyright surrogates and other limitations on cable television signal carriage.[41] Cable operators have sofught, in the context of the existing regulatory structures, limitations on the contractual program exclusivity that broadcast stations and networks would be permitted to purchase.[42]

45. The Commission's determination that cable television signal carriage should be restricted has historically been rationalized on one of four grounds: (1) as a means of assuring the public against a net loss of television service as a consequence of cable-created audience losses which would undermine the economic support of television stations and in the process deprive the poor and those living in areas unserved by cable of video

[40] The history of the Commission's response to these requests is set forth in some detail in the *Economic Inquiry Report, supra*,, paras. 31–68.

[41] *See, e.g., Cable Television Report and Order*, FCC 72–108, 36 FCC 2d 143, 163, para. 54 (1972), and *Motion Picture Association of America*, FCC 78–289, 68 FCC 2d 57 (1978).

[42] *Report and Order in Docket 20402*, FCC 77–657, 52 FCC 2d 87, 41 R.R. 2d 839 (1977). *See also* comments filed in response to the Commission's *Second Further Notice of Proposed Rule Making in Docket 18179*, FCC 72–306, 28 FCC 2d 348 (1972).

service;[43] (2) as necessary to support the broadcast television station allocations policy with its emphasis on local service,[44] (3) as a means of eliminating what was perceived to be the unfair means by which cable television systems competed with local broadcasters,[45] and (4) as necessary to assure against injury to the continued production of television programming.[46]

46. Cable television growth, it was feared, would harm the public through its competitive effect on commercial broadcasting. At least three undesirable consequences of unrestricted cable television operations were identified:

(1) Because cable television did not appear able to serve rural areas due to the high costs involved in providing cable in areas of low population density, urban cable subscribers might gain additional service from cable, but rural residents could lose service.

(2) There are substantial numbers of people who either cannot afford or do not wish to pay for television service so that if cable television supplanted over-the-air service these persons would either lose service or be forced to pay for it.

(3) Because cable television systems initially did not generally serve as an outlet for community self-expression, an adverse impact on local television broadcast service would have denied both cable subscribers and non-cable subscribers alike the benefits of programming designed to serve the needs and interests of the local area.[47]

For these reasons, among others, the Commission tended to view cable as only a "supplementary" service to broadcast television which should be regulated to limit its impact on over-the-air service.

47. The Commission relied heavily on these considerations in asserting jurisdiction to regulate cable television. In affirming this exercise of jurisdiction the Supreme Court stated:

> The Commission has been charged with broad responsibilities for the orderly development of an appropriate system of local television broadcasting. The significance of its efforts can scarcely be exaggerated, for broadcasting is demonstrably a principal source of information and entertainment for a great part of the Nation's population. The Commission has reasonably found that the successful performance of these duties demands prompt and efficacious regulation of community antenna television systems.[48]

48. Going beyond the concerns that cable distant signal carriage would disrupt the broadcast station allocations systems or impact on the public service or survival of particular stations, were the notions related to copyright and program acquisition. For example, in asserting jurisdiction to regulate cable television, the Commission expressed the view that because of "the disparate position of broadcasters and CATV systems in acquiring programs in the TV program distribution market" the competition involved is "of a patently unfair nature."[49] Broadcast-cable competition was thought to be "unfair" and "anomalous" because cable systems do not enter the market for programming when they carry distant signals, as would a competing broadcaster. Both provide the public with access to the same basic product yet only the broadcaster must obtain access to the product in the program distribution market with its various restrictions and conditions. The cable systems, in contrast, need not enter this market at all, need not complete for network affiliations, nor for access to syndicated programs, feature films, or sports events. Thus the Commission concluded "we cannot regard a CATV system's duplication of local programming via the signals of distant stations as a fair method of competition." "(T)he unfair competitive effect is a significant one, in view of the very significant penetration figure, and therefore should be eliminated under the public interest standard of the Communications Act."[50]

49. Finally, concerns have been expressed that cable television operators not be permitted to adversely impact on the economic incentives that result in a continued supply of programming for both broadcast and cable television use. Thus, for example, in the 1972 *Cable Television Report and Order* the Commission indicated its concern with respect to "the effect of distant signal carriage on the supply of television programming"[51] and particularly indicated its view that the syndicated exclusivity rules would operate "to insure the continued supply of programming."[52]

Results of the Inquiries

50. In our *Economic Inquiry Report*.[53] and our *Syndicated Exclusivity Report*[54] we articulated three criteria against which to measure the appropriateness of our cable television policies: consumer welfare, distributional equity, and external effects. The three criteria correspond in some respect to those used in earlier Commission decisions relating to cable television but frame the issues in somewhat more precise economic terms.

51. Briefly, our concern with localism in the context of broadcasting may be characterized as a concern with externalities—that is, the true value of local news and public affairs programing may not be reflected in the number of individuals who view it or the value they place on it but in the value it has to our society as a whole and especially in the functioning of our democratic institutions.

52. Distributional equity is related to the allocation between various segments of society of the costs and benefits of a particular policy. Cable television service, in contrast with broadcast service, must be paid for directly and is generally not available to residents of low population density areas or urban centers where demand is low and construction costs are high. Thus, even if the effect of a policy change to consumers as a whole proved beneficial, some groups might be less well off as a consequence of that policy change.

53. Consumer welfare is grounded in our responsibility to assure "efficient" communication service, 47 U.S.C. § 151. It is reflected in our concern with assuring that policies adopted tend toward the creation of a communications system that increases the net video service supplied to the public or otherwise maximizes the value the public receives from society's overall investment in the video distribution system.

54. This set of values and the factual information developed in our *Syndicated Exclusivity* and *Economic Inquiry* proceedings provide the basic ingredients for a re-examination of our cable television policies.

55. The purpose of the *Economic Inquiry* was to permit qualitative and quantitative analysis into the competitive relationship of the television broadcasting and cable television industries. As our *Economic*

[43] *See* para. 58, *infra*.

[44] *See* para. 60, *infra*.

[45] *See* para. 61, *infra*.

[46] *See* para. 62, *infra*.

[47] *See Carter Mountain Transmission Corp., supra*, n. 1 at para. 16: *Second Report and Order in Docket 14894, 15233, and 15971, supra*, n. 2 at 775 (para. 124); *U.S. v. Southwestern Cable Co.*, 392 U.S. 157, at n. 43 (1968).

[48] *U.S. v. Southwestern Cable Co.*, 392 U.S. 157, 177 (1968).

[49] *Notice of Proposed Rule Making and Notice of Inquiry in Docket 18397*, 15 FCC 2d 417 at paragraph 33 (1968) citing *Second Report and Order in Dockets 14895 et al., supra* at 770–781.

[50] *Notice of Proposed Rule Making in Docket 18397, supra* at 431, para. 36. The "penetration figure" referred to was an estimate that cable penetration in major markets would be "[on] the order of 50 percent." *Id.*

[51] 36 FCC 2d at 168, para. 68.

[52] *Id.* at 169, para. 73.

[53] *Supra*, paras. 8–14.

[54] *Supra*, paras. 11–14.

Inquiry Report indicates, we feel the purpose has been accomplished. We have far better information now than has been available at previous important junctures in our broadcast-cable regulatory effort. The *Economic Inquiry* has permitted us to review and re-evaluate the theoretical concerns which led to our regulatory intervention in the light of experience and new quantitive information.

56. The *Syndicated Exclusivity Inquiry* overlapped with the *Economic Inquiry* in both purpose and scope. The purpose was to permit qualitative and quantitative analysis of the ramifications of cable carriage of distant broadcast signals on the television program production [55] and the television broadcasting industries. As our *Syndicated Exclusivity Report* indicates, we feel that purpose also has been accomplished. Although the comments filed in the *Syndicated Exclusivity Inquiry* supplied far less quantitative information than those filed in the *Economic Inquiry* and although we have been able independently to find far less relevant information on the program production industry than on the television broadcasting industry, the close relationship between the cable-broadcasting competitive phenomenon we examined in the *Economic Inquiry* and the program supply questions we analyzed in the *Syndicated Exclusivity Inquiry* has permitted us to review our syndicated exclusivity rules in the light of improved factual information as well.

57. Both Reports note the significant sacrifices in consumer welfare occasioned by the distant signal and syndicated exclusivity limits[56] and essentially inquire whether there are benefits which outweigh these costs. As the Reports make clear, all available evidence indicates that our rules limiting the quantity and composition of distant broadcast signals carried on cable systems are not only unnecessary, but counterproductive. No evidence has been adduced to indicate that the markets linking consumers with the cable, broadcasting, and program production industries would be unable to satisfactorily serve the interests of consumers of video services if we eliminate our regulatory restrictions. Finding no material benefits in the continuation of the distant signal and syndicated programming rules, we propose that they be eliminated.[57]

58. We have carefully considered whether continuation of the limitations on cable carriage of distant broadcast signals is necessary to avoid undesirable distributional effects. As we explained in the *Economic Inquiry Report*, [58] this consideration traditionally has been very important in our calculation of the public interest and was an important motivating element in our regulatory intervention in the cable-broadcast relationship. In Sections III and IV of the *Economic Inquiry Report* we assessed the effects of cable carriage of distant signals on the distribution of audiences within local television markets and found them to be far less significant than we imagined they would be when we first embarked upon the general regulation of cable television fourteen years ago. On the basis of econometric analysis and case studies of the actual experience of broadcast licensees confronting extensive cable competition, we were able to conclude that the risk that consumers dependent upon broadcast television by virtue of income level, location, or unwillingness to pay for video services would be harmed by the unrestricted cable carriage of broadcast signals is negligible. We believe that existing levels of service to the public are secure, "that it is extremely unlikely that any viewer will be significantly harmed" by elimination of the distant signal rules.[59]

59. We have considered as well whether there are external or spillover effects of a positive nature which would be jeopardized by discontinuing the limitations on cable carriage of distant signals. As we explained in the *Syndicated Exclusivity Report*, we thought it important to gauge whether permitting cable consumers to choose among a wider range of signals and programs would threaten programming which is "nonremunerative yet in the public interest." [60]

60. In Section V of the *Economic Inquiry Report* we assessed the effects of cable signal carriage deregulation on broadcasters' ability to engage in such local and merit programming. We concluded that additional competition would not cause the supply of such programming to diminish materially. We were able to document only a weak relationship between local and public service minutes and broadcast station revenues. In other words, substantial increases in broadcast licensee revenues produce little increase in local and merit programming and, conversely, substantial decreases in licensee revenues produce little decrease in such programming.

61. We found a third element which contributed to the Commission's imposition of regulatory restraints on the cable industry little more than a historical curiosity. As we related in the Reports, [61] the sense that the cable industry was engaged in some form of "unfair competition" with the broadcasting industry to the disadvantage of the program production industry afflicted our early efforts to formulate cable regulations. We have long since recognized that the "unfair competition" concept of the 1960's was coexistensive with the issue of the cable industry's copyright liability. As such, it was a matter settled by the courts and Congress. We have no trouble concluding that "unfair competition" poses no barrier to lifting our distant signal and syndicated exclusivity rules.[62]

62. Finally, we have analyzed the desirability of continuing these restrictions in terms of their effect on the production of television programs in Section III of the *Syndicated Exclusivity Report*. Drawing upon quantitative analyses undertaken in the *Economic Inquiry*, we were able to conclude confidently that cable deregulation would visit no negative near-term effects upon the supply of television programming. We also estimated that there is little likelihood that the elimination of the rules requiring blackouts of syndicated programs under contract to local market broadcasters would adversely affect the supply of television programming at any point in the foreseeable future.

63. Overall, we have concluded on the basis of the data and analyses contained in the *Economic Inquiry*

[55] Just as in our *Syndicated Exclusivity Report*, we refer in this proceeding to "program production" and "producers". Where appropriate, these terms encompass "program distribution" and "distributors". *Syndicated Exclusivity Report, supra*, n. 11.

[56] *Economic Inquiry Report, supra*, paras. 10, 30, 71–72, 144; *Syndicated Exclusivity Report, supra*, paras. 69, 91–93.

[57] *Economic Inquiry Report, supra*, para. 145; *Syndicated Exclusivity Report, supra*, para. 96.

[58] *Economic Inquiry Report, supra*, para. 31.

[59] *Id.* at para. 143.

[60] *Syndicated Exclusivity Report, supra*, para. 43.

[61] *Economic Inquiry Report, supra*, para. 50 and n. 49; *Syndicated Exclusivity Report, supra*, paras. 19, 22, 26, 29, 30, 51, 52.

[62] As the Court of Appeals said in the context of the limitations on pay cable programming:

> [W]e do not perceive any public benefit to be achieved by hobbling cable television to correct the sort of unfair competition alleged by the Commission.

The Supreme Court has found that cable's free use of broadcast signals does not affect the amount of compensation paid to copyright holders. *Teleprompter Corp. v. Columbia Broadcasting System, Inc.*, 415 U.S. 394, 412, 413, and there can be no doubt that the absence of a charge "serve[s] the cause of promoting broad public availability of literature, music, and the other arts." *Twentieth Century Music Corp. v. Aiken*, 422 U.S. 151, 156 (1975). (Footnote omitted) *Home Box Office, Inc. v. FCC*, 567 F.2d 9, 42 (D.C. Cir. 1977), *cert. denied* 434 U.S. 829 (1977).

Report and *Syndicated Exclusivity Report* that the public interest would be better served by the deletion of the distant signal constraints [63] and the syndicated exclusivity limitations.[64] Our examination of the distant signal prohibitions, extending almost two years, and of the syndicated exclusivity limitations, extending well over two years, leads us to conclude in short that none of the four problems [65] which these rules ostensibly address in fact exists. Under the circumstances, our obligation to rescind the rules is clear. [66]

64. We invite public comment on the two Reports which form the basis for this conclusion and upon the conclusion itself. We have no desire to limit the scope of the comments, but we also have no desire to replicate our experience with the comments received in the *Syndicated Exclusivity Inquiry*. In that proceeding, the importance of which we announced in some detail,[67] no proponent of maintaining or enlarging the rules thought it necessary to present economic evidence of harm to program producers as a predicate for the argument that assurance of program supply depends upon our continuing intervention in the marketplace. If any party wishes to dissuade us from taking the deregulatory steps enunciated in our Reports, it will have to provide an adequate factual base to support its policy arguments. On the basis of the record before us today, there is ample reason to conclude that consumers will benefit from elimination of the rules and almost none to conclude that they will be injured. Thus, the burden upon those who would maintain the rules is to show by means of economic evidence that the rules protect the public from an identifiable harm.

65. At the conclusion of our *Syndicated Exclusivity Report* we suggested our willingness to consider grandfathering program supply contracts written in contemplation of the continuation of the syndicated exclusivity rules. We propose under the grandfathering provision that the existing rules cover each program exhibition license in effect today and extend for a period of three years or until expiration of the contract, whichever occurs sooner. We believe this will permit a transition period in which windfall gains or losses by either broadcasting or program interests will be minimized. We invite comment on this proposal.

Alternative Proposals and Considerations

66. We have found in the two Inquiries that consumers derive no benefit from the rules restricting the supply and type of programming available to cable subscribers. There are two matters recently brought to our attention by petition that are, so the petitioners maintain, so closely related to our deliberations in Dockets 20988 and 21284 as to warrant consideration with them.

67. First, in February we received a petition for rule making from the National Telecommunications and Information Administration (NTIA) of the United States Department of Commerce in substance urging that new or expanded cable television operations only be permitted to carry distant television signals with the consent of the originating station (RM–3324). This is a regulatory proposal which has been rejected by the Commission in the past.[68] It is, however, a proposal for regulation which deserves serious consideration because it has been suggested by the President's chief advisor on matters of telecommunications policy. In addition, last month we received a petition from the National Association of Broadcasters urging that the Commission take some regulatory action "to curb the harmful impact of superstation development on broadcast program service to the public." (RM–3346). This too is a matter which the Commission has considered in the past and rejected.[69] It too warrants some further consideration in this context, however, because it focuses our attention more specifically on the possible effects of cable carriage on the station whose signal is carried rather than on the station faced with additional competition from that station and because it resurrects claims conceptually similar to those rejected in the Inquiry Reports that broadcasters and program suppliers require shelter from the workings of the marketplace if the public is to be well served with respect to viedo home entertainment and information services.

A. NTIA Petition

68. The regulatory proposal advanced by NCTA contains the following basic elements: (a) retention of the mandatory signal carriage and network program nonduplication rules for all cable systems: (b) retention of the Commission's distant signal carriage limitations and the Copyright Act's compulsory licensing arrangement for existing cable systems; (c) extension of the syndicated program exclusivity restrictions presently applicable in markets 1–50 to markets 51–100 for the operations of existing systems; (d) adoption of a requirement that new systems or existing systems adding new signals or expanding operations into new communities obtain the consent of the originating station for retransmission of non-network programs; and (e) regulatory supervision and oversight of program exclusivity agreements if necessary.

69. In support of its petition, NTIA states that there is "an economic approach that relies upon the marketplace, results in fair competition or dealing among all the interests, and properly allows the Commission to eliminate much of its complex regulatory approach." According to NTIA, the present regulatory scheme is neither sound nor effective mainly because (1) cable's use of broadcast signals is "crabbed and hedged in" by government regulation and (2) the copyright owner's compensation for cable carriage of non-network programs is determined by government fiat, not the marketplace. Because the present approach constitutes an abandonment of the marketplace, anomalies occur. For example, a cable system is not restricted from carrying a sports program under present circumstances even though the right to broadcast this program is denied to a subscription television station or commercial broadcaster. As a consequence, cable systems are permitted to operate outside the television program marketplace whereas others are compelled to operate within this marketplace

70. To remedy the flaws that now exist, NTIA proposes that the Commission adopt a retransmission consent approach not unlike the rebroadcasting requirements applicable to television translators and others under Section 325(a) of the Communications Act. Retransmission consent would require new cable systems and existing cable systems expanding their operations to obtain the consent of the originating station for the retransmission of non-network programs.[70] Under this approach, the

[63] 47 CFR §§ 76.59(b)–(e), 76.61(b)–(f), 76.63.

[64] 47 CFR §§ 76.151–76.161.

[65] *See* para. 45, *supra*.

[66] *See Home Box Office, Inc. v. FCC, supra*.

[67] *Syndicated Exclusivity Report, supra*, paras. 8–10.

[68] *Notice of Proposed Rule Making and Notice of Inquiry in Docket 18397*, FCC 68–1176, 15 FCC 2d 417 (1968); *Cable Television Report and Order, supra*, at paragraph 59.

[69] *Motion Picture Association of America*, FCC 78–289, 68 FCC 2d 57 (1978).

[70] NTIA asserts that retransmission consent for cable carriage of network programming is not

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distribution of this type of programming could be left to the marketplace. It would enable the Commission to eliminate control and supervision of cable carriage of non-network programming except that necessary to protect against "warehousing" practices. In addition, it would enable the copyright owner to control the distribution of his programming and enable the copyright owner to receive full compensation. According to NTIA, the "core problem" of cable television standing outside the competitive television program market would be resolved under its recommended approach. As a consequence, "cable would be brought into the marketplace, the same market rules would apply to all, and their application would be clearly understood."

71. NTIA asserts that "retransmission consent is an idea" whose "time has come" because there is a "great difference between 1979 and the situation in 1968–1972" when the Commission proposed and abandoned such a requirement. Since then, NTIA asserts, the satellite has come into the picture. In addition, there are "interested stations like WTCG (some of which have the rights to popular sports programming), interested systems, interested sellers of film and interested middlemen." Moreover, it states that its approach constitutes "a reasonable and workable reconciliation" of the disparity in treatment between the two basic delivery systems for non-network programs—commercial broadcasting and cable television—and thus would treat cable television and broadcasting equally to the extent they vie for non-network programs.

72. NTIA also states that complete deregulation of cable television signal carriage from the Commission's standpoint would not constitute a marketplace solution but would create worse anomalies. According to NTIA, Commission deregulation would merely shift government regulation to another part of the government, the Copyright Royalty Tribunal, which does not represent a marketplace solution. Moreover, it would not be sound for the Commission to abandon its present regulatory program and expect Congress to resolve copyright matters relating to cable carriage of non-network programming because even though legislation would be the preferable way to proceed, it is not assured. Further, the Commission would not be acting responsibly in this manner because, NTIA claims, the "health of the copyright owner is an important part of the public interest 'in the larger and more effective use of radio' (Subsection 303(g) of the Act)." A retransmission consent requirement, however, would alleviate "anomalies which exist under the present rules and others that might arise from complete deregulation." In addition, NTIA contends that it would constitute "a marked step toward sound disengagement" of cable television regulation.

But in order to insure that program exclusivity rights are reasonable and to avoid adverse effects on the "public's interest in having reasonable access to programs," NTIA recommends that the Commission exercise oversight of the program marketplace to avoid unreasonable "warehousing" of programs. According to NTIA, the Commission has "ample authority" to do so not only with respect to retransmission of programs by cable systems but also rebroadcasting of programs by translators and other broadcast licensees.

73. Broadcast interests were generally receptive to NTIA's proposal.[71] They contend that the present marketplace is distorted because cable television is permitted to function outside the television program distribution marketplace and indicate that a retransmission consent policy might be a constructive, workable approach to bring cable into this marketplace. They agree with NTIA that complete deregulation of cable television would merely result in worse anomalies in the marketplace and aggravate the existing problems created by satellite retransmission of broadcast stations to cable systems. These commenters indicate that the Commission has the obligation to assure that cable competes fairly with broadcasters and the responsibility to create a "rational marketplace" by establishing rules for the operation of the marketplace under which the concept of exclusivity is recognized and pursuant to which cable systems are required, as are broadcasters, to negotiate in the marketplace for rights to television programming. Thus, for example, INTV perceives a retransmission consent requirement "as an acceptable form of copyright regulation." Metromedia, however, in offering only "qualified support" for the proposal, does not believe that such a policy should be accompanied by deletion of the distant signal carriage and syndicated exclusivity rules because it contends that "there will continue to be sound public policy reasons to preserve the viability of local broadcast stations." In addition, some disagree with the proposal to the extent it seeks to "grandfather" existing systems. They argue that existing sytems should also be subject to marketplace forces and should not receive "preferential treatment." The National Association of Broadcasters neither supports nor opposes NTIA's proposal at this time because its members have not had a sufficient opportunity to consider carefully this "fundamentally different approach" to cable regulation of signal carriage.

74. Program supplier interest also support the petition[72] expressing concern over cable television's operation outside the traditional television program distribution marketplace and making many of the same arguments advanced in the broadcast comments. MPAA alleges that it is necessary that cable television be brought into the broadcast programming marketplace and that cable's failure to

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needed because the copyright owner has sold such programming for viewing by the entire nation and thus has received full compensation. This, it is said, accords with the view of Congress in adopting the Copyright Law Revision:

Similarly, the retransmission of network programming, including network programming which is broadcast in "distant" markets, does not injure the copyright owner. The copyright owner contracts with the network on the basis of his programming reaching all markets served by the network and is compensated accordingly.

H.R. Rep. No. 94–1496, 94th Cong., 2d Sess. 90 (1976).

[71] Comments and/or reply comments were received from Metromedia, Inc., the National Association of Broadcasters (NAB), Association of Independent Television Stations (INTV), Klix Corporation, Taft Broadcasting Company *et al.*, The Licensees of Television Broadcast Stations KOB–TV *et al.*, Chartwell Communications Group, the Association of Maximum Service Telecasters, American Broadcasting Companies and Television Broadcast Licensees (Bahia De San Francisco Television Company *et al.*) Several of these parties requested that the Commission consolidate this proceeding with other pending Commission proceedings relating to cable television distant signal carriage (*e.g.*, Dockets 20988 and 21284). We hereby grant those requests. In addition, Metromedia and the National Association of Independent Television Producers and Distributors (NAITPD) have asked us to suspend any and all authorizations granted pursuant to Section 214 of the Communications Act for satellite retransmission of television broadcast signals to cable television systems. To the extent the issues raised in these requests are the same as those presented in RM–3324 and RM–3346 these issues will be considered here. There may, however, be separate common carrier related issues presented so that we will not formally rule on the NAITPD and Metromedia requests at this time.

[72] Comments and/or reply comments were filed by the Motion Picture Association of America (MPAA), the National Association of Independent Television Producers and Distributors (NAITPD), Tandem Productions, Inc., Madison Square Garden, Inc. (MSG), National Basketball Association (NBA), National Football League (NFL), National Collegiate Athletic Association (NCAA) and the Commissioner of Baseball.

pay copyright fees equivalent to marketplace fees will diminish the supply of television programming in the long run. In a similar vein, NAITPD states that "copyright royalties do not solve the market problems created by unrestricted cable retransmission." According to NAITPD, the Commission is authorized to deal with the deleterious effects of cable retransmission and satellite technology under *United States* v. *Southwestern Cable Co.*, 392 U.S. 157 (1968). Neither the new copyright law or its legislative history was intended to preclude the Commission from altering its rules or to preserve and enhance the marketplace, NAITPD contends.

75. Professional sports interests also support NTIA's proposal. They argue that at present they are denied the basic right to control the distribution of their product and to require cable systems to negotiate with them for cable carriage of their sports programming on distant signals. While Section 76.67 of the Commission's Rules prevents cable systems from importing a sports program of a local team when the program will not be shown by a local broadcast station in that market, it does not prevent cable systems from importing other sports programs which do not involve a local team or club. As a consequence, cable carriage of sports programs on distant signals results in oversaturation of sports programming in a market which not only injures the program supplier but reduces the value of telecasting rights of the sports owner for network, regional, and local sports presentation as well as affects the sports club's local attendance at the gate. Madison Square Garden, Inc. also alleges that unrestricted cable importation of Television Broadcast Station WOR-TV, New York, New York, which broadcasts New York Knicks and New York Rangers away games, would result in competition with its sports programming package of Knicks and Rangers home games which it offers to cable systems. A retransmission consent policy, however, would restore the basic right to negotiate freely in the marketplace over the terms and conditions surrounding the licensing of their product, as the Commissioner of Baseball puts it. The National Football League states that retransmission consent should not be limited solely to non-network programming because it is engaged in regional network programming of football games which it would have to abandon if unrestricted cable importation is allowed.

76. Comments from cable interests oppose the petition.[73] They allege that Congress rejected the concept of retransmission consent as early as 1960 and the Commission also considered and rejected this concept in 1972 as an answer to cable television regulation. Moreover, they allege that implementation of "retransmission consent" would be contrary to copyright policy established by the Copyright Law Revision's provision of compulsory licenses for cable carriage of distant television broadcast signals. Cable interests state that Congress had the choice of providing no copyright liability at all or providing full liability but instead chose a compulsory license system because it would be impractical and unduly burdensome to require negotiation with each copyright owner for each program retransmitted by a cable system. For the Commission to adopt a transmission consent policy would intrude upon the exclusive domain of Congress over copyright matters. To the extent that the petition seeks to protect the interests of copyright owners and program suppliers, cable interests say, it addresses matters beyond the Commission's jurisdiction.

77. In addition, cable interests indicate that this proposal has serious implications for cable operators and viewers under the First Amendment which should be seriously considered by the Commission in evaluating petitoner's proposal. They allege that a retransmission consent policy which would require the cable operator to secure approval from both the originating station and copyright owners of programming broadcast on the station would significantly restrict the availablility of programming for cable subscribers and, accordingly, the Commission should take into account First Amendment restrictions on those regulations which limit the provision of broadcast programs to the public. For example, Jim R. Smith and Company, Inc. argues that the public interest must be of sufficient importance to override the First Amendment rights of cable operators and viewers' rights to diverse sources of information. It states that the economic status of copyright owners and television stations is "an inadequate interest when pitted against the First Amendment rights of cable systems and subscribers," citing *Home Box Office, Inc. v. FCC*, 567 F. 2d 9 (D.C. Cir. 1977). According to Cape Cod Cablevision Corporation, if cable television is viewed as a multi-channel publisher, then "the First Amendment would seem to mandate that there be no government regulations." [74] In addition, the joint comments of 27 Cable Companies contend that meaningful relaxation of the restrictive cable television policies, rather than imposition of retransmission consent would serve "both the important 'First Amendment goal of achieving the widest possible dissemination if information from diverse and antagonistic sources' (Associated Press v. United States, 326 U.S. 1, 20 (1944)) and futher the Commission's statutorily mandated objective 'to make available, so far as possible, to all the people of the United States a rapid, efficient, Nationwide . . . radio communication service.'" Thus, cable interests consider the transmission consent proposal as impractical, illogical, and unlawful as well as a way in which television networks, television stations and program suppliers can restrict competition by cable in the marketplace.

78. We have carefully examined the petition and believe, on balance, that we should deny it. We agree with the general thrust of the petition that wherever possible marketplace solutions are preferable to approaches which rely heavily on governmental intervention. While the petition recommends the retransmission consent concept as a vehicle for achieving cable-broadcast programming markets free of most governmental interference, the proposal encompasses considerably more which appears less consistent with reliance on the marketplace. The proposal recommends that the Commission refrain from deregulating the present distant signal carriage and syndicated program exclusivity restrictions, absent adoption of a retransmission consent policy, and that for the existing operations of the cable industry, we extend syndicated exclusively protection for television stations in the second fifty television markets. The proposal also requests that the Commission consider retaining the

[73] Comments and/or reply comments were filed by the National Cable Television Association (NCTA), Community Antenna Television Association (CATA), Jim R. Smith and Company, Inc., Florida Cable Television Association, Cape Cod Cablevision Corporation, American Video Corp. *et al.*, and Visions, Ltd.

Comments in opposition were also filed by United Video, Inc. and the Secretary of Defense. Since the Secretary's comments were filed out of time, we shall treat them as informal comments.

[74] Cape Cod Cablevision also suggests "an alternative public policy proposal" which includes a condition that television broadcast licensees in accepting their licenses shall be deemed to have consented to retransmission of any material broadcast over the public spectrum. We decline, however, to specifically consider the proposal except as it relates to our discussion in para. 82, *infra*.

network nonduplication rules and mandatory signal carriage rules.[75]

79. We do not believe that consideration of the retransmission consent concept compels that we refrain from or postpone pursuing the recommendations of our *Economic Inquiry Report* and *Syndicated Exclusivity Report*. Indeed, to the extent that the proposal as a whole disfavors deregulation of cable television, absent adoption of a retransmission approach, and would continue to place distant signal carriage restrictions and syndicated program exclusivity restrictions on cable television systems and their subscribers, it is inconsistent with our conclusions, enunciated in the Reports, clearly endorsing increased competition in the marketplace. A major objective of these proceedings was to determine from available economic evidence whether Commission regulation of the competition between cable and television broadcasting continued to be supportable on public interest grounds or whether a marketplace approach would produce better results for consumers of video services. The Reports adopted today indicate quite clearly that increased competition in the marketplace for video entertainment and information services would not adversely affect consumers of video services.

80. In light of these findings and the previous unsuccessful effort to implement a retransmission consent program, we do not believe we could justify withholding action on the distant signal carriage and syndicated exclusivity restrictions as suggested by NTIA. Especially in view of our experience with a similar proposal, we are extremely reticent to forbear from proceeding on the evidence and recommendations of the Reports absent compelling evidence that substantial injury now or in the foreseeable future would occur to the public. We disagree with the argument of petitioner that we must act on its proposal now "before there is a plethora of new operations with grandfathering expectations." If our investigation of marketplace opportunities, deficiencies, and supplements so warrants, we are confident we will be able to take appropriate action at a later time.

81. We do, however, agree with the trust of the NTIA proposal that a market solution to the problems of compensating owners of programming materials for their commercial use is desirable. The existing compulsory license system substitutes regulatory judgment about the proper treatment of program rights for the normal market process that rewards holders of copyrights. So, too, does the retransmission consent proposal prejudge the type of market institutions that can best deal with the protection of equities. It is argued that if broadcasters succeed in raising advertising rates to reflect distant audiences, imported stations will want to have their signals retransmitted even if no retransmission fee is paid. Should this be true, the key equity issue, then, is whether the fees paid by the imported station for program rights will reflect the increase in advertising revenues to the imported station for the distant audiences. We solicit comment on this possibility and its economic effects. It may be the case that the normal market process will work without regulatory or legislative intervention. It may also be necessary to take actions that will facilitate the development of market institutions that will protect and adequately reward holders of program rights. Retransmission consent, full copyright liability, and pre-retransmission notification are among the ways to address this issue. The Commission's preference would be to give markets the opportunity to work and to impose regulatory judgments on how transactions should take place only on demonstration that a private market will not work. Nevertheless, on *a priori* grounds it might be the case that further Commission policy should be developed in this area. Therefore, the Commission invites further comment on how the markets in program rights might develop, and what actions, if any, the Commission can legally take that would serve that end.

82. While we believe that our action taken today compels our rejection of the NTIA proposal as a whole, nevertheless, we believe that we should examine independently the retransmission consent aspect of the proposal to the extent not inconsistent with the approach we are proposing today. We solicit comment on all aspects of retransmission consent including details on how it might work. In additon we invite comments on retransmission notification and any other way to allow the market process to work with the least amount of intervention. We are confident that a wider ranging examination of all relevant information on cable-broadcasting programming markets free of the complications imported by NTIA's specific two-tier, grandfathered plan will prove more fruitful than concentrating on a single, concrete proposal. Because of our refection of NTIA's proposal on policy-related grounds, we need not—and do not—resolve the various jurisdictional issues presented by it. However, since we are interested in a full discussion of what options we might have to encourage marketplace solutions in lieu of government regulation, we have set forth below the arguments presented to us that we lack authority to adopt proposals such as that advanced by NTIA.

83. The idea that cable television system operators should obtain the counsent of the stations carried is not a new one, having been given formal consideration by the Commission at least as early as 1959.[76] It, and its functional counterpart, full cable television copyright liability, have some considerable theoretical attractiveness as a policy response to aspects of the cable television signal carriage controversy. In particular it would, if fully implemented, eliminate the function of the Copyright Royalty Tribunal and restore to the marketplace the function of establishing the rates cable operators pay for the broadcast programming they carry. Moreover, it has been urged by some leading scholars that full copyright liability would permit consumers to better express the intensity of their program preferences to program suppliers with the result that programmers, cable systems, and broadcasters would more fully respond to consumer preferences.[77]

84. Considerable doubt has been expressed, however, about our jurisdiction to adopt this proposal. Congress in its recent revision of the copyright laws has provided that cable television systems need not negotiate individually for rights to the programs on broadcast signals they carry, but

[75] We have previously indicated, however, that changes in these rules should be considered separately except as they are relevant to the question of distant signal carriage. *See* para. 5, *infra*.

[76] *Report and Order in Docket 12433*, 26 FCC 403, 438 (1959).

[77] This appears to be a principal thrust of a frequently cited article which suggests that the compulsory licensing system established by the Congress was a mistake and should be replaced by full copyright liability. Besen, Manning, Jr., and Mitchell, "Copyright Liability for Cable Television: Compulsory Licensing and the Coase Theorem," 21 *Journal of Law and Economics* 67 (1978). The proposal raises interesting analytical and empirical questions which Congress will be considering in H.R. 3333, 96th Cong., 1st Sess. (1979). Essentially, these questions center upon whether full copyright liability is practicable—a matter which turns principally upon an estimate of the magnitude of transactions costs—and whether it is necessary to assure the correct volume, quality, and variety of television programming—a matter which turns importantly on the structure of the programming industry and upon the efficiency with which the existing compensation mechanism can make consumers' preferences known to the programming industry.

rather must pay for such programming by contributions to a central copyright fund pursuant to a compulsory licensing system. As described in more detail below, we believe NTIA's proposal might be more appropriate for consideration by Congress rather than by us.

85. Several factors tend to support the proposition that NTIA's proposal is more appropriately considered by the Congress. For example, although not entirely free from doubt, it appears that unless retransmission consents were obtained for every program carried, local as well as distant, network as well as non-network, cable operators would continue to have payment obligations under the compulsory licensing system even though, as under the NTIA proposal, distant non-network programs were negotiated and paid for individually.[78] Thus, unless our mandatory carriage rules were eliminated and cable operators commenced paying for network programs, there would still be cable operator payment obligations under the copyright law.[79]

86. NTIA cites as some support for the validity of its proposal, the inclusion of a similar requirement in recently introduced legislation to revise the Communications Act (H.R. 3333, 96th Congress, 1st Session).[80] This legislation, however, would also completely eliminate cable television subscriber rate regulation. To the extent the retransmission consent requirement might require general increases in subscription fees for its effective operation, there is a logical tie to granting the system operator greater control over his rates.

87. The fundamental reason asserted for doubting the Commission's authority to adopt this proposal, however, is Congress' explicit rejection of it and its enactment of a differing allocation of property rights as between copyright owners and cable systems and subscribers less than three years ago.

88. Except for a brief and unsuccessful *excursus* in the late 1960's, the Commission has been cognizant of the Congress' role with matters so fundamental as the allocation of property rights in copyrighted material, especially in the face of a new technology which was altering the value of the material and redistributing some of the wealth attributable to it.

89. Initial consideration of the retransmission concept in the cable television area focused on whether Section 325, 47 U.S.C. § 325,[81] should be amended to apply to cable television systems. Section 325 of the Communications Act requires broadcasters that rebroadcast the signals of other stations to obtain the permission of those stations. Its function is "to protect the rights of those having property rights in programs."[82]

90. When the issue of whether Section 325 should be applied to cable television operations came before the Commission, we stated:

> It may well be that Congress would desire to protect the property right of a broadcaster as against CATV retransmission as well as against rebroadcasting. For this reason, as well as because of the competitive impact involved here, we intend to recommend to Congress that an appropriate amendment to Section 325(a) be enacted * * * By other broadcasters * * * we are asked to recognize the existence of a property right, and to affirm it by rule; then, it is said, we would be in a position to issue "cease and desist order" against any CATV system rebroadcasting a signal without permission. This course of action we do not believe appropriate. This is not the forum in which the existence or nonexistence of a private property right can be adjudicated. * * *[83]

91. This legislative proposal was made to the Congress and was rejected by both the Senate and House Committees with responsibility for its consideration. The report of the House Committee stated:

> The Committee has considered the question raised by the Commission on its legislative recommendation of whether Section 325 of the Communications Act should be amended so as to prohibit transmission by CATV systems of any broadcast signals except with the express authority of the broadcast stations. In view of the pendency of copyright legislation, it is the view of the Committee that the recognition and protection of any property rights in programs broadcast by radio and television stations should more appropriately be determined within the framework of copyright legislation rather than within the framework of communications legislation. Therefore, the Committee decides against amending Section 325. * * *[84]

92. We considered the subject of retransmission consent again in the *First Report and Order in Dockets 14895 and 15233*, 38 FCC 683 (1965), which established minimum signal carriage requirements for microwave-served cable systems.[85] There, we were requested to "construe the microwave carriage and distribution of signals by or for the benefit of CATV's as a single transaction which, in effect, constitutes 'rebroadcasting' under the existing provisions of Sec. 325." *Id.* at 706 n. 37. We stated, however, that "the proposed construction is a strained one, which we are not at liberty to adopt." *Id.* In this *Report*, we recognized that cable television "stands outside of the program distribution process" and that, therefore, "the usual competitive situation" is not present. Nevertheless, we reiterated that cable television had not been found subject to the requirements of Section 325 and that Congress had not seen fit to adopt our recommendation that "restrictions on rebroadcasting embodied in Section 325 of the Communications Act should be extended to the distribution of broadcast signals by CATV's."[86]

93. The *Second Report and Order in Dockets 14895, 15233 and 15971*, 2 FCC 2d 725 (1966), in which we ultimately decided to exercise general jurisdiction over cable television also addressed the question of retransmission consent.[87] We stated:

> As a general approach encompassing all stations, we are proposing to the Congress that it consider the question of extending the rebroadcast concept of Section 325(a) to CATV. It may be that regulation of this nature would prove a preferable and more effective means of achieving fair recognition of the exclusivity contracts of the program marketplace.

Id. at 748. We also pointed out the "anomalies which result" from the situation in which broadcasters must negotiate for programming whereas cable systems do not and expressed our concern how this could affect the economic base of a television station serving as an outlet for local expression for all the people in its service area. *Id.* at 778–781. We concluded, as we had

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[78] In this respect it is important to note that cable operators make some payments for the "privilege" of carrying distant signal programming even if none is actually carried. *See* 17 U.S.C. § 111(d)(2)(B)(i).

[79] Under this legislative proposal, consent would have to be obtained either from the originating station or the owner of the program to be carried or from "the person who owns or controls the exclusive rights to the program involved." H.R. 3333, § 453(a)(2).

[80] H.R. 3333, 453(a)(2).

[81] Section 325(a): ". . . nor shall any broadcasting station rebroadcast the program or any part thereof of another broadcasting station without the express authority of the originating station."

[82] *Report on Amendment of Rebroadcasting Rules*, 1 R.R. (Pt. 3) 91:1131, at 91:1134, May 15, 1952.

[83] *Report and Order in Docket 12433*, 26 FCC 403, 430 (1959).

[84] *Report of the House Committee on Interstate and Foreign Commerce on H.R. 13286, H.R. Rep. No. 89–1635*, 89th Cong., 2d Sess. at 11 (1966).

[85] *See Economic Inquiry Report, supra*, paras. 41–43. Syndicated Exclusivity Report, *supra*, paras. 18–19.

[86] 38 FCC at 706 n. 37. We also pointed out pending copyright litigation in which program suppliers were seeking to establish their right to control the use by CATV systems of signals carrying their programs but declined to express or even to intimate any view as to the merit of this litigation since it fell "beyond our jurisdiction." *Id.* at 705 n. 32.

[87] *See Economic Inquiry Report, supra*, paras. 44–47; Syndicated Exclusivity Report, *supra*, paras. 20–24.

earlier in Docket 12433, that we should urge Congress to consider whether a provision similar to Section 325(a) should be made applicable to cable television including whether, to what extent, and under what circumstances cable systems should be required to obtain the consent of the originating broadcast station. In suggesting this approach, we observed:

> We are not in a position to state whether a Section 325(a) approach would be effective and fully consistent with the public interest. We think that this is a matter warranting Congressional (and Commission) consideration, including such aspects as how a "retransmission consent" requirement would function as a practical matter, whether systems in small communities should be dealt with specially, and whether grandfathering is appropriate and the nature of any such grandfathering.[88]

94. The Commission last considered this proposal in connection with its *Notice of Proposed Rule Making and Notice of Inquiry in Docket 18397*, FCC 68–1176, 15 FCC 2d 417 (1968), in which the Commission itself proposed to apply such a requirement to the carriage of distant commercial stations on cable television systems in the 100 largest television markets and to those signals carried by cable systems in the smaller markets that were necessary to provide subscribers with signals beyond the three national television networks and one independent station.[89]

95. In making this proposal the Commission indicated that it would forbear acting until the Congress had an opportunity to act on pending copyright legislation which it was hoped would resolve the unfair competition aspect of the retransmission consent proposal and provide "the legislative guideline which the Commission has long sought." [90] As the Commission noted, the retransmission proposal "necessarily also embodies considerations like copyright in its practical applications." [91]

96. After considering the various comments filed relating to this proposal and having undertaken some limited experimentation with operation under it, the Commission rejected it stating "experience has indicated that it will simply not achieve our basic objectives." [92]

97. Congress resolved the cable-copyright controversy by adopting the General Revision of the Copyright Law, Pub. L. 94–553, 17 U.S.C. § 101 *et seq.* (1976).

98. Congress chose to allow cable operators to obtain programming pursuant to a compulsory license process and thereby to avoid the necessity to negotiate exhibition licenses individually. Under this process cable operators may retransmit the programs on the signals they carry if they comply with Section 111, 17 U.S.C. § 111, which provides, among other things, that cable operators make payment of a prescribed royalty fee for this privilege.[93]

99. The legislative history shows that Congress was fully aware that the cable compulsory license constituted a major departure from traditional copyright practices. On this point the *Report of the House Committee on the Judiciary, Copyright Law Revision, H.R. Rep. No. 94–1476*, 94th Cong., 2d Sess. 89 (1976), stated:

> In general, the Committee believes that cable systems are commercial enterprises whose basic retransmission operations are based on the carriage of copyrighted program material and that copyright royalties should be paid by cable operators to the creators of such programs. The Committee recognizes, however, that it would be impractical and unduly burdensome to require every cable system to negotiate with every copyright owner whose work was retransmitted by a cable system. Accordingly, the Committee has determined to maintain the basic principle of the Senate bill to establish compulsory copyright license for the retransmission of those over-the-air broadcast signals that a cable system is authorized to carry pursuant to the rules and regulations of the FCC.[94]

100. Accordingly, Congress was cognizant that a compulsory licensing procedure would exempt cable television operators from the responsibility to negotiate with copyright owners for individual program clearances and that this procedure did not represent a conventional copyright solution,[95] but nevertheless concluded

> "In more familiar transactions in property there is no need for Government to intervene. In the free market buyers and sellers are able to bargain for and to reach prices which are acceptable to all concerned. The same is true in the case of business transactions involving copyrighted properties. However, the unique character and role of cable television is such that the Committee has been compelled to depart from traditional practices."
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> "We wished to permit and encourage the broader dissemination of communications through cable while being fair and equitable to the owners and users of copyrighted materials and at the same time protecting the public interest. The Committee process is now complete and the Committee has presented a bill which gives cable a compulsory license to intercept and retransmit—secondarily transmit—television and radio broadcasts."
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> "It may seem that a compulsory license is a drastic invasion of the rights of private property. Yet, when we remember that a cable system is passive in its program selection and must intercept and distribute whatever the primary transmitter transmits then we must recognize that it is impossible and impractical for the cable system to negotiate for a license with the copyright owner in advance of transmitting the programming. At the same time item-by-item negotiating between users and owners of copyright prior to each performance would be so burdensome as to destroy this valuable means of communication and would also effectively deny a valuable market to the copyright owners."

See also remarks of Senator John V. Tunney, 122 Cong. Rec. 3144–45 (Feb. 16, 1976) recommending adoption of Section 111:

> "The vast majority of copyrighted works enter the stream of commerce after the expense of manufacturing and distribution, or has licensed someone else to do so in exchange for a negotiated royalty. In the latter case, the copyright owner is free to bargain for the terms and conditions which best meets the author's concepts and goals. . . . Compulsory licenses are an exception to that method of operation and, as such, require, in my opinion, an extraordinary justification for Government intervention in an area that is best served by private parties negotiating with each other in their own best interests."
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> "In my opinion, the concepts of compulsory licenses and the Royalty Tribunal are only appropriate under circumstances that clearly indicate that they are more desirable than the negotiation process. The Committee on the Judiciary has determined that four industries have such needs that the compulsory license procedure is the most sensible method to resolve the licensing problems."
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> I would ask my fellow Senators to consider the nature of the task before us in Section 111. As I indicated earlier, in the compulsory license area the Congress and the Copyright Royalty Tribunal are called upon to act as arbitrators between conflicting economic interests. I strongly urge that you consider the equities involved and support Section 111 as reported by the Judiciary Committee.

[95] That Congress considered the possibility of establishing full copyright liability for cable retransmission of television signals and then allowing the marketplace to determine the

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[88] 2 FCC 2d at 788.

[89] 15 FCC 2d 417, 433 (1968), para. 39.

[90] *Id.* at para. 40.

[91] *See Economic Inquiry Report, supra*, paras. 49–52; Syndicated Exclusivity Report, *supra*, paras. 25–27.

[92] 36 FCC 2d 165. The comments responsive to this proposal and the nature of the experiment conducted are discussed in the *Cable Television Report and Order, Id.* at 150–154, paras. 20–26.

Although this resolution made it unnecessary for the Commission to further discuss its jurisdiction, others did question whether the matter was properly within the Commission's authority. For example, the Register of Copyrights stated that this requirement was precisely what the Supreme Court had held was unnecessary in the *Fortnightly* decision, the necessity to get retransmission consent. What the FCC had done—I am expressing my own opinion, but I honestly believe that—in the guise of administrative regulation of what it called unfair competition was to impose copyright liability where the Supreme Court had held it did not exist and to create a situation where Congress has so far declined to act. It was hardly surprising that the approach failed * * *. Testimony of Barbara Ringer, Register of Copyrights, *Hearings on H.R. 2223 Before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the House Judiciary Committee*, 94th Cong., 1st Sess., ser. 36, pt. 3, at 1816 (1975).

[93] It should be noted that the payment system adopted is not unlike one suggested by the Commission. *See Second Further Notice of Proposed Rule Making in Docket 18397–A*, FCC 70–676, 24 FCC 2d 580, para. 11 and Appendix A (1970).

[94] *See also* the remarks of Congressman George E. Danielson, 122 Cong. Rec. 10,904 (daily ed. Sept. 22, 1976):

that a compulsory license procedure for cable would best serve the purposes underlying the copyright laws.[96] It is argued in establishing a compulsory licensing scheme for cable television Congress has in effect determined that the interest of the public in the dissemination of copyrighted works outweighs the interest of the copyright owner in having exclusive dominion over the dissemination of its works.

101. It is asserted that this history demonstrates that Congress specifically considered and rejected the proposal that cable television system operators individually negotiate and pay for the programs carried on broadcast signals. It has been suggested that this action was taken entirely in a copyright context and should not be taken as limiting the Commission's authority to adopt the proposal in order to carry out its Communications Act responsibilities.[97]

102. For our purposes, it is sufficient to observe that nothing in the NTIA petition or the comments thereon has altered the tentative conclusions we enunciated in the Inquiry Reports. We believe the public will be well served by prompt consideration of the proposals to delete the distant signal and syndicated exclusivity restrictions from our rules.

National Association of Broadcasters Petition

103. On March 22, 1979, the National Association of Broadcasters (NAB) filed a petition requesting the Commission to commence rulemaking leading toward the adoption of rules designed to insure that local television broadcast service is not harmed by the development of "superstations" and further requesting that the Commission give expedited consideration to this matter.[98] Those supporting the petition request were primarily broadcast and program supplier interests. Those opposing the petition were primarily cable television interests but included as well resale common carriers presently engaged in the distribution of television signals via satellite and a television station licensee whose signal is presently being delivered by satellite to receive only earth stations for use by cable television systems.

104. We have examined the NAB petition and the related comments with care and have concluded that they fail to produce any evidence whatsoever that a regulatory problem either now exists or is being fomented. Accordingly, we deny the petition.

105. In support of its request, NAB alleges that (1) superstations are being created and that (2) their creation is harmful to the concept of local broadcast service to the public and, accordingly, the Commission should act consistent with its statements in *Report and Order in Docket 20487*, 57 FCC 2d 625, 645 (1975) and *Memorandum Opinion and Order in RM-2952*, 68 FCC 2d 57, 59 (1978) that it would take appropriate action if in fact adverse effects on the public interest from superstation development do occur.

106. To establish its viewpoint that superstations do in fact exist, NAB points to the development of television station WTCG, Atlanta, Georgia, since the distribution of its signal by satellite, and its predicted development in the future. According to NAB, the station's own officials have reportedly predicted that by 1980 the out of market viewing of WTCG will have increased from the current 60% figure to 75% of its total audience and that by 1989 its revenues will have increased from $31 million in 1978 to 138 million with annual pretax profits rising from 1.1 million to 62 million in the same time period.[99] NAB asserts that the station has opened advertising sales offices in New York and Chicago and has attracted national sales from major advertisers at rates in excess of what a station serving a market the size of Atlanta alone would attract. Relying upon WTCG's promotional information, NAB states that the station frequently averages, during certain days and day-parts, 30 to 40% of the total viewing of distant cable households and 10 to 15% of the total market viewing in certain areas with 25 to 50% cable penetration. It is NAB's view that WTCG has achieved the status of a superstation in terms of cable subscribers reached and total audience delivered and that other superstations are not far behind, most notably, television broadcast stations KTVU, Oakland, California and WGN-TV, Chicago, Illinois, which are already being distributed via satellite, and stations WOR-TV, WCBS-TV, and WPIX, all New York, New York, KTTV, Los Angeles, California, and WSBK-TV and WCVB-TV, Boston, Massachusetts, which are intended for satellite distribution very shortly.

107. NAB asserts that superstation development can be traced to several actions taken by the Commission: (1) the deletion of the "anti-leapfrogging" signal carriage rules in *Report and Order in Docket 20487*, 57 FCC 2d 625 (1975), (2) an "open entry" policy for satellite-to-cable distribution of broadcast signals established in *Southern Satellite Systems, Inc.*, 62 FCC 2d 153 (1976), and (3) the amendment of the Commission's rules to allow the use of small-diameter receive-only earth stations in *American Broadcasting Companies, Inc.*, 62 FCC 2d 901 (1977). These actions, according to NAB, have "opened the door to superstation development."

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compensation to be made to copyright owners is evident from the legislative hearings on the House version of the copyright bill. One example is the following colloquy between Congressman Herman Badillo and Jack Valenti, President of the Motion Picture Association of America:

Mr. Badillo: Would it be possible for us to merely say that it is a copyright and then leave the question of the amount to be paid to be settled in the marketplace?

Mr. Valenti: In all honesty, I have to tell you that I think there would be administrative difficulties in the free play of the marketplace. That is what the compulsory license was created to avoid—such an administrative difficulty; a compulsory license covering all signals, lessening paperwork, lessening everything.

Hearings on H.R. 2223 Before the Subcomm. on Courts, Civil Liberties, and the Administration of Justice of the House Judiciary Comm., 94th Cong., 1st Sess., ser. 36, pt.3, at 758 (1975).

[96] Congress' purpose in enacting copyright legislation has been to provide for the dissemination of works for the benefit of the public and, secondarily, to remunerate the author for his works. *See, e.g., Mazer v. Stein*, 347 U.S. 201 (1954) and *Fox Film Corp. v. Doyal*, 286 U.S. 123 (1932). *See also* J. E. Esezobor, "Concepts in Copyright Protection," 23 *Bulletin of Copyright Society* 258, 263–266 (1976), indicating that "[t]he rights granted to the author became regarded [under copyright law] as a means to an end, the end being the overall welfare of society" and that copyright "now assumes the role of balancing the needs of society versus the interests of the author."

[97] The argument is made by NTIA that the Commission now has the same authority it had in 1978 when the Commission proposed to adopt a retransmission consent requirement under its existing authority. It is not altogether clear that we had jurisdiction then. As the Supreme Court said in *Teleprompter Corp. v. CBS, Inc.*, 415 U.S. 394 406 n. 11 (1974):

The FCC has consistently contended that it is without power to alter rights emanating from other sources, including the Copyright Act. * * * This position is consistent with the terms of the Communications Act of 1934, the source of the Commission's regulatory power * * *.

Whether or not the Commission had the authority then, it is clear that subsequently enacted law must prevail to the extent of any inconsistency. 1A Sutherland, *Statutes and Statutory Construction* 23.09 (4th ed. D. Sands 1972). *See, e.g., Posadas v. National City Bank*, 296 U.S. 497 (1935); *United States v. Yuginovich*, 256 U.S. 450 (1922); *Anderson Hotels of Oklahoma v. Baker*, 190 F.2d 741, *cert. denied*, 342 U.S. 869 (1951). *See generally* E. Crawford, *The Construction of Statutes* § 137 (1940); 73 Am. Jur. 2d § 401; 82 C.J.S. §§ 290–91.

[98] By Order of the Chief, Cable Television Bureau, release date March 28, 1979, the time for filing comments in response to this petition (RM-3346) was set at April 6, 1979, with reply comments due April 13, 1979, less than the normal comment periods for this type of petition, in order that the Commission might be able to consider the issues raised by the petition in conjunction with other pending cable television related proceedings.

[99] Turner Communications Corp., in its comments, states that revenues from the publicly held company, not just from WTCG, were $29 million for 1977 and that the 1978 financial report for the company has not yet been published.

108. In support of its viewpoint that the development of superstations is detrimental to the public, NAB asserts that the formation of superstations negates the benefits of locally oriented broadcast service and undermines the Commission's efforts to promote local television broadcast service, the linchpin of the Commission's television frequency allocation policy in the *Sixth Report and Order*.[100]

According to NAB, WTCG has done little to provide more locally oriented programming since setting out to become a superstation and, as evidence thereof, NAB submits information derived from Commission records [101] which allegedly shows the limited amount of local programming on the Atlanta station as compared with other stations, both in the same market and nationally. The other satellite distributed superstations, specifically WGN and KTVU, on the other hand, have maintained their focus on their communities, NAB says. This evidence suggests to NAB that once a station sets out to become a superstation, it apparently loses sight of its local community to the detriment of the Commission's goal of locally oriented television broadcast service and that, in view of the promise of economic rewards, stations selected for nationwide distribution may find it more difficult to maintain a purely local orientation. NAB adds that the Commission further encourages potential superstations to minimize local programming by allowing cable operators to delete local programs under distant signals.[102] NAB therefore argues that "competition" among present and potential superstations shortchanges local viewers who rely on these stations as an additional local voice. In addition, NAB argues that superstations are an unhealthy development because they not only mean a loss of local programming choices but because they effectively remove themselves from the market for local advertising which results not merely in a loss of local advertising channels to the detriment of local advertisers but to the detriment of consumers as well who rely on this advertising.[103]

109. NAB also contends that problems arise for those stations who do not set out to become superstations. NAB alleges that they become hampered in their ability to serve their local communities because program suppliers refuse to sell program product to these stations or decide to withhold their product entirely from these markets. This hurts the other stations serving the market, according to NAB, but, most importantly, the viewing public. To substantiate its claim, NAB points to the withdrawal of broadcast rights to NCAA basketball games featuring area teams to WGN–TV, "obstensibly" in view of its superstation status. NAB claims that, as a result, the station's image as the local sports station was tarnished. Accordingly, NAB believes that superstation status will put stations at a distinct competitive disadvantage vis-a-vis their competitors in the program acquisition marketplace and will weaken their ability to provide programming their communities want. Additionally, NAB states that the combination of cable growth and formation of superstations will increase the reluctance of program suppliers to deal with superstations.

110. NAB states that superstation development is unhealthy for the development of UHF because it encourages new UHF applicants to begin operation in competition with some of the most attractive independent stations in the country which in NAB's opinion is an invitation to struggle and, perhaps, ultimately fail at the expense of local broadcast service. NAB alleges that the economic evidence submitted on its behalf in Docket 21284, which estimates substantial audience losses for local UHF is six independents are imported into the market, already shows that UHF stations are less likely to succeed, much less provide an additional source of local information and quality entertainment programs in the presence of severe cable competition. Removal of the distant signal carriage limitations and continued inaction on the development of superstations by the Commission would, according to NAB, be contrary to Commission efforts to promote locally oriented broadcast service and more and better UHF television service.

111. NAB also claims that superstation development now threatens to injure seriously the program production industry to the detriment of broadcasters, cable operators, their viewers and subscribers and the Commission's commitment to a wider diversity of program options for the public. According to NAB, the television program production industry has already been affected by cable's free ride to broadcast programming under the Commission's rules and the revised Copyright Act and that the situation will become more acute as superstations develop. If signal importation of superstations continues, NAB alleges, the very source for all cable-carried and broadcast programs may be severely threatened. NAB contends that superstations magnify, by geometric proportions, the degree to which program suppliers have lost control over their product. As a result of syndicators not being able to guarantee exclusive presentation rights, syndicators are faced with the difficult choice of foregoing sales to superstations or to markets to which these stations are licensed or losing prospects of selling their program product in those other markets which have already been cable-invaded with the same program and in return receiving miniscule payments under the copyright act, NAB alleges. In particular, superstation development will make it extremely difficult for the syndicator of first-run program product to recoup the costs of production, according to NAB. NAB states that speculation has been supplanted by specific factual evidence of harm and, in support of this proposition, alleges that MCA TV, one of the largest syndicators of motion pictures and television series, has refused to sell anything to station WTCG as reported by *Variety* magazine and others are reportedly bypassing the Atlanta market. Additionally, NAB refers to the denial of NCAA basketball broadcast rights to WGN–TV. According to NAB, the degree of marketplace competition by such cable carriage is not enhanced but is in fact diminished as a result of broadcast markets not sold and individual programs not produced.

112. Having concluded that the public has been already harmed, NAB states that the Commission has the authority and Congressionally mandated duty to equitably allocate use of the broadcast spectrum in such a manner as to insure that local broadcast service is preserved and, pursuant to this responsibility, to anticipate and "plan in advance of foreseeable events"[104] to insure that the

[100] *Sixth Report and Order in Dockets 8736, 8975, 8976, and 9175*, 41 FCC 148 (1952).

[101] *FCC Television Broadcast Programming Data*, 1973–1977.

[102] *E.g.*, Section 76.61(b)(2) of the Commission's Rules provides in pertinent part as follows: Whenever, pursuant to Subpart F of this part, a community unit is required to delete a television program on an independent signal carried pursuant to this section, or a program on such a signal is primarily of local interest to the distant community (e.g., a local news or public affairs program) such community unit may, consistent with the program exclusivity rules of Subpart F of this part, substitute a program from any other television broadcast station.

[103] NAB also alleges that superstations create problems for national and cooperative advertisers because those advertisements intended to reach only the local market of the station may be considered "highly deceptive" to audiences reached outside the station's normal market.

[104] *United States v. Southwestern Cable Co.*, 396 U.S. 157, 177 (1968).

public is not harmed by the development.

113. Broadcast interests generally were in support of the petition.[105] One broadcaster contends that, as an interim measure, the Commission require all satellite carriers of television broadcast signals to obtain prior written consent of the broadcasters whose signals are being distributed. Others assert that the Commission temporarily suspend authorizations for satellite retransmission of television programs to cable systems including those previously granted which are still subject to reconsideration pending resolution of the superstation problem and related matters. In addition, ABC states that the Commission should redirect its resources to reduce the backlog for television station applications, especially those for new UHF and subscription television stations, and to expedite the Commission's inquiry into the roles of television translators and low power television broadcast stations in Docket 78–253 in order to provide for increased conventional over-the-air television service rather than reoccupy itself with dismantling the very carefully-balanced cable regulatory plan. The Association of Maximum Service Telecasters adds, in its comments, that superstations are contrary to the policy underlying the Commission's multiple ownership rules, which seek to promote diversity of viewpoints in communications media. AMST also states that a retransmission consent requirement would not be an efficacious solution to the superstation problem, as others might suggest, because it might not be effective in minimizing the danger of impairing local service and impeding new television broadcast service. Broadcast interests also assert that recent Commission actions such as its decision in *Arlington Telecommunications Corp. d/b/a ARTEC,* 69 FCC 2d 1923 (1978), *recons., denied,* —— FCC 2d —— (1979), *appeal docketed,* Nos. 79–7043, *et al* (9th Cir. January 31, 1979), have increased the need for Commission consideration of superstation problems. Turner Communications Corporation, licensee of television station WTCG, was opposed to the petition.

[105] Broadcast interest filing comments and/or reply comments included the Association of Maximum Service Telecasters, Turner Farror, Inc., WBNS–TV, Inc., and Video Indiana, Inc., American Broadcasting Companies, Inc., Television Broadcast Licensees (KDTV *et al.*), Rustcraft Broadcasting Company, Springfield Television Corporation, Metromedia, Inc., Turner Communications Corp. and WGN Continental Broadcasting Co.

114. Program supplier interests were generally in support of the petition.[106] For example, Tandem Productions, Inc., in joint comments with Chartwell Communications Group, states that it is in agreement with "all of the premises of the NAB petition" and, in addition, suggests that the expeditions resolution of the superstation problem lies in the imposition of a retransmission consent requirement. Other program supplier interests suggest that the retransmission consent concept might be a suitable solution to this problem because it relies on the marketplace rather than governmental intervention. In addition, MPAA says that the Commission is required to set forth a consistent policy between localism and superstations. Sports interests, such as the National Basketball Association, state that superstation development leads to oversaturation of sports events in many television markets and, as a consequence, dilutes the value of their program product and, accordingly, also urge the Commission to address this matter.

115. Cable interest were opposed to the petition.[107] They state that the Commission has previously addressed the subject of satellite retransmission of television broadcast signals in its *Southern Satellite Systems, Inc., supra,* and *Memorandum Opinion and Order in RM–2952, supra,* and determined that such service would be consistent with the public interest. They emphasize that no new facts have been presented in the petition which justify a change in Commission policy. Jim R. Smith and Company additionally states that the petition is premature because the Commission stated in 1976 in *Southern Satellite Systems, Inc., supra,* at 161, that, in view of its limited regulatory experience with this new type of service, it would limit the satellite authorization to five years and at the end of that time review the authorization "in light of our actual experiences with this form of service." Oceanic Cablevision, Inc., cable operator of systems in Hawaii, says that satellite is the only feasible way it can provide its subscribers with the same program diversity cable systems in other communities of comparable size are able to provide their subscribers. Cape Cod Cablevision Corporation is supportive of the NAB petition to the extent that it would require a general investigation of all signal carriage rules governing cable but suggests an investigation of the entire emerging marketplace for commercial video programming. It is opposed, however, to consolidation of the NAB petition with the Commission's pending proceedings in *Dockets 21284 and 20988.* United Video, Inc., a resale common carrier engaged in satellite distribution of WGN–TV for use by cable systems, says that there has been no demonstration of harm to the public but, instead, a significant increase in the diversity of independent television programming available to cable viewers. It adds that national distribution of a television signal is not contrary to the Commission's overall goal of localism, otherwise the national television networks would be much more restricted in their domination of television programming in this country. Southern Satellites Systems Inc., which is engaged in satellite retransmission of WTCG, states that the issues raised by NAB in its petition are virtually the same as those raised in the *Memorandum Opinion and Order in RM–2952, supra,* and, accordingly, should be rejected for the same reasons stated in that case in which the petitioner failed to support its allegations of impact on local broadcast service, interference with the policy of localism and reduction in available television programming.

116. In *Southern Satellite Systems, Inc.,* 62 FCC 2d 153, 159 (1976), we granted the first application for authority to engage in satellite distribution of a television broadcast signal to cable television systems and other entities throughout the United States. We described this application as "an innovative combination of new technology and established practices." *Id.* In that decision, we pointed out several benefits which we envisioned this new service would provide: (1) a more efficient utilization of high capacity domestic satellite facilities by carriers with a special expertise in certain communications submarkets; (2) an increase in the diversity of cable television programming available to the public; and (3) the availability of a service that cannot be efficiently or economically provided by terrestrial

[106] Program supplier interests filing comments and/or reply comments included Tandem Productions, Inc. and Chartwell Communications Group, National Association of Independent Television Producers and Distributors, Commissioner of Baseball, National Hockey League, National Basketball Association, National Football League, Madison Square Garden Center, Inc. and the Motion Picture Association of America, Inc.

[107] Cable interest filing comments and/or reply comments included Cape Cod Cablevision, National Cable Television Association and Community Antenna Television Association, Jim R. Smith & Co., Inc., and Oceanic Cablevision, Inc. In addition, opposition comments or reply comments were filed by Southern Satellite Systems, Inc., Visions, Ltd., United Video, Inc.

means.[108] Since that decision we have subsequently received and approved other applications for this type of service.[109]

117. We have been asked to review once again our policy approving satellite dissemination of broadcast signals on the basis that establishment of this service may prove inimical to local broadcast service to the public interest. Only last year, we considered a petition for rulemaking similar to the present one which urged us "to determine whether restrictions should be placed upon the dissemination of broadcast signals to cable systems via satellites." *Memorandum Opinion and Order in RM–2952*, 68 FCC 2d (1978). We declined to take action unless it could be established that (1) superstations are being created and (2) their creation is harmful to the public.[110] We stated that "the burden of proof lies on those who would restrict service to the public." *Id.* at 59. We concluded that "[n]othing unforeseen has happened since that decision and that no new facts have been presented."

Id. We also indicated that the petition was "premature" in view of the fact that the authorization granted to Southern Satellite Systems, Inc. was for a five year period at the end of which we would review it "for the express purpose of re-evaluating this form of service in light of our experience at that time." *Id.* That five year period has not yet expired.

118. We have carefully considered the arguments contained in the petition herein and the supporting comments and have concluded that no new evidence has been presented to show that the public has been injured that would justify a departure from our decision in *Memorandum Opinion and Order in RM–2952, supra*, less than a year ago. We have examined extensively the impact of distant signal carriage on broadcasters' ability to serve the public in the *Economic Inquiry* Report. We have concluded that complete removal of the distant signal carriage rules will not cause significant risk of loss or broadcast service to non-cable viewers. This conclusion applies to the importation of programming of the current signals distributed by satellite as well as the programming of other stations' signals that may be distributed by satellite to cable systems in the foreseeable future.

119. Our analysis of the economics of the programming marketplace leads us to believe that superstations will not be able to compete effectively with the national networks in purchasing the programming which is most appealing to large audiences. Therefore, we do not expect that the growth of superstations will alter the impact on local broadcasters' audiences estimated in the *Economic Inquiry Report*. For example, in Section II of that report, we found that no more than approximately 48 percent of the television homes in the nation will subscribe to cable television in the foreseeable future, even in the unlikely occurrence that every home is passed by cable. Accordingly, given that each network will have a much larger audience base than any superstation, the networks will continue to purchase programming which more effectively attracts mass audiences. For example, even assuming that superstations will attract equal audiences as the networks in cable homes, that 48 percent of the homes in the nation will subscribe to cable, that there will be only five superstations, and that each of these stations will have acess to every cable household in the nation, each superstation will still have only about one-fourth the audience base of a national network.[111] Once again, it is clear that the superstations will not be able to bid effectively against the networks for programming and thus will attract smaller audiences. While cable carriage of independent stations may marginally improve the quality of their programming, we do not believe that it will cause additional significant impact on local stations' ability to serve the public interest or, more specifically, on their ability to provide locally oriented programming to their local viewing audiences, a primary concern articulated in the NAB petition.

120. As indicated above, at no point in the foreseeable future will superstations be able to compete as effectively as the networks for television programming. Moreover, the evidence indicates that not all superstations will be as effective in competing with the networks for audience as certain of the large market independents. These large market independents reach a larger number of homes than the entire current potential audience of the most widely-discussed of the superstations (WTCG, Atlanta). For example, WNEW–TV, New York, has a net weekly circulation [112] of 5,880,500 households whereas WTCG is said to reach approximately 3,000,000 cable homes [113] in addition to having a net weekly circulation of 686,900 households in its local market.[114]

121. We also do not believe that satellite distribution of a station's signal on a regional or national basis necessarily compels the conclusion that it will lead to a decrease in locally oriented programming on that station or in the station's market to the detriment of the viewing public. There are ample regulatory measures to guard against such occurrences, if they do in fact occur. As we pointed out in *Memorandum Opinion and Order in RM–2952*, "a station being distributed via satellite is still required to ascertain the needs and interests of its local community and to program to meet these needs." [115] Our license renewal process, which scrutinizes a broadcast licensee's performance once every three years, also provides an opportunity for citizens to determine whether the station licensee has shunted its public interest obligation to serve the needs and interests of its community of license and to express their concerns in this regard to the Commission. The risk which a station takes if it abdicates its public trustee responsibility to its community of license is a substantial one. We tend to doubt that television

[108] *Id.* at 159–160. Commissioner Washburn, in a separate statement, added: Today, we have made a unique and historic decision permitting Southern Satellite Systems, Inc. to serve as a common carrier to disseminate broadcast signals to cable systems via satellite. It could turn out to be the first step on the road to a fourth network. This decision, coupled with our action of yesterday authorizing small earth station receive-only antennae, represents very significant progress toward fulfillment of our commitment to deliver the benefits of satellite technology to the public. [footnotes omitted] 63 FCC 2d at 163.

[109] *See United Video, Inc.*, FCC 78–766,——FCC 2d——(1978), *recons. pending*.

[110] *See also Report and Order in Docket 20487*, 57 FCC 2d 625, 645 (1975).

[111] That is, assuming that each of five superstations and that each of the three networks receive equal audiences in the cable households (i.e., 48 percent of all television households), the potential audience for each is 6 percent of the nation's homes. Of the remaining 52 percent of the nation's homes which do not subscribe to cable, each network will have access to what accounts for approximately 17 percent of the potential audience in the nation. The combination of these percentages leaves each network with 23 percent of the potential viewing, while each superstation has access to only 6 percent of the potential viewing in the nation.

[112] Net weekly circulation is the number of different television households viewing a station at least once per week.

[113] NAB Petition for Rulemaking (RM–3346), p. 9.

[114] Net weekly circulation data derived from *Television Factbook, Stations Volume*, 1978 Ed.

[115] *Id.* at 58. (footnote omitted). *See also Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650 (1971) and *First Report and Order in Docket 19715*, 57 FCC 2d 418 (1976) concerning television broadcast station licensee responsibilities to serve their communities. A station licensee's obligation to provide service in meeting viewer needs, interests, and preferences is not confined or limited to the presentation of local programming. For example, in *Programming Policy Report*, 20 R.R. 1901, 1914 (1960), we recognized programming provided by "chains" of stations and then by networks "as of great value to the station licensee in providing a well-rounded community service."

station licensees will take lightly their responsibilities in this area whether they are network affiliated or their signals are distributed by satellite.[116] While NAB appears to be satisfied with the local service provided by stations WGN–TV and KTVU, whose signals are presently being distributed by satellite to cable systems, it appears to be less than satisfied with the performance of WTCG.[117] We believe, however, that the license renewal process is the appropriate forum in which to determine whether that station licensee's performance meets our public interest standards for broadcast licensees rather than a proceeding such as this. In sum, we believe that the risk of a diminution of local programming on satellite distributed signals is speculative at best.

122. We also find that NAB or the supporting comments have not demonstrated that stations whose signals are distributed by satellite are placed at a distinct competitive disadvantage vis-a-vis their competitors in the program acquisition marketplace and thus will be hampered in their ability to serve their local community. Although the instant petition claims that one syndicator has refused to sell its program product to station WTCG and that other program syndicators are allegedly considering similar action including by-passing the Atlanta market completely, this hardly constitutes proof that superstations will be impeded in their efforts to provide programming their viewing audiences want. Nor do we consider this information as evidence that injury to the public has in fact occurred upon which to base a decision on whether regulatory action is needed. The only concrete evidence provided in the petition is a reference to a single instance of a program supplier withdrawing broadcast rights for NCAA basketball games to WGN–TV. On this score, NAB notes that the broadcast rights to this programming was obtained by one of the station's competitors. Moreover, we have not been presented with any evidence from the station licensees of WGN–TV or WTCG that they have encountered problems in obtaining programming to serve their local communities.[118]

123. We also seriously doubt that program suppliers will decline to offer their products for sale in those television markets where superstations are licensed to the detriment of other market stations and the viewing public especially in view of the fact that stations subject to satellite delivery are usually located in the larger markets where substantial revenues are derived by program suppliers. Even if some program suppliers permanently withdraw their products from these markets, about which we are highly skeptical, their action would merely open the door for other syndicators to fill the void. It is also unlikely that the ability of these stations to provide locally oriented programming will be impaired.

124. While the petition and the supporting comments allege that satellite distribution of broadcast signals threatens to adversely affect the program production industry to the detriment of viewers, both off-the-air and cable subscribers, we have been presented with no evidence to that effect. Although program suppliers' control over the distribution of their program product is reduced by cable distant signal carriage, a phenomenon applicable to the distribution of television broadcast signals by terrestrial microwave facilities as well as by satellite retransmission, they are compensated in some measures for the effects of such carriage on the marketability and value of their programs under the Copyright Law Revision. Further, as pointed out in the *Syndicated Exclusivity Report*, it is not inconceivable that the total payments to program producers may remain unchanged, or may even increase, as a result of distant signal carriage on cable. In short, no evidence has been submitted to show that the television program production industry has suffered or will suffer adverse affects in the foreseeable future from satellite distribution of television signals.

125. In sum, we conclude that NAB and its supporting commenters have not demonstrated that the creation of superstations is inimical to the public. On the contrary, our experience to date indicates that consumers are being benefited by this new type of service. As pointed out by Oceanic Cablevision, Inc. as well as others filing comments in this proceeding, satellite dissemination of broadcast signals is making available to consumers of video services programming not otherwise being offered by local television stations in many instances and not capable of being delivered economically and efficiently to them by other means. The number of consumers already being reached by this service indicates the existence of a strong demand for additional television programming options by consumers which has only been partially met. We believe new video opportunities such as those presented by satellite technology may prove partially responsible to some of consumers' demands.[119] Accordingly, we should be extremely hesitant to halt developments such as the one we are asked to review here unless it can be clearly shown that the detriments to the public resulting from this particular use of satellite technology outweigh the benefits to be derived by consumers. In this case, it has not been shown that the development of superstations has produced any injury to local television broadcasters or, more specifically, to the public they are obligated to serve.

Conclusions

126. We have before us a wealth of information and analysis from our *Syndicated Exclusivity* and *Economic Inquiry* reports. We have, in addition, given careful consideration to the rulemaking petitions of the National Telecommunications and Information Administration and the National Association of Broadcasters and the comments filed in response thereto. We are now persuaded that the cable television distant signal and syndicated exclusivity rules can be deleted without undue risks and that the public will benefit by this action. We are, accordingly, issuing this *Notice of Proposed Rule Making* seeking comment on the proposed elimination of these rules.

127. Parties commenting in this proceeding will have a full opportunity to subject to detailed examination all of the policy criteria, information, and economic analysis relied on. Particularly for those who would have us continue regulatory restrictions, it should be clear

[116] *See* para. 34 n. 35, *supra*, which indicates a national average of 9.2% for local programs from sign-on to sign-off for television broadcast licensee. The 8.1% figure for WTCG, Atlanta, compares favorably with those of a number of non-UHF non-independent television station licensees who submitted comments. *See FCC Television Broadcast Programming Data*, 1977.

[117] Indeed, there is some basis for believing that on average the more successful a licensee, the more inclined to engage in local and merit programming. *Syndicated Exclusivity Report, supra*, para. 43.

[118] Although Metromedia, Inc., licensee of television broadcast station KTTV, Los Angeles, California, alleges that some program distributors intend to re-negotiate the terms of that station's program licenses and that others have insisted upon the right to terminate program licenses if the station's signal is distributed by satellite, it would be speculative to consider restrictions on satellite delivery of broadcast signals on this basis particularly in the absence of substantial concrete evidence that stations presently being distributed by satellite have encountered similar difficulties to the detriment of the public. Moreover, it should be clear that we do not regard "freezing existing economic arrangements" in the licensing of program exhibitions as indisputably in the public interest. *Cf. Teleprompter* v. *CBS, supra*, 415 U.S. at 414 n.15.

[119] *See Economic Inquiry Report, supra*, para. 65.

that such regulations cannot stand unless the need therefore has been documented. *See Home Box Office v. FCC*, 567 F.2d 9 (D.C. Cir. 1977) cert. denied, 434 U.S. 829 (1977). We would accordingly urge that all commenting parties address themselves to supplying the evidence on which an informed decision can be made. This is of particular importance with respect to those issues where relevant information is uniquely in the possession of the commenting parties.

Orders, Authority, and Comment Filing Procedures

128. Accordingly, it is ordered, That the petitions for rulemaking filed by the National Cable Television Association (RM–2721 and RM–2919) and the motion of consolidation filed by the National Association of Broadcasters are granted to the extent indicated above and are otherwise denied.

129. *It is further ordered,* That the petitions for rulemaking filed by the National Telecommunications and Information Administration (RM–3324) and the Natonal Association of Broadcasters (RM–3346) are denied.

130. Authority for the rulemaking proposed herein is contained in Sections 1, 2, 3, 4(i) and (j), 301, 303, 307, 308, 309 and 403 of the Communications Act of 1934, as amended.

131. All interested persons are invited to file written comments on or before July 17, 1979 and reply comments on or before August 16, 1979.

132. In accordance with the provisions of Section 1.419 of the Commission's Rules and Regulations, an original and 5 copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission. Participants filing the required copies who also wish each Commissioner to have a personal copy of the comments may file an additional 6 copies. Members of the general public who wish to express their interest by participanting informally in the rule making proceeding may do so by submitting one copy of the comments, without regard to form, provided only that the Docket Number is specified in the heading. Responses will be available for public inspection during regular business hours in the Commission's Docket Reference Room at its Headquarters, 1919 M Street NW., Washington, D.C. Further information on the procedures to be followed or on the status of this proceeding may be obtained from Stephen Bailey or William Johnson, Cable Television Bureau, Federal Communications Commission, 202–632–6468.

Federal Communications Commission.*

William J. Tricarico,
Secretary.

Separate Statement of Chairman Charles D. Ferris

Cable Television/Broadcasting Economic Inquiry (Docket 21284), Inquiry Into Cable Television Syndicated Program Exclusivity Rules (Docket 20988), and Notice of Proposed Rulemaking on Cable Television Syndicated Exclusivity and Signal Carriage Rules (Dockets 20988 and 21284)

April 25, 1979.

Today's action by the Commission marks a milestone for the FCC not only in its policy decision making in the broadcast/cable area in particular, but in its processes generally. I regard it as a watershed.

The FCC has been moving toward the zero-based analysis of all its regulatory programs. In this case, that analysis clearly indicated that the signal carriage and syndicated exclusivity rules contribute little if anything to helping viewers of over-the-air television while substantially penalizing subscribers to cable services.

But perhaps most significantly in terms of the Commission's process, the Reports establish a full economic predicate upon which the recommendations in the Notice of Proposed Rulemaking can be and are solidly based. The Commission can now confidently move in a deregulatory direction, designed to serve the American consumer, because a thorough economic analysis has been applied as part of our mandate to serve the public interest.

While our minds are not closed to new data or arguments, those who would have us retain this regulation carry a heavy burden to reverse the weight of the evidence in the Reports. All parties have already had ample opportunity for close to two years to supply contrary data.

The documents adopted today make it emphatic that the Commission's concern is for the welfare of the consumer. The FCC has an obligation to maximize the well being of the public. Sometimes we do this by adopting affirmative rules, and in other cases by removing rules that impede consumer choice as offered by a free marketplace.

In some cases, however, we recognize a change in our rules may help more people than it may harm, but the people who may be hurt are severely hurt. Therefore, we have considered distributional equity—who will be hurt or helped—inreaching our intial conclusions.

Commission staff, contract researchers, and commenters have drawn upon previous academic research and an unusually large body of factual evidence to prepare extensive and complementary economic analyses. To a degree not frequently experienced in social public policy matters, the findings consistently conclude that the risk of harm to any element of the public from deletion of our distant signal carriage and syndicated exclusivity rules is not significant.

Finally, the Commission recognized that some factors which are important to us may not be fully explored in the above two tests. Often raised as an example of such a social external benefit is local, public affairs programming. We have thoroughly examined whether such "merit" programming would be harmed if restrictions on cable are eliminated. Again, the evidence supports the conclusion that the rules are not warranted on the basis of such concerns.

During my year and a half here, I have attempted to increase the role of economic analysis at the Commission. I think this increase is necessary to correct an underweighting in the past. We are, after all, an eocnomic regulatory agency.

Today's items demonstrate the value of economic reasoning in aiding our processes. I believe that decisions on major issues in our other Bureaus can benefit no less from the application of economic analysis.

An economic perspective contributes in at least two important ways in determining where the public interest lies. First, it focuses our attention on the public—the consumer or the user of the goods and services offered by the entities we regulate.

I am often dismayed by what appears to be a confusion of the public interest with the self interests of one or more of the private parties participating in Commission actions. I appreciate the reasons for this, but I do not believe that the interest of the public can be always presumed to be identified necessarily with any of the industries we regulate. I am hopeful that greater use of economic analysis will enable the Commission to make our public interest findings with greater accuracy and impartiality.

Second, economics forces us to look at secondary and indirect consequences of our actions in addition to the direct effects. We all recognize the complexity of communications issues, but I fear that lack of the appropriate tools may have sometimes led the FCC to consider only the direct, easily discernible effects of its actions and fail to appreciate their more distant and subtle ramifications. Economics provides one tool to help us correct this deficiency.

The issues we voted on today exhibit another more general phenomenon with respect to matters coming before the Commission. To an increasing extent, major policy questions are arising because of advancing technology. Regulated industries often seem to perfer the familiarity of the status quo to the uncertainty of a dynamic marketplace. They frequently beseech the FCC—as they do other government entities—to referee between competing technologies. My own thinking convinces me that this is an inappropriate and futile role for us to fill.

I believe that the inherent process of technological advance is closely intertwined with benefit to the public. Such advances historically have led to lower prices, greater diversity, or increased innovation.

Certainly changes in technology will continue to have profound influence on the areas of Commission involvement. But I think

* See Separate Statement of Chairman Ferris, Dissenting Statement of Commissioner Lee, Separate Statement of Commissioners Quello and Washburn, Separate Statement of Commissioner Fogarty, Concurring Statement of Commissioner Washburn and Separate Statement of Commissioner Brown below.

we must exercise caution in seeking to respond in automatic regulatory modes.

First, by impeding technology or by arbitrating between competing technologies, we may disserve the public by depriving it of alternatives that would othewise be available. Second, as technological progress develops, efforts on our part to restrict different modes will become increasingly futile.

To a large extent, our regulation of cable has been an example of this. That is, we have attempted to put our finger in one hole of a dike which is looking more and more like a seive, as over the air pay TV, video cassettes and discs, teletext an viewdata are all beginning to offer more video diversity.

In the Economic Inquiry Report, staff analyses of "worst cases" and other specific stations/markets indicate that television revenues and income have at least kept pace with inflation. I think it is important to remind ourselves that our ultimate concern is with service to the public, not with broadcaster profits. Although the evidence points to continued financial success for broadcasters, it seems unlikely that even reduced profits of a level predicted as even remotely possible in the Economic Inquiry would drive television stations off the air.

Rates of return in television broadcasting are far above average. Allowing market in which broadcasting operates to become more competitive may very well reduce the profit or selling price of stations somewhat. But our reports show that service to the public will not be harmed.

In the formulation and evolution of its cable television rules, the Commission has moved with an abundance of caution. Securing the public interest is a serious charge and now that must be exercised with care. Nevertheless, our own actions have favored the status quo and may have impeded the implementation of new technology.

I hope that the items adopted today demonstrate that this Commission has recognized that the markets in which our regulatees operate is a dynamic one, that innovation in technology makes possible new services for the public to choose among and also causes change to existing participants in those markets, and that this change does not necessarily serve as a basis for protectionist regulation. It may be cause for the Commission to take a "wait and see" attitude with respect to how the public is faring. But we will not go leaping into markets just because they are changing.

Dissenting Statement of Commissioner Robert E. Lee in re: Notice of Proposed Rulemaking on Cable Television Syndicated Exclusivity and Signal Carriage Rules (Dockets 20988 and 21284)

Act in Haste, Repent at Leisure

The underpinnings of the Commission's action today looking toward substantial deregulation of cable are two economic studies prepared by a distinguished group of outside experts aided and abetted by our able staff. The studies seem to conclude that there will be no substantial impact on TV if cable is deregulated. I am in no position to dispute this analysis which seems to have substantial endorsement within the staff. There may be, however, other experts on the outside who could reach a different conclusion. It seems to me that when you are projecting the future, there is a great deal of subjective judgment in the ultimate conclusion.

In spite of the tone of certainty in this Notice, there are a lot of assumptions which underlie the conclusions of the two studies. One assumption is that the program market we know little about will stay healthy. Another is that everyone can adequately adjust to changes in competition and that the result will be in the public interest.

These assumptions may be too glib, however, because there is a serious problem, which affects competitive responses in the marketplace: All the players do not play under the same rules. The present copyright arrangement does not provide for a competitive marketplace.

We have been living with this problem for several years. However, with the development of so-called "superstations," this problem may become more serious. We don't know enough today to judge this.

As a regulator with statutory responsiblity for the public interest, I cannot pass this off as someone else's problem. It is mine.

When the Commission proposes to set in motion major changes in markets, it has the responsibility to be as sure as it can that the competitive marketplace it relies on is able to function competitively. If it cannot, the Commission has the responsibility to fashion appropriate regulations to compensate for impediments to fair competition.

Rather than leap to a rulemaking proposal so heavily weighted toward one result, I would like to have public comment on the two studies. I would like to test the assumptions of the reports. I would like to know whether those competing in the marketplace think the competitive markets will function as described. I would like to know whether I as a regulator should referee adjustments to changes in the marketplace for any period of time and, if I should, how I should do it. Maybe the answer is retransmission consent, although I have serious reservations about this regulatory device. Maybe it is something else. I would like to stimulate thought, at this stage, not cut it off.

I would also like to know how this complete elimination of distant signal and syndicated exclusivity rules will affect broadcasting on UHF channels. I hope we are not creating still another obstacle to UHF development which is finally recovering from the error we made twenty-seven years ago of intermixing the allocations table.

I dissent.

Separate Statement of FCC Commissioners James H. Quello and Abbott Washburn

Re: NTIA Petition for Retransmission Consent

We are concerned by the action of the Commission dismissing the NTIA Petition for Retransmission Consent.

There were substantial differences of opinion among Commissioners and valid arguments advanced for seeking comments on this open question from all affected parties, the public and from diverse legal experts.

We believe that the Copyright Revision Act does not bar FCC judgments on communications policy to address new problems or issues.

We believe FCC not only has the jurisdiction but the responsibility of establishing and updating policy to deal with new major developments that pose a potential of gross inequities or an ultimate threat to an established, orderly, allocations system.

In view of the broad nature of this proceeding, the Commission decided to provide an opportunity for interested parties and the public to file comments and viewpoints on the legality and desirability of requesting retransmission consent for cable operations and related matters. We look forward to carefully reviewing comments so that we will have the benefit of diverse and expert viewpoints before making a final decision in the public interest.

Separate Statement of Commissioner Joseph R. Fogarty

In re: Report on the Inquiry into the Economic Relationship Between Television Broadcasting and Cable Television—Docket 21284; Report on the Inquiry into the Cable Television Syndicated Program Exclusivity Rules—Docket 20988; and Notice of Proposed Rulemaking on Cable Television Syndicated Exclusivity and Signal Carriage Rules—Docket 20988 and 21284.

By these actions, the Commission begins to remedy a serious mistake of regulatory judgment. With the adoption of the 1972 cable rules, the Commission embarked on a policy of attempting to "integrate" cable television into the over-the-air broadcasting status quo. It did so ostensibly in the interest of preserving the "localism" principle of our broadcast allocation and assignment policies and according to an intuitive notion of the public interest. The Commission's regulation of cable's carriage of distant signals has thus been premised on preventing diversion of local broadcasters' audience in order to prevent diminution of their revenues and in turn their ability to serve the public. In effect, this policy and regulation assumed harm to the public interest before it materialized and placed a heavy burden of proof on new technology and additional services to show that they would not injure the status quo.

The evidence adduced in these Inquiries clearly demonstrates that this regulatory approach and policy has been misguided from the standpoint of economic reality, consumer welfare, and the larger public interest. As the Inquiry Reports make plain, something more than mere conjecture or intuitive assumptions should be required before we impose regulatory constraints and burdens on one industry or technology in favor of another. In an era of explosive technological innovation, the public interest is better served by regulatory deference to the marketplace and competitive forces until experience, rather than speculation, demonstrates the existence of problems or

inadequacies. With these actions, the burden of proof is now where it properly belongs: on those seeking protection against competition, diversity, and innovation.

It is fitting and proper to acknowledge two significant contributions to this process. The Court of Appeals for the District of Columbia Circuit has provided principled direction to our re-examination of the cable rules with the admonition that "'* * * regulation perfectly reasonable and appropriate in the face of a given problem is highly capricious if that problem does not exist.'" [1] The House Communications Subcommittee Staff Report on cable television [2] has provided a similar stimulus for our reevaluation of the legal, economic, and social premises and effects of our cable regulation. Finally, however, it is to the credit of the Commission as a responsible institution of Government that it has undertaken this candid and forthright reassessment and has proposed the reversal of policy that now is so clearly warranted by the record and mandated by the public interest.

Concurring Statement of Commissioner Abbott Washburn

Syndicated Exclusivity Portion of Cable-TV Deregulation Rulemaking

Adopted: April 25, 1979.

With today's rulemaking, the Commission continues on the cable-TV deregulatory course set in 1974. In that year we repealed parts of the mandatory origination requirement.[1] In 1975 we began to review our access requirements which led to their revision.[2] In 1976 we deleted the "leap-frogging" restrictions.[3] And in 1977 we initiated the present proceedings. As the Report on the Inquiry into the Economic Relationship between Television Broadcasting and Cable Television points out (pages 31–33), we have steadily eliminated restrictions in the signal carriage and exclusivity rules.

Syndicated Exclusivity

I voted today to seek comments on the complete deletion of the syndicated exclusivity rules because, as now written, these rules are excessively complicated and exceedingly difficult to comply with in daily operations. However, I am not yet persuaded that the philosophy behind these rules should be scrapped entirely. For that reason I am concurring on this portion of the action.

My concern stems in part from the lack of attention and study given to the impact which removing these rules could have on potential new UHF stations. How discouraging would be the presence of other channels in the market with the same program? Would discarding exclusivity tend to make putting a new independent commercial UHF station on the air a predestined failure?

Would a group of citizens in a community without an educational TV station be less willing to undertake establishing a UHF ETV if the local cable system were bringing in two or more ETVs from other points?

These questions, I hope, will be addressed in the comments. If by the deletion of these rules we would be contributing to the slowing down of UHF development, then the Commission would have to give serious consideration to modifying the final result of today's rulemaking proposal. We would need to balance our interest in increased program diversity against our longstanding commitment to the development of UHF.

I hope, also, that the comments will provide more factual data on the impact of the deletion of these rules on existing UHF stations, including marginal stations, both in small markets and in urban markets.

UHF provides the only avenue to expand television broadcasting outlets in this country. We are working hard to bring UHF up to technical comparability with VHF. If deletion of these rules would result in hindering UHF's progress even to a small degree, the Commission must take the final action with its eyes open and with as many facts as possible before it.

It is possible that, at the end of this rulemaking and in light of further evidence and analysis, the Commission may wish to consider a much simplified set of syndicated exclusivity rules. We could, for example, limit program deletion to times when both the local and distant programs are presented in prime time or both are presented in non-prime time hours. That is, we could limit syndicated exclusivity to the same "day-part."

Retransmission Consent

Though it turned down the NTIA petition, a majority of the Commission voted to ask for comment on "all aspects of retransmission consent. . . . preretransmission notification and any other way to allow the market process to work with the least amount of intervention" (para. 82). I urged the inclusion of this language in this rulemaking because so little is now known, under present conditions of superstations and satellite transmission, about how retransmission consent might serve to bring the various "players" equitably into the program-rights marketplace. The players—i.e., cable system operators, TV broadcasters, program producers, copyright owners, superstation operators, and satellite carriers—are not now, as we know, on an equal footing in that market.

We say, in this rulemaking, that we want to "encourage marketplace solutions in lieu of government regulation" (para. 82). We will need, therefore, from all interested parties and the public, the fullest possible response to our request for "details on how it [retransmission consent] might work" (para. 82). Questions requiring answers include:

Does the Commission have jurisdiction to adopt a retransmission consent rule? Is there a communications need which would be served by such a rule? Have circumstances markedly changed since last we considered such a proposal (1968–1972)? If so, with what new consequences? To which markets would the rule apply? Should we grandfather pre-existing systems? Should we provide for exemptions? What effect would such a rule have on the supply and distribution of programming, on cable systems, on broadcast licensees? Would such a rule serve the public interest?

Superstations' Impact on Marketplace

In our action in 1976 we explicitly limited to five years the authorization of Southern Satellite Systems, the satellite carrier of superstation WTCG, Atlanta.[4] The comments in response to today's rulemaking may lead us to reexamine the superstation question prior to the 1981 expiration of Southern Satellite's authorization. Therefore all comments on how the advent of superstations has impacted on, or is likely to change, the program marketplace are very pertinent.

Separate Statement of Commissioner Tyrone Brown

Re: Cable Television and Broadcasting Economic Inquiry, Inquiry Into Cable Television Syndicated Program Exclusivity Rules, and Notice of Proposed Rulemaking on Cable Television Syndicated Exclusivity and Signal Carriage Rules

Over two year ago, the Commission began an economic inquiry to determine if an economic justification for our cable signal carriage rules existed. Analysis in the resulting *Reports* suggests that our rules cannot be so justified. Thus, I join the Commission's decision to undertake this rulemaking.

The Notice of Proposed Rulemaking indicates (p.—) that the Commission is inclined to reject the retransmission consent proposal of the National Telecommunications and Information Administration (NTIA) in part because of the Commission's prior experience with a retransmission consent approach. In my judgment, our past experience with retransmission consent was too insubstantial, and occurred under market conditions too different from those which now prevail, for us to give that experience significant weight. A brief restatement of the extent of the Commission's entire experience with the retransmission consent proposal is instructive.

In 1968 the Commission issued a Notice of Proposed Rulemaking[1] proposing to remove all restrictions on the carriage of distant signals for which cable systems had obtained the consent of the originating station.[2] It was during the pendency of this rulemaking that we first expressed a willingness to experiment with the retransmission consent proposal. Two experiments subsequently were authorized.

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[1] *Home Box Office v. FCC*, 567 F.2d 9, 36 (D.C. Cir. 1977), *cert. denied*, 434 U.S. 829 (1977), *quoting City of Chicago v. FPC*, 458 F.2d 731, 742 (D.C. Cir. 1971), *cert. denied*, 405 U.S. 1074 (1972).

[2] Staff of Subcomm. on Communications of House Comm. on Interstate and Foreign Commerce, Cable Television: Promise Versus Regulatory Performance (1976) (Subcomm. Print).

[1] *Report and Order in Docket 19998*, 49 F.C.C. 2d 1090 (1974).

[2] *Report and Order in Docket 20508*, 59 F.C.C. 2d 294 (1976).

[3] *Report and Order in Docket 20487*, 57 F.C.C. 2d 625 (1976).

[4] *Southern Satellite Systems, Inc.*, 62 F.C.C. 2d 153 (1976).

[1] 33 F.R. 17655 (1968).

[2] Such consent was required on a program-by-program basis.

In *Top Vision Cable Company*,[3] we authorized the Owensboro, Kentucky system to conduct a six-month experiment. During its experiment, some stations, two networks, and a number of program owners and music licensors refused conent. However, consent for some programs was obtained. Similarly, in *Tri-Cities Cable TV, Inc.*,[4] another six-month experiment was authorized for the Petersburg, Virginia system to carry WYAH-TV, Portsmouth, Virginia. That experiment was terminated before completion because WYAH-TV increased its power, thereby placing a predicted Grade B contour over the cable community.[5] WYAH-TV thus became a local signal and could thereafter be carried without retransmission consent.

The above suggests to me that the Commission's "experience" with retransmission consent proposals is very limited. Moreover, a new phenomenon, the "superstations", which actively seek carriage on distant cable systems, did not exist in 1968–1970. Thus, I would not reject NTIA's proposal based on past experience. Rather, I am inclined to reject retransmission consent because, as a matter of communications policy, there is no justification for it in the light of the finding in the *Reports* issued today that deletion of our distant signal carriage and syndicated rules is unlikely to have a significant impact on the ability of television licenses to serve the public interest in their broadcast of informational and entertainment programming.

(Docket Nos. 20988, RM–2721; 21284, RM–2919, RM–3324, RM–3346; FCC 79–243)
[FR Doc. 79–14971 Filed 5–14–79; 8:45 am]
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR Part 285]

Atlantic Bluefin Tuna; Proposed Regulations

AGENCY: National Oceanic and Atmospheric Administration/ Commerce.

ACTION: Proposed Regulations

SUMMARY: These regulations would amend the present Atlantic bluefin tuna regulations by: (1) Decreasing the purse seine quota of school tuna from 1,000 short tons (st) to 650 st; (2) increasing the purse seine quota for giant tuna from 180 st to 300 st; (3) increasing the giant quota for the handgear fishery from 2,250 fish to 1,218 st (approximately 3,240 fish); (4) establishing vessel categories for full and part time vessels and charter boats for the handgear fishery in the Northern Area for which fishermen would apply; (5) dividing the handgear quota of giants for the Northern Area (1,128 st) among these categories based upon their historical participation in the fishery, i.e., 684 fish (full-time vessels) 342 fish (part-time vessels) and 102 fish (charter boats); (6) setting different catch rates for the various categories to reflect the differences in their operations, i.e., five fish per week per full-time vessel, two per week per part-time vessel, and one per day per charter boat; (7) requiring all dealers in Atlantic bluefin tuna to obtain licenses; and (8) allowing anglers to take more than one young school tuna as part of their daily catch limit.

The regulations have also been reworded for clarity, and the prohibitions and penalities sections have been expanded to refer specifically to the substantive requirements of the regulations.

DATES: Comments are invited until June 4, 1979. Public hearings will be held at the times and places announced.

May 21, 1979—Portsmouth, New Hampshire.
May 22, 1979—Plymouth, Massachusetts.
May 23, 1979—Plainview, New York.

ADDRESSES: Written comments may be sent to Dr. Robert H. Hanks, Acting Regional Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930.

Public hearings will be held at the following times and locations:

May 21, 1979, 7 p.m.–9 p.m.—Holiday Inn, 300 Woodbury Avenue, Portsmouth, New Hampshire 03801, (603) 431–8000.
May 22, 1979, 7 p.m.–9 p.m.—Governor Carver Motor Inn, 25 Summer Street, Plymouth, Massachusetts 02360, (617) 746–7100.
May 23, 1979, 7 p.m.–9 p.m.—Holiday Inn, Sunnyside Boulevard, Plainview, New York 11803, (516) 433–7400.

FOR FURTHER INFORMATION CONTACT: Dr. Robert H. Hanks, Phone: (617) 291–3600.

SUPPLEMENTARY INFORMATION: On March 21, 1969, the International Convention for the Conservation of Atlantic Tunas (the Convention, 20 UST 2887; TIAS 6767) entered into force. The United States as a party to that Convention implemented its obligations thereunder by enacting the Atlantic Tunas Convention Act of 1975 (the Act, 16 U.S.C. Sections 971–971h.)

The Act, among other things, directs the Secretary of Commerce to promulgate regulations which implement recommendations adopted by the Commission established under the provisions of the Convention. Those recommendations implemented by the regulations are as follows:

(1) To prohibit any taking and landing of bluefin tuna weighing less than 6.4 kg, (14 pounds) except for a 15 percent incidental catch allowance;

(2) To limit fishing mortality to recent levels.

In view of the varying mortality rates for different classes of Atlantic bluefin tuna, the regulations were written in a manner which reflects the relationship of recent fishing mortality levels to a particular size tuna (i.e., young school—under 14 lbs; school—14 to 115 lbs; medium—115 to 299 lbs; and giant tuna—300 pounds or more).

The Secretary, through the National Marine Fisheries Service (NMFS) of the National Oceanic and Atmospheric Administration (NOAA) has continually monitored the stock levels of bluefin tuna in order to meet the obligations of the United States to implement the recommendations of the Commission. Both the Convention and the Act are directed towards "maintaining the populations of Atlantic bluefin tuna at levels which will permit the maximum sustainable catch of food and other purposes" (Preamble to the Convention). Since the bluefin tuna recreational fishery is utilized by tens of thousands of domestic fishermen, and results in a source of protein for United States and foreign markets, the Secretary has attempted to ensure the broadest possible access to the fishery while preventing serious economic dislocations as a result of any management scheme she might impose. This approach has received support from the courts (*Tri Coastal Seafood Cooperative, Inc.* v. *Elliot L. Richardson, et al.*, No. 76–2316G (D. Mass., 1976)).

In an effort to develop a management scheme which permits growth of the Atlantic bluefin tuna stock and which is equitable to participants in the fishery, the NMFS held a number of informational meetings (44 FR 2397) to inform the public of certain management schemes under consideration and to receive responses. At those meetings, a variety of options were discussed which involved the following management measures: (a) Vessel allocations; (b) fixed categories or classes of fishermen; (c) varying catch rates; (d) increasing, reducing, or eliminating quotas for particular size classes of bluefin tuna; (e) size limits; (f) limited seasons; and (g) lotteries.

After considering the anticipated effects of various management schemes and the public comments received in response to those proposals, the NMFS has maintained its intent to shift effort away from school tuna and into the fishery for giants. Although the NMFS believes that eliminating the purse seine fishery for school tuna would serve best

[3] 18 FCC 2d 1051 (1969).
[4] 22 FCC 2d 533 (1970).
[5] 27 FCC 2d 432 (1970).

to rehabilitate the Atlantic bluefin tuna stocks in the short term, such a measure may result in unknown long-term consequences. The NMFS intends to undertake a study to ascertain the effects of totally eliminating the purse seine fishery for school tuna. The present proposal embodies the intent of the NMFS to shift some fishing effort away from school tuna, in order to meet the objective of maintaining fishery mortality of bluefin tuna at recent levels.

Current biological data indicates that the purse seine fishery for school tuna continues to have an adverse effect upon the overall bluefin tuna population in the Northwestern Atlantic Ocean. The current purse seine quota of 1,000 short tons results in a removal from the population of between 30,000 and 80,000 juvenile bluefin tuna each year. This rate of removal is due in part to the fact that the purse seine quota for school tuna is exceeded each year by amounts as high as 30 percent of the quota. This results from the capacity of the fleet to harvest the quota within a few days and the inability of the NMFS to contact vessels at the precise time at which the quota is reached. The number of fish removed in fisheries pursuing the other size classes of Atlantic bluefin tuna usually amounts to less than 5,000. Due to the fishing effort exerted on school tuna and a trend of smaller size year classes since 1963, the average size of the tuna caught has decreased. This has resulted in a higher mortality level due to the fact that more bluefin tuna must be caught to meet a particular weight quota. In order to obtain the optimum yield from the fishery, individual tuna should be harvested at the optimal size. Therefore, the average size of bluefin tuna must be increased. This can be accomplished by decreasing the catch of juvenile bluefin tuna (i.e., school tuna), thereby allowing more tuna to mature and spawn.

In addition to the foregoing, the regulations in 50 CFR Part 285 Subpart B (Atlantic bluefin tuna) have been rewritten in order to integrate the buy boat amendment (43 FR 39107) and to be more concise and understandable to the general public. The following is a brief summary of the proposed major changes in the regulations:

Definitions

The following definitions would be added to clarify the intent of the regulations: (a) "Authorized Officer;" (b) "Buy boat;" (c) "Metal tag;" (d) "Plastic tag;" (e) "Regulated species;" and (f) "Vessel of the United States." Certain other definitions would be eliminated or modified slightly to conform with the proposed regulations.

Dealer License

This section would formalize the practice of the NMFS of issuing individually numbered dealer report forms in response to the requirements of the present regulations. Anyone receiving or purchasing Atlantic bluefin tuna for commercial purposes would be required to obtain a dealer license. The numbers appearing on these report forms have come to be regarded as dealer license numbers. This system would enable the NMFS to monitor more effectively the identity of those dealers submitting reports and would act as an aid in enforcing the regulations. This license would have to be renewed each year to remain valid. There would be no license fee.

Purse Seine Vessel Gear Restrictions and Inspections

This regulation provides that an exemption from the mesh restrictions could be granted only by the Regional Director if he determines that the net sought to be exempted will not result in significant injury or mortality to Atlantic bluefin tuna which are originally encircled by the net but manage to escape.

Permitted Fishing

This section contains a general statement of fishing permitted and prohibited under these regulations. It sets specific dates for the commencement of fishing for various size classes of Atlantic bluefin tuna, but permits the Regional Director to change the commencement of fishing for any size class of Atlantic bluefin tuna if he determines that such a measure will enable scientific research on the status of the stock and its mortality level to be advanced and will not prevent the quotas for the affected fishery from being caught based upon historical catch data. The section further provides for closure of fishing when applicable quotas are reached. The section from previous regulations entitled Open and Closed Seasons is submitted under this section and has been deleted.

Quotas

The purse seine quotas would be 650 short tons of school tuna and 300 short tons of giant tuna. The quota of giant tuna taken by fishing gear other than purse seines would be 1,218 short tons (approximately 3,240 fish). Of this quota, 1,128 short tons (approximately 2,970 fish) could be taken in the Northern Area (the area north and east of a line drawn from a point on the southern coast of Massachusetts extending due south through Gay Head Light, Massachusetts into the Atlantic Ocean), and 90 short tons (approximately 270 fish) in the Southern Area (the area west and south of the above-described line, including Narragansett Bay). A research quota not to exceed 225 short tons of all Atlantic bluefin tuna would be reserved for scientific purposes.

Three categories would be established for the Northern Area for purposes of dividing into sub-quotas the total quota of giant tuna taken by gear other than purse seines. A person would indicate on his application the category in which he wishes to fish. No person could fish in more than one category in any season. However, a person could change his category by sending a written request to the NMFS before the beginning of the season. The categories and their sub-quotas would be as follows:

(a) Full-time vessels—684 short tons (approx. 1,800 fish).
(b) Part-time vessels—342 short tons (approx. 900 fish).
(c) Charter vessels—102 short tons (approx. 270 fish).

These sub-quotas are based on historical catch, and can be reallocated during the year based on criteria stated in the regulations. No categories would be established in the Southern Area.

Catch Limitations

The following catch limitations would apply in the Northern Area to the various categories established therein:

(a) Full-time vessels—one giant tuna per day per vessel through July 31. From August 1 until the sub-quota is reached no more than five giant tuna per week per vessel could be taken.

(b) Part-time vessels—two giant tuna per week per vessel until the sub-quota is reached; and

(c) Charter boats—one giant tuna per day per vessel until the sub-quota is reached, provided that there is a bona fide charter party on board the vessel.

All vessels fishing with gear other than purse seiners in the Southern Area would be limited to five giant tuna per week per vessel.

Anglers would be able to take four young school, school or medium Atlantic bluefin tuna per day at any time during the year. Only one medium Atlantic bluefin tuna would be permitted within this daily catch limit.

Written comments on the proposed regulations are requested. They should be sent to the Regional Director on or before June 4, 1979. In addition, public hearings will be held to discuss the

proposed regulations and to receive any written or verbal comments.

Based upon an environmental assessment prepared by the NMFS, the Assistant Administrator for Fisheries, NOAA, has determined that the proposed regulations do not constitute a major Federal action significantly affecting the quality of the human environment. That assessment is on file with the Agency and may be obtained by sending a written request to the Regional Director. It has also been determined that the changes in these regulations do not constitute significant regulatory action under Executive Order 12044, as implemented by Department of Commerce Administrative Order DAO 218-7.

Signed at Washington, D.C., this 4th day of May 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

It is proposed to amend 50 CFR Part 285 by revising Subparts A and B to read as follows:

Subpart A—General

Sec.

285.1 Definitions.
285.7 Persons and vessels exempt.

Subpart B—Atlantic Bluefin Tuna (Thunnus thynnus thynnus)

285.20 Effective period of regulations.
285.21 Vessel certificates.
285.22 Dealer license.
285.23 Recordkeeping and reporting.
285.24 Metal tags.
285.25 Prohibitions.
285.26 Presumptions.
285.27 Penalties.
285.28 Purse seine vessel gear restrictions and inspection.
285.29 Permitted Fishing.
285.30 Quotas.
285.31 Incidental Catch.
285.32 Catch limits.
285.33 Tag and Release Program.

Authority: Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971-971h).

Subpart A—General

§ 285.1 Definitions.

In addition to the meaning ascribed by the Act, if any, the following terms shall mean:

"Act" means the Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971-971h.

"Albacore" means *Thunnus alalunga.*

"Angling" means fishing for, catching or taking or the attempted fishing for, catching or taking of fish by any person (angler) with a barbed hook attached to a line which is hand held or by rod and reel designed and manufactured for that purpose.

"Assistant Administrator" means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.

"Atlantic bluefin tuna" means *Thunnus thynnus thynnus.* The following class size designations are made for Atlantic bluefin tuna:

(a) Young school tuna—less than 14 pounds;

(b) School tuna—14 pounds and more, but less than 115 pounds;

(c) Medium tuna—115 pounds and more, but less than 300 pounds; and

(d) Giant tuna—300 pounds and more.

"Atlantic bonito" means *Sarda Chiliensis* or *Sarda sarda.*

"Authorized Officer" means:

(a) Any commissioned, warrant, or petty officer of the United States Coast Guard;

(b) Any certified enforcement officer or special agent of the NMFS;

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

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

"Bigeye tuna" means *Thunnus obesus.*

"Buy boat" means any vessel of the United States used by a dealer in purchasing or receiving Atlantic bluefin tuna from any person or fishing vessel engaged in fishing for such tuna.

"Cargo vessel" means any fishing vessel used for transporting fish or fish products.

"Commercial activity" means any activity, other than fishing, of industry, trade, and commerce including but not limited to the buying or selling of a regulated species and activities conducted for the purpose of facilitating such buying and selling.

"Commission" means the International Commission for the Conservation of Atlantic Tunas established pursuant to Article III of the Convention.

"Convention" means the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro May 14, 1966, 20 U.S.T. 2887, including any amendments or protocols thereto, which are binding upon the United States.

"Council" means the Council established within the Commission pursuant to Article V of the Convention.

"Dealer" means any person who engages in a commercial activity with respect to a regulated species or parts thereof.

"Dressed weight" means the weight of a fish after it has been gilled, gutted, beheaded, and definned.

"Fishing" means the catching, taking, or fishing for, or the attempted catching, taking, or fishing for, any species of fish covered by the Convention, or any activities in support thereof.

"Fishing trip" means the period between the time a fishing vessel departs from any port after being inspected by a designated agent of the NMFS to carry out fishing operations and the time such vessel unloads any of its catch.

"Fishing vessel" means any vessel engaged in fishing or transporting fish loaded on the high seas, or any vessel outfitted for such activities.

"Metal tag" means the flexible, self-locking ribbon of metal issued by the NMFS for the identification of Atlantic bluefin tuna as provided in § 285.24.

"NMFS" means the National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

"Person" means any individual, partnership, corporation, or association subject to the jurisdiction of the United States.

"Plastic tag" means the plastic or combination plastic and metal marker which is issued with a tag and release permit by the NMFS pursuant to § 285.33(b).

"Purse seining" means fishing for, catching or taking a regulated species by means of an encircling net and associated gear used in commercial fishing operations.

"Quota" means the amount of fish measured either by number or weight which may be retained as prescribed in sections 285.29 and 285.30 of Subpart B and any other sections of this Part.

"Regional Director" means:

(a) For purposes of Atlantic bluefin tuna—the Regional Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930; and

(b) For purposes of yellowfin tuna—the Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

"Regulated species" means Atlantic bluefin, yellowfin, skipjack, albacore, or bigeye tuna.

"Regulatory area" means all waters of the Atlantic Ocean including adjacent seas, except the waters over which the individual States exercise jurisdiction unless the Assistant Administrator has determined otherwise in accordance with this Part.

"Round weight" means the weight of a fish prior to gilling, gutting, beheading, and definning.

"Secretary" means the Secretary of Commerce or her designee.

"Short ton" means 2000 pounds (907 kilograms).

"Skipjack tuna" means *Katsuwonus pelamis.*

"State" means the States of the United States, the District of Columbia, the Commonwealth of Purerto Rico and territories and possessions of the United States.

"Tuna" means Atlantic bluefin, yellowfin, skipjack, albacore or bigeye tuna.

"Yellowfin tuna" means *Thunnus albacares.*

"Vessel of the United States" means:

(a) Any vessel documented or numbered by the Coast Guard under United States law; or

(b) Any vessel under 5 net tons which is registered under the laws of any State.

§ 285.7 Persons and vessels exempt.

This Part does not apply to any person or vessel authorized by the Commission, the Regional Director, or any State upon approval by the Regional Director, to engage in fishing for research purposes, except that §§ 285.23 and 285.30(c) shall apply to persons or vessels engaging in research authorized by the Regional Director or the Director of the Southeast Fisheries Center, NMFS, under § 285.30(c).

Subpart B—Atlantic Bluefin Tuna (Thunnus thynnus thynnus)

§ 285.20 Effective period of regulations.

These regulations shall remain in effect until superseded, amended, or otherwise suspended.

§ 285.21 Vessel certificates.

(a) *General.* Any vessel of the United States which fishes for, catches or takes Atlantic bluefin tuna, except vessels operated by anglers fishing for young school or school Atlantic bluefin tuna, must have an appropriate certificate issued under this section. Any vessel to which a certificate has been issued under this section shall travel to and from the area where it will be fishing under its own power and the operator thereof shall bring under his control with no assistance from other vessels any Atlantic bluefin tuna, except in circumstances where the safety of the vessel or crew is jeopardized or due to other circumstances beyond the control of the operator.

(b) *Buy boats.* Any buy boat must have a certificate for that purpose issued under this section. No vessel to which a valid certificate has been issued under paragraph (a) of this section may be issued a buy boat certificate. No buy boat certificate shall be issued to any vessel unless the owner or operator thereof agrees in writing to allow an agent authorized by the Regional Director to accompany the vessel on any trip to observe operations. The Regional Director shall provide reasonable notice to the owner or operator of any buy boat that an agent will be placed on board the vessel. The Regional Director shall reimburse the owner of any buy boat for any expenses which the Regional Director determines to be reasonable and which are directly related to the placement of such observer on that vessel.

(c) *Application.* An application for a certificate under this section shall be submitted and signed by the vessel owner on an appropriate form which may be obtained from the Regional Director. The application shall be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the certificate made effective. The application shall state the name and address of the vessel owner, the name of the vessel, the port where the vessel is docked, the registration or documentation number, the length of the vessel, the tonnage (if known), and the area to be fished.

(d) *Issuance.* (1) Upon receipt of a completed application, the Regional Director shall issue a certificate within 30 days.

(2) Upon receipt of an incomplete or improperly executed application, the Regional Director shall notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within ten days following the date of notification, the application shall be considered abandoned.

(e) *Expiration.* Certificates issued under paragraph (a) of this section expire when the owner or name of the vessel changes or the vessel is retired from the Atlantic bluefin tuna fishery. Certificates issued under paragraph (b) of this section expire when one of the above conditions is met or on December 31 of the year for which it is issued, whichever is earlier.

(f) *Duration.* A certificate issued under this section continues in full force and effect until it expires or is revoked.

(g) *Alteration.* Any certificate issued under this section which is substantially altered, erased, or mutilated is invalid.

(h) *Replacement.* Replacement certificates may be issued by the Regional Director. An application for a replacement certificate shall not be considered a new application.

(i) *Transfer.* Certificates issued under this section are not transferable or assignable. A certificate is valid only for the vessel for which it is issued.

(j) *Display.* Any certificate issued under this section must be carried on board the vessel at all times. The certificate shall be displayed for inspection upon request of any Authorized Officer or any employee of the NMFS designated by the Regional Director for such purpose.

(k) *Revocation.* Certificates issued under this section may be modified, suspended, or revoked by the Assistant Administrator for violations of the Act, or any regulation promulgated thereunder. Any revocation, suspension, or modification shall be in accordance with the procedures set forth in 50 CFR Part 621.

(l) *Fees.* No fee is required for any certificate issued under this seciton.

(m) *Change in application information.* Any change in the information contained in an application submitted for a certificate under this section shall be reported in writing to the Regional Director within 15 days of the change.

§ 285.22 Dealer license.

(a) *General.* Any person purchasing or receiving Atlantic bluefin tuna for a commercial purpose from any person or vessel fishing for such tuna shall have a valid license under this section.

(b) *Application.* An application for a dealer license shall be made in writing, signed by the applicant and submitted to the Regional Director at least 30 days prior to the date upon which the applicant desires to have the license made effective. Applications shall provide all of the following information:

(1) The name, mailing address, and telephone number of the applicant; and

(2) The expected disposition of Atlantic bluefin tuna purchased (e.g., foreign or domestic markets).

(c) *Issuance.* (1) Upon receipt of a completed application, the Regional Director shall issue a license within 30 days.

(2) Upon receipt of an incomplete or improperly executed application, the Regional Director shall notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application shall be considered abandoned.

(d) *Expiration.* Any license issued under this section expires on December 31 of the year for which it was issued.

(e) *Duration.* Any license issued under this section continues in full force and effect until it is suspended, revoked, or expires.

(f) *Alteration.* Any license which is substantially altered, erased, or mutilated is invalid.

(g) *Replacement.* Replacement licenses may be issued by the Regional Director. An application for a replacement license shall not be considered a new application.

(h) *Transfer.* Licenses issued under this section are not transferable or assignable. A license shall be valid only for the person to whom it is issued.

(i) *Inspection.* A license issued under this section must be kept at the principal place of business of the dealer. The license shall be displayed for inspection upon request of any Authorized Officer, or any employee of the NMFS designated by the Regional Director for that purpose.

(j) *Revocation.* Licenses issued under this section may be revoked or suspended by the Assistant Administrator for violations of the Act, other regulations promulgated thereunder, or this subpart. Any revocation, suspension or modification shall be in accordance with the procedures set forth in 50 CFR Part 621.

(k) *Fees.* No fee is required for any license issued under this section.

(l) *Change in application information.* Any change in the information specified in this section shall be reported in writing to the Regional Director within 15 days of the change.

§ 285.23 Recordkeeping and reporting.

(a) *Fishing vessel records.*—(1) *Vessels using other than purse seine gear.* (i) The owner or operator of any fishing vessel to which a certificate has been issued under § 285.21(a) which fishes for, catches or takes giant Atlantic bluefin tuna with gear other than purse seines shall maintain an accurate and complete fishing logbook on forms supplied by the Regional Director in accordance with this section, and shall submit to the Regional Director weekly logsheets covering all fishing during each month. Such logsheets shall be submitted to the Regional Director within 10 days after the end of each month during which fishing is permitted under § 285.29. Logsheets shall specify for each reporting week the date, number, round or dressed weight and fork length of each giant Atlantic bluefin tuna landed, the type of gear used, the area fished, metal tag numbers used, and the amount of the time fished. (ii) In addition, such owner or operator shall report within 48 hours the taking of each giant Atlantic bluefin tuna by completing and returning one of the cards provided for this purpose in the logbook. Each card shall show the Atlantic bluefin tuna vessel certificate number, metal tag number affixed to the fish, the date landed, the port where landed, the round or dressed weight, the fork length, gear used, and area where caught. If no fish were caught or a vessel did not engage in fishing operations in any reporting week during whch fishing was permitted under § 285.29 a report to that effect shall be submitted.

(2) *Purse Seining.* (i) The owner or operator of any fishing vessel to which a certificate has been issued under § 285.21(a) which fishes for, catches or takes school or giant Atlantic blufin tuna with purse seine gear shall maintain an accurate and complete fishing logbook on forms supplied by the Regional Director in accordance with this section, and shall submit weekly logsheets to the Regional Director covering all fishing during each month. Such logsheets shall be submitted within 10 days after the end of each month during which fishing is permitted under § 285.29. Logsheets shall specify the date, number of sets, location, and approximate weight of fish landed. (ii) In addition, the owner, operator or designated representative shall notify the NMFS of the catch of such vessel by 8 p.m. every day during which the vessel has engaged in fishing. Such reports shall be made by telephoning (617) 992–7711. The call will be recorded automatically. The report shall include the name of the person calling, the name of the vessel, the Atlantic blufin tuna vessel certificate number, and the estimated catch of tuna by weight on board the vessel at the time the call is made.

(3) Fishing logbooks required under this section shall be made available for inspection by an Authorized Officer or any employee of the NMFS designated by the Regional Director to make such inspection at any time during or after a fishing trip.

(4) The owner of a vessel to which a certificate has been issued under § 285.21 shall retain in his possession any logbook required by this section for one year after the date of the last entry in the logbook.

(5) Vessels participating in the NMFS statistical programs or in authorized research under § 285.30(c) may be exempt from the logbook and reporting requirements of this section. Requests for exemption shall be made to the Regional Director.

(b) *Dealer reports.* Any person issued a dealer license under § 285.22 shall:

(1) Maintain an accurate and complete daily report on forms supplied by the NMFS and file it within two days after the end of each reporting week with the Regional Director. Each report shall specify the number of tuna purchased or received; the disposition of the tuna (names, addresses and, where applicable, country of destination); the source of the tuna (names, addresses and, where applicable, country of origin); metal tag numbers (where applicable); round or dressed weight (by individual fish for giant tuna); and any other information requested by the Regional Director;

(2) Permit an Authorized Officer, or any employee of the NMFS designated by the Regional Director to inspect any records of transfers, purchases, or receipts of Atlantic bluefin tuna; and

(3) Retain in his possession a copy of each weekly report for a period of two years from the date on which it was submitted to the Regional Director.

(c) *Buy boat reports.* (1) Any person who operates a buy boat to which a certificate has been issued under § 285.21(b) shall maintain a complete and accurate daily report of every Atlantic bluefin tuna received or purchased on forms supplied by the NMFS, and file it within two days after the end of each reporting week with the Regional Director. For each such tuna the report shall include the metal tag number, location where the tuna was caught, date and precise time when received, fork length, whole or dressed weight, and the name of the person catching the fish as well as that of the fishing vessel and its Atlantic blufin tuna certificate number.

(2) Each person specified in paragraph (c)(1) of this section shall notify the NMFS of any off-loading and request a vessel inspection at least six hours prior to such off-loading. Arrangements shall be made by calling (617) 281–3600, extension 252, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, local time, or at all other times during the day and weekends, by calling (617) 992–7711. In making the request for inspection, the owner or operator of the buy boat or his designated representative shall provide his name, the buy boat name and certificate number, the number of tuna received, and the location and anticipated time of landing at port.

(3) Each person specified in paragraph (c)(1) of this section shall retain in his possession a copy of each weekly report

for a period of two years from the date on which it was submitted to the Regional Director.

(d) *Reporting week.* For the purpose of this section the reporting week begins at 12 midnight on Sunday, and ends at 12 midnight the following Sunday.

§ 285.24 Metal tags.

(a) *Issuance of tags.* Any person receiving a vessel certificate under the provisions of § 285.21(A), except for those purse seine vessels fishing exclusively for school tuna, shall be issued numbered metal tags by the NMFS. Tag numbers shall be recorded by the NMFS under the certificate of the vessel to which they are issued.

(b) *Transfer of tags.* Tags issued under paragraph (a) of this section are not transferable.

(c) *Affixing tags.* Any person who catches a giant Atlantic bluefin tuna shall affix to that tuna between the fifth dorsal finlet and the keel, a tag issued under paragraph (a) of this section at the time the tuna has been brought under control and either brought aboard the vessel or secured to the vessel (See figure 1).

(d) *Removal of tags.* A metal tag affixed to any giant Atlantic bluefin tuna shall remain on the tuna until the tuna is either cut into portions for commercial purposes or sold for export from the United States. If the tag is removed from the tuna for either of these purposes, the tag number must be written legibly and indelibly on the outside of any package or container which holds the tuna or parts thereof and which is being exported or transported domestically for commercial use. If a giant tuna is packed for export, the tag shall also be attached to the container until it is shipped from the United States.

§ 285.25 Prohibitions.

It shall be unlawful for any person subject to the jurisdiction of the United States to:

(a) Fish for, take or catch Atlantic bluefin tuna without a valid certificate issued under § 285.21(a) and carried onboard the vessel;

(b) Fish for, take or catch Atlantic bluefin tuna after fishing has been closed or before fishing has commenced under § 285.29, except under the provisions of §§ 285.31, 285.32(c)(2) or 285.33;

(c) Fish for, take or catch Atlantic bluefin tuna in excess of the quotas or sub-quotas specified in § 285.30 except under the provisions of § 285.31 or § 285.33;

(d) Fish for, take or catch Atlantic bluefin tuna in excess of the catch limits specified in § 285.32'

(e) Fish for, take or catch Atlantic bluefin tuna with nets other than those specified in § 285.28;

(f) Fish for, take or catch Atlantic bluefin tuna with a buy boat;

(g) Land any Atlantic bluefin tuna in forms other than round, or eviscerated with the head removed;

(h) Retain any Atlantic bluefin tuna caught under a tag and release permit issued under § 285.33;

(i) Transfer any Atlantic bluefin tuna to another vessel not holding a valid buy boat certificate;

(j) Engage in fishing with a vessel holding a certificate under § 285.21(a) unless the vessel travels to and from the area where it will be fishing under its own power and the person operating that vessel brings under control any Atlantic bluefin tuna (secured to the catching vessel or boated) with no assistance from other vessels, except in circumstances where the safety of the vessel or crew is jeopardized or due to other circumstances beyond the control of the operator;

(k) Fail to release immediately with a minimum of injury any Atlantic bluefin tuna which will not be retained;

(l) Fail to affix to any giant tuna between the fifth dorsal finlet and the keel an individually numbered metal tag as soon as possible after the tuna has been brought under control and either brought aboard the vessel or secured to the vessel;

(m) Remove any metal tag affixed to a tuna pursuant to § 285.24 before permitted under that section, or fail to write the tag number on the package as prescribed by that section;

(n) Begin fishing or off-loading from any purse seine vessel to which a certificate has been issued under § 285.21(a) any Atlantic bluefin tuna without first requesting an inspection of the vessel by an agent of the NMFS in accordance with § 285.28;

(o) Ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession or control any Atlantic bluefin tuna which he knew or should have known was taken in violation of this subpart;

(p) Purchase or receive Atlantic bluefin tuna taken on board from a person or vessel engaged in fishing for such tuna without a valid buy boat certificate;

(q) Fail to report the taking of any Atlantic bluefin tuna to which a plastic tag has been affixed under a bona fide tag and release program conducted by the NMFS or its contractors;

(r) Fail to report to the Regional Director in writing any change in the information contained in an application for any certificate for a vessel within 15 days of any such change;

(s) Falsify or fail to make, keep, maintain, or submit any logbook, or other record or report required by this subpart;

(t) Refuse to permit an Authorized Officer, or any employee of the NMFS designated by the Regional Director for such purposes to make inspections for the purpose of checking any logbooks or records relating to the taking, catching, harvesting, landing, purchase or sale of any Atlantic bluefin tuna;

(u) Make any false statement, oral or written, to an Authorized Officer or an employee of the NMFS designated by the Regional Director to make inspections concerning the taking, catching, harvesting, landing, purchase, sale, or transfer of any Atlantic bluefin tuna;

(v) Refuse to permit an Authorized Officer or any person designated by the Regional Director for such purposes to board a fishing vessel or buy boat subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this Act, this subpart, or any other regulation promulgated under the Act;

(w) Violate any other provision of this Subpart, the Act, or any other regulation promulgated pursuant thereto.

§ 285.26 Presumptions.

(a) For any Atlantic bluefin tuna which is landed eviscerated with the head removed, there shall be a rebuttable presumption for purposes of this subpart that the tuna when caught fell into a weight class in accordance with the following table. For this purpose, all measurements must be taken in a straight line from the middle of the lateral surface (if the fish has been beheaded) to the fork of the tail.

Table I

Original weight class	Length with head off
Young school tuna less than 14 lbs. (6.4 kg)	Less than 18 in. (46 cm)
School tuna equal to 14 lbs. (6.4 kg) but less than 115 lbs (53.3 kg)	18 in. (46 cm) but less than 39 in. (100 cm)
Medium tuna equal to 115 lbs. (53.3 kg) but less than 300 lbs (136.4 kg)	39 in. (100 cm) but less than 53 in. (135 cm)
Giant tuna 300 lbs. and over (136.4 kg)	53 in. (135 cm) and over

§ 285.27 Penalties.

(a) Any person who violates paragraphs (a) through (p), inclusive, of

§ 285.25 shall be assessed a civil penalty of not more than $25,000, and for a subsequent violation shall be assessed a civil penalty of not more than $50,000.

(b) Any person who violates paragraphs (q) through (v), inclusive, of § 285.25 shall be assessed a civil penalty of not more than $1,000, and for a subsequent violation shall be assessed a civil penalty of not more than $5,000.

(c) Any person who violates paragraph (w) of § 285.25 shall be assessed a civil penalty in accordance with the criteria set forth in 16 U.S.C. § 971e.

§ 285.28 Purse seine vessel gear restrictions and inspection.

(a) *Mesh Size.* Any owner or operator of a vessel with a certificate issued under § 285.21(a) conducting a directed fishery for Atlantic bluefin tuna with nets, other than a trap net, shall use a net with a mesh size equal to or smaller than 4.5 inches in the main body (stretched when wet) and which has at least 24 count thread throughout the net.

(b) *Exemption.* The Regional Director may exempt any person from the mesh restrictions in paragraph (a) of this section if he determines that the net sought to be excluded will not result in significant injury or mortality to Atlantic bluefin tuna which are encircled by the net but manage to escape.

(c) *Inspection.* Any owner or operator of a purse seine vessel with a certificate issued under § 285.21(a) shall request an inspection of the vessel and fishing gear by an agent of the NMFS prior to commencing any fishing trip and prior to offloading any Atlantic bluefin tuna. Requests for such inspection shall be made by calling (617) 281–3600 extension 252; or (617) 992–7711. Requests shall be made at least 12 hours prior to commencement of a fishing trip or offloading.

§ 285.29 Permitted Fishing.

(a) *School and Giant Atlantic Bluefin Tuna.*—(1) *Commencement.* Fishing for, catching or taking giant Atlantic bluefin by vessels using purse seine gear in the regulatory area may commence on August 15 of each calendar year. Fishing for, catching or taking giant Atlantic bluefin tuna by vessels using gear other than purse seines, and fishing for, catching or taking school Atlantic bluefin tuna by vessels using purse seines or gear other than purse seines in the regulatory area may commence on January 1 of each calendar year; *Provided,* That, consistent with the Convention, the Act, and this part, the Regional Director may change the commencement of fishing under this section for any size class of Atlantic bluefin tuna for any area and vessel gear type if he determines that such a measure will enable scientific research on the status of the stock and will not prevent the quotas for the affected fishery from being caught based upon historical catch data. The Regional Director shall publish a notice in the **Federal Register** of any change in the commencement of fishing under this section.

(2) *Closure.* The Regional Director shall monitor catch and landing statistics of Atlantic bluefin tuna. On the basis of these statistics, he shall project a date when the total incidental and directed catch of school or giant Atlantic bluefin tuna will exhaust any quota or sub-quota under § 285.30, and shall publish a notice in the **Federal Register** stating that fishing for school or giant tuna by the type of vessels subject to the quota or sub-quota in the area affected must cease on that date at a specified hour. After closure of fishing under this section for a specified weight class of tuna, that weight class of tuna may be caught by the specified type of vessels in the affected area only as an incidental catch under § 285.31; *Provided,* That anglers may continue to catch school tuna as specified in § 285.32(c)(2), and to fish for giant tuna under a tag and release program in accordance with § 285.33.

(b) *Young School and Medium Atlantic Bluefin Tuna.* Fishing for, catching or taking young school or medium Atlantic bluefin tuna by vessels using purse seines or gear other then purse seines in the regulatory area shall be limited at all times during the year to incidental catch in accordance with § 285.31, except that anglers may fish for, catch or take young school and medium tuna at any time in accordance with the limitations specified in § 285.32(c)(2).

§ 285.30 Quotas.

(a) *Purse Seining.*—(1) *School tuna.* The total amount of school Atlantic bluefin tuna which may be caught in the regulatory area by vessels using purse seine gear before fishing is closed under § 285.29(a)(2) is 650 short tons.

(2) *Giant tuna.* The total amount of giant Atlantic bluefin tuna which may be caught in the regulatory area by vessels using purse seine gear before fishing is closed under § 285.29(a)(2) is 300 short tons.

(b) *Fishing by other than purse seining.*—(1) *Total Quota.* The total amount of giant Atlantic bluefin tuna which may be caught in the regulatory area by vessels using gear other than purse seines before fishing is closed under § 285.29(a)(2) is 1,218 short tons (approximately 3,240 fish).

(2) *Northern Area.* No more than 1,128 short tons of the total quota in this paragraph may be caught in the Northern Area (the area north and east of a line drawn from a point on the southern coast of Massachusetts extending due south through Gay Head Light, Massachusetts, into the Atlantic Ocean) (see figure 2).[1] This quota shall be divided into three sub-quotas as follows:

(i) Full-time vessels—684 short tons (±1,800 fish)

(ii) Part-time vessels—342 short tons (±900 fish)

(iii) Charter boats—102 short tons. (±270 fish)

Each applicant for a vessel certificate under § 285.21(a) shall specify the sub-quota under which he wishes to fish. No vessel may be entered in more than one sub-quota in any season. An applicant may change his designated sub-quota category by submitting a written request to the Regional Director on or before June 1 of any year. If the Regional Director determines, based upon historical catch statistics and expected participation in the fishery during the current season, that any of the sub-quotas will not be harvested, he may reallocate the remainder equally between the other sub-quota categories. The Regional Director shall publish a notice to that effect in the **Federal Register.**

(3) *Southern Area.* No more than 90 short tons of the total quota for vessels fishing by other than purse seining in this paragraph may be caught in the Southern Area (the area west and south of the line drawn through Gay Head Light including the waters of Narragansett Bay) (see figure 2).

(c) *Research.* In addition to the quotas set forth in paragraphs (a) and (b) of this section, a scientific quota not to exceed 225 short tons of Atlantic bluefin tuna is established for the purposes of tagging and obtaining age, sex, and other scientific research data. Any research activity shall be authorized by the Director, Southeast Fisheries Center, the Regional Director or their representatives.

(d) *Incidental Catches.* Atlantic bluefin tuna taken incidentally shall be included in the quotas and sub-quotas of this section.

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[1] Figure 2, "Boundary Line Separating North and South Areas" is not published in the Code of Federal Regulations. Copies may be obtained by writing to Dr. Robert H. Hanks, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Mass. 01930.

§ 285.31 Incidental catch.

(a) *Purse seine vessels.*—(1) *Giant tuna.* Purse seine vessels fishing for giant tuna in the regulatory area may take incidentally, during any fishing trip, Atlantic bluefin tuna weighing less than 300 pounds round weight: *Provided,* That the amount of such tuna taken shall not exceed 3 percent, by weight, of the total amount of giant Atlantic bluefin tuna on board the vessel at the end of the fishing trip.

(2) *School tuna.* Purse seine vessels fishing for school tuna in the regulatory area may take incidentaly, during any fishing trip, Atlantic bluefin tuna outside that weight class; *Provided.* That the amount of such tuna taken shall not exceed 3 percent, by weight, of the total amount of school tuna on board the vessel at the end of the fishing trip.

(b) *Herring, mackerel* and *menhaden purse seine vessels* and *vessels using fixed gear other than traps* (pounds, weirs, gill-nets and longlines). Any person operating a vessel fishing principally for species of fish other than Atlantic bluefin tuna, and possessing an Atlantic bluefin certificate under § 285.21(a) may take, during any fishing trip, Atlantic bluefin tuna of any size class; *Provided.* That the amount of Atlantic Bluefin tuna taken does not exceed 2 percent, by weight, of all other fish on board the vessel at the end of the fishing trip.

(c) *Traps.* Any person operating a vessel with a certificate issued under § 285.21(a), which takes Atlantic bluefin tuna incidentally while fishing with traps, may retain such Atlantic bluefin tuna; *Provided.* That such tuna do not exceed 2 percent, by weight, of the total amount of all other fish species taken within the preceding 30-day period.

§ 285.32 Catch limits.

(a) *Northern Area.* In the Northern area, as defined in § 285.30(b), vessels fishing for, catching or taking giant Atlantic bluefin tuna with gear other than purse seines shall limit their catches as follows:

(1) *Full-time vessels.* (i) From the commencement of fishing under § 285.29 through July 31, no more than one giant tuna per day per vessel may be caught; (ii) From August 1 until the sub-quota as established in section 285.30(b) for full-time vessels is reached, no more than five giant tuna per week per vessel may be taken;

(2) *Part-time vessels.* From the commencement of fishing under § 285.29 until the sub-quota in § 285.30(b), for part-time vessels is reached, no more than two giant tuna per week per vessel may be caught; and

(3) *Charter boats.* From the commencement of fishing under § 285.29 until the sub-quota for charter boats in § 285.30(b) is reached, one giant tuna per day per vessel may be taken if a *bona fide* charterparty is on board the vessel.

(b) *Southern Area.* In the Southern Area, as defined in § 285.30(b), vessels fishing for, catching or taking giant Atlantic bluefin tuna with gear other then purse seines may take five giant tuna per week per vessel from the commencement of fishing under § 285.29 until the sub-quota for the southern area in § 285.30(b) is reached.

(c) *Angling*—(1) *Giant tuna.* Vessels angling for giant Atlantic bluefin tuna in the regulatory area shall be subject to the catch limits contained in paragraphs (a) and (b) of this section.

(2) *Young school, school and medium tuna.* Vessels angling for young school, school or medium Atlantic bluefin tuna in the regulatory area may take no more than four young school, school or medium Atlantic bluefin tuna each day at any time during the year: *Provided* That only one of the four may be a medium Atlantic bluefin tuna.

§ 285.33 Tag and release program.

(a) *Tag and Release Permits.* Any angler who wishes to fish for giant Atlantic bluefin tuna after the sub-quota under which his vessel has been issued a certificate has been reached and fishing closed under § 285.29, may fish for giant tuna only with a valid tag and release permit, and tags issued by the NMFS under pargraph (b) of this section. A tag and release permit may be obtained by sending an application after fishing has been closed under § 285.29 to the Center Director, Southeast Fisheries Center, NMFS, 75 Virginia Beach Drive, Miami, Florida 33149. Such application shall include the name of the vessel, official Coast Guard or State number(s), name(s) of the owner and master, vessel Atlantic bluefin tuna certificate number, and the general area(s) in which the tag and release activity will be carried out. Upon receipt of a completed application, the Center Director shall issue a tag and release permit.

(b) *Plastic tags.* Anglers receiving a tag and release permit under paragraph (a) of this section shall also be issued plastic tags and detailed instructions for their use. All giant Atlantic bluefin tuna caught under a tag and release permit shall be tagged before they are released. Such tuna shall be released immediately with a minimum of injury.

Table II.—*The quotas, allocations, and catch limits prescribed in §§ 285.30, 285.31, and 285.32 are summarized in the following table:*

QUOTAS, ALLOCATIONS, AND CATCH LIMITS

[Weights in short tons]

A. Vessels Fishing With Other Than Purse Seine Gear (Hand Gear Fishery and Recreational Angling)

Size class	Permitted fishery			
Atlantic bluefin tuna	Southern area[1]		Northern area[1]	
	Vessel categories			
	Full-time		Part-time	Charter
Giant:				
Quota	90 tons (±270 fish)	684 tons (±1,800 fish)	342 tons (±900 fish)	102 tons. (±279 fish).
Catch limit	5 per week per vessel until quota is reached.	1 per day per vessel thru July; 5 per week per vessel from Aug. 1 until quota is reached.	2 per week per vessel until quota is reached.	1 per day per vessel until quota reached.
Medium:				
Quota	None		None	
Catch limit[2]	1 per angler per day.		1 per day.	
Young school and school:				
Quota	None		None.	
Catch limit[2]	4 per angler per day (1 of which may be a medium)		4 per angler per day (1 of which may be a medium).	

[1] See figure 2.

[2] An angler is permitted to take no more than four young school, school or medium size tuna per day: *Provided,* That only one of the four may be a medium tuna.

A. Purse Seine Vessels

Size class	Permitted fishery
Giant:	
Quota	300 tons (±900 fish).
Catch limit	None.
Medium:	
Quota	None
Catch limit	Incidental only.
School:	
Quota	650 tons (±32,500 fish).
Catch limit	None.
Young school:	
Quota	None.
Catch limit	Incidental only.

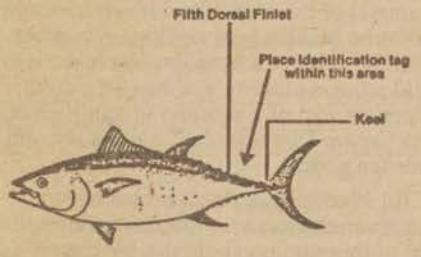

Figure 1

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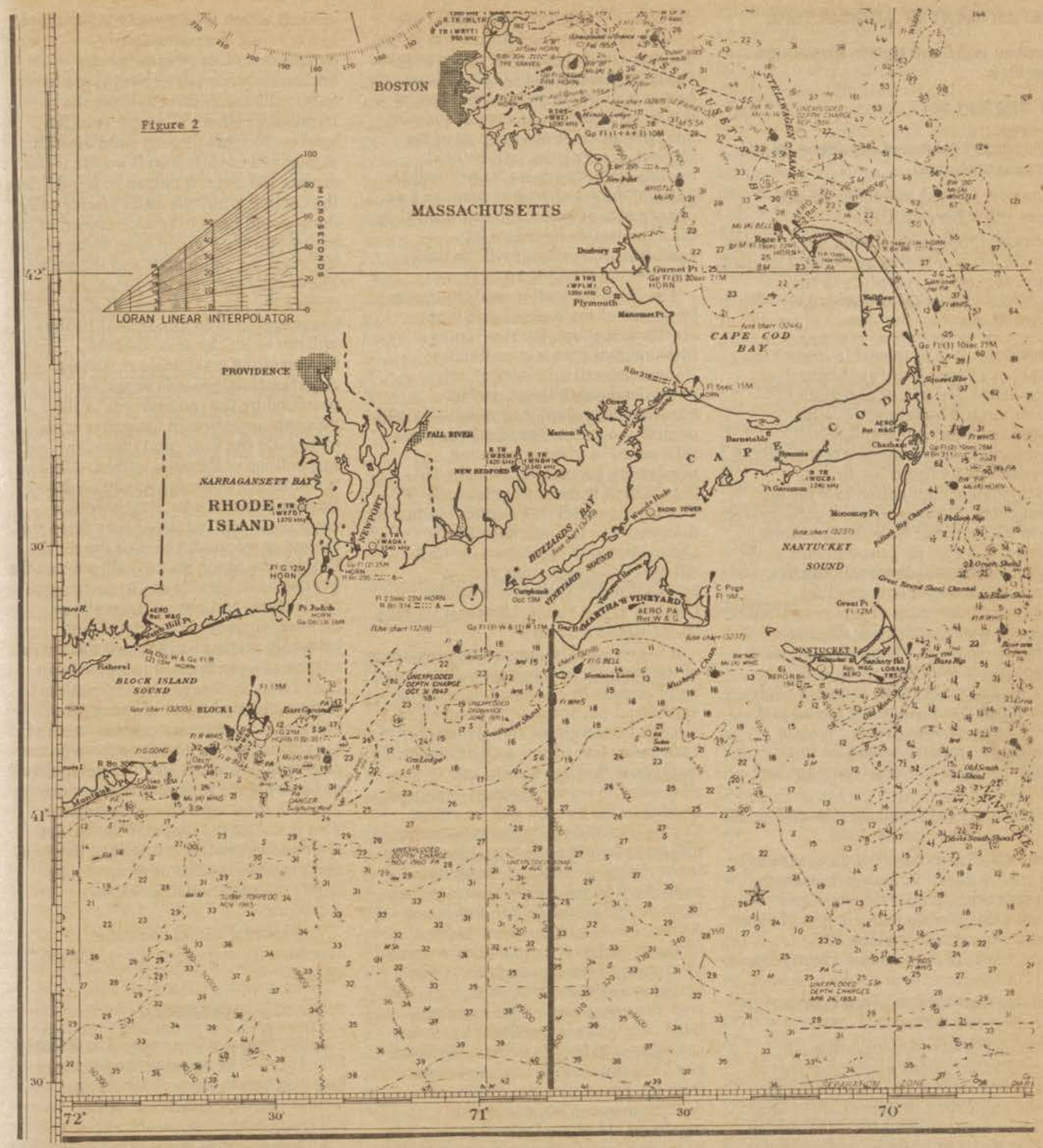

Figure 2. Boundary Line Separating North and South Areas

[FR Doc. 79-14739 Filed 5-14-79; 8:45 am]
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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[7 CFR Part 301]

Proposal To Amend Japanese Beetle Program Manual

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposal to amend the Japanese beetle administrative procedural manual incorporated by reference in the Japanese Beetle Quarantine and regulations.

SUMMARY: It is proposed to amend the Japanese Beetle Program Manual, an administrative procedural manual incorporated by reference in the Japanese Beetle Quarantine and regulations. It is proposed to amend the manual by, among other things, changing the application rate for the pesticides d-phenothrin and carbaryl for their use in controlling the Japanese beetle. It is also proposed to include in the manual procedures relating to mechancial treatments used for preventing the entry of Japanese beetles into the passenger compartments of aircraft. These mechanical treatments would have the effect of reducing the use of pesticides in the program while maintaining control of the beetle and preventing its spread into Western States. The manual would be further amended by correcting typographical errors.

DATE: Comments must be received on or before Monday, June 4, 1979.

ADDRESS: Submit written data, views, or arguments to: H. V. Autry, Regulatory Support Staff, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Hyattsville, Md 20782.

FOR FURTHER INFORMATION CONTACT: H. V. Autry, 301–436–8247.

SUPPLEMENTARY INFORMATION: All written submissions made pursuant to this notice will be made available for public inspection in Room 633, Federal Building, Hyattsville, MD 20782, during regular hours of business, unless the person makes the submission to the Regulatory Support Staff, Plant Protection and Quarantine Programs, and requests that it be held confidential. A determination will be made whether a proper showing in support of the request has been made on grounds that its disclosure could adversely affect any person by disclosing information in the nature of trade secrets or commercial or financial information obtained from any person and privileged or confidential. If it is determined that a proper showing has been made in the support of the request, the material will be held confidential; otherwise, notice will be given of denial of such request and an opportunity afforded for withdrawal of the submission. Requests for confidential treatment will be held confidential (76 CFR 1.27(c)).

The Plant Protection and Quarantine Programs of the Animal and Plant Health Inspection Service issues instructional manuals containing treatments and administratively authorized procedures used in implementing plant pest regulatory and control programs. These manuals are referenced in plant quarantine regulations promulgated under Title 7 of the Code of Federal Regulations (CFR). The Japanese Beetle Program Manual is referenced in the Japanese Beetle Quarantine and regulations (7 CFR 301.48–1) and was approved for incorporation by reference by the Director of the Federal Register on June 20, 1978 (43 FR 26411).

It is proposed to amend the provisions of the manual, which were incorporated by reference, by changing the rate for applying d-phenothrin (10 percent) in aircraft from 5 grams to 8 grams per 1,000 cubic feet because Departmental tests show that the 8-gram rate is necessary to ensure that any Japanese beetles in the aircraft will be killed. Copies of test data demonstrating the efficacy of d-phenothrin application at these dosage levels may be obtained from the Agricultural Research of the Department's Science and Education Administration. Also, the rate for applying carbaryl by mist blower would be changed from 2 pounds to 1 pound actual insecticide per acre to conform with the usage rate on the registered label, since this lower dosage rate is considered to be efficacious. Approval has been obtained for these changes from the Environmental Protection Agency in accordance with the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq.*)

An additional means of certifying the movement of aircraft is proposed which would not involve the use of chemicals in passenger compartments. A new paragraph d. would be added to section III. C. 1. of the manual providing procedures for mechanical treatment of aircraft which would exclude Japanese beetles from the passenger compartments of aircraft where enclosed walkways (jetways) are used to board aircraft directly from the terminal or where bus-type vehicles load passengers directly onto aircraft through an enclosed walkway that fits around the aircraft entrance. In addition, the cockpit windows and exterior galley door would have to remain closed or the galley entrance would have to be sealed between the cabin area and the galley. These requirements are designed to ensure the proper sealing off of the passenger area to assure that beetles will not enter the area, thereby necessitating insecticide treatment. Additional safeguards would be provided by the requirement of 100 percent inspection of the galley area, especially the floor, and thorough inspections of the area within 10 feet of the entrance door, especially on the floor or window sills. Past program experience has indicated that these are the areas where the beetles are most likely to be found. In the galley areas the beetles have been found to congregate on the floor and not on the walls or ceilings, since these ssurfaces are primarily made of metal, and the beetles cannot cling to them. It has also been found that the beetles remain within approximately 10 feet of the point of entry of the passenger compartment of aircraft where they cling to the window sills or floors, since they are not inclined to fly down the long dark aisle which is found in most aircraft configurations. This is due to the fact that the bettles are most active in the brightest daylight and are not usually active on cloudy days or in other such darkened situations.

The manual would be further amended by correcting typographical errors.

PART 330—[AMENDED]

Accordingly, it is proposed to amend 7 CFR Part 330 by revising the Japanese Beetle Program Manual, which is incorporated by reference, in the following respects:

1. On page 12 of the manual, under the heading of "Dosage" in section III. C. 1. a., the language would be amended to read: "Apply at the rate of 8 grams per 1000 cubic feet."

2. On page 40 of the manual, in the table provided in section IV. C., the listing of the dosage rate for the ground application by mistblower of carbaryl would be amended to read: "1.12 kg per hectare (1 lbs. per acre)."

3. Beginning on page 16a of the manual, a new section III. C. 1. d. would be added to read as follows:

(d). *Mechanical Exclusion of Japanese Beetles.* Mechanical exclusion of Japanese beetles from the passenger compartments of aircraft mayf be utilized if enclosed walkways or bus-tpye vehicles are used for the loading and unloading of passengers, and the enclosed walkways or vehicles fit tightly against the aircraft around the door. Cargo and baggage pits cannot be handled in this way since airlines do not currently provide methods for the enclosed loading of these areas. Consequently, they must be treated with pesticides.

Aircraft that have been parked for cleaning or other purposes that require exterior doors to remain open at a regulated airport will not be eligible for mechanical treatment and will require treatment with a pesticide.

At airports that may have to be regulated, PPQ personnel should contact local management personnel of airlines that fly into areas to be protected and discuss the procedures outlined in this section. The airline will then develop the specific approach to be used if the airport is regulated. PPQ employees should assist the airline in developing appropriate procedures if requested.

If mechanical treatments do not effectively prevent the entry of Japanese beetles into passenger compartments of aircraft, as determined by PPQ personnel, treatment with pesticides will be required (see Sec. III. C. 1. a, b, and c. of this manual).

Procedures for mechanically excluding beetles are as follows: (1) The walkways or bus doors must fit tightly against the aircraft to prevent entry of beetles into the aircraft.

(2) Cockpit windows must remain closed.

(3) The exterior galley door must remain closed unless the galley area is sealed between the passenger compartment and the galley to prevent beetles which may enter the galley area from entering the passenger compartment. After catered products are loaded aborad the airplane, a 100 percent inspection must be made by airline personnel of the galley area (especially the floor) to determine if beetles are present. If any are found, the beetles must be removed from the aircraft.

(4) After passengers are on board, a thorough inspection must be made within 10 feet of the passenger entrance door, especially on the floor or window sills. If any beetles are found, they must be removed from the aircraft.

Done at Washington, D.C., this 10th day of May 1979.

This proposal has been reviewed under the USDA criteria established to implement E.O. 12044, "Improving Government Regulations." A determination has been made that this action should not be classified as "significant" under those criteria. An addendum to the Environmental Impact Statement regarding the Japanese beetle program has been prepared and this addendum meets the requirements of an Impact Analysis Statement in accordance with the requirements of E.O. 12044 and Secretary's Memorandum 1955. Copies of this addendum are available from Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, Room 633, Federal Building, Hyattsville, MD 20782.

James O. Lee, Jr.,

Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service.

[FR Doc. 79-15306 Filed 5-15-79; 8:45 am]

BILLING CODE 3410-34-M

Rural Electrification Administration

[7 CFR Part 1701]

Environmental Policies and Procedures; Proposed REA Bulletin 20-21:320-21

AGENCY: Rural Electrification Administration.

ACTION: Notice of Proposed Rulemaking and Public Hearings.

SUMMARY: The Rural Electrification Administration (REA) proposes to issue a revised REA Bulletin 20-21:320-21, Environmental Policies and Procedures. This revised bulletin provides for compliance with the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508) implementing the procedural provisions of NEPA, as well as implementing REA's compliance with other laws, regulations, Executive Orders, and Secretary's Memoranda regarding environmental protection.

The proposed bulletin will replace the current REA Bulletin 20-21:320-21, National Environmental Policy Act, which was last revised May 20, 1974.

On issuance of Bulletin 20-21:320-21, Appendix A to Part 1701 will be modified accordingly.

DATE: Public comments must be received by REA no later than: July 16, 1979. Dates and locations of hearings will be published at a later date.

ADDRESS: Interested persons may submit written data, views and comments to the Director, Environmental and Energy Requirements Division, Rural Electrification Administration, Room 3863, South Building, U.S. Department of Agriculture, Washington, D.C. 20250. All written submissions made pursuant to this notice will be made available for public inspection in the Office of the Director, Environmental and Energy Requirements Division, during regular business hours.

HEARINGS: Public hearings will be held to discuss the proposed revision. Dates and locations will be noticed at a later date.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph R. Binder, Director, Environmental and Energy Requirements Division, Rural Electrification Administration, Room 3863, South Building, United States Department of Agriculture, Washington, D.C. 20250, telephone number 202-447-5755.

SUPPLEMENTARY INFORMATION:

1. Format

REA Bulletin 20-21:320-21 will consist of three parts, "Part One" being the only portion which is published herein today. Part One contains REA's procedures to implement and supplement the CEQ regulations. It includes Appendices which provide a graphic illustration of the REA EIS process (Appendix A) and forms of notice for public involvement in REA's NEPA process (Appendices B and C).

Part One as published in bulletin form will contain a reprint of the CEQ regulations with REA's implementing or supplemental procedures following the pertinent CEQ section. This format was chosen to give borrowers a single document to which to refer when dealing with the REA environmental review process. The draft bulletin, in the form described above, is being mailed to all REA and Rural Telephone Bank borrowers. Others may secure a copy in person or by writing the Director, Environmental and Energy Requirements Division.

Because of the general availability of the draft bulletin and CEQ regulations, and in order to avoid costly duplication in the **Federal Register**, REA is publishing herein only the text of its implementing procedures. The pertinent CEQ section is identified in brackets immediately above the REA section. Those who do not obtain the draft bulletin from REA may refer to 43 FR

55978 *et seq.* (November 29, 1978) for the full text of the CEQ regulations.

Part Two of the bulletin will be reserved for related environmental procedures. These procedures will be separately published, as appropriate, as draft and final rulemaking. One set of procedures, implementing the Executive Orders on Floodplains and Wetlands, was proposed in draft August 22, 1978, and will be published as a final rule shortly.

Part Three of the bulletin will provide specific guidance to REA borrowers in such areas as preparation of technical support documents which REA may utilize in preparing an EIS and environmental reports which may be used by REA as its environmental assessment. Part Three represents informal guidance only and will not be published as a proposed or final rule. A draft of Part Three will be available upon request. Parts Two and Three will be distributed as part of the complete Bulletin 20–21:320–21, when Part One is published in final form.

2. Categorical Exclusions

Section 1507.3 of the CEQ regulations require an agency's implementing procedures to include specific criteria for and identification of those typical classes of actions which normally do require an EIS, which normally do not require an EIS or EA (categorical exclusions), and which normally require an EA but not necessarily an EIS. REA has categorized borrower projects which require REA administrative actions in its Section IV to Part One of the bulletin.

Among the REA actions included in the categorical exclusion is financial assistance for an REA borrower's participation in a generation or transmission project which is to be constructed by a private utility when REA finds (1) that the project has been substantially constructed or would be completed regardless of REA financing, and (2) the borrower has no control over the design and construction of the project.

REA is considering the establishment of a presumption that total REA borrower participation up to a certain percentage of the project would normally fit under this exclusion. REA has had experience with participation projects of various sizes. Our experience has shown that normally when the borrower's share is 10 percent or less, the borrower has no control over the project. When the share has been 50 percent or more, the borrower normally has some control over the project. REA believes the percentage could be set at something greater than 10 percent but less than 50 percent. Public comment is solicited as to whether there should be a presumption and if so, at what percentage figure.

This action has been determined to be significant under the criteria set forth in Secretary's Memorandum No. 1955 and Executive Order 12044. A draft impact analysis has been prepared and is available for public inspection in the Office of the Director, Environmental and Energy Requirements Division, during regular business hours.

Date: May 10, 1979.

Joseph Vellone,
Acting Administrator.

U.S. Department of Agriculture, Rural Electrification Administration

REA Bulletin 20–21:320–31

SUBJECT: Environmental Policies and Procedures.

PART ONE

[Editor's note—.the pertinent section of the CEQ Regulations is indicated in brackets above the REA Provision which implements or supplements it.]

[§ 1500.1]

I. *Purpose*

Besides implementing NEPA and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 C.F.R. Parts 1500–1508), this Bulletin also implements REA's compliance with other laws, regulations, and Executive Orders having special relevance to NEPA, including, but not limited to the National Historic Preservation Act (16 U.S.C. § 470); Advisory Council on Historic Preservation Regulations, 36 C.F.R. Part 800; Executive Order 11593, "Protection and Enhancement of the Cultural Environment"; Executive Order 11514, "Protection and Enhancement of Environmental Quality"; Clean Air Act, as amended (42 U.S.C. § 1857 *et seq.*); Fish and Wildlife Coordination Act (16 U.S.C. § 661 *et seq.*); Federal Water Pollution Control Act (33 U.S.C. § 1151 *et seq.*); Wild and Scenic Rivers Act of 1973 (16 U.S.C. § 1271 *et seq.*); Endangered Species Act of 1973, as amended (16 U.S.C. §§ 1531–1543) and the related Interagency Cooperation Regulations, 50 C.F.R. Part 402; Executive Orders 11990, "Protection of Wetlands," and 11988, "Floodplain Management"; and Secretary's Memorandum No. 1827, Revised, "Statement on Land Use Policy."

Besides the language in the CEQ regulations and in the body of this bulletin, specific procedures for the protection of floodplains and wetlands can be found in Part Two of this bulletin. Specific procedures to assist REA compliance with the Historic Preservation Act for projects which normally do not require an Environmental Impact Statement may also be found in Part Two in the future.

Additional guidance to borrowers on environmental procedures for specific types of projects can be found in Part Three of this bulletin.

(§ 1500.3)

II. *Mandate—Procedural Modification and Trivial Violations*

The Administrator may determine that the procedural requirements of this bulletin may be modified where the purposes of the procedure have otherwise been served and where such modifications is consistent with the requirements of NEPA and the CEQ regulations. Further, it is the intent of REA that a trial violation of this bulletin not give rise to any independent course of action.

(§ 1501.2)

III. *Apply NEPA Early in the Process*

Initial planning efforts and environmental evaluation for power related facilities (*i.e.* power plants, transmission lines, coal or other fuel development) are interrelated and should take place simultaneously. The borrower should consult with REA at the earliest stages of planning. A guide to the timing of borrower and REA actions during the NEPA process can be found in Appendix A to this Part One of Bulletin 20–21:320–21.

(§ 1501.4)

IV. *Whether to Prepare an EIS—Administrative Actions Requiring Environmental Review*

REA gives consideration to environmental effects of all of its proposed actions. Examples of actions which might have an environmental effect include, but are not limited to, loans and loan guarantees, major reclassifications of loan funds, lien accommodations, and approvals of the use of general funds. As used in this bulletin, the terms loan and loan guarantee include all actions required of REA.

A. *Projects Normally Requiring an EIS.*—An EIS will normally be required in connection with the consideration of any REA loan or loan guarantee for the construction of the following type of facilities and the applicant shall provide REA with the information outlined in Part Three of this bulletin:

1. The addition of steam electric generating capacity of more than 25,000

kW (nameplate rating) when the REA borrower has control over construction of the project.

2. The addition of bulk electric transmission lines and associated facilities designed for or capable of operation at nominal voltage of 230 kilovolts or more (high side) which form the bulk transmission grids for overall power and energy supply, when the REA borrower has control over construction of the project.

3. Contracts for fuel or the acquisition of fuel when the REA borrower exerts control over the mining/drilling operation (*e.g.*, captive mine or purchase of mining equipment).

B. *Projects Normally Requiring an Environmental Assessment but not Necessarily an EIS.*—REA will normally prepare an environmental assessment for the following projects and based upon the assessment (a) make a finding of no significant impact or (b) proceed to prepare an EIS:

1. The borrower's construction of electric generating facilities not included in Section A. above (*e.g.*, combustion turbines).

2. Participation in electric generation projects not categorically excluded in Section C. below.

3. Projects designed to reduce the amount of pollutants released into the environment (*e.g.*, precipitators, baghouse or scrubber installation).

C. *Projects Normally Requiring Neither an EIS or an EA (Categorical Exclusions).*—1. Electric transmission and distribution lines and facilities not covered by Section A. above.

2. Telephone lines and facilities.

3. Participation by REA borrowers in a generation or transmission project which is not to be constructed by an REA-financed system and for which REA has found:

a. the project has been substantially constructed or would be completed regardless of REA financing, and

b. the borrower exerts no control over the design and construction of the project.

This is normally when the total REA borrower participation will be less than —— percent of the project.

4. Other miscellaneous projects such as coal washing plants, microwave facilities and cooperative headquarters, etc., or contracts for fuels, goods and services under which the borrower has no control over the contractor's actions. These projects are generally local in nature.

5. Agreements for purchase of power from other utilities.

6. Purchase of existing facilities where use or operation would remain unchanged.

7. Internal administrative actions (*e.g.* personnel actions, procurement, issuance of bulletins).

Note.—In those instances where a proposed action is not included among those categorized above, the Administrator may determine into which category the action should be placed.

[§ 1501.5]

V. *Lead Agencies*

It is REA's policy to utilize the lead agency process whenever possible so that a single EIS will be prepared to cover all Federal agency actions and sufficient information will be provided to enable all Federal agencies to assess their actions adequately for NEPA purposes.

Where REA borrowers are planning to participate in projects and there is uncertainty as to whether REA or some other Federal agency should be the "lead agency" for environmental purposes, the borrower should contact REA for advice. The Office of the Coordinator of Environmental Quality Activities in the Office of the Secretary will assist in resolving lead agency questions where REA and one or more other Federal agencies are involved.

[§ 1501.6]

VI. *Cooperating Agencies*

It is REA's policy to act as a cooperating agency whenever possible.

[§ 1501.7]

VII. *Scoping*

REA has developed a general approach to the entire NEPA process, including scoping, which is described and presented graphically in Appendix A to this Part One of Bulletin 20–21; 320–21. In isolated cases some variation may be permitted if there are good reasons for the variance, and such variance is consistent with NEPA and the CEQ regulations.

A. *Early Federal, State, and Local Involvement.*—Prior to REA's commencing the formal scoping process, the borrower should periodically consult with expert and interested agencies as early planning takes place.

B. *Notice of Intent To Prepare an EIS.*—1. *REA Notice(s).*—As soon as practicable, REA will publish its notice of intent (see § 1508.22) in the **Federal Register** in the form of notice in Appendix B to this Part One of Bulletin 20–21; 320–21. If the timing of the notice makes it difficult to project when the scoping meeting will be held, a second notice in the form attached in Appendix B will be published in the **Federal Register** no later than 30 days before the meeting.

2. *Borrower Notice(s).*—In addition to the REA notice(s), the borrower shall have published a legal notice and a news article and/or advertisement to attract the attention of the general public. The legal notice(s) should be substantially in the form attached in Appendix B and placed in newspaper(s) of general circulation in the county in which the borrower's principal office is located and in the county or counties in which the proposed project and reasonable alternatives may be located. If the first notice is published before the scoping meeting is set, a second notice giving the time, and location of the meeting shall be published in a like manner no later than 15 days before the meeting.

C. *Scoping Meeting.*—This meeting will be held in the vicinity of the proposed project and reasonable alternatives or such other place which REA determines will best afford an opportunity for public involvement.

The borrower is encouraged to hold additional public information meetings in the general location of proposed project after the public announcement of the intent to prepare an EIS is published in local newspapers, when such borrower meetings will make the scoping more meaningful. A summary of the comments made at such meetings should be submitted to REA.

[§ 1502.4]

VII. *Major Federal Actions Requiring the Preparation of Environmental Impact Statements—Responsible Official*

The Assistant Administrators, Electric and Telephone, are responsible for determining the need for and the preparation of EIS's. Final EIS's will be issued by the Administrator.

[§ 1502.5]

IX. *Timing*

See Appendix A to this Part One of Bulletin 20–21; 320–21 for guidance as to timing of the EIS preparation.

[§ 1502.9]

X. *Draft, Final, and Supplemental Statements—Procedures for Supplements*

A. *Supplement to Draft EIS.*—This supplement shall be circulated in the same manner as the Draft EIS, and then integrated into one Final EIS.

B. *Supplement to Final EIS.*—This supplement shall be prepared and

circulated in the same manner as the draft EIS (exclusive of scoping).

C. *Information Supplement to Final EIS.*—There are instances where the borrower proposes certain changes in a project for which a final EIS already has been issued, but the conditions of neither § 1502.9(c)(1)(i) or (ii) are met. In such a case, REA, at its discretion, may issue an information supplement to the final EIS where REA determines that the purposes of NEPA will be furthered by doing so. Notice of the availability of the information supplement will be placed in the **Federal Register** and in a local newspaper of general circulation covering the project area by the borrower. REA shall take no final action on any project modification discussed in the information supplement until 30 days after the notice of availability is published in the **Federal Register** by EPA.

[§ 1502.14]

XI. *Alternatives Including the Proposed Action*

An example of an alternative which might be eliminated from detailed study would be participating in a private utility's proposed project if that utility refused to allow the REA borrower to become a partner.

[§ 1502.18]

XII. *Appendix*

Where REA prepares the Federal EIS, the Environmental Analysis (see Section XX *infra*) which is prepared by the borrower under REA guidance and discretion will generally be attached as an appendix to the EIS or referenced by the EIS.

[§ 1502.19]

XIII. *Circulation of the Environmental Impact Statement*

Draft and Final EIS's (or Summaries) shall also be circulated to the appropriate state, regional, and metropolitan clearinghouses and will be available upon request to any interested person. In addition, copies will be available for public examination in REA's offices in Washington, D.C., the principal office of the applicant, and seleced libraries in the area(s) of reasonable alternatives, including the preferred alternative.

All background information will be available to the public as provided by the Freedom of Information Act (P.L. 89–487, 5 U.S.C. 552).

[§ 1503.1]

XIV. *Inviting Comments*

A. *REA Notice of Availability of Draft or Final EIS.*—REA will publish notice in the **Federal Register** of the availability of the Draft EIS and Final EIS, giving a brief description of the nature, location, and extent of the alternatives, including the preferred alternative; and stating where copies of the EIS are available for public inspection (see Section XIII *supra.*) or to whom requests for copies should be addressed.

A list of REA administrative actions for which EIS's are being prepared or are contemplated, will be available for public inspection on request at REA's Washington, D.C., office.

B. *Borrower's Notices.*—Upon receipt of a draft or final EIS, the borrower will publish a legal notice and a news article and/or advertisement to attract the attention of the general public announcing the availability of the statement for public review at its offices and selected local libraries in the proposed project area and the area of the reasonable alternatives. The notice should be published in a newspaper or newspapers of general circulation in the county in which the principal office of the borrower is located and in the counties in which the proposed construction including reasonable alternatives may take place. It is important that the people at the local level who may be most directly affected by the proposed construction be made aware of the EIS and have the opportunity to review and comment on it.

[§ 1503.2]

XV. *Duty to Comment*

Pursuant to Secretary's Memorandum No. 1695 REA will comment, to the extent practicable, on all EIS's sent to it.

[§ 1505.2]

XVI. *Record of Decision in Cases Requiring EIS*

Normally the REA loan recommendation will contain REA's record of decision.

REA will include, among its essential considerations of national policy, national economic development objectives and the National Energy Plan.

[§ 1506.1]

VII. *Limitations on Actions During the NEPA Process-Minimal Expenditures Not Affecting the Environment*

In determining which borrower activities related to a project normally requiring an EIS may be approved prior to completion of its NEPA process, REA will require of the borrower proof that:

A. The activity will not affect the environment. For example, purchase of water rights, optioning or transfer of land title, or continued use of land as historically employed would not have an environmental effect. However, site preparation or construction at or near the proposed site (*e.g.* rail spur) or development of a related facility (*e.g.* opening a captive mine) would normally affect the environment.

B. The expenditure is "minimal". To be minimal the expenditure

1. must not exceed the amount the loss of which the borrower could absorb without jeopardizing the government's security interest in the event the proposed project is not approved by the Administrator; and

2. must not compromise the objectivity of REA's environmental review. Notwithstanding other considerations, normally expenditures up to 10% of the proposed project cost would not compromise REA's objectivity.

Nothing in this definition precludes approval of expenditures for testing work conducted by the borrower (§ 1506.1(d)).

[§ 1506.2]

XVIII. *Elimination of Duplication with State and Local Procedures*

Where state law requires state agencies to control siting of plants or routing of transmission lines, REA will also coordinate with those state agencies in determining the siting options.

[§ 1506.3]

XIX. *Adoption*

A. *Policy.*—REA borrowers sometimes participate in projects where other Federal agencies have already prepared an EIS. These projects include, but are not limited to nuclear or some coal-fired generating stations and coal mining facilities. REA will adopt the existing EIS if it can do so pursuant to § 1506.3.

B. *Adoption in Final.*—1. If REA did act as a cooperating agency, and was adequately identified as such in the EIS, the statement may be adopted as a final EIS without circulation. The notice provisions in Section XIV. A. *supra* may be satisfied by the lead agency notice if it mentions REA involvement.

2. If REA was not a cooperating agency but determines that another federal agency's EIS is adequate it will adopt the EIS as its final EIS. The Administrator shall determine whether the adopted EIS is still generally available. This detemination will be based on consultation with other

agencies and consideration of such factors as project size and initial date of issuance of the adopted EIS.

A. If the adopted EIS is available, REA will

(1) circulate, pursuant to Section XIII *supra*, its written finding that the adopted statement meets the standards for an adequate EIS;

(2) advise that copies of the EIS will be sent to any person or agency who so requests; and

(3) make the adopted statement available for public examination as described in Section XIII *supra*.

b. If the adopted EIS is not generally available REA will circulate its written finding that the adopted statement is an adequate EIS along either (1) the adopted EIS or (2) a summary thereof, in accordance with § 1502.12.

C. *Adoption in Draft.*—If REA wishes to adopt another agency's EIS in whole or in part, but determines that supplementary information is required to meet the standards of an adequate statement the Administrator will determine whether the adopted EIS is still generally available.

1. If the EIS is still available, REA will

a. circulate only the REA Supplement as a draft and final supplement (see Section X and XIII, *supra*);

b. advise that copies of the adopted EIS will be sent to any person or agency who so requests; and

c. make the adopted statement available for public examination as described in Section XIII, *supra*.

2. If the EIS is not generally available, REA will circulate its supplement along with either (a) the adopted EIS of (b) a summary thereof pursuant to § 1502.12.

[§ 1506.5]

XX. *Agency Responsibility—Borrower's and Contractors' Submission of Environmental Documents.*

A. *Project Requiring an EIS.*—1. Electric Generation Facilities—REA will require the borrower to submit three environmental studies:

a. Siting Study—(see guidance for preparation in Part Three—Exhibit A to this Bulletin 20–21; 320–21).

b. Alternative Evaluation—(see guidance for preparation in Part Three—Exhibit B).

c. Environmental Analysis—this document, prepared under the direction of REA staff, and subject to REA's independent verification, shall provide the basis for preparation of the EIS (see guidance for preparation in Part Three—Exhibit C). The Analysis will normally become an Appendix to the REA EIS. Generally the borrower will be required to provide REA with 200 revised copies of the document after it has undergone REA evaluation.

2. Transmission Facilities—REA will require the borrower to submit the following environmental studies:

a. Macro corridor study

b. Alternative Evaluation—(see guidance for preparation in Part Three—Exhibit D).

c. Environmental Analysis—see explanation of analysis above (guidance for preparation in Part Three—Exhibit E).

B. *Projects Not Normally Requiring an EIS.*—For those projects which so not normally require an EIS, including any borrower's project included under categorical exclusions, the borrower shall submit a Borrower's Environmental Report (see Part Three—Exhibit F of this Bulletin 20–21;320–21 for guidance in preparation). The BER may serve as REA's assessment for projects not categorically excluded. For borrower's projects within the categorical exclusion, the BER will assist REA in identifying the extraordinary circumstance in which a normally excluded action may have a significant environmental effect.

C. *Contractor—Prepared EIS.*—In individual situations upon mutual agreement between REA and the borrower, the Environmental Impact Statement may be prepared by an independent contractor. The contractor must be chosen solely at the discretion of REA and/or other cooperating agencies, although the borrower may recommend potential parties to fulfill these duties.

[§ 1506.6]

XXI. *Public Involvement*

A. *Actions Normally Requiring an EIS.*—REA has provided for public involvement as follows:

1. Notice of Intent—(see Section VII. B. *supra*),

2. Scoping Meeting—(see Section VII. C. *supra*),

3. Notice of Availability of Draft and Final EIS—(see Section XIV *supra*),

4. Borrower Notices—(see Sections VII.B. and XIV. B *supra*),

5. Additional Public Information Meetings—(see Section VII.C. *supra*),

6. Availability of Supporting Information—(see Section VIII. *supra*),

7. Agency Contact Person—shall be the Assistant Administrators-Electric or Telephone, U.S. Department of Agriculture, South Building, Washington, D.C. 20250.

8. Hearing(s):

a. Hearing(s) may be held anytime, but normally, if held, they will occur after the publication of either the draft of final EIS. Public hearing(s) will be held concerning environmental aspects of a proposed action for which an EIS is required under the provisions of this bulletin in all cases where, in the Administrator's opinion, the need for hearing(s) is indicated in order to bring out adequately significant environmental implications of the proposed action. In cases where hearing(s) are held, notice of the hearings will be published in the **Federal Register** at least thirty (30) days in advance of the hearings. The draft or final EIS as applicable will be made available to the public at least fifteen (15) days in advance of the hearing(s).

b. The applicant will also publish a notice similar to REA's and a news article and/or advertisement to attract the attention of the general public in a newspaper or newspapers of general circulation in a county in which the principal office of the borrower is located and in the counties in which the proposed construction may take place, announcing that hearing(s) will be held.

c. All persons desiring to make statements at the hearing(s) will be invited to submit a copy of their proposed statement, in writing, but such submission will not be required. The hearing(s) will normally be informal and will generally be confined to the environmental aspects of the proposed loan, although economic and technical comments may be included.

B. *Actions Requiring an Assessment.*—In connection with such proposed projects, public involvement shall be as follows:

1. Borrower Notices—The borrower shall have published a legal notice (substantially in the form attached as Appendix C to this Part One of Bulletin 20–21;320–21) and a news articles and/or advertisement to attract the attention of the general public in a newspaper or newspapers of general circulation in the county in which the principal office of the borrower is located and in the counties in which the proposed construction will take place. This notice shall generally describe the nature, location and extent of the proposed action and indicate the availability and location of additional information. The notice shall invite comments with respect to environmental effects of the proposed construction, to be submitted to the borrower or REA within thirty (30) days of publication of the notice.

2. Consideration of Comments.—The borrower and REA shall give proper consideration to all comments received. A copy of the notice together with all comments received shall be forwarded to REA, together with the borrower's

recommendations. If no comments are received, this should be so stated.

C. *Actions Categorically Excluded.*—To assist REA in identifying those extraordinary circumstances in which the normally excluded action might have a significant environmental effect, the borrower shall follow the provisions in Section B. above for all projects involving construction of electric transmission lines or substations designed for or capable of operation at a nominal voltage of 69,000 kilovolts or more (in the case of substations this applies to the low voltage side of the substation).

[§ 1506.10]

XXII. *Timing of Agency Action*

A. Where an agency action requires an EIS, the action will not be approved or commitments executed before expiration of the thirty (30) day-period starting with notice in the **Federal Register** by EPA that the final EIS, together with comments on the draft EIS, is available.

B. For budgetary purposes some loans may be approved conditionally with a stipulation that no funds will be advanced to the borrower or contracts of guarantee executed until the NEPA process is completed. Except under emergency circumstances where waiver is secured from the Council on Environmental Quality, no funds will be advanced nor contracts of guarantee executed until the later of the following:

1. Ninety (90) days after notice of a draft EIS is published in the **Federal Register** by EPA, or

2. Thirty (30) days after notice of a final EIS is published in the **Federal Register** by EPA.

[§ 1506.11]

XXIII. *Emergencies*

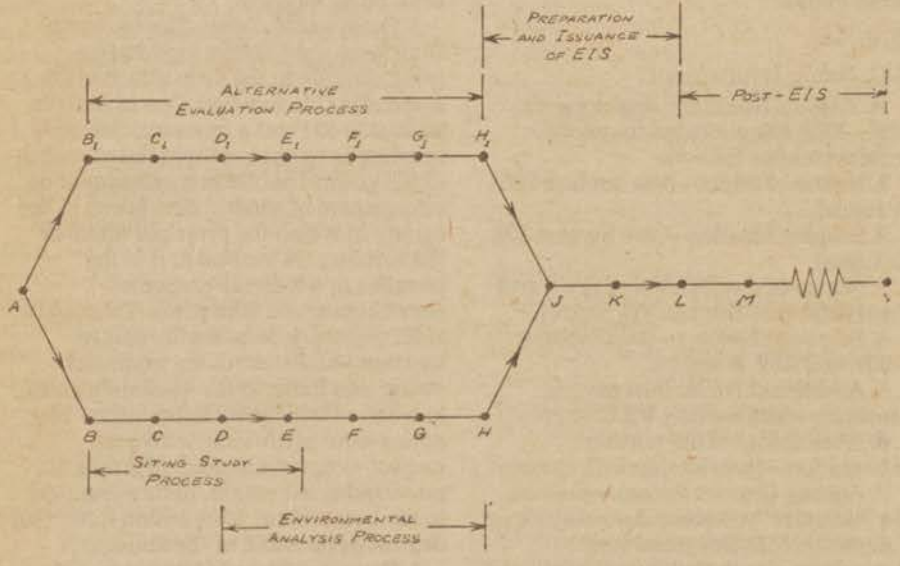
If there should be emergency circumstances which make it necessary for REA to take an action with significant environmental impact without observing the provisions of this bulletin concerning minimum periods for agency review and advance availability of EIS's, REA will consult with the Council on Environmental Quality before waiving the requirements.

XXIV. *Miscellaneous Provisions*

A. *Use of Metric Units.*—The United States is committed to a long-term program to convert all measurements to the metric system. Borrowers are urged to have environmental documents prepared using metric units with British system equivalents placed in parentheses.

APPENDIX A

PROCEDURE FOR PROPOSALS WHICH NORMALLY REQUIRE AN EIS



→ On-going activity in the EIS process

B, C, D Discrete events in the Siting Study and Environmental Analysis path

B_1, C_1 Discrete events in the Alternative Study

As the diagram illustrates, there will be two separate but interrelated study processes leading to the preparation of the EIS. One process B_1 through H_1 will examine alternatives to building a generating (or transmission) facility. The other process, B through H will examine a range of potentially acceptable sites for a generating (or transmission) facility.

In order to facilitate long-range planning and reduce delays, a borrower may undertake preliminary evaluations of alternative means of providing power and begin the study of a range of potentially acceptable sites for a generation (or transmission) facility before demonstrating a need for power. The obligation to show a need for power would still remain, however, before REA financial assistance could be obtained.

Equal spacing between points on the diagram is not meant to suggest equal time intervals. Where two letters are the same (except for subscripts), generally the two indicated events should occur within the same time frame. For BD and B_1D_1 this is only true where the applicant initiates site selection at a time when there is a specific need to be filled. For major transmission projects, references to events occurring during the Corridor Study are analogous to the generation siting procedures.

The flow diagram is intended to indicate the normal sequence of events although some variance may be acceptable in individual cases if good cause is demonstrated.

Discrete Events

A. An updated power requirements study (or similar document) which shows a need for generated or transmitted power is undertaken, utilizing REA procedures. This must be approved by REA before any loan is made.

B and B_1: The borrower consults with REA on the procedures and general parameters for the Siting Study and on potential alternative ways to meet the need, including guidance

on preparing the Alternative Evaluation. Consultation may be initiated even if a specific need has not been identified.

BC: Work is performed on Siting Study by borrower and/or consultant. This includes "macroanalysis" in which general criteria, literature search and consultation are used to identify a reasonable range of potentially acceptable sites. (See Part III of this Bulletin for additional guidance.)

Borrower/consultant contact Soil Conservation Service (SCS), Environmental Protection Agency (EPA), Fish and Wildlife Service (FWS), Army Corps of Engineers (COE), Federal land use agencies and State agencies for early guidance and input.

As soon as practicable during this period, REA publishes its "Notice of Intent" in the **Federal Register** and the borrower publishes similar information in local newspapers. (See Part One, Section VII.B.)

B_1C_1: Borrower also does research and consultation, contacts other utilities, etc., to determine whether there are reasonable alternatives to a new generating (or transmission) facility.

The Alternative Evaluation should include discussion, as appropriate, of joint projects, alternate fuels, alternate energy sources, conservation, etc. (more guidance is in Part III of this Bulletin.) Alternatives eliminated from detailed study should be identified and reasons given for the elimination. The borrower should also indicate which alternatives are reasonably available to it if its preferred alternative is not approved.

C and C_1: Borrower submits draft of Siting Study and Alternative Evaluation to REA for review. REA reviews each draft for major flaws. If such flaws are not present, REA submits draft Siting Study and Alternative Evaluation to EPA, SCS, COE, FWS and other potentially involved Federal and State agencies for review and comment.

D and D_1: REA invites other Federal and State agencies to make a field investigation of potentially acceptable siting areas discussed in the draft Siting Study, critique the study methodology, and point out potential problems with these alternative siting areas. Borrowers will at this time present non-specific alternatives included in the alternative evaluation to these agencies for their comments. Participating agencies may critique alternative means of meeting the need. The agencies set up a strategy for conducting the scoping process and tentatively identify the lead agency for the EIS.

DE: Federal agencies are given the opportunity to comment on the potentially acceptable alternatives to point out fatal flaws. During this stage the borrower may secure land, water or other critical factors for potentially acceptable sites by option or other means (subject to the limitations in Section XVII of Part One of the Bulletin). If REA's notice of intent and the borrower's notice did not give the date and time of the scoping meeting, second, more specific notices are published now.

E and E_1: Scoping meeting(s) held to receive input from the public, interested parties, and Federal, State, and local officials and agencies. Among the topics for discussion should be reasonable alternatives to meet the need, such as potentially acceptable sites, participation projects or conservation; significant issues to be addressed in the EIS; the need for the project; and designation of a lead agency.

EF: Borrower submits revised Siting Study to REA for review after revising it to reflect input from scoping meeting. Borrower prepares the draft Environmental Analysis which includes a fatal flaw study of potentially acceptable sites and a "microanalysis" in which detailed field work is conducted on the borrower's preferred site(s). The borrower continues consultation with REA and other interested Federal, State, and local agencies and the public and reflects their comments in the analysis.

C_1F_1: Borrower updates and expands as necessary, the Alternative Evaluation on the basis of comments received from Federal, State and local officials and agencies, input from participants at the scoping meeting(s) and new developments (*e.g.* negotiations with other electric power utilities).

F and F_1: The borrower submits draft Environmental Analysis to REA for review and comment. REA distributes copies of the Analysis to cooperating agencies for review. Borrower also submits expanded Alternative Evaluation, which has been updated after the scoping meeting, and also includes any new alternatives if any, which have developed. REA submits updated Alternative Evaluation to requesting cooperating agencies.

G and G_1: REA and cooperating agencies independently evaluate, for accuracy, scope and content, the information submitted to them. REA collates responses and transmits them to the borrower. REA may begin writing the draft EIS at this point.

H and H_1: Borrower submits as appropriate a final revised Environmental Analysis and Alternative Evaluation to REA.

HJ and H_1J: REA independently evaluates the revised documents and verifies the information therein, before using it in the EIS. During this time, REA prepares the draft EIS, utilizing the borrower-supplied data; inter-agency expertise, and other information.

J: REA issues draft EIS for public review and comment after publishing notice of availability in the **Federal Register.**

K: Public comment period ends on draft EIS. This date may be extended in certain instances.

KL:REA (and cooperating agencies as appropriate) review comments received on draft EIS and respond, by modifying alternatives; developing alternatives not previously given serious consideration; supplementing, improving or modifying the analyses; etc. A final EIS or supplemental draft EIS is prepared as appropriate, with cooperating agencies' assistance.

L: REA issues final EIS with notice of availability published in **Federal Register.**

M: REA will take no final action on any loan, loan guarantee, etc. sooner than 30 days after issuance of the final Federal EIS.

MN: Mitigation measures are checked by REA and other Federal, State, and local agencies during construction and operation of the project.

Appendix B

U.S. Department of Agriculture, Rural Electrification Administration, Notice of Intent To Prepare Draft Environmental Impact Statement

Notice is hereby given that the Rural Electrification Administration, if lead agency, intends to prepare a Draft Environmental Impact Statement, in order to fulfill its requirements under the National Environmental Policy Act of 1969 in connection with a possible loan guarantee commitment to (borrower's name and address) for the construction of certain generation and related transmission facilities. The borrower tentatively proposes that the generating facilities be located in the State of (name) and is investigating possible sites in the counties of (name).

The sites are being investigated for a possible (size) MW of coal-fired

generation with possible capability for expansion to ultimately support (size) MW of generating capacity. Associated with the proposed generating station will be (identify major facilities such as fuel handling, waste disposal, bulk transmission facilities, cooling reservoir, etc) and other ancillaries.

Alternatives to be considered by REA and the borrower are described in REA Bullentin 20–21:320–21 and may include (a) no project, (b) conservation measures, (c) purchase power from other utilities, (d) shared generating units with other utilities, (e) alternative sites for the generating plant and transmission lines, (f) alternatives fuels, and (g) alternative methods of generation.

A field investigation will be held on (time and date) at (location). Federal, state, and local agencies are invited to attend. Issues to be discussed include, but are not limited to, tentative (a) designation of the lead Federal agency, (b) determination of the project scope and identification of the significant environmental issues, (c) elimination of issues which are not significant from detailed study, (d) identification of cooperating agencies and allocating assignments to them for the EIS process, (g) identification of other environmental review, consultation, and study requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with the EIS, (h) identification of exclusive areas and/or other potential sites, and (i) Federal, state, and local coordination.

A formal scoping meeting or meetings will be held as soon as is practicable after the field investigation, when specific alternative sites and other pertinent data have been developed. All agencies, groups, and individuals are requested to indicate their interest in attending this scoping meeting(s) when the date and location have been set. All others will be invited by a future notice or notices in the **Federal Register** and a local paper(s) of general circulation serving the affected area(s). Governmental agencies, other organizations, and the public are invited to participate in the planning and analysis of this proposed project at an early stage. All of the subject area discused in the field investigation will be open to comment. The participants will be invited to critique specific alternative sites identified as well as propose other potential alternatives including no action. Inquiries and comments should be forwared to the Assistant Administrator—Electric, USDA, REA, Agriculture-South Building, Washington, D.C. 20250.

The Rural Electrification Administration's financing assistance to (borrower's name) will be subject to, and release of funds thereunder will be contignet upon, REA's arriving at satisfactory conclusions with respect to environmental effects and final action will be taken only after compliance with environmental impact statement precedures required by the National Environmental Policy Act of 1969.

Dated at Washington, D.C., this 10th day of May 1979.

Joseph Vellone,
Acting Administrator.

Appendix C

Sample Announcement—Financial Assistance Not Requiring an EIS

The (Name and Address of Borrower) announces that it (has made) (is making) and application for a loan (loan guarantee) from the Rural Electrification Administration which will provide for the construction of approximately ——— kilometers (——— Miles) of ——— volt transmission line. The facilities covered by the announcement will consist of ——— kilometers (——— miles) of (single pole) (H-frame) transmission line running on a ——— meter (——— foot) wide right-of-way from ——— in ——— County (via ———) in a ——— direction to a (terminal) (connection) (substation) near ——————— in ———————county.

The (terminal) (substation will be a ———KVa ——— volt to ——— volt facility which normally requires a ——— hectare (——— acre) site.

If there are any comments on the environmental aspects of the proposed construction, they should be submitted to the cooperative within thirty (30) days of the publication of this notice. Additional information may be obtained at the cooperative's office at the above address.

General

The above descritpion of the facilities to be constructed is indicative of the information that should be included. However, each project will have its own particular facilities that should be described. Specific reference should be made to any features of special environmental interest and more specific information should be given as to the location of facilities to be constructed to the extent practicable. The borrower may include additional information in the announcement if it wishes to do so. If the project will be located in or impact upon floodplains and/or wetlands, this fact must be stated in the announcement together with the location of the affected floodplains and wetlands.

[FR Doc. 79-15161 Filed 5-14-79; 8:45 am]
BILLING CODE 3510-15-M

Notices

Federal Register
Vol. 44, No. 95
Tuesday, May 15, 1979

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Feed Grain Donations for the Northern Cheyenne Indian Tribe in Montana

Pursuant to the authority set forth in Section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Northern Cheyenne Indian Tribe in Montana has been materially increased and become acute because of heavy and prolonged snow cover making range forage unavailable, thereby creating a serious shortage of feed because of abnormal feeding of livestock. This reservation is designated for Indian use and is utilized by members of the Indian tribe for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation for livestock feed for such needy members of the tribe will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing lands of this tribe to be acute distress areas and authorize the donation of feed grain owned by the Commodity Credit Corporation to livestock owners who are determined by the Bureau of Indian Affairs, Department of the Interior, to be needy members of the tribe utilizing such lands. These donations by the Commodity Credit Corporation may commence upon signature of this notice and shall be made available through June 15, 1979, or to such other time as may be stated in a notice issued by the Department of Agriculture.

Signed at Washington, D.C., on May 4, 1979.

Stewart N. Smith,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 79-14924 Filed 5-14-79; 8:45 am]

BILLING CODE 3410-05-M

Animal and Plant Health Inspection Service

Japanese Beetle; Availability of the Addendum to the 1978 Environmental Impact Statement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability of the addendum to the 1978 environmental impact statement on the control of the Japanese beetle at airports.

SUMMARY: This gives notice that the Department has prepared an addendum to the 1978 environmental impact statement (EIS) on the control of the Japanese beetle at airports. The addendum to the 1978 EIS (USDA–APHIS–ADM–78–1–F) was sent to the Environmental Protection Agency (EPA) on MAY 9, 1979, pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, by the Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service.

ADDRESS: Requests for a copy of the addendum to the EIS should be addressed to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs, Regulatory Support Staff, U.S. Department of Agriculture, Federal Building, Hyattsville, MD 20782.

Copies are available for public inspection at the following locations.

Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 302–E, Administration Building, 14th Street and Independence Avenue SW., Washington, DC 20250

Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 3505 25th Avenue, Gulfport, MS 39501

Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 505 South Lenola Road, Blason II, First Floor, Moorestown, NJ 08057

Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 103, Building 2B, 620 Central Avenue, Alameda, CA 94501

Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 2100 Boca Chica Boulevard, Suite 400, Brownsville, TX 78520

FOR FURTHER INFORMATION CONTACT: H. V. Autry, 301–436–8247.

SUPPLEMENTARY INFORMATION: A notice of the Department's intent to prepare a draft environmental impact statement (DEIS) on the control of the Japanese beetle at airports, including treatment of aircraft interiors using insecticides, was published in the **Federal Register** (43 FR 17515) on April 25, 1978. After consideration of comments received in response to this notice, a preliminary DEIS was prepared and a notice of availability of the preliminary DEIS for review was published in the **Federal Register** (43 FR 21709) on May 19, 1978.

The public was given the opportunity to participate in the development of the draft EIS (43 FR 26089). All comments received were considered in the development of the final EIS. The availability of the final EIS was published in the **Federal Register** (43 FR 52755) on November 14, 1978.

The program for retarding the artificial movement of the Japanese beetle from the infested area to the noninfested Western States of Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and the foreign countries of Canada, England, France, and West Germany has been carefully monitored. As a result of tests and trial methods, adjustments are being made in the program and an addendum to the EIS has been prepared which discusses and analyzes these adjustments. In accordance with procedures being considered for use during the 1979 program, physical barriers would be used to prevent the entry of Japanese beetles into the passenger compartments of aircraft. This would decrease the use of pesticides in passenger compartments. Changes would be made in the application rate for the pesticides d-phenothrin and carbaryl for their use in controlling the beetle. The rate for applying d-phenothrin (10 percent) in aircraft would be changed from 5 grams to 8 grams per 1,000 cubic feet because tests show that the 8-gram rate is necessary to ensure that any Japanese

beetles in the aircraft will be killed. This increased dosage rate was approved by EPA. The rate for applying carbaryl by mist blower would be changed from 2 pounds to 1 pound actual insecticide per acre to conform with the usage rate on the registered label. The addendum to the EIS discusses these changes and the alternatives considered.

Done at Washington, D.C., this 9th day of May 1979.

James O. Lee, Jr.,

Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service.

[FR Doc. 79-15077 Filed 5-14-79; 8:45 am]

BILLING CODE 3410-34-M

Soil Conservation Service

Knob Creek Watershed, Texas; Deauthorization of Federal Funding

Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83-566, and the Soil Conservation Service Guidelines (7 CFR Part 622), Federal funding for the Knob Creek Watershed, Bell County, Texas, is hereby deauthorized.

A notice of intent not to file an environmental impact statement for deauthorization of Federal funding was published on February 1, 1979. Appropriate committees of Congress and concerned local, State, and Federal agencies were notified of the proposed deauthorization at least 60 days prior to the effective date. No objections to deauthorization or expressions of support to complete the project have been made known to the Soil Conservation Service.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program, Pub. L. 83-566, 16 U.S.C. 1001-1008)

Dated: April 30, 1979.

R. M. Davis,

Administrator, Soil Conservation Service.

[FR Doc. 79-15027 Filed 5-14-79; 8:45 am]

BILLING CODE 3410-16-M

Office of the Secretary

Intent To Reestablish Agricultural Advisory Committees for the Multilateral Trade Negotiations

Notice is hereby given that the Secretary of Agriculture, after consultation with the Special Representative for Trade Negotiations, proposes to reestablish the following advisory committees: Agricultural Policy Advisory Committee for Trade Negotiations, and the eight separate Agricultural Technical Advisory Committees for Trade Negotiations on: Cotton, Dairy, Fruits and Vegetables, Grain and Feed, Livestock and Livestock Products, Oilseeds and Products, Poultry and Eggs, and Tobacco.

The purpose of these committees is to provide advice to the Secretary and the Special Representative for Trade Negotiations in respect to multilateral trade negotiations pursuant to Section 135(c) of the Trade Act fo 1974. (Pub. L. 93-618).

The reestablishment of such committees is in the public interest in connection with the duties of the Department imposed by the Trade Act of 1974.

Comments may be submitted to George White, Advisory Committee Control Officer, FAS, U.S. Department of Agriculture, room 5057 South Building, Washington, D.C. 20250 until May 30, 1979.

Joan S. Wallace,

Assistant Secretary for Administration

May 10, 1979

[FR Doc. 79-15141 Filed 5-14-79; 8:45 am]

BILLING CODE 3410-10-M

CIVIL AERONAUTICS BOARD

Atlantida Linea Aerea Sudamericana, S.A.; Application

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause: ORDER 79-5-68.

SUMMARY: The Board proposes to approve the following application: Applicant: Atlantida Linea Aerea Sudamericana, S.A. Application date: February 22, 1978. Docket: 32153. Authority sought: Foreign Air Carrier Cargo Permit authorizing nonscheduled transportation of property between Uruguay and the United States (Miami, New York and Houston) via specified intermediate countries in Central and South America.

OBJECTIONS: All interested persons having objections to the Board's tentative findings and conclusions that this authority should be granted, as described in the order cited above, shall, no later than May 31, 1979, file a statement of such objections with the Civil Aeronautics Board (20 copies) and mail copies to the applicant, the Department of Transportation, the Department of State, and the Ambassador of Uruguay in Washington, D.C. A statement of objections must cite the docket number and must include a summary of testimony, statistical data, or other such supporting evidence.

If no objections are filed, the Secretary of the Board will enter an order which will, subject to disapproval by the President, make final the Board's tentative findings and conclusions and issue the proposed permit or certificate.

ADDRESSES FOR OBJECTIONS:

Docket 32153, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

A.L.A.S., c/o Thomas J. Whalen, Condon & Forsyth, 1001 Connecticut Avenue NW., Washington, D.C. 20036.

To get a copy of the complete order, request it from the C.A.B. Distribution Section, Room 516, 1825 Connecticut Avenue NW., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

FOR FURTHER INFORMATION CONTACT: The Regulatory Affairs Division of the Bureau of International Aviation, Civil Aeronautics Board; (202) 673-5880.

By the Civil Aeronautics Board, May 9, 1979.

Phyllis T. Kaylor,

Secretary.

[Order 79-5-68; Docket 32153]

[FR Doc. 79-15138 Filed 5-14-79; 8:45 am]

BILLING CODE 6320-01-M

Pacific Alaska Airlines, Inc., and Fleming International Airways, Inc.; Order Dismissing Applications and Instituting Formal Proceedings

Adopted by the Civil Aeronautics Board at ist office in Washington, D.C. on the 9th day of May, 1979.

In the matter of Applications of Pacific Alaska Airlines, Inc. Fleming International Airways, Inc. for All-Cargo certificates under section 418 (Dockets 33977, 34031); fitness investigation of Fleming International Airways (Docket 35507); fitness investigation of Pacific Alaska Airlines (Docket 35508); order dismissing applications and instituting formal proceedings.

Pacific Alaska Airlines and Fleming International Airlines, two FAR Part 121 operators, have applied for certificates for all-cargo air service under Section 418(a)(4) of the Act. Their applications, dated November 9, 1978, and November 15, 1978, respectively, were among the first all-cargo applications received from carriers not eligible under the "grandfather" provisions of Section 418(a)(1)-(3).[1]

One answer was received, from Zantop International Airlines, in opposition to Fleming's application; Fleming replied to the answer. No one

[1] The other applicants, to which we have issued certificates, are: Trans Continental Airlines, Conner Air Lines, Rosenbalm Aviation, Emery Air Freight, and Air Express International Airlines. (Order 79-5-44).

responded to Pacific Alaska's application.

Section 418 was signed into law by the President on November 9, 1977, as Pub. L. 95–163. Section 418(a)(4) permits any citizen to apply, beginning one year after the date of enactment, for a certificate authorizing all-cargo air service. Section 418(b)(1)(B) requires us to issue a certificate under subsection (a)(4) not later than 180 days after a complete application is filed, unless we find that the applicant is not fit, willing and able to provide all-cargo service and to comply with any orders and regulations we issue.

We have considered all of the material contained in the subject applications and answer, plus the safety and compliance evaluations and other material submitted by the Federal Aviation Administration,[2] and have decided, for the reasons set forth below, to deny the applications of Pacific Alaska and Fleming. The evidence now available to us casts doubt on the willingness of these carriers to comply with our rules and regulations and their ability to provide their services safely. We will, however, institute formal proceedings for the purpose of obtaining more evidence on these questions. On the basis of the information we now have, we must find that Pacific Alaska and Fleming are not fit, willing and able within the meaning of section 418. The formal proceedings we are instituting will give them an opportunity to demonstrate their fitness.

Pacific Alaska

Pacific Alaska's application and documents from the files of the FAA reveal a history checkered with frequent charges of violations of safety regulations. The FAA has assessed Pacific Alaska more than $15,000 in civil penalties during the five years since it began service as a Part 121 commercial operator.

In December of 1975, the FAA charged Pacific Alaska with violation of numerous provisions of the Federal Aviation Regulations (FAR). The first of these charges alleged that airline personnel had been improperly trained in refueling procedures, thus risking fuel contamination. The charge alleged that, as a result, contaminated fuel was used in the refueling of a flight on February 16, 1975, causing the crash of the plane and the death of two persons and injury of a third. These circumstances constituted a violation of FAR Sections 121.135(b)(18) and 91.9. Other charges alleged failure to report major alterations of the aircraft, failure to make alterations in conformity with approved technical data, failure to report malfunctions of the landing gear, and failure to make needed repairs.[3] These failures rendered the aircraft unairworthy. The action brought against the airline for these violations was settled in December 1977, by payment of a $6,000 civil penalty without admission of guilt.

More recently, Pacific Alaska was faced with suspension of its Commercial Operators Operating Certificate as a result of further charges brought by the FAA. The President and General Manager of the Airline, Donald G. Gilbertson, was charged with making intentionally false and fraudulent entries in a logbook, record or report required to be kept or made to show compliance with the regulations. Mr. Gilbertson was said to have altered flight logs to increase the number of landings for the purpose of exaggerating the operating record of one of the airline's pilots. He was said to have falsely certified that he personally had completed a required six-month proficiency check, to have flown as a crewmember without having received this check, and, on seven occasions in July 1978, to have flown as a crewmember after having been aloft as a crewmember more than 120 hours during the preceding 30 consecutive days. The chief pilot and check airman, Kenneth R. Martin, was also accused of having made the false certification that D. G. Gilbert had satisfactorily completed the six-month proficiency check. For these alleged violations, the FAA revoked the Airline Transport Pilot Certificates of both men on an emergency basis.[4]

The charges relating to Gilbertson and Martin were included in charges brought against Pacific Alaska in December 1978. Also alleged were the use of an unqualified crewmember during flights on April 14 and 15, 1978, and 305 violations of flight time limitations on crewmembers during the period from July 10 to September 1, 1978. The FAA concluded that Pacific Alaska:

> [H]as failed to at all times exercise the degree of care, judgment, and responsibility required to enable it to adequately conduct safe operations in accordance with Part 121 and is therefore not presently qualified to be the holder of a Commercial Operator Operating Certificate.[5]

All charges then pending against the airline were settled on February 9, 1979, with the payment of a civil penalty of $7,500, and Mr. Gilbertson's agreement not to assume, for a period of one year, any of the following positions at Pacific Alaska: General Manager, Chief Pilot or Chief Inspector. He is also free to reapply for an Airline Transport Pilot Certificate. The settlement did not constitute an admission of guilt by the airline or its president.

Fleming International

The history of Fleming International also gives us serious reservations about its fitness. It too has a record of numerous violations of the Federal Aviation Regulations relating to safety. Since October 1973, Fleming has paid $2100 in civil penalties, and $22,500 in assessed civil penalties are still pending.

Unfortunately, we are in possession of very limited information regarding Fleming's alleged violations. The FAA has not yet supplied us with the pertinent records, and we are relying upon a list of violations contained in Exhibit FL–9 of Fleming's application. Among the more serious violations cited in this list are the operation of components beyond approved time limits (October 10, 1973 and February 1, 1975), operation of two flights without radio and navigation equipment (November 30, 1977), operation of aircraft on several flights with an inoperative pitot heat warning light for the captain's pitot system (February 3, 1978), and two unspecified "hazardous material" violations (March 26 and April 27, 1978) for which a total of $18,000 in civil penalties are now pending.

Also, like Pacific Alaska, Fleming has experienced a fatal air crash. On July 6, 1977, one of its Lockheed L–188C's crashed shortly after takeoff at St. Louis, resulting in the death of three crewmembers. A brief description of the accident by the National Transportation Safety Board [6] described the "type of accident" as "propeller/rotor failure", and listed ten "probable causes". These included "pilot in command attempted operation w/known deficiencies in equipment" and "inadequate maintenance and inspection".

Determination of Unfitness

We consider the allegations made by the FAA, discussed above, to bear heavily on the question of the carriers'

[2] Copies of the safety and compliance evaluations have been placed in the respective dockets.

[3] These alleged acts constitute violations of FAR Sections 121.709(a), 121.707, 91.29(a), and 43.13 (a) and (b).

[4] Case numbers AL–78–OC–14–E and AL–78–OC–12–E, respectively.

[5] Notice of Proposed Certificate Action, Case NOs. AL–78–OC–3 and AL–78–OC–15, FAA Alaskan Region, December 19, 1978.

[6] Supplied by Zantop in its answer as Exhibit 21A–104.

fitness. The preponderance of the evidence now before us indicates that Fleming and Pacific Alaska lack the disposition to comply with the Act and applicable regulations and operate safely.[7] We make this determination in the absence of more information. The Act's 180-day deadline compels us to decide in the affirmative or the negative on the applications by May 9, 1979, in Pacific Alaska's case and May 15, 1979, in Fleming's and we cannot find otherwise on the basis of the information we now possess.

We do not regard the matter to be closed, however. We will require the carriers to submit new applications, thus initiating additional 180-day periods, if they remain interested in pursuing all-cargo authority. To facilitate the resolution of the fitness issues, we are instituting formal proceedings.[8] The applicants should refile in the appropriate dockets within thirty (30) days of the service of this order. Failure to file within this period will result in the termination of the formal proceedings.

The separate proceedings will be confined entirely to the issue of the fitness of each of the applicants. We urge the Administrative Law Judges assigned to these proceedings to set the hearings at the earliest convenience of the parties, and to confer with the parties on means of expedition.[9]

We believe, given the circumstances of these cases, that fitness hearings will be the best and most expeditious way to acquire all relevant facts and resolve possible factual disputes. We also believe that parties should have the benefit of oral testimony, cross-examination, and rebuttal of evidence.

At the heart of our determination to hold hearings lie doubts as to the applicants' abilities to comply with the regulations which help to assure safe operations. We stated in a previous case that the Act "requires the application of the highest safety standards in the course of regulating new entry into the industry."[10] Yet operational safety is primarily the responsibility of the FAA,[11] and we do not possess its expertise in evaluating a carrier's safety potential. In a case such as this, we need the expert opinions of the FAA, as well as all relevant facts in its possession. To this end, we are making the Federal Aviation Administration a party to both of the formal cases which we are instituting. We expect that it will participate actively and render valuable assistance in resolving the difficult issues before us.

Accordingly, 1. We deny the applications of Pacific Alaska Airlines and Fleming International Airways in Dockets 33977 and 34031, respectively, for certificates for all-cargo authority under Section 418(a)(4) of the Act;

2. We institute formal proceedings entitled *Fitness Investigation of Pacific Alaska Airlines, Inc.* in Docket 35508, and *Fitness Investigation of Fleming International Airways, Inc.* in Docket 35507;

3. We direct Pacific Alaska and Fleming to file new applications in the appropriate dockets, along with all information previously submitted, updated to reflect any changes by June 11, 1979;

4. All issues relating to the fitness of the applicants will be heard before Administrative Law Judges at places and times to be determined later; and

5. We make the Federal Aviation Administration a party to the proceedings instituted in paragraph 3.

We will publish this order in the **Federal Register.**

By the Civil Aeronautics Board.[12]

Phyllis T. Kaylor,

Secretary.

[Order 79-5-69; Dockets 33977, 34031, 35507, 35508]

[FR Doc. 79-15139 Filed 5-14-79; 8:45 am]

BILLING CODE 6320-01-M

[7] There is also a factual dispute as to the financial fitness of Fleming. Zantop, in its answer, raises questions regarding Fleming's dependence on credit extended by its suppliers, and its long-term financial future. While we are making no judgment on Fleming's financial fitness here, we wish to inquire more fully into the question through the procedures set forth below.

[8] The Docket for Pacific Alaska's application is Docket 35508; Fleming should file in Docket 35507.

[9] For our convenience and that of the Judges and the parties, applicants should resubmit all required evidence, updated to reflect any changes which have transpired since the original data were filed. The Bureau of Pricing and Domestic Aviation will submit evidence requests for any further information which is needed, and consistent with customary practice, the Judges assigned to the proceedings will rule on any disputes concerning the evidence that should be required.

[10] *Application of Federal Express, supra.* fn. 7, at 7.

[11] *Transcontinental, supra.* fn. 7, at 25.

[12] All members concurred.

CIVIL RIGHTS COMMISSION

California 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 California Advisory Commission (SAC) of the Commission will convene at 7:00 pm and will end at 9:00 pm, on June 1, 1979, at the Jack Tar Hotel, Van Ness at Geary, San Francisco, California 94101.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Western Regional Office of the Commission, 312 North Spring Street, Room 1015, Los Angeles, California 90012.

The purpose of this meeting is to review the remainder of fiscal year 1979 and fiscal year 1980 projects.

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

Dated at Washington, D.C., May 9, 1979.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79-15144 Filed 5-14-79; 8:45 am]

BILLING CODE 6335-01-M

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 Commission (SAC) of the Commission will convene at 1:00 pm and will end at 5:00 pm, on June 5, 1979, at the Union Baptist Community Service Agency, 2601 North Pine Street, Wilmington, 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 the consideration of reports from agenda-planning subcommittee.

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

Dated at Washington, D.C., May 9, 1979.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79-15145 Filed 5-14-79; 8:45 am]

BILLING CODE 6335-01-M

New York Advisory Committee; Meeting Change

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 New York Advisory Committee (SAC) of the Commission originally scheduled for May 18–19, 1979 has been changed, (FR Doc. 79–10622) on page 20735.

The meeting now will be held on May 18, 1979, beginning at 3:00 pm and will end at 6:00 pm, at Phelps Stokes Fund, Inc., 10 East 87 Street, New York, New York.

Dated at Washington, D.C., May 10, 1979.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79-15146 Filed 5-14-79; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Maine Coastal Management Program; Intent to Approve Amendment

Notice is hereby given of the intent by the Office of Coastal Zone Management (OCZM) to approve amendments to the Maine Coastal Management Program by the addition of procedures to cover three areas:

1. Coastal Shorefront Access and Protection.

2. Shoreline Erosion Assessment and Mitigation.

3. Energy Facility Siting.

Interested parties have 30 days from the issuance of this notice to submit comments. If no serious disagreement of that action is raised during this comment period, the Assistant Administrator for Coastal Zone Management intends to give formal approval to these amendments. Comments should be addressed to:

Dick O'Connor, Deputy North Atlantic Regional Manager, Office of Coastal Zone Management, 3300 Whitehaven Street, N.W., Washington, D.C. 20235.

A full text of the proposed amendments to the Maine Coastal Management Program has been distributed to all Federal agencies. Interested parties wishing to obtain copies of the refinements may request copies from OCZM at the above address.

Dated: May 8, 1979.

M. P. Snidero,

Acting Assistant Administrator for Administration.

[FR Doc. 79-15082 Filed 5-14-79; 8:45 am]

BILLING CODE 3510-08-M

Public Hearings on Draft Environmental Impact Statement

Notice is hereby given that the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, will hold a public hearing for the purpose of receiving comments on the Draft Environmental Impact Statement (DEIS) Prepared on the Proposed Apalachicola Estuarine Sanctuary.

The hearing will begin at 7:00 p.m. on Thursday, June 7, 1979. It will be held at the Franklin County Courthouse in Apalachicola, Florida.

The views of interested persons and organizations on the adequacy of the impact statement and the proposed Apalachicola Estuarine Sanctuary, are solicited, and may be expressed orally or in written statements. Persons or organizations wishing to be heard on this matter should contact the Office of Coastal Zone Management (OCZM), National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, N.W., Washington, D.C. 20235 (phone: 202/634-4253), so that an appearance schedule may be prepared. In addition, requests for presentations will be accepted immediately prior to the hearing. Presentations are scheduled on a first-come, first-served basis, and should be limited to ten minutes in order to assure that all views can be heard. Office of Coastal Zone Management staff may wish to question speakers following the conclusion of their statements. If time permits, additional statements (and general discussion) may be scheduled at the conclusion of presentations. No verbatim transcript of the hearing will be prepared; but staff present will record the general thrust of the remarks. As part of his review of the Proposed Estuarine Sanctuary, the Assistant Administrator for Coastal Zone Management will consider fully all comments received at this hearing, as well as written statements submitted to, and received by OCZM on or before June 19, 1979. As part of the procedures leading toward designation of this sanctuary, a Final Environmental Impact Statement, reflecting his consideration of these comments, will be prepared pursuant to the National Environmental Policy Act of 1969 and its implementing guidelines. All written comments received by OCZM prior to the deadline will be included in the FEIS.

Dated: May 8, 1979.

M. P. Snidero,

Assistant Administrator for Administration.

[FR Doc. 79-15081 Filed 5-15-79; 8:45 am]

BILLING CODE 3510-08-M

Office of the Secretary

Financial Disclosure Reports; Interim Procedures for Public Inspection and Copying

1. *Purpose*

Pursuant to title II of the Ethics in Government Act of 1978 (the Act) each executive agency is to make available to the public for inspection and copying the financial disclosure reports which certain of its officers and employees are to file under the Act. These reports, together with a position description or equivalent paper describing the reporting individual's job, are to be made publicly available within fifteen days of their receipt by the agency. This notice is to inform the public of the Department of Commerce procedures for examining and obtaining copies of those reports.

2. *Scope*

These procedures are initially directed to implement the first annual filing of financial reports by Department of Commerce officers and employees under section 201(d) of the Act. These reports cover the calendar year 1978 and are to be filed by May 15, 1979, unless an extension of time has been granted to particular individuals for good cause. The financial disclosure reports are made on Standard Form 278, which was developed and made available by the Office of Government Ethics under section 203(g) of the Act. However, these procedures will apply also to other financial reports which are required to be filed with the Department under title II of the Act, until further rules may be formalized on the basis of experience and public comments.

3. *Public Inspection*

Copies of the financial disclosure reports filed by officers and employees of the Department of Commerce under title II of the Act, together with the relevant official position descriptions, will be available for public inspection in the Central Reference and Records Inspection Facility, Room 5319, Department of Commerce, 14th Street between Constitution Avenue and E Street, Northwest, Washington, D.C. 20230. The Facility is open to the public Monday through Friday of each week, except on official holidays of the United States Government, between the hours of 9 a.m. and 4:30 p.m. The telephone number of the Facility is (202) 377-4217.

4. *Copying*

a. Persons who are inspecting reports at the Facility may obtain copies upon payment of the fees set forth in paragraph 5.a. below.

b. Persons may obtain copies of reports and position descriptions by writing to the Facility. The request shall specify the name and/or position title of each officer or employee whose report is being sought. The request shall be signed by the individual requester, identify his or her organization, and include the appropriate fee for copying and mailing calculated under paragraph 5.b. below.

c. Normally only one copy of the same report will be provided. Additional

copies will be provided only upon a showing of demonstrated need.

5. *Fees*

a. In person, copies may be obtained at a cost of $.07 per page, or the charge of a coin operated machine, as available.

b. Individuals requesting copies to be sent by mail shall include a fee of $1.00 for each report and position description (usually 10 pages), to cover the cost of reproduction and mailing, payable by check or money order to "U.S. Department of Commerce".

6. *Unlawful Use of Reports*

a. The Act makes it unlawful for any person to obtain or use a report or the information in it (a) for any unlawful purpose; (b) for any commercial purpose, other than by news and communication media for dissemination to the general public; (c) for determining or establishing the credit rating of any individual; or (d) for use, directly or indirectly, in the soliciation of money for any political, charitable, or other purpose. Persons violating this provision are subject to civil fines as well as other remedial action.

b. For administrative purposes, persons who seek to examine or receive copies of financial reports shall identify themselves and their organizations.

7. *Designation*

The Secretary of Commerce has designated the General Counsel of the Department, who is also its Ethics Counsellor, as the person to administer the provisions of the Act within the Department of Commerce.

8. *Comments*

Individuals are encouraged to provide suggestions or comments on these procedures, which should be sent to the Facility at the address given in paragraph 3. above.

9. *Effective Date*

This notice shall become effective May 15, 1979.

William V. Skidmore,
Acting General Counsel.

[FR Doc. 79-15042 Filed 5-14-79; 8:45 am]

BILLING CODE 3510-17-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1979 Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List

SUMMARY: This action adds to Procurement List 1979 commodities to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: May 15, 1979.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On February 9, 1979 and March 9, 1979 the Committee for Purchase from the Blind and Other Severely Handicapped, published notices (44 FR 8324 and 44 FR 13061) of proposed additions to Procurement List 1979, November 15, 1978 (43 FR 53151).

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77.

Accordingly, the following commodities are hereby added to Procurement List 1979:

Class 7210

Tablecloth
7210-00-492-8381

Class 7910

Pad, Floor Polishing Machine Buffing (fine) Class 1
7910-00-685-6686
7910-00-685-6687
7910-00-685-3908
7910-00-685-6671
7910-00-685-6909
7910-00-685-6672
7910-00-685-3910
Scrubbing (medium) Class 2
7910-00-685-6656
7910-00-685-6657
7910-00-685-3912
7910-00-685-6659
7910-00-685-3915
7910-00-685-6660
7910-00-685-3914
Stripping (coarse) Class 3
7910-00-685-4239
7910-00-685-4240
7910-00-685-4242
7910-00-685-4243
7910-00-685-4241
7910-00-685-4244
7910-00-685-4245

Class 7920

Pad, Scouring
7920-00-151-6120

C. W. Fletcher,
Executive Director.

[FR Doc. 79-15092 Filed 5-14-79; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

The DoD Advisory Group on Electron Devices (AGED) will meet in closed session on 20 June 1979, at 201 Varick Street, 9th floor, New York, New York 10014.

The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of Electron Devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with 5 U.S.C. App. 1 10(d) (1976), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

H. E. Lofdahl,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

May 10, 1979.

[FR Doc. 79-15140 Filed 5-14-79; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF ENERGY

Sales of Lithium Compounds Enriched in the Isotope Lithium-7

In compliance with general Department of Energy (DOE) policy not to compete with private industy, DOE is considering withdrawing from sales of lithium hydroxide monohydrate enriched in the isotope lithium-7 (Li-7) to an isotopic purity of 99.9% or higher, in order to encourage development of commercial capability in lithium isotope enrichment.

For the past several years, DOE has sold limited quantities of highly-enriched Li-7 through the Oak Ridge National Laboratory Stable Isotope Sales Office at Oak Ridge, Tennessee. The material has been used in nuclear reactor operations, because the isotope Li-7 has a very low neutron absorption cross-section, making its compounds

useful as a coolant-water corrosion inhibitor in pressurized water reactors.

The lithium isotope separation facilities at Oak Ridge, where the DOE inventory of enriched Li-7 was produced, were placed in standby condition in 1963. In 1974 the facilities were dismantled after it was determined that restart of the standby facility would be more costly and more difficult than construction of a new plant of the smaller size suitable to serve reactor needs. The remaining stocks of DOE-owned high-purity Li-7 are limited. If private industry does not build a separation plant, then in about four to six years either (1) new government facilities will have to brought into production, (2) high-purity Li-7 will have to be purchased from foreign suppliers, or (3) industry will have to use less desirable materials.

Enriched Li-7 of 99.9% purity or greater now can be purchased by domestic or foreign customers from commercial sources. If the proposed policy is adopted, highly-enriched Li-7 of 99.9% purity or greater in the form of lithium hydroxide monohydrate will continue to be available through the ORNL Stable Isotopes Sales Office for research purposed at 50 cents per gram in lots not to exceed 50 grams to any one customer in any 12-month period.

A supply of Li-7 of an isotopic purity of 98.4% also will continue to be available for use in startup of new reactors and for other miscellaneous activities. Enough of this material will be made available for such purposes to constitute at least a ten-year supply at current consumption rates. Additional stocks of 98.4% Li-7 will be reserved to furnish feedstocks to supply at last two isotopic enrichment facilities for up to ten years at forecast demand rates.

The DOE contingency reserve of enriched Li-7 of 99.9% purity or greater in the form of lithium hydroxide monohydrate also will be available for release if potential domestic purchasers petition DOE, and DOE determines that material of this quality is not available from commercial sources on terms and conditions, including prices, that are reasonable.

All parties who desire to submit written comments on this notice should send them to Mr. George B. Pleat, Office of Nuclear Materials Production, A-362, U.S. Department of Energy, Washington, D.C., 20545, by June 15, 1979. Comments received after that date will be considered if it is practicable to do so, but assurance of consideration cannot be given except as to comments filed within the period specified. Answers to questions concerning this notice can be obtained by writing to Mr. Pleat at the above address or by calling Mr. Richard D. Hahn, at 301–353–3782.

The proposed notice, hereby issued for comment follows:

1. The Department of Energy (DOE) hereby withdraws from the sale of lithium-7 (Li-7) in the form of lithium hydroxide monohydrate having an isotopic purity of 99.9% or greater other than the sale in gram lots, not to exceed 50 grams to any purchaser in any 12-month period, which will continue to be priced at 50 cents per gram.

2. DOE will reserve its stocks of Li-7 in the form of lithium fluoride having an isotopic purity of 99.9% or greater for sale at $260 per kilogram to an industry source which wishes to process it to the form of lithium hydroxide monohydrate; provided that such sale shall be made only upon a determinaton by DOE that it will serve to foster private domestic competition in the isotopic separation of lithium.

3. DOE will continue to sell Li-7 having an isotopic purity of 98.4% or lower, in any of the forms available to DOE, at a price of $51.00 per kilogram, except that DOE will reserve from sale approximately 440,000 kg of Li-7 in the form of lithium hydroxide monohydrate having an isotopic purity of 98.4% for sale to industries desiring to use it, upon a showing to DOE's satisfaction that such material will be used as feed stock for a plant to enrich lithium to an isotopic purity of Li-7 of 99.9% or greater. DOE will sell not more than 220,000 kg of the reserved material to any one entity. This restriciton will provide sufficient feed stocks for two lithium enrichers should the market opportunity for two enrichers develop.

4. If at any time after the effective date of this notice a person who is a user or potential user of lithium hydroxide monohydrate, enriched in Li-7 to an isotopic purity of 99.9% or greater, is unable to reach agreement with a commercial U.S supplier of such material and if such person considers that terms and conditions, including prices, for the material offered by the commercial U.S. supplier are unreasonable, DOE, upon such person's request, will review the proposed terms and conditions including prices. If after the review DOE determines the required material is not available at reasonable terms and conditions, including prices, DOE to the extent it has stocks available, will sell to such person lithium hydroxide monohydrate enriched in Li-7 to an isotopic purity of 99.9% or greater in amounts DOE determines to be appropriate at a price which DOE at that time determines to be reasonable.

5. The notice published in the Federal Register at 42 FR 28912 on June 6, 1977, entitled "Lithium-7 Sales, Revision of Charges," as well as all previous notices dealing with the sales of lithium-7, are hereby superseded.

Dated at Washington, D.C. this 7th day of May 1979.

For the U.S. Department of Energy.

Duane C. Sewell,

Assistant Secretary for Defense Programs.

[FR Doc. 79-15090 Filed 5-14-79; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Greenwood Energy Center Unit 1; Detroit Edison Co.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of request for classification.

SUMMARY: On April 18, 1979, Detroit Edison Company requested the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) to classify Greenwood Energy Center Unit 1 as an existing facility pursuant to § 515.6 of the Revised Interim Rule to Permit Classification of Certain Powerplants and Installations as Existing Facilities (Interim Rule) issued by ERA on March 15, 1979 (44 FR 17464) and pursuant to the provisions of the Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95–620 (FUA). FUA, which is effective May 8, 1979, imposes certain statutory prohibitions against the use of natural gas and petroleum by new and existing electric powerplants. ERA's decision in this matter will determine whether Greenwood Energy Center Unit 1 is a new or existing powerplant. The prohibitions which apply to existing powerplants are different from those which apply to new powerplants. The purpose of this Notice is to invite interested persons to submit written comments on this matter prior to the issuance of a final decision by ERA. In accordance with § 515.25 of the Interim Rule, no public hearings will be held.

DATES: Written comments are due on or before June 6, 1979.

ADDRESSES: Ten copies of written comments shall be submitted to:

Department of Energy, Case Control Unit, Box 4629, 2000 M Street, NW., Room 2313, Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

William L. Webb (Office of Public Information), Economic Regulatory Administration, Department of Energy,

2000 M Street, NW., Room B-110, Washington, D.C. 20461, (202) 634-2170.
Charles A. Falcone, Director, Power Supply and Reliability, Economic Regulatory Administration, Department of Energy, 2000 M Street, NW., Washington, D.C. 20461, (202) 634-5620.
James H. Heffernan (Office of the General Counsel), Department of Energy, 12th & Pennsylvania Avenue, NW., Room 7134, Washington, D.C. 20461, (202) 633-8814.
Robert L. Davies, Deputy Assistant Administrator, Office of Fuels Regulation, Economic Regulatory Administration, 2000 M Street, NW., Room 7202, Washington, D.C. 20461, (202) 254-3910.

SUPPLEMENTARY INFORMATION: Detroit Edison Company is a corporation organized under the laws of the State of Michigan. Detroit Edison supplies electric service to southeastern Michigan.

Detroit Edison stated that contracted engineering activities for Greenwood Energy Center Unit 1 began on April 30, 1971. Construction of the 800 MW residual fuel oil fired generating unit began on May 1, 1972. Greenwood Unit 1 was originally scheduled for operation on April 1, 1979. Detroit Edison has confirmed by phone that the unit at this time is not commercially operational but is synchronized with the utility's system. The company has not provided a revised date for commercial operation of Unit 1.

On April 18, 1979, pursuant to ERA's Revised Interim Rule to Permit Classification of Certain Powerplants and Installations as Existing Facilities (Interim Rule) issued on March 15, 1979, Detroit Edison requested that ERA classify Greenwood Energy Center Unit 1 as an existing facility.

In accordance with Section 515.6 of ERA's Interim Rule, a powerplant will be classified as existing if the cancellation, rescheduling or modification of the construction or acquisition of a powerplant would result in a substantial financial penalty or an adverse effect on the electric system reliability. Detroit Edison supported its request for classification by providing evidence in support of its claim that prohibiting the company from burning petroleum products in Greenwood Unit 1 would result in a substantial financial penalty to the company.

A summary of the evidence requirements and Detroit Edison's response to those requirements follows:

Substantial Financial Penalty—Pursuant to Section 515.6(a) of the Interim Rule, ERA will classify a facility as existing upon a demonstration that at least 25 percent of the total projected project cost as of November 9, 1978 was expended in nonrecoverable outlays as of November 9, 1978.

In response to the evidence requirements of Section 515.7(b)(1) of the Interim Rule, Detroit Edison provided the following information:

—Total projected cost on 11/9/78 was $369,500,000;

—Total project expenditures on 10/31/78 were $215,847,664.87;

Total net nonrecoverable outlay (including contract liability costs as of 9/3/78) was $140,984,000;

—Total recoverable outlays were $75,273,000.

There appears to be a reasonable likelihood that Greenwood Energy Center Unit 1 will be determined to be an existing facility. ERA hereby invites all interested persons to submit written comments on this matter.

The public file, containing Detroit Edison's request for classification and supporting materials, is available for inspection upon request at:

ERA, Room 7202, 2000 M Street, NW., Washington, D.C. 20461, Monday–Friday, 8:00 a.m.–4:30 p.m.

Issued in Washington, D.C., on May 9, 1979.

Doris J. Dewton,

Acting Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

[ERA Case No. 50782-6035-01-77]

[FR Doc. 79-15091 Filed 5-14-79; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

Champlin Petroleum Co. et al.; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 7, 1979.

On April 26, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

State of Utah, Department of Natural Resources, Board of and Division of Oil, Gas and Mining

FERC Control Number: JD79-3050
API Well Number: 4304330048
Section of NGPA: 103
Operator: Champlin Petroleum Company
Well Name: #2 Newton Sheep 32-9 NWNE 9-2N-7E
Field: Pineview
County: Summit
Purchaser: Mountain Fuel Supply Company
Volume: 120 MMcf.

FERC Control Number: JD79-3051
API Well Number: 43-037-3044
Section of NGPA: 103
Operator: Texaco Inc.
Well Name: Aneth Unit Well No. G116
Field: Aneth
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 8 MMcf.

FERC Control Number: JD79-3052
API Well Number: 43-047-30268
Section of NGPA: 103
Operator: Belco Petroleum Corporation
Well Name: Chapita Wells Unit 39-16 30268
Field: Chapita Wells
County: Uintah
Purchaser: Mountain Supply Co.
Volume:

FERC Control Number: JD79-3053
API Well Number: 43-037-11356
Section of NGPA: 102
Operator: Cordillera Corporation
Well Name: Cordillera State #1
Field: Little Valley
County: San Juan
Purchaser: N/A
Volume: 730,000 MMcf.

FERC Control Number: JD79-3054
API Well Number: 43-033-30003
Section of NGPA: 102
Operator: American Quasar Petroleum Co.
Well Name: Hogback Ridge #20-1
Field: 1980 FSL & 660 FEL SEC. 20-13N-7E
County: Rich
Purchaser: Mountain Fuel Supply Co.
Volume: 5,475 MMcf.

FERC Control Number: JD79-3055
API Well Number: 43-043-30075
Section of NGPA: 103
Operator: American Quasar Petroleum Co.
Well Name: Blonquist 26-1
Field: 660 FSL & 1997 FWL 26-2N-6E
County: Summit
Purchaser: Mountain Fuel Supply
Volume: 180 MMcf.

FERC Control Number: JD79-3056
API Well Number: 43-043-30061
Section of NGPA: 103
Operator: American Quasar Petroleum Co.
Well Name: Judd 34-1
Field: 1900 FWL & 660 FSL 34-3N-7E
County: Summit
Purchaser: Mountain Fuel Supply
Volume: 180 MMcf.

FERC Control Number: JD79-3057
API Well Number: 43-043-30077
Section of NGPA: 103
Operator: American Quasar Petroleum Co.
Well Name: Pineview 4-3
Field: 772' FSL 663' FEL 4-2N-7E
County: Summit
Purchaser: Mountain Fuel Supply Co.
Volume: 180 MMcf.

FERC Control Number: JD79-3058
API Well Number: 43-043-30071
Section of NGPA: 103
Operator: American Quasar Petroleum Co.
Well Name: Clark 4-1
Field: 3300 FEL & 660 FSL Sec. 4-2N-7E
County: Summit
Purchaser: Mountain Fuel Supply Co.
Volume: 180 MMcf.

FERC Control Number: JD79-3059
API Well Number: 43-043-30035
Section of NGPA: 103
Operator: American Quasar Petroleum Co.
Well Name: UPRR 3-5
Field: 1969 FWL, 673 FSL 3-2N-7E
County: Summit

Purchaser: Mountain Fuel Supply
Volume: 180 MMcf.

FERC Control Number: JD79–3060
API Well Number: 43–043–30036
Section of NGPA: 103
Operator: American Quasar Petroleum Co.
Well Name: UPRR 3–6
Field: 658 FEL 665 FSL 3–2N–7E
County: Summit
Purchaser: Mountain Fuel Supply
Volume: 180 MMcf.

FERC Control Number: JD79–3061
API Well Number: 43–043–30033
Section of NGPA: 103
Operator: American Quasar Petroleum Co.
Well Name: Bingham 2–3
Field: 2126 FWL & 561 FSL 2–2N–7E
County: Summit
Purchaser: Mountain Fuel Supply
Volume: 180 MMcf.

FERC Control Number: JD79–3062
API Well Number: 43–043–30038
Section of NGPA: 103
Operator: American Quasar Petroleum Co.
Well Name: Bingham 2–4
Field: 2055 FWL & 2084 FNL 2–2N–7E
County: Summit
Purchaser: Mountain Fuel Supply
Volume: 180 MMcf.

FERC Control Number: JD79–3063
API Well Number: 43–043–30004
Section of NGPA: 103
Operator: American Quasar Petroleum Co.
Well Name: UPRR 5–1
Field: 3120 FSL & FEL 5–2N–7E
County: Summit
Purchaser: Mountain Fuel Supply
Volume: 180 MMcf.

FERC Control Number: JD79–3064
API Well Number: 43–043–30047
Section of NGPA: 103
Operator: American Quasar Petroleum Co.
Well Name: 1949.5' FNL & 1828.5' FEL 19–2N–7E
Field: UPRR 19–1
County: Summit
Purchaser: Mountain Fuel Supply
Volume: 180 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record of which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information. Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission, on or before May 30, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79–15047 Filed 5–14–79; 8:45 am]
BILLING CODE 6450–01–M

Connecticut Light & Power Co.; Transmission Agreement

May 8, 1979.

The filing Company submits the following:

Take notice that on May 4, 1979, The Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule with respect to Transmission Agreement dated March 13, 1979 between (1) CL&P, The Hartford Electric Light Company (HELCO) and Western Massachusetts Electric Company (WMECO) and (2) Long Island Lighting Company (LILCO).

CL&P states that the Transmission Agreement provided for a transmission service to LILCO during the period from April 1, 1979 to November 30, 1979.

The transmission charge rate is a monthly rate equal to one-twelfth of the annual average cost of transmission service on the Northeast Utilities system determined in accordance with Section 13.9 (Determination of Amount of Pool Transmission Facilities (PTF) Costs) of the New England Power Pool (NEPOOL) Agreement and the uniform rules adopted by the NEPOOL Executive Committee. The transmission charge is the product of (i) the monthly transmission charge rate and (ii) the number of kilowatts which LILCO is entitled to receive.

CL&P requests an effective date of April 1, 1979 for the Transmission Agreement.

HELCO and WMECO have filed certificates of concurrence in this docket.

CL&P states that copies of this rate schedule have been mailed or delivered to CL&P, Hartford, Connecticut, HELCO, Hartford, Connecticut, WMECO, West Springfield, Massachusetts and LILCO, Hicksville, New York.

CL&P further stated that the filing is in accordance with Section 35 of the Commission's Regulations.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedures (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 29, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[Docket No. ER79–350]
[FR Doc. 79–15049 Filed 5–14–79; 8:45 am]
BILLING CODE 6450–01–M

Consolidated Gas Supply Corp.; Application

May 4, 1979.

Take notice that on April 16, 1979, Consolidated Gas Supply Corporation (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP79–272 an application pursuant to Section 7(c) of the Natural Gas Act and § 157.7(b) of the Regulations thereunder (18 CFR 157.7(b)) for a certificate of public convenience and necessity authorizing the construction, during the 12-month period ending May 6, 1980, and operation of facilities pipeline system natural gas which would be purchased from producers or other similar sellers thereof, all as more fully set forth in the application on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in connecting to its pipeline system supplies of natural gas which may become available from various producing areas generally coextensive with its pipeline system or the systems of other pipeline companies which may be authorized to transport gas for the account of or exchange gas with Applicant.

Applicant states that the total cost of the proposed facilities would not exceed $8,000,000 with no single onshore project to exceed $1,500,000 and no single offshore project to exceed $2,500,000. Applicant states that the proposed facilities would be financed from funds on hand and funds to be obtained from Applicant's parent corporation, Consolidated Natural Gas Company.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 29, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the

Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[Docket No. CP79-272]
[FR Doc. 79-15050 Filed 5-14-79; 8:45 am]
BILLING CODE 6450-01-M

John E. Dolan; Filing

May 8, 1979.

Take notice that on April 23, 1979, John E. Dolan, (Applicant) filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Director: Indiana & Michigan Electric Company—Electric utility.
Director: Kanawha Valley Power Company—Electric utility.
Director: Kingsport Power Company—Electric utility.
Director: Michigan Power Company—Electric utility.
Director: Ohio Electric Company—Electric utility.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 29, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[Docket No. ID-1735]
[FR Doc. 79-15056 Filed 5-14-79; 8:45 am]
BILLING CODE 6450-01-M

Duquesne Light Co. and West Penn Power Co.; Termination

May 8, 1979.

Take notice that Allegheny Power Service Corporation (APS), on behalf of Duquesne Light Company and West Penn Power Company, on April 26, 1979, tendered for filing a notice of termination indicating that the Elizabeth Interchange point described in the Interchange Agreement between West Penn Power Company and Duquesne Light Company (West Penn FERC Schedule No. 24 and Duquesne Light FERC Schedule No. 9) has been terminated.

APS indicates that the reason for the termination is that the interconnection point is no longer required.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 25, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[Docket No. ER79-346]
[FR Doc. 79-15061 Filed 5-14-79; 8:45 am]
BILLING CODE 6450-01-M

East Tennessee Natural Gas Co.; Extension of Time

May 4, 1979.

On April 26, 1979 a joint motion was filed by Commission staff and East Tennessee Natural Gas Company for an extension of the briefing schedule on the initial decision issued in this proceeding on April 6, 1979. The motion states that additional time is needed to analyze complex issues in the case and that no party opposes the request.

Upon consideration, an extension of time for filing briefs on exceptions is granted to and including June 6, 1979. Briefs opposing exceptions shall be filed on or before June 26, 1979.

Kenneth F. Plumb,
Secretary.

[Docket No. RP 79-12]
[FR Doc. 79-15052 Filed 5-14-79; 8:45 am]
BILLING CODE 6450-01-M

Florida Power & Light Co.; Filing

May 8, 1979.

The filing Company submits the following:

Take notice that Florida Power & Light Company (FPL), on May 4, 1979, tendered for filing an Agreement, entitled "Agreement To Provide Specified Transmission Service Between Florida Power & Light Company and New Smyrna Beach Utilities Commission." FPL states that under the Agreement, FPL will transmit power and energy for New Smyrna Beach Utilities Commission (New Smyrna) as is required by New Smyrna in the implementation of its interchange agreements with the Orlando Utilities Commission, the City of Homestead, Ft. Pierce Utilities Authority and Lake Worth Utilities Authority. A letter from New Smyrna requesting that the Agreement be filed is attached.

FPL requests and effective date of no later than 60 days after the date of filing. According to FPL copies of this filing were served on New Smyrna's Director of Utilities.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with 1.8 and 1.10 of the Commission's Rule of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 1, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file

with the Commission and are available for public inspections.

Kenneth F. Plumb,
Secretary.

[Docket No. ER 79-352]
[FR Doc. 79-15053 Filed 5-14-79; 8:45 am]
BILLING CODE 6450-01-M

Idaho Power Co.; Compliance Filing

May 8, 1979.

The filing Company submits the following:

Take notice that on May 4, 1979, the Idaho Power Company tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No 1 (Supersedes Original Volume No. 1) during March, 1979, along with cost justification for the rate charged.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before *May 29, 1979.* Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[Docket No. ER79-347]
[FR Doc. 79-15054 Filed 5-14-79; 8:45 am]
BILING CODE 6450-01-M

Iowa Power & Light Co.; Proposed Rate Change

May 8, 1979

The filing Company submits the following:

Take notice that Iowa Power and Light Company (Iowa Power) on May 3, 1979, tendered for filing an Electric Interchange Agreement with Montezuma Municipal Light and Power (City), which is intended as a change in Rate Schedule to supersede Rate Schedule FPC No. 16. The additional services under the new Agreement provide the City with several opportunities for exchanging capacity through interconnections with Iowa Power. These include:

(1) Purchase of participation type power and energy generated by Iowa Power's base load units;

(2) Delivery of power and energy through Iowa Power's transmission facilities to the City's electric system;

(3) Purchase of replacement energy for energy temporarily unavailable;

(4) Purchase of equalization power and energy for the purpose of equalizing reserve responsibilities;

(5) Sale of excess economy peaking capacity to Iowa Power;

(6) Purchase of energy to repalce more expensive energy;

(7) Purchase of transmission service to deliver power and energy to the City.

In addition, this Agreement provides the City with the opportunity to purchase dispatching service, under which Iowa Power would act as agent for the City in performing normal dispatching functions.

Iowa Power states that the Interchange agreement was entered into for the purpose of interconnecting facilities and co-ordinating operations of the two systems so that the systems themselves, the respective areas served, and the public interest generally might benefit from more effective use of generating facilities, economies in the production of electric energy, and improved service reliability.

Iowa Power requests the Commission waive the prior notice requirements and accept the filing with an effective date of December 16, 1978. Iowa Power states that copies of the filing have been served upon the City and the Iowa State Commerce Commission.

Any person desiring to be heard or protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 29, 1979. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[Docket No. ER79-348]
[FR Doc. 79-15055 Filed 5-14-79; 8:45 am]
BILLING CODE 6450-01

New Bedford Gas and Edison Light Co.; Amendment to Unit Sale Agreement

May 8, 1979.

The filing company submits the following:

Take notice that on May 3, 1979 New Bedford Gas and Edison Light Company ("New Bedford") filed, pursuant to Section 205 of the Federal Power Act and the implementing provisions of Section 35.13 of the Commission's Regulations thereunder, an amendment to its currently effective Rate Schedule FERC No. 35.

By the tendered amendatory agreement, New Bedford proposes to make available to the Electric Light Department of the Town of Braintree, Massachusetts certain increased quantities of capacity and related energy from New Bedford's entitlement in Canal Electric Company Unit No. 2.

New Bedford requests that the Commission's notice requirements be waived pursuant to Section 35.11 of the Commission's Regulations in order to allow said filing to become effective May 1, 1979.

Copies of this filing have been served by New Bedford upon Buyer and the Massachusetts Department of Public Utilities.

Any person wishing to be heard to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § § 1.8 and 1.10 of the Commission's rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 29, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[Docket No. ER79-345]
[FR Doc. 79-15057 Filed 5-14-79; 8:45 am]
BILLING CODE 6450-01-M

Niagara Mohawk Power Corp.; Applications for Amendment of License and for Major License

May 3, 1979.

Take notice that Niagara Mohawk Power Corporation filed two related applications on February 6, 1978, affecting the existing Oswego Project

No. 2474. One application seeks to remove the existing Granby hydroelectric development from the Oswego River Project No. 2474. That development is located in the City of Fulton and the Town of Granby on the Oswego River, in the County of Oswego, New York. The other application seeks authorization to reconstruct the existing Granby hydroelectric development under a new 50-year license as a separate project (FERC No. 2837). The Applicant has conditioned its filing of the amendment of license to allow for the removal of the Granby development from the Oswego Project upon granting of its application for license for the redeveloped Granby project. Correspondence concerning the applications should be sent to: John H. Terry, Senior Vice-President, General Counsel and Secretary, Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, New York 13202.

The Oswego River Project No. 2474 consists of four developments which are located upstream from Lake Ontario on the Oswego River. The license for the Oswego River Project was issued on May 27, 1968, and terminates December 31, 1993. The Granby facility is currently rated at 3,052 kW. If the two applications are approved, the Granby development would be removed from the Oswego Project, and a new fifty-year license would be issued authorizing the redevelopment of the Granby Project to allow for the installed generating capacity to be increased from 3,052 kW to 10,000 kW.

The redevelopment of the Granby project would consist of: (1) a concrete substructure and steel frame powerhouse containing two generating units each rated at 5,000 kilowatts under a design head of 26.5 feet; (2) a substation, and switchyard; and (3) water intake and discharge conduits adjoining the proposed powerhouse. The State of New York-owned Fulton Tower Dam No. 4 would continue to provide hydraulic head to the project but is not described in the application as a facility to be licensed. Applicant estimates that project construction would cost $10,000,000.

There are no existing recreational facilities at the project. The Applicant states in its application that it does not intend to undertake any recreational development at the project site due to the current commercial nature of the area and the lack of adequate land and suitable access.

The power generated would be used for public utility purposes in upstate New York.

Anyone desiring to be heard or to make any protest about this application should file a protest or a petition to intervene with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure ("Rules"), 18 CFR § 1.10 or § 1.8 (1978). In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any protest or petition to intervene must be filed on or before July 9, 1979. The Commission's address is: 825 N. Capitol Street, N.E., Washington, D.C. 20426.

The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,
Secretary.

[Projects Nos. 2474, 2837]
[FR Doc. 79-15058 Filed 5-14-79; 8:45 am]
BILLING CODE 6450-01

Northwest Pipeline Corp.'s Petition To Amend

May 4, 1979.

Take notice that on April 11, 1979, Northwest Pipeline Corporation (Northwest), P.O. Box 1526, Salt Lake City, Utah 84110, filed in Docket No. CP78-415, a petition to amend the order of October 27, 1978, issued in said docket pursuant to Section 7(c) of the Natural Gas Act so as to permit Northwest to augment its ability to make sales of natural gas on an as available basis to Southwest Gas Corporation (Southwest) through the utilization of underground storage capability, all as more fully set forth in the petition to amend, which is on file with the Commission and open to public inspection.

Northwest requests authority to sell and deliver to Southwest volumes of natural gas which may be withdrawn from the Clay Basin Storage Field on an as available basis and which are surplus to the volumes of working gas in the Clay Basin Storage Field required to protect the requirements of Northwest's on-system customers. It is said that the total maximum delivery of as available gas to Southwest of 50 billion Btu's equivalent of gas as presently authorized, would remain unchanged.

Northwest states that in order to effectuate the aforementioned proposal, it and Southwest have amended their agreement of April 28, 1978 to provide an augmentation to the present as available service to Southwest by Northwest.

It is said that the amendment to the agreement provides the following types of as available service covering gas tendered by Northwest to Southwest:

(a) *Type A.* Type A service would be under the April 28, 1978 contract, it is stated. No changes are contemplated in such service which would for all purposes be considered to be the first through the meter when any gas is delivered to El Paso Natural Gas Company for Southwest's account pursuant to the existing contract, states Northwest.

(b) *Type B.* Type B service would be any gas which is tendered by Northwest to Southwest as specifically coming from the Clay Basin Storage Field and which Southwest would accept, it is asserted. Northwest states that there would be an additional charge for any gas tendered and accepted under Type B service.

It is stated that on any day when as available gas is tendered by Northwest to Southwest, Southwest would be required to accept all Type A service prior to Type B gas being delivered and that in no event can the combined service under Type A and B exceed 50 billion Btu's on any day.

Northwest indicates that it would charge Southwest the same rate for Type B service as Southwest is currently paying for Type A service plus 39.0 cents per Mcf to cover the utilization of storage facilities and proposes to flow through any revenues from Type B service to its customers through its purchased gas adjustment clause.

Northwest states that to the extent that the Clay Basin Storage volumes are not required for system requirements on a given day, the difference between the available supply from Clay Basin and that required for system supply could be made available to Southwest.

Any person desiring to be heard or to make any protest with reference to said petition should on or before May 29, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a

proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,
Secretary.

[Docket No. CP78-415]
[FR Doc. 79-15059 Filed 5-14-79; 8:45 am]
BILLING CODE 6450-01-M

Phillips Petroleum Co.; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 7, 1979.

On April 24, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

New Mexico Oil Conservation Division

FERC Control Number: JD79-3986.
API Well Number: 30-025-25077.
Section of NGPA: 108.
Operator: Phillips Petroleum Company.
Well Name: MARG-C No. 1.
Field: Flying M South Atoka.
County: Lea.
Purchaser: Gas Co. of New Mexico.
Volume: 19.3 MMcf.

FERC Control Number: JD79-3987.
API Well Number: 30-025-09675.
Section of NGPA: 108.
Operator: Phillips Petroleum Company.
Well Name: Woolworth, C. D. No. 12.
Field: Jalmat Yates Gas.
County: Lea.
Purchaser: El Paso Natural Gas Co.
Volume: 3.3 MMcf.

FERC Control Number: JD79-3988.
API Well Number: 30-025-09711.
Section of NGPA: 108.
Operator: Phillips Petroleum Company.
Well Name: Vernon No. 1.
Field: Jalmat Yates Gas.
County: Lea.
Purchaser: El Paso Natural Gas Company.
Volume: 9.2 MMcf.

FERC Control Number: JD79-3989.
API Well Number: 30-025-24542.
Section of NGPA: 108.
Operator: Phillips Petroleum Company.
Well Name: Leamex No. 18.
Field: Maljamar Grayburg/San Andres.
County: Lea.
Purchaser: El Paso Natural Gas Company.
Volume: 1 MMcf.

FERC Control Number: JD79-3990.
API Well Number: 30-025-01857.
Section of NGPA: 108.
Operator: Phillips Petroleum Company.
Well Name: Ranger No. 7.
Field: Ranger Lake Bough.
County: Lea.
Purchaser: El Paso Natural Gas Company.
Volume: .2 MMcf.

FERC Control Number: JD79-3991.
API Well Number: 30-015-21030.
Section of NGPA: 108
Operator: Phillips Petroleum Company.
Well Name: Malaga-A No. 1.
Field: Malaga Morrow.
County: Eddy.
Purchaser: El Paso Natural Gas Company.
Volume: 22.4 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before May 30, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-15046 Filed 5-14-79; 8:45 am]
BILLING CODE 6450-01-M

City of Redding, Calif.; Application for Preliminary Permit

May 3, 1979.

Take notice that on November 16, 1978, the City of Redding (City) filed an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. Section 791(a)-825(r)] for a proposed water power project to be known as the Whiskeytown Power Project, FERC No. 2888, on Clear Creek in Shasta County, California. The proposed project would occupy lands of the United States managed by the Bureau of Reclamation (USBR) for the Whiskeytown Dam and Lake which is a part of the UBR's Central Valley Project.

Corresponsence with the Applicant should be directed to: Mr. W. Brickwood, City Manager, City of Redding, 760 Parkview Avenue, Redding, California 96001 and Mr. Martin McDonough Esq., Attorney at Law, 555 Capital Mall, Sacramento, California 95814.

Project Description—The proposed project would have a total installed capacity of 4,000 kW and would be located approximately 500 feet downstream of the USBR's existing Whiskeytown Dam and Lake. The project would utilize waters (50 cfs or more) released from the Lake for fish and domestic use purposes. The head for the project would be 240 feet maximum.

The project would consist of: (a) concrete powerhouse, located at the existing outlet of the Whiskeytown Dam, containing a Pelton turbine and generating unit discharging into Clear Creek adjacent to the powerhouse; and (b) a tap to the existing pacific Gas and Electric Company's (PG&E) 12-kV transmission line, at a point 300 feet northeast of the powerhouse.

Proposed Scope and Cost of Work Under Permit—The Applicant seeks a preliminary permit for a period of 36 months to study the feasibility of installing generating facilities at the proposed site.

Work under the permit would include: (1) analyzing the City's electric energy requirements as they relate to sizing of the power plant: (2) assessing the impact of the proposed project on fish and wildlife and recreational resources of the project area; (3) obtaining a State water rights permit; (4) conducting negotiations with the U.S. Bureau of Reclamation concerning use of its facilities at Whiskeytown Dam, and with Pacific Gas and Electric Company concerning a wheeling agreement; and (5) developing maps and other data required for the filing of an application for license. The Applicant estimates the cost of the studies to be $100,000.

Purpose of Project—Project energy would be delivered to PG&E's transmission system for wheeling to the City's distribution network which serves domestic and industrial customers within the City of Redding.

Purpose of Preliminary Permit—A preliminary permit does not authoriuze construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other necessary information for inclusion in an application for license. In this instance, Applicant seeks a 36-month permit.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file

comments within the time set below it will be presumed to have no comments.

Protests, Petitions to Intervene, and Agency Comments—Anyone desiring to be heard or to make a protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 C.F.R. Section 1.8 or Section 1.10 (1978). In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any protest, petition to intervene, or agency comment must be filed on or before July 9, 1979. Commission's address is: 825 N. Capitol Street, N.E., Washington, D.C. 20425. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,
Secretary.

[Project No 2888]
[FR Doc. 79-15048 Filed 5-14-79; 8:45 am]
BILLING CODE 6450-01-M

South Columbia Basin Irrigation District; Application for Preliminary permit

May 4, 1979.

Take notice that on May 12, 1978, the South Columbia Basin Irrigation District filed an application for Preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. § 791(a)–825(r)] for a proposed water power project, to be known as the Main Canal Headworks and Summer Falls Project, FERC No. 2849, located in Grant County, Washington on the Main Canal of the Bureau of Reclamation's (BOR) Columbia Basin Irrigation Project which conveys water diverted from the Columbia River. The proposed project would utilize waters diverted from a navigable waterway (Columbia River) and would occupy lands over which the BOR holds an easement.

Correspondence with the Applicant should be directed to Mr. Russell D. Smith, Secretary-Manager, South Columbia Basin Irrigation District, P.O. Box 1006, Pasco, Washington 99301 and Mr. James Leavy, Leavy, Taber Schultz, Bergdhal & Sweeney, Attorneys at Law, P.O. Box 891, Pasco, Washington 99301.

Description of Project—The project that would be studied during the term of the permit would consist of two developments as follows:

(a) The proposed Main Canal Headworks Powerplant would have an installed capacity of approximately 14,500 kW, would be located at the outlet works of BOR's Dry Falls Dam, and would utilize water released into the Main Canal; and

(b) The proposed Summer Falls Powerplant would have an installed capacity of 72,000 kW, would be located on the north end of BOR's Billy Clapp Lake, and would utilize water diverted from the Main Canal at a point 1400 feet before the canal enters Billy Clapp Lake, and conveyed to the powerplant via a proposed lined power tunnel.

The estimated average annual output of such a project would be 327 million kWh.

Proposed Scope and Cost of Studies Under Permit—Applicant has requested a 3-year permit to prepare a definitive project report, including preliminary designs, geological explorations, and collection of environmental data. The cost of the foregoing activities, together with preparation of an environmental impact report or environmental assessment, obtaining agreements with various Federal, state and local agencies, preparing a license application, final geologic exploration and field survey, is estimated by Applicant to be about $150,000.

Proposed Use of Project Power—Project energy would be utilized by the Applicant in the operation of irrigation facilities with excess energy being marketed within the State of Washington to publicly owned utilities, rural electric cooperatives, municipalities, or investor-owned utilities.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering and economic feasibility of the proposed project, market for the power, and all other necessary information for inclusion in an application for license.

Agency Comments—Federal, state, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. A copy of the application may be obtained directly from the Applicant.

Comment should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made.

If an agency does not file comments within the time set below, it will be presumed to have no comments.

Protests, Petitions to Intervene, and Agency Comments—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR § 1.8 or §1.10 (1977). In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules.

Any protest, petition to intervene, or agency comments must be filed on or before July 10, 1979. The Commission's address is: 825 N. Capitol Street, NE., Washington, D.C. 20426.

The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,
Secretary.

[Project No. 2849]
[FR Doc. 79-15061 Filed 5-14-79; 8:45 am]
BILLING CODE 6450-01-M

Southern California Edison Co.; Filing of Initial Rate Schedule and Request for Waiver of Prior Notice Requirements

May 8, 1979.

The filing Company submits the following:

Take notice that on May 4, 1979, Southern California Edison Company ("Edison") tendered for filing, as an initial rate schedule, an agreement, dated March 15, 1979, with the Department of Water and Power of the City of Los Angeles ("Los Angeles"). This agreement is entitled "Edison-Los Angeles Midway-Sylmar Interruptible Transmission Service Agreement".

Under the terms of this Agreement, Edison will provide interruptible transmission service for energy purchased by Los Angeles from the Pacific Gas and Electric Company. Edison will charge Los Angeles for transmission, dispatching and scheduling services. Transmission losses in delivery of such energy shall be reimbursed by Los Angeles in kind at a rate of 1.8% of the hourly scheduled deliveries of energy.

Edison requests that this Agreement be made effective 60 days after the day of filing with the Commission. Upon acceptance for filing by the Federal Energy Regulatory Commission, the Agreement will become effective and service may commence. The Agreement will then continue in effect until terminated on 30-day advance notice.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Department of Water and Power of the City of Los Angeles.

Any person desiring to be heard or to protest this application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with § 1.8 and § 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 29, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[Docket No. ER 79-351]

[FR Doc. 79-15060 Filed 5-14-79; 8:45 am]

BILLING CODE 6450-01-M

Tenneco Oil Co., et al.; Petition for Extraordinary Reflief

May 4, 1979.

In the matter of Tenneco Oil Company, CI75-45; Placid Oil Company, CI75-59; Hunt Petroleum Corporation, CI75-66; Hunt Industries, CI75-67; Hunt Oil Company, CI75-68; Kewanee Oil Company, CI75-69; Tenneco Oil Company, CI75-105; Shell Oil Company, CI75-684, CI75-107; Ashland Oil, Inc., CI75-122; TransOcean Oil, Inc., CI75-138; Tennessee Gas Pipeline Company, a Division of Tenneco Inc., CP73-339; Trunkline Gas Company, CP75-330, CP75-19; Tennessee Gas Pipeline Company, CP75-23, CP75-119, CP75-120; Trunkline Gas Company, CP75-149; Southern Natural Gas Company, CP75-316, CP75-151; Southern Natural Gas Company, United Gas Pipe Line Company and Florida Gas Transmission Company, CP75-153; Southern Natural Gas Company, CP75-163; Tennessee Gas Pipeline Company, a Division of Tenneco Inc., and Tenneco Chemicals, Inc., CP75-258; and Highland Resources, CI75-733.

Take notice that on April 23, 1979, First Mississippi Corporation filed an "emergency petition for extraordinary relief" in the above consolidated proceeding. The petition asks that the Commission sever from the proceeding the certificate applications in Dockets No. CP75-330, CP75-316, CP75-59, CI75-66, CI75-67, and CI75-68 and reconsider its disapproval of interstate pipeline transportation of specified volumes of offshore natural gas for feedstock and process gas requirements of First Mississippi's AMPRO fertilizer plant at Donaldsonville, Louisiana.

Among other things, First Mississippi alleges that the AMPRO plant is deteriorating as a result of its not being operated since its construction in 1977. First Mississippi also alleges that other than its contracted for supply of offshore gas, there are no other viable sources of gas for operating its plant. Consequently, First Mississippi asks the Commission to authorize the transportation of offshore natural gas pursuant to the related applications for certificates of public convenience and necessity.

In further support of its petition, First Mississippi says that its situation has changed since FERC Opinion No. 10 was issued, because the U.S. Department of Agriculture has certified the feedstock and process gas as an essential agricultural use within the meaning of section 401 of the Natural Gas Policy Act. Furthermore, says First Mississippi, it is economically impossible to purchase natural gas on the open market and operate an ammonia plant.

First Mississippi says that its production interests in the Green Creek Field are entirely committed to the interstate market. It says that permitting onshore gas to flow to the AMPRO plant will have a *de minimis* effect on the interstate market, that the gas at issue would otherwise go to low priority uses served by interstate pipelines, that denying access to the offshore gas will not preserve competition in the industry, and that First Mississippi committed its resources to the AMPRO facility at a time when the Commission's policy permitted the use of reserved gas by producers. Finally, first Mississippi alleges that the relief sought would have no precedential value and would have an almost exclusive effect only on the AMPRO plant.

Any person desiring to be heard or to make any protest with reference to said petition should on or before May 18, 1979, file with the Federal Energy Regulatory Commission, 825 North Capitol St. N.E., Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-15062 Filed 5-14-79; 8:45 am]

BILLING CODE 6450-01-M

Tennessee Gas Pipeline Co.; Application

May 9, 1979.

Take notice that on April 16, 1979, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP79-271 and application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Columbia Gas Transmission Corporation (Columbia), all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant requests authorization to transport for Columbia natural gas produced from the Bonus Field, Wharton County, Texas, pursuant to a gas transportation agreement dated March 21, 1979, between the two Companies. Applicant states that it would receive, to the extent operating conditions permit, up to 3,000 Mcf of natural gas per day for Columbia at a point of interconnection Columbia proposes to construct, without cost to Applicant, on Applicant's existing mainline facilities near Milepost 15-1 plus 4.8 miles in Wharton County, and that it would transport and deliver such gas to Columbia at an existing point of interconnection between the facilities of Applicant and Columbia Gulf Transmission Company (Columbia Gulf) near Egan in Acadia Parish, Louisiana, and/of other mutually agreeable points of exchange where gas can be delivered to or for the account of Columbia. It is indicated that Applicant would have the right but not the obligation to accept volumes in excess of the transportation quantity which are tendered by Columbia.

The application states that Columbia would pay Applicant each month for the proposed transportation service a volume charge equal to 10.53 cents per Mcf, with a provision for a minimum monthly bill based on transportation quantity. Further, Columbia would provide to Applicant daily volumes of gas equal to 3.0 percent of the volumes received for transportation each day, for applicant's fuel and use requirements, it is said.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 30, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[Docket No. CP79-271]
[FR Doc. 79-15064 Filed 5-14-79; 8:45 am]
BILLING CODE 6450-01-M

Tennessee Gas Pipeline Co.; Tariff Filing

May 8, 1979.

Take notice that on April 30, 1979, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), tendered for filing proposed tariff sheets to its FERC Gas Tariff, Sixth Revised Volume No. 2, consisting of the following: Original Sheet Nos. 299C through 299C19; Original Sheet Nos. 299D through 299D18; Original Sheet Nos. 299E through 299E21; Original Sheet Nos. 299F through 299F18; Original Sheet Nos. 299G through 299G19;

Tennessee states that these tariff sheets constitute its Rate Schedules T-80, T-81, T-82, T-83, and T-84. These rates schedules are applicable to transportation services Tennessee will render for Berkshire Gas Company, Bay State Gas Company, Brooklyn Union Gas Company, Haverhill Gas Company, and Connecticut Gas Company.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May24, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[Docket Nos. CP78-490, CP78-499, CP78-523, and CP78-543, CP29-81]
[FR Doc. 79-15083 Filed 5-14-79; 8:45 am]
BILLING CODE 6450-01-M

Terra Bella Irrigation District; Application for Preliminary Permit

May 3, 1979.

Take notice that on December 8, 1978, the Terra Bella Irrigation District filed an application for a preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. § 791(a)—825(r)] for a proposed water power project to be known as the Friant Dam Hydroelectric Project, FERC No. 2892, located on the San Joaquin River in Fresno County, California. The project would utilize water released from the U.S. Bureau of Reclamation's (BOR) Millerton Lake. Correspondence with the Applicant should be directed to: Mr. John Boudreau, Manager, 24790 Avenue 95, Terra Bella, California, 93270, and Paul R. Minasian, Esq., Minasian, Minasian, Minasian, Spruance & Baber, Attorneys at Law, P.O. Box 1679, Oroville, California, 95965.

Description of Project—The project to be studied under the permit would consist of three powerplants to be constructed at the base of BOR's Friant Dam as follows: (a) the Downstream Powerplant, containing one 2,700-kW generating unit, would utilize approximately 50,000 acre-feet of water currently released downstream annually into the San Joaquin River through an outlet pipe; (b) the Friant-Kern Canal Powerplant, containing one 15,000-kW generating unit, would be located at the outlet works to the Friant-Kern Canal and would utilize approximately 1,420,000 acre-feet of water currently released into the canal annually; and (c) the Madera Canal Powerplant, containing one 5,000-kW generating unit, would be located at the outlet works to the Madera Canal and would utilize approximately 348,000 acre-feet of water currently released into the canal annually. The estimated average annual output of the proposed project would be 130 million kWh.

Proposed Scope and Cost of Studies Under Permit—Applicant has requested a 3-year permit to prepare a definitive project report, including preliminary designs, geological explorations, and collection of environmental data. The cost of the foregoing activities, together with preparation of an environmental impact report or environmental assessment, obtaining agreements with various Federal, State, and local agencies, preparing a license application, final geologic exploration and field surveys, is estimated by Applicant to be about $800,000.

Proposed Use of Project Power—Project energy would be utilized by the Applicant and other State agencies who have contracted with the U.S. Bureau of Reclamation for the use of the water from the Friant Dam. Any remaining energy would be sold to other public agencies and/or public utilities.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic and environmental feasibility of the proposed project, the market for power,

and all other necessary information for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Protests, Petitions To Intervene, And Agency Comments—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission in accordance with the requirements of the Commission's Rules of Practice and Procedure 18 CFR § 1.8 or § 1.10 (1978). In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules.

Any protest, petition to intervene, or agency comments must be filed on or before *July 5, 1979*. The Commission's address is: 825 N. Capitol Street, NE., Washington, D.C., 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,
Secretary.

[Project No. 2892]
[FR Doc. 79-15065 Filed 5-14-79; 8:45 am]
BILLING CODE 6450-01-M

Texas Gas Transmission Corp.; Application

May 4, 1979.

Take notice that on April 25, 1979, Texas Gas Transmission Corporation (Applicant), P. O. Box 1160, Owensboro, Kentucky 42301, filed in Docket No. CP79-287 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities and for permission and approval to abandon certain other facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant requests permission to abandon two segments of 6-inch pipeline totaling approximately 7,417 feet in Clay County, Indiana. The application states that the facilities proposed to be abandoned have deteriorated to the point where they cannot be operated and meet the requirements of Natural Gas Pipeline Safety Act of 1968 and the regulations promulgated thereunder, and that during a recent reconditioning program two sections of pipeline, one of 3,761 feet and another of 3,656 feet, which totals the 7,417 feet for which abandonment is requested, were in congested areas and could not be removed and reconditioned and it was, therefore, necessary to relocate around the congested areas. Thirty farm tap customers of Indiana Gas Company, Inc. (Indiana Gas) are located on the two sections of pipeline, and the customers are presently being served through temporary connections at each of the isolated sections of pipeline, it is stated. Applicant states that Indiana Gas, a cutomer of Applicant, would like to acquire the two sections of pipeline in order to maintain service to its customers. Applicant further states that if the abandonment is approved, the 7,417 feet of pipeline would be conveyed to Indiana Gas at a minimal consideration and Indiana Gas would operate the facilities at low pressure to serve the farm taps.

Applicant also requests authorization to construct and operate two assemblies to render service to the customer for resale to the existing farm taps. The cost of the facilities proposed to be constructed is estimated to be $1,130.00 and would be financed from cash on hand, it is stated.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 29, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Pratice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 7 and 15 of the Natural Gas Act and the commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[Docket No. CP79-287]
[FR Doc. 79-15066 Filed 5-14-79; 8:45 am]
BILLING CODE 6450-01-M

Transcontinental Gas Pipe Line Corp.; Application

May 4, 1979.

Take notice that on April 10, 1979, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77001, filed in Docket No. CP79-262 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gs for Columbia Gas Transmission Corporation (Columbia Gas), all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant requests authorization to transport for Columbia Gas natural gas to be produced from Block 99, Eugene Island Area, offshore Louisiana, pursuant to a gas transportation agreement dated November 22, 1978, between the two companies. Applicant states that it would receive up to 1,000 Mcf of natural gas per day for Columbia Gas at its Southeast Louisiana Gathering System in Block 100 and would deliver a thermally equivalent quantity to Columbia Gas' transportation affiliate, Columbia Gulf Transmission Company (Columbia Gulf), at existing authorized points of exchange between Applicant and Columbia Gulf at the terminus of the Western Leg of the Blue Water Project of Columbia Gulf and Tennessee Gas Pipeline Company, a Division of Tenneco Inc., near Egan, Acadia Parish,

Louisiana (Egan), and at the outlet of Continental Oil Company's Acadia Plant, Acadia Parish, Louisiana (Acadia).

It is stated that Columbia Gulf would pay Applicant initially a monthly charge of $3.12 per Mcf of daily contract demand quantity. Applicant states that it would retain initially 1.2 percent of the gas transported for compressor fuel and line loss makeup.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 29, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[Docket No. CP79-262]
[FR Doc. 79-15067 Filed 5-14-79; 8:45 am]
BILLING CODE 6450-01-M

Transcontinental Gas Pipe Line Corp.; Application

May 4, 1979.

Take notice that on April 20, 1979, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77001, filed in Docket No. CP79-281 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity for authorization to transport 20,000 Mcf of natural gas per day, on a firm basis, for Natural Gas Pipeline Company of America (Natural), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Transco states that it would transport natural gas to be produced from Block 272, Ship Shoal area, offshore Louisiana and delivered into Transco's Southeast Louisiana Gathering System in Block 269. It is indicated that pursuant to a transportation agreement with Natural, Transco would receive for Natural a daily contract demand quantity of up to 20,000 Mcf and deliver a thermally equivalent quantity to the following points of delivery:

(1) The point to interconnection between Natural's system and the terminus of U-T Offshore System in Cameron Parish, Louisiana,

(2) The outlet side of Mobil Oil Corporation's La Gloria Plant in Jim Wells County, Texas,

(3) The point of interconnection between Natural's system and South Texas Natural Gas Company's system in Jim Wells County, Texas,

(4) The outlet side of Mobil Oil Corporation's Cameron Meadows Processing Plant, Cameron Parish, Louisiana, and

(5) Any other mutually agreeable point.

It is stated that for this firm transportation service, Natural would pay Transco, initially, a monthly charge of $92,800 and to provide for onshore compressor fuel and line loss make-up, Transco would retain, initially, 1.2 percent of the gas received.

The volumes of gas available to Natural at Ship Shoal Black 292, which can reach Natural's system by means of the transportation service proposed would help to maintain as adequate and reliable service as possible in Natural's marketing areas, it is asserted.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 29, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to be come a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene it timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transco to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[Docket No. CP79-281]
[FR Doc. 79-15068 Filed 5-14-79; 8:45 am]
BILLING CODE 6450-01-M

Western Massachusetts Electric Co.; Purchase Agreement

May 8, 1979.

The filing Company submits the following: Take notice that on May 4, 1979, Western Massachusetts Electric Company (WMECO) tendered for filing a proposed Purchase Agreement with Respect to Gas Turbine Units, dated May 1, 1979 between WMECO and Vermont Electric Cooperative, Inc. (VEC).

WMECO states that the Purchase Agreement provides for a sale to VEC of a specified percentage of capacity and energy from two gas turbine generating units during the summer period from May 1, 1979 to October 31, 1979.

WMECO requests the Commission, pursuant to Section 35.11 of its regulations, waive the customary notice period and permit the rate schedule filed to become effective on May 1, 1979 in order for VEC to meet its Capability Responsibility as a result of changes to their generation mix.

WMECO states that the capacity charge for the proposed service is a negotiated rate, and the variable and

additional maintenance charges were derived from historical costs.

WMECO states that copies of this rate schedule have been mailed or delivered to WMECO, West Springfield, Massachusetts and VEC, Johnson, Vermont.

WMECO further states that the filing is in accordance with Part 35 of the Commission's Regulations.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedures (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 29, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[Docket No. ER79-349]

[FR Doc. 79-15089 Filed 5-14-79; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

National Emission Standard for Vinyl Chloride; Delegation of Authority to Commonwealth of Pennsylvania

On October 21, 1976 (40 FR 46560), pursuant to Section 112 of the Clean Air Act, as amended, the Administrator of the Environmental Protection Agency (EPA) promulgated a National Emission Standard for Vinyl Chloride, a hazardous air pollutant. Section 112(d) directs the Administrator to delegate his authority to implement and enforce National Emission Standards for Hazardous Air Pollutants (NESHAPS) to any State which has submitted adequate procedures. Nevertheless, the Administrator retains concurrent authority to implement and enforce the standards following delegation of authority to the State. EPA previously delegated the authority for three NESHAPS pollutants to Commonwealth of Pennsylvania on September 30, 1976.

On September 20, 1978, Maurice K. Goddard, then Secretary of the Pennsylvania Department of Environmental Resources, submitted to the EPA Region III Office a request for delegation of authority for vinyl chloride, the fourth NESHAPS pollutant. Included in that request was a copy of the Pennsylvania regulations which incorporated by reference the Federal emission standards and testing procedures set forth in 40 CFR Part 61.60 *et seq.* These regulations do not adopt the procedures for waivers of compliance and waiver of emission tests published in the Code of Federal Regulations, Title 40, Part 61, Subpart §§ 61.10, 61.11 and 61.13, and provide that all requests for any such waiver shall be addressed to EPA, who retains all authority to grant such waivers. However, the regulations provide that waivers granted to EPA under 40 CFR §§ 61.11 and 61.13 will be recognized by the Department in administering its regulations.

Also included were references to Pennsylvania statutes and regulations which provide the Commonwealth with the requisite authority to enforce the vinyl chloride standard. After a thorough review of that request, the Acting Director of the Enforcement Division has determined that delegation is appropriate for vinyl chloride subject to the conditions set forth in the following letter to Secretary Jones.

May 4, 1979

Certified Mail

Return Receipt Requested

The Honorable Clifford L. Jones, Secretary, Pennsylvania Department of Environmental Resources, P.O. Box 1467, Harrisburg, Pennsylvania 17120.

Re: Delegation of Authority of National Emission Standards for Vinyl Chloride pursuant to Section 112(d), Clean Air Act, as amended

Dear Secretary Jones: This is in response to Maurice K. Goddard's letter of September 20, 1978, requesting delegation of authority for implementation and enforcement of the National Emission Standard for Vinyl Chloride to the Commonwealth of Pennsylvania for all areas except for Allegheny and Philadelphia Counties, excluded by Section 12 of the Pennsylvania Air Pollution Control Act, 35 P.S. §§ 4001 *et seq.*

We have reviewed the pertinent laws of the Commonwealth and the rules and regulations of the Pennsylvania Department of Environmental Resources and have determined that they provide an adequate and effective procedure for implementation and enforcement of the vinyl chloride regulations by the Department of Environmental Resources through its Bureau of Air Quality Control, and the Commonwealth. Therefore, we hereby delegate authority to administer and enforce the vinyl chloride regulations to the Commonwealth of Pennsylvania, and the Commonwealth shall have authority for all sources located in the Commonwealth of Pennsylvania (excepting Allegheny and Philadelphia Counties) subject to the National Emission Standard for Hazardous Air Pollutants promulgated in 40 CFR Part 61 as of the date of the request for delegation.

This delegation is based upon the following conditions:

1. Quarterly reports will be submitted to EPA by the Pennsylvania Department of Environmental Resources including:

(a) Vinyl chloride sources in areas affected by this delegation, granted a permit to construct;

(b) Vinyl chloride sources in areas affected by this delegation, inspected during that quarter and their compliance status.

2. Enforcement of the vinyl chloride regulations in the areas of the Commonwealth of Pennsylvania affected by this delegation will be the primary responsibility of the Pennsylvania Department of Environmental Resources. Where the Department determines that such enforcement is not feasible and so notifies EPA, or where the Department acts in a manner inconsistent with the terms of this delegation, EPA will exercise its concurrent enforcement authority pursuant to Section 113 of the Clean Air Act, as amended, with respect to sources affected by this delegation within the Commonwealth of Pennsylvania and subject to the National Emission Standard for Vinyl Chloride.

3. Acceptance of this delegation of the National Emission Standard for Vinyl Chloride does not commit the Commonwealth of Pennsylvania to request or accept delegation of future standards and requirements. A new request for delegation will be required for any standards not included in the Commonwealth's request of September 20, 1978.

4. The Pennsylvania Department of Environmental Resources will at no time grant a waiver of compliance under the vinyl chloride regulations.

5. This delegation to the Commonwealth of Pennsylvania does not include the authority to implement and enforce vinyl chloride regulations for facilities owned or operated by the United States which are located in areas of the Commonwealth affected by this delegation. This condition in no way relieves any Federal facility from meeting the requirements of 40 CFR Part 61.

6. The Pennsylvania Department of Environmental Resources will not grant a variance from compliance with the vinyl chloride regulations if such variance delays compliance with the Federal standards (Part 61). Should the Pennsylvania Department of Environmental Resources grant such a variance, EPA will consider the source receiving the variance to be in violation of the applicable Federal regulation and may initiate enforcement action against the source pursuant to Section 113 of the Clean Air Act. The granting of such variance by the Department shall also constitute grounds for revocation of delegation by EPA.

7. The Pennsylvania Department of Environmental Resources and EPA will develop a system of communication sufficient to guarantee that each office is always fully informed regarding the interpretation of

applicable regulations. In instances where there is a conflict between a Commonwealth interpretation and a Federal interpretation of applicable regulations, the Federal interpretations must be applied if it is more stringent than that of the Commonwealth.

8. If at any time there is a conflict between a Commonwealth regulation and a Federal regulation (40 CFR Part 61), the Federal regulation must be applied if it is more stringent than that of the Commonwealth. If the Commonwealth does not have the authority to enforce the more stringent Federal regulation, this portion of the delegation may be revoked.

9. The Pennsylvania Department of Environmental Resources will utilize the methods specified in 40 CFR Part 61 in performing source tests pursuant to the regulations.

10. If the Enforcement Division Director determines that the Commonwealth's program for enforcing or implementing the vinyl chloride regulations in areas affected by this delegation is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the Pennsylvania Department of Environmental Resources.

A Notice announcing this delegation will be published in the **Federal Register** in the near future. The Notice will state, among other things, that, effective immediately, all reports required pursuant to the Federal Vinyl Chloride regulations by sources located in affected areas of the Commonwealth of Pennsylvania should be submitted to the Pennsylvania Department of Environmental Resources, Bureau of Air Quality Control, P.O. Box 2063, Harrisburg, Pennsylvania 17120, in addition to EPA Region III. Any such reports which have been or may be received by EPA, Region III will be promptly transmitted to the Pennsylvania Department of Environmental Resources.

Since this delegation is effective immediately, there is no requirement that the Commonwealth notify EPA of this acceptance. Unless EPA receives from the Commonwealth written notice of objections within 10 days of receipt of this letter, the Commonwealth of Pennsylvania will be deemed to have accepted all of the terms of the delegation.

Sincerely yours,

Thomas C. Voltaggio,

Acting Director, Enforcement Division.

Therefore, pursuant to the authority delegated to him by the Administrator, the Director, Enforcement Division notified Clifford L. Jones, Secretary of the Pennsylvania Department of Environmental Resources, on May 4, 1979, that authority to implement and enforce the National Emission Standard for Vinyl Chloride was delegated to the Commonwealth of Pennsylvania.

Copies of that request for delegation of authority are available for public inspection at the Environmental Protection Agency, Region III Office, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106.

Effective immediately, all reports required pursuant to the National Emission Standard for Vinyl Chloride should be submitted to the Pennsylvania Department of Environmental Resources, Bureau of Air Quality Control, P.O. Box 2063, Harrisburg, Pennsylvania 17120, with copies to EPA, Region III.

This Notice is issued under the authority of Section 112 of the Clean Air Act, as amended, 42 U.S.C. 7412(d)(1).

Dated: May 4, 1979.

Thomas C. Voltaggio,

Acting Director, Enforcement Division.

[FRL 1225-3]

[FR Doc. 79-15148 Filed 5-14-79; 8:45 am]

BILLING CODE 6560-01-M

Toxic Substances; Premanufacturing Notices; Monthly Status Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Summary of Premanufacturing Notices for April 1979.

SUMMARY: Section 5(d)(3) of the Toxic Substances Control Act (TSCA) requires that a list be published in the **Federal Register** at the beginning of each month reporting the premanufacturing notices (PMN's) received and under review and the PMN's for which the review period has expired. This is the first such report.

ADDRESS: As stated in the **Federal Register** document announcing receipt of the PMN's, interested parties wishing to file written comments on specific chemicals should submit them before June 19, 1979, to the Document Control Officer (TS-793), Office of Toxic Substances, EPA, 401 M Street, SW., Washington, D.C. 20460.

Nonconfidential portions of the notice and other documents in the public record are available for public inspection from 9 a.m. to 4 p.m., Monday through Friday (excluding holidays), in Room 709, East Tower, at the address above.

FOR FURTHER INFORMATION CONTACT: Robert Smith, Premanufacture Review Division (TS-794), Office of Toxic Substances, EPA, Washington, D.C. 20460. (202) 472-3500.

SUPPLEMENTARY INFORMATION: Under Section 5 of TSCA, any person who intends to manufacture or import a new chemical substance for commercial purposes in the United States must submit a notice to EPA at least 90 days before he begins such manufacture or importation. A new chemical substance is any chemical substance that is not on the Inventory of existing chemical substances compiled by EPA under Section 8(b) of TSCA. The § 5 requirements are effective 30 days after first publication of the Inventory, which EPA expects to publish June 1, 1979. According to section 5(a)(1), EPA must review these notices within 90 days from the date they are received, unless it is decided to extend the review period for up to an additional 90 days for good cause.

The monthly status report required under section 5(d)(3) will eventually indicate (a) each chemical substance for which a PMN has been received and for which the review period has not expired; (b) each chemical substance for which the premanufacture review period has expired; (c) each "new" chemical substance which has been in the review process for less than 30 days; and (d) after first publication of the Inventory, each chemical substance that has been added to the published Inventory since the last monthly report.

In the future, these reports will be generated by computer as part of a larger management "tracking" system. As the reports develop, attempts will also be made to have a corresponding growth in usefulness of the information in the lists.

(Section 5 of the Toxic Substances Control Act (90 Stat. 2012; 15 U.S.C. 2604))

Dated: May 8, 1979.

Steven D. Jellinek,

Assistant Administrator for Toxic Substances.

Premanufacture Notices Received During April 1979

PMN No.	Identity/generic name	FR citation	Expiration date
5AHQ0479-0002-1	Isobutyric acid carbomonocyclic ester	44 FR 23310 (4/19/79).	July 4, 1979.*
5AHQ0479-0002-2	Propiophenone, ring substituted-2-methyl	do	Do.
5AHQ0479-0002-3	Butyronitrile, 2-(substituted phenyl)-3-methyl	do	Do.
5AHQ0479-0002-4	Benzyl alcohol, ring substituted-alpha-isopropyl	do	Do.

*EPA is considering extending the premanufacture review period under section 5(c)(1) of TSCA, because EPA did not receive sufficient information to complete its analysis within the 90 day period specified. Such a determination will be published as a separate document in the FEDERAL REGISTER.

[FRL 1224-4; OTS-530001]

[FR Doc. 79-15115 Filed 5-14-79; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL COMMUNICATIONS COMMISSION

Cable TV Syndicated Program Exclusivity Rules; Action in Docket Case

April 25, 1979.

The Commission has concluded there would be no substantial economic impact on broadcast stations if it deleted its rules requiring provision of syndicated program exclusivity by cable television system. The commission also found no evidence that the elimination of the rules would threaten the supply of programing used by television stations.

The rules, which affect only cable systems with at least 1,000 subscribers commencing operation after 1972, afford local broadcast stations in the top 100 markets protection against duplication of their syndicated program on cable television systems serving communities in their markets. Therefore, a cable system has to delete syndicated programing carried on a distant station if a local station has contracted for the same programing and requests the protection.

In the first 50 markets protection is provided for the duration of the contract between a program producer and a local broadcaster, whether or not the broadcaster shows the program during the contract term. Copyright holders also are benefited by the restriction of carriage of first-run, syndicated programs for one year after the first syndicated sale, even if no local station has rights to exhibit it.

In the second 50 markets, the rules are not so restrictive. Protection can be requested in these markets (1) for off-network series, beginning with the first showing until the completion of the first run, but no longer than one year; (2) for first-run syndicated series, beginning with the first showing and for two years thereafter; (3) for feature films and first-run, non-series syndicated programs, beginning with the availability date and for two years thereafter; and (4) for other programing beginning with purchase and until one day after the first run, but no longer than one year. In these markets, cable systems are not required to delete a program broadcast in prime time if the local station does not also broadcast the program in prime time.

The Commission noted it had received over 60 sets of comments in response to the notice of inquiry and the comments by broadcast interests almost unanimously urged that the present exclusivity protection be expanded substantially. The cable television and public interest comments, however, argued for total abandonment of syndicated exclusivity protection.

The Commission noted that about 230 private citizens also expressed opposition to requiring deletions of any syndicated programing. Copyright interests argued that any change should be in the direction of expanded protection.

The Commission said its analysis revealed the potential of the syndicated exclusivity rules to impose significant burdens on the consuming public. It said these burdens were of two types—a direct loss of programing to cable subscribers and the loss the public suffers from whatever effect these rules may have in terms of retarding the growth of cable television systems for which consumers would otherwise be willing to pay.

The FCC said that although it was true that almost all of the programing subject to deletion under these rules would appear at some time on the broadcasts of local stations, this was not reason enough to find that the rules had little effect because the public appears to value highly the "time diversity" that cable television service makes available.

The second negative aspect of the syndicated exclusivity rules from the point of view of the consumer, the FCC said, was the impediment the rules create to the development of new cable systems. This deprives potential subscribers not only of the programing that would be deleted under the rules but of whatever other benefits they might have through access to cable television service. The Commission noted that sometimes the operation of these rules could cause reductions in the demand for cable services that make cable service unavailable or delay its provision to the public.

The Commission said it found that the syndicated exclusivity rules did not appear to enable local broadcasters to serve the viewing public better and elimination of the rules would result in no more than about a 1 percent reduction in local station audiences under present conditions.

It said since the effect of the syndicated exclusivity rules on program supply was derivative of the effect on local broadcast stations, it followed that the rules have very little impact on program supply. Thus, it said, the rules did not confer any present benefits to the public in the form of an expanded supply of programing.

On the other hand, it said, any long-term negative effect of eliminating the syndicated exclusivity rules on program supply had not been shown. It said to the extent that broadcast stations would receive compensation for the audiences in distant cable communities, the total payments to program producers could remain unchanged, or may even increase, due to the growth of cable television.

It noted that, even assuming the worst possible consequences for the program production industry, Congress has established a regulatory body empowered to mitigate any adverse reallocation of resources from program producers to cable systems and their subscribers.

Finally, the Commission said, the long-term financial outlook for television program production was good, with continued increases in revenues and profits expected for the industry, even with complete deregulation of cable television.

The Commission said these results suggested that non-cable viewers would not be disadvantaged by the elimination of the syndicated exclusivity rules. No evidence had been presented, it said, that demonstrated significant adverse impact on broadcasters or on the supply of television programing.

On the other hand, it noted, the subscribers and potential subscribers of cable television would benefit significantly from the increased fare of television programing in the absence of the rules.

As a result, the Commission said, "assessing the facts developed in this Report against our criteria for ascertaining the public interest points unambiguously toward the elimination of the rules."

In a separate but related action the Commission has determined that elimination of the cable TV distant signal carriage rules would pose no threat to television service (Docket 21284).

Action by the Commission April 25, 1979, by Report (FCC 79-242). Commissioners Ferris (Chairman), Lee, Quello, Washburn, Fogarty, Brown and Jones.

The text of the FCC's Report has been released publicly May 7, 1979. The document consists of 98 pages. Because of the cost of printing so voluminous a text it will not be published in the

Federal Register. However, the FCC has prepared a limited number of copies that are available upon request (Report, FCC 79-242, Docket No. 20988, adopted April 25, 1979, "In the Matter of Cable Television Syndicated Program Exclusivity Rules") at its Information Office, Room 202, 1919 M Street, NW., Washington, D.C. 20554. The Report is also available for inspection at the Commission's Docket Reference Room.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[Report No. 14920; Docket No. 20988]

[FR Doc. 79-14962 Filed 5-14-79; 8:45 am]

BILLING CODE 6712-01-M

Cable TV Distant Signal Carriage Rules; Action in Docket Case

April 25, 1979.

The Commission has found that elimination of all restrictions on the kind and number of distant signals cable television systems may carry will not significantly harm any viewer of over-the-air television.

In a report on its inquiry on the economic relationship between cable and broadcast television, the Commission said the inquiry involved a study of "the typical problem of regulatory policy," which is: " * * * whether and to what extent to retard technological progress in order to protect those who may be harmed by change."

While it found it was impossible to say that no broadcaster or viewer would be harmed by elimination of the distant signal carriage restrictions, the Commission found that it was unlikly that either would be harmed significantly.

By contrast, however, it said the benefits of relaxation of those restrictions were obvious—an increase in the opportunity for diversity and competition both in the economic marketplace and the marketplace of ideas.

Since 1972, a cable system's choice of signals has been governed by the system's geographic location, its size, any grandfather rights the system might possess, and by the availability of local market stations, the FCC said.

In providing a basic complement of network and independent signals to cable subscribers located in established television markets, the Commission said the current rules require system operators to select first from locally available stations (all systems regardless of location or size are required to carry all local or significantly-viewed commercial and local noncommercial stations). Cable systems in a specified market may carry any distant educational station except on a showing by the local stations that the additional competition would adversely affect their ability to serve the public, it added.

If sufficient local signals are unavailable to a system in a television market, the Commission pointed out that distant signals may be imported to fill the relevant network or independent signal complement. Also where major market systems fill their signal complements locally, the Commission noted that they are entitled to two "bonus" independents. The FCC added, however, that under the current rules only cable systems outside all markets or with fewer than 1,000 subscribers may import distant signals without limitation.

The Commission said the criteria used in the analysis conducted in its inquiry for ascertaining the extent to which current and proposed cable television policies serve the public interest tend to fall into three general categories—consumer welfare, distributional equity and external or spillover effects.

First, it said, the broadcasting and cable industries, like any other, should be evaluated in part on the basis of the economic value placed on their products by consumers. It noted that the standard economic measure of the value of a product to the consumer is "consumer surplus"—the difference between the maximum amount consumers are willing to pay for the current quality and quantity of a product and the amount they actually pay. It said the important lesson from economic theory is that competition produces prices and outputs that maximize consumer surplus.

In broadcasting, the FCC pointed out, consumers do not pay directly for programing so there is no natural way to infer the economic value they place on available programing. It said the principal source of information on the economic value of programing to consumers is found in the history of cable and pay television, because subscribers to those services do pay for the programing they receive.

The most important benefit from cable television is that cable allows more program services to compete for consumer time and money, the FCC said, adding that as the number of services increases, the economic welfare of subscribers increases—as evidenced by the growth in the number of subscribers.

Therefore, it said, to the extent that existing regulations inhibit the growth of cable television services which the public would be willing to pay for, the welfare of subscribers and potential subscribers is being sacrificed. On the other hand, it said, to the extent existing regulations protect off-the-air viewers from losing service, the welfare of those who would not or could not subscribe is being preserved.

Thus, it said, an important issue in the dabate over cable television policy is the relative size of these two effects.

Noting that policy changes affect the distribution of wealth, the Commission said a second criterion for evaluating broadcasting and cable is the effect of alternative policies on such distribution. It said wealthy consumers may spend more for any given amount of service than poor consumers, and therefore, a change in policy that systemically benefits higher income groups at the expense of lower income groups might be judged undesirable even if the net economic value of the change to all consumers, taken as a whole, proved to be positive.

Similar arguments could be made with respect to other segments of the population, i.e., urban dwellers versus residents of rural areas, children compared to adults, and non-English compared to English-speaking viewers. However, it said, these judgments were not reached because, on analysis, no adverse distributional effects are expected to occur as a result of cable deregulation.

The Commission said the third criterion for evaluating broadcasting and cable policies deals with consequences that are not necessarily taken into account by viewers in making individual economic decisions—i.e., the effect of programing on the operation of a democratic society. It noted that television programing may have an important effect in shaping the attitudes and values of citizens, in making the electorate more informed and responsible and in contributing to greater understanding and respect among different racial and ethnic groups.

While none of these social values are affected much by the viewing decisions of any one person, the Commission said individuals are likely to pay little attention to these issues in deciding which programs to view. But to the extent that a change in broadcast-cable policy would dramatically alter the amount by which local news, public affairs and instructional programing are not only broadcast but viewed, the FCC said these issues could be an important component of the policy debate.

It said it was generally assumed that the type of programing the Commission has tried to encourage—news, public affairs and instructional—is not economical and therefore relatively high profits must be earned on conventional programing to offset losses on programs of greater merit. Thus, more competition in broadcasting could, by reducing profits, also reduce this so-called merit programing, it said. The Commission added, however, that more competition means more independent voices. For these reasons, it said, there is no necessary inconsistency between expanded competition and the supply of merit programing.

In conclusion, the Commission said "the benefits of our current rules are small, and these benefits go mainly to broadcasters whose incomes thereby rise faster than they otherwise would." It said the current regulations cost potential and existing cable subscribers in the terms of denial of an increase in freedom of choice. It added that the costs of the existing regulations also fall on society as a whole to the extent they inadvertently stifle some participants in the system of freedom of expression.

In finding that elimination of the distant signal carriage rules will not harm over-the-air broadcasting, the Commission pointed out that it had taken account of the submission of parties, analyzed existing academic work in the field, and conducted its own economic studies.

The Commission said that its efforts have provided a significant improvement in its understanding of the competitive relationship between broadcast television and cable. It noted that in 1966 it had substantial doubt as to cable's impact, adding that in 1972 when cable subscribers had doubled, that doubt had lessened and it allowed importation of a small number of distant signals into television markets.

Today, the Commission noted, the number of cable subscribers has again doubled and, based on its analysis of all available evidence, that doubt had diminished to a level which is uncommon in matters of public policy.

Action by the Commission April 25, 1979, by Report (FCC 79–241). Commissioners Ferris (Chairman), Lee, Quello, Washburn, Fogarty, Brown and Jones.

The text of the FCC's Report has been released publicly May 7, 1979. The document consists of 497 pages. Because of the cost of printing so voluminous a text, it will not be published in the **Federal Register.** However, the FCC has prepared a limited number of copies that are available upon request (Report, FCC 79–241, Docket No. 21284, adopted April 25, 1979 "Inquiry into the Economic Relationship Between Television Broadcasting and Cable Television") and its Information Office, Room 202, 1919 M Street, N.W., Washington, D.C. 20554. The Report is also available for inspection at the Commission's Docket Reference Room.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[Report No. 14919; Docket No. 21284]

[FR Doc. 79–14983 Filed 5–14–79; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

National Advisory Council on the Education of Disadvantaged Children; Amendment No. 2, Meeting Relocated

This notice is an amendment to the notice of the meeting of the National Advisory Council on the Education of Disadvantaged Children which appeared in the **Federal Register** on Monday, May 7, 1979, page 26798. The Council meeting scheduled to be held on May 18 and 19, 1979 in the council office will now be held at the Hyatt House Hotel, Ravensworth East Room, located at 1325 Wilson Boulevard, Arlington, Virginia, (703) 841–9595. The dates of the meeting will remain the same. For any further information regarding this meeting, please contact the council office at (202) 724–0114.

The National Advisory Council on the Education of Disadvantaged Children is established under section 148 of the Elementary and Secondary Education Act (20 U.S.C. 2411) to advise the President and the Congress on the effectiveness of compensatory education to improve the educational attainment of disadvantaged children.

Signed at Washington, D.C. on May 10, 1979.

Gloria B. Strickland,

Acting Executive Director.

[FR Doc. 79–15080 Filed 5–14–79; 8:45 am]

BILLING CODE 4110–02–M

Food and Drug Administration

Advisory Committees Meetings

AGENCY: Food and Drug Administration

ACTION: NOTICE

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meetings are announced:

Committee name	Date, time, and place	Type of meeting and contact person
1. Radiopharmaceutical Drugs Advisory Committee	June 1, 9 a.m., Conference Rm. F, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.	Open committee discussion 9 a.m. to 11:30 a.m.; open public hearing 11:30 a.m. to 12:30 p.m.; open committee discussion 12:30 p.m. to 4:45 p.m.; Ermona McGoodwin (HFD–150), 5600 Fishers Lane, Rockville, MD 20857, 301–443–4250.

General function of the Committee. The Committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the practice of nuclear medicine.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee.

Open committee discussion. The Committee will discuss radiobiologic efficacy reviews; update on pediatric labeling of radiopharmaceutical drugs; investigational new drugs, new drug applications, and Radioactive Drug Research Committee status.

Committee name	Date, time, and place	Type of meeting and contact person
2. Miscellaneous Internal Drug Products Panel	June 2 and 3, 9 a.m., Holiday Inn, Bethesda, MD	Open public hearing June 2, 9 a.m. to 10 a.m.; open committee discussion June 2, 10 a.m. to 4:30 p.m.; June 3, 8:30 a.m. to 3:30 p.m.; Armond Welch (HFD-510), 5600 Fishers Lane, Rockville, MD 20857, 301-443-4960.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee. Those who desire to make such a presentation should notify the contact person before May 29, 1979, and submit a brief statement of the general nature of the data, information, or views they wish to present, the names and addresses of proposed participants, and an indication of the approximate time desired for their presentation.

Open committee discussion. The Panel will review data submitted in response to the over-the-counter (OTC) review's call for data for this Panel (see also 21 CFR 330.10(a)(2)). The Panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

Committee name	Date, time, and place	Type of meeting and contact person
3. Psychopharmacologic Drugs Advisory Committee	June 4 and 5, 9 a.m., Conference Rm. G-H, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.	Open public hearing, June 4, 9 a.m. to 10 a.m.; open committee, discussion, June 4, 10 a.m. to 4:30 p.m.; June 5, 9 a.m. to 4:30 p.m.; Robert C. Nelson, (HFD-120), 5600 Fishers Lane, Rockville, MD 20857, 301-443-3800.

General function of the Committee. The Committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the practice of psychiatry and related fields.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee.

Open committee discussion. The Committee will discuss Ludiomil (NDA 17-534) Ciba-Geigy Co., an evaluation for safety and efficacy; review of "Guidelines for Prospective Studies of Growth Related Effects of Stimulant Medication in Hyperactive Children"; preliminary report on long-term studies with pemoline (Cylert) Abbott Labs; and review of "Guidelines for the Evaluation of Drugs in the Demented and Non-Demented Elderly Patient."

Committee name	Date, time, and place	Type of meeting and contract person
4. Oncologic Drugs Advisory Committee	June 7 and 8, 9 a.m., Conference Rm. G, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.	Open committee discussion June 7, 9 a.m. to 1:30 p.m.; open public hearing June 7, 1:30 p.m. to 2:30 p.m.; open committee discussion June 7, 2:30 p.m. to 5 p.m.; June 8, 9 a.m. to 5 p.m.; Joyce Creamer (HFD-150), 5600 Fishers Lane, Rockville, MD 20857, 301-443-4260.

General function of the Committee. The Committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the treatment of cancer.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee.

Open committee discussion. The Committee will discuss safety and efficacy of Estramustine (NDA 18-045), Hydroxyurea (HDA 16-293), Dacarbazine (NDA 17-575), High Dose Thymidine (IND 14-794), High Dose Thymidine (IND 14-723); labeling for Group C drugs; and consideration of revision of guidelines for antineoplastic drugs.

Committee name	Date, time, and place	Type of meeting and contact person
5. Antimicrobial	June 8 and 9, 9 a.m., Conference Rm. K, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD, (June 8); Holiday Inn, Bethesda, MD, (June 9).	Open public hearing, June 8, 9 a.m. to 10 a.m.; open committee discussion June 8, 10 a.m. to 4:30 p.m.; June 9, 9 a.m. to 4:30 p.m.; Lee Geismar (HFD-510), 5600 Fishers Lane, Rockville, MD 20857, 301-443-6057.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee. Those who desire to make such a presentation should notify the contact person before June 5, 1979, and submit a brief statement of the general nature of the data, information, or views they wish to present, the names and addresses of proposed participants, and an indication of the approximate time desired for their presentation.

Open committee discussion. The Committee will review data submitting in response to the over-the-counter (OTC) review's call for data for this panel (see also 21 CFR 330.10(a)(2)). The Panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

Committee name	Date, time, and place	Type of meeting and contact person
6. Ad Hoc Subcommittee of the Drug Abuse Advisory Committee to Study the "Effects of Scheduling".	June 11, 9 a.m., Conference Rm. A, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.	Open public hearing 9 a.m. to 10 a.m.; open committee discussion 10 a.m. to 4:30 p.m.; Robert C. Nelson (HFD-120), 5600 Fishers Lane, Rockville, MD 20857, 301-443-3800.

General function of the Committee. The Committee advises on the scientific and medical evaluation of information gathered by the Department of Health, Education, and Welfare and the Department of Justice on the safety, efficacy, and abuse potential of drugs and recommends actions to be taken on the marketing, investigation, and control of such drugs.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee.

Open committee discussion. This Subcommittee is charged with the study of "Effects of Scheduling" and will continue its examination of various information sources by inviting representatives from various government agencies and the pharmaceutical industry to cooperate in this information assessment process.

Committee name	Date, time, and place	Type of meeting and contact person
7. Cardiovascular and Renal Drugs Advisory Committee.....	June 21 and 22, 9 a.m., Conference Rm. M, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.	Open public hearing, June 21, 9 a.m. to 10 a.m.; open committee discussion June 21, 10 a.m. to 5 p.m.; June 22 9 a.m. to 3 p.m.; Joan Standaert (HFD-110), 5600 Fishers Lane, Rockville, MD 20857, 301-443-4730.

General function of the Committee. The Committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in cardiovascular and renal disorders.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee.

Open committee discussion. The Committee will discuss the safety and efficacy of Lidoflazine, an anti-anginal agent (NDA 18-220) (Janssen), and reports of the animal carcinogenicity of reserpine.

Committee name	Date, time, and place	Type of meeting and contact person
8. Device Good Manufacturing Practices Advisory Committee	June 29, 9 a.m., Plaza Ball Room, Holiday Inn, 8777 Georgia Ave., Silver Spring, MD.	Open public hearing 9 a.m. to 10 a.m.; open committee discussion 10 a.m. to 4:30 a.m.; Lincoln I. Gluscevich (HKF-132), 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7194.

General function of the Committee. The Committee reviews proposed good manufacturing practice regulations (GMP's) governing the methods used in, and the facilities and controls used for, the manufacture, packing, storage, and installation of devices and makes recommendations on the feasibility and reasonableness of the proposed regulations.

Agenda—Open public hearing. Interested persons are encouraged to present information pertinent to good manufacturing practice regulations to Lincoln I. Gluscevich. Those desiring to make formal presentations should notify Lincoln I. Gluscevich by May 31, 1979, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their comments.

Open committee discussion. The Committee will discuss guidelines for submission of GMP exemptions and variances; additions to the critical device list; GMP inspections; Class I device GMP exemption status report; and status report and determination of GMP economic impact.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a mininum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be obtained from the Public Records and Documents Center (HFC–18), 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

Dated: May 8, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-14872 Filed 5-14-79; 8:45 am]

BILLING CODE 4110-03-M

Advisory Committees Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meetings are announced:

Committee name	Date, time, and place	Type of meeting, and contact person
1. Gastroenterology-Urology Devices Section of the General Medical Devices Panel.	June 1, 9 a.m., Rm. 529A, 200 Independence Ave. SW., Washington, DC.	Open public hearing 9:30 a.m. to 10:30 a.m.; closed committee deliberations 10:30 a.m. to 3:30 p.m.; Dennis J. Cotter (HFK-420), 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7750.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons are encouraged to present information pertinent to classification of gastroenterology-urology devices to Dennis J. Cotter. Submission of data relative to tentative classification findings is also invited. Those desiring to make formal presentations should notify Dennis J. Cotter by May 22, 1979, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their comments.

Closed committee deliberations. The Committee will discuss premarket approval applications. This portion of the meeting will be closed to permit discussion of trade secret data (5 U.S.C. 552b(c)(4)).

Committee name	Date, time, and place	Type of meeting and contact person
2. Orthopedic Devices Section of the Surgical and Rehabilitation Devices Panel.	June 7, 9 a.m., Rm. 339A, 200 Independence Ave. SW., Washington, DC.	Open public hearing 9 a.m. to 10 a.m.; closed committee deliberations 10 a.m. to 5 p.m.; James G. Dillon (HFK-410), 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7238.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons are encouraged to present information pertinent to classification of orthopedic devices to James G. Dillon. Submission of data relative to tentative classification findings is also invited. Those desiring to make formal presentations should notify James G. Dillon by May 25, 1979, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to

be relied on, and also an indication of the approximate time required to make their comments.

Closed committee deliberations. The Committee will review three premarket approval applications. This portion of the meeting will be closed to permit discussion of trade secret data (5 U.S.C. 552b(c)(4)).

Committee name	Date, time, place	Type of meeting, and contact person
3. Circulatory Systems Devices Panel	June 29, 9 a.m., Rm. 1409, 200 C St. SW., Washington, DC.	Open public hearing, 9 a.m. to 10 a.m.; open committee discussion 10 a.m. to 11 a.m.; closed committee deliberations 11 a.m. to 4 p.m.; Glenn A. Rahmoeller (HFK-450), 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7559.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendation for their regulation.

Agenda—Open public hearing. Interested persons are encouraged to present information pertinent to classification of circulatory systems devices to Glenn A. Rahmoeller. Submission of data relative to tentative classification findings is also invited. Those desiring to make formal presentations should notify Glenn A. Rahmoeller by June 22, 1979, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their comments.

Open committee discussion. The Committee will discuss comments submitted to FDA concerning the proposed classification regulations for cardiovascular devices.

Closed committee deliberations. The Committee will discuss premarket approval applications. This portion of the meeting will be closed to permit discussion of trade secret data (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be obtained from the Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from

public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

Dated: May 8, 1979.

Donald Kennedy,
Commissioner of Food and Drugs.

[FR Doc. 79-14871 Filed 5-14-79; 8:45 am]
BILLING CODE 4110-03-M

Color Additives; Denial of Petition to Prohibit Color Additives in Dog and Cat Food

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is denying a petition to prohibit the use of color additives in dog and cat food because the petition lacks an adequate basis to support the proposed action.

DATE: Objections by June 14, 1979.

ADDRESS: Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4065, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Bureau of Foods (HFF-334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, D.C. 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: Glenn M. W. Scott, 6211 Orion Road, Louisville, KY 40222, submitted a petition to amend Parts 73 and 74 of the color additive regulations (21 CFR Parts 73 and 74) to prohibit the use of color additives in dog and cat food. According to the petition, the prohibition would enable a purchaser to make an accurate judgement of the quality and value of the product by visual examination. A notice of filing of the petition (CAP 8CP0134) was published in the **Federal Register** of December 23, 1977 (42 FR 64440). The agency has reviewed the petition and concludes that it does not sufficiently support the proposed action. Each of the petitioner's points and the agency's conclusions are explained in the following analysis:

Analysis of Petition

1. The petitioner asserts that section 706(b)(6) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 376(b)(6)) supports the proposed action. That provision states that "the Secretarty shall not list a color additive under this subsection for a proposed use if the data before him show that such proposed use would promote deception of the consumer in violation of this chapter [Act] ***." The petitioner states that artificial coloring in dog and cat food deceives a purchaser of these products.

As used in section 706 of the act, "deception of the consumer" is a narrowly defined term. When Congress enacted the Color Additive Amendments of 1960 (Pub. L. 86-618), it made the judgment that color additives that have been proved safe may be used to enhance the attractiveness of food, including pet food, and that such use should not of itself be considered deceptive, provided that the presence of artificial coloring is properly listed on the ingredient label of the product. Deception of the consumer was considered to involve only those uses of artificial coloring that conceal damage to, or inferiority of, a product, thereby causing it to appear to be of greater value than it is. The examples of coloring practices cited by the Congress in the legislative history of the Color Additive Amendments (106 CONG. REC. 13309 (June 25, 1960)) that would constitute deception of the consumer are as follows:

(1) The use of artificial color in egg noodles to hide a deficiency in eggs.

(2) The use of artificial color on immature apples or oranges to make the fruit appear to be mature.

(3) The use of artificial color in tomato catsup or juice or canned tomatoes prepared from immature raw material.

(4) The use of artificial color in stale red meat to make it appear fresh.

Thus, deception has generally been interpreted as occurring in those situations where the use of color cannot be readily discerned and the use of a label declaration of its presence would not prevent deception of the consumer.

Section 403(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(k)) requires the presence of color additives in food to be disclosed on the label of the food. Further, § 501.22(c) of the animal food labeling regulations (21 CFR 501.22(c)) requires that animal foods containing artificial coloring have a statement of artificial coloring on the container or wrapper, and that this statement be so placed as to render it "likely to be read by the ordinary individual under customary conditions of purchase and use of such food."

Artificial coloring used in dog and cat food does not, under the statute and implementing regulations, deceive a purchaser if its presence is listed on the label.

2. The petitioner states that meat and meat byproducts are often mixed with legumes, cereals, and other grains, whose natural colors differ from the natural colors of meat and meat byproducts. The petitioner concludes that the presence of artificial coloring in the product deceives a purchaser because "the degree to which the product contains meat and meat derivatives is inevitably masked by the artificial color."

Most pet foods are processed foods containing a variety of different ingredients of varying percentages. As noted above, the addition of artificial coloring to enhance the appearance of wholesome foods is permitted under the act if the presence of the coloring is disclosed in the labeling. Section 403(i)(2) of the act requires that every food bear a true and accurate statement of its ingredients, and § 501.4(a) of the animal food labeling regulations (21 CFR 501.4(a)) requires that ingredients declared on the label of pet food be listed in descending order of predominance by weight. Thus, under the statute and implementing regulations, the product label is the means for ascertaining the degree to which a product contains meat and meat byproducts in comparison with other ingredients.

Furthermore, the ingredient collectively termed "meat byproducts" does not include what is normally considered meat, i.e., striated muscle tissue. The term "meat byproducts" may include various kinds of epithelial tissue such as beef gullets, beef tripe, ox lips, pork liver, and beef lungs. The natural color of some of these tissues may be similar to the natural color of some grains or cereals. Therefore, it is unlikely that a purchaser could readily distinguish a product composed of meat byproducts from one containing grains and other ingredients even if artificial coloring were not present.

3. The petitioner asserts that color additives mask and disguise the "true quality and value" of the dog and cat foods in which they are used. However, he does not provide a definition of the terms "quality" and "value." He appears to relate quality and value with meat content, as when he states that "An important determinant of the quality and value of such products is the extent to which such products contain meat and meat derivatives."

This is not true for all types of dog and cat food. The domesticated dog or cat may be nourished by almost everything its owner eats, including fruits, vegetables, and cereals. Meat and meat byproducts, alone or in combination, do not provide nutrients in the proper balance for dogs and cats. Products made solely from animal

tissues may cause nutritional diseases from nutrient excess, deficiency, or imbalance. The quality and value of a dog or cat food is determined by the blending of a variety of ingredients of animal, vegetable, mineral, or synthetic origin to formulate a balanced, nutritious ration for the appropriate stage of the pet's life. In such a food product, the presence or absence of color additives is irrelevant in assessing quality and value.

Comments

In response to the notice of filing, the agency received 108 comments from pet owners, pet food purchasers, veterinarians, and a trade association. These comments and the agency's conclusions are summarized below.

1. Many of the pet owners and pet food purchasers who responded agreed with the action proposed in the petition and expressed a general dislike for color additives in all foods. Several pet owners specifically complained about the problem of stains caused either directly by colored pet food, or indirectly by regurgitated pet food that contained artificial coloring.

None of these comments, however, presented any evidence to support the claim that color additives in dog and cat food are "deceptive," as that term is defined in the legislative history of the Color Additive Amendments of 1960. The matter of stains caused by color additives in food is not subject to FDA's jurisdiction.

2. One veterinarian supported the action proposed in the petition. He commented that hundreds of pet food items have red dyes in them to make the products look like meat when they are mostly water, coloring, cereal, and sucrose.

A pet food purchaser, by reading the ingredient listing on the food label, may determine before purchasing a product the relative quantities of meat, grains, and other ingredients present and whether there is artificial coloring that might lead him or her to discount the appearance of the product. Many pet foods also contain detailed information concerning their nutritional composition. While labels of some pet foods may be of only limited usefulness in determining overall nutritional value because of insufficient information, this problem is not pertinent to the issues at hand, i.e., the question of the deceptiveness of color additives.

3. A second veterinarian commented that the meat content of dog food is not a measure of the nutritional completeness of a dog's diet, and that an artificially colored dog food based on cereal or grain is nutritionally better for a dog than one based on red meat.

The agency understands that there is disagreement among veterinarians and nutritionists about whether a meat-based or cereal-based diet is nutritionally preferable. The petitioner's contention is based not on the nutritional controversy among experts, but on his perception that a purchaser equates meat with high quality. Therefore, the meat-based versus cereal-based pet food issue is not germane to the petitioner's basis for claiming deception.

4. One comment from a trade association pointed out that the use of color additives in dog and cat food does not differ significantly from the use of color additives in food generally, and, in addition to the requirements of the Federal Food, Drug, and Cosmetic Act, pet foods are also subject to requirements imposed by State authorities under commercial feed laws.

It is true that dog and cat foods are subject not only to Federal requirements, but also to State laws modeled on the pet food regulations of the American Association of Feed Control Officials. Whether or not the product is artificially colored, these regulations, plus the nutritional guarantees that are present on labels of most pet foods, can assure the purchaser that the nutritional quality of the food complies with label claims.

Summary

For the reasons above, the Food and Drug Administration is denying the petition to prohibit the use of color additives in dog and cat food. The reasons for this denial are summarized as follows:

1. The use of color additives in dog and cat food is not deceptive if, as required by section 403(k) of the act, the label of the pet food product discloses the presence of artificial coloring, and if the artificial coloring does not conceal damage to, or inferiority of, the product.

2. No evidence has been submitted to demonstrate that the use of color additives in dog and cat food disguises the extent to which these products contain meat and meat by-products, if, as required by § 501.4(a), the label of the product lists the ingredients in descending order of predominance by weight.

Any person who will be adversely affected by the foregoing order may at any time on or before June 14, 1979, file with the Hearing Clerk, Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, written objections. Objections shall show how the person filing them will be adversely affected by the order, specify the provisions of the order considered objectionable, and state the grounds for the objections. Objections shall be filed in accordance with the requirements of § 71.30 (21 CFR 71.30). If a hearing is requested, the objections shall state the issues for the hearing, shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that a hearing is held. Five copies of all documents shall be filed and identified with the Hearing Clerk docket number found in brackets in the heading of this order. Received objections may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–403 (21 U.S.C. 371, 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1).

Dated: May 7, 1979

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[Docket No. 77c-0385]

[FR Doc. 79-14820 Filed 5-14-79; 8:45 am]

BILLING CODE 4110-03-M

Consumer Participating Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming consumer exchange meeting to be chaired by Abraham I. Kleks, District Director, Los Angeles District Office, Los Angeles, CA.

DATE: The meeting will be held at 9:30 a.m., Tuesday, June 5, 1979.

ADDRESS: The meeting will be held at the Los Angeles District Office, Food and Drug Administration, Conference Room, 1521 W. Pico Blvd., Los Angeles, CA 90015.

FOR FURTHER INFORMATION CONTACT: Elaine Roentgen or Irene Caro, Consumer Affairs Officers, Food and Drug Administration, 1521 W. Pico Blvd., Los Angeles, CA 90015. 213–688–4395.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's Los Angeles District Office, and to contribute to the

agency's policymaking decisions on vital issues.

Dated: May 8, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-14874 Filed 5-14-79; 8:45 am]

BILLING CODE 4110-03-M

Gastrointestinal Drugs Advisory Committee Meeting; Agenda Change

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The agenda for the Gastrointestinal Drugs Advisory Committee meeting announced by notice in the **Federal Register** of April 17, 1979 (44 FR 22814) for May 31 and June 1, 1979, has been amended to include discussion of NDA 18-290 (Secretin) Kabi Group, Inc., for diagnosis of pancreatic disorders.

FOR FURTHER INFORMATION CONTACT: Joan C. Standaert, Bureau of Drugs (HFD-110), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4730.

Dated: May 8, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-14873 Filed 5-14-79; 8:45 am]

BILLING CODE 4110-03-M

Peripheral and Central Nervous System Drugs Advisory Committee; Meeting Cancellation

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Peripheral and Central Nervous System Drugs Advisory Committee meeting scheduled for May 23, 1979, and announced by notice in the **Federal Register** of April 17, 1979 (44 FR 22814), has been cancelled.

FOR FURTHER INFORMATION CONTACT: Robert C. Nelson, Bureau of Drugs (HFD-120), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3520.

Dated: May 9, 1979

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-15025 Filed 5-14-79; 8:45 am]

BILLING CODE 4110-03-M

Tomato Juice Deviating From Identity Standard; Extension and Amendment of Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the amendment and extension of a temporary permit issued to the Del Monte Corp. to market test tomato juice from concentrate in which the vitamin C content is raised to a level of 100 percent of the U.S. Recommended Daily Allowance (U.S. RDA) per 6-fluid-ounce serving. This action will enable the Del Monte Corp. to further its experimental marketing survey.

DATES: This amended permit is effective May 15, 1979 and shall terminate either on the effective date of an affirmative order ruling on the FDA proposal to amend the identity standard for tomato juice, which was published in the **Federal Register** of May 9, 1978 (43 FR 19864), or 30 days after a negative order ruling on the proposal, whichever the case may be.

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

SUPPLEMENTARY INFORMATION: The original permit was issued to the Del Monte Corp. under 21 CFR 130.17, concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341). Notice of the issuance of the permit was published in the **Federal Register** of May 17, 1977, (42 FR 25380). The permit covered limited interstate marketing tests of tomato juice from concentrate that deviated from the standard of identity prescribe for tomato juice under 21 CFR 156.145. The test product is prepared by adding water to concentrated tomato liquid complying with the tomato paste requirements of 21 CFR 155.191(a)(1). The finished product contains not less than 5.5 percent by weight of tomato soluble solids, which is equivalent to a single-strength tomato juice normally found in the marketplace. In addition, ascorbic acid is added in a quantity sufficient to raise the vitamin C level to 100 percent of the U.S. RDA in a 6-fluid-ounce serving. All ingredients are to be declared on the label by their common or usual name.

The original permit provided for the market testing of a total of 120,000 cases of twelve 46-ounce cans of the product to be distributed in the States of Arkansas, Illinois, and Tennessee and in the metropolitan areas of Indianapolis, Indiana; Louisville and Paducah, Kentucky; Detroit and Grand Rapids, Michigan; St. Louis, Missouri; and Dayton, Ohio.

The Del Monte Corp. has requested that the temporary permit issued to it on May 17, 1977, be amended to increase the amount of the product to be market tested and to expand the areas of distribution. The company stated that the limited testing areas of the quantity of 120,000 cases of twelve 46-ounce cans of the test product, as originally provided for by the permit, was insufficient to obtain adequate data to assess the product's acceptance fully by a representative segment of U.S. consumers.

The Del Monte Corp. has requested that its temporary permit be extended for the duration of the administrative proceedings in the May 1978 proposal to amend the standard of identity for tomato juice. The proposed amendment would, among other things, (1) permit the use of concentrated tomato juice to prepare a single-strength tomato juice product, (2) require the name "tomato juice from concentrate" when concentrated tomato juice is used in the preparation of the canned juice, (3) establish in the identity standard a minimum tomato soluble solids requirements of 5.5 percent, by weight, for the product made from concentrate, and (4) require declaration of all optional ingredients.

FDA concludes that it will be in the interest of consumers to extend the time period of the temporary permit and to permit further market testing of 25,000 cases of twelve 46-ounce cans of tomato juice from concentrate per month, in all States except Alaska, Arizona, California, Colorado, Hawaii, Idaho, Nevada, Oregon, Utah, Washington, and Wyoming, as requested. Under § 130.17, all interested persons may participate in the market test under the conditions that apply to the Del Monte Corp., including the labeling requirements and the amounts to be distributed.

Any interested person who elects to participate in the extended market test shall notify FDA in writing of that fact, the amount to be distributed, and the area of distribution, and shall submit the labeling under which the food will be distributed.

This permit extension, as issued to the Del Monte Corp. and such others who participate in accordance with the

provisions set forth in this notice, is effective on May 15, 1979, and expires either on the effective date of an affirmative order ruling on the FDA proposal of May 9, 1978, or 30 days after a negative order ruling on the proposal, whichever the case may be.

Dated: May 7, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[Docket No. 76P-0429]

[FR Doc. 79-14869 Filed 5-14-79; 8:45 am]

BILLING CODE 4110-03-M

Tomato Juice Deviating From Identity Standard; Extension and Amendment of Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the amendment and extension of a temporary permit issued to Juice Bowl Products, Inc., to market test tomato juice from concentrate. This action will enable Juice Bowl Products, Inc., to further its experimental marketing survey.

DATES: This amended permit is effective May 15, 1979 and shall terminate either on the effective date of an affirmative order ruling on the FDA proposal of May 9, 1978, to amend the identity standard for tomato juice or 30 days after a negative order ruling on the proposal, whichever the case may be.

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

SUPPLEMENTARY INFORMATION: The original permit was issued to Juice Bowl Products, Inc., under § 130.17 (21 CFR 130.17), concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standard of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341). Notice of the issuance of the permit was published in the **Federal Register** of March 28, 1978 (43 FR 12949). The permit covered limited interstate marketing tests of tomato juice from concentrate that deviated from the standard of identity prescribed for tomato juice under § 156.145 (21 CFR 156.145). The test product is prepared by adding water to tomato paste and concentrated tomato juice that comply with the requirements of §§ 151.191(a)(1) and 151.192(b)(2) (21 CFR 155.191(a)(1) and 155.192(b)(2)), respectively. The finished product contains not less than 5.5 percent by weight of tomato soluble solids, which is equivalent to a single-strength tomato juice normally found in the marketplace. All ingredients are to be declared on the label by their common or usual names.

The original permit provided for the temporary marketing of 250,000 cases of forty-eight 6-ounce cans of the product to be distributed in all the States except Alaska, Hawaii, Montana, North Dakota, Oregon, and South Dakota.

Juice Bowl Products, Inc., has requested that its existing temporary permit be amended to provide for market testing on a monthly basis of 3,500 cases of twelve 46-ounce cans along with 17,000 cases of forty-eight 6-ounce cans of the product. The company stated that "with the modification allowing the marketing of the product in larger can sizes, consumer acceptance and convenience to the consumer provided by the large size can now be measured and compared with the small size can." In regard to the request for a monthly distribution, the company stated that in consideration of the pending finalization of the FDA proposal to amend the identity standard for tomato juice (see the **Federal Register** of May 9, 1978 (43 FR 19864)), "it would appear to be more meaningful to provide for the temporary marketing permit to provide a monthly distribution limit of product as opposed to a fixed amount for the entire fifteen month period." It has asked that the temporary permit be extended during the duration of the administrative proceedings regarding the May 1978 proposal to amend the standard of identity for tomato juice. The proposed amendment of the standard would, among other things, (1) permit the use of concentrated tomato juice to prepare a single-strength tomato juice product, (2) require the name "tomato juice from concentrate" when concentrated tomato juice is used in the preparation of the canned juice, (3) establish in the identity standard a minimum tomato soluble solids requirement of 5.5 percent, by weight, for the product made from concentrate, and (4) require label declaration of all optional ingredients.

FDA concludes that it will be in the interest of consumers to extend the time period of the temporary permit and to permit further market testing of 17,000 cases of forty-eight 6-ounce cans and to begin market testing of 3,500 cases of twelve 46-ounce cans of tomato juice from concentrate per month in all the states except Alaska, Hawaii, Montana, North Dakota, Oregon, and South Dakota, as requested. Under § 130.17, all interested persons may participate in the market test under the conditions that apply to Juice Bowl Products, Inc., including the labeling requirements and the amounts to be distributed.

Any interested person who elects to participate in the extended market test shall notify FDA in writing of that fact, the amount to be distributed, and the area of distribution, and shall submit the labeling under which the food will be distributed.

This permit extension, as issued to Juice Bowl Products, Inc., and such others who participate in accordance with the provisions set forth in this notice, is effective on May 15, 1979, and expires either on the effective date of an affirmative order ruling on the FDA proposal of May 9, 1978, or 30 days after a negative order ruling on the proposal, whichever the case may be.

Dated: May 7, 1979.

William F. Randolph,

Acting Associate Commission for Regulatory Affairs.

[Docket No. 77P-0293]

[FR Doc. 79-14870 Filed 5-14-79; 8:45 am]

BILLING CODE 4110-03-M

Wien Laboratories; Request for Data and Information on Petition for Reclassification

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) invites interested persons to submit information, data, and views on a petition seeking reclassification of a medical device from class III (premarket approval) into class II (performance standards). The petition was submitted by Wien Laboratories, Inc., Succasunna, NJ 07876, for a device used in the quantitative determination of antidepressant drugs. Material submitted will be forwarded to members of the Clinical Toxicology Device Classification Panel, who will make a recommendation on the petition to FDA.

DATE: Information, data, and views should be submitted by June 14, 1979.

ADDRESSES: Copies of the petition are available at the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857. Information, data, and views should be submitted (preferably five copies) to Eugene W. Rice, Panel Section Leader, Clinical Toxicology Device Classification Panel (address below).

FOR FURTHER INFORMATION CONTACT: Eugene W. Rice, Bureau of Medical Devices (HFK-440), Food and Drug

Administration, Department of Health, Education, and Welfare, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7550.

SUPPLEMENTARY INFORMATION: On July 5, 1978, Wien Laboratories, Inc., Succasunna, NJ 07876, submitted under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), a premarket notification of its intent to market a device for the quantitative determination of antidepressant drugs. The manufacturer calls the device "Tri-Cy Test Set." The product utilizes radiolabeled imipramine and charcoal separation for the quantitative determination of imipramine, desipramine, amitriptyline, nortriptyline, protriptyline, or doxepin in serum by radioimmunoassay.

The agency has determined that the device is not substantially equivalent to any device that was in commercial distribution before May 28, 1976, nor is the device substantially equivalent to a device that has been placed in commercial distribution since that date and subsequently reclassified. Therefore, the device is classified automatically into class III under section 513(f)(1) of the act (21 U.S.C. 360c(f)(1)).

On August 14, 1978, Wien Laboratories, Inc., submitted to FDA a reclassification petition for the device under section 513(f)(2) of the act. On November 8, 1978, the Clinical Toxicology Section of the Clinical Chemistry and Hematology Device Classification Panel reviewed the petition and recommended that the device not be reclassified into class II. The agency published a notice of this panel recommendation in the **Federal Register** of March 20, 1979 (44 FR 16961). Interested persons were given until April 19, 1979, to comment on the Panel's recommendation. The petitioner submitted a new petition for reclassification of this device on January 22, 1979. The agency has reviewed the petition and determined that it is not deficient.

Under section 515(a)(2) of the act (21 U.S.C. 360e (a)(2)), before a device that is in class III under section 513(f)(1) of the act can be marketed, it must either be reclassified under section 513(f)(2) of the act or have an approval of an application for premarket approval under section 515 of the act unless there is in effect for the device an investigational device exemption under section 502(f) of the act (21 U.S.C. 360j(g)).

Section 513(f) of the act requires FDA to submit the petition to a device classification panel for recommendation concerning classification. The panel is required to make its recommendation to FDA within 90 days after the petition is referred to the panel. Ordinarily, the petition would be discussed in an open panel meeting before the panel makes its recommendation. However, a meeting of the Clinical Toxicology Device Classification Panel could not be scheduled so as to enable the Panel to make its recommendation within the required 90-day period. Therefore, this petition has been mailed to the voting members of the Panel for their review and recommendation to FDA. The Panel will make its recommendation to FDA by mail.

Section 513(f) of the act also requires FDA to provide an opportunity for interested persons to provide information, data, and views to the Panel before it makes its recommendation. Information, data, and views will be mailed to the Panel members for their consideration before they make their recommendation. Then each voting member will send the executive secretary of the Panel a completed supplemental data sheet and a completed classification questionnaire applicable to the device for which a recommendation is sought. The Panel recommendation will be published in the **Federal Register.** A period for public comment will follow and then FDA will issue a final order approving or denying the petition.

Dated: May 9, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[Docket No. 78P–0287]

[FR Doc. 79–15024 Filed 5–14–79; 8:45 am]

BILLING CODE 4110–03–M

Drug Products Containing Papaverine or Ethaverine and Similar or Related Drugs; Postponement of Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice of Postponement of Hearing.

SUMMARY: The agency announces its postponement of the May 23, 1979 public hearing before the Peripheral and CNS Drugs Advisory Committee on the issue of the safety and effectiveness of papaverine, ethaverine, and similar or related drugs. The agency also clarifies the scope of matters to be considered at the hearing and the time permitted for submission of certain written materials.

DATE: Written notices of participation by July 13, 1979.

ADDRESSES: Communications forwarded in response to this notice should be directed to the attention of the appropriate office named below:

Written notices of participation (identify with Docket Number 76N–0064): Hearing Clerk (HFA–305), Food and Drug Administratrion, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857. (To facilitate identification, label the envelope "Papaverine Hearing.").

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, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Ronald Kartzinel, Bureau of Drugs (HFD–120), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4020; or

Tenny Neprud, Jr., Regulations Policy Staff (HFC–10), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md 20857, 301–443–3480.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 5, 1976 (41 FR 14405), the Food and Drug Aministration (FDA) requested data on the safety, effectiveness, and legal status of drug products containing papaverine or ethaverine, and similar or related drugs. These drug products have been used for many years for the relief of spasm in certain blood vessels of the body but have never been evaluated in accordance with the new drug provisions of the Federal Food, Drug, and Cosmetic Act. Whether there is adequate support for the claims made for these products is questionable. In order to determine the scientific validity of the claims being made for these drugs and their legal status ("new drugs," "not new drugs," or "grandfathered drugs"), the agency requested manufacturers to submit evidence in support of all of the claims as well as evidence to support any other contention.

In the **Federal Register** of April 13, 1979 (44 FR 22180), the agency announced its conclusions that the data submitted in response to the April 5, 1976 notice and reviewed in the April 13 notice fail to show any of the products to be safe and effective or exempt from the new drug provisions of the act. The agency further concluded that it would be in the public interest to hold a hearing before an advisory committee pursuant to the provisions of 21 CFR Part 14 to receive oral and written information and views from interested

persons on the issue of the safety and effectiveness of the drug products.

The April 13 notice provided that persons wishing to comment or present views must file by May 14, 1979, (1) a written notice of participation under 21 CFR 14.29(b), and (2) any new data, information, and analyses on which the person relies which were not previously submitted pursuant to the April 5, 1976 notice, with the Hearing Clerk (HFA–305), Food and Drug Administration. The notice also provided that the hearing would be held on May 23, 1979.

The agency has received, to date, requests on behalf of several manufacturers of drug products containing papeverine or ethaverine to postpone the hearing date. The requests argued that additional time was needed to analyze and prepare comments on the contents of the April 13 notice or to accumulate new data and information as to the safety and effectiveness of the drug products. The requests are on file under Docket No. 76N–0064 and available for public review in the office of the FDA Hearing Clerk

In view of the many requests for additional time, the agency has decided to postpone the hearing date and the date for submissions. The agency is setting July 13, 1979, as the date for the filing of notices of participation in the hearing and for the submission of new data and all other information or comments relating to this matter, including any comments on the April 13 notice of hearing, and any legal analyses of the "grandfather" issue or any other matter. This submission of all the material being relied on will permit the advisory committee to become fully familiar with relevant safety and effectiveness material in advance of the hearing, and facilitate a thorough review of legal issues by the agency.

The requests for an extension of time have asked for at least a 60-day postponement of the hearing. The extension being granted by the agency for the submission of all material provides a 60-day extension from the May 14 date originally set for the submission of new data, and it provides well over 60 days from the April 13 notice of hearing. While the actual hearing date has not yet been determined, the hearing will not be scheduled before July 23, 1979, and thus the date will fall at least 60 days after the original May 23 date for the hearing. A notice of the hearing date and location will be published in the **Federal Register** as soon as a rescheduled date is determined.

One of the manufacturers listed in the April 13 notice of hearing, B. F. Ascher & Co., Inc., Kansas City, MO, submitted studies and information to support its marketed product, Ethaquin. This submission was inadvertently omitted from the material placed on file with the FDA Hearing Clerk at the time the April 13 notice published. The submission is being reviewed in the Bureau of Drugs. When this review is completed, a separate **Federal Register** notice will announce the agency's conclusions about the applicability of the April 13 notice to Ethaquin. If the Agency concludes that Ethaquin is subject to the April 13 notice of hearing, B. F. Ascher & Co. will be provided 60 days from the date of the separate notice for filing a notice of participation and any new data, information, or comments relating to this matter.

Dated: May 10, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[Docket No. 76N–0064]

[FR Doc. 79–15175 Filed 5–11–79; 10:18 am]

BILLING CODE 4110–03–M

DEPARTMENT OF HEALTH, EDUCATION, WELFARE

Office of the Secretary

Cost-of-Living Increase in Social Security Benefits and in Income Limitations for Beneficiaries Under the Supplemental Security Income Program

I hereby determine and announce a cost-of-living increase of 9.9 percent in benefits under titles II and XVI of the Social Security Act.

Under title II, old-age, survirors, and disability insurance benefits will increase by 9.9 percent beginning with the June 1979 benefits which are payable on July 3, 1979. This increase is based on the authority contained in section 215(i) of the Social Security Act (42 U.S.C 415(i)), as amended by section 201 of Pub. L. 95–216 enacted December 20, 1977.

Under title XVI, supplemental security income payment levels will increase by 9.9 percent effective for payments made on June 29, 1979. This is based on the authority contained in section 1617 of the Social Security Act (42 U.S.C. 1382f).

Title II Benefits

Title II benefits are payable under the Federal old-age, survivors, and disability insurance program. Individuals entitled under this program include insured workers, wives, husbands, children, widows, widowers, mothers, fathers, and parents.

In accordance with section 215(i)(4) of the Social Security Act (the Act), the primary insurance amounts and the maximum family benefits shown in columns, IV and V of the revised benefit table (table 1) set forth below were obtained by increasing by 9.9 percent of the corresponding amounts established by: (1) the last cost-of-living increase; and (2) the extension of the benfit table made under section 215(i)(4) and published on November 16, 1978 at FR 53504. The table applies only to those persons who attained age 62, become disabled, or died before January 1979 and is deemed to appear in section 215(a) of the Act. Note that this table does not apply to those individuals who become elegible for retirement benefits, become disabled, or die after 1978; for persons first becoming eligible for benefits in 1979, benefits will generally be determined by a new benefit formula provide by the Social Security Amendments of 1977 (Pub. L. 95–216), and will also be increased by 9.9 percent beginning with the June 1979 benefits.

Section 215(i)(2)(D) of the Act also requires that, when the Secretary determines a cost-of-living increase in social security benefits, he shall publish in the **Federal Register** a revision of the range of the primary insurance amounts, and corresponding maximum family benefits, based on the dollar amount and other provisions described in section 215(a)(1)(C)(i)(II). These benefits are referred to as "special minimum benfits; and are payable to certain inviduals with long periods of relatively low earnings. In accordance with section 215(a)(1)(C)(i)(II), the attached table 2 shows the revised range of primary insurance amounts and corresponding maximum family benefit amounts after the 9.9 benefit increase.

Section 227 of the Act provides limited benefits to a worker who became age 72 before 1969 and was not insured under the usual requirements, and to his wife or widow. Section 228 of the Act provides similar benefits at age 72 for certain uninsured persons. The current monthly benefit amounts of $83.70 and $41.90 established under sections 227 and 228, respectively, of the Act are increased by 9.9 percent to obtain the new amounts of $92.00 and $46.10.

Title XVI Benefits

Section 1617 of the Act provides that whenever title II benefits are increased under section 215(i), the amounts in sections 1611(a)(1)(A), 1611(a)(2)(A), and 1611(b) of the Act and in section 211(a)(1)(A) of Pub. L. 93–66 shall be increased. The new amounts are effective for months after the month in

which the title II increase is effective. The percentage increase is the same as the title II benefit increase and the annual payment amount is rounded, when not a multiple of $1.20, to the next higher multiple of $1.20.

In accordance with section 1617, Federal Supplemental Security Income (SSI) gurantees for the aged, blind, and disabled are increased effective with July 1979 by 9.9 percent. The current Federal SSI guarantees of $2,272.80 and $3,409.20 per year are thereby increased to $2,498.40 and $3,747.60 respectively. The actual monthly payment received by the individual is the Federal SSI gurantee less any countable income. The actual monthly payment received by the individual is one-twelfth of the annual SSI guarantee, less any countable income assigned to that month. The current Federal SSI guarantee amount of $1,137.60 per year to essential persons under section 211(a)(1)(A) of Pub. L. 93–66 is also increased by 9.9 percent of obtain a new amount of $1,250.40.

Automatic Benefit Increase Determination

Section 215(i) of the Act requires that when certain conditions are met in the first calendar quarter of a year, the Secretary shall determined that a cost-of-living increase in benefits it due. Section 215(i) of the Act also specifies the formula for determing the amount of any cost-of-living increase in benefits. This formula utilizes the Consumer Price Index for urban wage earners and clerical workers reported by the Department of Labor.

Section 215(i)(2)(A) of the Act requires the Secretary to determine each year, whether there is a cost-of-living computation quarter in that year. If he so determines, he shall, effective with June of that year, increase benefits for individuals entitled under section 227 and 228 of the Act, and shell increase the primary insurance amounts of all other individuals entitled under title II of the Act, subject to the limitations provided in section 215(i)(2)(A) of the Act. The percentage increase is equal to the percentage increase in the Consumer Price Index for the cost-of-living computation quarter over the index for the most recent cost-of-living computation quarter.

Section 215(i)(1) of the Act defines a base quarter as a calendar quarter ending on March 31 in each year after 1974, or any other calendar quarter in which occurs the effective month of a general benefit increase. Section 215(i)(1) also defines a cost-of-living computation quarter as a base quarter in which the Consumer Price Index prepared by the Department of Labor exceeds by not less than 3 percent the index in the later of (1) the last prior cost-of-living computation quarter or (2) the most recent calendar quarter in which a general benefit increase was effective. It is specified, however, that there shall be no cost-of-living computation quarter in any calendar year if, in the prior year, a general benefit increase was enacted or becomes effect. Section 215(i)(1) of the Act also provides that the Consumer Price Index for a cost-of-living computation quarter shall be the arithmetical mean of such index for the 3 months in that quarter.

The Department of Labor's revised Consumer Price Index for urban wage earners and clerical workers for each month in the quarter ending March 31, 1978, was: for January 1978, 187.1; for February 1978, 188.4; for March 1978, 189.7. The arithmetical mean for that calendar quarter was 188.4. The corresponding Consumer Price Index for each month in the quarter ending March 31, 1979, was: for January 1979, 204.7; for February 1979, 207.1; for March 1979, 209.3. The arithmental mean for this calendar quarter is 207.0. The increase for the calendar quarter ending March 31, 1979, is 9.9 percent. Thus, since the percentage of increase in the Consumer Price Index from the calendar quarter ending March 31, 1978, to the calendar quarter ending March 31, 1979, is not less than 3 percent, the quarter ending March 31, 1979, is a cost-of-living computation quarter. Consequently, a cost-of-living benefit increase of 9.9. percent is effective for benefits under title II of the Act beginning June 1979.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802–5, and 13.807 Social Security Programs.)

Dated: May 8, 1979.

Hale Champion,

Acting Secretary of Health, Education, and Welfare.

BILLING CODE 4110-07-M

TABLE 1

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS

I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT, AS MODIFIED)	II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR JUNE 1978)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (d)) IS—	OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUBSEC. (c)) IS—	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (b)) IS—		THE AMOUNT REFERRED TO IN THE PRECEDING PARAGRAPHS OF THIS SUBSECTION SHALL BE—	AND THE MAXIMUM AMOUNT OF BENEFITS PAYABLE (AS PROVIDED IN SEC. 203(a)) ON THE BASIS OF HIS WAGES AND SELF-EMPLOYMENT INCOME SHALL BE—
AT LEAST—	BUT NOT MORE THAN—	AT LEAST	BUT NOT MORE THAN—		
	16.20	121.80		76	133.90	200.90
16.21	16.84	123.70	77	78	136.00	204.00
16.85	17.60	126.60	79	80	139.20	208.80
17.61	18.40	128.90	81	81	141.70	212.70
18.41	19.24	131.20	82	83	144.20	216.30
19.25	20.00	134.00	84	85	147.30	221.00
20.01	20.64	136.50	86	87	150.10	225.20
20.65	21.28	138.60	88	89	152.40	228.60
21.29	21.88	141.40	90	90	155.40	233.10
21.89	22.28	143.80	91	92	158.10	237.20
22.29	22.68	146.20	93	94	160.70	241.10
22.69	23.08	148.50	95	96	163.30	245.00
23.09	23.44	151.30	97	97	166.30	249.50
23.45	23.76	155.70	98	99	169.00	253.50
23.77	24.20	156.70	100	101	172.30	258.50
24.21	24.60	158.90	102	102	174.70	262.20
24.61	25.00	161.60	103	104	177.60	266.40
25.01	25.48	164.60	105	106	180.90	271.40
25.49	25.92	167.30	107	107	183.90	275.90
25.93	26.40	169.80	108	109	186.70	280.10
26.41	26.96	172.50	110	113	189.60	284.50
26.97	27.48	174.90	114	114	192.30	288.50
27.47	28.00	177.60	119	122	195.20	292.90
28.01	28.68	180.40	123	127	198.30	297.50
28.69	29.24	183.00	128	132	201.20	301.80
29.26	29.88	185.50	133	136	203.90	305.90
29.89	30.36	188.00	137	141	206.70	310.10
30.37	30.92	190.80	142	146	209.70	314.60
30.93	31.36	193.60	147	150	212.80	319.20
31.37	32.00	195.40	151	155	215.30	323.00
32.01	32.60	198.70	156	160	218.40	327.70
32.61	33.20	201.30	161	164	221.30	332.00
33.21	33.88	203.90	165	169	224.10	336.20
33.89	34.50	206.70	170	174	227.20	340.80

TABLE 1—Continued

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS

I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT, AS MODIFIED)	II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR JUNE 1978)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (d)) IS—	OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUBSEC. (c)) IS—	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (b)) IS—		THE AMOUNT REFERRED TO IN THE PRECEDING PARAGRAPHS OF THIS SUBSECTION SHALL BE—	AND THE MAXIMUM AMOUNT OF BENEFITS PAYABLE (AS PROVIDED IN SEC. 203(a)) ON THE BASIS OF HIS WAGES AND SELF-EMPLOYMENT INCOME SHALL BE—
AT LEAST—	BUT NOT MORE THAN—	AT LEAST	BUT NOT MORE THAN—		
34.51	35.00	209.10	175	178	229.90	344.90
35.01	35.80	211.90	179	183	232.90	349.50
35.81	36.40	214.40	184	188	235.70	353.60
36.41	37.08	217.20	189	193	238.80	358.30
37.09	37.60	219.90	194	197	241.70	362.60
37.61	38.20	222.40	198	202	244.50	366.80
38.21	39.12	225.30	203	207	247.70	371.60
39.13	39.68	228.00	208	211	250.60	375.90
39.69	40.33	230.10	212	216	252.90	379.40
40.34	41.12	233.00	217	221	256.10	384.20
41.13	41.76	235.60	222	225	259.00	388.50
41.77	42.44	238.50	226	230	262.20	393.30
42.45	43.20	241.10	231	235	265.00	397.60
43.21	43.76	244.00	236	239	268.20	402.40
43.77	44.44	246.30	240	244	270.70	407.90
44.45	44.88	248.70	245	249	273.40	410.40
44.89	45.60	251.40	250	253	276.80	423.10
		254.30	254	258	279.50	431.40
		256.50	259	263	281.90	439.60
		259.60	264	267	285.40	446.20
		262.10	268	272	288.10	454.70
		264.90	273	277	291.20	462.90
		267.40	278	281	293.90	469.50
		270.00	282	286	296.80	478.00
		272.90	287	291	300.00	486.50
		275.10	292	295	302.40	493.00
		278.10	296	300	305.70	501.30
		280.70	301	305	308.50	509.80
		283.10	306	309	311.20	516.40
		286.00	310	314	314.40	524.70
		288.50	315	319	316.90	533.20
		291.00	320	323	319.90	539.80
		293.80	324	328	322.90	548.10
		296.20	329	333	325.60	556.40
		299.30	334	337	329.00	565.30
		301.40	338	342	331.30	571.40
		304.20	343	347	334.40	579.80
		307.10	348	351	337.60	586.50
		309.40	352	356	340.10	594.30
		312.40	357	361	343.40	603.20
		314.90	362	365	346.10	609.90
		317.30	366	370	348.80	618.20
		320.20	371	375	351.90	626.40
		322.90	376	379	354.90	633.40
		325.60	380	384	357.90	641.80
		328.00	385	389	360.50	649.90
		330.50	390	393	363.30	656.60
		333.40	394	398	366.50	665.10
		336.00	399	403	369.30	673.40
		338.40	404	407	372.50	679.90
		341.10	408	412	374.90	688.40
		343.50	413	417	377.60	696.60
		346.00	418	421	380.30	703.30
		348.70	422	426	383.30	711.70
		351.10	427	431	385.90	720.00
		353.20	432	436	388.20	728.40
		356.20	437	440	391.50	731.70

TABLE 1—Continued

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS

I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT AS MODIFIED)	II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR JUNE 1978)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (d)) IS—	OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUBSEC. (c)) IS—	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (b)) IS—		THE AMOUNT REFERRED TO IN THE PRECEDING PARAGRAPHS OF THIS SUBSECTION SHALL BE—	AND THE MAXIMUM AMOUNT OF BENEFITS PAYABLE (AS PROVIDED IN SEC. 203(a)) ON THE BASIS OF HIS WAGES AND SELF-EMPLOYMENT INCOME SHALL BE—
AT LEAST—	BUT NOT MORE THAN—	AT LEAST	BUT NOT MORE THAN—		
	$358.40	441	445	$393.90	$736.10
	360.80	446	450	396.60	740.10
	363.50	451	454	399.50	743.30
	365.90	455	459	402.20	747.50
	368.30	460	464	404.80	751.50
	370.60	465	468	407.30	755.20
	373.50	469	473	410.50	759.20
	375.60	474	478	412.80	763.40
	378.00	479	482	415.50	766.80
	380.70	483	487	418.40	771.10
	383.10	488	492	421.10	775.30
	385.50	493	496	423.70	778.60
	388.20	497	501	426.70	782.60
	390.50	502	506	429.20	786.70
	392.90	507	510	431.80	790.20
	395.30	511	515	434.50	794.40
	398.00	516	520	437.50	798.70
	400.30	521	524	440.00	801.80
	402.70	525	529	442.60	806.10
	405.60	530	534	445.80	810.10
	407.70	535	538	448.10	813.50
	410.20	539	543	450.90	817.80
	412.80	544	548	453.70	821.90
	415.30	549	553	456.50	826.10
	417.60	554	556	459.00	828.60
	419.60	557	560	461.20	831.90
	421.90	561	563	463.70	834.50
	424.10	564	567	466.10	837.80
	426.50	568	570	468.80	840.20
	428.50	571	574	471.00	843.50
	430.70	575	577	473.40	846.20
	432.70	578	581	475.60	849.40
	435.00	582	584	478.10	852.00
	436.90	585	588	480.20	855.30
	439.50	589	591	483.10	857.80
	441.60	592	595	485.40	861.10
	443.80	596	598	487.80	863.40
	446.00	599	602	490.20	867.10
	448.10	603	605	492.50	869.50
	450.30	606	609	494.90	872.70
	452.60	610	612	497.50	875.40
	454.70	613	616	499.80	878.70
	456.80	617	620	502.10	882.00
	459.10	621	623	504.60	884.50
	461.20	624	627	506.90	887.90
	463.40	628	630	509.30	891.00
	465.60	631	634	511.70	895.40
	467.80	635	637	514.20	899.60
	470.10	638	641	516.70	903.90
	472.10	642	644	518.90	907.90
	474.40	645	648	521.40	912.30
	476.50	649	652	523.70	916.30
	477.80	653	656	525.20	918.90
	479.20	657	660	526.70	921.50
	480.90	661	665	528.60	924.90
	482.60	666	670	530.40	928.20
	484.40	671	675	532.40	931.30

TABLE 1—Continued

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS

I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT AS MODIFIED)	II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR JUNE 1978)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (d)) IS—	OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUBSEC. (c)) IS—	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (b)) IS—		THE AMOUNT REFERRED TO IN THE PRECEDING PARAGRAPHS OF THIS SUBSECTION SHALL BE—	AND THE MAXIMUM AMOUNT OF BENEFITS PAYABLE (AS PROVIDED IN SEC. 203(a)) ON THE BASIS OF HIS WAGES AND SELF-EMPLOYMENT INCOME SHALL BE—
AT LEAST—	BUT NOT MORE THAN—	AT LEAST	BUT NOT MORE THAN—		
	$486.10	676	680	$534.30	$934.70
	487.80	681	685	536.10	938.00
	489.70	686	690	538.20	941.20
	491.20	691	695	539.90	944.80
	492.90	696	700	541.70	948.00
	494.70	701	705	543.70	951.30
	496.40	706	710	545.60	954.60
	498.20	711	715	547.60	957.80
	500.00	716	720	549.50	961.20
	501.70	721	725	551.40	964.50
	503.40	726	730	553.30	967.90
	505.10	731	735	555.20	971.30
	506.90	736	740	557.10	974.50
	508.50	741	745	558.90	978.00
	510.10	746	750	560.60	981.10
	511.70	751	755	562.40	984.10
	513.20	756	760	564.10	986.70
	514.70	761	765	565.70	989.60
	516.00	766	770	567.10	992.40
	517.40	771	775	568.70	995.10
	518.90	776	780	570.30	997.80
	520.40	781	785	572.00	1000.60
	521.70	786	790	573.40	1003.30
	523.10	791	795	574.90	1006.10
	524.60	796	800	576.60	1008.90
	526.20	801	805	578.30	1011.70
	527.50	806	810	579.80	1014.40
	529.00	811	815	581.40	1017.30
	530.40	816	820	583.00	1019.90
	531.90	821	825	584.60	1022.80
	533.30	826	830	586.10	1025.50
	534.70	831	835	587.70	1028.40
	536.10	836	840	589.20	1031.00
	537.60	841	845	590.90	1034.00
	538.90	846	850	592.30	1036.40
	540.50	851	855	594.10	1039.40
	541.90	856	860	595.60	1042.00
	543.40	861	865	597.20	1044.90
	544.80	866	870	598.80	1047.60
	546.30	871	875	600.40	1050.40
	547.60	876	880	601.90	1053.10
	549.10	881	885	603.50	1056.00
	550.40	886	890	604.90	1058.60
	551.90	891	895	606.60	1061.70
	553.40	896	900	608.20	1064.20
	554.90	901	905	609.90	1067.10
	556.30	906	910	611.40	1069.90
	557.80	911	915	613.10	1072.70
	559.30	916	920	614.70	1075.20
	560.60	921	925	616.10	1078.20
	561.90	926	930	617.60	1080.80
	563.40	931	935	619.20	1083.60
	564.90	936	940	620.90	1086.40
	566.30	941	945	622.40	1089.20
	567.70	946	950	624.00	1091.90
	569.30	951	955	625.70	1094.80
	570.80	956	960	627.40	1097.50

TABLE 1—Continued

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS

I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT AS MODIFIED)		II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR JUNE 1978)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (d)) IS—		OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUBSEC. (c)) IS—	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (b)) IS—		THE AMOUNT REFERRED TO IN THE PRECEDING PARAGRAPHS OF THIS SUBSECTION SHALL BE—	AND THE MAXIMUM AMOUNT OF BENEFITS PAYABLE (AS PROVIDED IN SEC. 203(a)) ON THE BASIS OF HIS WAGES AND SELF-EMPLOYMENT INCOME SHALL BE—
AT LEAST—	BUT NOT MORE THAN—		AT LEAST	BUT NOT MORE THAN—		
		$372.30	961	965	629.00	1100.10
		373.40	966	970	630.20	1103.00
		374.90	971	975	631.90	1105.90
		376.40	976	980	633.50	1108.40
		377.90	981	985	635.20	1111.20
		379.70	986	990	636.60	1114.60
		380.70	991	995	638.20	1116.90
		382.70	996	1000	639.90	1119.50
		383.50	1001	1005	641.30	1121.60
		384.60	1006	1010	642.50	1124.50
		386.00	1011	1015	644.10	1126.90
		387.40	1016	1020	645.60	1129.60
		388.60	1021	1025	646.90	1131.90
		389.80	1026	1030	648.20	1134.40
		391.20	1031	1035	649.80	1137.00
		392.40	1036	1040	651.10	1139.40
		393.80	1041	1045	652.60	1142.00
		395.20	1046	1050	654.20	1144.40
		396.20	1051	1055	655.30	1146.70
		397.60	1056	1060	656.80	1149.50
		399.00	1061	1065	658.40	1151.80
		400.30	1066	1070	659.80	1154.50
		401.60	1071	1075	661.20	1156.90
		402.80	1076	1080	662.50	1159.40
		404.20	1081	1085	664.10	1161.80
		405.40	1086	1090	665.40	1164.30
		406.80	1091	1095	666.90	1166.90
		408.20	1096	1100	668.50	1169.40
		409.70	1101	1105	669.60	1171.70
		410.60	1106	1110	671.10	1174.30
		412.00	1111	1115	672.50	1176.70
		413.20	1116	1120	674.00	1179.40
		414.60	1121	1125	675.50	1181.80
		415.80	1126	1130	676.80	1184.50
		417.10	1131	1135	678.20	1186.60
		418.40	1136	1140	679.70	1189.40
		419.80	1141	1145	681.20	1191.80
		421.10	1146	1150	682.60	1194.50
		422.20	1151	1155	683.80	1196.60
		423.60	1156	1160	685.40	1199.20
		424.90	1161	1165	686.80	1201.70
		426.20	1166	1170	688.20	1204.30
		427.50	1171	1175	689.70	1206.80
		428.70	1176	1180	691.00	1209.20
		429.90	1181	1185	692.30	1211.40
		431.20	1186	1190	693.70	1213.70
		432.30	1191	1195	694.90	1216.10
		433.50	1196	1200	696.30	1218.40
		434.70	1201	1205	697.60	1220.60
		436.00	1206	1210	699.00	1223.10
		437.10	1211	1215	700.20	1225.30
		438.30	1216	1220	701.50	1227.60
		439.50	1221	1225	702.90	1229.80
		440.80	1226	1230	704.30	1232.20
		441.90	1231	1235	705.50	1234.40
		443.10	1236	1240	706.80	1236.90
		444.40	1241	1245	708.20	1239.20

TABLE 1—Continued

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS

I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT AS MODIFIED)		II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR JUNE 1978)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (d)) IS—		OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUBSEC. (c)) IS—	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (b)) IS—		THE AMOUNT REFERRED TO IN THE PRECEDING PARAGRAPHS OF THIS SUBSECTION SHALL BE—	AND THE MAXIMUM AMOUNT OF BENEFITS PAYABLE (AS PROVIDED IN SEC. 203(a)) ON THE BASIS OF HIS WAGES AND SELF-EMPLOYMENT INCOME SHALL BE—
AT LEAST—	BUT NOT MORE THAN—		AT LEAST	BUT NOT MORE THAN—		
		445.50	1246	1250	709.50	1241.50
		446.70	1251	1255	710.80	1243.70
		447.90	1256	1260	712.10	1246.10
		449.20	1261	1265	713.50	1248.40
		450.30	1266	1270	714.70	1250.70
		451.50	1271	1275	716.00	1252.90
		452.70	1276	1280	717.40	1255.30
		453.70	1281	1285	718.50	1257.40
		454.90	1286	1290	719.80	1259.60
		456.10	1291	1295	721.10	1261.70
		457.20	1296	1300	722.30	1263.90
		458.30	1301	1305	723.50	1266.10
		459.40	1306	1310	724.70	1268.30
		460.60	1311	1315	726.00	1270.40
		461.70	1316	1320	727.30	1272.60
		462.80	1321	1325	728.50	1274.70
		464.00	1326	1330	729.80	1277.00
		465.00	1331	1335	730.90	1279.10
		466.20	1336	1340	732.20	1281.30
		467.40	1341	1345	733.50	1283.40
		468.40	1346	1350	734.60	1285.60
		469.60	1351	1355	735.90	1287.70
		470.70	1356	1360	737.10	1289.90
		471.90	1361	1365	738.50	1292.00
		472.90	1366	1370	739.60	1294.30
		474.10	1371	1375	740.90	1296.40
		475.20	1376	1380	742.10	1298.60
		476.20	1381	1385	743.20	1300.60
		477.30	1386	1390	744.40	1302.70
		478.30	1391	1395	745.50	1304.70
		479.40	1396	1400	746.70	1306.80
		480.50	1401	1405	747.90	1308.70
		481.50	1406	1410	749.00	1310.80
		482.60	1411	1415	750.20	1312.90
		483.70	1416	1420	751.40	1315.00
		484.70	1421	1425	752.50	1317.00
		485.80	1426	1430	753.70	1319.10
		486.90	1431	1435	755.00	1321.00
		487.90	1436	1440	756.10	1323.10
		489.00	1441	1445	757.30	1325.10
		490.10	1446	1450	758.50	1327.30
		491.10	1451	1455	759.60	1329.30
		492.20	1456	1460	760.80	1331.40
		493.30	1461	1465	762.00	1333.40
		494.30	1466	1470	763.10	1335.40
		495.40	1471	1475	764.30	1337.40
		496.40	1476	1480	765.40	1339.40
		497.40	1481	1485	766.50	1341.40
		498.40	1486	1490	767.60	1343.20
		499.40	1491	1495	768.70	1345.20
		700.40	1496	1500	769.80	1347.10
		701.40	1501	1505	770.90	1349.10
		702.40	1506	1510	772.00	1350.90
		703.40	1511	1515	773.10	1352.90
		704.40	1516	1520	774.20	1354.80
		705.40	1521	1525	775.30	1356.80
		706.40	1526	1530	776.40	1358.60

TABLE 1—Continued

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS

I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT AS MODIFIED)	II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR JUNE 1978)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (d)) IS—	OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUBSEC. (c)) IS—	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (b)) IS—		THE AMOUNT REFERRED TO IN THE PRECEDING PARAGRAPHS OF THIS SUBSECTION SHALL BE—	AND THE MAXIMUM AMOUNT OF BENEFITS PAYABLE (AS PROVIDED IN SEC. 203(a)) ON THE BASIS OF HIS WAGES AND SELF-EMPLOYMENT INCOME SHALL BE—
AT LEAST— / BUT NOT MORE THAN—		AT LEAST	BUT NOT MORE THAN—		
707.40	1531	1535	777.50	1360.60	
708.40	1536	1540	778.60	1362.50	
709.40	1541	1545	779.70	1364.50	
710.40	1546	1550	780.80	1366.30	
711.40	1551	1555	781.90	1368.30	
712.40	1556	1560	783.00	1370.20	
713.40	1561	1565	784.10	1372.20	
714.40	1566	1570	785.20	1374.00	
715.40	1571	1575	786.30	1376.00	
716.40	1576	1580	787.40	1377.90	
717.40	1581	1585	788.50	1379.80	
718.40	1586	1590	789.60	1381.70	
719.40	1591	1595	790.70	1383.70	
720.40	1596	1600	791.80	1385.60	
721.40	1601	1605	792.90	1387.50	
722.40	1606	1610	794.00	1389.40	
723.40	1611	1615	795.10	1391.40	
724.40	1616	1620	796.20	1393.30	
725.40	1621	1625	797.30	1395.20	
726.40	1626	1630	798.40	1397.10	
727.40	1631	1635	799.50	1399.10	
728.40	1636	1640	800.60	1400.90	
729.40	1641	1645	801.70	1402.90	
730.40	1646	1650	802.80	1404.80	
731.40	1651	1655	803.90	1406.80	
732.40	1656	1660	805.00	1408.60	
733.40	1661	1665	806.10	1410.60	
734.40	1666	1670	807.20	1412.50	
735.40	1671	1675	808.30	1414.50	
736.40	1676	1680	809.40	1416.30	
737.40	1681	1685	810.50	1418.30	
738.40	1686	1690	811.60	1420.20	
739.40	1691	1695	812.70	1422.20	
740.40	1696	1700	813.70	1424.00	
741.40	1701	1705	814.80	1426.00	
742.40	1706	1710	815.90	1427.90	
743.40	1711	1715	817.00	1429.80	
744.40	1716	1720	818.10	1431.70	
745.40	1721	1725	819.20	1433.70	
746.40	1726	1730	820.30	1435.60	
747.40	1731	1735	821.40	1437.50	
748.40	1736	1740	822.50	1439.40	
749.40	1741	1745	823.60	1441.40	
750.40	1746	1750	824.70	1443.30	
751.40	1751	1755	825.80	1445.20	
752.40	1756	1760	826.90	1447.10	
753.40	1761	1765	828.00	1449.10	
754.40	1766	1770	829.10	1450.90	
755.40	1771	1775	830.20	1452.90	
756.40	1776	1780	831.30	1454.80	
757.40	1781	1785	832.40	1456.80	
758.40	1786	1790	833.50	1458.60	
759.40	1791	1795	834.60	1460.60	
760.40	1796	1800	835.70	1462.50	
761.40	1801	1805	836.80	1464.50	
762.40	1806	1810	837.90	1466.30	
763.40	1811	1815	839.00	1468.30	

TABLE 1—Continued

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS

I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT AS MODIFIED)	II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR JUNE 1978)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (d)) IS—	OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUBSEC. (c)) IS—	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (b)) IS—		THE AMOUNT REFERRED TO IN THE PRECEDING PARAGRAPHS OF THIS SUBSECTION SHALL BE—	AND THE MAXIMUM AMOUNT OF BENEFITS PAYABLE (AS PROVIDED IN SEC. 203(a)) ON THE BASIS OF HIS WAGES AND SELF-EMPLOYMENT INCOME SHALL BE—
AT LEAST— / BUT NOT MORE THAN—		AT LEAST	BUT NOT MORE THAN—		
764.40	1816	1820	840.10	1470.20	
765.40	1821	1825	841.20	1472.20	
766.40	1826	1830	842.30	1474.00	
767.40	1831	1835	843.40	1476.00	
768.40	1836	1840	844.50	1477.90	
769.40	1841	1845	845.60	1479.90	
770.40	1846	1850	846.70	1481.70	
771.40	1851	1855	847.80	1483.70	
772.40	1856	1860	848.90	1485.60	
773.40	1861	1865	850.00	1487.50	
774.40	1866	1870	851.10	1489.40	
775.40	1871	1875	852.20	1491.40	
776.40	1876	1880	853.30	1493.30	
777.40	1881	1885	854.40	1495.20	
778.40	1886	1890	855.50	1497.10	
779.40	1891	1895	856.60	1499.10	
780.40	1896	1900	857.70	1501.00	
781.40	1901	1905	858.80	1502.90	
782.40	1906	1910	859.90	1504.80	

TABLE 2

9.9% GENERAL BENEFIT INCREASE

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS UNDER SUBPARAGRAPH (C)(i)(II) OF SUBSECTION 215(a)(1) BEGINNING JUNE 1979

I (Years of coverage)	II (Primary insurance amount)	III (Maximum family benefits)
If an individual's years of coverage (as determined under sec. 215(a)(1)(C)(ii)) are—	The amount referred to in sec. 215(a)(1)(C)(i)(II) shall be—	And the maximum amount of benefits payable (as provided in sec. 215(i)(2)(D)) on the basis of his or her wages and self-employment income shall be—
11	$ 12.70	$ 19.10
12	25.30	38.00
13	38.00	57.00
14	50.60	75.90
15	63.20	94.90
16	75.90	113.90
17	88.50	132.80
18	101.20	151.80
19	113.80	170.70
20	126.40	189.60
21	139.10	208.70
22	151.70	227.60
23	164.40	246.60
24	177.00	265.50
25	189.60	284.50
26	202.30	303.50
27	214.90	322.40
28	227.50	341.30
29	240.20	360.30
30	252.80	379.20

NOTE: The amounts shown in the above table for years of coverage less than 21 are not payable because the corresponding values shown in column II are less than the minimum primary insurance amount of $133.90.

[FR Doc. 79-14929 Filed 5-14-79; 8:45 am]
BILLING CODE 4110-07-C

Public Health Service

Health Maintenance Organizations

Correction

In FR Doc. 79–13077 appearing at page 25266 in the issue for Monday, April 30, 1979, make the following changes:

1. On page 25268, in the second table of zip codes for *Los Angeles County*, first column of the table, delete the asterisk after "90242", and in the second table of zip codes for *Orange County*, sixth column of the table, insert an asterisk after "92624".

2. On page 25269, first table of zip codes for *San Bernadino County*, fifth column of the table, "91843" should read "91743".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Ely District; Nevada Grazing Advisory Board Meeting

Notice is hereby given, in accordance with Pub. L. 94–579 that a meeting of the Ely District Grazing Advisory Board will be held on Wednesday, June 20, 1979.

The meeting will commence at the Ely District Office at 8:00 a.m. (PDT) and consist of a field tour of the Moorman Allotment and a meeting period to be held at a field location during the tour. The tour and meeting period Agenda will include: (1) A discussion of management problems of the Moorman Allotment, (2) water right filings on public lands, (3) proposed range improvement projects for Fiscal Year 1980, (4) a discussion of the expenditure of range betterment funds, (5) public comment period, (6) Advisory Board recommendations, and (7) Ely Grazing Board Charter provisions.

The tour and meeting are open to the public. Interested persons may make oral statements to the Board beginning at 2:00 p.m. on June 20, 1979, or file written statements for the Board's consideration.

Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, Star Route 5, Box 1, Ely, Nevada 89301 by June 19, 1979.

Depending on the number of persons wishing to make oral statements a time limit per person will be established by the Ely District Manager.

A summary of minutes of the Board's tour and meeting will be on file at the District Office and will be available for public inspection and reproduction during regular hours within 30 days following the meeting.

Date signed: May 7, 1979.

Neil B. McCleery,

District Manager.

[FR Doc. 79–15112 Filed 5–14–79; 8:45 am]

BILLING CODE 4310–84–M

Environmental Impact Statement; Mountain Foothills Grazing Management

1. Purpose of the Action

The Mountain Foothills Grazing Management Environmental Impact Statement (EIS) for public lands within the Dillon Resource Area, Montana (Beaverhead, Deer Lodge, Madison, & Silverbow Counties) will be written to analyze implementation of 138 proposed allotments management plans (AMPs) revising 22 AMPs, and sustaining 26 existing AMPs. Non-allocated acreage also will be addressed. Supportive measures required to achieve grazing management program goals consists primariliy of fencing and water developments and may include seeding, burning brush control, and erosion control sturctures.

Alternatives to the proposed action include: (1) No action (continuation of the present grazing management program); (2) elimination of livestock grazing from public lands within the area; (3) a watershed/wildlife effective option, involving reduced livestock use to enhance watershed values and wildlife habitat; and (4) accelerated livestock forage development.

2. Scoping Process

The scoping process for this EIS consists of meetings with individual operators, interest groups, and affected agencies and public input through submission of written suggestions for the purpose of indentifying the significant issues and alternatives related to the proposed action. Affected federal, state, and local agencies and other interested persons are requested to submit written statements and suggestions on the scope of the statement on or before June 1, 1979 to:

Jack A. McIntosh, District Manager, BLM, Butte District, 220 N. Alaska, Butte, Montana 59701.

Jack A McIntosh,

District Manager.

[FR Doc. 79–15111 Filed 5–14–79; 8:45 am]

BILLING CODE 4310–84–M

Utah; Application

May 7, 1979.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920 as amended (30 U.S.C. 185) the Northwest Pipeline Corporation has applied for 4½-inch natural gas pipeline rights-of-way across the following lands:

Salt Lake Meridian, Utah

T. 20 S., R. 21 E.,
Sec. 4.
T. 17 S., R. 25 E.,
Sec. 24.
T. 17 S., R. 26 E.,
Sec. 30.

The needed rights-of-way are a portion of applicant's gas gathering system located in Grand County, Utah.

The purpose of this notice is to inform the public that the Bureau will be proceeding with the preparation of environmental and other analyses necessary for determining whether the applications should be approved, and if so under what terms and conditions.

Interested persons should express their interest and views to the Moab District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah, 84532.

Dell T. Waddoups,

Chief, Branch of Lands and Minerals Operations.

[U–42528; U–42647; U–42648]

[FR Doc. 79–15100 Filed 5–14–79; 8:45 am]

BILLING CODE 4310–84–M

Bureau of Reclamation

Colorado River Basin; Meetings

Notice of Initiation of Meetings to Discuss Possible Termination of the Filling Criteria as Described in the "General Principles to Govern, and Operating Criteria for, Glen Canyon Reservoir (Lake Powell) and Lake Mead During the Lake Powell Filling Periods".

A determination has been made to initiate meetings prior to mid-June 1979, with the representatives of the Colorado River Basin States for the purpose of discussing the provisions of the filling criteria and the impacts of the modified 1979 operation plan to release additional Colorado River water. At these meetings, concurrent discussions will be held on the accomplishment of the termination of filling criteria and the related deficiency in firm energy generation at Hoover Powerplant.

Considering the recent resolution passed by the Upper Colorado River Commission, past requests by the Commission, the current and projected status of the Colorado River System, and the concurrent secretarial decision to release additional water, consultation

on the provisions of termination of the Filling Criteria and Hoover Deficiency becomes timely and imperative. Review of the status of the Colorado River Storage System and discussions on the Filling Criteria will be accomplished in consultation with the Governors of the seven Colorado River Basin States or their designated representatives, the Upper Colorado River Commission, representatives of the power contractors, operating agents, and others having appropriate interests in Colorado River operations.

Organizations or individuals interested in this notice should contact:

Guy Martin, Assistant Secretary, Land and Water Resources, Interior Building, Suite 6616, 18th and C Streets NW., Washington, DC 20240, Telephone (202) 343–2191

Nelson W. Plummer, Regional Director, Bureau of Reclamation, P.O. Box 11568, Salt Lake City, UT 84147, Telephone (801) 588–5592

Roy D. Gear, Assistant Regional Director, Bureau of Reclamation, P.O. Box 427, Boulder City, NV 89005, Telephone (702) 598–7411

Dated: May 8, 1979.

R. Keith Higginson,
Commissioner.

[FR Doc. 79-15038 Filed 5-14-79; 8:45 am]

BILLING CODE 4310-09-M

Heritage Conservation and Recreation Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before May 4, 1979. Pursuant to § 60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the Keeper of the National Register, Office of Archeology and Historic Preservation, U.S. Department of the Interior, Washington, DC 20240. Written comments or a request for additional time to prepare comments should be submitted by May 25, 1979.

William J. Murtagh,
Keeper of the National Register.

CALIFORNIA

Alameda County

Oakland, *M. V. Santa Rosa (ferryboat)* Howard Terminal.

Tehama County

Red Bluff, *Cone and Kimball Building*, 747 Main St.

GEORGIA

Fulton County

Atlanta, *Pitts, Thomas H., House and Diary*, 3105 Cascade Rd., SW.

MAINE

Piscataquis County

Chesuncook vicinity, *Munsungan-Chase Lake Thoroughfare Archeological District.*

MARYLAND

Baltimore (independent city)

House at 9 North Front Street.

Frederick County

Middletown vicinity, *Bennies Hill Road Bridge*, SW of Middletown on Bennies Hill Rd., over Catoctin Creek.

Unionville vicinity, *Pearre-Metcalfe House*, NE of Unionville off MD 31.

Prince Georges County

Laurel, *Laurel High School*, Montgomery St.

Worcester County

Snow Hill, *All Hallows Episcopal Church*, 101 N. Church St.

MASSACHUSETTS

Hampden County

Holyoke, *Caledonia Building*, 185–193 High St.

MINNESOTA

Washington County

Marine on St. Croix vicinity, *Copas, John, House*, N of Marine on St. Croix on MN 95.

Stillwater vicinity, *Croixsyde*, N of Stillwater at 4 Croixside Rd.

Stillwater vicinity, *Health Summer Home*, N of Stillwater.

Stillwater vicinity, *Pest House*, N of Stillwater at 9033 Fairy Falls Rd.

Stillwater vicinity, *St. Croix Boom Company House and Barn*, S of Stillwater at 9666 N. St. Croix Trail.

MISSISSIPPI

Adams County

Natchez, *Burn, The*, 307 Oak St.

Natchez, *Cottage Gardens*, 816 Myrtle Ave.

Natchez, *Glen Mary Plantation and Tenant House*, Foster Mound Rd.

Natchez, *Hawthorne Place*, Lower Woodville Rd.

Natchez, *Institute Hall*, 111 S. Pearl St.

Natchez, *Ravennaside*, 601 S. Union St.

Hinds County

Jackson, *Williams, Alex, House*, 937 N. Lamar St.

Warren County

Vicksburg, *Hotel Vicksburg*, 801 Clay St.

NEW JERSEY

Oradell, Van Buskirk-Oakley House, 467 Kinderamack Rd.

Hudson County

Hoboken, *Hoboken Land and Improvement Company Building*, 1 Newark St.

Middlesex County

Monmouth Junction vicinity, *Gulick House*, W of Monmouth Junction on Raymond Rd.

Warren County

Washington, *Washington Railroad Station*, Railroad Ave.

TEXAS

Dallas County

Dallas, *Wilson Building*, 1621–1623 Main St.

Jasper County

Roganville, *Turner-White-McGee House*, off U.S. 96

UTAH

Salt Lake County

Salt Lake City, *Rowland Hall-St. Mark's School*, 205 1st Ave.

Weber County

Ogden, *New Brigham Hotel*, 2402–2410 Wall Ave.

WISCONSIN

Dodge County

Mayville, *Hollenstein Wagon and Carriage Factory*, Bridge and German Sts.

Milwaukee County

Milwaukee, *St. James Episcopal Church*, 833 W. Wisconsin Ave.

Racine County

Racine, *Engine House No. 4*, 1339 Lincoln St.

Racine, *St. Patrick's Roman Catholic Church*, 1100 Erie St.

Waukesha County

Muskego, *Philadelphia Toboggan Company Carousel No. 15*, S76 W11708 Janesville Rd.

[FR Doc. 79-14730 Filed 5-14-79; 8:45 am]

BILLING CODE 4310-03-M

DEPARTMENT OF LABOR

Office of the Secretary

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to Section 221(a) of the Act and 29 CR 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 acutal 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 provision 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 May 21, 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 late than May 21, 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 3rd day of May 1979.

Marvin M Fooks.

Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Berlou Company (company)	Freehold, N.J	4/30/79	4/23/79	TA-W-5,349	Little girl's dresses.
Coat Corp. of New Jersey	Egg Harbor, N.J	4/30/79	4/23/79	TA-W-5,350	Contractors of ladies' blazers.
Ginny Linn Mills, Inc. (workers)	Quebradillas, P.R	4/30/79	4/17/79	TA-W-5,351	Women's panti-hose.
Glassboro Shirts Company, Inc. (ACTWU—Cotton Branch).	Glassboro, N.J	4/30/79	4/27/79	TA-W-5,352	Infants and children's clothing.
Igoe Brothers (USWA)	Newark, N.J	4/30/79	4/24/79	TA-W-5,353	Steel bars and wire rods.
A. Jacobs & Sons Company, Inc. (company)	Lynn, Mass	4/30/79	4/24/79	TA-W-5,354	Athletic shoes for men, women and boys.
Roneale Coal Co. (workers)	Omar, W. Va	4/30/79	4/25/79	TA-W-5,355	Mining of coal.
Alice Stuart, Inc. (company)	North Bergen, N.J	4/30/79	4/25/79	TA-W-5,356	Women's blouses, also some skirts and pants.
Underground Energy Corp., Underground Energy Mine (U.M.W.A).	Wyoming County, W. Va	4/30/79	4/25/79	TA-W-5,357	Contract mining of coal.

[FR Doc. 79-14769 Filed 5-14-79; 8:45 am]

BILLING CODE 4510-28-M

Investigations Regarding Certifications of Eligibility of 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 May 25, 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 May 25, 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 8th day of May 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Atlantic Products Corporation, Trenton, N.J. Plant (company).	Trenton, N.J.	5/3/79	4/26/79	TA-W-5,358	Soft vinyl luggage.
Excel Development, Inc. (U.M.W.A.)	Richwood, W. Va	4/9/79	4/4/79	TA-W-5,359	Mining of coal.
Hobet Mining & Construction Co. (U.M.W.A.)	Craigsville, W.Va	4/9/79	4/4/79	TA/W-5,360	Mining of coal.
Jacobs Brothers Industries, Inc. (ACTWU)	Moonachie, N.J	5/3/79	4/25/79	TA-W-5,361	Children's and women's outerwear.
Linda-Jo Shoe Co., Inc. (workers)	Gainesville, Tex.	5/3/79	4/30/79	TA-W-5,362	Ladies' leather and urethane sport shoes.
Linda-Jo Shoe Co., Inc. (workers)	Forestburg, Tex.	5/3/79	4/30/79	TA-W-5,363	Ladies' leather and urethane sport shoes.
Revere Copper & Brass Company (workers)	New Bedford, Mass	4/30/79	4/24/79	TA-W-5,364	Non-ferrous metals—sheet and plate and strip.
Standard Dyeing & Finishing Co. (ACTWU)	Paterson, N.J.	5/1/79	4/20/79	TA-W-5,365	Dyeing and finishing of fabrics.

Appendix —Continued

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
R. W. Taylor Company (U.M.W.A.)	Fenwick, W. Va.	4/9/79	4/4/79	TA-W-5,366	Mining of coal.
Theber, Inc. (ACTWU)	Bridgeton, N.J.	5/1/79	4/27/79	TA-W-5,367	Boy's pants.
United Pants Co., Inc. (ACTWU)	Swoyersville, Pa.	5/1/79	4/27/79	TA-W-5,368	Sew coats and vests and cut pants.
White Ridge Coal Co., Standard Pocahontas Strip Mine (U.M.W.A.).	Raleigh County, W. Va.	4/23/79	4/19/79	TA-W-5,369	Mining of coal.

[FR Doc. 79-15150 Filed 5-14-79; 8:45 am]

BILLING CODE 4510-28-M

American Motors Corp.; Termination of Investigation

The investigation was initiated on April 4, 1979 in response to a worker petition received on March 27, 1979 which was filed by the United Auto Workers on behalf of workers and former workers producing the Concord car and its component parts at the Kenosha, Wisconsin plant of the American Motors Corporation.

In a previously revised determination (TA-W-1930, to expire on June 27, 1980) and a currently revised determination (TA-W- 3250, to expire on June 27, 1980), all workers in final assembly, body assembly support functions, and component production at the Kenosha plant are presently eligible under one or the other revisions to apply for adjustment assistance. These determinations cover workers on all car model lines, including the Concord car. Consequently the investigation has been terminated.

Signed at Washington, D.C. this 7th day of May 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[TA-W-5101]

[FR Doc. 79-15152 Filed 5-14-79; 8:45 am]

BILLING CODE 4510-28-M

International Shoe Co.; Correction 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 issues the following correction of the Certification Regarding Eligibility to Apply for Worker Adjustment Assistance applicable to workers and former workers of the Belle, Missouri plant of International Shoe Company (TA-W-4867).

In FR Doc. 79-13202 appearing at page 42955 in the **Federal Register** of April 27, 1979 the impact date was erroneously stated due to a clerical error. Therefore, the following correction should be made:

1. The 2nd column, the 4th line of the first full paragraph is corrected to read "June 15, 1979".

Signed at Washington, D.C. this 7th day of May 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[TA-W-4867]

[FR Doc. 79-15151 Filed 5-14-79; 8:45 am]

BILLING CODE 4510-28-M

Shenango, Inc., Buffalo, N.Y.; 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-4987: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on March 19, 1979 in response to a worker petition received on March 5, 1979 which was filed by the United Steelworkers of America on behalf of workers and former workers producing ingot molds at the Buffalo, New York Division of Shenango, Incorporated, Pittsburgh, Pennsylvania.

The Notice of Investigation was published in the **Federal Register** on 4/27/79 (44 FR 24954). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Shenango, Inc., 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 such increased 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 Buffalo, New York Division of Shenango Incorporated produces ingot molds exclusively.

There is no separately identifiable import data on ingot molds in the Tariff Schedules of the United States Annotated.

The evidence developed in the Department's investigation indicates that there is no import influence in this market sector.

Conclusion

After careful review, I determine that all workers of Shenango, Incorporated, Buffalo, New York Division 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 8th day of May 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[TA-W-4987]

[FR Doc. 79-15153 Filed 5-14-79; 8:45 am]

BILLING CODE 4510-28-M

LEGAL SERVICES CORPORATION

Grants and Contracts

May 8, 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: Migrant Legal Action Program to provide services to migrant farmworkers through programs funded by the Legal Services Corporation in the

states of Iowa, Kentucky, Missouri, Nebraska, Nevada, New Hampshire, Rhode Island, South Dakota, Tennessee, Vermont and West Virginia.

Interested persons are hereby invited to submit written comments or recommendations concerning the above application to the Regional Office of the Legal Services Corporation at:

Legal Services Corporation, 733 15th Street, NW., Washington, D.C. 20005.

Alice Daniel,
Acting President.
[FR Doc. 79-15028 Filed 5-14-79; 8:45 am]
BILLING CODE 6820-35-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Literature Advisory Panel Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel to the National Council on the Arts will be held June 1, 1979, from 9:00 a.m. to 5:45 p.m., June 2, 1979, from 9:00 a.m. to 5:30 p.m., and June 3, 1979, from 9:00 a.m. to 1:45 p.m. at the Washington University in St. Louis, Missouri.

A portion of this meeting will be open to the public on June 2, 1979, from 2:00 p.m. to 5:30 p.m. The topic of discussion will be Policy.

The remaining sessions of this meeting on June 1, 1979, from 9:00 a.m. to 5:45 p.m., June 2, 1979, from 9:00 a.m. to 2:00 p.m. and June 3, 1979, from 9:00 a.m. to 1:45 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** March 17, 1977, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,
Director, Office of Council and Panel Operations, National Endowment for the Arts.

May 7, 1979.

[FR Doc. 79-15101 Filed 5-14-79; 8:45 am]
BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Combination of Dynamic Loads; Meeting

An open meeting of the ACRS Subcommittee on Combination of Dynamic Loads postponed from 1:00 p.m. on May 9, 1979, has been rescheduled to be held at 8:30 a.m. on Wednesday, May 30, 1979, in room 1046, 1717 H St., N.W., Washington, DC to review, with representatives of the NRC Staff and industry, the basis for shutting down five nuclear power plants due to seismic structural inadequacies and other related topics.

Notice of this meeting was published April 24 and May 1, 1979 (44 FR 24174 and 25535, respectively).

All other items remain the same as announced in the cited **Federal Register** notices.

Further information can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Mr. Elpidio G. Igne (202/634-3314) between 8:15 and 5:00 p.m., EDT.

Dated: May 10, 1979.

John C. Hoyle,
Advisory Committee Management Officer.
[FR Doc. 79-15120 Filed 5-14-79; 8:45 am]
BILLING CODE 7590-01-M

Advisory Committee on Study of Nuclear Power Plant Construction During Adjudication; Rescheduling of Meetings

The Nuclear Regulatory Commission's advisory committee on nuclear power plant construction during adjudication is cancelling its meeting scheduled for Friday, May 11, 1979. As previously announced, the group's next meeting will be held at 9:30 a.m. Friday, June 1, 1979, in Room 415, East West Towers, 4350 East West Highway, Bethesda, Maryland.

Members of the public are invited to attend the group's meetings and there will be a limited amount of time available during each meeting for members of the public to make oral statements to the study group. Written comments, addressed to the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, will be accepted for one week after each meeting. The Chairman of the study group is empowered to conduct the meetings in a manner that in his judgment, will facilitate the group's work, including, if necessary, continuing or rescheduling meetings to another day.

A file of documents relevant to the group's work, including a complete transcript of each meeting, memoranda exchanged between group members, public comments and other documents, is available for inspection and copying at the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. 20555. The Secretary of the NRC maintains a mailing list for persons interested in receiving notices of the group's meetings and actions. Anyone wishing to be on that list should write to: Secretary of the Commission, Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

The study group will provide its final report to the Commission by November 1, 1979. For further information on the study group's mission, please call Stephen S. Ostrach, Office of the General Counsel, Nuclear Regulatory Commission, (202) 634-3224.

Dated at Washington, D.C., this 9th day of May, 1979.

Gary Milhollin,
Chairman.
[FR Doc. 79-15124 Filed 5-14-79; 8:45 am]
BILLING CODE 7590-01-M

New York State Electric & Gas Corp. and Long Island Lighting Co. (New Haven 1 and 2 Nuclear Power Plant), New York State Electric & Gas Corp., and Long Island Lighting Co. (New Haven/Stuyvesant Nuclear Generating Facility); Prehearing Conference

April 30, 1979.

In the Matter of New York State Electric and Gas Corp. and Long Island Lighting Co. (New Haven 1 and 2 Nuclear Power Plant).

In the Matter of the Application of the New York State Electric and Gas Corp. and Long Island Lighting Co. New Haven/Stuyvesant Nuclear Generating Facility.

Take notice that the New York State Electric and Gas Corporation and the Long Island Lighting Company (Applicants) have filed applications requesting authority from the Nuclear Regulatory Commission (NRC) and the

New York State Board on Electric Generation Siting and the Environment (Siting Board) to construct and operate a nuclear generating facility in the Town of New Haven, County of Oswego, State of New York. The Chairman of the NRC and the New York State Public Service Commission have agreed that hearings on both applications should proceed on a common record. The application pending before the Siting Board (Case 80008) includes provision for an alternate site in the Town of Stuyvesant, County of Columbia, State of New York.

Take further notice that two public statement hearings on these applications will be held before Chairman Seymour Wenner and members, Dr. Walter H. Jordan and Dr. Oscar H. Paris, of the NRC's Atomic Safety and Licensing Board and Presiding Examiner Thomas R. Matias and Dr. Sidney A. Schwartz, Associate Examiner, of the New York State Department of Public Service and the New York State Department of Environmental Conservation, respectively. The first public statement hearing will be held on Tuesday, May 22, 1979 at the Legislative Chambers, 46 East Bridge Street, Oswego, New York. Hearings will begin at 1:00 p.m. and conclude no later than 4:00 p.m.; hearings will resume at 7:00 p.m. and conclude no later than 11:00 p.m. The Oswego hearing is scheduled primarily for the purpose of taking statements from those members of the public residing in the vicinity of the preferred site in the Town of New Haven.

The second public statement hearing will be held on Thursday, June 14, 1979 at the Convention Center, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York. Hearings will begin at 1:00 p.m. and conclude no later than 4:00 p.m.; hearings will resume at 7:00 p.m. and conclude no later than 11:00 p.m. The Albany hearing is being scheduled primarily for the purpose of taking statements from interested members of the public residing in the vicinity of the alternate site in the Town of Stuyvesant, Columbia County. For the convenience of those driving to the Convention Center from the Town of Stuyvesant and vicinity for the afternoon session, parking will be available at the Philip Street lot and the P–1 and P–2 (North) areas of the Empire State Plaza for the sum of $1.00 per car. For the evening session, parking will be available at no charge.

Take further notice that the public statement hearing in Oswego will be followed (at the same location) with a special prehearing conference to begin at 10:00 a.m. on Wednesday, May 23, 1979. At the special prehearing conference the NRC's Atomic Safety and Licensing Board will consider: petitions to intervene in the Federal proceeding, the specification of contentions, the establishment of procedural schedules, and such other matters which may be appropriate for consideration under the NRC's rules of practice for domestic licensing proceedings, 10 CFR 2.751(a) et seq. Procedural matters peculiar to Case 80008 also may be the subjects of discussion at the special prehearing conference to be held on May 23, 1979.

Parties to the Federal proceeding are advised that supplements to the petitions to intervene referred to in § 2.714(b) of the NRC's rules of practice may be filed on or before May 11, 1979. The answers referred to in Paragraph (c) of this section should be delivered by hand to the Atomic Safety and Licensing Board Panel, Room 450, East West Towers, 4350 East West Highway, Bethesda, Maryland, no later than 4:00 p.m. on May 18, 1979. In view of the abbreviated time for answering, the Board will entertain requests for supplemental answers.

Seymour Wenner,

Chairman for the Atomic Safety and Licensing Board.

Thomas R. Matias,

Presiding Examiner, State Siting Board.

[Docket Nos. STN 50-596; STN 50-597]

[FR Doc. 79-15121 Filed 5-14-79; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Intermarket Trading System; Receipt of Amendment to Plan Filed Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934

The participants in the Intermarket Trading System ("ITS") [1] have submitted to the Commission an amendment to the joint industry plan (the "ITS Plan" or "Plan"), authorized pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934 ("Act"),[2] governing the implementation and operation of the ITS.

I. *Amendment*

On February 6, 1979, the participants submitted to the Commission a proposed amendment to Section 8(a), paragraph 16, of the ITS Plan which would establish a procedure for the allocation of costs associated with leasing various telecommunications lines necessary to implement and operate the ITS (the "Line Cost Amendment").[3] Although the ITS Plan presently states that these costs are to be "shared" by the participants, the Plan does not specify how these costs are to be allocated.

Pursuant to the procedure, which would be formally established by the Line Cost Amendment, a participant's share of the line costs will vary each month in relation to the number of messages sent or received by that participant and the total number of messages sent or received by all participants. With respect to the initial three lines leased by any participant, 100% of the costs of these lines will be allocated among all participants based upon each participant's percentage of the total number of messages sent or received by all participants. With respect to lines four through seven leased by any participant, 50% of the costs of these lines will be allocated among all participants based upon each participant's percentage of the total number of messages sent or received by all participants and 50% of the costs of these lines will be paid for solely by the participant leasing these lines. With respect to lines eight and above leased by any participant, the participant's cost will be the total cost of leasing these lines.

II. *Request for Comment*

In order to assist the Commission in determining whether to approve the proposed amendment to the ITS Plan, interested persons are invited to submit their views and comments on the Line Cost Amendment in writing to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549, within 30 days from the date of publication in the **Federal Register.** All such communications should refer to File No. 4–208.

By the Commission.

May 9, 1979.

George A. Fitzsimmons,

Secretary.

Exhibit A

The sixteenth paragraph of Section 8(a) of the Plan, said paragraph appearing on pages 48 and 49 of the Plan, is hereby amended to read in full as follows:

Line costs attributable to ITS and the Pre-Opening Application during any calendar month on or after August 1, 1978 shall be borne by the persons who were Participants

[1] The participants include the American Stock Exchange, Inc., Boston Stock Exchange, Inc., Midwest Stock Exchange, Inc., New York Stock Exchange, Inc., Pacific Stock Exchange, Inc. and the Philadelphia Stock Exchange, Inc.

[2] *See* Securities Exchange Act Release Nos. 14662 (April 14, 1978) and 15058 (August 11, 1978), 43 FR 17422 and 15058.

[3] Agreement to Amend Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage, dated November 30, 1978, contained in File No. 4–208. The text of the Line Cost Amendment is set forth in *Exhibit A.*

during any portion of such month as set forth in this paragraph. Such Participants shall share (i) all of the line costs incurred during such month identifiable to the first three lines and associated modems linking each such Participant with the System's communication network and (ii) 50 percent of the line costs incurred during such month identifiable to the fourth through seventh lines and associated modems so linking each such Participant. Each such Participant's share shall equal the total of the costs referred to in clause (i) and clause (ii) multiplied by a fraction, the numerator of which shall equal the number of messages (whether ITS commitments to trade or responses thereto, or pre-opening notifications, pre-opening responses or any other administrative messages sent through the System) sent or received by such Participant during such month and the denominator of which shall equal the sum of the amounts derived by calculating such numerator for each such Participant for such month. Each such Participant shall also bear 50 percent of the line costs incurred during such month identifiable to the fourth through seventh lines and associated modems linking such Participant with the System's communication network. In addition, each such Participant shall bear 100 percent of the line costs incurred during such month identifiable to any lines and associated modems in excess of seven so linking such Participant. Line costs will be computed by SIAC as soon as practicable following the close of each calendar month. Each Participant's (or former Participant's) share thereof shall be billed by SIAC to, and payable to SIAC by, such Participant or former Participant promptly thereafter.

[Release No. 34-15805; File No. 4-208]
[FR Doc. 79-15043 Filed 5-14-79; 8:45 am]
BILLING CODE 8010-01-M

NEA Mutual Fund, Inc.; Filing of Application Pursuant to Section 8(f) of the Act for Order Declaring That Applicant Has Ceased To Be an Investment Company

May 9, 1979.

In the Matter of NEA Mutual Fund, Inc., 7900 Westpark Drive, McLean, Virginia 22101.

Notice is hereby given that NEA Mutual Fund, Inc. ("Applicant"), a Delaware corporation registered under the Investment Company Act of 1940 (the "Act") as an open-end, diversified, management investment company, filed an application on February 27, 1979, pursuant to Section 8(f) of the Act and Rule 8f-1 thereunder, for an order of the Commission declaring that Applicant has ceased to be an investment company as defined by the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that on June 12, 1964, it registered under the Act, and filed a registration statement pursuant to the Securities Act of 1933 ("Securities Act") with respect to 50,000 shares of its common stock. Applicant further states that its Securities Act registration statement was declared effective by the Commission on November 23, 1964, and that it commenced a public offering of its shares on December 11, 1964.

According to the application, on May 23, 1978, and December 29, 1978, Applicant's board of directors approved an Agreement and Plan of Reorganization ("Agreement") between Applicant and Horace Mann Fund, Inc. ("HMF"), registered under the Act as an open-end, diversified, management investment company, which provided for: (i) the acquisition by HMF of substantially all of the assets of Applicant in exchange solely for shares of common stock of HMF; (ii) the *pro rata* distribution of such shares of HMF stock to shareholders of Applicant according to their respective interests; and (iii) the subsequent dissolution and deregistration of Applicant. In connection with this Agreement, Applicant states that it, HMF, and certain other companies, filed an application for an order (i) pursuant to Sections 26(b) and 11 of the Act, approving the substitution of securities held by Educators Life Insuance Company Separate Account A, Horace Mann Life Insurance Company Separate Account A, Horace Mann Life Insurance Company Separate Account B, and Life Insurance Company of North America Separate Account A (collectively "Separate Accounts") with respect to all contracts of the Separate Accounts whose underlying investment medium consists of shares of Applicant, and (ii) pursuant to Section 17(b) of the Act, exempting from the provisions of Section 17(a) of the Act, and pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, permitting, the purchase of Applicant's assets by HMF. The request order was granted on October 12, 1978 (Investment Company Act Release No. 10433). The application states that the shareholders of Applicant approved the Agreement at a Special Meeting on December 29, 1978, by an affirmative vote of the holders of a majority of its outstanding shares, and that on January 15, 1979, a Certificate of Dissolution was filed with the Secretary of State of Delaware.

Applicant states that pursuant to the Agreement, on January 6, 1979 ("Closing Date"), HMF acquired substantially all of the assests of Applicant in exchange for 2,223,030.096 shares of HMF and that such shares of HMF have been delivered or credited to the accounts of Applicant's shareholders according to their respective interests. Applicant further states that, immediately prior to the acquistion of its assests by HMF, it had outstanding 4,323,094 shares of its common stock having an aggregate net asset value of $32,840,379, and that it is not now engaged, and does not propose to engage, in any business activity other than that necessary to wind up its affairs. According to the application, Applicant has retained $51,841.27 in cash from which to pay (i) certain liabilities existing as of the Closing Date and the unpaid expenses incurred or to be incurred by Applicant in carrying out its obligations under the Agreement, and (ii) the expenses of its liquidation and dissolution. Applicant represents that any of the $51,841.27 not utilized for such purposes will be transferred to HMF, and that HMF will credit to former shareholders of Applicant, who at that time continue to be shareholders of HMF, additional shares of HMF equal in net asset value, at the date of such transfer, to the cash amount transferred. Applicant also represents that if any such cash is apportionable to former shareholders of Applicant who do not remain shareholders of HMF at the time of transfer, no shares of HMF will be issued in exchange therefor and such cash will be added to the assets of HMF. Applicant states that the $51,841.27 of cash has not and will not be invested in securities. Applicant further states that it knows of no debts or other liabilities which remain outstanding other than fees and costs for legal and accounting services which will be billed to Applicant at or before the conclusion of the winding up of its affairs, and that such fees and costs, and such other expenses as may arise during the winding up of its affairs, will be charged against the $51,841.27 of cash being retained.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to an investment company, it shall so declare by order, and that upon the taking effect of such order the registration of such company under the Act shall cease to be in effect.

Notice is further given that any interested person may, not later than May 30, 1979, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may

request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[Release No. 10688; (811–1270)]

[FR Doc. 79–15045 Filed 5–14–79; 8:45 am]

BILLING CODE 8010–01–M

Paine Webber Cashfund, Inc.; Filing of Application Pursuant to Section 6(c) of the Act for Order of Exemption From Rules 2a–4 and 22c–1 Under the Act

May 7, 1979

In the Matter of Paine Webber Cashfund, Inc., 815 Connecticut Avenue, N.W., Washington, D.C. 20006.

Notice is Hereby Given that Paine Webber Cashfund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an openend, diversified management investment company, filed an application on April 18, 1979, for an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of rules 2a–4 and 22c–1 under the Act to the extent necessary to permit Applicant to compute its net asset value per share, for the purpose of effecting sales, redemptions and repurchases of its shares, to the nearest one cent on a share value of one dollar. Applicant represents that in all other respects, its portfolio securities will be valued in accordance with the views of the Commission set forth in Investment Company Act Release No. 9786 (May 31, 1977) ("IC–9786"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that is is a "money market fund," designed as an investment vehicle for funds held by institutional and individual customers of Paine, Webber, Jackson & Curtis Incorporated ("Paine Webber") seeking liquidity for their investment. Applicant states that its portfolio is invested primarily in short-term marketable obligations issued or guaranteed as to principal and interest by the U.S. Government (or its agencies or instrumentalities), obligations of U.S. banks, commercial paper, and short-term corporate obligations. Applicant further states that the dollar-weighted average maturity of its portfolio has been substantially less than 120 days at all times since it commenced operations in April 1978. Since that time, Applicant states, it has valued its portfolio securities with more than 60 days to maturity by marking to market, using either market quotations when available, or a matrix pricing procedure which reflects market fluctuations in calculation. Securities with remaining maturities of 60 days or less have been valued on an amortized cost basis.

Applicant further states that when it commenced operations in April 1978, its management decided that its net income, declared daily as a dividend, would include (i) interest accrued and discount earned (including both original issue and market discount), (ii) all unrealized appreciation and depreciation on Applicant's portfolio securities, less applicable expenses. Applicant states that it was decided that unrealized gains and losses on portfolio securities would be included in net income, rather than in net assets, so that Applicant's net asset value per share would remain constant. Applicant states, however, that including unrealized appreciation or depreciation in net income had the undesirable effect of causing Applicant's income to fluctuate. Fluctuations in income, nevertheless, were viewed as more acceptable than including unrealized appreciation and depreciation in net assets, which posed the risk of breaking constant net asset value per share.

Applicant states that since its inception, Paine Webber has advised Applicant that in its view such unanticipated fluctuations in the daily dividend are inconsistent with most shareholders' wishes. It is asserted that both individual and institutional shareholders frequently invest cash reserves which occur, for example, between settlements in other securities, for relatively short periods, and that such investors expect that their daily dividend on Applicant's shares will be the practical equivalent of the interest rate (less expenses) actually being realized on Applicant's portfolio. Applicant submits that the inclusion of unrealized appreciation or depreciation in its net income for dividend purposes is inconsistent with this expectation because it results in fluctuations in Applicant's daily dividend.

Rule 22c–1 under the Act provides, in part, that no registered investment company issuing any redeemable security shall sell, redeem, or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 2a–4 under the Act provides, as here relevant, that "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution and redemption shall be determined with reference to (1) current market value for portfolio securities with respect to which market quotations are readily available and (2) for other securities and assets, fair value as determined in good faith by the board of directors of the registered company. In IC–9786 the Commission issued an interpretation of rule 2a–4 expressing its view that it was inconsistent with rule 2a–4 for certain money market funds to "round off" calculations of their net asset value per share to the nearest one cent on a share value of $1.00, because such a calculation might have the effect of masking the impact of changing values of portfolio securities and therefore might not "reflect" its portfolio valuation as required by Rule 2a–4.

Section 6(c) of the Act provides, in part, that the Commission may, upon application, exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act and rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant requests an exemption to permit it to change its dividend policy to include unrealized appreciation and depreciation in net assets, rather than in net income, and to round its net asset value per share to the nearest cent on a share value of $1.00 Applicant submits that the granting of such exemption would be appropriate in the public

interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant states that, in determining to change its dividend policy, its board of directors reviewed its investment objective and policies, its shareholders' reasonable expectations and desires, and the advantages and possible disadvantages of including unrealized appreciation and depreciation in net assets, rather than net income, and concluded that such change was consistent with the economic needs and desires of Applicant's shareholders. Applicant states that maintaining a constant net asset value per share is still important to its continued success as a valuable service to Paine Webber customers, but that its shareholders also prefer the more stable yield which would result from the proposed method of computing net income. The proposed method of valuation would enable Applicant to meet both of these objectives. Applicant has agreed, in order to attempt to assure the stability of its price per share, that the following conditions may be imposed in the order it seeks:

(1) Applicant's Board of Directors, in supervising Applicant's operations and delegating special responsibilities involving portfolio management to its investment adviser, will undertake, as a particular responsibility within its overall duty of care owed to its shareholders, to assure to the extent reasonably practicable, taking into account current market conditions affecting Applicant's investment objectives, that Applicant's price per share as computed for purposes of distribution, redemption and repurchase, rounded to the nearest one cent, will not deviate from $1.00;

(2) Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable price per share, and it will not (i) purchase a portfolio security with a remaining maturity of greater than one year, or (ii) maintain a dollar-weighted average portfoliio maturity in excess of 120 days; and

(3) Applicant's purchases of portfolio securities, including repurchase agreements, will be limited to:

(a) U.S. Treasury Bills and other obligations issued or guaranteed as to interest and principal by the U.S. Government, its agencies and instrumentalities.

(b) Obligations of U.S. banks (including certificates of deposit and bankers' acceptances) having total assets at the time of purchase in excess of $1.5 billion.

(c) Commercial paper, including variable amount master notes, rated A–1 at the time of purchase by Standard & Poor's or P–1 or better by Moody's, or if not rated, which is issued by companies having an outstanding debt issue rated AA or better at the time of purchase by Standard & Poor's or Aa or better by Moody's.

Notice is further given that any interested person may, not later than June 1, 1979, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the addresses stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements therof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[Release No. 10085; 812-4464]
[FR Doc. 79-15044 Filed 5-14-79; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Advisory Committee on International Intellectual Property; Meeting

The International Copyright Panel of the Department of State's Advisory Committee on International Intellectual Property will meet in open session on Tuesday, May 29, 1979, at the Department of State in Conference Room 1107. The meeting will begin at 9:30 a.m. and will continue until 1:00 p.m. Although we anticipate that the business of the meeting will be concluded prior to the lunch break, an afternoon session will be held if required.

The purpose of this open meeting will be to discuss the possible U.S adherence to the Berne Copyright Convention.

The public attending may, as time permits and subject to the instructions of the chairperson, participate in the discussion or may submit their views in writing to the chairperson prior to, or at the meeting for later consideration by the Committee.

Members of the public who plan to attend will be admitted up to the limits of the conference room's capacity. Entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Members of the general public who plan to attend the meeting are requested to provide their name, affiliation and address to Steven Brattain, Office of Business Practices, Department of State, 202/632–0889, prior to May 29, 1979. All non-government attendees should use the C street entrance.

Dated: May 7, 1979.

Harvey J. Winter,
Executive Secretary.

[Public Notice CM-8/194]
[FR Doc. 79-15109 Filed 5-14-79; 8:45 am]
BILLING CODE 4710-07-M

Study Group 5 of the U.S. Organization for the International Radio Consultative Committee (CCIR) Meeting

The Department of State announces that Study Group 5 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on June 19, 1979 from 9:00 am until 12:00 Noon, in the Walker-Ames Room of Kane Hall on the campus of the University of Washington, Seattle, Washington.

Study Group 5 deals with propagation of radio waves (including radio noise) at the surface of the earth, through the non-ionized regions of the earth's atmosphere, and in space where the effect of ionization is negligible. The purpose of the meeting is to discuss preparations for the international meeting of Study Group 5 in 1980.

Members of the general public may attend the meeting and join in the discussions subject to the instructions of the Chairman. Requests for further information should be directed to Mr. Gordon Huffcutt, State Department, Washington, D.C. 20520, telephone (202) 632–2592.

Dated: May 7, 1979.

Gordon L. Huffcutt,

Chairman, U.S. CCIR National Committee.

[Public Notice CM-8/193]

[FR Doc. 79-15108 Filed 5-14-79; 8:45 am]

BILLING CODE 4710-07-M

Agency for International Development

Arthur Bjorlykke; Redelegation of Authority Regarding Contracting Functions

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 of the Agency for International Development, I hereby amend Redelegation of Authority No. 99.1.97, dated December 21, 1978, to substitute "$1,000,000" for "$500,000" in the first paragraph.

The number of the Redelegation of Authority No. 99.1.97, published in the **Federal Register** of January 9, 1979 (44 FR 2049) is corrected to "Redelegation of Authority No. 99.1.98."

Except as provided herein, the Redelegation of Authority remains unchanged and continues in full force and effect.

This amendment is effective on May 15, 1979.

Dated: May 2, 1979.

Hugh L. Dwelley,

Director, Office of Contract Management.

[Redelegation of Authority No. 99.1.98, Amdt. No. 1]

[FR Doc. 79-15107 Filed 5-14-79; 8:45 am]

BILLING CODE 4710-02-M

Robert Gibson; Redelegation of Authority Regarding Contracting Functions

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 of the Agency for International Development, I hereby amend Redelegation of Authority No. 99.1.97, dated May 14, 1978, to substitute "$1,000,000" for "$500,000" in the first paragraph.

Except as provided herein, the Redelegation of Authority remains unchanged and continued in full force and effect.

This amendment is effective on May 15, 1979.

Dated: May 2, 1979.

Hugh L. Dwelley,

Director, Office of Contract Management.

[Redelegation of Authority No. 99.1.97, Amdt. No. 1]

[FR Doc. 79-15106 Filed 5-14-79; 8:45 am]

BILLING CODE 4710-02-M

Director, East Africa Regional Economic Development Services Office; Redelegation of Authority Regarding Contracting Functions

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 of the Agency for International Development, I hereby further amend Redelegation of Authority No. 99.1.81, dated October 13, 1976, as amended, to substitute "$1,000,000" for "$500,000" in the first paragraph.

Except as provided herein, the Redelegation of Authority remains unchanged and continues in full force and effect.

This amendment is effective on May 15, 1979.

Dated: May 2, 1979.

Hugh L. Dwelley,

Director, Office of Contract Management.

[Redelegation of Authority No.99.1.81, Amdt. No. 2]

[FR Doc. 79-15103 Filed 5-14-79; 8:45 am]

BILLING CODE 4710-02-M

Director, West Africa Regional Economic Development Services Office; Redelegation of Authority Regarding Contracting Functions

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 of the Agency for International Development, I hereby further amend Redelegation of Authority No. 99.1.5, dated July 30, 1973, as amended, to substitute "$1,000,000" for "$500,000" in the first paragraph.

Except as provided herein, the Redelegation of Authority remains unchanged and continued in full force and effect.

This amendment is effective on May 15, 1979.

Dated: May 2, 1979.

Hugh L. Dwelley,

Director, Office of Contract Management.

[Redelegation of Authority No. 99.1.5, Amdt. No. 2]

[FR Doc. 79-15102 Filed 5-14-79; 8:45 am]

BILLING CODE 4710-02-M

Raymond J. Potocki; Redelegation of Authority Regarding Contracting Functions

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 of the Agency for International Development, I hereby amend Redelegation of Authority No. 99.1.87, dated July 25, 1977, to substitute "$1,000,000" for "$500,000" in the first paragraph.

Except as provided herein, the Redelegation of Authority remains unchanged and continues in full force and effect.

This amendment is effective on May 15, 1979.

Dated: May 2, 1979.

Hugh L. Dwelley,

Director, Office of Contract Management.

[Redelegation of Authority No. 99.1.87, Amdt. No. 1]

[FR Doc. 79-15104 Filed 5-14-79; 8:45 am]

BILLING CODE 4710-02-M

Stanley R. Nevin; Redelegation of Authority Regarding Contracting Functions

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 of the Agency for International Development, I hereby amend Redelegation of Authority No. 99.1.89, dated July 28, 1977, to substitute "$1,000,000" for "$500,000" in the first paragraph.

Except as provided herein, the Redelegation of Authority remains unchanged and continues in full force and effect.

This amendment is effective on May 15, 1979.

Dated: May 2, 1979.

Hugh L. Dwelley,

Director, Office of Contract Management.

[Redelegation of Authority No. 99.1.89, Amdt. No. 1]

[FR Doc. 79-15105 Filed 5-14-79; 8:45 am]

BILLING CODE 4710-02-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974; Additions, Changes and Deletions to Notices of Systems of Records

The Department of Transportation herewith deletes eight systems of records, publishes four new proposed systems, and republishes eight systems notices which have been substantially changed.

Any person or agency may submit written comments on the proposed systems to the Privacy Act Officer (M-30), Room 10319, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590. Comments must be received by June 15, 1979, to be considered.

If no comments are received, the proposed new and changed systems will

become effective on June 16, 1979. If comments are received, the comments will be considered and where adopted, the system will be republished with the changes.

Issued in Washington, D.C. on May 9, 1979.

Brock Adams,
Secretary of Transportation.

Deletions of Notices

The following Notices of Systems of Records should be deleted from the Notices previously published by the Department and complied in the **Federal Register** publication "Privacy Act Issuances, Annual Publication" Part IV, Volume 42, No. 181, September 29, 1977, (pages 47036–47151). The reason for deletion is shown with each system listed:

DOT/FRA 119—No longer maintained.
DOT/NHTSA 405—List not maintained.
DOT/NHTSA 407—Tests discontinued, files stored by test number.
DOT/NHTSA 444—Volunteer pool discontinued, records destroyed.
DOT/NHTSA 446—Discontinued operation and file.
DOT/NHTSA 452—File no longer maintained.
DOT/NHTSA 456—System never developed.
DOT/FHWA 214—Function, people and files transferred (see DOT/OST 100).

New Systems of Records

The following four new systems of records are published for the first time, and should be appended to the notices in the Department's compilation in the **Federal Register** publication "Privacy Act Issuances, Annual Publication" Part IV, Volume 42, No. 181, September 19, 1977 (pages 47036–47151).

DOT/UMTA 182
DOT/NHTSA 468
DOT/OST 100
DOT/NHTSA 469

DOT/UMTA 182

SYSTEM NAME:

New Systems Survey Response Forms.

SYSTEM LOCATION:

U.S. Department of Transportation, Urban Mass Transportation, Office of Socio-Economic and Special Projects, UTD–10, 2100 2d Street SW., Washington, D.C. 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Respondents to surveys.

CATEGORIES OF RECORDS IN THE SYSTEM:

Completed survey response forms.

AUTHORITY:

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Statistical purposes only. (See also Prefatory Statement of General Routine Uses.)

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are original completed Response Forms, or copies of completed Response Forms.

RETRIEVABILITY:

Retrieved by name or by selected attributes.

SAFEGUARDS:

Maintained in locked file cabinets.

RETENTION AND DISPOSAL:

Retained until statistical abstracting is completed, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Socio-Economic and Special Projects, UTD–10, Office of Technology Development and Deployment, Urban Mass Transportation Administration, 2100 2d Street SW., Washington, D.C. 20590.

NOTIFICATION PROCEDURE:

Inquiries are addressed to the System Manager.

RECORD ACCESS PROCEDURES:

Access is permitted by written or personal request.

CONTESTING RECORD PROCEDURES:

Contest of these records is to the System Manager. Unsatisfactory resolution by the individual may be appealed in writing to the UMTA Privacy Act Coordinator, addressed as follows: UMTA Privacy Act Coordinator, Urban Mass Transportation Administration, 400 7th Street SW., Washington, D.C. 20590.

RECORD SOURCE CATEGORIES:

Response Forms completed by survey respondents.

DOT/OST 100

SYSTEM NAME:

Investigative Record System. DOT/OST

SYSTEM LOCATION:

Department of Transportation (DOT), Office of the Secretary (OST), Office of the Inspector General, 400 7th Street SW., Washington, D.C. 20590

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former DOT employees, DOT contractors and employees as well as all grantees, subgrantees, contractors, subcontractors and their employees and recipients of DOT monies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Results of investigations and inquiries conducted by Inspector General (OST); reports of investigations conducted by other departmental, Federal, state and local investigative agencies which relate to the mission and function of the Inspector General and investigative case index card files.

AUTHORITY:

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in the Investigative Records System is collected and maintained in the administration of the DOT Act, Federal Criminal Statutes, Uniform Code of Military Justice, Executive Orders, and the Code of Federal Regulations to oversee and enforce Federal laws and regulations. Material gathered is used in the enforcement of the aforementioned laws and regulations.

These records may be disseminated, depending on jurisdiction, to: DOT Officials in the administration of their responsibilities. Other Federal, state, local or foreign agencies or administrations having interest or jurisdiction in the matter. Any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, to inform the source of the nature and purpose of the investigation, and to identify the type of information requested.

See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in case folders in manual filing system and on index cards.

RETRIEVABILITY:

By name or incident title.

SAFEGUARDS:

Investigative files and case index files are maintained in several spaces with appropriate access controls. Access to investigative files is restricted to authorized investigative personnel on a "need to know" basis.

RETENTION AND DISPOSAL:

Investigative material held for ten years, then destroyed by secure means used for classified materials.

SYSTEM MANAGER(S) AND ADDRESS

Inspector General (J–1), Department of Transportation, Office of the Secretary, 400 7th Street, S.W., Washington, D.C. 20590.

NOTIFICATION PROCEDURE:

Same as "System Manager".

RECORD ACCESS PROCEDURE:

Same as "System Manager". Investigative data compiled for law enforcement may be exempt from the access provisions pursuant to 5 USC 552a(k)(2).

CONTESTING RECORD PROCEDURES:

Same as "Record Access Procedure".

RECORD SOURCE CATEGORIES:

These records contain information obtained from interviews, review of records and other authorized investigative techniques.

DOT/NHTSA 468

SYSTEM NAME:

New Jersey Novice Driver Evaluation Project.

SYSTEM LOCATION:

New Jersey Division of Systems and Communications, River Road, West Trenton, New Jersey.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Selected New Jersey drivers under the age of 20, during the period 1975 through 1983.

CATEGORIES OF RECORDS IN THE SYSTEM:

Driver license number, biographical imformation, DMV records, driver education/driver improvement records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The data will be used to evaluate the effectiveness of new Jersey's Probationary Driver Program in reducing the incidence of accidents and violations among novice drivers. Statistical comparisons will be made of group accident and violation rates to determine overall component effectiveness of the project. No use will be made of any single individual's data.

See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records will be maintained on storage mediums of magnetic tape and disc.

RETRIEVABILITY:

Driver license number.

SAFEGUARDS:

Data will not be available to any public source. Records are maintained in a secure area with controlled access through the use of both an account number and an access privacy code.

RETENTION AND DISPOSAL:

All subject data will be retained until project termination. At that time, de-identified copies of the analysis file will be submitted to Office of Driver and Pedestrian Programs, NHTSA. Washington, D.C., and to other research organizations specifically requesting the de-identified data, as per NHTSA approval.

SYSTEM MANAGER(S) AND ADDRESS:

Contract Technical Manager, Demonstration Evaluation Division, NTS–12 400 7th Street, S.W. Washington, D.C. 20590.

NOTIFICATION PROCEDURE:

Same as above.

RECORDS ACCESS PROCEDURES:

See system manager.

CONTESTING RECORD PROCEDURES:

See system manager.

RECORD SOURCE CATEGORIES:

New Jersey: driver license records, State Police accident records, Municipal police accident reports, High school driver education records, Municipal Court reporting system, Probationary Driver program records.

DOT/NHTSA 469

SYSTEM NAME:

Survey on Low Damage Accidents Involving Bumpers.

SYSTEM LOCATION:

Westat Inc. 11600 Nebel Street Rockville, Maryland 20852

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Selected automobile owners within continental United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

Vehicle inventory, characteristics of incidents (i.e., object struck, point of contact on car, miles per hour, place, date, etc.), damage to property and/or people and exposure of car.

Authority

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records will be used by NHTSA to evaluate the effectiveness of bumpers designed to meet the requirements of Federal Motor Vehicle Safety Standard 215 or Title I of the Motor Vehicle Information and Cost Savings Act in reducing vehicle damage in low-speed collisions.

See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic Tape

RETRIEVABILITY:

Serial number assigned to case.

SAFEGUARDS:

(a) Interviewers will keep completely confidential respondent identifiers and information collected.

(b) Survey instruments containing respondent identifiers will be stored in locked cabinets or locked room.

(c) Respondent identifiers will not be part of the machine record.

(d) Upon completion of the pilot study, respondent identifiers will be destroyed.

RETRIEVABILITY INFORMATION:

These records are retrieved by Name, Address, and Phone Number.

RETENTION AND DISPOSAL:

Upon completion of the pilot phase, respondent identifiers, i.e., names, addresses and telephone numbers will be destroyed. Survey instruments will be kept until the completion of the main survey and then destroyed. Records will be kept on tape and after completion of the main survey will be turned over to the Contact Technical Manager.

SYSTEM MANAGER(S) AND ADDRESS:

Contract Technical Manager, Office of Program Evaluation, National Highway Traffic Safety Administration, Room 5212, 400 7th Street, S.W., Washington, D.C. 20590.

NOTIFICATION PROCEDURE:

Department of Transportation, National Highway Traffic Safety Administration, Room 5301, 400 7th Street, S.W., Washington, D.C. 20590, *Attn:* Director, Office of Contracts and Procurement.

RECORD ACCESS PROCEDURES:

Contact System Manager

CONTESTING RECORDS PROCEDURES:

Contact System Manager.

RECORD SOURCE CATEGORIES:

All of the information in the system will be supplied by the individual himself.

Changed Systems of Records

The following eight systems are republished totally because of substantial changes:

DOT/OST 024

SYSTEM NAME:

Parking Permit Application File, and Vanpooling Application Files, DOT/OST.

SYSTEM LOCATION:

Department of Transportation (DOT), Office of the Secretary (OST), Parking Management Office, M–444.3, 400 7th Street, SW., Room 2322, Washington, DC 20590. Federal Highway Administration, Ridesharing Branch, HHP–33, 400 7th Street, SW., Room 3311, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOT parking permit holders (Washington, DC), DOT carpool members and DOT van-pooling applicants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Parking permit application forms and vanpool application forms.

Authority

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Determine criteria for permit issuance, record change data, record garage violations and periodic review and revalidation. Used by parking management office personnel only. See Prefatory Statement of General Routine Uses. Vanpooling applicants are matched up as to area and work hours and records of vanpools are maintained.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in lockable visible edge file in a security locked workroom.

RETRIEVABILITY:

Indexed sequentially by permit number; vanpool applications are alphabetical by name and organized for retrieval by "home-cell" numbers for areas.

SAFEGUARDS:

Only Parking Management Office personnel have access to these records; for vanpools only Public Transportation Management Office personnel have access to applications.

RETENTION AND DISPOSAL:

Record cards are retained for 3 years locally, sent to the Federal Records Center for 2 more years, and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

For Parking Permit File: Chief, Transportation Branch, M–444, Department of Transportation, Office of the Secretary, Office of Administration Operations, 400 7th Street, SW., Room 2318, Washington, DC 20590. For Vanpooling Application File: Chief, Ride Sharing Branch, HHP–33, Federal Highway Administration, 400 7th Street, SW., Room 3311, Washington, DC 20590.

NOTIFICATION PROCEDURE:

Individual may review only his own application card upon presentation of valid DOT ID card at the addresses given under "System Location".

RECORD ACCESS PROCEDURES:

Same as Notification Procedure.

CONTESTING RECORD PROCEDURES:

No contest—individual can change recorded data at will.

RECORD SOURCE CATEGORIES:

Submitted by individual.

DOT/OST 050

SYSTEM NAME:

Emergency Alerting Schedules. DOT/OST.

SYSTEM LOCATION:

These records are located in the national headquarters of the Offices of the Secretary; the heads of operating elements, regional offices of the Regional Emergency Transportation Coordinators, the Regional Administrators, Directors and Commanders of the operating elements and in headquarters of operating element divisions, district commands, and other field offices of the Department.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Professional and clerical employees and military members of the U.S. Government, Directors—designate and Deputy Directors—designate and members of the National Defense Executive Reserve who have been given emergency billet assignments within the Department of Transportation Emergency Structure.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Alerting Charts and Schedules show names and office and home telephone numbers of individuals in calling sequence and are listed by national headquarters and by regional offices; also contains similar listings designed for management convenience within DOT and the operating elements.

Authority

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

For identification of individuals required to insure viability of DOT in the immediate preattack—transattack—postattack period of a national defense emergency. Available to the Secretarial Officers, heads of operating administrations or designated subordinates (national and regional) and to individuals listed.

See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Publication is maintained in stock, in listings in each office of record, and in standard filing equipment in locked file rooms.

RETRIEVABILITY:

Manually by position listing.

SAFEGUARDS:

Metal file containers or other standard office equipment secured in a locked file room during office duty hours.

RETENTION AND DISPOSAL:

Retained until republished then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Emergency Transportation, DPB–30, Department of Transportation, Office of the Secretary, 400 7th Street, SW, Washington, DC 20590.

NOTIFICATION PROCEDURE:

Inquiries may be addressed to any of the offices listed under "System Locations". Individuals requesting such information must sign the request personally and include in the text of the request, the card number of his or her Federal Emergency Assignee

Identification Card (CD Card) (SF 138) or other official identification card.

Alternatively, personal visits to the above locations with presentation of the above credentials will enable individual to learn of and have access to his or her record.

RECORD ACCESS PROCEDURES:

Individual may secure or obtain information on procedures for gaining access to records by (1) referral to the information sheet issued to him or (2) addressing a written query to the offices cited under System Location, (except the Facility Manager, FAA Records Center, West King Street and Maple Avenue, Martinsburg, WV 25401, who maintains duplicate files in storage only) or (3) presenting himself to those offices.

CONTESTING RECORD PROCEDURES:

Same as "Record Access Procedures".

RECORD SOURCE CATEGORIES:

Office or Agency of employment.

DOT/FAA 801

SYSTEM NAME:

Aircraft Registration System DOT/FAA.

SYSTEM LOCATION:

Aircraft Registration Branch, Aeronautical Center, Oklahoma City, OK 73125. Portions of these records are located in: General Aviation District Offices (GADO's). Air Carrier District Offices (ACDO's). Flight Standards District Offices (FSDO's).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system identifies aircraft owners, partners, corporations, lien holders, operators, and lessees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of a series of records that identify: Aircraft types. Current certification status and ownership of registered aircraft. Aircraft to be registered, or aircraft that have been registered and are now temporarily deregistered. These records contain information about: N—Number assignment. Airworthiness of aircraft. Bills of sale. Applications for certification of amateur aircraft. Major repairs and alterations maintenance inspection forms. Revalidation and use forms. Lien and collateral documents.

Authority

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To determine that aircraft are registered in accordance with the provisions of the Federal Aviation Act of 1958.

To support investigative efforts of investigation and law enforcement agencies of Federal, State, and foreign governments. To serve as a repository of legal documents used by individuals and title search companies to determine the legal ownership of an aircraft.

To provide aircraft owners and operators information about potential mechanical defects or unsafe conditions of their aircraft in the form of airworthiness directives.

To provide supporting information in court cases concerning liability of individual in law suits.

To serve as a data source for management information for production of summary descriptive statistics and analytical studies in support of agency functions for which the records are collected and maintained.

To respond to general requests from the aviation community or the public for statistical information under the Freedom of Information Act or to locate specific individuals or specific aircraft for accident investigation, violation, or other safety related requirements.

To provide data for the automated aircraft registration master file.

To provide documents for microfiche backup records.

To provide data for development of the aircraft registration statistical system.

To prepare an Aircraft Registry in magnetic tape and publication form required by ICAO agreement containing information on aircraft by registration number, type of aircraft, name and address of owners used for internal FAA safety program purposes. See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES: FOR STORING, RETRIEVING , ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

Records are maintained in file folders, magnetic tape, punch cards, and on microfiche.

RETRIEVABILITY:

Records are filed by registration number, but may be retrieved by name of the current individual aircraft owners.

SAFEGUARDS:

Records are stored in open shelves in a room that is open only to authorized employees and by special permission. Magnetic tapes are maintained in secure data processing area accessed by pass only. Backup copies of microfiche are kept in a fire proof vault and storage room.

RETENTION AND DISPOSAL:

Punch cards are kept on file in working area, destroyed after magnetic tape is complete. Microfiche is retained indefinitely. Aircraft registration files are retained until deregistered, held in N-Number file system for 2 years, then sent to storage in Fort Worth Federal Records Center. Destruction is not authorized.

SYSTEM MANAGER(S) AND ADDRESS:

For official agency records, contact: Chief, Aircraft Registration Branch, Aeronautical Center, Oklahoma City, OK73125. chief of the nearest GADO, ACDO, or FSDO.

NOTIFICATION PROCEDURE:

Individual owners of currently registered aircraft who wish to know if their records appear in this system of records may inquire in person or in writing to the System Manager.

RECORD ACCESS PROCEDURES:

Individual owners of currently registered aircraft who desire access to the information about themselves in this system of records should contact or address their inquiries to the System Manager.

CONTESTING RECORD PROCEDURES:

Individuals who desire to contest information about themselves contained in this system of records should contact or address their inquiries to the Administrator or his delegate, 800 Independence Avenue, SW, Washington, DC 20591.

RECORD SOURCE CATEGORIES:

Information is collected from individuals, manufacturers or aircraft, maintenance inspectors, mechanics, and FAA officials.

DOT/FAA 802

SYSTEM NAME:

Airman Certification System DOT/FAA.

SYSTEM LOCATION:

Airman Certification Branch, Aeronautical Center, Oklahoma City, OK 73125. Copies or temporary files are maintained in the originating General Aviation District Office (GADO), Air Carrier District Office (ACDO), or Flight Standards District Office (FSDO) until required action or certification is completed.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals seeking to be certified, airmen seeking additional certifications or additional ratings, individuals denied certification, airmen holding inactive certificates, airmen who have had certificate revoked, and flight attendants engaged in international air transport.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application for certification; written examination, application for written examination, results of written test, application for inspection authority, certificates held, ratings, stop orders.

AUTHORITY ROUTINE USES OF RECORDS MAINTAINED IN SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To determine that airmen are certified in accordance with the provisions of the Federal Aviation Act of 1958. Repository of documents used by individual and potential employers to determine validity of airmen qualificatins. To support investigative efforts of investigation and law enforcement agencies of Federal, State, and local governments. Supporting information in court cases concerning individual status and/or qualifications in law suits. To provide data for the Comprehensive Airman Information System (CAIS). To provide documents for microfilm and microfiche backup records. To prepare an airman Directory in magnetic tape and paper form containing information on airmen by name, address, and certificate status used for internal FAA safety program purposes. To verify U.S. citizenship, certify qualified applicants, and provide them with a crew member certificate to be used in lieu of a passport in International Civil Aviation Organization member countries. To answer inquiries regarding crew member certification. The U.S. Department of State uses these applications and any supporting documents to verify U.S. citizenship. See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in microfilm, microfiche, magnetic disk, magnetic tape, file folders, and notebook listings.

RETRIEVABILITY:

Records are maintained in alphabetic order cross referenced with social security number and airman number.

SAFEGUARDS:

Records are stored in a data processing facility. Data are retrieved via a terminal, which requires operation numbers and individual passwords. Accessible only to limited numbers of authorized persons. Backup microfilm and microfiche are kept in locked vault.

RETENTION AND DISPOSAL:

Source documents are destroyed after being microfilmed and key punched. Magnetic tapes and disks are being continually updated, destruction is not authorized. Source document crew member certifications are in storage at the Fort Worth Federal Records Center, destruction not authorized.

SYSTEM MANAGER(S) AND ADDRESS:

For official FAA Certification Records, contact: Chief, Airman Certification Branch, Aeronautical Center, Oklahoma City, OK 73125 or request assistance from the originating GADO, ACDO, or FSDO.

NOTIFICATION PROCEDURE:

Individuals wishing to know if their records appear in this system of records may inquire in person or in writing to the System Manager.

RECORD ACCESS PROCEDURES:

Individuals who desire access to the information about themselves in this system of records should contact or address their inquiries to the System Manager.

CONTESTING RECORD PROCEDURES:

Individuals who desire to contest information about themselves contained in this system of records should contact or address their inquiries to the Administrator or his delegate, 800 Independence Avenue, SW, Washington, DC 20591.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains. Written test scores are derived from answers given by individuals. Action filed by FAA personnel.

DOT/FAA 806

SYSTEM NAME:

Federal Aviation Administration Employee Payable System DOT/FAA.

SYSTEM LOCATION:

Financial Systems and Accounting Operations Divisions, Washington, D.C., and each region and center accounting division. Working copies of certain of these records are held by the organizations employing the personnel and at emergency operations facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal Aviation Administration employees and civilians who work for the United States Coast Guard.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains those records required to insure that an employee receives his or her pay and benefits required by law. It includes Employee Master Record, Annual Leave Payroll Register, FAA Bond Deductions and Bond Issued, Union Dues, FICA Records, City Withholdings, State Withholdings, Federal Withholdings, Retirement, Leave Without Pay, Pay Scale, Contributions, Travel Orders, Travel Advances, Travel Vouchers, Time and Attendance, Overtime, claims relating thereto.

AUTHORITY:

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This System is used to: Calculate pay and allowances due to employees. Prepare annual report and reconcile with Gen. Ledger Accounts. Record permanent pay changes. Record temporary pay changes. Notify employees of pay adjustments processed. Record travel advances and allowances. List leave earned, taken, and/or lost and new balances for employees.Test run against Employee Master Record to reflect missing T&A cards of employees. Summarize earnings, deductions, and leave by pay periods, and produce statement for employee information. Provide management information on an as required, ad hoc basis. Produce history of checks and bonds to be issued and magnetic tape sent to Treasury for their issuance. Report dues deducted by individuals to unions. Report amounts withheld to credit financial institutions, charitable organizations, and professional associations. Quarterly summary of earnings and deductions. Adjudicate claims for reimbursements which are sent to GAO. Extract list of FICA employees for reporting earnings and deductions to IRS. Report State and local tax withholding to various States and local taxing authorities and to IRS. See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on punch cards, magnetic tape, magnetic disk, microforms, and in file folders. Storage

is at the geographic location of the servicing accounting office and the central payroll operations facility.

RETRIEVABILITY:

Records are maintained by employee name and employee payroll number. Social Security Account Numbers are often used as the employee payroll number. Retrieval is often accomplished by use of telecommunications.

SAFEGUARDS:

Magnetic tape and disk files are kept with limited accessibility by agency personnel. Other files are retained mainly in unsecured work area but are locked during non-duty hours.

RETENTION AND DISPOSAL:

Employee retirement records are retained until such time as the employee leaves the agency whereupon these records are transferred to the CSC. Original payment vouchers and supporting documentation are usually retained on site for a period of three years, and then are stored in GSA Records Centers before destruction when ten years and three months old. Certain payroll records are retained permanently at the GSA National Personnel Records Center and others are destroyed after GAO audit or when no longer useful. See FAA Order 1350.15A for records in the 2710 and the 2730 series for specific details on individual records covered by this system.

SYSTEM MANAGER(S) AND ADDRESS:

Chiefs, Financial Systems and Accounting Operations Divisions, 800 Independence Avenue, SW, Washington, DC 20591. Chief, Accounting Division, Regional Office and Centers address listed in FAA National Field Directory, 1000.23G.

NOTIFICATION PROCEDURE:

Individuals wishing to know if their records appear in this system may inquire in person or in writing to the System Manager.

RECORD ACCESS PROCEDURES:

Individuals who desire access to the information about themselves in this system of records should contact or address their inquiries to the System Manager.

CONTESTING RECORD PROCEDURES:

Individuals who desire to contest information about themselves contained in this system of records should contact or address their inquiries to the Administrator or his delegate, 800 Independence Avenue, SW, Washington, DC 20591.

RECORD SOURCE CATEGORIES:

Data are collected from the individual employees, time and attendance clerks, and FAA Personnel Management Operations Divisions.

DOT/NHTSA 415

SYSTEM NAME:

Motor Vehicle Defects. DOT/NHTSA.

SYSTEM LOCATION:

Department of Transportation (DOT), National Traffic Safety Highway Administration (NHTSA), Office of Defects Investigation, 400 7th Street, SW, Room 5328, Washington, DC 20590. Sterling Systems, Inc., 4340 Connecticut Avenue, Washington, DC 20008. Informatics, Inc., 7926 Jones Branch Drive, Suite 272, McLean, VA 22101.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Vehicle owners.

CATEGORIES OF RECORDS IN THE SYSTEM:

Vehicle identification, vehicle problem, vehicle owner.

AUTHORITY:

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Check complaints about vehicle defects to spot trends, resulting in investigations of the vehicle model. See Prefactory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Disc pack and paper file.

RETRIEVABILITY:

Identification number for each vehicle owner.

SAFEGUARDS:

Coded entry numbers.

RETENTION AND DISPOSAL:

Three years or indefinite.

SYSTEMS MANAGER(S) AND ADDRESS:

Chief, Information System Staff, Department of Transportation, National Highway Traffic Safety Administration, Office of Defects Investigation, 400 7th Street, SW, Washington, DC 20590.

NOTIFICATION PROCEDURE:

Write or visit the applicable address in "System Location" above.

RECORD ACCESS PROCEDURES:

Same as "System Manager" above.

CONTESTING RECORD PROCEDURES:

Same as "System Manager" above.

RECORD SOURCE CATEGORIES:

General public, State highway offices, insurance companies, vehicle manufacturers.

DOT/NHTSA 417

SYSTEM NAME:

National Driver Register (NDR). DOT/NHTSA.

SYSTEM LOCATION:

Department of Transportation (DOT), National Highway Traffic Safety Administration (NHTSA) Office of Driver and Pedestrian Programs National Driver Register Office, 2100 2nd Street, SW, Room 3506, Washington, DC 20590. Master file is located at: Transportation Computer Center, 400 7th Street, SW, Room 2401, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have had their driver's license denied, withdrawn, revoked or suspended as reported by State/Territorial driver licensing authorities.

CATEGORIES OF RECORDS IN THE SYSTEM:

NDR records include: the reporting jurisdiction, the subject's full name, other names used, date of birth, driver license number and/or social security number (if used by the reporting jurisdiction), sex, height, weight, eye color, the reason for withdrawal, the date of the withdrawal, and the date eligible for restoration of driving privilege or the date license was actually restored.

It should be noted that very frequently the physical data is not provided by the reporting agency.

AUTHORITY ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Provide identification of drivers who have had their licenses withdrawn, suspended, revoked or otherwise denied in response to inquiries from State or Federal driver licensing agencies relative to driver license applicant.

See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The NDR master file is maintained on magnetic tape. Source data; i.e., manual input (forms, letters) are retained in that form. Source data received on magnetic tape are converted into printed listings. All source data is batch filed.

RETRIEVABILITY:

The magnetic tape master file is indexed by surname and refined by program application of screening criteria involving given names, date of birth and physical charactistics. Source data batch files are indexed by the processing data as determined from test inquiry of the master file. A manual search of the appropriate batch is then required to access the specific record.

SAFEGUARDS:

The master file is kept in the Transportation Computer Center, a limited access area. The source data files are maintained in a building under surveillance of a 24 hour guard force. In addition, the spaces in which the files are maintained are equipped with lockable doors which are locked when vacated. All personnel have met the investigative requirements for secret classified matter. In addition, all NDR employees are orally briefed on NDR security requirements and their responsibilities.

RETENTION AND DISPOSAL:

Records of actions that have been cancelled or rescinded are purged from the file upon receipt of notification from the reporting jursidiction. Other records are retained for seven or five years depending on the reason for withdrawal of the individual's license. Withdrawals for drunk driving, hit and run, fatal accident, felony and misrepresentation are retained for seven years. Records of "habitual offenders" as stipulated by certain states are retained indefinitely, unless otherwise requested by the reporting state. All other master file records are retained for five years. Source data files are retained for one year. Magnetic tape records are erased by degaussing, using 86db degaussing equipment, prior to disposing of the tapes. Paper source data reports of withdrawal are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, National Driver Register, National Highway Traffic Safety Administration, NTS–15 Department of Transportation, Washington, DC 20590.

NOTIFICATION PROCEDURE:

Mailed inquiries should be addressed as above under "System Manager." For inquiries made in person, the inquirer should present himself at the National Driver Register office at the following location: 2100 2nd Street, SW, Room 3506, Washington, DC. In order to conduct a file search the requesting party must provide: Full legal name, Other names used (nickname, professional name, maiden name), Date of birth, Sex, Height, Weight, Color of eyes, Social security number and/or driver license number (provision of the social security number is voluntary). In addition, although not mandatory, it would help to more positively identify any records we may have concerning the inquirer if the following information is included: The reason his/her driver license was withdrawn or denied. The date of the action. The State which took the action. An inquirer presenting himself/herself in person should have at least two means of identification sufficient to reasonably insure that he/she is who he/she purports to be. For mailed inquiries the foregoing identification elements should be included in the form of a notarized affidavit and addressed to the System Manager.

RECORD ACCESS PROCEDURES:

An individual desiring to obtain information on procedures to obtain his or her record(s) should contact the Chief, National Driver Register, at the address under "System Manager" above.

CONTESTING RECORD PROCEDURES:

To obtain information on procedures to contest records one should contact the Chief, National Driver Register, at the address in "System Manager" above.

With regard to contesting records it must be realized that the file is made up of State records. As such, these can only be changed or corrected by the reporting State. The records in the Driver Register file are changed only when advised by the originating jurisdiction.

RECORD SOURCE CATEGORIES:

The records comprising the National Driver Register file are provided by States. District of Columbia, Puerto Rico, Canal Zone, Virgin Islands and Guam driver licensing administrators or the agency within the jurisdictions responsible for such records.

DOT/NHTSA 461

SYSTEM NAME:

Hotline-Call Report System. DOT/NHTSA.

SYSTEM LOCATION:

Department of Transportation (DOT), National Highway Traffic Safety Administration (NHTSA) Office of Defects Investigation, 400 7th Street, SW, Room 5328, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Vehicle owners according to make/model/year of motor vehicles owned, and/or according to safety information requested.

CATEGORIES OF RECORDS IN THE SYSTEM:

System contains: Vehicle defect-related owner complaints or information. Vehicle or equipment failure-related complaints or information. Inquiry groupings according to types of safety-related information or written source-materials requested.

ROUTINE USES OF RECORD MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

System is used to indicate emerging patterns of vehicle or vehicle equipment failure, and/or to correlate such patterns with typographical or geographical regions, in order to support defect-related NHTSA investigations and vehicle recall actions as authorized by statute. Individuals may be contacted to verify the accuracy of the information initially provided. System is also used to categorize the types of informational requests and safety-related materials most requested and/or needed by all users of the Hotline service. System is also used to generate statistical evaluation of Hotline-call volume, frequency, service rendered, degree of safety-related information recorded and utilized as a result of the Hotline's installation. Records may be disclosed to other Federal or State agencies or consumer groups having remedial or response jurisdiction over the individual complaint recorded. See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On hard copy and magnetic tape.

RETRIEVABILITY:

By name and case number.

SAFEGUARDS:

Appropriate ADP procedures for safeguarding data are utilized with the system.

RETENTION AND DISPOSAL:

System is maintained in support of an experimental "pilot" program. Hence, length of record retention is now unknown. Destruction, when authorized, will be by shredder (hard copy) and by deletion (magnetic tape).

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Consumer Services, Department of Transportation, National Highway Traffic Safety Administration, 400 7th Street, SW, Washington, DC. 20590.

NOTIFICATION PROCEDURE:

Department of Transportation, National Highway Traffic Safety Administration Chief, Office of Consumer Services, 400 7th Street, SW, Room 5232, Washington, DC 20590.

RECORD ACCESS PROCEDURES:

Same as listed under "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

Same as listed under "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

All information in the system is voluntarily submitted by vehicle owners, individual citizens, or other interested parties.

[FR Doc. 79-15095 Filed 5-14-79; 8:45 am]
BILLING CODE 4910-62-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Tolls on Bridges Owned by Delaware River Port Authority; Final Order of the Administrator

On March 20, 1979, the Administrator issued an Order in this matter concerning an increase in tolls on bridges owned by the Delaware River Port Authority (DRPA) which held, following a review by a Federal Highway Administration (FHWA) Investigation Team, that there are no material factual issues outstanding which would necessitate a full administrative hearing and the toll schedule adopted by DRPA on February 1, 1978, is reasonable and just. The complaints filed by the Automobile Club of Southern New Jersey (Auto Club), Mr. Henry Ward, Mr. Harry Wilson, Mr. John T. Chesluk, and Mr. David Creskoff were thereby dismissed.

Parties to the proceedings were given 20 days to petition the Administrator for reconsideration of the March 20, 1979, Order.

The Administrator has received one petition for reconsideration submitted by the Auto Club. The Auto Club states:

> By its own admission, the Delaware River Port Authority (DRPA) had in excess of $24 million of surplus on December 31, 1978, which clearly belies the need for a toll increase to produce $3.5 million. The $24 million surplus was never mentioned in the Investigation Team's report and is clearly far more money than the DRPA needs.

Two things can be said about this statement. First, we do not see how or where DRPA has admitted to a $24 million surplus. There is no evidence in the record to indicate such "surplus." The Investigation Team Report was filed with the Administrator on November 15, 1978, and hence the record was closed. Second, the term "surplus" can be interpreted in different ways. The Auto Club has not indicated whether this term is intended to mean funds in excess of operating expenses or funds in excess of all foreseeable obligations, including a reasonable reserve.

Therefore, the Administrator cannot accept the Auto Club's unsubstantiated statement that the DRPA had a $24 million surplus on December 31, 1978.

The Administrator stands by his finding in his March 20, 1979, Order which concludes that, according to Figure 4 of Attachment 6 of the Investigation Team's Report, that the equity balances of the DRPA reserves would be substantially decreased without this toll increase.

The Auto Club also argues that "if the toll increase is denied, additional funds (for PATCO operations) in the form of State subsidies will be available," saying further that "the time has come for the Administrator to demand fairness and equity in this treatment by New Jersey and deny a toll increase, forcing operating subsidies to be awarded for support of PATCO." This argument was fully covered by the March 20, 1979, Order when the Administrator stated:

> To require the DRPA to exhaust its reserves to take care of apparent reasonable long-range capital maintenance expenses on the rare chance of forcing the State or Federal Governments to come forward with additional funds to subsidize the PATCO deficits is a gamble that the Administrator cannot ask DRPA to take.

What the Auto Club's argument boils down to is that the Auto Club feels it is better to require New Jersey taxpayers and Federal taxpayers to subsidize PATCO instead of the South Jersey commuter. The Administrator doubts that the New Jersey taxpayer or the Federal taxpayer would see any fairness or equity in such an arrangement, and neither does the Administrator. So long as the bridge tolls do not place an undue burden on the South Jersey commuter (or anyone else for that matter) whose tolls in part subsidize the PATCO line, the Administrator cannot agree that fairness and equity demands denial of the toll increase in order to force State or Federal subsidies for the PATCO line.

Therefore, the petition for reconsideration by the Auto Club is hereby denied and the Administrator affirms his March 20, 1979, Order finding that there is no need for a full administrative hearing, and further that the toll schedule adopted by DRPA on February 1, 1978, is reasonable and just.

It is further found that in accordance with the Toll bridge Procedural Rules, 49 CFR 310.16, this Order shall be in effect for a period of 3 years, measured from February 1, 1978, the date the new toll rates went into effect.

It is so ordered.

Issued this 8th day of May, 1979.

Karl S. Bowers,
Federal Highway Administrator.

[Docket No. 78-15T]
[FR Doc. 79-15110 Filed 5-14-79; 8:45 am]
BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco, and Firearms

Authorities of the Director in 27 CFR Part 201, Distilled Spirits Plants; Delegation Order

1. *Purpose.* This order delegates certain authorities, now vested in the Director by regulations in 27 CFR Part 201, to the Assistant Director (Regulatory Enforcement), and provides for redelegation to Regulatory Enforcement personnel, Headquarters and field.

2. *Change.* This delegation order is being changed to allow for certain authorities, relating to the establishment and operation of plants producing alcohol fuels, to be delegated to the regional level. These authorities are outlined in paragraph 5e of this order. [This delegation order was previously published in the **Federal Register** of February 22, 1978, (43 FR 7387) without this change.]

3. *Background.* Under current regulations, the Director has authority to take final action on matters relating to the approval of activities at regulated plants. It has been administratively

determined that certain authorities now vested in the Director by regulations in 27 CFR Part 201, Distilled Spirits Plants, belong at and should be delegated to a lower organizational level.

4. *Delegations.* Pursuant to the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 221, dated June 6, 1972, and by 26 CFR 301.7701–9, there is hereby delegated to the Assistant Director (Regulatory Enforcement) the authority to take final action on the following matters relating to 27 CFR Part 201, Distilled Spirits Plants:

a. To prescribe all forms required by regulations, under 27 CFR 201.61; and to prescribe certain forms which are provided by users at their own expense, under 27 CFR 201.613.

b. To approve applications for:

(1) Alternate methods, procedures, or operations, including alternate construction or equipment in lieu of methods or procedures specifically prescribed in regulations, under 27 CFR 201.62(a).

(2) Emergency variations from requirements for construction, equipment, and methods of operations, under 27 CFR 201.62(b).

c. To withdraw authorization of any alternate method or procedure or any variation whenever the revenue is jeopardized or the effective administration of the regulations is hindered by the continuation of such authorization or variation, under 27 CFR 201.62.

d. To waive any provision of law and regulations for temporary pilot or experimental operations, and to designate any plant for such operations, under 27 CFR 201.63.

e. To waive any provision of law and regulations to effectuate the purposes of 26 U.S.C. 5312(b), and to authorize and approve, pursuant to written application, the establishment and operation of experimental distilled spirits plants, under 27 CFR 201.64 and 27 CFR 201.65.

f. To determine the nonpotability of a by-product, tc waive any provision of law and regualtions, and to approve applications for waiver of requirements, under 27 CFR 201.66.

g. To authorize the carrying on of other businesses on premises of distilled spirits plants, under 27 CFR 201.67.

h. To temporarily exempt a proprietor of any plant from provisions of law and regulations by reason of disaster, under 27 CFR 201.69.

i. To require the discontinuance of the use of storage facilities and to require supervision of spirits to be transferred, under 27 CFR 201.71.

j. To waive any provision of law and regulations to effectuate the purposes of 26 U.S.C. 5312(a); to authorize and approve, pursuant to written application, experimental or research operations by scientific institutions and colleges of learning; and to require the filing of bonds and any additional information and the submission of records, under 27 CFR 201.72.

k. To approve the use of meters or other devices or methods for controlling the denaturation of spirits, under 27 CFR 201.90.

l. To authorize the use of meters or other devices or methods for volumetrical measurement of spirits (including denatured spirits) or wines, under 27 CFR 201.91.

m. To approval all seals, locks, or other devices, that are to be used on conveyances in which spirits are transferred in bond, withdrawn free of tax, or withdrawn without payment of tax, under 27 CFR 201.100(b)(1).

n. To approve applications to establish a warehouse without regard to the minimum storage requirements, and to limit the type of operations to be conducted and any expansion or changes thereto, udner 27 CFR 201.112.

o. To authorize regional regulatory administrators to approve registrations of plants with separated areas, under 27 CFR 201.117.

p. To approve other materials and methods for plats and plans, under 27 CFR 201.155.

q. To approve applications by successors to adopt the approved ATF F 27-B Supplemental, Formula and Process for Rectified Products, of predecessors, under 27 CFR 201.65.

r. To approve meters, other devices, methods, or manner for safeguarding the security of the closed distilling system and the protection of processing equipment, under 27 CFR 201.240.

s. To approve:

(1) Other devices, methods or other means to secure openings in tanks and to control the flow of spirits in and out of tanks on bonded or bottling premises, under 27 CFR 201.243 (b) and (c).

(2) Fences or walls to enclose tanks on bonded premises used as receptacles for spirits, under 27 CFR 201.243(b).

t. To approve pipelines which may not be readily examined, under 27 CFR 201.244.

u. To approve other methods for identification of pipelines, under 27 CFR 201.245.

v. To approve other measuring devices for weighing or measuring materials, spirits (including denatured spirits), and denaturants, under 27 CFR 201.246.

w. To approve:

(1) Meters, other methods or other devices (comparable in accuracy and security to meters) to accurately determine the production gauge of spirits and the total quantity filled into containers, under 27 CFR 201.269(a), (c), and (d).

(2) The manner and type of governmental supervision of proprietors' production gauges, under 27 CFR 201.269(d).

x. To approve other methods for determining the quantities of chemical by-products produced, under 27 CFR 201.277.

y. To authorize the spirits content of chemicals to exceed 10 percent by volume including chemical by-products of spirits produced, and to approve methods to test chemicals for spirits content, under 27 CFR 201.278.

z. To approve:

(1) Meters or other devices to measure and control the flow of spirits into and out of storage tanks or other containers which permit a determination of the quantity being deposited and removed, under 27 CFR 201.291 (b) and (c).

(2) Applications to store packages and cases in any manner which adequately safeguards the interests of the Government, under 27 CFR 201.291(c).

aa. To waive the requirement of showing information on labels, under 27 CFR 201.331.

bb. To approve applications and issue permits on ATF F 1444, Tax-Free Spirits for Use of United States, for the procurement of spirits for use by the United States or a governmental agency, to receive evidence of authority to sign for the head of a department or independent bureau or agency, and to cancel permits returned by a governmental agency, under 27 CFR 201.391.

cc. To authorize the disposition of excess spirits in the possession of a governmental agency, under 27 CFR 201.392.

dd. To require the testing of approved synthetic oils or essential oils or pure chemicals or other denaturants, under 27 CFR 201.404.

ee. To approve meters or other devices for measurement of spirits and denaturants, under 27 CFR 201.407.

ff. To authorize other methods for adding denaturants to spirits, and to require a flow diagram of the intended process or method of adding denaturants, under 27 CFR 201.408.

gg. To approve the conversion and use of specially denatured alcohol, under 27 CFR 201.411.

hh. To approve ATF F 27–B Supplemental and to require a diagram, drawing or other pictorial depiction of process, under 27 CFR 201.422.

ii. To approve ATF F 27–B Supplemental and riders to the formulas, and to accept surrender of original formulas, under 27 CFR 201.425.

jj. To approve ATF F 27–B Supplemental, under 27 CFR 201.443.

kk. To waive the requirement of showing information on labels to be affixed to bottles containing spirits bottled for export, under 27 CFR 201.467.

ll. To approve other types of containers or the use of containers made of other materials, under 21 CFR 201.501.

mm. To approve the use of bulk conveyances for withdrawal of spirits free of tax to a specified consignee, under 27 CFR 201.507.

nn. To approve applications to locate the required marks on a container at a place other than that prescribed by regulations, and to approve other durable methods of marking and branding, under 27 CFR 201.515.

oo. To approve applications for other designations and branding of distilled spirits for which a designation is not prescribed, under 27 CFR 201.517(c).

pp. To approve other extraneous matter to be printed on caution labels, under 27 CFR 201.523.

qq. To approve applications for designs or other marks to be placed on the Government side of cases, under 27 CFR 201.527(b), 27 CFR 201.528(b), 27 CFR 201.529(b), and 27 CFR 201.530.

rr. To approve, pursuant to applications accompanied by specimen bottles or acceptable models or representations, distinctive liquor bottles which are found not to afford a jeopardy to the revenue and which are suitable for the intended purpose, under 27 CFR 201.540d.

ss. To approve applications to receive and reuse liquor bottles, under 27 CFR 201.540f.

tt. To disapprove for use as a liquor bottle any bottle which is determined to be deceptive, under 27 CFR 201.540i.

uu. To require the State of distillation to be shown on labels or to permit other labeling to negate any misleading or deceptive impressions, under 27 CFR 201.540o.

vv. To approve overprinting strip stamps with the class and type of product or with an appropriate abbreviation or symbol, under 27 CFR 201.541.

ww. To authorize labels or State stamps to be affixed to containers so as to partially obscure strip stamps, and to approve the use of any cup, cap or seal after receiving a sample of the closure and container, under 27 CFR 201.545.

xx. To approve applications to modify and use certain prescribed forms, and to withdraw the use of such forms, under 27 CFR 201.614.

yy. To approve processes for reproducing records and the type of records to be reproduced, under 27 CFR 201.616.

zz. To approve applications to estimate the weight or volume of non-liquid distilling materials, under 27 CFR 201.618.

5. *Redelegation.*

a. The authorities in paragraphs 4a through 4p, in paragraphs 4r through 4gg, and in paragraphs 4kk through 4zz above, may be redelegated to Regulatory Enforcement personnel in Bureau Headquarters not lower than the position of branch chief.

b. The authorities in paragraphs 4g, 4hh, 4ii, and 4jj above, may be redelegated to Regulatory Enforcement personnel in Bureau Headquarters, not lower than the position of ATF specialist (GS–11).

c. The authorities in paragraphs 4b(2), 4g, 4h, 4i, 4o, 4p, 4s(2), 4t, 4u, 4w(2), 4z(2), 4cc, 4mm, 4ss, 4vv, 4ww, and 4zz above, may be redelegated to regional regulatory administrators, who may redelegate these authorities to regional Regulatory Enforcement personnel not lower than the position of chief, technical services, or area supervisor.

d. The authorities in paragraphs 4k, 4l, 4r, 4s(1), 4v, 4w(1), 4z(1), 4ee, 4ff, and 4yy above, may be redelegated to regional regulatory administrators for approval of identical meters, devices, methods or materials, and processes for reproducing records and the types of records to be reproduced, which have been previously approved in Bureau Headquarters. Regional regulatory administrators may redelegate these authorities to regional Regulatory Enforcement personnel not lower than the position of chief, technical services, or area supervisor.

e. With respect to alcohol fuel plants, the authorities in paragraphs 4b(1), 4e, and 4j may be redelegated to the regional regulatory administrator, who may redelegate the authority in 4b(1) to regional Regulatory Enforcement personnel not lower than chief, technical services.

Effective date: May 9, 1979.

Signed: May 9, 1979.

G. R. Dickerson,

Director.

[Notice No. 79–12; Reference: ATF 0 1100.6A–Change 1]

[FR Doc. 79–15131 Filed 5–14–79; 8:45 am]

BILLING CODE 4810–31–M

VETERANS ADMINISTRATION

Ambulatory Care Addition at VAMC, Tuskegee, Ala.; Finding of No Significant Impact

The proposed project will correct space criteria deficiencies in the existing outpatient clinic at the Veterans Administration Medical Center, Tuskegee, Alabama. This action proposes the correction of space criteria deficiencies in the existing outpatient clinic. The project will provide a new one-story addition to the south face of Wing 3A in the main hospital building. Building No. 17 will be demolished as part of this project to provide a potential site for Project No. 680–060, Renovate/Replace Building No. 62.

Natural resources and environmental factors will not experience any discernible impact as a result of this project. An analysis of all environmental factors related to the proposed project indicates a Finding of No Significant Impact.

The assessment is being placed for public examination in the Veterans Administration Office of Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. Willard Sitler, Director, Environmental Affairs Office (66), Room 950, Veterans Administration, 1425 K Street, NW., Washington, D.C., (202–389–2526).

Questions and requests for single copies of the Environmental Assessment should be addressed to:

Director, Environmental Affairs Office (66), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420.

Dated: May 8, 1979.

By direction of the Administrator.

Maury S. Cralle, Jr.,

Assistant Deputy Administrator for Financial Management and Construction.

[FR Doc. 79–15096 Filed 5–14–79; 8:45 am]

BILLING CODE 8320–01–M

Ambulatory Care Addition at VAMC, Altoona, Pa.; Finding of No Significant Impact

The proposed project provides for the construction of an Ambulatory Care Addition at the Veterans Administration Medical Center, Altoona, Pennsylavania. The proposed construction will consist of a new

building additon with two floors. The structure will contain approximately 19,800 net square feet of space.

The project will have definite impacts on the human and natural environment as they affect existing vegetation, soil erosion and stabilization, and noise levels. Mitigating actions include implementation of erosion control measures, rock and foundation stabilization measures and specific onsite noise abatement measures. Site grading will be minimized and landscape planting will be provided for. An analysis of all environmental factors related to the proposed project indicates a Finding of No Significant Impact.

The assessment is being placed for public examination in the Veterans Administration office of Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. Willard Sitler, Director, Environmental Affairs Office (66), Room 950, Veterans Administration, 1425 K Street, N.W., Washington, D.C., (202–389–2526).

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Maury S. Cralle, Jr.,

Assistant Deputy Administrator for Financial Management and Construction.

[FR Doc. 79–15097 Filed 5–14–79; 8:45 am]

BILLING CODE 8320–01–M

Outpatient Clinic at VAM & ROC, White River Junction, Vt.; Finding of No Significant Impact

The proposed project provides for the design and construction of an Outpatient Clinic at the Veterans Administration Medical and Regional Office Center, White River Junction, Vermont. This action will correct inadequate existing ambulatory care facilities by construction of a new three-story 43,000 gross square feet addition to Building No. 1 for Ambulatory Care and other clinical and support related functions. The addition will directly connect to the existing corridors between Building Nos. 1 and 8. Two additional floors may be constructed in the future, thereby matching the existing roof line of Building No. 1.

Short term impacts, as a result of the project, are associated with the construction phase. Mitigating actions include noise abatement and adequate construction methods. An analysis of all environmental factors related to the proposed project indicates a Finding of No Significant Impact.

The assessment is being placed for public examination in the Veterans Administration office of Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. Willard Sitler, Director, Environmental Affairs Office (66), Room 950, Veterans Administration, 1425 K Street, N.W., Washington, D.C. (202–389–2526).

Questions and requests for single copies of the Environmental Assessment should be addressed to:

Director, Environmental Affairs Office (66), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420.

Dated: May 8, 1979.

By direction of the Administrator.

Maury S. Cralle, Jr.,

Assistant Deputy Administrator for Financial Management and Construction

[FR Doc. 79–15098 Filed 5–14–79; 8:45 am]

BILLING CODE 8320–01–M

INTERSTATE COMMERCE COMMISSION

Assignment of Hearings

May 10, 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.

No. 37132, United States Steel Corporation v. Louisville & Nashville, Railroad Company, now being assigned for Prehearing Conference on June 5, 1979, at the Offices of the Interstate Commerce Commission, Washington, D.C.

No. 37095, Arthur Goldweig, et al. v. Transport of New Jersey, et al., now being assigned for continued hearing on the 14, of May 1979, followed by evening session, at the Marlboro Municipal Office's Meeting Room, Route 79 Tennent Road, Marlboro Township, Marlboro, New Jersey.

No. 36438, Providence and Wocester Company v. Robert Merserve and Benjamin H. Lacy, Trustees for Boston and Main Corporation, Debtor, Consolidated Rail Corporation, And Robert W. Blanchette, Richard C. Bond, And John H. McArthur, Trustees For Penn Central Transportation Company, Debtor, now being assigned for Prehearing conference on May 22, 1979, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 103926 (Sub-72F), W. T. Mayfield Sons Trucking Co., now assigned for hearing on May 17, 1979, at Birmingham, AL, is postponed indefinitely.

MC 2368 (Sub-84F), Bralley-Wallet Tank Lines, Inc., now assigned for hearing on June 6, 1979, at Richmond, VA, is postponed to June 26, 1979, (3 days), at Richmond, Va, in a hearing room to be later designated.

MC 115904 (Sub-106F), Grover Trucking Co., application dismissed.

MC 30844 (Sub-633F), Kroblin Refrigerated Express, Inc., application dismissed.

MC 116004 (Sub-49F), Texas Oklahoma Express, Inc., now assigned for continued hearing on June 26, 1979, (4 days), at Wichita, KS., will be held at Best Western, Canterbury Inn, 5805 W. Kellogg.

MC 145355F, John Murray's Motor Tours, Inc., now assigned for hearing on May 22, 1979, (3 days), at Wilkes Barre, PA., will be held in Court Room No. 2, U.S. Post Office & Courthouse Building, 197 S. Main Street.

MC 95540 (Sub-1031), Watkins Motor Lines, Inc., now assigned for hearing on June 13, 1979, (3 days), at Chicago, IL., will be held in Room 1319, Everett McKinley Dirksen Bldg., 219 S. Dearborn St.

MC 61231 (Sub-129F), Easter Enterprise, Inc. DBA Ace Lines, Inc., now assigned for hearing on June 11, 1979, (2 days), at Chicago, IL., will be held in Room 1319, Everett McKinley Dirksen Bldg., 219 S. Dearborn St.

MC 145137F, Eight Way Express, Inc., now assigned for hearing on June 6, 1979, (3 days), at Chicago, IL., will be held in Room 1319, Everett McKinley Dirksen Bldg., 219 S. Dearborn St.

MC 108119 (Sub-106F), E. L. Murphy Trucking Company, now assigned for hearing on June 18, 1979, (3 days), at St. Paul, MN., in a hearing room to be later designated.

MC 127811 (Sub-15F), Brynwood Transfer, Inc., now assigned for hearing on June 21, 1979, (2 days), at St. Paul, MN., in a hearing room to be later designated.

MC 95876 (Sub-254F), Anderson Trucking Service, Inc., now assigned for hearing on July 19, 1979, (2 days), at St. Paul, MN., in a hearing room to be later designated.

MC 111545 (Sub-268F), Home Transportation Company, Inc., now assigned for hearing on July 23, 1979, (3 days), at St. Paul, MN., in a hearing room to be later designated.

MC 115826 (Sub-362F), W. J. Digby, Inc., now assigned for hearing on July 26, 1979, (1 day), at St. Paul, MN., in a hearing room to be later designated.

MC 30844 (Sub-632F), Kroblin Refrigerated Express, Inc., now assigned for hearing on July 27, 1979, (1 day), at St. Paul, MN., in a hearing room to be later designated.

MC–F–13723, Denver-Midwest Motor Freight, Inc—Control Merger—Load And Go Truck Line, MC–127602 (Sub-No. 17F), Denver Midwest Motor Freight, Inc., now assigned for hearing on September 10, 1979 (1 week), at Phoenix, AZ., is postponed and continued to September 17, 1979 (1 week),

at Denver, CO., in a hearing room to be later designated.

MC 120257 (Sub-41), K. L. Breeden & Sons, Inc., now assigned for hearing on May 15, 1979, (2 days), at Birmingham, AL., is canceled and application dismissed.

H. G. Homme, Jr.,
Secretary.

[Notice No. 85]
[FR Doc. 79-15154 Filed 5-14-79; 8:45 am]
BILLING CODE 7035-01-M

Fourth Section Application for Relief

May 10, 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. on or before May 30, 1979.

ESA No. 43694, Yangming Marine Transport Corporation No. 1, intermodal rates on general commodities in containers, from rail carriers terminals on the United States Atlantic Coast to ports in the Far East by way of Gulf Coast interchange points, in its Tariff No. 1, ICC 1. Grounds for relief water competition.

By the Commission.

H. G. Homme, Jr.,
Secretary.
[FR Doc. 79-15155 Filed 5-14-79; 8:45 am]
BILLING CODE 7035-01-M

Motor Carrier Temporary Authority Applications

May 4, 1979.

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register.** One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

MC 26825 (Sub-31TA), filed February 28, 1979. Applicant: ANDREWS VAN LINES, INC., P.O. Box 1609, Norfolk, NE 68701. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Furniture,* from Burlington, IA, to points in CA, UT, CO, OK, TX, AR, LA, KY, TN, MS, AL, GA, FL, ND, SD, NE, KS, NM, WY, MT, ID, AZ, and NV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Robert E. Eaton, Lehigh-Leopold Division of Litton Industries, Inc., 2825 Mount Pleasant Street, Burlington, IA 52601. James H. Vaughan, Chittenden & Eastman Company, 123 South Third St., Burlington, IA 52601. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 26825 (Sub-32TA), filed March 1, 1979. Applicant: ANDREWS VAN LINES, INC., Seventh & Park Ave., Box 1609, Norfolk, NE 68701. Representative: Steven K. Kuhlmann, P.O. Box 82028, Lincoln, NE 68501. *Such commodities as are dealt in by manufacturers of metal tool and utility boxes, tool chests, medical cabinets, benches and shelves (except commodities in bulk),* from the facilities of Waterloo Industries, Inc., located at or near Waterloo, IA; Pocahontas, AR; Sedalia, MO; and the facilities of Lumidor Manufacturing, Inc., located at or near Los Angeles, CA to points in the United States, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Frank Bescher, Waterloo Industries, Inc., P.O. Box 209, Waterloo, IA. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 40494 (Sub-13TA), filed March 13, 1979. Applicant: HILBURN TRUCKING, INC., 19401 East 39th Street, Independence, MO 64057. Representative: S. Harrison Kahn, Jeremy Kahn, Attorneys-at-Law, Suite 733 Investment Building, Washington, D.C. 20005. *SUCH COMMODITIES AS ARE DEALT IN BY AGRICULTURAL EQUIPMENT DEALERS,* from the facilities of Deere & Company, located in Rock Island County, IL to points in CO, KS, MO, NE, OK and WY. Supporting shipper(s): Deere & Company, John Deere Road, Moline, IL 61265. Send protests to: Vernon V. Coble, DS, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, Missouri 64106.

MC 65895 (Sub-8TA), filed March 27, 1979. Applicant: REDDAWAY'S TRUCK LINE, 7540 Ridgewood Drive, Gladstone, OR 97027. Representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Ave., Portland, OR 97210. *Paper machinery* between Oregon City, OR, on the one hand, and Kelso, Longview, Tacoma, Seattle, WA, on the other hand, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Publishers Paper, 6637 S.E. 100th Ave., Portland, OR 97266. Send protests to: A. E. Odoms, DS, ICC, 114 Pioneer Courthouse, Portland, OR 97204.

MC 89684 (Sub-106TA), filed March 23, 1979. Applicant: WYCOFF COMPANY, INCORPORATED, 560 South 300 West, Salt Lake City, UT 84110. Representative: John J. Morrel (same address as applicant). Common carrier, regular route, *general commodities,* having a prior or subsequent movement by aircraft, (except articles of unusual value, classes A & B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between St. George, UT, on the one hand, and, on the other, McCarran International Airport at Las Vegas, NV, serving no intermediate points, from St. George, UT over U.S. Highways 91 and I-15 to Las Vegas, NV and return over the same route, for 180 days. Applicant requests authority to interline at Las Vegas, NV and to tack this authority with authority it presently holds in No. MC 89684 Sub 52. Supporting shipper(s): United Air Lines, Inc., International Airport, Salt Lake City, UT 84122. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 106644 (Sub-278TA), filed March 14, 1979. Applicant: SUPERIOR TRUCKING COMPANY, INC., P.O. Box 916, Atlanta, GA 30301. Representative: Louis C. Parker, III (same address as applicant). *(1) Self-propelled articles and (2) attachments, parts, and supplies moving with commodities described in Part (1)* between points in the U.S. in and east of MN, IA, NE, KS, OK and TX.

Restricted to traffic moving on trailers and originating at or destined to the facilities of Hertz Equipment Rental, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Hertz Equipment Rental, 5600 Mariner, Suite 215, Tampa, FL 33623. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., N.W., Rm. 300, Atlanta, GA 30309.

MC 109124 (Sub-71TA), filed March 29, 1979. Applicant: SENTLE TRUCKING CORPORATION, P.O. Box 7850, Toledo, OH 43619. Representative: James M. Burtch, 100 East Broad St. Columbus, OH 43215. *Iron and steel articles and non-ferrous articles,* (1) from Chicago, IL Commercial Zone to points in OH; (2) from the facilities of J. T. Ryerson & Son, Inc. at Chicago, IL to Buffalo, NY, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): J. T. Ryerson & Son, Inc., 2558 West 16th St. Chicago, IL 60608. Send protests to: Interstate Commerce Commission, Bureau of Operations, 600 Arch St., Rm. 3238, Philadelphia, PA 19106.

MC 109124 (Sub-72TA), filed March 23, 1979. Applicant: SENTLE TRUCKING CORPORATION, P.O. Box 7850, Toledo, OH 43619. Representative: James M. Burtch, 100 East Broad St. Columbus, OH 43215. *Lime, limestone, and lime products,* from the facilities of United States Steel Corp. at Lorain, OH to the facilities of United States Steel Corp. in Allegheny County, PA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): United States Steel Corporation, 600 Grant St., Rm 568, Pittsburgh, PA 15230. Send protests to: Interstate Commerce Commission, Bureau of Operations, 600 Arch St., Rm. 3238, Philadelphia, PA 19106.

MC 109124 (Sub-73TA), filed March 16, 1979. Applicant: SENTLE TRUCKING CORPORATION, P.O. Box 7850, Toledo, OH 43619. Representative: James M. Burtch, 100 East Broad St. Columbus, OH 43215. *Iron and steel articles,* between the facilities of Crucible, Inc., a Division of Colt Industries at Midland, PA, on the one hand, and, on the other points in AL, AR, FL, GA, LA, MO, MS, NC, SC, TN, TX and VA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Crucible, Inc., Division of Colt Industries, P.O. Box 226, Midland, PA 15059. Send protests to: Interstate Commerce Commission, Bureau of Operations, 600 Arch St., Rm. 3238, Philadelphia, PA 19106.

MC 109124 (Sub-74TA), filed March 13, 1979. Applicant: SENTLE TRUCKING CORPORATION, P.O. Box 7850, Toledo, OH 43619. Representative: James M. Burtch, 100 East Broad St. Columbus, OH 43215. *Lime, limestone and products thereof including High Temperature Bonding Mortar, in bags or containers,* from Fremont, Oh to points in IN, MI, and Chicago, IL (including points in the commercial zone), for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Pfizer, Inc., P.O. Box 46, Gibsonburg, OH 43431. Send protests to: Interstate Commerce Commission, Bureau of Operations, 600 Arch St., Rm. 3238, Philadelphia, PA 19106.

MC 109124 (Sub-75TA), filed March 13, 1979. Applicant: SENTLE TRUCKING CORPORATION, P.O. Box 7850, Toledo, OH 43619. Representative: James M. Burtch, 100 East Broad St., Suite 1800, Columbus, OH 43215. *Lime, limestone and products thereof, including High Temperature Bonding Mortar, in bags or containers,* from Gibsonburg (Sandusky County), OH to points in DC, KY, MD, NJ, PA, VA, and WV, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Pfizer, Inc., P.O. Box 46, Gibsonburg, OH 43431. Send protests to: Interstate Commerce Commission, Bureau of Operations, 600 Arch St., Rm. 3238, Philadelphia, PA 19106.

MC 109124 (Sub-76TA), filed March 14, 1979. Applicant: SENTLE TRUCKING CORPORATION, P.O. Box 7850, Toledo, OH 43619. Representative: James M. Burtch, 100 E. Broad St., Suite 1800, Columbus, OH 43215. *Limestone, in bulk,* from Woodville, OH to the facilities of PPG Industries, Inc., at Cumberland, MD, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Ohio Lime Company, A Subsidiary of General Refractories, P.O. Box 128 Woodville, OH 43469. Send protests to: Interstate Commerce Commission, Bureau of Operations, 600 Arch St., Rm. 3238, Philadelphia, PA 19106.

MC 109124 (Sub-77TA), filed March 16, 1979. Applicant: SENTLE TRUCKING CORPORATION, P.O. Box 7850, Toledo, OH 43619. Representative: James M. Burtch, 100 East Broad St., Columbus, OH 43215. *Iron and steel articles,* between the facilities of Crucible, Inc., Division of Colt Industries at Midland, PA, on the one hand, and, on the other, points in CT, DE, MD, NJ, NY and WV, for 180 days. Supporting Shipper(s): Crucible, Inc., Division of Colt Industries, P.O. Box 226, Midland, PA 15059. Send protests to: Interstate Commerce Commission, Bureau of Operations, 600 Arch St., Rm. 3238, Philadelphia, PA 19106.

MC 109584 (Sub-193TA), filed March 28, 1979. Applicant: ARIZONA PACIFIC TANK LINES, P.O. Box 7240, Denver, CO 80207. Representative: Rick Barker (same address as applicant). *Animal feeds, liquid,* in bulk, in tank vehicles, from Clovis, NM to points in Imperial County, CA for 180 days. Underlying ETA seeks 90 days authority. Supporting Shipper(s): Jay W. Chilton, Inc., 1449 Marelen Dr., Fullerton, CA 92635. Send protests to: D/S Roger L. Buchanan, Interstate Commerce Commission, 492 U.S. Customs House, 721 19th St., Denver, CO 80202.

MC 111045 (Sub-168TA), filed March 26, 1979. Applicant: REDWING CARRIERS, INC., 8515 Palm River Road, P.O. Box 426, Tampa, FL 33601. Representative: L. W. Fincher (same address as applicant). *Petroleum* and *petroleum products,* in packages and in bulk, from Bradford, PA, to VA, NC, SC, GA, FL, AL, MS, LA, and TN for 180 days. Supporting Shipper(s): Witco Chemical Corporation, 77 N. Kendall Avenue, Bradford, PA 16701. Send protests to: Donna M. Jones, Transportation Assistant, Interstate Commerce Commission, Monterey Building, Suite 101, 8410 N.W. 53rd Terrace, Miami, FL 33166.

MC 111274 (Sub-38TA), filed March 20, 1979. Applicant: SCHMIDGALL TRANSFER, INC., P.O. Box 356, Morton, IL 61550. Representative: (same address as applicant). Materials used or useful in the installation, erection and completion of pole and panel buildings, between Iowa, Illinois, Michigan, Mississippi, Arkansas, Alabama, Washington and Oregon as well as ports of entry on the U.S.-Canadian Boundary in Washington and Montana on the one hand, and Allenton, WI on the other. Supporting Shipper(s): Jack Walters and Sons Corp., P.O. Box 388, Allenton, WI 53002. Send protests to: Charles Little, DS, Interstate Commerce Commission, Room 414 Leland Office Building, Springfield, IL 62701.

MC 111545 (Sub-277TA), filed March 5, 1979. Applicant: HOME TRANSPORTATION COMPANY, INC., P.O. Box 6426, Station A, Marietta, GA 30065. Representative: Robert E. Born (Same as applicant). *Iron and steel articles, forms N.O.I.* from Springfield, MO to Drakesboro, KY for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Acme Structural, Inc., 2101 N. Packer Rd., Springfield, MO 65803. Send protests to: Sara K. Davis, T/A ICC, 1252 W. Peachtree St., N.W., Rm. 300, Atlanta, GA 30309.

MC 111545 (Sub-278TA), filed March 7, 1979. Applicant: HOME

TRANSPORATION COMPANY, INC., 1425 Franklin Road, S.E., Marietta, GA 30067. Representative: Robert E. Born, P.O. Box 6426, Station A, Marietta, GA 30065. *(1) Irrigation systems and solar energy heating and cooling systems* from Valley, NE to points in MN, IA, MO, WI, IL, KY, IN, MI, OH, WV, VA, MD, NJ, DE, PA, NY, MA, CT, RI and TX and points in CA. *(2) Pipe, tubing, light poles, mast arms, brackets, bases and transmission poles* from Valley, NE to points in MN, IA, MO, WI, IL, KY, IN, MI, OH WV, VA, MD, NJ, DE PA, NY, MA, CT and RI and points in CA, for 180 days. An ETA seeks 90 days authority. Supporting Shipper(s): Valmont Industries, Hwy. 275 & Neb. 64, Valley, NE 68064. Send protests to: Sara K. Davis, T/A ICC, 1252 W. Peachtree St., NW, Rm. 300, Atlanta, GA 30309.

MC 112595 (Sub-86TA), filed February 28, 1979. Applicant: FORD BROTHERS, INC., P.O. Box 727, Ironton, OH 45638. Representative: Richard T. Trettin, some address as applicant. *Liquid chemicals, in bulk, in tank vehicles,* from the plant sites of Union Carbide Corporation, at or near Charleston, WV, to points in AL, CT, DE, GA, IA, IL, IN, KS, KY, LA, MA, MD, MI, MN, MO, MS, NC, NE, NH, NJ, NY, OH, PA, SC, TN, TX, VA and WI, for 180 days. An underlying ETA seeks 30 days authority. Supporting shipper(s): Union Carbide Corporation, R. L. Juillerat, Sr. Transportation Analyst, 270 Park Ave., NY, NY 10017. Send protests to: Ruth F. Stark, Secy., ICC, Room 3108 Federal Bldg., 500 Quarrier St., Charleston, WV 25301.

MC 113024 (Sub-159TA), filed April 2, 1979. Applicant: ARLINGTON J. WILLIAMS, INC., 1398 S. DuPont Highway, Smyrna, DE 19977. Representative: Samuel W. Earnshaw, 833 Washington Bldg., Washington, DC 20005. *Contract carrier:* Irregular routes: *Clothing, dry goods, drugs, medicines, toilet preparations and articles,* from Dover, DE to the commercial zone of St. Paul, MN, including St. Paul, for 90 days, for the account of International Playtex, Inc. Supporting shipper(s): International Playtex, Inc., P.O. Box 631, Dover, DE 19901. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore, MD 21201.

MC 113325 (Sub-158TA), filed March 23, 1979. Applicant: SLAY TRANSPORTATION CO., INC., 2001 S. 7th St., St. Louis, MO 63104. Representative: T. M. Tahan, same as above. *Chemicals,* in bulk, in tank vehicles, from the facilities of Dow Chemical Co., U.S.A., at or near Brazoria County, TX to points in LA, MS, AL, FL, GA, SC, NC, TN, AR, OK, KS, MO, KY, WV, OH, IN, IL, IA, MN, WI and MI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Dow Chemical U.S.A., Freeport, TX 77541. Send protests to: P. E. Binder, DS, ICC, Rm 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 113434 (Sub-129TA), filed February 28, 1979. Applicant: GRA-BELL TRUCK LINE, INC., A–5253 - 144th Avenue, Holland, MI 49423. Representative: Roger VanWyk, A–5253, 144th Avenue, Holland, MI 49423. Television parts and sub-assemblies, from the plant site of Owens-Illinois, Inc., Columbus, OH to Melrose Park, IL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Owens-Illinois, Inc., P.O. Box 1035, Toledo, OH 43666. Send protests to: C. R. Flemming, D/S, ICC, 225 Federal Building, Lansing, MI 48933.

MC 114965 (Sub-65TA), filed April 9, 1979. Applicant: CYRUS TRUCK LINE, INC., P.O. Box 327, Iola, KS 66749. Representative: Charles H. Apt, 104 South Washington, Iola, KS 66749. *Dry fertilizer and fertilizer ingredients in bulk or in bag,* from Brunswick River Terminal, Inc., at or near Brunswick, MO. to all points and places in IA, IL, KS & NE, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Olin Corporation, P.O. Box 991, Little Rock, AR 72203. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 101 Litwin Bldg., Wichita, KS 67202.

MC 117815 (Sub-310TA), filed March 13, 1979. Applicant: PULLEY FREIGHT LINES, INC., 405 S.E. Twentieth Street, Des Moines, IA 50317. Representative: Paul L. Haskins (same as applicant). *Meat, meat products, meat by-products, and articles distributed by meat packing houses* as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of Rath Packing Co. at Waterloo, IA to points in Indianapolis, IN and its commercial zone for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Rath Packing Co., Sycamore and Elm Streets, Waterloo, IA 50704. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 117815 (Sub-311TA), filed March 23, 1979. Applicant: PULLEY FREIGHT LINES, INC., 405 S.W. Twentieth Street, Des Moines, IA 50317. Representative: Paul L. Haskins (same as applicant). *Such commodities as are dealt in by wholesale grocers (except commodities in bulk), from St. Louis, MO and its commercial zone, to points in IA on and West of U.S.* Hwy 65 and to Chariton, IA, and Lincoln, Norfolk and Omaha, NE and points in their commercial zones for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Lever Brothers Company, 1400 N. Pennsylvania Ave., St. Louis, MO 63133. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 117815 (Sub-312TA), filed March 27, 1979. Applicant: PULLEY FREIGHT LINES, INC., 405 S.E. 20th St., Des Moines, IA 50317. Representative: Jack H. Blanshan, Attorney, Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. *Meat, meat products, meat by-products and articles distributed by meat packinghouses* as described in Sections A and C to Appendix I of Descriptions in Motor Carrier Certificates 61 M.C.C. 209 and 766 (except commodities in bulk) (1) from the facilities of Peschke Packing Co. at Detroit, MI and its Commercial Zone, to points in IN and Chicago, IL, and Plover, Racine, Sheboygan and Waukesha, WI and their respective commercial zones; and (2) from Nashville, TN and Chicago, IL and their respective commercial zones to the facilities of Peschke Packing Co. at Detroit, MI and its commercial zone for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Peschke Packing Co., 18615 Sherwood Ave., Detroit, MI 38234. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 117815 (Sub-313TA), filed March 27, 1979. Applicant: PULLEY FREIGHT LINES, INC., 405 S.E. Twentieth St., Des Moines, IA 50317. Representative: Paul L. Haskins (same as applicant). *Frozen foods* from the facilities of Campbell Soup Co. located at Omaha, NE and its commercial zone to points in IA and Alexandria, E. Grand Forks, Marshall, Thief River Falls, Wadena, and Worthington, MN and their respective commercial zones for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Campbell Soup Co., 1202 Douglas St., Omaha, NE 68102. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 117815 (Sub-314TA), filed March 27, 1979. Applicant: PULLEY FREIGHT LINES, INC., 405 S.E. Twentieth Street, Des Moines, IA 50317. Representative: Jack H. Blanshan, Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. *Such commodities as are dealt in by business and office supply companies* from the facilities of United Stationers at Forest Park, IL to Minneapolis, MN and their

respective commercial zones for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): United Stationers, 1701 S. First Ave., Maywood, IL 60153. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 117815 (Sub-315TA), filed March 27, 1979. Applicant: PULLEY FREIGHT LINES, INC., 405 S.E. Twentieth St., Des Moines, IA 50317. Representative: Jack H. Blanshan, Attorney, Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. *Such commodities as are dealt in by wholesale grocers* (except commodities in bulk) from the facilities of Preferred Products, Inc., at Jonathan, MN and its commercial zone to Urbana, IL and Des Moines, IA and their commercial zones for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Preferred Products, Inc., 312 Lake Hazeltine Dr., Chaska, MN 55318. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 118535 (Sub-135TA), filed March 1, 1979. Applicant: TIONA TRUCK LINE, INC., 102 West Ohio, Butler, MO 64730. Representative: Tom Ventura, 102 West Ohio, Butler, MO 64730. *Soda Ash*, from producing plants at or near Green River, WY to Gurnee, IL and Winchester, IN for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Anchor Hocking Corp., 109 North Broad St., Lancaster, OH. Send protests to: DS John V. Barry, 600 Fed Bldg., 911 Walnut, Kansas City, MO 64106.

MC 119315 (Sub-26TA), filed March 13, 1979. Applicant: FREIGHTWAY CORPORATION, 131 Matzinger Road, Toledo, OH 43612. Representative: Paul F. Beery, Beery & Spurlock Co., L.P.A., 275 East State St., Columbus, OH 43215. *Janitorial supplies, starches, cleaning supplies and plastic bottles (except commodities in bulk),* from the plantsite of Purex Corporation at or near Toledo, OH to points in IN and MI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Purex Corporation, 6120 North Detroit Ave., Toledo, OH 43612. Send protests to: Interstate Commerce Commission, Bureau of Operations, 600 Arch St., Rm. 3238, Philadelphia, PA 19106.

MC 120364 (Sub-20TA), filed February 13, 1979. Applicant: A & B FREIGHT LINES, INC., 2800 Falund Street, Rockford, IL 61109. Representative: Robert M. Kaske (address same as applicant). *(1) Lawn Equipment and Parts,* between Genoa, IL on the one hand, and on the other IA, IN, MI, MN, and WI; and *(2) Materials and Equipment* used in the manufacture of (1), on the return movement, restricted to the facilities of Sycamore Manufacturing Company at Genoa, IL, for 180 days. Supporting shipper(s): Sycamore Manufacturing Company, Genoa, IL 60135. Send protests to: Annie Booker, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

No. MC 123314 (Sub-28TA), filed March 16, 1979. Applicant: JOHN F. WALTER, INC., P.O. Box 175, Newville, PA 17241. Representative: Christian V. Graf, 407 North Front Street, Harrisburg, PA 17101. Canned and preserved foodstuffs, from the facilities of Heinz U.S.A., Division of H. J. Heinz Company, at or near Fremont and Toledo, OH to points in Washington, DC and its commercial zone. Restricted to traffic originating at the named origins and destined to the named destinations, for 180 days. Supporting shipper(s): Heinz U. S. A., Division of H. J. Heinz Co., P.O. Box 57, Pittsburgh, PA 15230. Send protests to: Charles F. Myers, D/S, Interstate Commerce Commission, Bureau of Operations, Room 278, Federal Bldg., 228 Walnut St., P.O. Box 869, Harrisburg, PA 17108.

MC 123314 (Sub-29TA), filed March 26, 1979. Applicant: JOHN F. WALTER, INC., P.O. Box 175, Newville, PA 17241. Representative: Christian V. Graf, Esquire, 407 North Front Street, Harrisburg, PA 17101. (1) Such merchandise as is dealt in by retail, wholesale, chain grocery and feed business houses; and (2) materials, ingredients and supplies used in the manufacture, distribution and sale of the products in (1) above, between the facilities used by Ralston Purina Company at or near Hampden Township, Cumberland County, PA, on the one hand, and, on the other, the facilities used by Ralston Purina Company at or near Dunkirk and Buffalo, NY. Restricted to traffic originating at the named origins and destined to the named destinations. Supporting shipper(s): Ralston Purina Company, Checkerboard Square, St. Louis, MO 63188. Send protests to: Interstate Commerce Commission, Wm. J. Green, Jr. Federal Bldg., 600 Arch St., Rm. 3238, Philadelphia, PA 19106.

MC 124174 (Sub-139TA), filed March 13, 1979. Applicant: MOMSEN TRUCKING CO., 13811 "L" Street, Omaha, NE 68137. Representative: Karl E. Momsen (same address as applicant). *Aluminum and aluminum articles,* from Oswego, NY, to OH, WV, GA, MI, KY, IL, and Williamsburg, VA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Clifford G. Pearson, Alcan Aluminum Corporation, P.O. Box 6977, Cleveland, OH 44101. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 124174 (Sub-140TA), filed March 12, 1979. Applicant: MOMSEN TRUCKING CO., 13811 "L" Street, Omaha, NE 68137. Representative: Karl E. Momsen (same address as above). *(1) Cabinets and such commodities that are useful in the erection or installation thereof,* from Auburn, NE to IA, IL, KS, MN, MO, NE, ND, SD, and WI; and *(2) Material, equipment and supplies as are used in the manufacture or assembly of the commodities in (1) above,* from IA, IL, KS, MN, MO, NE, SD, and WI to Auburn, NE, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): David Orkin, Triangle Pacific Corp., 4255 LBJ Freeway, Dallas, TX 75234. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 124174 (Sub-141TA), filed March 12, 1979. Applicant: MOMSEN TRUCKING CO., 13811 "L" Street, Omaha, NE 68137. Representative: Karl E. Momsen (same address as applicant). *Iron and steel and iron and steel articles,* from Auburn and Buffalo, NY to OH, MO, IN, KY, IL, MI, WI, WV, IA, KS, NE, MN, and PA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Ryan Hoover, Ambassador Steel Corp., 3415 S. Lafountain, Kokomo, IN 46901. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 125985 (Sub-26TA), filed March 13, 1979. Applicant: AUTO DRIVEAWAY COMPANY, 310 South Michican Avenue, Chicago, IL 60604. Representative: Daniel B. Johnson, 4304 East-West Highway, Washington, D.C. 20014. Trucks greater than ¾ ton and self-propelled vehicles in secondary movements in driveaway service between points in Waukesha County, WI, on the one hand, and, on the other, points in IL for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Dalum's Utility Equipment Company, Inc., 3630 North 126th Street, Brookfield, WI 53005. Send protests to: Annie Booker, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 126305 (Sub-113TA), filed April 6, 1979. Applicant: BOYD BROTHERS TRANSPORTATION CO., INC., Route 1, Box 18, Clayton, AL 36016. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Waste or scrap paper,* from points in AR, FL, GA,

IL, IA, KY, LA, MS, MO, NC, SC, and TN, to the facilities of the National Gypsum Co. at or near Anniston, AL. For 180 days. Supporting shipper(s): Gold Bond Building Products, Division of National Gypsum Company, 2001 Rexford Road, Charlotte, NC 28211. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616—2121 Building, Birmingham, AL 35203.

MC 126375 (Sub-17TA), filed March 5, 1979. Applicant: CEL TRANSPORTATION COMPANY, P.O. Box 447, Latrobe, PA 15650. Representative: William A. Gray, Esquire, Wick, Vuono & Lavelle, 2310 Grant Building, Pittsburgh, PA 15219. *Animal fats, vegetable oils and feed supplements,* in bulk, in tank vehicles, between Linville, VA, on the one hand, and, on the other, points in Ohio, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Jacob Stern & Sons, Inc., Suite 910, Benjamin Fox Pavilion, Jenkintown, PA 19046. Send protests to: John J. England, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

MC 126375 (Sub-18TA), filed March 27, 1979. Applicant: CEL TRANSPORTATION COMPANY, P.O. Box 447, Latrobe, PA 15650. Representative: William A. Gray, Esquire, Wick, Vuono & Lavelle, 2310 Grant Building, Pittsburgh, PA 15219. *Fluorspar,* in bulk, in tank vehicles from East Liverpool, Ohio to Latrobe, PA under a continuing contract or contracts with Latrobe Steel Company, Latrobe, PA, for 180 days. An underlying ETA seeks authority for 90 days. Supporting shipper(s): Latrobe Steel Company, 2626 S. Ligonier Street, Latrobe, PA 15650. Send protests to: John J. England, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

MC 126844 (Sub-78TA), filed March 6, 1979. Applicant: R. D. S. TRUCKING CO., INC., 1713 North Main Road, Vineland, NJ 08360. Representative: Kenneth F. Dudley, 611 Church Street, P.O. Box 279, Ottumwa, IA. *General commodities,* from Chicago, IL, to points in CO, FL, GA, MN, MO, NE, NJ, NY, PA and TX, when moving on bills of lading of EAST-WEST Shippers Association, Inc.; from Philadelphia, PA, to points in CO, FL, GA, IL, IN, MI, MN, MO, NE, TX and WI when moving on bills of lading of West Coast Shippers Association, Inc.; from Marinette, WI, to Chicago, IL and Philadelphia, PA, when moving on bills of lading of East-West Shippers Association, Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): East West Shippers Association, Inc., 2000 South 71st St., Philadelphia, PA 19142. West Coast Shippers Association, Inc., 2000 South 71st St., Philadelphia, PA 19142. Send protests to: District Supervisor, ICC, 428 East State Street, Room 204, Trenton, NJ 08608.

MC 126844 (Sub-79TA), filed March 19, 1979. Applicant: R.D.S. TRUCKING CO., INC., 1713 North Main Road, Vineland, NJ 08360. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, Iowa 52501. *Malt beverages,* from the facilities of Pabst Brewing Co. at Perry, GA to points in NJ north of Interstate 195 and points in MD, NY and PA, for 180 days. Supporting Shipper(s): Pabst Brewing Company, 917 W. Juneau Avenue, Milwaukee, WI 53201. Send protests to: District Supervisor, ICC, 428 East State Street, Room 204, Trenton, NJ 08608.

MC 126844 (Sub-80TA), filed March 19, 1979. Applicant: R.D.S. TRUCKING CO., INC., 1713 North Main Road, Vineland, NJ 08360. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, Iowa 52501. *Food and food products* (except commodities in bulk), from Vineland, NJ to points in KS, NE and IA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Venice Maid Company, Inc., 270 North Mill Road, Vineland, NJ 08360. Send protests to: District Supervisor, ICC, 428 East State Street, Room 204, Trenton, NJ 08608.

MC 126844 (Sub-81TA), filed March 19, 1979. Applicant: R.D.S. TRUCKING CO., INC., 1713 North Main Road, Vineland, NJ 08360. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, Iowa 52501. *Refractory products and equipment, material and supplies* used in the manufacture and distribution of refractory products (except in bulk) from Baltimore and Leslie, MD; and Cape May, NJ to points in AR, CO, IL, IN, IA, KS, MI, MO, NE, OH, OK and WI, for 180 days. Supporting Shipper(s): Division of Dresser Industries, Inc., Harbison-Walker Refractories, 2 Gateway Center, Pittsburgh, PA 15222. Send protests to: District Supervisor, ICC, 428 East State Street, Room 204, Trenton, NJ 08608.

MC 128205 (Sub-67TA), filed February 14, 1979. Applicant: BULKMATIC TRANSPORT COMPANY, 12000 South Doty Avenue, Chicago, IL 60628. Representative: Arnold L. Burke, 180 North LaSalle Street, Chicago, IL 60601. *Starch,* in bulk, from the facilities of Clinton Corn in or near Clinton, IA to points in IL, IN, OH, WI and MI, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Clinton Corn Processing Company, 1251 Beaver Channel Parkway, Clinton, IA 52732. Send protests to: Annie Booker, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 128205 (Sub-68TA), filed February 26, 1979. Applicant: BULKMATIC TRANSPORT COMPANY, 12000 South Doty Avenue, Chicago, IL 60628. Representative: Arnold L. Burke, 180 North LaSalle Street, Chicago, IL 60601. *Salt,* in bulk, from Akron, OH to IN, IL and MI, for 180 days. Supporting Shipper(s): Diamond Crystal Salt Company, 916 South Riverside Avenue, St. Clair, MI 48079. Send protests to: Annie Booker, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 128205 (Sub-69TA), filed February 8, 1979. Applicant: BULKMATIC TRANSPORT COMPANY, 12000 South Doty Avenue, Chicago, IL 60628. Representative: Arnold L. Burke, 180 North LaSalle Street, Chicago, IL 60601. *Dry sugar,* in bulk from the facilities of American Crystal Sugar in or near Chaska, MN to the facilities of General Foods, in or near Battle Creek, MI, Chicago, IL, Kankakee, IL and Lafayette, IN, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): American Crystal Sugar, 101 N. Third Street, Moorhead, MN 56560. Send protests to: Annie Booker, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 128205 (Sub-70TA), filed February 12, 1979. Applicant: BULKMATIC TRANSPORT COMPANY, 12000 South Doty Avenue, Chicago, IL 60628. Representative: Arnold L. Burke, 180 North LaSalle Street, Chicago, IL 60601. *Animal Feed, Animal Feed Ingredients and Animal Health Care Products* in bulk from the facilities of Supersweet Feeds (1) at Nappanee, IN to IL, MI and OH; and (2) at Danville, IL to IN, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Supersweet Feeds, 301 South Jacson Street, Nappanee, IN 46550. Send protests to: Annie Booker, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South

Dearborn Street, Room 1386, Chicago, IL 60604.

MC 134064 (Sub-26TA), filed March 6, 1979. Applicant: INTERSTATE TRANSPORT, INC., 1600 Highway 129 South, Gainesville, GA 30501. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. *Hanging carcass beef* from the facilities of Shapiro Packing Company at or near Augusta, GA to points in AL for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Shapiro Packing Company, P.O. Box 119, Augusta, GA 30903. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., N.W., Rm. 300, Atlanta, GA 30309.

MC 134105 (Sub-50TA), filed April 5, 1979. Applicant: CELERYVALE TRANSPORT, INC., 1318 East 23rd Street, Chattanooga, TN 37404. Representative: L. D. Miller III (same address as applicant). *Foodstuffs* from Chattanooga Warehouse and Cold Storage at Chattanooga, TN to Falmouth, VA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Kitchens of Sara Lee, 500 Waukegan Road, Deerfield, IL 60015. Send protests to: Glenda Kuss, TA, ICC, Suite A–422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 135104 (Sub-1TA), filed March 27, 1979. Applicant: A. J. (ARCHIE) GOODALE LIMITED, 2559 Barton Street, East, Hamilton, Ontario, Canada. Representative: Robert D. Gunderman, Esq., 710 Statler Building, Buffalo, NY 14202. *Bridge girders, the transportation of which because of size or weight require the use of special equipment, and parts and assemblies for bridge girders,* from ports of entry on the International Boundary line between the United States and Canada on the Niagara River to all points in NY, for 180 days. Supporting Shipper(s): Peerless Steel Forwarders Ltd., 2391 Cawthra Rd., Mississauga, Ontario. Bridge & Tank Co., Ltd., 390 Gage Avenue, Hamilton, Ontario. York Steel Ltd., 75 Ingram Dr., Toronto, Ontario. Canron Limited (Eastern Structural Div.), 100 Disco Rd., Rexdale, Ontario. Send protests to: Richard H. Cattadoris, DS, ICC, 910 Federal Bldg., 111 W. Huron Street, Buffalo, NY 14202.

MC 135684 (Sub-90TA), filed February 28, 1979. Applicant: BASS TRANSPORTATION CO., INC., P.O. Box 391, Old Croton Rd., Flemington, NJ 08822. Representative: Ronald L. Knorowski, P.O. Box 391, Old Croton Rd., Flemington, NJ 08822. Such commodities as are dealt in by retail and chain grocery, hardware and drugstores, in containers, and materials and supplies (except in bulk) used in the manufacture and distribution of such commodities from the facilities of Boyle-Midway, at or near Canton, OH to points in NY counties of Chautaugua, Cattaraugus, Erie, Niagara, Orleans, Genesse, Wyoming and Allegheny, and to points in PA on and west of U.S. Highway 219, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): American Home Products Corporation, Boyle Midway Division, 685 Third Ave., New York, NY 10017. Send protests to: District Supervisor, ICC, 428 East State Street, Room 204, Trenton, NJ 08608.

MC 135684 (Sub-91TA), filed March 13, 1979. Applicant: BASS TRANSPORTATION CO., INC., P.O. Box 391, Old Croton Rd., Flemington, NJ 08822. Representative: Ronald L. Knorowski, P.O. Box 391, Old Croton Rd., Flemington, NJ 08822. Such commodities as are dealt in by wholesale and retail, chain grocery, hardware and drug stores, in containers, from the facilities of S. C. Johnson & Son, Inc., at or near Racine and Waxdale, WI to points in CT, IN, MI, MA, NJ, NY, OH, PA, MD and RI for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): S. C. Johnson & Son, Inc., 1525 Howe Street, Racine, WI 53403. Send protests to: District Supervisor, ICC, 428 East State Street, Room 204, Trenton, NJ 08608.

MC 135874 (Sub-163TA), filed March 16, 1979. Applicant: LTL PERISHABLES, INC., 550 East 5th Street South, South St. Paul, MN 55075. Representative: Paul Nelson, (same address as applicant). *Playground apparatus, gas and electric grills, scooters, revolving chairs, recreational equipment, games and toys (except commodities in bulk)* from Du Quoin, Ordill, and Marion, IL to points in IA, MN, NE, ND, SD and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Turco Manufacturing Company, Traffic Manager, 501 South Line, Du Quoin, IL. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 135874 (Sub-164TA), filed March 26, 1979. Applicant: LTL PERISHABLES, INC., 550 East 5th Street South, South St. Paul, MN 55075. Representative: Paul Nelson, (same address as applicant). *Building materials and supplies (except in bulk)* from the facilities of Alside, Inc., at or near Cuyahoga Falls, OH to the commercial zones of Chicago, IL, Omaha, NE, and Kansas City, KS-MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Alside, Inc., Traffic Manager, P.O. Box 2010, Akron, OH 44309. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 135924 (Sub-6TA), filed March 6, 1979. Applicant: SIMONS TRUCKING CO., INC., 3851 River Road, Grand Rapids, MN 55744. Representative: David and Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. *Phenolic resin* from Peachtree, GA to Grand Rapids, MN, for 180 days. Supporting shipper(s): Blandin Wood Products, 115 Southwest First Street, Grand Rapids, MN 55744. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 135924 (Sub-7TA), filed March 8, 1979. Applicant: SIMONS TRUCKING CO., INC., 3851 River Road, Grand Rapids, MN 55744. Representative: David and Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. *Lubricants (except in bulk, in tank vehicles)* from Cleveland, OH to Grand Rapids and International Falls, MN and points in CN, for 180 days. Supporting shipper(s): Industrial Lubricant Company, 1018 Fourth Street, Northwest, Grand Rapids, MN 55744. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 136315 (Sub-67TA), filed February 28, 1979. Applicant: OLEN BURRAGE TRUCKING, INC., Rt. 9, Box 22–A, Philadelphia, MS 39350. Representative: Fred W. Johnson, Jr., P.O. Box 22628, Jackson, MS 39205. *Iron and steel and iron and steel articles* from Birmingham, AL; Burns Harbor, Gary, Indiana Harbour and LePorte, IN; Chicago, Granite City, Madison and Hennepin, IL; and Pittsburgh, PA, to the facilities of Emerson Electric at or near Mena, Paragould and Rogers, AR; Russellville, KY; Independence, KS; Philadelphia, Oxford and Tupelo, MS; and Kennett, MO, for 180 days. Supporting Shipper(s): Emerson Electric Co., 8100 W. Florissant Ave., St. Louis, MO 63136. Send protests to: Alan Tarrant, D/S, ICC, Rm. 212, 145 E. Amite Bldg., Jackson, MS 39201.

MC 136315 (Sub-68TA), filed February 28, 1979. Applicant: OLEN BURRAGE TRUCKING, INC., Route 9, Box 22–A, Philadelphia, MS 39350. Representative: Fred W. Johnson, Jr., P.O. Box 22628, Jackson, MS 39205. *Iron and steel articles* from the facilities of Bethlehem Steel Corp. located at Burns Harbour, IN to all points in AL, AR, GA, LA, MS, OK,

TN and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Bethlehem Steel Corp., Box 248, Chesterton, IN 46304. Send protests to: Alan Tarrant, D/S, ICC, Room 212, 145 E. Amite Bldg., Jackson, MS 39201.

MC 136315 (Sub-69TA), filed March 21, 1979. Applicant: OLEN BURRAGE TRUCKING, INC., Rt. 9, Box 22–A, Philadelphia, MS 39350. Representative: Fred W. Johnson, Jr., P.O. Box 22628, Jackson, MS 39205. *Composition board and sheets* from the facilities of Champion International Corp. at or near Oxford, MS, to Emporia, Gridley and Newton, KS; Oklahoma City and Tulsa, OK; and Arlington, Dallas, Garland, Houston, and Waco, TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Champion International Corp., Knightsbridge Drive, Hamilton, OH 45020. Send protests to: Alan Tarrant, D/S, ICC, Rm. 212, 145 E. Amite Bldg., Jackson, MS 39201.

MC 138104 (Sub-74TA), filed March 16, 1979. Applicant: MOORE TRANSPORTATION CO., INC., 3509 North Grove Street, Fort Worth, TX 76106. Representative: James W. Hightower, First Continental Bank Bldg., Suite 301, 5801 Marvin D. Love Freeway, Dallas, TX 75237. *Trailers and trailer chassis* (except those designed to be drawn by passenger automobiles), *trailer converter dollies, containers, and truck bodies,* in initial movements, in truckaway service, from the facilities of Fruehauf Corporation, at or near Ft. Wayne, IN and Middletown, PA to points in LA, AR, MO, OK and TX, and points in the United States east of the Mississippi River, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Fruehauf Corporation, P.O. Box 238, Detroit, MI 48232. Send protests to: Martha A. Powell, TA, ICC, Room 9A27 Federal Bldg., 819 Taylor St., Fort Worth, TX 76102.

MC 138104 (Sub-75TA), filed March 26, 1979. Applicant: MOORE TRANSPORTATION CO., 3509 N. Grove Street, Fort Worth, TX 76106. Representative: Bernard H. English, 6270 Firth Road, Fort Worth, TX 76116. *Cast iron pipe* from the facilities of U. S. Pipe and Foundry Company, at or near Bessemer, AL to Montrose, CO, for 180 days. An underlying ETA seeks 90 days. Supporting Shipper(s): U. S. Pipe & Foundry Company, 3300 First Avenue North, Birmingham, AL 35202. Send protests to: James H. Berry, ROD, ICC, Room 9A27 Federal Bldg., 819 Taylor St., Fort Worth, TX 76102.

MC 138505 (Sub-10TA), filed March 5, 1979. Applicant: METROPOLITAN CONTRACT SERVICES, INC., 9225 Katy Freeway, Suite 110, Houston, TX 77024. Representative: Van Thompson, Jr., 5100 Westheimer, Suite 100, Houston, TX 77056. Contract carrier over irregular routes. *Such commodities as are dealt in by retail department stores* between points in MO and IL within a 50 mile radius of St. Louis, MO for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Stix, Baer & Fuller, St. Louis, MO. Send protests to: John F. Mensing, Interstate Commerce Commission, 8610 Federal Bldg., 515 Rusk Avenue, Houston, TX 77002.

MC 138805 (Sub-6TA), filed March 20, 1979. Applicant: S & L SERVICES, INC., RD 1, Milton, PA 17847. Representative: Terrence D. Jones, 2033 K Street, NW., Washington, D.C. 20006. Foodstuffs, except in bulk, from the facilities of American Home Foods Division, American Home Products Corporation, at or near Milton, PA to points in Ohio. Supporting Shipper(s): American Home Foods Division, American Home Products Corporation, 685 Third Avenue, New York, N.Y. 10017. Send protests to: Interstate Commerce Commission, Wm. J. Green, Jr. Federal Bldg., 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 139495 (Sub-434TA), filed March 2, 1979. Applicant: NATIONAL CARRIERS, INC., P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Springs, MD 20910. *Such commodities as are dealt in by wholesale and retail food and drug outlets (except commodities in bulk) in vehicles providing temperature control;* from the facilities utilized by Proctor & Gamble Distributing Company at or near St. Louis, MO, to points in the states of KS, OK & CO. 180 days, common, irregular; Supporting shipper: The Proctor & Gamble Distributing Company, Cincinnati, OH 45201; Send protests to: M. E. Taylor, DS, ICC, 101 Litwin Bldg., Wichita, KS 67202. Supporting Shipper(s): The Proctor & Gamble Distributing Company, P.O. Box 599, Cincinnati, OH 45201. Send protests to: M. E. Taylor, Dist. Supv., Interstate Commerce Commission, 101 Litwin Bldg., Wichita, KS 67202.

MC 139495 (Sub-435TA), filed March 14, 1979. Applicant: NATIONAL CARRIERS, INC., P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. *Abrasives, abrasive products, industrial safety products and industrial ceramics* (except commodities in bulk, in tank vehicles), from (A) Facilities of Norton Company, Worcester, MA to facilities of Norton Company, Watervliet, NY; (b) Facilities of Norton Company, Worcester, MA, to points in GA, IL, LA, OH, OK, TX and WI; (C) Between facilities of Norton Company, in Watervliet, NY on the one hand, and, on the other, Brownsville and Stephenville, TX; (D) Facilities of Norton Company, Watervliet, NY to facilties of Norton Company, Memphis, TN; (E) Facilities of Norton Company, Ravenna, OH to points in LA, OK and TX; 180 days, common, irregular; 90-day ETA filed simultaneously; Supporting shipper: Norton Company, Worcester, MA; Send protests to: M. E. Taylor, DS, ICC, 101 Litwin Bldg., Wichita, KS 67202.

MC 139495 (Sub-436TA), filed March 21, 1979. Applicant: NATIONAL CARRIERS, INC., P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. *Chemicals, cleaning, scouring and washing compounds, plastic liquid, defoaming compounds, ink, plastic sheeting and laminating machinery and laminating machinery parts,* from facilities of Thiokol/Dynachem Corporation in Tustin and Orange, CA to Indianapolis, IN; Terre Haute, IN; Elmhurst, IL; Wolburn, MA; South Hadley Falls, MA; Detroit, MI; Moss Point, MS; Kearny, NJ; Farmingdale, NY; Charlotte, NC; Matthews, NC; Deerpark, TX; Herndon, VA; for 180 days, common, irregular; 90-day ETA filed simultaneously; Supporting shipper: Thiokol/Dynachem Corporation, Santa Ana, CA 92711; Send protests to: M. E. Taylor, DS, ICC, 101 Litwin Bldg., Wichita, KS 67202.

MC 139495 (Sub-437TA), filed April 9, 1979. Applicant: NATIONAL CARRIERS, INC., P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. *Pet supplies, floor and rug cleaning machines and related cleaning compounds and soap, from facilities of Hartz Mountain Corporation* located at or near (1) Harrison, Jersey City, Bloomfield, NJ and (2) Wrens, GA to (1) points in the states of OH, IN, MI, KY, TN, AR, IA, MO and NE and (2) points in the states of MN and OK, 180 days, common, irregular; Supporting shipper: Hartz Mountain Corporation, Harrison, NJ; Send protests to: M. E. Taylor, DS, ICC, 101 Litwin Bldg., Wichita, KS 67202.

MC 143815 (Sub-7TA), filed April 6, 1979. Applicant: R & D TRUCKING CO., INC., Church Road, Lauderdale Industrial Park, Florence, AL 35630. Representative: Roland M. Lowell, 618 United American Bank Building, Nashville, TN 37219. Contract, Irregular:

(1) Adhesives, sealants, solvents, stains, preservatives and related installation supplies and equipment and (2) carpeting carpet, moldings, wood trim, and flooring installation supplies and equipment from the facilities of Roberts Consolidated Industries at or near Dayton, OH; Kalamazoo, MI and Los Angeles County, CA to points in the United States in and east of ND, SD, NE, KS, OK and TX, under a continuing contract or contracts with Roberts Consolidated Industries for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Roberts Consolidated Industries, Inc., 600 N. Baldwin Blvd., City of Industry, CA 91749. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616—2121 Building, Birmingham, AL 35203.

MC 144275 (Sub-1TA), filed March 29, 1979. Applicant: J. K. EXPRESS, INC., P.O. Box 2408, Trenton, N.J. 08690. Representative: Mel P. Booker, Jr., Esq., 110 South Columbus Street, Alexandria, VA 22314. *Contract carrier:* irregular routes: *Coatings and sealers* (except in bulk), from the facilities of Cosmicoat, Inc., located at or near Cheshire, CT to points in CT, DE, DC, FL, GA, IL, ME, MD, MA, MS, NJ, NH, NY, NC, OH, PA, RI, SC, VT, VA and WV, under a continuing contract with Cosmicoat, Inc. of Wooster, OH, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Cosmicoat, Inc., 100 Lexington Avenue, Trenton, N.J. 08618. Send protests to: District Supervisor, ICC, 428 East State Street, Room 204, Trenton, N.J. 08608.

MC 144345 (Sub-3TA), filed February 28, 1979. Applicant: DON'S FROZEN EXPRESS, INC., 3820 Airport Way, Caldwell, Idaho 83605. Representative: David E. Wishney, Attorney at Law, P.O. Box 837, Boise, Idaho 83701. *Dairy products,* from the facilities of Dairymen's Creamery Ass'n. Inc. at Caldwell, ID to Salt Lake City, UT, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Dairymen's Creamery Ass'n, Inc., P.O. Box 578, Caldwell, ID 83605. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 144345 (Sub-4TA), filed February 27, 1979. Applicant: DON'S FROZEN EXPRESS, INC., 3820 Airport Way, Caldwell, Idaho 83605. Representative: David E. Wishney, Attorney at Law, P.O. Box 837, Boise, Idaho 83701. *Furniture and window coverings and materials and supplies used in the manufacture of furniture and window coverings,* from Los Angeles, Orange, Riverside and San Bernadino Counties, CA to the facilities of Restline Products, Inc. at Nampa, ID, for 180 days, in common carriage. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Restline Products, Inc., 1324 Eleventh Ave. North Extension, Nampa, ID 83651. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 144345 (Sub-5TA), filed March 1, 1979. Applicant: DON'S FROZEN EXPRESS, INC., 3820 Airport Way, Caldwell, Idaho 83605. Representative: David E. Wishney, Attorney at Law, P.O. Box 837, Boise, Idaho 83701. *Windows and materials and supplies used in the manufacture of windows,* from Los Angeles, and Orange Counties, CA to the facilities of Hehr International, Inc. at Nampa, ID, for 180 days in common carriage. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Hehr International, Inc., P.O. Box 186, Nampa, ID 83651. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 144345 (Sub-6TA), filed March 12, 1979. Applicant: DON'S FROZEN EXPRESS, INC., 3820 Airport Way, Caldwell, Idaho 83605. Representative: David E. Wishney, Attorney at Law, P.O. Box 837, Boise, Idaho 83701. *Cleaning, scouring and washing compounds; buffing and polishing compounds; sodium hypochlorite solution; soap base compound; fabric and textile softeners; plastic bags; filters,* from the facilities of Economics Lab, Inc., at San Jose, CA to points in OR, ID, UT and WA, for 180 days in common carriage. An underlying ETA seeks 90 days authority. Supporting shipper(s): Economics Laboratory, Inc., 640 Lenfest Road, San Jose, CA 95133. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 144345 (Sub-7TA), filed March 21, 1979. Applicant: DON'S FROZEN EXPRESS, INC., 3820 Airport Way, Caldwell, ID 83605. Representative: David E. Wishney, P.O. Box 837, Boise, ID 83701. *Plastic containers and materials and supplies* used in the manufacture thereof, and materials and supplies used in the manufacture of soaps and detergents, from points in CA, OR, WA and UT to points in Ada and Canyon Counties, ID. An underlying ETA seeks 90 days authority. Supporting shipper(s): Intermountain Soap & Chemical Co., 205 South 20th, Nampa, ID 83651. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 144775 (Sub-1TA), filed April 2, 1979. Applicant: LELAND HAGE and GERALD HAGE, d.b.a. HAGE TRUCKING, Halstad, MN 56548. Representative: Gene P. Johnson, P.O. Box 2471, Fargo, ND 58108. *Liquid fertilizer,* in bulk, in tank vehicles, from Hendrum, MN to points in ND and SD, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Hendrum Fertilizer Company, Inc., P.O. Box 159, Hendrum, MN 56550. Send protests to: DS, ICC, Bureau of Operations, Room 268, Fed. Bldg. & U.S. Post Office, 657 2nd Avenue North, Fargo, ND 58102.

MC 144855 (Sub-10TA), filed March 6, 1979. Applicant: TRANS CONTINENTAL CARRIERS, 169 East Liberty Avenue, Anaheim, CA 92803. Representative: David P. Christianson, Knapp, Stevens, Grossman & Marsh, 707 Wilshire Blvd., Suite 1800, Los Angeles, CA 90017. *Frozen fruits and vegetables,* from Santa Clara, San Benito, Monterey and Santa Cruz Counties, CA, to points in the United States (except AK and HI), for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Golden West Foods, Inc., 1350 Pacheco Pass Highway, Gilroy, CA 95020. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 145025 (Sub-3TA), filed April 2, 1979. Applicant: CONSIGNOR'S, INC., P.O. Box 42, Dayton, OH 45450. Representative: Thomas F. Kilroy, Suite 406, Executive Building, 6901 Old Keene Mill Rd., Springfield, VA 22150. *Contract* carrier: irregular routes: *Such commodities as are dealt in and distributed by trading stamp companies (except foodstuffs and commodities in bulk),* between the facilities ot Top Value Enterprises, Inc., their customers and suppliers in Dayton, OH, and its commercial zone, and points in the states of ME, NH, VT, MA, CT, RI, MY, PA, NJ, DE, MD, WV, VA, NC, SC, GA, FL, OH, AL, TN, KY, MI, IN, IL, MS, LA, AR, MO, WI, OK, TX, IA, MN and DC, for 180 days. Supporting shipper(s): Top Value Enterprises, Inc., William A. Becher, Director of Transportation, 3085 Woodman Dr., Dayton, OH. Send protests to: Bureau of Operations, ICC, Wm. J. Green, Jr., Federal Bldg., 600 Arch St., Room 63238, Philadelphia, PA 19106.

MC 145065 (Sub-4TA), filed February 5, 1979. Applicant: WESTERN CARRIERS, INC., 2100 Alaskan Way, Seattle, WA 98121. Representative: George R. LaBissoniere, 1100 Norton Bldg., Seattle, WA 98104. *Frozen citrus juices, fruits, vegetables and berries*

when moving in vehicles equipped with mechanical refrigeration, from the facilities of C & W Frozen Foods at Castroville, CA to points in OR and WA, for 180 days. Supporting shipper(s): C & W Frozen Foods, 1575 Old Bayshore Highway, Burlingame, CA 94010. Send protests to: Shirley M. Holmes, T/A, ICC, 858 Federal Bldg., Seattle, WA 98174.

MC 145065 (Sub-5TA), filed January 25, 1979. Applicant: WESTERN CARRIERS, INC., 2100 Alaskan Way, Seattle, WA 98101. Representative: George R. LaBissoniere, 1100 Norton Bldg., Seattle, WA 98104. *Non-dairy milk and cream substitutes; salad dressings; and whipped toppings, chilled and frozen,* from the facilities of Presto Food Products, Inc. at Los Angeles, CA to points in OR and WA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Presto Food Products, Inc., 628 South Brandon, Seattle, WA 98108. Send protests to: Shirley M. Holmes, T/A, ICC 858 Federal Bldg., Seattle, WA 98174.

MC 145065 (Sub-6TA), filed February 1, 1979. Applicant: WESTERN CARRIERS, INC., 2100 Alaskan Way, Seattle, WA 98121. Representative: George R. LaBissoniere, 1100 Norton Bldg., Seattle, WA 98104. *Frozen citrus juices when moving in vehicles equipped with mechanical refrigeration,* from the facilities of Ventura Coastal Corporation at Ventura, CA to points in OR and WA, for 180 days. Supporting shipper(s): Ventura Coastal Corp., 2325 Vista Del Mar Drive, Ventura, CA. Send protests to: Shirley M. Holmes, T/A, ICC 858 Federal Bldg., Seattle, WA 98174.

MC 145065 (Sub-7TA), filed February 1, 1979. Applicant: WESTERN CARRIERS, INC., 2100 Alaskan Way, Seattle, WA 98121. Representative: George R. LaBissoniere, 1100 Norton Bldg., Seattle, WA 98104. *Frozen foods, when moving in vehicles equipped with mechanical refrigeration,* from the facilities of Seabrook Foods, Inc. at Los Angeles and Sanger, CA to points in OR and WA, for 180 days. Supporting shipper(s): Seabrook Foods, Inc., P.O. Box 367, Sanger, CA 93657. Send protests to: Shirley M. Holmes, T/A, ICC, 858 Federal Bldg., Seattle, WA 98174.

MC 145335 (Sub-2TA), filed March 6, 1979. Applicant: RIVER ENTERPRISES, INC., Rural Route 6, Edwardsville, IL 62087. Representative: Robert T. Lawley, Attorney at Law, 300 Reisch Building, Springfield, IL 62701. Contract carrier: Engines, engine parts, marine parts, and equipment, tools and equipment used in the repair, installation, and maintenance of engines, ships and marine equipment, for the account of National Marine Service. Supporting shipper(s): National Marine Service, Inc., P.O. Box 38, Hartford, IL 62408. Send protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission 414 Leland Office Building, 527 East Capitol Avenue, Springfield, Illinois 62701.

MC 145384 (Sub-30TA), filed March 2, 1979. Applicant: ROSE-WAY, INC., 1914 E. Euclid, Des Moines, IA 50306. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. (1) Adhesives, in containers, from the facilities of Essex Chemical Corporation at or near LaMirada, CA to points in AZ, IL, MA, MD, NJ, OR, TX, WA and WI, and (2) Wood resin, in containers, from Brunswick, GA, to the facilities of Essex Chemical Corporation at or near LaMirada, CA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Essex Chemical Corporation, 1401 Broad Street, Clifton, NJ 07015. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 145384 (Sub-31TA), filed March 26, 1979. Applicant: ROSE-WAY, INC., 1914 E. Euclid, Des Moines, IA 50309. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. *Millwork and molding* (1) from Diamond Springs, CA to points in LA, OK and TX, and (2) from Oroville and Marysville, CA, to points in IL, IN, IA, LA, MN, MI, MO, OH, OK, PA, TX and WI for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Pacific Southeast Forest Products, Inc., 5330 Primrose Drive, Suite 200, Fair Oaks, CA 95628. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 145664 (Sub-3TA), filed March 15, 1979. Applicant: STALBERGER, INC., 223 South 50th Avenue West, Duluth, MN 55806. Representative: John M. LeFever and James S. Holmes, Holmes, Kircher, Graven & Reyer, 4610 IDS Center, Minneapolis, MN 55402. *Particle board or composition board* from the United States-Canada International Boundary Line at or near Grand Portage, MN to points in MN, MI, ND, SD, NE, MO, IN, KY, KS, OH, and to points in WI on or north of Highway 29, limited to traffic originating at the facilities of MacMillan Bloedel Building Materials Limited and of Great Lakes Paper Company Limited at or near Thunder Bay, Ontario, Canada, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): MacMillan Bloedel Building Materials Ltd., Transportation Coordinator, P.O. Box 608, Thunder Bay, Ontario, Canada P7C 4W6. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 145984 (Sub-1TA), filed April 5, 1979. Applicant: A. T. BYRUM & SONS, INC., Route 4, Box 85, Ahoskie, NC 27910. Representative: F. Kent Burns, P.O. Box 1406, Raleigh, NC 27602. *Wood residuals* from Louisburg, Edenton, Ahoskie, Enfield, and Murfreesboro, NC to Franklin, VA for 180 days. An underlying ETA seeking 90 days authority has been filed. Supporting shipper(s): Union Camp Corporation, 1600 Valley Road, Wayne, NJ 07470. Send protests to: Mr. Archie W. Andrews, D/S, ICC, P.O. Box 26896, Raleigh, NC 27611.

MC 146035 (Sub-1TA), filed March 29, 1979. Applicant: SOUTHERN DRAYAGE, INC., P.O. Box 1983, Jackson, MS 39205. Representative: John A. Crawford, P.O. Box 22567, Jackson, MS 39205. *Iron and steel articles* from the facilities of Inland Steel Co. at or near E. Chicago, IN to points in Tennessee, for 180 days. An underlying ETA seeks 90 day authority. Supporting shipper(s): Inland Steel Company, 30 W. Monroe St., Chicago, IL 60603. Send protests to: Alan Tarrant, D/S, ICC, Room 212, 145 East Amite Building, Jackson, MS 39201.

MC 146054 (Sub-2TA), filed March 16, 1979. Applicant: Hi-Way Lines, Inc., 625 Van Duyn Road, Coburg, OR 97401. Representative: LAWRENCE V. SMART, JR., 419 N. W. 23rd Avenue, Portland, OR 97210. *Lumber and wood products,* from points in Multnomah, Clackamas, Hood River, Yamhill, Polk, Washington, Benton, Linn, Lane, Marion, Douglas, Josephine, Jackson, Klamath, Lake, Deschutes, Jefferson, and Crook Counties, OR to points in CA and NV, for 180 days. An underlying ETA seeks 90 day authority. Supporting shipper(s): There are nine shippers. Their statements may be examined at the office listed below and Headquarters. Send protests to: District Supervisor, A. E. Odoms, ICC, 114 Pioneer Courthouse, Portland, OR 97204.

MC 146114 (Sub-1TA), filed March 22, 1979. Applicant: RICKY SOWDER d.b.a, RICKY SOWDER TRUCK SERVICE COMPANY, P.O. Box 242, Savannah, TN 38372. Representative: Ricky Sowder, 1906 Rosewood Drive, Savannah, TN 38372. *Crushed stone, sand, slag, gravel, fertilizer, riprap stone and lightweight aggregates* between Itawamba, Prentiss, Alcorn and Tishomingo counties, MS; Colbert, Lauderdale counties, AL, on the one hand, and, on the other, Hardin,

McNairy, Shelby, Benton, Decatur, Wayne, Lawrence counties, TN; and Colbert, Limestone, Lauderdale and Franklin counties, AL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): (1) Southern Stone & Slag Co., P.O. Box 16117, Jackson, MS 39206; (2) Folk Construction Co., Inc., P.O. Box 309, Corinth, MS 38834. Send protests to: Floyd A. Johnson, District Supervisor, Interstate Commerce Commission, 100 North Main Building, Suite 2006, 100 North Main Street, Memphis, TN 38103.

MC 146184 (Sub-2TA), filed March 29, 1979. Applicant: RUSS TAYLOR TRUCKING, INC., R. R. 6, Watertown, WI 53094. Representative: James A. Spiegel, 6425 Odana Rd., Madison, WI 53719. Contract carrier; irregular routes; (1) *Rough Steel castings, and* (2) *Materials, equipment and supplies used in foundries* (1) from Watertown, WI to points in AR, IL, IN, OH, MI, NY, NC, PA and TX; and (2) on return moves from AR, IL, IN, OH, MI, NY, NC, PA, & TX to Watertown, WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Spuncast, Inc., Hwy. 16 By Pass, 207 Rhine Rd., Watertown, WI 53094. Send protests to: Gail Daugherty, Transportation Asst., Interstate Commerce Commission, Bureau of Operation, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 146185 (Sub-1TA), filed March 13, 1979. Applicant: ROMAN WEBER, d.b.a., BULK FEED TRANSPORT, Bartelso, IL 62218. Representative: Robert T. Lawley, 300 Reisch Building, Springfield, IL 62701. Authority sought to operate as a Contract Carrier by motor vehicle, over irregular routes, transporting: *Pet Foods,* from Davenport, IA to Vandalia, IL, for 180 days, under a continuing contract or contracts with Ralston Purina Company. An underlying ETA seeks 90 days authority. Supporting shipper(s): Ralston Purina Company, Checkerboard Square, St. Louis, MO 63188. Send protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission, 414 Leland Office Building, 527 East Capitol Avenue, Springfield, IL 62701.

MC 146294 (Sub-1TA), filed March 2, 1979. Applicant: ARKANSAS TRUCKING, INC., 3223 N. W. Avenue, El Dorado, AR 71730. Representative: Jon E. Williams, (same as applicant). *Petroleum and petroleum products,* from Shreveport and Cotton Valley, LA to Red River and Lone Star Arsenals at Texarkana, TX, for 180 days as a common carrier over irregular routes. An underlying ETA seeks 90 days authority. Supporting shipper(s): Zaroco, Inc., R.R. No. 2, Box 145, Lawrence, KS 66044. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 146294 (Sub-2TA), filed March 8, 1979. Applicant: ARKANSAS TRUCKING, INC., 3223 N.W. Avenue, El Dorado, AR 71730. Representative: Jon E. Williams (same as applicant). *Petroleum and petroleum products,* from Shreveport and Cotton Valley, LA to Long Horn Army Arsenal at Karnack, TX, for 180 days as a common carrier over irregular routes. An underlying ETA seeks 90 days authority. Supporting shipper(s): Zaroco, Inc., R.R. 2, Box 145, Lawrence, KS 66044. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 146295 (Sub-1TA), filed March 7, 1979. Applicant: MOORE'S TRUCKING, INC., P.O. Box 699, Red Bay, AL 35582. Representative: Gerald D. Colvin, Jr., 603 Frank Nelson Building, Birmingham, AL 35203. Contract, irregular: *Stone,* between points in AL, TN, and MS, under a continuing contract with Road Maintenance Supply, Inc., Jackson, MS, for 180 days. Supporting shipper(s): Road Maintenance Supply, Inc., P.O. Box 1096, Jackson, MS 39205. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operation, ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 146314 (Sub-3TA), filed February 12, 1979. Applicate: IRVIN D. BLAIR, d.b.a. D & T TRUCKING CO., 4300 Curtis Ave., Baltimore, MD 21226. Representative: Walter T. Evans, 7401 Wisconsin Ave., Washington, DC 20014. Contract carrier, irregular routes, (1) *Unfinished steel pipe,* from Baltimore, MD to Houston, TX, points in the Houston, TX commercial zone and Stephenville, TX and (2) *Raw steel billets* from Lone Star, TX to Baltimore, MD, under contract with American Seamless Tubing, Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): American Seamless Tubing, Inc., 1920 Benhill Ave., Baltimore, MD 21226. Send protests to: William L. Hughes, Dist, Supv., 1025 Federal Bldg., Charles Center, 31 Hopkins Plaza, Baltimore, MD 21201.

MC 146325 (Sub-1TA), filed March 5, 1979. Applicant: DELIVERY SERVICE INC., 6284 Claude Way East, Inver Grove Heights, MN 55075. Representative: Ralph S. Mehlhorn (same address as applicant). *Contract carrier:* irregular routes: *Computer components, subassemblies, subsystems, cables and cable assemblies* between points in Ramsey, Dakota, Jackson and Hennepin Counties, MN and Cerro Gordo County, IA, under a continuing contract or contracts with Sperry Univac Computer Systems, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Sperry Univac Computer Systems, Transportation Manager, 2276 Highcrest Road, Roseville, MN 55113. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building & U.S. Court House, 10 South 4th Street, Minneapolis, MN 55401.

MC 146385 (Sub-1TA), filed February 28, 1979. Applicant: ED TALMADGE DUNN, d.b.a. DUNN TRUCKING, Route 5, Highway 225, Chatsworth, GA 30705. Representative: Blaine Buchanan, 1024 James Building, Chattanooga, TN 37402. *Contract carrier:* irregular routes, *Carpet* from the facilities of Len-Dal Carpets, Inc. at or near Eton, GA to points in IL, IN, IA, KS, MN, NE, ND, SD and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Len-Dal Carpets, Inc., P.O. Box 39, Chatsworth, GA 30705. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., N.W., Rm. 300, Atlanta, Ga 30309.

MC 146395 (Sub-2TA), filed March 1, 1979. Applicant: W. C. PITTS CONSTRUCTION CO., INC., Hwy. 84W, P.O. Box 112, Waynesboro, MS 39367. Representative: Harold R. Ainsworth, 2307 American Bank Bldg., New Orleans, LA 70130. *Contract carrier:* irregular routes: *Lumber, poles, and pilings, ties, timbers, wood chips, shavings, sawdust, hogged fuel and plywood* from the facilities of Longleaf Forest Products, Inc., at Waynesboro, MS to points in AL and LA, for the account of North Pacific Lumber Co., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): North Pacific Lumber Co., Box 3915, Portland, OR 97208. Send protests to: Alan Tarrant, D/S, ICC, Rm. 212, 145 East Amite Bldg., Jackson, MS 39201.

MC 146404 (Sub-2TA), filed February 28, 1979. Applicant: C & J TRUCKING, INC., 2055 South High Street, Columbus, Ohio 43207. Representative: David A. Turano, 100 East Broad Street, Columbus, Ohio 43215. *Iron and steel articles, and materials, equipment, and supplies used in the manufacture and distribution of iron and steel articles (except commodities in bulk)* between the facilities of Newark Steel Company at or near Newark, Ohio on the one hand, and, on the other, points in IL, IN, KY, NC, SC, TN, VA and WV for 180

days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Newark Steel Company, 550 Wehrle Avenue, Newark, Ohio 43055. Send protests to: Frank L. Calvary, Interstate Commerce Commission, 220 Federal Building and U.S. Courthouse, 85 Marconi Boulevard, Columbus, Ohio 43215.

MC 146414 (Sub-1TA), filed March 1, 1979. Applicant: COOL TRANSPORTS, INCORPORATED, 6300 Alondra Boulevard, Paramount, CA 90723. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. *Petroleum and petroleum products,* from points in CA, to points in AZ, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Salt River Project Agricultural Improvement & Power District, P.O. Box 1980, Phoenix, AZ 85001, and Arizona Public Service, P.O. Box 21666, Phoenix, AZ 85036. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, California 90012.

MC 146424 (Sub-1TA), filed March 13, 1979. Applicant: TRANSPORTATION ANALYST, INC., d.b.a. Clarendon-Breton Truck Division, 9419 East 63rd Street, Kansas City, MO 64133. Representative: Arthur J. Cerra, P.O. Box 19251, 2100 TenMain Center, Kansas City, MO 64141. Contract, irregular. *Such commodities as are dealt in and sold or utilized by retail discount department stores,* (1) Between the warehouses of Mattingly Stores, Inc., at Kansas City and Lexington, MO and (2) from the warehouses described in (1) above to the retail discount department stores of Mattingley Stores, Inc., at Centerville, IA and points in MO for 180 days. An underlying ETA seeks 90 days. Supporting shipper(s): Mattingly Stores, Inc., 13th and Franklin, P.O. Box 10, Lexington, MO 64067. Send protests to: DS John V. Barry, Rm. 600, 911 Walnut, Kansas City, MO 64106.

MC 146425R (Sub-1TA), filed March 22, 1979. Applicant: RANDY KINDER, d.b.a. RANDY KINDER CONSTRUCTION COMPANY, Route 2, Dexter, MO 63841. Representative: William F. Ringer, 21 Vine, Dexter, MO 63841. Contract carrier: *Aluminum fuel tanks for use by motor boats with special shipping pallets and banding,* from Dexter, MO to Neodosha, KS; Holland, MI; Little Falls, MN; Miami, FL; W. Frankfort, IL; Goshen, IN; Austin, TX, for 180 days. An underyling ETA seeks 90 days authority. Supporting shipper(s): Florida Marine Tanks, Inc., Highway 114 East, Dexter, MO. 63481. Send protests to: P. E. Binder, DS, ICC, Rm. 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 146455 (Sub-1TA), filed March 23, 1979. Applicant: AIR FRESH TRUCKING, INC., 961 Bing Street, San Carlos, CA 94070. Representative: Don Stanwood (same address as above). *Contract carrier:* irregular routes: *Soybean flour, Lecithin, and Dry milk solids,* from Louisville, KY; Decatur, IL; Peoria, IL; Chicago, IL and Belmond, IA to Oakland, CA, for the account of Soya Pacific, Inc., 8707 San Leandro, St., San Leandro, CA 94621, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Soya Pacific, Inc., 8707 San Leandro St., San Leandro, CA 94621. Send protests to: District Supervisor M. M. Butler, 211 Main, Suite 500, San Francisco, CA 94105.

MC 146464 (Sub-1TA), filed March 7, 1979. Applicant: NEVADA GENERAL TRANSPORTATION, INC., P.O. Box 1239, Lamoille, NV 89828. Representative: Jerald Payne (same as applicant). *Petroleum and petroleum products,* from Salt Lake County, UT and Ninidoka County, ID to Elko County, NV, for 180 days. Supporting shipper(s): Merkley & Hankins, Box 508, Elko, NV 89801. Send protests to: W. J. Huetig, DS, ICC, 203 Federal Bldg., 705 N. Plaza St., Carson City, NV 89701.

MC 146465 (Sub-1TA), filed March 15, 1979. Applicant: LAWRENCE PILGRIM, d.b.a. PILGRIM TRUCKING COMPANY, P.O. Box 77, Cleveland, GA 30528. Representative: Jeffrey Kihlman, Suite 508, 1447 Peachtree St., N.E., Atlanta, GA 30309. *Lumber* between the facilities of Hoover Universal, Inc., Wood Preserving Division, located at or near Milford, VA on the one hand, and, on the other, points in the U.S., in and east of MT, WY, CO and NM, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Hoover Universal, Inc., Wood Preserving Division, P.O. Box 746, Thomson, GA 30824. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., N.W., Rm. 300, Atlanta, GA 30309.

MC 146465 (Sub-2TA), filed March 21, 1979. Applicant: LAWRENCE PILGRIM, d.b.a. PILGRIM TRUCKING COMPANY, P.O. Box 77, Cleveland, GA 30528. Representative: Jeffrey Kihlman, Suite 508, 1447 Peachtree St., N.E., Atlanta, GA 30309. *Lumber* between the facilities of Hoover Universal, Inc., Wood Preserving Division, located at Thomson, GA, on the one hand, and, on the other, points in the U.S., in and east of MT, WY, CO and NM (except points in AL, FL, KY, MD, NC, OH, PA, SC, TN, VA, WV and DC) for 180 days. Supporting shipper(s): Hoover Universal, Inc., Wood Preserving Division, P.O. Box 746, Thomson, GA 30824. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., N.W., Rm. 300, Atlanta, GA 30309.

MC 146504 (Sub-2TA), filed March 14, 1979. Applicant: LEO TRUCKING CO., INC., P.O. Drawer F, Poteau, OK 74953. Representative: Greg E. Summy, P.O. Box 1540, Edmond, OK 73034. *Lime, quicklime, hydrate, and limestone products,* in bulk, and in bags, from the facilities of St. Clair Lime Co., at or near Marble City and Sallisaw, OK to points in AR, KS, LA; Adams, Issaquena, and Warren Counties, MS; and Cass and Bowie Counties, TX, for 180 days as a common carrier over irregular routes. Supporting shipper(s): St. Clair Lime Company, P.O. Box 894, Oklahoma City, OK 73101. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 146554 (Sub-1TA), filed March 23, 1979. Applicant: GEORGE L. BRINCKS, Templeton, IA 51463. Representative: Richard D. Howe, 600 Hubbell Bldg., Des Moines, IA 50309. *Iron and steel articles,* from Chicago, IL and its commercial zone, and the facilities of J & L Steel at or near Hennepin, IL to the facilities of M. L. Foss Incorporated at or near Denver, CO for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): M. L. Foss Incorporated, 1485 Rio Court, Denver, CO. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 146555 (Sub-1TA), filed March 23, 1979. Applicant: GARY A. VOSIKA, R.R. #1, Moorland, IA 50566. Representative: Richard D. Howe, 600 Hubbell Bldg., Des Moines, IA 50309. *Animal feed, feed ingredients and milk replacer,* in bags, between the facilities of Dr. McDonald's Vitamized Feed Co., Inc., at or near Moorland, IA, on the one hand, and, on the other, points in MN and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Dr. McDonald's Vitamized Feed Co., Inc., Hwy 20 West, P.O. Box 1077, Moorland, IA 50566. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 146564 (Sub-1TA), filed March 23, 1979. Applicant: BENNIE MILLER d.b.a. M & L TRUCK SERVICE, 6730 Larry Lane, Berkeley, MO 63134. Representative: Lawrence O. Willbrand Atty, Suite 873, 818 Olive St., St. Louis, MO 63101. *Contract carrier:* irregular routes: *Dry fertilizer and other seed,* not in bulk or tanks, between St. Louis, MO, on the one hand, and on the other, all points in IL and MO, for 180 days. An

underlying ETA seeks 90 days authority. Supporting shipper(s): Mangelsdorf Seed Co., Box 327, St. Louis, MO 63166. Send protests to: P. E. Binder, DS, ICC, Rm. 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 146584 (Sub-1TA), filed March 22, 1979. Applicant: CARL GAINER (Individual), 2244 DeVos Street, Eugene, OR 97402. Representative: Carl Gainer (same as above). *Contract carrier,* irregular routes, *steel tubing, steel clips and truss accessories, and wooden structural trusses,* between points in Los Angeles County, CA, on the one hand, and on the other Hillsboro, OR, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Trus Joist Corporation, P.O. Box 297, 550 S. Bailey, Hillsboro, OR 97123. Send protests to: A. E. Odoms, DS, ICC, 114 Pioneer Courthouse, Portand, OR 97204.

MC 146595 (Sub-2TA), filed March 21, 1979. Applicant: SELCO CORPORATION, P.O. Box 628, Provo, UT 84601. Representative: Daniel O. Hands, Attorney at Law, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. *Confectionery* (except commodities in bulk), in vehicles equipped with mechanical refrigeration (1) from the facilities of E. J. Brach & Sons at or near Chicago, IL to the facilities of E. J. Brach & Sons at or near Reno, NV and (2) from the facilities of E, J, Brach & Sons at or near Reno, NV to points in the states of AZ, CA, OR and WA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): E. J. Brach & Sons, P.O. Box 802, Chicago, IL 60690. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 146604 (Sub-1TA), filed March 27, 1979. Applicant: SILVER TRUCKING, INC., P.O. Box 2663, Jackson, WY 83001. Representative: Don C. Henderson (same address as applicant). *Malt beverages,* from Fairfield, CA to Victor, ID and Jackson, WY; between Victor, ID and Jackson, WY for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Dunlap Distributing, P.O. Box A, Jackson, WY 83001. Send protests to: District Supervisor Paul A. Naughton, Rm., 105 Federal Bldg. & Crt. House, 111 South Wolcott, Casper, WY 82601.

MC 146605 (Sub-1TA), filed March 26, 1979. Applicant: EVENSON BROS., INC., 835 1st Street, S.W., Pelican Rapids, MN 56572. Representative: Thomas J. Van Osdel, 502 First National Bank Bldg., Fargo, ND 58126. (1) *Lumber, lumbermill products and wood products,* from points in WA, OR, ID and MT to the facilities of Dynamic Homes, Inc., at or near Mandan, ND, and Detroit Lakes and Pelican Rapids, MN; (2) *Siding,* from International Falls, MN to the facilities of Dynamic Homes, Inc., at or near Mandan, ND, and (3) *Rafters and trusses,* from Pelican Rapids, MN to the facilities of Dynamic Homes, Inc., at or near Mandan, ND, for the account of Dynamic Homes, Inc., for 180 days. An undrlying ETA seeks 90 days authority. Supporting Shipper(s): Dynamic Homes, Inc., Box 875, Detroit Lakes, MN 56501. Send protests to: DS, ICC, Bureau of Operations, Room 268 Fed. Bldg. & U.S. Post Office, 657 2nd Avenue North, Fargo, ND 58102.

MC 146704 (Sub-TA), filed March 13, 1979. Applicant: FALCON MOTOR TRANSPORT, INC., 1250 Kelly Avenue, Akron, OH 44216. Representative: Michael L. Moushey, 275 East State Street, Columbus, OH 43215. Contract carrier-irregular routes, *building products and parts* thereto, and *materials, equipment, and supplies* used in the manufacture thereof, between Lodi, OH, and Franklin Park, IL, on the one hand, and, on the other, points in WV, VA, MD, DE, PA, NY, NJ, MA, CT, RI, VT, NH, ME, MI, IN, OH, and DC, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Questor Corporation, One John Goerlich Square, Toledo, OH 43694. Send protests to: Mary Wehner, D/S, I.C.C., 731 Federal Bldg. Cleveland, OH 44199.

MC 146744 (Sub-TA), filed March 29, 1979. Applicant: A. L. EUBANKS, Mt. Carmel Rd., Rt. 2 box 45–6, Cabot, AR 721023. Representative: A. L. Eubanks (same as applicant). *Ventilating products, roof louvers, turbines, and shutters,* from Jacksonville, AR to any and all points in CA, for 180 days as a contract carrier over irregular rotues. Supporting shipper(s): Lomanco, Inc., 2101 W. Main, Jacksonville, AR 72076. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 146745 (Sub-TA), filed April 2, 1979. Applicant: WILLIAM E. SALTSMAN, Patricia M. Saltsman d.b.a, WILLIAM SALTSMAN TRUCKING, 1734 Windsor Avenue, McKinleyville, CA 95521. Representative: William E. Saltsman, Patricia M. Saltsman (same address as applicant). *Contract carrier,* irregular routes: *Lumber, particle board, plywood, veneer, moulding, kraft, pulp,* from points in Humboldt County, CA to points in Sonoma, Shasta and Mendocino Counties, CA for subsequent out of state movement by rail, for 180 days. Supporting Shipper(s): Simpson Timber Company, P. O. Drawer V, Arcata, CA 95521. Send protests to: A. J. Rodriguez, DS, ICC, 211 Main Street, Suite 500, San Francisco, CA 94105.

H. G. Homme, Jr.,
Secretary

[Notice No. 78]
[FR Doc. 79-15158 Filed 5-14-79; 8:45 am]
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Permanent Authority Decisions, Decision-Notice

Decided: May 4, 1979.

The following applications filed on or before February 28, 1979, are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR § 1100.247). For applications filed before March 1, 1979, these rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date notice of the application is published in the **Federal Register.** Failure to file a protest, on or before June 14, 1979, will be considered as a waiver of opposition to the application. A protest under these rules should comply with Rule 247(e)(3) of the Rules of Practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (as specifically noted below), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. A protestant should include a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describe in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named. If the protest includes a request for oral hearing, such request shall meet the requirements of section 247(e)(4) of the special rules and shall include the certification required in that section.

On cases filed on or after March 1, 1979, petitions for intervention either with or without leave are appropriate.

Section 247(f) provides, in part, that an applicant which does not intend timely to prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an

application under the procedures of the Commission will result in its dismissal.

If applicant has introduced rates as an issue it is noted. Upon request an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy of 49 U.S.C. 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a protestant, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. 10101 subject to the right of the Commission, which is expressly reserved, to impose such conditions as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930(a) [formerly section 210 of the Interstate Commerce Act].

In the absence of legally sufficient protests, filed on or before June 14, 1974 (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, such duplication shall not be construed as conferring more than a single operating right.

Applicants must comply with all specific conditions set forth in the grant or grants of authority within 90 days after the service of the notification of the effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number 2, Boyle, Eaton, and Liberman.

H. G. Homme, Jr.,
Secretary.

MC 1494 (Sub-26F), filed January 30, 1979. Applicant: GROSS COMMON CARRIER, INC., 660 West Grand Ave., Wisconsin Rapids, WI 54494. Representative: William S. Rosen, 630 Osborn Bldg., St. Paul, MN 55102. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between junction U.S. Hwy 10 and WI Hwy 54 at or near Waupaca, WI, and Milwaukee, WI: (a) from junction U.S. Hwy 10 and WI Hwy 54 over WI Hwy 54 to junction U.S. Hwy 141, then over U.S. Hwy 141 to junction Interstate Hwy 43, then over Interstate Hwy 43 to Milwaukee, and return over the same route, serving all intermediate points, and (b) from junction U.S. Hwy 10 and WI Hwy 54 over U.S. Hwy 10 to Appleton, WI, then over U.S. Hwy 41 to Milwaukee, and return over the same route, serving all intermediate points, (2) between junction U.S. Hwy 10 and U.S. Hwy 41 and Milwaukee, WI: from junction U.S. Hwy 10 and U.S. Hwy 41 over U.S. Hwy 10 to junction WI Hwy 57, then over WI Hwy 57 to Milwaukee, and return over the same route, serving all intermediate points, and (4) between junction WI Hwy 57 and U.S. Hwy 10, and junction U.S. Hwy 10 and U.S. Hwy 141, over U.S. Hwy 10, serving all intermediate points, and serving, in connection with routes (1), (2), (3), and (4) above, as off-route points those points in WI bounded by a line beginning at junction WI Hwy 54 and WI Hwy 22, near Waupaca, WI, and extending along WI Hwy 54 to Green Bay, then along U.S. Hwy 141 to junction WI Hwy 23, then along WI Hwy 23 to junction WI Hwy 22, at or near Montello, WI, and then along WI Hwy 22 to the point of beginning. (Hearing site: St. Paul, MN, or Madison, WI.)

MC 2484 (Sub-54F), filed January 18, 1979. Applicant: E & L TRANSPORT COMPANY, a corporation, 23420 Ford Road, Dearborn Heights, MI 48127. Representative: Eugene C. Ewald, 100 West Long Lake Road, Suite 102, Bloomfield Hills, MI 48013. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *motor vehicles* (except trailers), in initial movements, in truckaway and driveaway service, from the facilities of Ford Motor Company at Detroit, MI, to points in the United States (except AK and HI), restricted to the transportation of traffic originating at the named origin facilities, and (2) *motor vehicles* (except trailers), in secondary movements, (a) in truckaway service, from Detroit, MI, to points in the United States, (except AK and HI), and (b) in driveaway service, from Detroit, MI, to points in MI, IL, IN, KY, OH, MD, PA, VA, and WV, restricted in (2)(a)(b) to the transportation of traffic having a prior movement from the facilities of the Ford Motor Company. (Hearing site: Detroit, MI.)

MC 22195 (Sub-177F), filed February 6, 1979. Applicant: DAN DUGAN TRANSPORT COMPANY, a Corporation, 41st & Grange Ave., Sioux Falls, SD 57105. Representative: F. Fred Fischer (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *fly ash*, in bulk, in tank vehicles, from Cohasset, Dilworth, and Fergus Falls, MN, to points in ND, SD, and MN. (Hearing site: Fargo, ND, or Sioux Falls, SD.)

MC 65475 (Sub-23F), filed February 9, 1979. Applicant: JETCO, INC., 4701 Eisenhower Avenue, Alexandria, VA 22304. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101. To operate as a *common carrier*, by motor vehicle, in interestate or foreign commerce, over irregular routes, transporting (1) *iron and steel articles*, from the facilities of Atlas Machine & Iron Works, Inc., at Gainesville, VA, to those points in the United States in and east of MN, IA, MO, AR, and LA, and (2) *iron and steel articles, and materials, equipment and supplies* used in the manufacture of iron and steel articles, in the reverse direction. (Hearing site: Washington, DC.)

MC 111545 (Sub-272F), filed February 1, 1979. Applicant: HOME

TRANSPORTATION COMPANY, INC., P.O. Box 6426, Station A, Marietta, GA 30065. Representative: Robert E. Born (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *turf sweepers, chippers, and utility trailers*, from the facilities of Olathe Mfg. Co., at or near Olathe, KS, to points in CA, and those points in the United States in and east of MN, IA, NE, KS, OK, and TX. (Hearing site: Kansas City, KS, or Washington, DC.)

MC 112304 (Sub-184F), filed February 1, 1979. Applicant: ACE DORAN HAULING & RIGGING CO., a Corporation, 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: Fred Schmits (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *railway car wheels, locomotive wheels, railway axles, and railway bearings*, from the facilities of Griffin Wheel Co., at or near Keokuk, IA, to points in the United States (except AK and HI); and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), in the reverse direction. (Hearing site: Chicago, IL, or Washington, DC.)

MC 114015 (Sub-25F), filed June 8, 1978, previously noticed in the **Federal Register** issue of August 8, 1978. Applicant: HUSS, INCORPORATED, Highway 47 West, P.O. Box 666, Chase City, VA 23924. Representative: Morton E. Kiel, Suite 6193, 5 World Trade Center, New York, NY 10048. Authority granted to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between those points in the United States in and east of MN, IA, MO, AR, and LA, restricted to the transportation of traffic originating at, or destined to the facilities of The United States Gypsum Company, under continuing contract(s) with The United States Gypsum Company, of Chicago, IL. (Hearing site: Chicago, IL.)

MC 116164 (Sub-12F), filed February 12, 1979. Applicant: ARROW TRANSPORTATION, a Corporation, 1911 58th Avenue, Des Moines, IA 50313. Representative: Thomas E. Leahy, Jr. 1980 Financial Center, Des Moines, IA 50309. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *brick and clay* (except commodities in bulk), from the facilities of Midland Brick Sales Co., at or near Utica, MO, to points in IL, IA, IN, KS, MI, NE, ND, MN, SD, and WI, under continuing contract(s) with Midland Brick Sales Co., of Chillicothe, MO. (Hearing site: St. Louis or Kansas city, MO.)

MC 116254 (Sub-236F), filed January 15, 1979. Applicant: CHEM-HAULERS, INC., 118 East Mobile Plaza, Florence, AL 35630. Representative: Hampton M. Mills (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *aluminum articles, brass articles, bronze articles, and copper articles*, (2) *scrap and unfinished shapes* for the commodities named in (1) above, and (3) *materials, equipment, and supplies* used in the manufacture of the commodities named in (1) above, between the facilities of Revere Copper and Brass, Incorporated and Wells Aluminum Company, at or near (a) Scottsboro, AL, (b) Detroit, MI, (c) Belton, SC, (d) Clinton and Franklin Park, IL, (e) Shelbyville, KY, (f) Monett and Cassville, MO, (g) Rome, NY, (h) Hannibal, OH, (i) N. Liberty, IN, (j) Moultrie, GA, and (k) Newport, AR, on the one hand, and, on the other, those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Syracuse, NY, or Washington, DC.)

MC 116254 (Sub-253F), filed February 12, 1979. Applicant: CHEM-HAULERS, INC., 118 East Mobile Plaza, Florence, AL 35630. Representative: Randy C. Luffman (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *liquid chemicals*, in bulk, in tank vehicles, from Mt. Pleasant, TN, to Henderson, NV, and Richmond, CA. (Hearing site: Nashville, TN, or Birmingham, AL.)

MC 116254 (Sub-254F), filed February 12, 1979. Applicant: CHEM-HAULERS, INC., 118 East Mobile Plaza, Florence, AL 35630. Representative: Randy C. Luffman (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *chemicals*, in bulk, from points in Marengo County, AL, to points in AL, GA, FL, MI, TN, AR, SC, NC, TX, LA, VA, NY, WI, MI, OK, OH, MO, IN, IL, PA, MN, IA, KY, WV, and MS. (Hearing site: Columbus, OH, or Washington, DC.)

MC 118304 (Sub-7F), filed February 7, 1979. Applicant: CALDWELL TRANSPORT LTD., Florenceville, New Brunswick, Canada. Representative: Francis E. Barrett, Jr., 10 Industrial Park Rd., Hingham, MA 02043. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *waferboard*, from the ports of entry on the international boundary line between the United States and Canada, in ME, NH, VT, and NY, to points in CT, DE, ME, MD, MA, NH, NJ, NY, OH, PA, RI, VT, VA, WV, and DC. (Hearing site: Bangor or Augusta, ME.)

MC 119974 (Sub-78F), filed February 9, 1979. Applicant: L. C. L. TRANSIT COMPANY, a Corporation, 949 Advance Street, Green Bay, WI 54304. Representative: L. F. Abel, P.O. Box 949, Green Bay, WI 54305. To operate as a *common carrier*, by motor vehicle, in interstate for foreign commerce, over irregular routes, transporting *such commodities* as are dealt in by grocery and drug stores (except foodstuffs and commodities in bulk, in vehicles equipped with mechanical refrigeration), from the facilities of Warner-Lambert Company, at or near Elk Grove Village, IL, to points in the Upper Peninsula of MI, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: Chicago, IL, or Washington, DC.)

MC 125254 (Sub-55F), filed February 12, 1979. Applicant: MORGAN TRUCKING CO., a Corporation, P.O. Box 714, Muscatine, IA 52761. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *such commodities* as are dealt in by grocery, and food business houses, and (2) *materials, and supplies* used in the manufacture, sale, and distribution of the commodities in (1) above, (a) between Union City, GA, on the one hand, and, on the other, Sharonville and Lancaster, OH, and Davenport, and Clinton, IA, and (b) between Dunkirk, NY, on the one hand, and on the other, points in PA, and WV. (Hearing site: St. Louis, MO.)

MC 127705 (Sub-71F), filed February 6, 1979. Applicant: KREVDA BROS. EXPRESS, INC., P.O. Box 68, Gas City, IN 46933. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *glass containers*, from

Knox, Marianville, and Clarion, PA, to points in VA, MD, and NJ. (Hearing site: Washington, DC.)

MC 134014 (Sub-2F), filed February 9, 1979. Applicant: TOM M. ROBERTS TRUCKLINES, INC., P.O. Box 297, Ashland, IL 62612. Representative: Saul J. Morse, 1018 Myers Building, Springfield, IL 67201. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *coiled drainage tile*, from the facilities of Springfield Plastics, Inc., at Auburn, IL, to points in AL, AR, GA, IN, IA, KS, LA, MN, MI, MO, NE, OH, TN, WI, and KY, and (2) *color resins*, in the reverse direction, under continuing contract(s) with Springfield Plastics, Inc., of Auburn, IL. (Hearing site: St. Louis, MO, or Chicago, IL.)

MC 135234 (Sub-15F), filed February 8, 1979. Applicant: TRENCO, INC., 2109 Marydale Ave., P.O. Box 697, Williamsport, PA 17701. Representative: E. Stephen Heisley, 805 McLachen Bank Building, 666 Eleventh Street, NW., Washington, DC 20001. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *new furniture and furniture parts*, and (2) *materials, equipment and supplies* used in the manufacture, distribution, and sale of new furniture and furniture parts (except commodities in bulk), between Louisburg, NC, and Williamsport, PA, on the one hand, and, on the other, points in OH, PA, NJ, NY, MD, VA, NC, SC, GA, MS, IN, and DC, under continuing contract(s) with J. K. Rishel Furniture Co., of Williamsport, PA. (Hearing site: Washington, DC.)

Note.—Dual operations may be involved.

MC 135895 (Sub-33F), filed February 5, 1979. Applicant: B & R DRAYAGE, INC., P.O. Box 8534, Battlefield Station, Jackson, MS 39204. Representative: Douglas C. Wynn, P.O. Box 1295, Greenville, MS 38701. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *ground clay, crude clay, floor sweeping compounds, and absorbents* (except commodities in bulk), between the facilities of Oil-Dri Corporation of America, at or near Ripley, MS, on the one hand and on the other, points in Al, AR, KS, LA, MO, OK, TN, and TX. (Hearing site: Memphis, TN, or Jackson, MS.)

MC 138104 (Sub-68F), filed February 12, 1979. Applicant: MOORE TRANSPORTATION CO., INC., 3509 N. Grove Street, Fort Worth, TX 76106. Representative: Bernard H. English, 6270 Firth Road, Fort Worth, TX 76116. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *construction materials* (except commodities in bulk), from the facilities of Celotex Corporation, at or near Texarkana, AR, to points in CO, and WY. (Hearing site: Fort Worth or Dallas, TX.)

MC 138875 (Sub-123F), filed December 26, 1978, and previously noticed in the FR of February 8, 1979. Applicant: SHOEMAKER TRUCKING COMPANY, a corporation, 11900 Franklin Road, Boise, ID 83705. Representative: F. L. Sigloh (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *laminated wooden beams*, from the facilities of Glu-Laminated Wood Systems, Inc., at or near Magna, UT, to points in AZ, CA, CO, ID, MT, NM, NV, TX, and WY. (Hearing site: Salt Lake City, UT, or Washington, DC.)

Note.—This republication correctly states the destination States.

MC 140134 (Sub-12F), filed January 29, 1979. Applicant: CALDARULO TRADING CO., a Corporation, 2840 South Ashland Avenue, Chicago, IL 60608. Representative: Richard A. Kerwin, 180 North La Salle Street, Chicago, IL 60601. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs* (except in bulk), from the facilities of Sanna Division, Beatrice Foods Co., at or near Menomonie, Vesper, Cameron, Eau Claire, and Wisconsin Rapids, WI, to points in AZ, CA, CO, ID, MT, NV, NM, ND, OR, SD, UT, WA, and WY, under continuing contract(s) with Sanna Division, Beatrice Foods Co., of Madison, WI. (Hearing site: Chicago, IL.)

MC 141124 (Sub-36F), Filed January 19, 1979. Applicant: EVANGELIST COMMERCIAL CORPORATION, P.O. Box 15000, Wilmington, DE 19850. Representative: Boyd B. Ferris, 50 West Broad St., Columbus, OH 43215. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in or used by manufacturers and distributors of containers (except commodities in bulk), between points in the United States (except AK and HI). (Hearing site: Columbus, OH, or Washington, DC.)

MC 141124 (Sub-38F), filed February 9, 1979. Applicant: EVANGELIST COMMERCIAL CORPORATION, a Corporation, P.O. Box 15000, Wilmington, DE 19850. Representative: Boyd B. Ferris, 50 West Broad St., Columbus, OH 43215. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *zinc and zinc articles*, from the facilities of St. Joe Zinc Company, at or near Josephtown, PA, to points in the United States (except AK and HI), (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities named in (1) above, in the reverse direction. Hearing site: Columbus, OH, or Pittsburgh, PA.)

MC 141804 (Sub-178F), filed February 12, 1979. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *retail stores fixtures*, from Omaha, NE, and Scottsboro, AL, to points in AZ, CA, ID, NV, OR, UT, and WA. (Hearing site: Los Angeles or San Francisco, CA)

MC 142864 (Sub-6F), filed February 6, 1979. Applicant: RAY E. BROWN TRUCKING, INC., P.O. Box 501, Massillon, OH 44646. Representative: Jerry B. Sellman, 50 West Broad St., Columbus, OH 43215. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in or used by manufacturers and distributors of containers (except commodities in bulk), (1) between the facilities of Davies Can Co., Division of Van Dorn Co., at (a) Leetsdale, PA, and (b) Cleveland and Solon, OH, on the one hand, and, on the other, points in IN, IL, MI, PA, MN, and WI, and (2) between Massillon, OH, on the one hand, and, on the other, points in IL, IN, IA, KY, MD, MI, MN, MO, NE, NJ, NY, PA, TN, and WI. (Hearing site: Columbus, OH, or Washington, DC.)

MC 145044 (Sub-2F), filed February 12, 1979. Applicant: FOREDECK TRANSPORTATION , INC., Whitewood Lane, Oak Ridge, NJ 07438. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *deodorants, disinfectants, breath fresheners, cleaning compounds, swimming pool treatment compounds, and insecticides*, (except commodities in bulk), and (2) *materials, equipment and supplies* used in the manufacture and

sale of the commodities in (1) above, (except commodities in bulk, in tank vehicles), between points in CA, WA, UT, CO, TX, MO, MN, WI, MI, IL, IN, OH, NJ, RI, MA, NY, MD, FL, TN, NC, and GA, restricted to the transportation of traffic destined to the facilities of Airwick Industries, Inc. (Hearing site: New York, NY, or Washington, DC.)

MC 145104 (Sub-2F), filed February 1, 1979. Applicant: MIL–CO TRUCKING, INC., 319 South Main St., West Unity, OH 43570. Representative: James W. Muldoon, 50 West Broad St., Columbus, OH 43215. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *salt and salt products*, and (2) *such commodities* as are dealt in or used by the agriculture, water treatment, food processing, wholesale grocery, and institutional supply, in mixed shipments with the commodities in (1) above, from Chicago, IL, St. Joseph, MI, and points in Fulton, Lucas, and Hamilton Counties, OH, to points in IN and MI. (Hearing site: Chicago, IL, or Columbus, OH.)

MC 145755 (Sub-1F), filed January 15, 1979, previously noticed in the **Federal Register** of March 1, 1979. Applicant: D & L CARTAGE, INC., P.O. Box 170, 1865 Bernice Road, Lansing, IL 60438. Representative: James Robert Evans, 145 W. Wisconsin Avenue, Neenah, WI 54956. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *soybean meal and soybean hulls*, in bulk, from Chicago, IL, to points in IN, MI, and WI. (Hearing site: Chicago, IL.)

Note.—This republication correctly indicates that applicant is a common carrier.

MC 145925F, filed December 7, 1979. Applicant: WETTERAU TRANSPORT, INCORPORATED, 8920 Pershall Rd., Hazelwood, MO 63042. Representative: B. W. LaTourette, Jr., 11 S. Meramec, Suite 1400, St. Louis, MO 63105. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in the United States (except AK and HI), under continuing contract(s) with Wetterau, Incorporated, of Hazelwood, MO, Consolidated Toy Company, of Hazelwood, MO, W. T. Sistrunk, of Lexington, KY, and G. H. Delp Company, of Temple, PA (Hearing site: St. Louis or Jefferson City, MO.)

MC 146314 (Sub-1F), filed February 6, 1979. Applicant: G & T TRUCKING CO., a Corporation, Route 1, County Road 2 and I–35, Elko, MN 55020. Representative: James E. Ballenthin, 630 Osborn Bldg., St. Paul, MN 55102. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *construction equipment, materials, and supplies* between points in AL, AR, CO, IL, IA, IN, KS, KY, LA, MI, MN, MS, MO, MT, NE, NM, ND, OH, OK, SD, TN, TX, WI, and WY. (Hearing site: St. Paul, MN.)

Passenger

MC 14715 (Sub-1F), filed February 7, 1979. Applicant: PASSAIC VALLEY COACH LINES, d/b/a PASSAIC VALLEY COACHES, 179 Division Ave., Summit, NJ 07901. Representative: William W. Braunwarth (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *passengers and their baggage*, in the same vehicle with passengers, in charter operations, beginning and ending at points in NJ, and extending to points in the United States (except AK and HI). (Hearing site: Newark, NJ, or New York, NY.)

[Permanent Authority Decisions Vol. No. 5]
[FR Doc. 79–15157 Filed 5–14–79; 8:45 am]
BILLING CODE 7035–01–M

Frank R. Scheer; Petition for Declaratory Order

AGENCY: Interstate Commerce Commission.

ACTION: Denial of petition for declaratory order.

SUMMARY: Frank R. Scheer filed a petition seeking a Commission declaration that the term "train" in 49 U.S.C. §§ 10908 and 10909 means "passenger train". The Commission denied the petition because it did not disclose the existence of uncertainty or controversy.

DATE: The decision will be effective May 15, 1979.

FOR FURTHER INFORMATION CONTACT: Michael Erenberg 202–275–7564.

SUPPLEMENTARY INFORMATION: On January 24, 1979, Frank R. Scheer filed a petition seeking a Commission declaration that the term "train" as used in 49 U.S.C. 10908 and 10909 (formerly section 13a of the Interstate Commerce Act) means "only regularly scheduled passenger trains engaged in interstate commerce." Mr. Scheer states that he is a private individual with an academic and business interest in the railroad industry and transportation. He believes that if the term "train" in sections 10908 and 10909 encompasses freight as well as passenger trains, shippers might seek to block carriers' schedule changes, reducing managerial discretion and control over operations.

Section 10908 provides a federal regulatory forum for a carrier proposing to discontinue or change interstate train or ferry transportation when the disconstinuance or change is subject to State law or regulation. The railroad may discontinue or change the service, notwithstanding the State law or regulation, if (1) it files the proper notice with the Commission, (2) it performs other specified notice and posting requirements, and (3) the Commission does not otherwise provide. 49 U.S.C. 10908(a). If the carrier takes the outlined steps, an interested party may then petition the Commission to conduct a proceeding on the proposal. 49 U.S.C. 10908(b).

Section 10909 provides a federal regulatory forum for a carrier proposing to discontinue or change a train or ferry operating entirely within one State. If (1) State law prohibits the discontinuance or change, (2) the railroad sought State permission for the proposal and the State denied the request, or (3) the State has not finally acted by the 120th day after the request, the carrier may petition the Commission for permission to discontinue or change the transportation. 49 U.S.C. 10909(a). Interested parties may request a hearing on the carrier's petition to the Commission. 49 U.S.C. 10909(b).

Sections 10908 and 10909 confer us with only limited jurisdiction respecting the discontinue or change of trains and ferries. Those provisions plainly provide that only the carier can invoke our jurisdiction in a particular proceeding. Further, a railroad may accomplish a discontinuance or change without Commission authority by obtaining appropriate approval under the laws of the States affected.

We have found no instance in which a railroad has sought authority to discontinuance or change freight service under these provisions. Therefore, there appears to be no uncertainty or controversy which requires the issuance of a declaratory order.

This decision will not affect the quality of the human environment or the level of energy consumption.

It is ordered:

The petition for declaratory order filed by Frank R. Scheer is denied.

This decision will be effective on the date it is served.

Dated: May 7, 1979.

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

H. G. Homme, Jr.,

Secretary.

[Finance Docket No. 28956F]

[FR Doc. 79-15156 Filed 5-14-79; 8:45 am]

BILLING CODE 7035-01-M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 95
Tuesday, May 15, 1979

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

CIVIL AERONAUTICS BOARD.

Short notice of Board meeting and short notice of item to be closed.

TIME AND DATE: 10 am., May 14, 1979.

PLACE: Room 1027 (Open), Room 1011 (Closed), 1825 Connecticut Avenue NW., D.C. 20428.

SUBJECT:

1. Docket 32851 Agreement CAB 1175, as amended: on November 2, 1978, IATA filed for Board approval amendments to its *Provisions for the Regulation and Conduct of the IATA Traffic Conferences.* (Memo No. 7959-B, BPDA, OGC, BLJ, BIA, BCP)
2. Japan Off-Route Charters. (BIA)

STATUS: Open (Item No. 1), Closed (Item No. 2).

PERSON TO CONTACT: Phillis T. Kaylor, the Secretary, (202) 673-5068.

SUPPLEMENTARY INFORMATION: The Board has been carefully considering comments from various airlines, organizations, government agencies and sovereign foreign nations concerning its Order to Show Cause with respect to various agreements adopted by the International Air Transport Association. (Order 78-6-78) IATA, supported by number of other parties, has asked that the Board's consideration of these issues be expedited. At this meeting further action in this docket will be considered which may involve expedited filing dates. So that the public and parties will have as much time as possible, the following members voted that agency business requires that a Board Meeting be held on May 14, 1979 at 10:00 a.m. and that no earlier announcement of this meeting was possible:

Chairman Marvin S. Cohen
Member Richard J. O'Melia
Member Elizabeth E. Bailey
Member Gloria Schaffer

Japan Air Lines Company, Ltd. applied on May 7, 1979, to perform an off-route charter flight on May 16. Trans International Airlines filed an objection on May 8. The staff could not prepare an order for Board action in time for the May 10 meeting and the flight is scheduled to depart the day before the next meeting scheduled for May 17. Accordingly, the following Members have voted that agency business requires that the Board meet on this item on less than seven days' notice and that no earlier announcement of the meeting was possible:

Chariman Marvin S. Cohen
Member Richard J. O'Melia
Member Gloria Schaffer

Public disclosures, particularly to foreign governments, of opinion, evaluations, and strategies in the discussions could seriously compromise our ability to achieve aviation objectives that would be in the best interests of the United States. Accordingly, the following Members have voted that the meeting on this subject would involve matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action within the meaning of the exemption provided under 5 U.S.C. 552b(c)(9)(B) and 14 CFR 310b.5(9)(B) and that any such meeting should therefore be closed:

Chairman Marvin S. Cohen
Member Richard J. O'Melia
Member Gloria Schaffer

Persons expected to attend:

Board Members.—Chairman, Marvin S. Cohen; Member Richard J. O'Melia; Member Elizabeth E. Bailey; and Member Gloria Schaffer.
Assistants to Board Members.—Mr. Sanford Rederer, Mr. David M. Kirstein, Mr. Richard Klem, Mrs. Stephen H. Lachter, and Mr. James L. Deegan.
Managing Director.—Mr. Cressworth Lander.
Executive Assistant to the Managing Director.—Mr. John R. Hancock.
Bureau of International Affairs.—Mr. Rosario J. Scibilia, Mr. Richard M. Loughlin, Mr. David A. Levitt, Mr. James Horneman, Mr. Regis Milan, Mr. Dean Johnson, Mr. Ivars V. Mellups, and Mr. Williard L. Demory.
Office of the General Counsel.—Philip J. Bakes, Jr., Mr. Gary J. Edles, and Mr. Michael Schopf.
Bureau of Pricing and Domestic Aviation.—Mr. Michael E. Levine, Ms. Barbara A. Clark, Mr. Herbert P. Aswall, Mr. Douglas Leister, and Mr. John Kiser.
Office of Economic Analysis.—Mr. Robert H. Frank and Mr. Larry Manheim.
Bureau of Consumer Protection.—Mr. Reuben Robertson.
Office of the Secretary.—Mrs. Phyllis T. Kaylor, Ms. Deborah A. Lee, and Ms. Louise Patrick.

General Counsel Certification

I certify that this meeting may be closed to the public under 5 U.S.C. 552b(c)(9)(B) and 14 CFR section 310b.5(9)(B) and that the meeting may be closed to public observation.

Gary J. Edles,
Acting General Counsel.

[M-219, May 11, 1979]
[S-973-79 Filed 5-11-79; 3:10 pm]
BILLING CODE 6320-01-M

2

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 10 a.m., May 17, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

1. Ratification of items adopted by notation.
2. Docket 28298, et al., Petition of Action on Smoking and Health for review of staff action (OM)
3. American Airlines procedures under Part 252 (BCP, OGC)
4. Docket 34280, Third-party complaint of Carlsbad, Clovis, and Hobbs, New Mexico; Enforcement Proceeding for the assessment of civil penalties against Texas International Airlines for failure to meet service obligations at Carlsbad, Clovis, and Hobbs, New Mexico. (Memo 8772, BCP, BPDA, OGC)
5. H.R. 2990—Federal Acquisition Reform Act, request for comments (Memo 8788, OGC)
6. Docket 34291—Program for removal of certificate restrictions (OGC)
7. Docket 34352, American Camping Association petition for rulemaking to give affinity charter status to organized camps (OGC)
8. Dockets 35376, 31491, American's request for emergency exemption in St. Louis-San Francisco market (OGC)
9. Dockets 34215 and 35105. Removal of Kansas City-Chicago/Denver restrictions on certificates of Ozark and Frontier (Memo 8602-A, BPDA)
9a. Docket 33314—Increase in air taxi aircraft size from 30 to 60 seats (OGC, BPDA)
10. Docket 35241; Application of Continental Airlines for an emergency exemption (BPDA, OGC)

11. Dockets 34887, 28316, 28436, 29584, 30558, 32704, 34667, 30094, 32698, 35244, 32761, 33595, 35258, 33998, 35260, 33023, 35239, 35262, 35249, 35273, and 35263, Milwaukee Show-Cause Proceeding (BPDA)

12. Dockets 34785, 34967, 35112 and 35133 Continental's, Western's, North Central's and Hughes Airwest's Applications for Denver-Sacramento and Fresno and Sacramento-Fresno nonstop authority (Memo 8778, BPDA)

13. Dockets 34920, 35094, 35124 and 34945, Allegheny's, Northwest's and Continental's applications for New Orleans-Cleveland and Pittsburgh nonstop authority and Continental's application for New Orleans-Detroit nonstop authority; Allegheny's application to provide nonstop service in the New Orleans-Cleveland and Pittsburgh markets *pendente lite* (BPDA, OCCR)

14. Dockets 33708, 34976, 35049, 35050 and 35051, (American), (North Central), (Southern), (Ozark), and (Northwest), requesting authority between Cleveland and San Francisco (Memo 8518-A, BPDA)

15. Docket 35152—North Central's Exemption Application to Provide Northern Tier Service (BPDA, OGC)

16. Dockets 34336 and 35210, Finalization of Show-Cause Order 79-3-97, tentatively adding Providence as an intermediate point on Air New England's Route 172 (Doc. 34336) and proposing to grant the Providence authority at issue to applicants whose fitness can be established by officially noticeable material. (BPDA)

17. Dockets 34513, 26681 and 34565—Petition of the Port of Astoria for determination of essential air transportation and Hughes Airwest Petition for modification of orders granting temporary suspension and notice of intent to terminate service at Astoria/Seaside, Oregon (BPDA)

18. Dockets 34796, 34812, American's notice to terminate all service at Charleston, W. VA. and United's notice to suspend nonstop Pittsburgh-Charleston service and petition and motion of various West Virginia parties to prohibit United from reducing its Charleston service as proposed until a replacement carrier is found (BPDA, OCCR)

19. Docket 35307, Ozark's notice of intent to suspend all service at Clarksville, Tennessee-Ft. Campbell-Hopkinsville, Kentucky (BPDA, OCCR)

20. Docket 34831, Airwest's notice of intent to suspend service at Chico, California (BPDA)

21. Docket 34934—Piedmont's notice of intent to suspend all service at New Bern/Morehead City, NC (BPDA)

22. Dockets 33858 and 25311—Golden West Airlines' petition for review of Order 79-3-71; and Hughes Airwest's suspension at Oxnard (BPDA, OGC)

23. Docket 15700, Petition of Frontier Airlines for modification of Order E-21594 and E21595, permitting General Tire's acquisition of Frontier. The carrier requests exclusion of cash dividend payments from the intercorporate transactions required to be submitted for Board review (Memo 6676-C, BPDA)

24. Dockets 31290 and 27417, Notice of Proposed Rulemaking amending PS-80 policies to reflect changes in the Act and eliminating the 130 percent upward fare flexibility allowed local service carriers (BPDA)

25. Dockets 35407 and 35434, Complaints of the State of Hawaii requesting suspension/investigation/rejection of general fare increase proposals by Hawaiian Airlines (3.4 percent) and Aloha Airlines (3.3 percent) (Memo 8667-E, BPDA)

26. Tariff rules proposed by Air Canada disclaiming liability for negligence for loss or damage of certain articles included in baggage without its knowledge. Carrier petitions for reconsideration of order rejecting tariff on the ground that it would not be liable for articles which it does not agree to carry.

27. Docket 33514, Petition of Air Florida for reconsideration of Order 79-3-161, imposing flat-rated low-fare conditions on New York-West Palm Beach/Miami exemption authority (Memo 8435-C, BPDA)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

[M-218, May 10, 1979]
[S-974-79 Filed 5-11-79; 3:10 pm]
BILLING CODE 6320-01-M

3

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Thursday, May 17, 1979,

PLACE: Room 856, 1919 M Street, NW., Washington, D.C.

STATUS: Special closed Commission Meeting following the Open Meeting.

MATTER: TO BE CONSIDERED:

Agenda, Item No., and Subject

General—1—Transfer of certain Private Radio Bureau functions to Gettysburg, Pa.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from the FCC Public Affairs Office, telephone number (202) 632-7260.

Issued: May 10, 1979.

[S-975-79 Filed 5-11-79; 3:10 pm]
BILLING CODE 6712-01-M

4

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Thursday, May 17, 1979.

PLACE: Room 856, 1919 M Street, NW., Washington, D.C.

STATUS: Special Open Commission Meeting.

MATTERS TO BE CONSIDERED:

Agenda, Item No., and Subject

Common Carrier—1—Applications for consent to transfer of control of RCA Alaska Communications, Inc. from RCA Corporation to PACOM, Inc. (File Nos. 1437-CF-TC-(189)-79), et al.

Common Carrier—2—Petitions for Reconsideration of First Report and Order in CC Docket 78-144, setting forth procedural rule for CATV pole attachment regulation; and Second Report and Order, containing substantive guidelines and rules for the resolution of pole attachment complaints.

Common Carrier—3—In the Matter of Lincoln Telephone and Telegraph's duty to furnish interconnection facilities to MCI Telecommunications Corp.

Common Carrier—4—In the Matter of AT&T Petition for Modification of Prescribed Rate of Return.

General—1—Rule changes to expand the CARS band from 12.7-12.95 to 12.7-13.20 GHz.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from the FCC Public Affairs Office telephone number (202) 632-7260.

Issued: May 10, 1979.

[S-976-79 Filed 5-11-79; 8:45 am]
BILLING CODE 6712-01-M

5

FEDERAL DEPOSIT INSURANCE CORPORATION.

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at 10:15 a.m. on Wednesday, May 9, 1979, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session by telephone conference call to consider recommendations regarding (1) the discontinuation of termination-of-insurance proceedings against an insured State nonmember bank; (2) the continuance of cease-and-desist proceedings against an insured State nonmember bank; and (3) an application of an insured State nonmember bank for consent to the issuance and retirement of capital notes.

In calling the meeting, the Board determined on motion of Chairman Irvine H. Sprague, seconded by Director William M. Isaac (Appointive), concurred in by Mr. Lewis G. Odom, Jr., acting in the place and stead of Director John G. Heimann (Comptroller of the Currency), that Corporation business required its consideration of the recommendations on less than seven days' notice to the public; that no earlier

notice of the meeting was practicable; and that the recommendations could be considered in a closed meeting, pursuant to subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)), since the public interest did not require consideration of the recommendations in a meeting open to public observation.

Dated: May 9, 1979.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-967-79 Filed 5-11-79; 9:56 am]

BILLING CODE 6714-01-M

6

FEDERAL RESERVE SYSTEM.

TIME AND DATE: Approximately 11 a.m., Friday, May 18, 1979 (following a recess at the conclusion of an open meeting to be held earlier the same day).

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Conceptual design and target budget for the Baltimore Branch Building of the Federal Reserve Bank of Richmond.
2. Proposed acquisition of real property by a Federal Reserve Bank.
3. Proposal for improving internal security.
4. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
5. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board;

Griffith L. Garwood,

Deputy Secretary.

[S-970-79 Filed 5-11-79; 1:48 am]

BILLING CODE 6210-01-M

7

FEDERAL RESERVE SYSTEM.

TIME AND DATE: 10 a.m., Friday, May 18, 1979.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposed purchase of computer equipment by the Federal Reserve Bank of Minneapolis.
2. Proposed purchase of computer equipment by the Federal Reserve Bank of Chicago for the Chicago and Detroit offices.

Discussion Agenda

1. Proposed promotion of the Susan B. Anthony $1 coin.
2. Proposed amendment to Regulation E (Electronic Fund Transfers) regarding notice of loss or theft of an access device.
3. Any agenda items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 462-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 462-3204.

Griffith L. Garwood,

Deputy Secretary.

[S-971-79 Filed 5-11-79; 1:48 pm]

[BILLING CODE 6210-01-M

8

INTERSTATE COMMERCE COMMISSION.

TIME AND DATE: 9:30 p.m., Friday, May 11, 1979.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, D.C. 20423.

STATUS: Short Notice—Partially Open/ Closed Conference.

In addition to the item on the open agenda as previously published, the Commission unanimously voted, all Commissioners in attendance, to add the following item to the agenda and consider the same in closed session because it is likely to disclose information which if written would be contained in investigatory records compiled for law enforcement purposes, the production of which would interfere with enforcement proceedings, deprive a person of a right to a fair trial, and disclose investigative techniques and procedures, within the meaning of 5 U.S.C. 552b(c)(7) (A), (B), and (E), and 49 C.F.R. 1012.7(d)(7). The General Counsel has issued his certificate accordingly.

Report by Director Shannon on Pending Investigations.

The following persons will be in attendance at the closed portion:

Mark Evans, General Counsel
James Thomas, Director, Accounts
Peter Shannon, Director, BIE
Lewis Teeple, BIE
John Moseman, BIE
Robert Goren, BIE
John O'Brien, Chairman O'Neal's Office
Ardith Horne, Vice Chairman Brown's Office
Mary Kelly, Commissioner Stafford's Office
Gail Gibbons, Commissioner Clapp's Office
Pierce A. Quinlan, Managing Director
Benjamin McKenzie, Regional Managing Director
Richard Berman, Managing Director's Office
Joel Burns, Director, Operations
Douglas Baldwin, Director, Communications

CONTACT PERSON FOR MORE INFORMATION: Douglas Baldwin, Director, Office of Communications, Telephone: (202) 275-7252.

[S-969-79 Filed 5-11-79; 9:56 am]

BILLING CODE 7035-01-M

9

LEGAL SERVICES CORPORATION, COMMITTEE ON PROVISION OF LEGAL SERVICES.

TIME AND PLACE: 10 a.m., Saturday, May 19, 1979.

PLACE: Room 2401, University of New Mexico School of Law, 1117 Stanford Drive, N.E., Albuquerque, New Mexico.

STATUS: Open Meeting.

MATTERS TO BE CONSIDERED:

1. Adoption of Agenda
2. Approval of Minutes
3. Report on Delivery Systems Study
4. Section 1007(h) of the Legal Services Corporation Act—concluding considerations
5. Report on activities of the Office of Program Support
6. Report on Reginald Heber Smith Community Fellowship Program

CONTACT PERSON FOR MORE INFORMATION: Peggy Bell, Office of the President, telephone (202) 376-5100.

Issued: May 10, 1979.

Alice Daniel,

Acting President.

[S-968-79 Filed 5-11-79; 9:56 am]

BILLING CODE 6820-35-M

10

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: May 16 and 17, 1979.

PLACE: Commissioners' Conference Room, 1717 H St., NW, Washington, D.C.

STATUS: Open and Closed (Changes).

MATTERS TO BE CONSIDERED:

Wednesday, May 16, 9:30 a.m.

Continuation of Discussion of Uranium Mill Tailings Act (Approximately 1 hour—Public meeting—continued from May 9).

Wednesday, May 16, 1:30 p.m.

1. Meeting with UCS on Petition for Reconsideration (Approximately 1½ hours—Public meeting—as scheduled.

Discussion of Personnel Matter (Approximately 1½ hours—Closed-EX-6—Continuation).

Thursday, May 17, 9:30 a.m.

1. Briefing on Facts of TMI Operational Sequence (Approximately 1½ hours—Public meeting).
2. Affirmation Session (Postponed from May 16):
   a. As scheduled.
   b. As scheduled.
   c. As scheduled.
   d. Fialka FOIA Appeal.

Thursday, May 17, 2:00 p.m.

1. Briefing on Reactor Licensing Schedules (Approximately 1 hour—Public meeting).

CONTACT PERSON FOR MORE INFORMATION: Walter Magee, 202–634–1410.

Dated: May 10, 1979.

Roger M. Tweed,
Office of the Secretary.

11

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [44 FR 25970 May 5, 1979].

STATUS: Closed meeting.

PLACE: Room, 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Monday, April 30, 1979.

CHANGES IN MEETING: Additional item.

The following additional item was considered at a closed meeting held on Wednesday, May 9, 1979, at 5:00 p.m.

Regulatory matter bearing enforcement implications.

Commissioners Loomis, Evans and Pollack determined that Commission business required the above change and that no earlier notice thereof was possible.

May 11, 1979.

[S–977–79 Filed 5–11–79; 3:10 pm]

BILLING CODE 8010–01–M

federal register

Tuesday
May 15, 1979

Part II

Department of Agriculture

Office of the Secretary

Semiannual Agenda of Regulations

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[7 CFR, Subtitle A, Chs. I–VII, IX–XII, XIV–XVIII, XXI, XXIV–XXIX; 9 CFR Chs. I–IV; 36 CFR Ch. II; 41 CFR Ch. 4]

Semiannual Agenda of Regulations

AGENCY: U.S. Department of Agriculture.

ACTION: Semi-Annual Agenda of Regulations.

SUMMARY: This decision calendar contains a listing of significant regulations and other actions being developed in the Department of Agriculture under the procedures described in the report "Improving USDA Regulations," 43 FR 50988 (Nov. 1, 1978). The listing contains both actions underway and to be initiated during the next 6 months. Actions are listed under the name of the responsible USDA agency. The purpose of the calendar is to provide information to the public on pending decisions on regulations and certain other significant actions to facilitate comments and views by interested members of the public.

FOR FURTHER INFORMATION CONTACT: For additional information regarding any particular regulatory action contained in the agenda, contact the individual identified as the contact person in the agenda. Comments or inquiries of a general nature about the agenda should be directed to the following individual: Mr. Linley E. Juers, OBPE, Office of the Secretary, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone Number: (202) 447–6667.

SUPPLEMENTARY INFORMATION: On March 23, 1978, President Carter signed Executive Order 12044, "Improving Government Regulations". The Executive Order directs all executive branch departments and agencies to "adopt procedures to improve existing and future regulations."

This decision calendar contains a listing of significant regulations and other actions being developed in the Department of Agriculture under the procedures described in the report "Improving USDA Regulations," 43 FR 50988 (Nov. 1, 1978). The listing contains both actions underway and to be initiated during the next 6 months. Actions are listed under the name of the responsible USDA agency.

This decision calendar is being published to provide an overview of pending major actions and estimated dates when further steps in their development should occur. It is intended as an aid to the public in its participation in the USDA decisionmaking process at the appropriate stages. We have attempted to list all significant actions pending at the time of the calendar but some may have been inadvertently missed. There is no legal significance to an item not appearing on this listing.

The dates shown for the various stages of each action are estimated and are not commitments to act on or by the date shown. The "prenotice" date, when given, is an indication the agency intends to seek public input prior to the "notice of proposed rulemaking." Anyone desiring further information on an action should write or call the agency contact listed for the action. Unless a different address is given, inquiries should be addressed to: (Name of Agency Contact) (Agency Name), U.S. Department of Agriculture, Washington, D.C. 20250.

Additional information on USDA regulation and decisionmaking procedures may be obtained from Linley E. Juers, Office of Budget, Planning and Evaluation, Office of the Secretary, U.S. Department of Agriculture, Washington, D.C. 20250, phone (202) 447–6667.

This decision calendar will be updated in 6 months in accordance with the President's Executive Order 12044, **Federal Register**, March 24, pages 12661–12665.

Bob Bergland,

Secretary.

May 8, 1979.

BILLING CODE 3410-01—M

AGRICULTURAL MARKETING SERVICE

1. Calendar No: AM 1081

2. Title: Beef Pricing Investigation

3. Description: Study of marketing, pricing of beef carcasses, and reporting services.

4. Authority: 7 U.S.C. 192, investigation request by Secretary

5. Projected Schedule

   a. Date of pre-notice: 12/78
   b. Date of proposal: 12/78
   c. Final Decision: 11/79

6. Contacts:

   Agency: James Tuggle, Ext. (202) 447-5877

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1. Calendar No: AM 1085

2. Title: Implementation of the Wheat and Wheat Foods Research and Nutrition Education Act.

3. Description: (Formal Rulemaking) A series of steps coordinated by the Dept. will be required to develop an appropriate Wheat and Wheat Foods Research and Nutrition Education order. A referendum of end product manufacturers (primarily wholesale bakers) would determine if the order is approved.

4. Authority: Wheat and Wheat Foods Research and Nutrition Education Act (Public Law 95-113, Section 1701-1719) Statutory. 7 U.S.C. 3401 et seq.

5. Projected Schedule

   a. Date of pre-notice: 11/78
   b. Public hearing: 3/79
   c. Recommend Decision: 6/79
   d. Final Decision: 9/79

6. Contacts:

   Agency: Ralph Tapp, Ext. (202) 447-3970

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1. Calendar No: AM 1086

2. Title: Implementation of the amended Beef Research and Information (BRI) Act

3. Description: (Formal Rulemaking) A series of steps coordinated by the Dept. will be required to develop an appropriate BRI order. A referendum would determine if beef producers wish to assess themselves for the purpose of carrying out a BRI program.

4. Authority: Beef Research and Information Act (P.L. 94-294, May 29, 1976) as amended by the Agricultural Credit Act of 1978 (P.L. 95-334, August 4, 1978) 7 U.S.C. 2901 et seq.

5. Projected Schedule

   a. Date of pre-notice: 3/79
   b. Date of Hearing: 6/79
   c. Recommend Decision: 9/79
   d. Final Decision: 12/79

6. Contacts:

   Agency: Ralph Tapp, Ext. (202) 447-3970

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1. Calendar No: AM 1087

2. Title: Amendments to regulations under the Federal Seed Act. 7 CFR Part 201

3. Description: Update and clarify provisions such as definition of variety rules for assigning variety names, add new kinds, add new rules for testing, amend standards for certified seed, and amend rules for sampling unusual containers. Last major revision of regulations was in 1973.

4. Authority: Federal Seed Act, 7 U.S.C. 1551 et seq.

5. Projected Schedule

   a. Date of pre-notice:
   b. Date of proposal: 7/15/79
   c. Final Decision: 11/30/79

6. Contacts:

   Agency: Clyde Edwards, Ext. (202) 447-9340

1. **Calendar No:** AM 1089

2. **Title:** Proposed revisions of U.S. Grade Standards for Feeder Cattle.

3. **Description:** The present standards are outdated due to changes in the cattle population and changes in beef standards in 1976.

4. **Authority:** Agricultural Marketing Act of 1946. 7 U.S.C. 1621 et seq.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 5/1/79
   c. **Final Decision:** 8/1/79

6. **Contacts:**

   Agency: W. Edmund Tyler, Ext. (202) 447-5679

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1. **Calendar No:** AM 10814

2. **Title:** Proposed New England Apple Marketing Agreement and Order. 7 CFR Part (Pending)

3. **Description:** Obtain evidence on requested program regarding research, promotion and minimum maturity provisions covering apples grown in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.

4. **Authority:** Agricultural Marketing Agreement Act of 1937, as amended. 7 U.S.C. 601 et seq.

5. **Projected Schedule**

   a. **Notice of hearing:** 11/78
   b. **Public hearing:** 12/78
   c. **Recommend Decision:** 4/79
   d. **Final Decision:** 5/79
   e. **Final Order:** 6/79

6. **Contacts:**

   Agency: C. R. Brader, Ext. (202) 447-6393

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1. **Calendar No:** AM 10843

2. **Title:** Amendment of Greater Kansas City Milk Order 7 CFR Part 1064

3. **Description:** Key proposals would change the pooling standards for supply plants.

4. **Authority:** Agricultural Marketing Agreement Act of 1937. 7 U.S.C. 601 et seq.

5. **Projected Schedule**

   a. **Invite proposals:** 7/13/78
   b. **Public hearing:** 10/30-31/78
   c. **Recommend Decision:** 5/21/79
   d. **Final Decision:** 8/1/79

6. **Contacts:**

   Agency: Maurice Martin, Ext. (202) 447-7183

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1. **Calendar No:** AM 10844

2. **Title:** Amendment of Nebraska-Western Iowa Milk Order 7 CFR Part 1065

3. **Description:** Key proposals would change the pooling standards for supply plants and increase the limit on the amount of milk that may be diverted from pool plants to nonpool plants for manufacturing. Another proposal would establish a later payment charge on all over-due obligations of handlers that are payable to the market administrator. Other proposals would either reduce or increase the Class I price at certain locations by various amounts.

4. **Authority:** Agricultural Marketing Agreement Act of 1937. 7 U.S.C. 601 et seq.

5. **Projected Schedule**

   a. **Invite proposals:** 7/13/78
   b. **Public hearing:** 10/24-27/78
   c. **Recommend Decision:** 5/21/79
   d. **Final Decision:** 8/1/79

6. **Contacts:**

   Agency: Maurice Martin, Ext. (202) 447-7183

1. Calendar No: AM 10849

2. Title: New Federal Milk Order for Boise, Idaho, Area
7 CFR Part (Pending)

3. Description: Establish a new Federal milk order covering 18 southwestern Idaho and 5 eastern Oregon counties. The principal cities in the proposed marketing area are Boise, Nampa, and Twin Falls, Idaho. The provisions of the order would be patterned after those commonly used in most other Federal orders.

4. Authority: Agricultural Marketing Agreement Act of 1937, as amended. 7 U.S.C. 601 et seq.

5. Projected Schedule
   a. Invite proposals: 9/15/78
   b. Public hearing: 12/5/78
   c. Recommend Decision: 8/15/79
   d. Final Decision: 11/15/79

6. Contacts:

Agency: Maurice Martin, Ext. (202) 447-7183

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1. Calendar No: AM 12857

Title: California Ruby Seedless Grape Marketing Agreement and Order. 7 CFR Part (Pending)

3. Description: Assess proposed program covering Ruby Seedless grapes grown in California.

4. Authority: Agricultural Marketing Agreement Act of 1937, as amended. 7 U.S.C. 601 et seq.

5. Projected Schedule

   a. Recommend Decision: 5/79
   b. Final Decision: 7/79
   c. Final Order: 8/79

6. Contacts:

Agency: C. R. Brader, Ext. (202) 447-6393

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1. Calendar No: AM 12859

2. Title: Amendment of Indiana Milk Order
7 CFR Part 1049

3. Description: Key proposals would increase the Class I differential 6 cents and would floor the Class I and blend prices when adjusted downward for plant location at the Class III price level.

4. Authority: Agricultural Marketing Agreement Act of 1937, as amended. 7 U.S.C. 601 et seq.

5. Projected Schedule
   a. Invite proposals: 10/12/78
   b. Public hearing: 1/9/79
   c. Recommend Decision: 4/16/79
   d. Final Decision: 6/15/79

6. Contacts:

Agency: Martin Dunn, Ext. (202) 447-7311

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1. Calendar No: AM 12860

2. Title: Changing License Fees and Requirements under Perishable Agricultural Commodities Act.

3. Description: Implement recent amendments to Act, e.g., increase exemptions for retailers and frozen food brokers, increase license fees and add fee assessments for branch operations.

4. Authority: Perishable Agricultural Commodities Act (7 U.S.C. 499a et seq.) and recent amendments to Act (Act of Nov. 1, 1978, P.L. 95-562, 92 Stat. 2381)

5. Projected Schedule

   a. Date of pre-notice:
   b. Date of proposal: 2/79
   c. Final Decision: 10/79

6. Contacts:

Agency: Wilbur Rife, Ext. (202) 447-2189

1. Calendar No: AM 194

2. Title: California Grapefruit Marketing Agreement and Order. 7 CFR Part 909 (Pending)

3. Description: Assess proposed program to regulate grapefruit grown in California.

4. Authority: Agricultural Marketing Agreement Act of 1937, as amended. 7 U.S.C. 601 et seq.

5. Projected Schedule

a. Date of Hearing: 3/8/79
b. Recommend Decision: 5/79
c. Final Decision: 7/79
d. Final Order: 8/79

6. Contacts:

Agency: M. E. McGaha, Ext. (202) 447-5975

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1. Calendar No: AM 195

2. Title: Arizona Grapefruit Marketing Agreement and Order 7 CFR Part 909 (Pending)

3. Description: Assess proposed program to regulate grapefruit grown in Arizona

4. Authority: Agricultural Marketing Agreement Act of 1937, as amended. 7 U.S.C. 601 et seq.

5. Projected Schedule

a. Date of Hearing: 3/12/79
b. Recommend Decision: 5/79
c. Final Decision: 5/79

6. Contacts:

Agency: M. E. McGaha, Ext. (202) 447-5975

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1. Calendar No: AM 4921/(993.0)

2. Title: Marketing Policy for California Dried Prunes under Mo.O. No. 993. 7 CFR Part 993

3. Description: To set volume regulation for California dried prunes for the 1979-80 crop year beginning August 1, 1979, and ending July 31, 1980.

4. Authority: Authorized by Agricultural Marketing Agreement Act/Recommended by Prune Administrative Committee 7 U.S.C. 601 et seq.

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal: 7/79
c. Final Decision: 8/79

6. Contacts:

Agency: William J. Higgins, Ext. (202) 447-5053

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1. Calendar No: AM 4922/(932.0)

2. Title: Marketing Policy Statement - 1979-80 Crop Year - Olives Grown in California. 7 CFR Part 932

3. Description: The committee's marketing policy sets forth basis for regulations for 1979-80 year beginning September 1, 1979, and ending August 31, 1980.

4. Authority: Order 932/Committee considers marketing policy each crop year.

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal:
c. Final Decision: 9/79

6. Contacts:

Agency: M. E. McGaha, Ext. (202) 447-5975

1. Calendar No: AM 4923/(925.5)

2. Title: Proposed Termination of Marketing Order 925 covering Idaho-Oregon Fresh Prunes. 7 CFR Part 925

3. Description: This notice solicits comments on a proposal to terminate M.O. 925 and dispose of administrative committee assets.

4. Authority: M.O. 925 - Fresh prunes grown in designated area of Idaho and Oregon has been inactive since 1974. 7 U.S.C. 608c(16)

5. Projected Schedule

   a. Date of pre-notice:
   b. Date of proposal: 4/79
   c. Final Decision: 5/79

6. Contacts:

   Agency: M. E. McGaha, Ext. (202) 447-5975

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1. Calendar No: AM 4925/(907.0)

2. Title: Marketing Policy Statement - 1979-80 Crop Year - Navel Oranges Grown in Arizona and California. 7 CFR Part 907

3. Description: The committee's marketing policy sets forth basis for regulations for 1979-80 year beginning November 1, 1979, and ending October 31, 1980.

4. Authority: Order 907/Committee considers marketing policy each crop year. 7 U.S.C. 601 et seq.

5. Projected Schedule

   a. Date of pre-notice:
   b. Date of proposal:
   c. Final Decision: 10/79

6. Contacts:

   Agency: M. E. McGaha, Ext. (202) 447-5975

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1. Calendar No: AM 4926/(910.0)

2. Title: Marketing Policy Statement - 1979-80 Crop Year - Lemons Grown in California and Arizona. 7 CFR Part 910

3. Description: The Committee's marketing policy sets forth basis for regulations for 1979-80 year beginning August 1, 1979, and ending July 31, 1980.

4. Authority: Order 910/Committee considers marketing policy each crop year. 7 U.S.C. 601 et seq.

5. Projected Schedule

   a. Date of pre-notice:
   b. Date of proposal:
   c. Final Decision: 8/79

6. Contacts:

   Agency: M. E. McGaha, Ext. (202) 447-5975

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1. Calendar No: AM 4927/(930.0)

2. Title: Marketing Policy Statement - 1979-80 Crop Year - Tart Cherries Grown in Selected States. 7 CFR Part 930

3. Description: The Board's marketing policy sets forth basis for regulations for 1979-80 year beginning May 1, 1979, and ending April 30, 1980.

4. Authority: Order 930/Board considers marketing policy each crop year. 7 U.S.C. 601 et seq.

5. Projected Schedule

   a. Date of pre-notice:
   b. Date of proposal:
   c. Final Decision: 7/79

6. Contacts:

   Agency: M. E. McGaha, Ext. (202) 447-5975

1. **Calendar No:** AM 4928/(966.0)

2. **Title:** Marketing Policy Tomatoes Grown in Florida - M.O. 966. 7 CFR Part 966

3. **Description:** Establish a basis for recommending 1979-80 handling regulations under expected tomato supply and demand situation.

4. **Authority:** Authorized by Agricultural Marketing Agreement Act/Recommended by Florida Tomato Committee 7 U.S.C. 601 et seq.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 9/79
   c. **Final Decision:** 10/79

6. **Contacts:**

   Agency: D. S. Kuryloski, Ext. (202) 447-6393

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1. **Calendar No:** AM 4929/(967.0)

2. **Title:** Marketing Policy for Florida Celery Under M.O. No. 967. 7 CFR Part 969

3. **Description:** This would establish a basis for recommending a handling regulation for the 1979-80 season, which begins August 1, 1979, and ends the following July 31.

4. **Authority:** Authorized by Agricultural Marketing Agreement Act/Recommended by Florida Celery Committee. 7 U.S.C. 601 et seq.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 6/79
   c. **Final Decision:** 8/79

6. **Contacts:**

   Agency: D. S. Kuryloski, Ext. (202) 447-6393

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1. **Calendar No:** AM 4930/(981.0)

2. **Title:** Marketing Policy for California Almonds Under M.O. No. 981. 7 CFR Part 981

3. **Description:** To set the volume regulation for California almonds for the 1979-80 crop year beginning July 1, 1979 and ending June 30, 1980.

4. **Authority:** Authorized by Agricultural Marketing Agreement Act/Recommended by Almond Board of California. 7 U.S.C. 601 et seq.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 8/79
   c. **Final Decision:** 9/79

6. **Contacts:**

   Agency: William J. Higgins, Ext. (202) 447-5053

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1. **Calendar No:** AM 4931/(984.0)

2. **Title:** Marketing Policy for California Walnuts under M.O. No. 984. 7 CFR Part 984

3. **Description:** To set the volume regulation for California walnuts for the 1979-80 marketing year beginning August 1, 1979, and ending July 31, 1980.

4. **Authority:** Authorized by Agricultural Marketing Agreement Act/Recommended by the Walnut Marketing Board 7 U.S.C. 601 et seq.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 9/79
   c. **Final Decision:** 11/79

6. **Contacts:**

   Agency: William J. Higgins, Ext. (202) 447-5053

1. **Calendar No:** AM 4932/(989.0)

2. **Title:** Marketing Policy for California Raisins Under M.O. No. 989. 7 CFR Part 989

3. **Description:** To set the volume regulation for California raisins for the 1979-80 crop year beginning August 1, 1979, and ending July 31, 1980.

4. **Authority:** Authorized by Agricultural Marketing Agreement Act/Recommended by Raisin Administrative Committee. 7 U.S.C. 601 et seq.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 11/79
   c. **Final Decision:** 12/79

6. **Contacts:**

   Agency: William J. Higgins, Ext. (202) 447-5053

ANIMAL AND PLANT HEALTH INSPECTION SERVICE

1. **Calendar No:** AP 1081

2. **Title:** Revise Gypsy Moth and Brown-Tail Moth Quarantine and Regulations

3. **Description:** Would redirect Gypsy Moth and Brown-Tail Moth programs by adopting a pest management concept based on pest risk.

4. **Authority:** 7 U.S.C. 161, 162, 150ee. To change regulatory program.

5. **Projected Schedule**

   a. **Date of pre-notice:** None
   b. **Date of proposal:** 5/4/79
   c. **Final Decision:** 9/1/79

6. **Contacts:**

   Agency: H. V. Autry, Ext. (301) 436-8247

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1. **Calendar No:** AP 1089

2. **Title:** Revised Bird Quarantine Regulation

3. **Description:** Would add "smuggled birds" to definitions, and would provide for release when determined to be free of disease

4. **Authority:** 21 U.S.C. 111, 134a-c, and 134f. Provide method for quarantining "smuggled" birds.

5. **Projected Schedule**

   a. **Date of pre-notice:** None
   b. **Date of proposal:** 3/30/79
   c. **Final Decision:** 7/1/79

6. **Contacts:**

   Agency: Dr. George Pierson, Import/Export Staff, Ext. (301) 436-8170

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1. **Calendar No:** AP 10810

2. **Title:** Revision of Export Livestock Handling Requirements

3. **Description:** Amendments would delete specific maximum length requirements for container pens for animals on ocean vessels and would relax restrictions on the type of roof which may be used to cover pens carrying animals on exposed decks aboard ocean vessels.

4. **Authority:** 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612-614, 618; 46 U.S.C., 466a, 466b. Research studies performed indicate that certain modifications in shipping practices would not result in relaxed humane handling standards or disease control measures.

5. **Projected Schedule**

   a. **Date of pre-notice:** None
   b. **Date of proposal:** 8/1/79
   c. **Final Decision:** 11/1/79

6. **Contacts:**

   Agency: Dr. Harold Waters, Ext. (301) 436-8383

1. **Calendar No:** AP 10815

2. **Title:** Revised Bird Quarantine Regulation

3. **Description:** Would provide for approval of additional quarantine facilities for importation of birds only if adequate manpower is available to service the facility.

4. **Authority:** 21 U.S.C. 111, 134a, 134b, 134c, and 134f would provide authority to allocate agency personnel resources for servicing privately owned and operated bird quarantine facilities.

5. **Projected Schedule**

   a. **Date of pre-notice:** None
   b. **Date of proposal:** 4/3/79
   c. **Final Decision:** 8/1/79

6. **Contacts:**

   Agency: Dr. George Pierson, Import/Export Staff, Ext. (301) 436-8170

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1. **Calendar No:** AP 3911

2. **Title:** Revised Voluntary Inspection Regulations (Docket 78-59)

3. **Description:** This action would permit APHIS to require that the exporter reimburse the government for the cost of these services.

4. **Authority:** 7 U.S.C. 1622, 1624/APHIS does not have the resources to continue providing free inspection, testing, and certification services to exporters to meet the importing country's requirements.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 7/15/79
   c. **Final Decision:** 11/15/79

6. **Contacts:**

   Agency: Dr. H. Waters, Ext. (301) 436-8383

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1. **Calendar No:** AP 3912

2. **Title:** Revised Cattle Scabies Regulations (Docket 78-76)

3. **Description:** Revision would require that Federally-approved facilities be provided by livestock market managers for the treatment of cattle required to be dipped before moving interstate.

4. **Authority:** 21 U.S.C. 111-113, 115, 117, 120-1, 123-6/Revision would give added support to the State-Federal cooperative cattle scabies eradication efforts.

5. **Projected Schedule**

   a. **Date of pre-notice:** 1/26/78
   b. **Date of proposal:** 8/1/79
   c. **Final Decision:** 12/1/79

6. **Contacts:**

   Agency: Dr. J. Hourrigan, Ext. (301) 436-8231

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1. **Calendar No:** AP 3915

2. **Title:** Amendment to TB Indemnity Rates (Docket 78-107)

3. **Description:** This proposed amendment would raise the maximum indemnity rate for livestock destroyed because of tuberculosis. On tuberculin reactors and exposed animals the indemnity would be the difference between the appraised value and residual salvage value up to the new maximum.

4. **Authority:** 21 U.S.C. 111-113, 114, 114a, 114a-1, 120, 121, 125, 134b/To maintain a reasonable incentive for livestock owners to voluntarily cooperate in the TB Eradication Program, the indemnity would raised to a level which will minimize the owner's loss for agreeing to depopulate the infected herd.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 5/25/79
   c. **Final Decision:** 8/25/79

6. **Contacts:**

   Agency: Dr. Ralph Bennett, Ext. (301) 436-8715

1. **Calendar No:** AP 3925

2. **Title:** Revise Brucellosis Regulation to Parallel Uniform Methods and Rules

3. **Description:** To consider revision of the regulations to conform to the Uniform Methods and Rules as administered within the States.

4. **Authority:** 21 U.S.C. 111-114a-1, 114g, 115, 117, 120, 121, 123-125, 134b, 134f/This action would be responsive to the Secretary's Brucellosis Technical Commissions's Report recommending changes to the Uniform Methods and Rules. The recommended changes were adopted as Resolutions by the Brucellosis Committee of the USAHA.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 12/1/79
   c. **Final Decision:** 4/1/80

6. **Contacts:**

   Agency: Dr. A. D. Robb, Ext. (301) 436-8713

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1. **Calendar No:** AP 3926

2. **Title:** Revise Brucellosis Indemnity Regulations

3. **Description:** Would authorize surveys of market values of cattle to determine flat rate indemnity maximums for each class and type. The rates should preferably be by State so that the combination of State/Federal indemnity and salvage value will give the producer a total return great enough to insure his participation in disease eradication, but not so great that he would live with the disease in order to collect indemnities

4. **Authority:** 21 U.S.C. 111, 113, 114, 114a-1, 120, 121, 125, 134b/This action is responsive to recommendations made by USAHA, the Secretary's Brucellosis Technical Commission and the National Cattleman's Association. The recommendations ask APHIS to evaluate the possibility of adopting an indemnity system keyed to replacement value which moves with the market.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 10/1/79
   c. **Final Decision:** 2/1/80

6. **Contacts:**

   Agency: Dr. A. D. Robb, Ext. (301) 436-8713

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1. **Calendar No:** AP 3929

2. **Title:** Imported Fire Ant (IFA) Revocation

3. **Description:** Proposal to revoke the imported fire ant quarantine and regulations which regulate the movement of articles to prevent artificial, long-range spread of the ant to noninfested areas. Federal regulatory activities would be terminated.

4. **Authority:** 7 U.S.C. 161, 162, 150ee/Control chemicals will soon be unavailable. No acceptable alternatives appear to exist.

5. Projected Schedule

   a. **Date of pre-notice:**
   b. **Date of proposal:** 6/1/79
   c. **Final Decision:** 9/30/79

6. **Contacts:**

   Agency: H. Autry, Ext. (301) 436-8247

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1. **Calendar No:** AP 4935

2. **Title:** Quarantine 37 - Nursery Stock, Plants and Seeds (Docket 77-308)

3. **Description:** Complete revision of entire quarantine and update of lists of nursery stock, plants, and seeds prohibited or restricted entry. Proposal will include provision for a public hearing.

4. **Authority:** 7 U.S.C. 160, 162, and 7 U.S.C. 150ee/Cyclical revision of entire quarantine

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 6/5/79
   c. **Final Decision:** 10/15/79

6. **Contacts:**

   Agency: H. Autry, Ext. (301) 436-8247

AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE

1. **Calendar No:** AS 1086

2. **Title:** 1980-Crop Wheat

3. **Description:** Proposed rulemaking for national program acreage, set-aside and diversion levels, voluntary reduction, target and loan levels, special grazing and hay program and acreage limitations for the 1980-crop of wheat.

4. **Authority:** Agricultural Act of 1949, as amended by the Food and Agriculture Act of 1977, Section 1001 of the Food and Agriculture Act of 1977, and the Act of May 15, 1978.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 5/15/79
   c. **Final Decision:** by 8/15/79

6. **Contacts:**

   Agency: Bruce R. Weber, Ext. (202) 447-7987

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1. **Calendar No:** AS 10819

2. **Title:** Emergency Feed Program

3. **Description:** Amend regulations to: (1) Require forage from set-aside acres be utilized before program assistance is provided; (2) Limit assistance covering pasture loss to 50% of the pasture loss; (3) Provide that grain under loan is considered sold on the date the loan is disbursed.

4. **Authority:** Food and Agriculture Act of 1977.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 7/15/79
   c. **Final Decision:** 10/30/79

6. **Contacts:**

   Agency: Robert Cook, Ext. (202) 447-7997

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1. **Calendar No:** AS 492

2. **Title:** 1979 Crop Sugar Loan Program

3. **Description:** Issue proposed range of loan rates and terms and conditions under which CCC would offer nonrecourse loans on 1979 crop sugar.

4. **Authority:** Sec. 301 of Agricultural Act of 1949 (7 U.S.C. 1447).

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 4/30/79
   c. **Final Decision:** 6/1/79

6. **Contacts:**

   Agency: Larry Ackland, Ext. (202) 447-5647

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1. **Calendar No:** AS 494

2. **Title:** 1980 Upland Cotton Program Provisions

3. **Description:** Announce the preliminary target price, national program acreage, voluntary reduction percentage, set-aside requirement, voluntary diversion requirement, and limitation on planted acreage.

4. **Authority:** Agriculture Act of 1949, as amended by the Food & Agricultural Act of 1977 and the Act of May 15, 1978.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 9/14/79
   c. **Final Decision:** 12/15/79

6. **Contacts:**

   Agency: Charles V. Cunningham, Ext. (202) 447-7873

1. **Calendar No:** AS 497

2. **Title:** 1980 Feed Grain Program

3. **Description:** Proclamation of national program acreage (NPA), set-aside level, recommended reduction for the 1980 feed grain crop, and other provisions.

4. **Authority:** Agricultural Act of 1949, as amended by the Food and Agriculture Act of 1977 and the Act of May 15, 1978.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 8/15/79
   c. **Final Decision:** by 11/15/79

6. **Contacts:**

   Agency: Orville I. Overboe, Ext. (202) 447-7987

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1. **Calendar No:** AS 498

2. **Title:** 1980 Feed Grain Program

3. **Description:** Proclamation of 1980 Feed Grain Support Levels.

4. **Authority:** Agricultural Act of 1949, as amended by the Food and Agriculture Act of 1977, and the Act of May 15, 1978.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 8/15/79
   c. **Final Decision:** 11/15/79

6. **Contacts:**

   Agency: Orville I. Overboe, Ext. (202) 447-7987

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1. **Calendar No:** AS 499

2. **Title:** 1980 Soybean Price Support Program

3. **Description:** Announce a loan and purchase program for soybeans and the provisions to carry out the program.

4. **Authority:** Agricultural Act of 1949, as amended by the Food and Agriculture Act of 1977.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 8/15/79
   c. **Final Decision:** 11/15/79

6. **Contacts:**

   Agency: Harry A. Sullivan, Ext. (202) 447-7951

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1. **Calendar No:** AS 4911

2. **Title:** 1980 Rice Set-Aside and Land Diversion Payment Program

3. **Description:** Announce the national acreage allotment and the set-aside and the land diversion payment program determinations.

4. **Authority:** Agricultural Act of 1949, as amended by the Food and Agriculture Act of 1977 and the Agricultural Credit Act of 1978.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 9/28/79
   c. **Final Decision:** 12/31/79

6. **Contacts:**

   Agency: George H. Schaefer, Ext. (202) 447-8480

1. Calendar No: AS 4912

2. Title: 1980 Rice Loan, Purchase and Payment Program

3. Description: Determine and announce the loan and purchase rate and the target price for rough rice. Basically, the determinations are mathematical calculations specified by statute.

4. Authority: Agricultural Act of 1949, as amended by the Food and Agriculture Act of 1977 and the Agricultural Credit Act of 1978.

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal: 9/28/79
c. Final Decision: 12/31/79

6. Contacts:

Agency: George H. Schaefer, Ext. (202) 447-8480

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1. Calendar No: AS 4913

2. Title: 1979 Crop Wheat

3. Description: Proclaim final national program acreage for 1979 crop of wheat.

4. Authority: Agricultural Act of 1949, as amended by the Food and Agriculture Act of 1977.

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal:
c. Final Decision: 11/15/79

6. Contacts:

Agency: Bruce R. Weber, Ext. (202) 447-6688

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1. Calendar No: AS 4920

2. Title: 1980 Crop Peanuts -- National Average Price Support Levels and General Program Provisions.

3. Description: Establish a 1980 national average support level for quota peanuts at not less than $420 a ton; a national average support level for additional peanuts; and CCC sales policy for sales of additional peanuts for edible export use.

4. Authority: Agricultural Act of 1949, as amended by the Food and Agriculture Act of 1977.

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal: 11/1/79
c. Final Decision: 2/15/80

6. Contacts:

Agency: Kay Wygal, Ext. (202) 447-7695

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1. Calendar No: AS 4921

2. Title: 1980 Crop Peanuts - National Acreage Allotment and National Poundage Quota.

3. Description: Establish for 1980 crop peanuts a national acreage allotment which determines maximum planted acres, and a national poundage quota which determines the quantity of peanuts eligible for loans at the domestic edible support level.

4. Authority: Agricultural Adjustment Act of 1938, as amended by the Food and Agriculture Act of 1977.

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal: 9/1/79
c. Final Decision: by 12/1/79

6. Contacts:

Agency: Kay Wygal, Ext. (202) 447-6695

1. **Calendar No:** AS 4922

2. **Title:** Price Support Level for Milk, 1979-80 Marketing Year

3. **Description:** To set the support price for milk between 75 and 90 percent of parity in order to assure an adequate supply of pure and wholesome milk to meet current needs, reflect changes in the cost of production, and assure a level of farm income adequate to maintain productive capacity sufficient to meet anticipated future needs.

4. **Authority:** Agricultural Act of 1949, as amended.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 6/15/79
   c. **Final Decision:** by 9/30/79

6. **Contacts:**

   Agency: Sidney Cohen, Ext. (202) 447-4037

ECONOMICS, STATISTICS & COOPERATIVE SERVICE

1. **Calendar No:** ES 1081

2. **Title:** BLS Data Series

3. **Description:** The decision involves our adjustment to the new data series and evaluating its impact on our work in margins and cost components. Includes other possible sources of retail price data.

   Need: Bureau of Labor Statistics has dropped certain individual retail commodity price series and replaced them by composites series.

4. **Authority:** Agricultural Marketing Act of 1946, as amended, 7 U.S.C. 1622

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** Fall 1978
   c. **Final Decision:** 12/79

6. **Contacts:**

   Agency: Bob Bohall, Ext. (202) 447-8666

OFFICE OF ENERGY

1. **Calendar No:** EN 1082

2. **Title:** Industrial Hydrocarbons and Alcohols, Pilot Projects.

3. **Description:** Decisions regarding selection of pilot projects.

4. **Authority:** Section 1420 of Food and Agriculture Act of 1977 mandates Secretary of Agriculture, through CCC, to guarantee loans of up to $15 million for each of 4 pilot projects -- provided that economic and energy criteria are met.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:**
   c. **Final Decision:** 6/15/79

6. **Contacts:**

   Agency:

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1. **Calendar No:** ES 1082

2. **Title:** Cost of Production -- Methods, Procedures and Format

3. **Description:** Major crop and livestock cost of production estimates, their form, content, procedures and methods, dates of release, etc.

   Need: Need to establish a more satisfactory set of procedures and format for analyzing and publishing cost of production estimates.

4. **Authority:** 7 U.S.C. 1441a

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** Underway
   c. **Final Decision:** 6/1/79

6. **Contacts:**

   Agency: Preston LaFerney, Ext. (202) 447-8860

1. Calendar No: ES 1089

2. Title: Futures Trading in Potatoes

3. Description: Conduct a study of potato marketing and futures trading. Submit a report to the Secretary of Agriculture for response to requirements of P.L. 95-405, Sec. 27. The report is due to each House of Congress October 1, 1979.

4. Authority: P.L. 95-405, Sec. 27 - 7 U.S.C. 20 note

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal:
c. Final Decision: 10/1/79

6. Contacts:

Agency: Allen Paul, Ext. (202) 447-8168

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1. Calendar No: ES 10814

2. Title: Standby Authority for Mandatory Reporting of Data

3. Description: Determine possible ways industry could be required to submit monthly data and what legislation to propose

4. Authority: (GAO Report to Congress "What Causes Food Prices to Rise" CED-78-170, 9/7/78 recommends USDA develop legislation requiring firms to report data on margins.)

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal: 1/79
c. Final Decision: 12/79

6. Contacts:

Agency: Harry Harp, Ext. (202) 447-8489 and Rod Kite, Ext. (202) 447-8489

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1. Calendar No: ES 10824

2. Title: Review of Cooperative Program

3. Description: Determine the scope and content of an outside review of the cooperative program, including the composition of the review group.

Need: Need for guidance in the development of a more effective cooperative program within ESCS.

4. Authority: 7 U.S.C. 451-457

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal: 11/1/78
c. Final Decision: 6/15/79

6. Contacts:

Agency: Ken Farrell, Ext. (202) 447-8104

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1. Calendar No: ES 492

2. Title: 1979 Rice 5-Month Price Computation

3. Description: Reach understanding and agreement with rice industry, including cooperatives, on rice price reporting and computations of 5-month average price for 1979 crop.

4. Authority: P.L. 95-113, Sec. 702; 7 U.S.C. 1441; Food and Agricultural Act of 1977. Deficiency payments are based on ESCS-derived average price received by farmers for the August-December period.

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal: 4/12/79
c. Final Decision: 7/31/79

6. Contacts:

Agency: J. W. Kirkbride, Ext. (202) 447-2122

FOREIGN AGRICULTURAL SERVICE

1. Calendar No: FA 1083

2. Title: Proposed Establishment of Selected Area Agricultural Trade Offices

3. Description: On-the-spot surveys are being made where necessary; and financial, personnel and overseas position limitations are being explored with a view to establishing six trade offices by end of September 1979 and to develop proposal for opening additional trade offices during 1980.

4. Authority: Title VI of the Agricultural Act of 1954, as amended.

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal:
c. Final Decision: by 9/30/79

6. Contacts:

Agency: Jimmy Minyard, Ext. (202) 447-4761

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1. Calendar No: FA 10838

2. Title: Proposed designation of Agricultural Counselors

3. Description: Identify those positions in the field which should be upgraded from Attache to Counselor and submit to Department of State for concurrence. Select foreign country attache posts which will be upgraded during 1979 and 1980.

4. Authority: Title VI of the Agricultural Act of 1954, as amended.

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal:
c. Final Decision: 10/1/79

6. Contacts:

Agency: Alexander Bernitz, Ext. 202) 447-3253

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1. Calendar No: FA 10835

2. Title: Implementation of Public Law 88-482 Meat Import Law

3. Description: To estimate 1980 U.S. imports of meats subject to the Meat Import Act.

4. Authority: Public Law 88-482, The Meat Import Law.

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal:
c. Final Decision: 12/30/79

6. Contacts:

Agency: Jon Falck, Ext. (202) 447-7868

FEDERAL GRAIN INSPECTION SERVICE

1. Calendar No: FG 1081

2. Title: Export Shiploading Inspection Plans

3. Description: Review present export shiploading inspection plans and develop an alternative. The current "Uniform Shiploading Plan" is complicated and difficult to apply. The "10 Percent Plan" allows too much off grade grain to be loaded aboard ship.

4. Authority: U.S. Grain Standards Act, Section 5 and 7

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal: 6/15/79
c. Final Decision: 12/14/79

6. Contacts:

Agency: John Marshall, Ext. (202) 447-8497

1. **Calendar No:** FG 1082

2. **Title:** Weighing Handbook

3. **Description:** Develop and issue an interim instruction on the Supervision of Weighing for non-export grain. This must be done in two stages. First, an interim instruction to be available on 11/20/78. A final instruction will receive public review and comment.

4. **Authority:** U.S. Grain Standards Act, Section 7A

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:**
   c. **Final Decision:** 3/1/80

6. **Contacts:**

   Agency: George Lipscomb, Ext. (202) 447-4851

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1. **Calendar No:** FG 1083

2. **Title:** Dust Particle Size Standards

3. **Description:** Establish dust particle size standards as guidelines on the grain dust that should be removed from grain and the size dust particles that may be allowed to remain within the grain.

4. **Authority:** U.S. Grain Standards Act.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 2/80
   c. **Final Decision:** 7/80

6. **Contacts:**

   Agency: George Lipscomb, Ext. (202) 447-4851

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1. **Calendar No:** FG 1084

2. **Title:** Regulations Under the United States Grain Standards Act

3. **Description:** Regulations to implement new and amended provisions of the Act which was extensively amended by Congress in Oct 1976 and Sept 1977. Subpart A for administering and enforcing the Act; Subparts C & D contain standards for inspection and weighing equipment and handling systems respectively. (Other subparts to be drafted separately)

4. **Authority:** U.S. Grain Standards Act of 1976. To implement the U.S. Grain Standards Act -- Subparts A, C, and D.

5. **Projected Schedule**

   a. **Date of pre-notice:** 7/31/78
   b. **Date of proposal:** 3/2/79
   c. **Final Decision:** 8/15/79

6. **Contacts:**

   Agency: J. T. Abshier, Ext. (202) 447-8262

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1. **Calendar No:** FG 1085

2. **Title:** Expansion of Duties of Official Inspection Agencies

3. **Description:** A proposed rulemaking requiring all official inspection agencies to provide, upon request, official protein testing services for all classes of wheat using only FGIS approved protein testing equipment effective 5/1/79. However, on 5/1/80 FGIS will specify that only NIR equipment will be approved for protein testing. Exemptions provided for agencies where little or no wheat is marketed.

4. **Authority:** U.S. Grain Standards Act, Section 7(b) and 7 (f)

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 3/8/79
   c. **Final Decision:** 6/1/79

6. **Contacts:**

   Agency: Neil Porter, Ext. (202) 447-8262

1. **Calendar No:** FG 1086

2. **Title:** Proposed Amendment to the Official U.S. Standards for Grain

3. **Description:** Presently the standards for various grains require varying sizes of samples used for determining infestation. We propose to provide uniform requirements as to sample size and procedures used; and to establish a zero tolerance on live insect infestation before certificates identify involved grain as infested.

4. **Authority:** Section 4 of U.S. Grain Standards Act.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 7/15/79
   c. **Final Decision:** 10/30/79

6. **Contacts:**

   Agency: James L. Driscoll, Ext. (202) 447-9329

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1. **Calendar No:** FG 1087

2. **Title:** Sub-part J, Safety and Health Standards, Regulation Under the U.S. Grain Standards Act.

3. **Description:** Establish official safety and health standards regarding the minimum workplace conditions under which official personnel will perform official services.

4. **Authority:** Executive Order 11807, 29 CFR 1960, and the U.S. Grain Standards Act.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 7/13/79
   c. **Final Decision:** 11/1/79

6. **Contacts:**

   Agency: E. K. (Gus) Bauman, Ext. (202) 447-8955

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1. **Calendar No:** FG 496

2. **Title:** Eliminate Analysis for Dark, Hard, and Vitreous Kernels in Hard Red Winter Wheat

3. **Description:** Elimination of quality analysis for Dark, Hard, and Vitreous (DHV) Kernels in Hard Red Winter (HRW) Wheat effective May 1, 1980. Provide for quicker, more reliable objective testing (protein content) as a better indicator of baking quality.

4. **Authority:** Section 7(b) of U.S. Grain Standards Act (7 U.S.C. 79(b)).

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 1/24/79
   c. **Final Decision:** 5/30/79

6. **Contacts:**

   Agency: John Marshall, Ext. (202) 447-8497

FARMERS HOME ADMINISTRATION

1. **Calendar No:** Fm 1081

2. **Title:** Review of thermal insulation standards for masonry construction

3. **Description:** Review of technical and economic data on the effect of building mass upon energy consumption to determine the optimum level of thermal performance which should be required in FmHA financed masonry homes.

4. **Authority:** Action by House-Senate conference committee on FY 79 Agriculture Apropriations Act.

5. **Projected Schedule**

   a. **Date of pre-notice:** 11/13/78
   b. **Date of proposal:** 12/79
   c. **Final Decision:** 2/80

6. **Contacts:**

   Agency: Daniel J. Ball, Ext. (202) 447-3394

1. **Calendar No:** Fm 1082

2. **Title:** Revision of Hillside Development Standards in FmHA Instruction 424.5.

3. **Description:** Revision of requirements for site development in areas which have steep slopes. Standards apply to streets, grading, drainage, and other aspects of residential site development.

4. **Authority:** Requests by Appalachian Regional Commission, State agencies and FmHA field staff for more flexibility in standards.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 6/79
   c. **Final Decision:** 9/79

6. **Contacts:**

   Agency: Daniel J. Ball, Ext. (202) 447-3394

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1. **Calendar No:** Fm 1083

2. **Title:** Solar Demonstration Retrofit

3. **Description:** Select 2 FmHA inventory houses in each of six regions for retrofit utilizing Wilke Solar collector and monitor system over 2 heating seasons. Houses similar in design and orientation - one as control, other for solar. Audio-visual aids for training and demonstration are planned.

4. **Authority:** Departmental initiative to offset high cost of heating Sec. 502 housing through application of low-cost solar energy hardware.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 4/81
   c. **Final Decision:** 6/81

6. **Contacts:**

   Agency: Carl Larson, Ext. (202) 447-7595

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1. **Calendar No:** Fm 1084

2. **Title:** Change in FmHA 430.2 Exhibit F - Rural Rental Housing "Rent Increase."

3. **Description:** Change FmHA Procedure to require that before granting rent increases to RRH owners that are receiving interest credit, the owner must request Rental Assistance when a substantial number of tenants are paying more than 25% of their income for rent.

4. **Authority:** Departmental initiative to enable RRH tenants who are paying more than 25% of their income for rent to receive Rental Assistance.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 6/79
   c. **Final Decision:** 8/79

6. **Contacts:**

   Agency: Thomas Maxwell, Ext. (202) 447-7207

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1. **Calendar No:** Fm 1086

2. **Title:** Revision of Rural Rental Housing (RRH) Procedures (FmHA 444.5)

3. **Description:** Clarify application and preapplication requirement for RRH projects, including requirements for previous participation, evaluation of the market survey of demand and need, and to make other policy changes to shore up possible misuse of the program. Also, this action will incorporate the Rural Cooperative Housing program.

4. **Authority:** Departmental initiative to clarify procedure and to curb possible misuse of the program.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 7/79
   c. **Final Decision:** 9/79

6. **Contacts:**

   Agency: Lynn Voight, Ext. (202) 447-7207

1. **Calendar No:** Fm 1087

2. **Title:** Procedure to Implement Section 525 of the Housing Act of 1949

3. **Description:** Draft procedures to implement Section 525 of the Housing Act of 1949 on technical and supervisory assistance. (Out reach)

4. **Authority:** Introduce a new program. Housing Act of 1949

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 3/79
   c. **Final Decision:** 6/79

6. **Contacts:**

   Agency: John Pentecost, Ext. (202) 447-7207

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1. **Calendar No:** Fm 10810

2. **Title:** Consideration of Limited Assistance Self Help Housing Approach

3. **Description:** Review the policy and procedure concerning the minimum hours of participation on self help projects. Ask public interest groups for comment concerning the advisibility of limiting the family's labor contribution.

4. **Authority:** Departmental initiative

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 5/79
   c. **Final Decision:** 9/79

6. **Contacts:**

   Agency: John Pentecost, Ext. (202) 447-7207

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1. **Calendar No:** Fm 10812

2. **Title:** Home Ownership Assistance Program

3. **Description:** Development and promulgation of instructions to implement a Home Ownership Assistance subsidy program as requested by the Administration and passed by Congress.

4. **Authority:** Housing and Community Development Amendments of 1978

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 5/79
   c. **Final Decision:** 8/79

6. **Contacts:**

   Agency: Matt Felber Ext. (202) 447-4295

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1. **Calendar No:** Fm 10814

2. **Title:** Coordinated Use of Loan and Grant Programs to Meet Low-Income Needs

3. **Description:** Deny community program assistance in prescribed circumstances, and to accelerate repayment in certain instances when communities arbitrarily prohibit or restrict low-income housing.

4. **Authority:** Departmental initiative to prevent communities and groups from using FmHA Community Program resources and subsequently, and arbitrarily denying or restricting low-income housing.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 5/79
   c. **Final Decision:** 9/79

6. **Contacts:**

   Agency: Art Collings, Ext. (202) 447-8448

1. **Calendar No:** Fm 10818

2. **Title:** Review of Present Priorities for B&I Loans

3. **Description:** Review will include consideration of lines of credit, small loans, limited partnerships, interim financing and other matters

4. **Authority:** Departmental Initiative

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 6/79
   c. **Final Decision:** 9/79

6. **Contacts:**

   Agency: Robert Butler, Ext. (202) 447-5243

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1. **Calendar No:** Fm 10822

2. **Title:** Proposed change in B&I Program to broaden eligibility for foreign-owned applicants.

3. **Description:** Completed survey of states to determine significance of impact, published proposed change to permit foreign applicants if 85% of employees are U.S. citizens, and prepared option paper for decision.

4. **Authority:** Request by applicants, S/D, Vermont and general requests.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 5/79
   c. **Final Decision:** 8/79

6. **Contacts:**

   Agency: Robert Butler, Ext. (202) 447-5243

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1. **Calendar No:** Fm 10823

2. **Title:** Revise FmHA instructions to permit certain energy producing projects to be funded under B&I Program

3. **Description:** Departmental initiative to amend B&I regulations to permit certain energy projects to be approved.

4. **Authority:** Consolidated Farm and Rural Development Act, as amended, Section 310B, Public Law 92-419; 7 U.S.C. 1932.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 6/79
   c. **Final Decision:** 9/79

6. **Contacts:**

   Agency: Robert Butler, Ext. (202) 447-5243

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1. **Calendar No:** Fm 10826

2. **Title:** Community Facility loans for electric and telephone facilities

3. **Description:** Consider making FmHA loans for electric and telephone facilities to communities not eligible for REA assistance.

4. **Authority:** To provide a complete spectrum of loan assistance to rural communities in need.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 8/79
   c. **Final Decision:** 12/79

6. **Contacts:**

   Agency: John Bowles, Ext. (202) 447-7667

1. Calendar No: Fm 10827

2. Title: Assistance to Energy Impacted Areas

3. Description: Provide grants for planning, land acquisition, and site development to energy impact areas

4. Authority: Powerplant and Industrial Fuel Use Act, Section 601

5. Projected Schedule

   a. Date of pre-notice:
   b. Date of proposal: 3/79
   c. Final Decision: 5/79

6. Contacts:

   Agency: Paul Kugler, Ext. (202) 447-2573

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1. Calendar No: Fm 10828

2. Title: Small Communities Conferences

3. Description: A series of conferences under USDA leadership with several other departments cooperating, for the purpose of addressing the critical economic needs of small rural communities.

4. Authority: Section 603, Rural Development Act of 1972

5. Projected Schedule

   a. Date of pre-notice:
   b. Date of proposal:
   c. Final Decision: 10/79

6. Contacts:

   Agency: Carl Larson, Ext. (202) 447-7595

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1. Calendar No: Fm 10842

2. Title: Joint Memorandum of Agreement between FmHA and the Appalachian Regional Commission

3. Description: The Agreement will commit FmHA to follow the priorities set by local development districts and states, FmHA and ARC to jointly set priorities and establish and support compatible programs in rural development.

4. Authority: Departmental Initiative

5. Projected Schedule

   a. Date of pre-notice:
   b. Date of proposal: 5/79
   c. Final Decision: 7/79

6. Contacts:

   Agency: Craig Bigler, Ext. (202) 447-3360

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1. Calendar No: Fm 10844

2. Title: Phase II, National Rural Community Facilities Assessment Study.

3. Description: Major feasibility study currently underway with ABT Assoc. to determine the data requirements, collection and analysis plans for making the assessments. Performance criteria and types of communities to be included will be presented to FmHA prior to the initiation of Phase II. Supplemental study to be conducted by Agency.

4. Authority: Agency initiative to develop national and state assessments of the current status of community facilities relative to acceptable performance standards.

5. Projected Schedule

   a. Date of pre-notice:
   b. Date of proposal:
   c. Final Decision: 10/79

6. Contacts:

   Agency: Lou Higgs, Ext. (202) 447-9296

1. Calendar No: Fm 10847

2. Title: Rural Development Goals Report

3. Description: Appraise Congress of Executive actions to promote rural development

4. Authority: Required by Rural Development Act of 1972.

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal: 5/79
c. Final Decision: 6/79

6. Contacts:

Agency: John Leslie, Ext. (202) 447-3360

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1. Calendar No: Fm 10848

2. Title: Refine data gathering to aid state directors in development strategy.

3. Description: Identify, refine and gather data to assist State Directors in complying with the Administrator's memorandum on targeting FmHA programs.

4. Authority: Agency Initiative

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal: 6/79
c. Final Decision: 7/79

6. Contacts:

Agency: Richard Long, Ext. (202) 447-4871

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1. Calendar No: Fm 10853

2. Title: Business and Industrial Guaranteed Loan Program Evaluation.

3. Description: Evaluation will include an analysis of institutional processing characteristics, loan portfolio characteristics and alternative types of assistance.

4. Authority: Agency initiative to evaluate the program.

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal: 10/79
c. Final Decision: 12/79

6. Contacts:

Agency: Dick Ackley, Ext. (202) 447-6586

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1. Calendar No: Fm 10856

2. Title: Needs Assessment Capability Study

3. Description: The Needs Assessment Component will be designed to be nationally applicable, to be used at the national level in assessing the relative needs of States, and within assessing the relative needs of counties. Center for Census Use Studies has contracted to develop a Needs Assessment Component to help FmHA assess relative levels of need for its loan programs.

4. Authority: Departmental Initiative.

5. Projected Schedule

a. Date of pre-notice: Completed
b. Date of proposal: Completed
c. Final Decision: 11/79

6. Contacts:

Agency: Mark Nestle, Ext. (202) 447-6484

1. **Calendar No:** Fm 10858

2. **Title:** Weatherization Program - A change in emphasis

3. **Description:** Review alternative procedures available to improve effectiveness of programs.

4. **Authority:** Departmental initiative to increase effectiveness of current programs to meet the President's energy program.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:**
   c. **Final Decision:** 10/79

6. **Contacts:**

   Agency: J. Maetzold, Ext. (202) 447-6586

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1. **Calendar No:** Fm 10866

2. **Title:** Section 502 Loans Income Limitations

3. **Description:** To adjust current limits for inflation.

4. **Authority:** Departmental initiative.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 5/79
   c. **Final Decision:** 6/79

6. **Contacts:**

   Agency: Byron Fischer, Ext. (202) 447-4295

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1. **Calendar No:** Fm 10883

2. **Title:** Small Business Enterprise Loans

3. **Description:** Issue regulations for implementation of program.

4. **Authority:** Section 304 of the Consolidated Farm and Rural Development Act.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 9/79
   c. **Final Decision:** 12/79

6. **Contacts:**

   Agency: Carl Opstad, Ext. (202) 447-4572

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1. **Calendar No:** Fm 12891

2. **Title:** Demonstration Program to improve coordination and upgrade the water and sewer assistance FmHA and EDA provide rural communities.

3. **Description:** Implement six month pilot program led by the EPA in the states of Iowa, Nebraska, Kansas, Missouri, Oklahoma, Arkansas, Louisiana and Texas. Joint program involves needs assessment, new screening procedures, single application for assistance, contract in engineering fees, and other streamlined features.

4. **Authority:** Interagency agreement, (EPA, FmHA, EDA, CSA, and HUD) initiated by White House.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:**
   c. **Final Decision:** 7/79

6. **Contacts:**

   Agency: Glenn E. Walden, Ext. (202) 447-4307

FOOD AND NUTRITION SERVICE

1. **Calendar No:** FN 1182

2. **Title:** Proposed and Final Regulations Part 226 - Child Care Food Program

3. **Description:** The proposed rule provides for: administrative payments to sponsors of day care homes, a food service rate for family day care providers, start-up and advance payments, and alternative licensing procedures. Final rule will reflect comments received on proposed rule.

4. **Authority:** P.L. 95-627, the Child Nutrition Act of 1978. To revise Part 226 to conform to changes in National School Lunch Act by P.L. 95-627.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 5/79
   c. **Final Decision:** 8/79

6. **Contacts:**

   Agency: Jordan Benderly, Ext. (202) 447-8211

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1. **Calendar No:** FN 1186

2. **Title:** State Plan (210) for Child Nutrition Programs

3. **Description:** Amendment to regulations to clarify items to be included in the State Plan.

4. **Authority:** Departmental Initiative, Court Order, FNS Depositions

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of reproposal:** 7/79
   c. **Final Decision:** 9/79

6. **Contacts:**

   Agency: Margaret Glavin, Ext. (202) 447-8130

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1. **Calendar No:** FN 1188

2. **Title:** School Breakfast Program: Grain-Fruit Product - Withdrawal of Approval, Part 220 to use the product in the School Breakfast Program.

3. **Description:** Elimination of formulated grain/fruit products from the Breakfast Program to promote development of good food habits in the furtherance of nutrition education through a well-balanced diet of conventional foods.

4. **Authority:** Departmental Initiative and P.L. 95-627.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of reproposal:** 5/79
   c. **Final Decision:** 8/79

6. **Contacts:**

   Agency: Margaret Glavin, Ext. (202) 447-8130

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1. **Calendar No:** FN 11813

2. **Title:** Assessment, Improvement and Monitoring System for School Nutrition Programs

3. **Description:** A series of regulatory amendments for management, evaluation and monitoring designed to improve accountability. To assist State agencies, additional SAE funds will be provided. Removes Part 245 amendments from the PARS proposal and makes them a separate proposal.

4. **Authority:** Statutory (P.L. 95-627)

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 6/79
   c. **Final Decision:** 9/79

6. **Contacts:**

   Agency: Margaret Glavin, Ext. (202) 447-8130

1. **Calendar No:** FN 11815

2. **Title:** School Breakfast Program: Revision of Criteria for Determining Especially Needy Schools, Part 220

3. **Description:** To revise Part 220, School Breakfast Program regulations to change the designation of a school from "especially needy" to read "a school in severe need" and to revise the existing criteria for determining schools in severe need.

4. **Authority:** Legislation and Departmental initiative

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 1/79
   c. **Final Decision:** 6/79

6. **Contacts:**

   Agency: Margaret Glavin, Ext. (202) 447-8130

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1. **Calendar No:** FN 11824

2. **Title:** Control on the Sales of Competitive Foods in Schools

3. **Description:** Regulations to implement that Section of P. L. 95-166 which requires that the Secretary approve those foods which may be sold in competition with the lunch and breakfast served under the National School Lunch and School Breakfast Programs, thereby placing controls on the sale of competitive foods at State and local levels.

4. **Authority:** Statutory (P.L. 95-166)

5. **Projected Schedule**

   a. **Date of pre-notice:** 12/78
   b. **Date of reproposal:** 5/79
   c. **Final Decision:** 8/79

6. **Contacts:**

   Agency: Margaret Glavin, Ext. (202) 447-8130

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1. **Calendar No:** FN 11826

2. **Title:** Food Distribution Program: Review and republication of regulations (7 CFR Part 250)

3. **Description:** FDD to make a systematic review of regulations and recommend restructuring and consolidation

4. **Authority:** Department's response to E.O. 12044 (Improving Government Regulations) designated Part 250 for review. The regulations date from 1958 and now include 41 amendments. Substantial portions have become obsolete owing to legislative and policy changes as well as realignment of responsibilities within FNS.

5. **Projected Schedule**

   a. **Date of pre-notice:** 5/79
   b. **Date of proposal:** 7/79
   c. **Final Decision:** 10/79

6. **Contacts:**

   Agency: Darrel Gray, Ext. (202) 447-8362

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1. **Calendar No:** FN 11842

2. **Title:** School Feeding Program: Definition of authorized milk products for use in food service.

3. **Description:** Develop definition for authorized milk products. This would clarify FNS policy pertaining to use of milkshakes. States are not interpreting requirement for "fluid" milk consistently as being synonymous with Class I dairy products.

4. **Authority:** NSLA and CNA give the Secretary the authority to prescribe regulations relating to nutritional requirements.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 7/79
   c. **Final Decision:** 11/79

6. **Contacts:**

   Agency: Audrey Maretzki, Ext. (202) 447-9081

1. Calendar No: FN 11852

2. Title: Special Supplemental Food Program Regulations.

3. Description: Regulations must be published to implement program administration and operations as required by P.L. 95-627.

4. Authority: P.L. 95-627 requires the Secretary to promulgate new regulations.

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal: 12/78
c. Final Decision: 5/79

6. Contacts:

Agency: Jennifer Nelson, Ext. (202) 447-8206

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1. Calendar No: FN 11869

2. Title: Food Stamp Program: Regulations concerning administrative cost allocations for States

3. Description: Regulations concern the reimbursement to States for administrative costs incurred in operating the Food Stamp Program.

4. Authority: P.L. 95-113 implementation

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal: 5/79
c. Final Decision: 7/79

6. Contacts:

Agency: Ray Pugh, Ext. (202) 447-3545

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1. Calendar No: FN 11870

2. Title: Food Stamp Program: Work Registration Joint Rulemaking

3. Description: Defines and assigns the responsibility for administering the food stamp work registration requirement, including job search activities, to the appropriate agencies within the Departments of Labor and Agriculture. Additionally the responsibilities and penalties for failure to comply with work requirements by participating households will be delineated.

4. Authority: P. L. 95-113 implementation

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal: 6/79
c. Final Decision: 8/79

6. Contacts:

Agency: Joseph Shepherd, Ext. (202) 447-8982

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1. Calendar No: FN 11873

2. Title: Food Stamp Program: Regulations concerning the Performance Reporting System

3. Description: Regulations require that the existing system be continued and further refined to ensure that States assess themselves at the local level and report to the Department on their efficiency and effectiveness.

4. Authority: P. L. 95-113 implementation

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal: 4/79
c. Final Decision: 7/79

6. Contacts:

Agency: Joseph Shepherd, Ext. (202) 447-8982

1. **Calendar No:** FN 11875

2. **Title:** Food Stamp Program: Regulations concerning the participation of Indians.

3. **Description:** Regulations allow Indian participation in the Food Distribution Program and the Food Stamp Program; also will allow, in certain cases, capable tribes to operate those programs.

4. **Authority:** P.L. 95-113 implementation

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 12/78
   c. **Final Decision:** 5/79

6. **Contacts:**

   Agency: Joseph Shepherd, Ext. (202) 447-8982

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1. **Calendar No:** FN 391

2. **Title:** Changes in WIC Food Packages

3. **Description:** Proposed regulations - Part 246.8 - changing the food packages for the WIC participants. Current research of the nutritional needs of the target population indicate some changes should be made in the nutrients and levels provided.

4. **Authority:** Public Law 95-627 requires the Secretary to review the food packages in light of current research.

5. **Projected Schedule**

   a. **Date of pre-notice:** None
   b. **Date of proposal:** 5/79
   c. **Final Decision:** 9/79

6. **Contacts:**

   Agency: Jennifer R. Nelson, Ext. (202) 447-8206

FOREST SERVICE

1. **Calendar No:** FS 1081

2. **Title:** National Forest System Land and Resource Management Planning

3. **Description:** Issue regulations to guide the land and resource planning process for the National Forest System

4. **Authority:** Forest and Rangeland Renewable Resource Planning Act of 1974 as amended by the National Forest Management Act of 1976.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of second draft:** 4/20/79
   c. **Final Decision:** 7/15/79

6. **Contacts:**

   Agency: Rex Hartgraves, Ext. (202) 447-6697

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1. **Calendar No:** FS 1082

2. **Title:** Title V Regulations of Federal Land Policy and Management Act of 1976

3. **Description:** Revise 36 CFR 251 regulations governing "Special Uses" to incorporate provisions of P.L. 94-579.

4. **Authority:** P.L. 94-579 (90 Stat. 2743), Sec. 310 requires that regulations be promulgated.

5. **Projected Schedule**

   a. **Date of pre-notice:** 11/4/77
   b. **Date of proposal:** 5/1/79
   c. **Final Decision:** 10/1/79

6. **Contacts:**

   Agency: William R. Boring, Ext. (703) 235-8107

1. **Calendar No:** FS 1083

2. **Title:** Cost Recovery Policy Issue

3. **Description:** No uniform policy among Federal agencies on collecting costs incurred in processing applications for use of Federal lands. This is being brought to the attention of the Office of Management and Budget by U.S. Department of Agriculture for consideration in establishing a government-wide policy.

4. **Authority:** Federal Land Policy and Management Act of 1976, P.L. 94-579 (90 Stat. 2743), Secs. 304 and 504(g).

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:**
   c. **Final Decision:**

6. **Contacts:**

   Agency: R. M. Housley, Ext. (202) 447-7465

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1. **Calendar No:** FS 1085

2. **Title:** Implementation of P.L. 95-313. The Cooperative Forestry Assistance Act of 1978

3. **Description:** Update and clarify Forest Service Manual program guidelines and existing regulations.

4. **Authority:** P.L. 95-313 updates and reorganizes existing authorities for cooperative forestry programs.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 8/1/79
   c. **Final Decision:**

6. **Contacts:**

   Agency: John C. Barber, Ext. (202) 447-3331

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1. **Calendar No:** FS 1086

2. **Title:** Draft 1980 RPA Assessment and Program

3. **Description:** The decision to release draft documents that assess the Nation's renewable resource situation and that describe Alternative Program Directions for the Forest Service for the next 50 years.

4. **Authority:** Forest and Rangeland Renewable Resources Act of 1974

5. **Projected Schedule**

   a. **Date of pre-notice:** 2/79
   b. **Date of proposal:** 10/79
   c. **Final Decision:** 12/79

6. **Contacts:**

   Agency: Lamar Beasley, Ext. (202) 447-5440

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1. **Calendar No:** FS 1088

2. **Title:** Regulations for administering Forest Highways

3. **Description:** Revise definition - update selection criteria to reflect Federal interests in routes and projects.

4. **Authority:** Change in law. GAO Audit Report CED-77-130 B164497(3)

5. **Projected Schedule**

   a. **Date of pre-notice:** 11/78
   b. **Date of proposal:** 1/79
   c. **Final Decision:** 8/1/79

6. **Contacts:**

   Agency: Mike Howlett, Ext. (703) 235-8035

1. **Calendar No:** FS 1089

2. **Title:** Public Participation Procedures

3. **Description:** Establishment by regulation to give the Federal, State & local governments and the public adequate notice and opportunity to comment upon the formulation of standards, criteria, and guidelines applicable to Forest Service programs.

4. **Authority:** Sec. 11 National Forest Management Act of 1976

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 4/17/79
   c. **Final Decision:** 10/15/79

6. **Contacts:**

   Agency: Wayne R. Nicolls, Ext. (202) 447-7013

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1. **Calendar No:** FS 10811

2. **Title:** Secretary Review of Rate Redetermination for Alaska Lumber and Pulp Co. Sale

3. **Description:** Review, report, and recommendations from Board regarding rates for Alaska Lumber and Pulp Co. long-term timber sale contract.

4. **Authority:** Request to Secretary by purchaser to appoint special Board to review rates redetermined by the Forest Service.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:**
   c. **Final Decision:** 5/15/79

6. **Contacts:**

   Agency: Norm Gould, Ext. (202) 447-6893

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1. **Calendar No:** FS 10813

2. **Title:** Amendment to Regulation 36 CFR 222, Management of Wild Free-Roaming Horses and Burros

3. **Description:** Amendments in Regulations are needed to implement provisions of the Act including: Inventories, research, disposal of unadoptable animals, assigning of title of adopted animals. Regulations must be coordinated with efforts by U.S. Department of the Interior.

4. **Authority:** Public Rangelands Improvement Act of 1978

5. **Projected Schedule**

   a. **Date of pre-notice:** 12/15/78
   b. **Date of proposal:** 5/15/79
   c. **Final Decision:** 8/1/79

6. **Contacts:**

   Agency: William Evans, Ext. (703) 235-8139

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1. **Calendar No:** FS 10814

2. **Title:** Amendment to Regulation 36 CFR 222, Grazing and Livestock Use on the National Forest System

3. **Description:** Regulation amendments are needed to implement provisions of the Public Rangelands Improvement Act of 1978 including: (1) Rangeland inventories and management, (2) grazing permits and leases, and (3) allotment management plans, Grazing Advisory Boards, and experiment stewardship program. Efforts must be coordinated with U.S. Department of Interior.

4. **Authority:** Enactment of the Public Rangelands Improvement Act of 1978.

5. **Projected Schedule**

   a. **Date of pre-notice:** 5/1/79
   b. **Date of proposal:** 5/15/79
   c. **Final Decision:** 8/1/79

6. **Contacts:**

   Agency: William Evans, Ext. (703) 235-8139

1. **Calendar No:** FS 10816

2. **Title:** Forest Service Manual 2351 Off-road Vehicle Management

3. **Description:** Promulgate revised Forest Service Manual direction to field units. Revisions based on recent activity review and task force help.

4. **Authority:** Current policy requires updating based on final rules published May 1978.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 6/79
   c. **Final Decision:** 9/79

6. **Contacts:**

   Agency: Tom Hoots, Ext. (202) 447-3649

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1. **Calendar No:** FS 12817

2. **Title:** Shawnee Hills National Recreation Area

3. **Description:** Study area for possible designation as a National Recreation Area

4. **Authority:** P. L. 94-518 - To authorize the study of certain areas by the Secretary of Agriculture and the Interior. Congressionally mandated study area.

5. **Projected Schedule**

   a. **Date of pre-notice:** 5/79
   b. **Date of proposal:** 11/79
   c. **Final Decision:** 12/79

6. **Contacts:**

   Agency: Doug Shenkyr, Ext. (202) 447-6390

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1. **Calendar No:** FS 492

2. **Title:** Evaluation of Forest Pest Management Programs

3. **Description:** Review the rationale for our present program direction and recommend program adjustments where appropriate. Will concentrate on examining operating procedures including: policy, decisionmaking processes, program management, adequacy of analysis, and program coordination.

4. **Authority:** Requested by Assistant Secretary M. Rupert Cutler.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 5/1/80
   c. **Final Decision:** 7/1/80

6. **Contacts:**

   Agency: Robert Gale, Ext. (202) 447-5475

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1. **Calendar No:** FS 493

2. **Title:** Cultural Resources Procedures

3. **Description:** Publish procedures to implement regulations as required by Presidential Memorandum on Environmental Quality and Water Resources Management

4. **Authority:** Required Action by 36 CFR 800.10

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 6/1/79
   c. **Final Decision:** 11/1/79

6. **Contacts:**

   Agency: John Leasure, Ext. (202) 447-8618

FOOD SAFETY AND QUALITY SERVICE

1. Calendar No: FSQ 1083

2. Title: Voluntary Quality Control Regulations - Sanitation and Carcass Cleanliness

3. Description: This proposal would permit firms to implement company-operated quality control programs. This would permit FSQS to shift more responsibility to industry with FSQS monitoring industry performance.

4. Authority: 21 U.S.C. 601 et seq.; 21 U.S.C. 451 et seq. Additional information: To supplement system of inspection while holding down costs as outlined in report on Strengthening Meat and Poultry Inspection.

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal: 7/6/79
c. Final Decision: 12/18/79

6. Contacts:

Agency: V. H. Berry, Ext. (202) 447-3473

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1. Calendar No: FSQ 1084

2. Title: Poultry Chiller Water Regulation

3. Description: New regulation will permit plants to reduce volume of replacement water in poultry chilling tanks by 50 percent providing the plant adds chlorine to the water in the amount of 20 parts per million. Due to the nature of comments received on the proposal, a protocol is being prepared to restudy the issue. This must be accomplished before further action can be taken on the final regulation.

4. Authority: 21 U.S.C. 451 et seq. Additional information: This regulation will conserve water, reduce the energy necessary for chilling, and reduce waste water pollution.

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal: 4/4/78
c. Final Decision: Undetermined

6. Contacts:

Agency: V. H. Berry, Ext. (202) 447-3473

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1. Calendar No: FSQ 1086

2. Title: Revise $18,000 Limit on Retail Exemption from Continuous Inspection

3. Description: A retail store is currently exempt from continuous meat inspection provided its sales of meat items do not exceed $18,000 per year to non-household consumers. The new regulation would raise the $18,000 limit to account for the inflation that has transpired since 1973, when this limit was fixed.

4. Authority: 21 U.S.C. 601 et seq.; 21 U.S.C. 451 et seq. Additional information: This action is in response to a petition from retail stores.

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal: 7/1/79
c. Final Decision: 12/7/79

6. Contacts:

Agency: V. H. Berry, Ext. (202) 447-3473

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1. Calendar No: FSQ 1087

2. Title: Regulatory Plan for Cured Pork Products

3. Description: Cured pork products contain varying amounts of water introduced with the curing agents. The amount of added water is limited by regulation. The new regulatory plan would establish a standard for these products based on protein content rather than added water, and establish more effective enforcement procedures. The protein content standard should provide useful information to consumers.

4. Authority: 21 U.S.C. 601 et seq. Additional information: Better method to enforce added water requirements.

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal: Undetermined
c. Final Decision: Undetermined

6. Contacts:

Agency: L. L. Gast, Ext. (202) 447-8803

1. **Calendar No:** FSQ 1088

2. **Title:** Work Week Proposal

3. **Description:** This proposal would modify existing regulations governing hours of operations for plants operating under meat and poultry inspection. It would provide a uniform policy regarding work schedules, and eliminate many administrative and functional problems.

4. **Authority:** 21 U.S.C. 601 et seq.; 21 U.S.C. 451 et seq.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 6/15/79
   c. **Final Decision:** 11/1/79

6. **Contacts:**

   Agency: V. H. Berry, Ext. (202) 447-3473

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1. **Calendar No:** FSQ 10812

2. **Title:** Studies on Uniform Grade Nomenclature

3. **Description:** The Department is considering options to obtain information on the usefulness of the present grading system and nomenclature including an extensive educational/informational campaign involving hearings, demonstrations, and exhibits.

4. **Authority:** 7 U.S.C. 1621 et seq.

5. **Projected Schedule**

   a. **Date of pre-notice:** Undetermined
   b. **Date of proposal:** Undetermined
   c. **Final Decision:** Undetermined

6. **Contacts:**

   Agency: E. F. Kimbrell, Ext. (202) 447-5231

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1. **Calendar No:** FSQ 10818

2. **Title:** Establish Microbiological Criteria for Meat & Poultry Products

3. **Description:** This proposal will establish guidelines and standards for microbiological agents that may be present in selected meat and poultry products and will describe enforcement procedures.

4. **Authority:** 21 U.S.C. 601 et seq.; 21 U.S.C. 451 et seq.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 10/79
   c. **Final Decision:** 6/80

6. **Contacts:**

   Agency: R. E. Engel, Ext. (202) 447-2326

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1. **Calendar No:** FSQ 10822

2. **Title:** Antibiotic Residues

3. **Description:** This document would implement on-line, in-plant test procedures to detect antibiotic residues in dairy cows. Furthermore, this is a cooperative program among the dairy industry, the drug industry, the Extension Service, and FDA to educate dairymen about the need to eliminate drug residues in meat.

4. **Authority:** 21 U.S.C. 601 et seq. Additional information: Product containing excessive antibiotic residues is adulterated under the Federal Meat Inspection Act.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:**
   c. **Final Decision:** 5/79

6. **Contacts:**

   Agency: R. E. Engel, Ext. (202) 447-2326

1. Calendar No: FSQ 10830

2. Title: Proteolytic Enzyme Proposal

3. Description: This document would propose two regulatory changes. One to permit the use of proteolytic enzymes to tenderize mature poultry meat; the other to extend current permission for the use of such enzymes in beef to other red meat species.

4. Authority: 21 U.S.C. 451 et seq. Additional information: Request from poultry industry to use papain in fowl as tenderizer. Already permitted in beef.

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal: 5/15/79
c. Final Decision: 11/15/79

6. Contacts:

Agency: L. L. Gast, Ext. (202) 447-8803

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1. Calendar No: FSQ 10832

2. Title: Mechanically Processed Poultry Product

3. Description: A study on the safety of this product is now in the final stages of evaluation. Following this evaluation, the results of the study and a prenotice will be published and the public's views will be solicited. A proposal, if necessary, will be published to establish standards and labeling requirements for the product that results from the mechanical separation of poultry tissue from bones.

4. Authority: 21 U.S.C. 451 et seq.

5. Projected Schedule

a. Date of pre-notice: 6/1/79
b. Date of proposal: Undetermined
c. Final Decision: Undetermined

6. Contacts:

Agency: L. L. Gast, Ext. (202) 447-8803

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1. Calendar No: FSQ 10834

2. Title: Nitrates and Nitrites Regulation

3. Description: This regulation will allow the manufacture of traditionally cured products without the use of nitrites. Before final publication, this regulation will be submitted to the Meat and Poultry Inspection Advisory Committee for consideration.

4. Authority: 21 U.S.C. 601 et seq.

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal: 4/27/78
c. Final Decision: Undetermined

6. Contacts:

Agency: L. L. Gast, Ext. (202) 447-8803

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1. Calendar No: FSQ 10835

2. Title: Standard for Turkey Ham

3. Description: This regulation would establish the name and labeling requirements for the product that consists of cured turkey thigh meat. The purpose of the regulation is to provide an accurate and identifiable description of this product for consumers. Before final publication, this regulation will be submitted to the Meat and Poultry Inspection Advisory Committee for consideration.

4. Authority: 21 U.S.C. 451 et seq. Additional information: The poultry industry has requested a standard. The red meat industry has petitioned for restriction of the term "ham" to leg of swine.

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal: 6/2/78
c. Final Decision: 6/8/79

6. Contacts:

Agency: L. L. Gast, Ext. (202) 447-8803

1. **Calendar No:** FSQ 10837

2. **Title:** U.S. Ungraded Proposal

3. **Description:** The Department is considering a survey to determine consumer perceptions of USDA quality grades and the possible use of a meaningful term on meat that is inspected but not graded. The survey would include alternative terms and would provide the basis for decisions on whether to withdraw the proposal requiring the use of the term "Ungraded," substituting some other more meaingful term.

4. **Authority:** 21 U.S.C. 601 et seq. Additional information: A previous proposal on the "Ungraded" designation was published on January 23, 1978. The comments raised significant questions concerning consumer perception of this term.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 1/23/78
   c. **Final Decision:** Undetermined

6. **Contacts:**

   Agency: L. L. Gast, Ext. (202) 447-8803

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1. **Calendar No:** FSQ 10842

2. **Title:** Revise Meat Grade Standards and Regulations

3. **Description:** This action would improve the system of grading determinations by making it more accurate and uniform and less subject to fraudulent practices. The rules for deciding upon quality and yield grades would be more objective.

4. **Authority:** Agricultural Marketing Act of 1946, 7 U.S.C. 1621 et seq. Additional information: Proposal will make major revisions in grading proposal as published in the January 23, 1978, Federal Register.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 6/15/79
   c. **Final Decision:** 1/12/80

6. **Contacts:**

   Agency: Jerry Goodall, Ext. (202) 447-4727

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1. **Calendar No:** FSQ 10845

2. **Title:** Final Net Weight Regulation

3. **Description:** This action will make changes in net weight regulations to require that the net weight statements on meat and poultry products be accurate at all points in the distribution chain from processing plant to retail store.

4. **Authority:** 21 U.S.C. 601 et seq.; 21 U.S.C. 451 et seq. Additional information: Proposal was in response to petition from State Weights and Measures Officials.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 12/77
   c. **Final Decision:** Awaiting completion of study by ESCS expected by July 1979.

6. **Contacts:**

   Agency: V. H. Berry, Ext. (202) 447-3473

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1. **Calendar No:** FSQ 294

2. **Title:** U.S. Standards for Grades of Major Canned Fruits

3. **Description:** This document would revise the standards for the major canned fruits. The purpose would be to improve the standards by including sampling plans based on attributes in order to make them equally applicable to lot or on-line inspection.

4. **Authority:** 7 U.S.C. 1622, 1624

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 6/79
   c. **Final Decision:** 4/3/80

6. **Contacts:**

   Agency: E. F. Kimbrell, Ext. (202) 447-5231

1. Calendar No: FSQ 3911

2. Title: Humane Slaughter Regulations

3. Description: This document would issue regulations implementing the Humane Methods of Slaughter Act of 1978. This Act requires all livestock slaughtered for food under inspection in the U.S. and animals slaughtered for export to the U.S. to be handled and slaughtered humanely at the slaughter plants.

4. Authority: 21 U.S.C. 601, et seq.; The Humane Methods of Slaughter Act of 1978.

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal: 5/15/79
c. Final Decision: 9/10/79

6. Contacts:

Agency: V. H. Berry, Ext. (202) 447-3473

1. Calendar No: FSQ 3913

2. Title: Change in Reporting Frequency (MP Form 404) from Weekly to Annually of Processing Operations at Official Establishments.

3. Description: This document would change the reporting frequency of meat processing operations at official establishments from weekly to annually. This proposal is based on an internal assessment of the Government's need for information, and is in support of the President's program to reduce the paperwork burden on the public and industry.

4. Authority: 21 U.S.C. 677; 15 U.S.C. 46

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal: 5/25/79
c. Final Decision: 10/1/79

6. Contacts:

Agency: J. A. Powers, Ext. (202) 447-4425

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1. Calendar No: FSQ 5920

2. Title: Meat and Poultry Quality Control Systems

3. Description: To permit official meat and poultry establishments to carry out their own total plant quality control, providing such quality control programs ar USDA approved.

4. Authority: Federal Meat Inspection Act and Poultry Products Inspection Act.

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal: 5/25/79
c. Final Decision: 10/1/79

6. Contacts:

Agency: V. H. Berry, Ext. (202) 447-3473

OFFICE OF BUDGET, PLANNING AND EVALUATION

1. Calendar No: OB 391

2. Title: To establish USDA policies and procedures relating to reimbursement for public participation in Department rulemaking proceedings.

3. Description: Proposed regulations provide procedures for application, processing, and criteria for eligibility for those individuals or groups to be considered for reimbursement in a given rulemaking proceeding.

4. Authority: 5 U.S.C. 301 and implied authority in specific USDA program statutes.

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal: 3/22/79
c. Final Decision: 6/79

6. Contacts:

Agency: Elizabeth Webber, Ext. (202) 447-3465

OFFICE OF GENERAL SALES MANAGER

1. Calendar No: OG 1082

2. Title: Intermediate Credit Program for Breeding Stock

3. Description: Development of a program concept; draft CCC Board Dockets, and obtain CCC Board approvals; obtain other necessary clearances; write, clear, and announce program rules and regulations.

4. Authority: Section 4 of the Food for Peace Act of 1966, as amended.

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal: 4/5/79
c. Final Decision: 6/15/79

6. Contacts:

Agency: Fred Mangum, Ext. (202) 447-5693

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1. Calendar No: OG 492

2. Title: P.L. 480 - CCC Docket

3. Description: Basis for Secretary's determination of commodities available for P.L. 480 programming.

4. Authority: Section 401(a) of P.L. 480, as amended.

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal:
c. Final Decision: Prior to beginning of each FY.

6. Contacts:

Agency: Fred Mangum, Ext. (202) 447-5693

1. Calendar No: OG 391

2. Title: Intermediate Credit for Market Facility Projects

3. Description: Develop program concept; draft CCC Board Dockets and obtain approval; develop and announce program rules and regulations.

4. Authority: Section 4 of the Food for Peace Act of 1966, as amended.

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal: 7/1/79
c. Final Decision: 10/1/79

6. Contacts:

Agency: Fred Mangum, Ext. (202) 447-5693

RURAL ELECTRIFICATION ADMINISTRATION

1. Calendar No: RE 1083

2. Title: Exhibit G to Bulletin 20-21; 320-21; Floodplain and Wetlands Procedures

3. Description: Addendum to REA Bulletin 20-21; 320-21 providing procedures with respect to protecting Floodplains and Wetlands.

4. Authority: Rural Electrification Act; National Environmental Policy Act (42 U.S.C. 4321 et seq.); Executive Order 11988 (42 Fed. Reg. 26951) and 11990 (42 Fed. Reg. 26961)

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal: 8/29/78
c. Final Decision: 5/30/79

6. Contacts:

Agency: Joseph R. Binder, Ext. (202) 447-5755

1. **Calendar No:** RE 1089

2. **Title:** Environmental Policies and Procedures, Bulletin 20-21; 320-21

3. **Description:** Revision of REA Bulletin providing REA policy and procedures implementing National Environmental Policy Act, Council on Environmental Quality Regulations, and related environmental statues, Executive Orders, regulations and guidelines.

4. **Authority:** Rural Electrification Act; National Environmental Policy Act (42 U.S.C. 4321 et seq.) Council on Environmental Quality Regulation (43 Fed. Reg. 55978) and other Federal environmental statues, regulations and Executive Orders.

5. **Projected Schedule**

   a. **Date of pre-notice:** 1/79
   b. **Date of proposal:** 5/79
   c. **Final Decision:** 9/79

6. **Contacts:**

   Agency: Joseph R. Binder, Ext. (202) 447-5755

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1. **Calendar No:** RE 494

2. **Title:** Protection of Historic and Cultural Properties

3. **Description:** Addendum to REA Bulletin 20-21; 320-21 providing procedures with respect to protecting Historic and Cultural Resources.

4. **Authority:** National Historic Preservation Act (16 U.S.C. 470 et seq.), Advisory Council on Historic Preservation Regulations (36 CFR 800), Executive Order 11593 (36 Fed. Reg. 8921)

5. **Projected Schedule**

   a. **Date of pre-notice:** 5/79
   b. **Date of proposal:** 6/79
   c. **Final Decision:** 9/79

6. **Contacts:**

   Agency: Joseph R. Binder, Ext. (202) 447-5755

1. **Calendar No:** RE 492

2. **Title:** Endangered Species Procedures

3. **Description:** Addendum to REA Bulletin 20-21; 320-21, providing procedures with respect to protecting Endangered Species.

4. **Authority:** Endangered Species Act (16 U.S.C. 1531 et seq.)

5. **Projected Schedule**

   a. **Date of pre-notice:** 6/79
   b. **Date of proposal:** 7/79
   c. **Final Decision:** 10/79

6. **Contacts:**

   Agency: Joseph R. Binder, Ext. (202) 447-5755

SOIL CONSERVATION SERVICE

1. **Calendar No:** SC 1081

2. **Title:** 7 CFR Chapter VI, Part 624, and Watershed Memorandum No. 124, Emergency Flood Protection

3. **Description:** Review rules and regulations for Emergency Flood Protection under authority of Section 216, Public Law 81-516, 64 Stat 184.

4. **Authority:** Requested by the Secretary.

5. **Projected Schedule**

   a. **Date of pre-notice:** 12/13/78
   b. **Date of proposal:** 7/1/79
   c. **Final Decision:** 12/1/79

6. **Contacts:**

   Agency: James W. Mitchell, Ext. (202) 447-3527

1. **Calendar No:** SC 1082

2. **Title:** 7 CFR Chapter VI, Part 622, Watershed Projects

3. **Description:** Review rules and regulations for Watershed projects carried out under authority of Public Law 83-566, 68 Stat. 666, as amended

4. **Authority:** Selected pursuant to E.O. 12044, Improving Government Regulations

5. **Projected Schedule**

   a. **Date of pre-notice:** 5/80
   b. **Date of proposal:** 10/80
   c. **Final Decision:** 4/81

6. **Contacts:**

   Agency: James W. Mitchell, Ext. (202) 447-3527

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1. **Calendar No:** SC 1083

2. **Title:** Compliance with NEPA

3. **Description:** Revision of Rules (7CFR Part 650) to comply with new CEQ guidelines

4. **Authority:** Change in CEQ Guidelines

5. **Projected Schedule**

   a. **Date of pre-notice:** 3/79
   b. **Date of proposal:** 5/79
   c. **Final Decision:** 8/79

6. **Contacts:**

   Agency: Gary A. Margheim, Ext. (202) 447-3849

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1. **Calendar No:** SC 1084

2. **Title:** SCS Public Participation Plan

3. **Description:** SCS will adopt a public participation plan that will guide future activities related to making decisions.

4. **Authority:** Required by Secretary's Memorandum 1955

5. **Projected Schedule**

   a. **Date of pre-notice:** 4/30/79
   b. **Date of proposal:** 1/1/80
   c. **Final Decision:** 4/1/80

6. **Contacts:**

   Agency: Victor Barry, Ext. (202) 447-7245

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1. **Calendar No:** SC 10810

2. **Title:** Landrights, Water Rights and Construction Permits (7 CFR Part 651)

3. **Description:** SCS requires sponsors of projects to acquire all necessary landrights as a condition for receiving Federal financial assistance. This part sets forth the requirements for the acquisition of landrights.

4. **Authority:** Codify SCS Policy For Projects Receiving Federal Financial Assistance

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 11/15/78
   c. **Final Decision:** 7/1/79

6. **Contacts:**

   Agency: Leo Link, Ext. (202) 447-2177

1. **Calendar No:** SC 10813

2. **Title:** Plan for Completing Soil Mapping Nationwide

3. **Description:** Evaulate workload remaining to complete the onceover soil mapping and set target date for completing. Evaluate soil survey publication needs in survey areas having few individual landowners with the objective of reducing publication costs.

4. **Authority:** Soil mapping nationwide is about 67% completed. Need a plan for orderly completion of remaining areas.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:**
   c. **Final Decision:**

6. **Contacts:**

   Agency: V. G. Link, Ext. (202) 447-4931

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1. **Calendar No:** SC 10816

2. **Title:** Revision of SCS policy relating to Endangered Species.

3. **Description:** The current SCS policy 7 CFR 650.22 will be revised.

4. **Authority:** Compliance with NEPA.

5. **Projected Schedule**

   a. **Date of pre-notice:** 6/79
   b. **Date of proposal:** 9/79
   c. **Final Decision:** 12/79

6. **Contacts:**

   Agency: T. N. Shiflet, Ext. (202) 447-2587

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1. **Calendar No:** SC 10818

2. **Title:** Formulation of SCS Wetlands Protection Policy

3. **Description:** A new subsection, 7 CFR 650.26 Protection of Wetlands is being prepared.

4. **Authority:** Compliance with NEPA and E.O. 11990

5. **Projected Schedule**

   a. **Date of pre-notice:** 6/78
   b. **Date of proposal:** 6/30/78
   c. **Final Decision:** 6/79

6. **Contacts:**

   Agency: Gary A. Margheim, Ext. (202) 447-3849

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1. **Calendar No:** SC 10819

2. **Title:** Formulation of SCS Flood Plain Management Policy

3. **Description:** A new subsection, 7 CFR 650.25 Management of Flood Plains is being prepared.

4. **Authority:** Compliance with NEPA and E.O. 11988

5. **Projected Schedule**

   a. **Date of pre-notice:** 6/78
   b. **Date of proposal:** 6/2/78
   c. **Final Decision:** 5/79

6. **Contacts:**

   Agency: Gary A. Margheim, Ext. (202) 447-3849

1. Calendar No: SC 10820

2. Title: Revision to comply with new Historic Preservation Regulations

3. Description: Current SCS rules will be revised to comply with new regulations to be published March 1, 1979.

4. Authority: Compliance with NEPA and National Historic Preservation Act.

5. Projected Schedule

a. Date of pre-notice: 6/79
b. Date of proposal: 8/79
c. Final Decision: 1/80

6. Contacts:

Agency: Gary A. Margheim, Ext. (202) 447-3849

SCIENCE AND EDUCATION ADMINISTRATION

1. Calendar No: SE 391

2. Title: National Agricultural Research Award

3. Description: Develop guidelines for making the award.

4. Authority: P.L. 95-113, Section 1418; 7 U.S.C. 3153

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal: 3/15/79
c. Final Decision: 6/15/79

6. Contacts:

Agency: Dr. J. C. Torio, Ext. (202) 447-6652

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1. Calendar No: SE 392

2. Title: Department's Position on Research Facility Program

3. Description: Develop Department's recommendations on research facility program as directed. Recommendations are to be included in a report to the President and Congress of the Agricultural Research Facilities Study.

4. Authority: P.L. 95-113, Section 1462; 7 U.S.C. 3304

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal:
c. Final Decision: Uncertain

6. Contacts:

Agency: D. T. Black, Ext. (301) 344-3333

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1. Calendar No: SE 393

2. Title: National Comprehensive Nutrition Research and Extension Program

3. Description: Development steps to implement National Comprehensive Nutrition Research and Extension Program as based on the February 1, 1979 report to Congress.

4. Authority: P.L. 95-113, Secs. 1421-1427; 7 U.S.C. 3171-3177

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal: Uncertain
c. Final Decision: Uncertain

6. Contacts:

Agency: Audrey Cross, Ext. (202) 447-4119

1. **Calendar No:** SE 394

2. **Title:** Nutrition Status Monitoring Program

3. **Description:** Develop steps to implement the Nutrition Status Monitoring Program submitted to Congress in 1978.

4. **Authority:** P.L. 95-113, Section 1428; 7 U.S.C. 3178

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** Uncertain
   c. **Final Decision:** Uncertain

6. **Contacts:**

   Agency: Mark Hegsted, Ext. (202) 447-2868

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1. **Calendar No:** SE 395

2. **Title:** Implement Solar Energy Research and Development

3. **Description:** Develop steps for implementing authorized research and development on Solar Energy.

4. **Authority:** P.L. 95-113, Secs. 1449-1457; 7 U.S.C. 3241-3281

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 1980
   c. **Final Decision:** 1980

6. **Contacts:**

   Agency: Landy Altman, Ext. (301) 344-2740

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1. **Calendar No:** SE 396

2. **Title:** Extension Evaluation

3. **Description:** Prepare report to Secretary on the Extension Evaluation for transmittal to Congress.

4. **Authority:** P.L. 95-113, Section 1459; 7 U.S.C. 3301

5. Projected Schedule

   a. **Date of pre-notice:** Preliminary Report
   b. **Date of proposal:** 3/31/79
   c. **Final Report:** 1/15/80

6. Contacts:

   Agency: Fred Woods, Ext. (202) 447-4465

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1. **Calendar No:** SE 397

2. **Title:** Green Thumb Project

3. **Description:** Evaluate Green Thumb project for expansion beyond pilot counties. It would provide more specific local weather, market, and other agricultural information to farmers through communicating computers, phones, and home TV sets.

4. **Authority:** 7 U.S.C. 341 et seq.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 8/80
   c. **Final Decision:** 9/80

6. **Contacts:**

   Agency: Ray Scott, Ext. (202) 447-5623

1. **Calendar No:** SE 398

2. **Title:** Renewable Resources Extension Act

3. **Description:** Develop guidelines for implementing the Renewable Resources Extension Act's five-year plan by March 30, 1980

4. **Authority:** P.L. 95-306, Sec. 5; 16 U.S.C. 1674

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 11/15/79
   c. **Final Decision:** 12/15/79

6. **Contacts:**

   Agency: Don Nelson, Ext. (202) 447-5119

OFFICE OF THE SECRETARY

1. **Calendar No:** SEC 491

2. **Title:** Enhancement, Protection and Management of Cultural Resources

3. **Description:** Formulate policy direction in support of cultural resource goals. Establish compliance responsibilities and authorities.

4. **Authority:** Sec. 106, National Historic Preservation Act (36 CFR 800)

5. **Projected Schedule**

   a. **Date of pre-notice:** 4/11/79
   b. **Date of proposal:** 6/1/79
   c. **Final Decision:** 11/1/79

6. **Contacts:**

   Agency: Barry Flamm, Ext. (202) 447-3965

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1. **Calendar No:** SEC 592

2. **Title:** Departmental NEPA Regulations, Policies and Procedures

3. **Description:** Proposed rule adopting CEQ regulations to comply with National Environmental Policy Act (NEPA).

4. **Authority:** NEPA, CEQ Regulations.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 4/26/79
   c. **Final Decision:** 8/79

6. **Contacts:**

   Agency: Rado Kinzhuber, Ext. (202) 447-5695

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1. **Calendar No:** SEC 593

2. **Title:** Implementation of the Resources Conservation Act of 1977.

3. **Description:** Develop: (1) An appraisal of the resource base; and (2) a program establishing the direction of future soil and water conservation efforts of the Department.

4. **Authority:** P.L. 95-192 - The Soil and Water Resources Conservation Act of 1977.

5. **Projected Schedule**

   a. **Date of pre-notice:** 6/1/79
   b. **Date of proposal:** 9/79
   c. **Final Decision:** 1/80

6. **Contacts:**

   Agency: Ernest Todd, Ext. (202) 447-2771

1. **Calendar No:** SEC 594

2. **Title:** Tax Treatment of Certain Federal/State Payments

3. **Description:** Payments may be excluded from gross income for federal income tax purposes if they are determined by the Secretary of Agriculture to be made primarily for specific purposes and are determined by the Secretary of the Treasury as not substantially increasing income.

4. **Authority:** Revenue Act of 1978 (P.L. 95-600, Section 543)

5. **Projected Schedule**

   a. **Date of pre-notice:** 5/15/79
   b. **Date of proposal:** 6/15/79
   c. **Final Decision:** 9/15/79

6. **Contacts:**

   Agency: Arnold Miller, Ext. (202) 447-3465

INTRODUCTION TO PROPOSED LIST OF EXISTING REGULATIONS FOR REVIEW

The following USDA regulations are proposed for review under the procedures described in the report "Improving USDA Regulations," 43 FR 50988 (Nov. 1, 1978). They are listing by USDA agency, along with an appropriate citation, a brief description, and an agency contact person. Public comment is invited on whether these or other regulations should be reviewed at this time.

Authority	Subject	Description	Contact
		Agriculture Marketing Service	
9 CFR 201.25	Regulations under the Packers and Stockyards Act - schedules of rates and charges for stockyards and market agencies.	These regulations require each stockyard owner and market agency to support in writing any proposed tariff increase. Recent tariff provision amendments to the Packers and Stockyards Act may make it possible to revise or delete this particular section.	Robert Brown 202-447-3817
7 CFR Part 28 Subpart D	Cotton Classification and Market News Services for Organized Groups of Producers	The Smith-Doxey Amendment to the Cotton Statistics and Estimates Act authorizes and directs the Secretary of Agriculture to furnish cotton classification and market news services, without charge, to groups of producers organized to promote the improvement of cotton. The regulations in Subpart D implement this Amendment by defining organized groups and giving requirements for filing applications with USDA to receive the classing and market news services. The regulations also contain requirements and details governing the sampling and classing of cotton for producers, and the distribution of market news.	Robert Brown 202-447-3817
7 CFR Part 29	Official Standard Grades for Dark Air-Cured Tobacco (U.S. Types 35, 36, and 37) Subsections 3501-4656.	Dark air-cured tobacco consists of Type 35, One-Sucker, grown in Kentucky and Tennesse; Type 36, Green River, grown in Kentucky; and Type 37, sun-cured, grown in Virginia.	Robert Brown 202-447-3817
7 CFR Part 30	Tobacco Stocks and Standards, (Class 3, air-cured types and groups) Section 38 (b) and (c); Type 31-V	Type 31-V tobacco has the general visual characteristics of Type 31, Burley tobacco, but is a low-nicotine strain or variety. Production is under contract between grower and dealer and such tobacco neither receives price support nor is sold at auction.	Robert Brown 202-447-3817
		Animal and Plant Health Inspection Service	
9 CFR 51	Cattle Destroyed Because of Brucellosis	Regulation provides for cooperation with States in eradicating brucellosis, a contagious disease of cattle, swine and bison; for payment to owners, at specified rates, for animals destroyed because of brucellosis; procedures and requirements under which indemnities may be paid; and for disinfection of premises, conveyances and materials.	C. J. Nelson 301-436-8711
9 CFR 52	Dourine in Horses and Asses	Regulation provides for cooperation with States in eradicating dourine, an infectious and communicable disease of horses and asses; and for appraisal of animals and payment to owners at specified rates for animals destroyed because of dourine.	J. Hourrigan 301-436-8073

Authority	Subject	Description	Contact
		Animal and Plant Health Inspection Service	
9 CFR 53	Foot-and-Mouth Disease, Pleuro-pneumonia, Rinderpest, and Certain other Communicable Diseases of Livestock or Poultry	Regulation provides for the determination of the existence of exotic or foreign animal and poultry diseases and for agreements to cooperate with States; for payment to owners, at specified rates, for animals and materials destroyed because of specific exotic diseases; procedures and requirements under which payments to owners for animals or materials destroyed may be made; for disinfection or destruction of materials; and disinfection of premises and conveyances.	M. A. Mixson 301-436-8073
9 CFR 56	Swine Destroyed Because of Hog Cholera	Regulation provides for cooperation with States in eradicating hog cholera, a contagious, infectious and communicable disease of swine; for payment to owners, at specified rates, for swine destroyed; and procedures and requirements under which such payment may be made.	J. W. Walker 301-436-8438
7 CFR 319.59	Flag Smut	The regulation prohibits the importation from certain countries of wheat, wheat straw, hulls and chaff; wheat products of the milling process other than wheat flour; and certain seeds. This quarantine protects the United States from the entry of flag smut disease of wheat, an injurious plant disease caused by a fungus.	H. V. Autry 301-436-8247
7 CFR 318.60	Sand, Soil, or Earth with Plants	The regulation restricts the movement of sand, soil or earth around the roots of plants between Guam, Hawaii, Puerto Rico, the Virgin Islands or the Continental United States due to the possible presence of plant pests in that soil.	H. V. Autry 301-436-8247
		Federal Crop Insurance Corporation	
7 CFR 401.101	Insurance Offer	Insurance offers for these commodities are currently complex and verbose. Purpose of review will be to bring about conformance with current FCIC policies, to modernize and simplify the insurance offer, placing it on an equitable basis for all producers.	Peter Cole 202-447-3325
401.127	Dry Beans		
401.128	Flax		
401.133	Rye		
401.144	Combined Crop		
401.145	Tobacco (Guarantee in pounds per acre)		
401.129	Grain Sorghum		
401.134	Soybeans		
401.125	Barley		
401.130	Oats		
401.140	Sugar Beets (all except CA)		
401.152	Sunflowers		
401.149	Sugar Beets (AZ and CA only)		
401.136	Cotton		
401.150	Flue Cured Tobacco (Poundage Quota)		
401.132	Rice		
401.137	Canning & Processing Tomatoes		

Authority	Subject	Description	Contact
		Federal Crop Insurance Corporation	
7 CFR 401.101 401.138 401.141 401.148 401.154 401.155 401.156	Insurance Offer (Continued) Peanuts Tobacco (Dollar Amount) Burley Tobacco (Poundage Quota) Corn (Grain-Grain & Silage) Potatoes Canning & Freezing Sweet Corn		Peter Cole 202-447-3325
		Federal Grain Inspection Service	
7 CFR 68.1 through 7 CFR 68.54	Regulations under the Agricultural Marketing Act of 1946, as amended.	FGIS will formally review and propose amendments or revisions as necessary to the regulations governing FGIS inspection of commodities under the Agricultural Marketing Act of 1946, as amended. Commodity activities covered by these regulations include the grading of rice, pulses and hay/straw; factor analysis of hops; and the certification of processed grain products for contract compliance.	J. T. Abshier 202-447-8262
		Food Safety and Quality Service	
9 CFR 301 et seq.	Regulations Governing the Labeling of Meat and Poultry Products	Joint FDA/USDA/FTC hearings on food labeling have been completed. The information obtained from the hearings is being summarized and analyzed. The public input will be compared with current policies and approaches to determine what changes, if any, should be proposed in the regulations governing the labeling of meat and poultry products. Particular interest will be paid to those areas which appear to be of greatest public concern such as nutritional labeling, complete disclosure of product content and other additional labeling to allow more informed purchasing.	Paul Ragan 202-447-7745
		Forest Service	
36 CFR 200.3	Forest Service Functions	Defines broad responsibilities of the Forest Service	Charles Teague, Jr. 202-447-3716
36 CFR 211.5	Advance of Funds for Cooperative Work	Describes advancements authorized by law for research to public and private agencies.	Clarence Tipton 703-235-8130
36 CFR 212	Administration of the Forest Development Transportation System	Describes the plan for the system of access roads, trails, and airfields needed for the protection, administration, and utilization of the National Forests and other lands administered by the Forest Service.	M. R. Howlett 703-235-8035

Authority	Subject	Description	Contact
		Forest Service	
36 CFR 213	Administration of Lands Under Title III of the Bankhead-Jones Farm Tenant Act by the Forest Service	Describes the protection, use and administration of national grasslands and land utilization projects, the latter of which are carried out on lands considered to be submarginal for crop production. Such lands were purchased by the Federal Government between 1933 and 1946 for the purpose of retiring them from crop production and transferring them to their most suitable renewable resource uses, such as livestock grazing. Land utilization projects are currently carried out, for the most part, on small acreages in 13 states, the total acreage involved being 60,000 acres.	William Evans 703-235-8139
36 CFR 221.3	Timber Management Planning	Establishes requirements for timber management plans.	Norman Gould 202-447-6893
36 CFR 251.9	Management of Municipal Watersheds	For the protection of water supplies of towns, cities, or irrigation districts. The Chief of the Forest Service will enter into agreements within the watershed to restrict the use of the national forest lands from which the water supplies are derived.	Mike Barton 703-235-8096
36 CFR 251.23	Experimental areas and research natural areas.	Establishment of areas to be known as experimental forests or experimental ranges to provide for the research necessary for the management of forest and range land in each forest region.	Robert Buckman 202-447-6665
		Office of the General Sales Manager	
7 CFR 17.1-17.4	P.L. 480, Title I Financing Regulations	General Statement; definitions; purchase authorizations; sub-authorizations.	Leo Wallace 202-447-6211
		Rural Electrification Administration	
7 CFR 1700 Appendix A	Bulletins describing the policies and procedures for administering the REA electric and telephone loan programs	REA is currently reviewing all of its Appendix A bulletins to determine whether they (a) impose requirements on REA loan applicants, (b) impose requirements on REA, (c) state guidelines, or (d) simply provide information. Following this review, those bulletins falling into categories (a) and (b) above will be reviewed in accordance with the requirements of E.O. 12044 and Secretary's Memorandum No. 1955 for need, clarity and appropriateness of approach.	Harlan Severson 202-447-5606

Authority	Subject	Description	Contact
		Soil Conservation Service	
7 CFR 660	Cooperative relationships and arrangements	SCS enters into cooperative arrangements and memoranda of understanding with State and local governmental units and other nonfederal participants in the furtherance of authorized SCS programs of mutual benefit and interest. Such arrangements and memoranda cover conservation operations, space, equipment, soil surveys, watershed agreements, river basin studies, personnel, etc.	Leo Link 202-447-2177
		Farmers Home Administration	

FmHA will submit its entry(s) in a future issue of the FEDERAL REGISTER.

[FR Doc. 79-14720 Filed 5-14-79; 8:45 am]

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federal register

Tuesday
May 15, 1979

Part III

Department of Defense

Corps of Engineers

Water Resources Policies and Authorities; Implementation of Executive Order 11988 on Floodplain Management

DEPARTMENT OF DEFENSE

Corps of Engineers

33 CFR Part 239

Water Resources Policies and Authorities; Implementation of Executive Order 11988 on Floodplain Management

AGENCY: U.S. Army Corps of Engineers.

ACTION: Final rule.

SUMMARY: This regulation prescribes policies and procedures to be used by the Corps of Engineers Offices for implementing Executive Order 11988, Floodplain Management, as it pertains to the planning, design and construction of Civil Works projects, and to the activities under the operation and maintenance program of the Corps.

EFFECTIVE DATE: May 15, 1979.

FOR FURTHER INFORMATION CONTACT: Maurice Jackson, Department of the Army, Corps of Engineers, Wash., D.C. 20314. ATTN: DAEN–CWR–R (202–693–6807).

SUPPLEMENTARY INFORMATION: On May 24, 1978, the Corps of Engineers published in the **Federal Register** (33 CFR Part 239) a proposed regulation prescribing the policies and procedures the Corps would follow for implementing Executive Order 11988 on Floodplain Management. The general public was given until June 24, 1978 to provide comments on the proposed policy regulation. Comments were received from the Corps of Engineers field office and from seven other organizations. All comments were given full and careful consideration and were utilized where appropriate in revising the regulation. Many of the comments received were generally similar in addressing the need for more specificity and detail in the regulation. Inasmuch as the proposed rule is a general policy regulation intended to set forth the policies and procedures the Corps will utilize in implementing the Executive Order, no attempt was made to prescribe detailed specifics. When other Corps regulations pertaining to the planning, design, and construction of Civil Works projects and operation and maintenance activities are subsequently revised, specific details will be included therein.

The regulation was revised to include all definitions in the Corps regulation as contained in the Floodplain Management Guidelines (43 FR 6030), in order to clarify to the Corps field offices the basic definitions that will apply to the regulation. Also, the term "natural and beneficial floodplain values" was defined and added to the list of definitions.

The general policy was revised to eliminate the exemption of the practicability analysis to small lots or tracts of vacant lands in closely spaced urban areas. This was necessary since the Executive Order contains no provisions for such exemptions. In addition, the general policy was modified to indicate that the practicability test would also include consideration of alternative sites, alternative actions and no action.

The general procedures were revised to reflect the requirement of advising the general public early in the decision making process whenever an action would be located in a floodplain. This step was omitted from the proposed rule since existing Corps of Engineers regulations and procedures presently require early public participation and involvement during the early stages of the planning and decision making processes.

The section pertaining to minimization was revised to clarify whenever an action is undertaken in the floodplain steps be taken to minimize the impact of floods on human safety, health and welfare and beneficial floodplain values for both the floodplain action and any induced development likely to occur as a result of the action.

A section pertaining to Real Estate activities was added to the regulation. The regulation was modified to eliminate the exemption for projects under construction. The Order is applicable to projects under construction to the extent that construction activities should be performed in a manner that harm to the existing floodplain environment is minimized; environmental values of a floodplain construction site is restored to the extent practicable; and existing and beneficial floodplain values of undisturbed floodplain construction site are preserved and protected to the extent possible. The regulation was also revised to show that post flood rehabilitation activities performed by the Corps under Pub. L. 84–99 are within the purview of Executive Order 11988.

With the above changes, and several other editorial revisions, the proposed regulation is adopted as set forth.

Dated: May 8, 1979.

Thorwald R. Peterson,

Colonel, Corps of Engineers, Executive Director, Engineer Staff.

PART 239—WATER RESOURCES POLICIES AND AUTHORITIES: IMPLEMENTATION OF EXECUTIVE ORDER 11988 ON FLOODPLAIN MANAGEMENT

Sec.

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239.14 Reporting Requirements and Public Involvement.
239.15 Application of EO to Civil Works Program.

Authority: EO 11988, 43 FR 6030, February 10, 1978.

§ 239.1 Purpose.

The purpose of this regulation is to set forth general policy and guidance for Corps of Engineers implementation of Executive Order 11988, Floodplain Management, as it pertains to the planning, design and construction of Civil Works projects, to the activities under the operation and maintenance and to the regulatory and real estate programs of the Corps.

§ 239.2 Applicability.

This regulation is applicable to all OCE elements and to all field operating agencies having Civil Works responsibilities.

§ 239.3 References.

(a) Executive Order 11988, *Floodplain Management*, May 24, 1977.

(b) Water Resources Council, Floodplain Management Guidelines for Implementing E.O. 11988, February 10, 1978 (43 FR 6030).

(c) Water Resources Council, *A Unified National Program for Flood Plain Management*, July 1976.

(d) Pub. L. 84–99

(e) 33 CFR Parts 320 through 329 (42 FR 37121–37164, July 19, 1977).

(f) ER 1105–2–50

(g) ER 1105–2–200

(h) ER 1105–2–210

(i) ER 1105–2–220

(j) ER 1105–2–230

(k) ER 1105–2–240

(l) ER 1105–2–250

(m) ER 1105–2–351
(n) ER 1105–2–502
(o) ER 1105–2–507
(p) ER 1105–2–800
(q) ER 1105–2–811
(r) ER 1120–2–117

§ 239.4 Definitions.

(a) "Action" is any Federal activity, including (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

(b) "Base Flood" is that flood which has a one percent chance of occurrence in any given year (also known as a 100-year flood). This term is used in the National Flood Insurance Program to indicate the minimum level of flooding to be used by a community in its floodplain management regulations.

(c) "Base Floodplain" is the one percent chance floodplain.

(d) "Channel" a natural or artificial watercourse of perceptible extent with a definite bed and banks to confine and conduct continuously or periodically flowing water.

(e) "Critical Action" any activity for which even a slight chance of flooding would be too great. The critical action floodplain is defined as the 500 year floodplain (0.2 percent chance floodplain).

(f) "Flood Fringe" that portion of the floodplain outside of the regulatory floodway (often referred to as "floodway fringe").

(g) "Floodplain" the lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands, including at a minimum that area subject to a one percent chance of flooding in any given year.

(h) "Minimize" is to reduce to the smallest possible amount or degree.

(i) "Practicable" is capable of being done within existing constraints. The test of what is practicable depends upon the situation and includes consideration of the pertinent factors, such as environment, cost or technology.

(j) "Preserve" is to prevent adverse modification to the existing floodplain environment or to maintain it.

(k) "Restore" is to re-establish a setting or environment in which the natural functions of the floodplain can again operate.

(l) "Regulatory Floodway" the area regulated by Federal, State or local requirements; the channel of a river or other watercourse and the adjacent land areas that must be reserved in an open manner, i.e. unconfined or unobstructed either horizontally or vertically to provide for the discharge of the base flood so the cumulative increase in water surface elevation from encroachment does not exceed one foot as set by the NFIP.

(m) "Natural and Beneficial Values" include but are not limited to water resources values (natural moderation of floods, water quality maintenance, and ground water recharge), living resource values (fish, wildlife and plant resources), cultural resource values (open space, natural beauty, scientific study, outdoor education and recreation) and cultivated resource values (agriculture, aquaculture and forestry).

(n) "Direct support" of floodplain development is an action in the floodplain that encourages, allows, serves or otherwise facilitates additional floodplain development.

(o) "Facility" is any man-made or manplaced item other than a structure.

(p) "Structures" walled or roofed buildings, including mobile homes and gas or liquid storage tanks that are primarily above ground (as set by the NFIP).

§ 239.5 Background.

Executive Order 11988, Floodplain Management, signed May 24, 1977, revoked and replaced Executive Order 11296 issued August 10, 1966. The new Order adds emphasis to the environmental aspects of floodplain management that was not present in Executive Order 11296. The Order requires Federal agencies to recognize the significant values of floodplains and to consider the public benefits that would be realized from restoring and preserving floodplains. The conceptual framework of floodplain management as set out in § 239.3(c) is to be incorporated in agency procedures. The unified program has as a goal sound floodplain management that embodies the "wise use, conservation, development and utilization of interrelated land and water resources to serve objectives of economic efficiency, environmental quality and social well-being as consonant with responsibilities assigned to respective levels of government by law." Floodplain Management Guidelines for Implementing EO 11988 were published in the Federal Register on February 10, 1978 (43 FR 6030) (§ 239.3(c)). The guidelines were developed for the purpose of explaining key terms in the EO, floodplain management concepts and procedures for complying with the Order. The guidelines have been utilized in preparing this Corps of Engineers policy regulation and other affected Corps regulations and procedures will subsequently be revised to reflect the policies and procedures contained herein.

§ 239.6 Objective of the order.

The Executive Order has as an objective the avoidance, to the extent possible, of long and short term adverse impacts associated with the occupancy and modification of the base floodplain and the avoidance of direct and indirect support of development in the base floodplain wherever there is a practicable alternative. Under the Order, the Corps is required to provide leadership and take action to:

(a) Avoid development in the base floodplain unless it is the only practicable alternative;

(b) Reduce the hazard and risk associated with floods;

(c) Minimize the impact of floods on human safety, health and welfare; and

(d) Restore and preserve the natural and beneficial values of the base floodplain.

§ 239.7 General policy.

It is the policy of the Corps of Engineers to formulate projects which, to the extent possible, avoid or minimize adverse impacts associated with use of the base floodplain and avoid inducing development in the base floodplain unless there is no practicable alternative. The decision on whether a practicable alternative exists will be based on weighing the advantages and disadvantages of floodplain sites and non-floodplain sites. Factors to be taken into consideration include, but are not limited to, conservation, economics, aesthetics, natural and beneficial values served by floodplains, impact of floods on human safety, locational advantage, the functional need for locating the development in the floodplain, historic values, fish and wildlife habitat values, endangered and threatened species, Federal and State designations of wild and scenic rivers, refuges, etc. and, in general, the needs and welfare of the people. The test of practicability will apply to both the proposed Corps action and to any induced development likely to be caused by the action. Identification and evaluation of practicable alternatives shall include consideration of alternative sites (carrying out the proposed action outside the floodplain); alternative actions (other means which accomplish the same purpose as the proposed

action); and no action. When a determination is made that no practicable alternative to undertaking an action in the floodplain exists, it will be appropriately documented and the features or qualities of the floodplain that make it advantageous over alternative non-floodplain sites shall be described and adequately supported.

§ 239.8 General procedures.

Listed below are the general procedures to be followed for implementing Executive Order 11988. These procedures are the "decision making process" and are graphically depicted in § 239.3(b). The general procedures are to be incorporated in the multiobjective planning approach under the WRC principles and standards for the planning, design and construction of civil works projects and activities under the operation and maintenance programs.

(a) Determine if the proposed action is in the base floodplain.

(b) If the action is in the base floodplain, identify and evaluate practicable alternatives to the action or to the location of the action in the base floodplain as outlined in § 239.7 above.

(c) If the action must be in the floodplain, advise the general public in the affected area and obtain their views and comments.

(d) Identify beneficial and adverse impacts due to the action and any expected losses of natural and beneficial floodplain values. Where actions proposed to be located outside the base floodplain will affect the base floodplain, impacts resulting from these actions should also be identified.

(e) If the action is likely to induce development in the base floodplain, determine if a practicable non-floodplain alternative for the development exists, as outlined in § 239.7 above.

(f) As part of the multiobjective planning approach under the Principles and Standards, determine viable methods to minimize any adverse impacts of the action including any likely induced development for which there is no practicable alternative and methods to restore and preserve the natural and beneficial floodplain values. Successive iterations of the planning process as called for in ER 1105–2–200 should be used to develop methods for minimization (§§ 239.10 and 239.11). This should include reevaluation of the "no action" alternative.

(g) If the final determination is made that no practicable alternative exists to locating the action in the floodplain, advise the general public in the affected area of the findings.

(h) Recommend the plan most responsive to the planning objectives established by the study and consistent with the requirements of the Executive Order stated in § 239.6 above.

§ 239.9 Assessment and evaluation of impacts.

The determination called for in § 239.8(d) above requires an assessment of the likely adverse and beneficial impacts of an action. Impact identification and assessment apply to both the Corps action and to any induced development likely to occur in the base floodplain with the proposed action. Existing procedures and guidance for identifying, assessing and evaluating impacts are contained in ER 1105–2–240 and ER 1105–2–250 for multiobjective planning and ER 1105–2–507 for responding to NEPA requirements. These procedures are designed to ensure that all significant adverse and beneficial effects of actions are identified and measured. ER 1105–2–240 requires identifying sources of impacts, tracing impacts, describing the magnitude of impacts and specifying the location, timing, and duration of impacts. ER 1105–2–250 requires determining the beneficial and adverse contribution of each alternative plan. ER 1105–2–507 requires the identification of impacts and effects of an action on the environment. Therefore, impact identification, assessment and evaluation procedures required by existing Corps regulations comply with the intent of the EO and should continue to be followed.

§ 239.10 Minimize.

Whenever there is no practicable alternative to undertaking an action in the floodplain, steps should be taken to minimize the impact of floods on human safety, health and welfare, beneficial floodplain values, and any induced development likely to occur as a result of the action. Minimize, by definition, is broad and open-ended; however, there is an implicit acceptance of practical limitations which makes it consistent with the Principles and Standards. All practical means and measures should be utilized to minimize any adverse impacts likely to occur because of an action in the floodplain. For example, successive iterations of the planning process should normally result in the deletion of separable segments of a plan when such segments protect undeveloped land and would likely induce development in the floodplain for which another practicable non-floodplain alternative may exist.

§ 239.11 Restore and preserve.

Restoration and preservation are methods of enhancing or maintaining the natural and beneficial values of floodplains. These are primarily environmental values falling within the broad scope of multiobjective planning of the Principles and Standards and the ER 1105–2–200 series. The implementation of actions or measures to restore or preserve floodplain values should be recommended, as appropriate, in reporting documents if they fall under existing Corps authorities. If they are not within existing authorities of the Corps, the report should describe how such measures can be implemented. Examples of actions that could be taken to restore floodplain values are as follows:

(a) Relocate non-conforming structures and facilities out of the base floodplain.

(b) Reestablish damaged floodplain ecosystems.

(c) Restore and preserve wetlands, marshes, and etc.

(d) Implement measures that will enhance fish and wildlife values.

(e) Restore and revegetate damaged beaches and dunes.

§ 239.12 Regulatory functions program.

Section 2c of the Executive Order pertains to the issuance of permits or licenses and relates to the Corps regulatory permit program. Section 2c requires agencies to: (a) Consider and evaluate flood hazards for actions in floodplains; (b) provide early public review of plans or proposals in floodplains for which the impact would not require an EIA; and (c) provide guidance to applicants to enable them to evaluate the effects of their proposal on the floodplain. § 239.3(e) is the regulation that sets forth the policies and procedures of the Corps of Engineers for review of permit applications. The general policies in the regulation provide for an evaluation of the flood hazard and the effect an action in the floodplain may have on the floodplain environment through the public interest review process described in § 320.4. The public notice process, as contained in § 325.3, is the primary method utilized by the Corps for advising the public early of potential plans or proposals in flood plains for which a permit is sought. Existing policies and procedures related to the regulatory program (§ 239.3(e)) fulfill the requirements and intent of Section 2c of Executive Order 11988 and should continue to be followed.

§ 239.13 Real estate activities.

When property in floodplains is proposed for outgrant or disposal to non-Federal public or private parties, the Corps shall reference in the outgrant or conveyance those uses that are restricted under Federal, State and local floodplain regulations and attach other restrictions to uses of the property as may be appropriate. In the event the proposed use is incompatible with good floodplain management, the Corps shall consider withholding such properties from outgrant or conveyance.

§ 239.14 Reporting requirements and public involvement.

When a determination has been made that no practicable alternative to locating an action in the floodplain exists, the EO requires the reporting of this finding. The Order requirements generally include reporting procedures that are presently being accomplished under existing Corps regulations, with some minor exceptions. The following additional information shall be included in existing reporting requirements, as appropriate, for general investigation studies, projects in engineering and design stages, studies under the special continuing authorities program, and activities under the operations and maintenance program.

(a) *Section 2(a)(2) of Executive Order.* If there is no practicable alternative to locating an action in the floodplain, a public notice shall be prepared and circulated to the general public. The notice shall include the following: (1) An explanation of why the action must be located in the floodplain; (2) a description of significant facts considered in making the determination to locate in the floodplain, including alternative sites and actions considered and any tradeoffs that were made; and (3) a statement indicating whether the proposal conforms to applicable State or local floodplain protection standards. The public notice issued by the District Engineer upon completion of a study action or its equivalent will serve as the means to satisfy this requirement of the Order. Public notices should provide specific information pertaining to paragraphs (a)(1), (2) and (3) of this section, and be disseminated to the general public in the affected area.

(b) *Section 2(a)(3) of Executive Order.* A notice, not to exceed three pages in length, including a location map, should be submitted to State and areawide A–95 Clearinghouse for the geographic area affected, when an action is to be located in the floodplain. Continuation of existing procedures and requirements of § 239.3(q) will comply with the intent of the Order with the exception that future notices to clearinghouses should also include the additional information required in §239.14(a).

(c) *Section 2b of Executive Order.* Requests for new authorizations or appropriations for new construction starts transmitted to the Office of Management and Budget will provide information on whether a proposed action is located in the floodplain. If the action is located in the floodplain the transmittal will include information on whether the action complies with the EO.

(d) *Statement of Findings.* Since Corps actions in the floodplain are subject to NEPA, the Statement of Findings that is required as part of the conclusions in feasibility reports and required for actions pertaining to operations and maintenance will include, in addition to existing requirements, the following:

(1) Reasons why the proposed action must be located in the floodplain.

(2) Facts considered in making the determination to locate in the floodplain, including alternative sites and actions considered.

(3) Statement on whether the proposed action conforms to applicable State of local floodplain protection standards.

(4) Statement on whether the action affects the natural and beneficial values of the floodplain.

(5) Steps taken to design or modify the proposed action to minimize potential harm to or within the floodplain; and

(6) A general listing of involved agencies, groups, and organizations.

(e) *Public Involvement.* To insure that adequate information and opportunities are provided early in the decision-making process to allow the public to participate effectively in floodplain management decisions, a public involvement program should: (1) Include as broad an audience as possible; (2) provide continuous interaction and involvement opportunities for the public in the planning and decision-making process; (3) provide information which promotes the fullest understanding of the proposed action; and (4) provide timely opportunities for all segments of the public to affect a proposed action or plan before alternative actions have been precluded. The policies and objectives for public involvement contained in § 239.3 (n) and (p) are parallel to the requirements of the Order and should be continued. However, public participation programs will also include early, specific reference to Executive Order 11988 and its objectives.

§ 239.15 Application of EO to civil works program.

The provisions of this regulation are applicable to civil works activities as outlined below.

(a) *Preauthorization Studies.* Where a floodplain may be affected, the policy and procedures of this regulation shall be incorporated in the multiobjective planning process (ER 1105–2–200 series of regulations) from the outset, to a scope and level of detail appropriate for preauthorization studies.

(b) *Advanced Engineering and Design.* Reporting officers should insure that projects in the advanced engineering and design stages comply with the intent and objective of the Executive Order as set forth in this regulation.

(c) *Continuing Authorities Program (ER 1105–2–50).* Where a floodplain may be affected, the policies and procedures of this regulation are applicable to the planning and design of projects under the continuing authorities program. Current studies conducted thereunder shall incorporate the policies and procedures of this regulation early in the multiobjective planning process as required by § 239.3(f).

(d) *Projects Under Construction.* The minimization, restoration and preservation requirements of the Executive Order shall apply to projects under construction. Construction activities should be performed in a manner that harm to the existing floodplain environment is minimized; environmental values of a floodplain construction site is restored to the extent practicable; and existing and beneficial floodplain values of an undisturbed floodplain construction site are preserved and protected to the extent possible.

(e) *Operation and Maintenance Activities.* The policies and procedures of this regulation are applicable to operation and maintenance activities of the Corps of Engineers within the base floodplain. District Engineers should insure that future actions at projects operated and maintained by the Corps comply with the policies and procedures set forth in this regulation and 33 CFR 209.145.

(f) *Emergency Activities.* Emergency flood-related activities essential to saving lives and protecting property and public health and safety, are exempt from the provisions of the Order. Post flood rehabilitation activities performed under Pub. L. 84–99 by the Corps shall comply with the intent of the Executive Order.

[ER–1165–2–26]

[FR Doc. 79–14909 Filed 5–14–79; 8:45 am]

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federal register

Tuesday
May 15, 1979

Part IV

Department of Energy

Economic Regulatory Administration

Definitions of Administrative Procedures and Sanctions; Interim Rule

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Parts 500 and 501

Definitions and Administrative Procedures and Sanctions; Interim Rule

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Interim Rule

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is issuing this interim rule to implement provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA) which prohibit the use of petroleum and natural gas by certain electric powerplants and major fuel burning installations. This interim rule defines certain terms critical to the operation of the FUA program and establishes the procedures by which owners and operators of powerplants and installations may petition for an exemption from the prohibitions of the Act.

DATES: These interim rules shall become effective on May 8, 1979. ERA has decided to extend the period for written comments until August 15, 1979, before issuing its final definitional and procedural rules.

No additional public hearings will be held. However, before formalizing this rule, ERA will consider all written comments submitted during this extended comment period.

ADDRESSES: All comments should be addressed to Public Hearing Management, Docket No. ERA–R–78–19D, Department of Energy, Room 2313, 2000 M Street, N.W., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

William L. Webb (Office of Public Information), Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room B–110, Washington, D.C. 20461, (202) 634–2170.

Stephen M. Stern (Regulations and Emergency Planning), Economic Regulatory Administration, Department of Energy, Room 2130C, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254–9766.

Robert L. Davies (Fuels Regulation—Program Office), Economic Regulatory Administration, Department of Energy, Room 61281, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254–3910.

James Heffernan (Office of General Counsel), Department of Energy, Room 7136, 12th and Pennsylvania Avenue, N.W., Washington, D.C. 20461, (202) 633–8714.

SUPPLEMENTARY INFORMATION:

I. Background and extended comment period
II. Comments (Section 500.2—Definitions)
III. Comments (Part 501—Administrative Procedures and Sanctions)
IV. Procedural matters

I. Background and Extended Comment Period

This interim rule sets forth the definitions necessary for the implemention of the Powerplant and Industrial Fuel Use Act of 1978 (FUA) and the procedures that will apply to certain administrative proceedings implementing FUA which are identified in Parts 502, 503, 504, 505, 506, 507, 508, and 515 of Alternate Fuels Subchapter E of Title 10 of the Code of Federal Regulations. ERA may decide to use these procedures in administering other programs and will so indicate their applicability in those rules at the time they are published.

ERA published proposed rules for section 500.2, Part 501 and for new and existing facilities on November 17, 1978 and January 29, 1979 (43 FR 53974 and 44 FR 5808, respectively). In the preambles to those proposed rules, ERA described the basic provisions of FUA and its proposed programs to implement them. ERA solicited comments on its proposals and held public hearings in Boston, Massachusetts on February 7, 1979; Salt Lake City, Utah on February 14, 1979; Tampa, Florida on February 21, 1979; and in Lexington, Kentucky on March 2 and 3, 1979.

ERA received a large number of written comments and heard a variety of oral presentations at its hearings, all of which were incorporated into the record of the administrative proceedings on these rules. Based upon these comments and ERA analysis of the full record in these administrative proceedings to date, ERA has decided to issue this interim rule to define certain terms and establish procedures that will govern FUA-related administrative proceedings. ERA is also issuing a new Subpart M for the Use of Natural Gas or Petroleum for Emergency and Unanticipated Equipment Outage Purposes that was not contained in the earlier proposals. This subpart provides for certain emergency uses of petroleum or natural gas, therefore ERA believes it is appropriate to issue this subpart at this time. ERA plans to publish interim rules for Parts 502, 503, 504, 505, 506, and 507 in the near future in order to provide the basis for full implementation of the regulatory programs required by FUA.

ERA has also decided to extend the period for submission of additional written comments on this interim rule. This extended period for additional written comments commences on the date this interim rule is issued and extends until August 15, 1979. ERA invites all interested persons to participate in these further proceedings by submitting any written information, views or arguments to Department of Energy, Public Hearing Management, Room 2313, 2000 M Street, N.W., Washington, D.C. 20461. All submissions should be identified on the outside envelope and on the documents contained therein with the designation, "Definitions and Administrative Procedures," Docket Number ERA–R–78–19D. You should submit 15 copies. All comments received will be available for public inspection in the DOE Reading Room GS–152, James Forrestal Buildings, 1000 Independence Avenue, S.W., Washington, D.C. We will consider all comments received by August 15, 1979, and incorporate these into the record of the administrative proceedings on section 500.2 and Part 501.

ERA will receive petitions for exemptions and make determinations in accordance with the procedures set forth in this interim rule. ERA's determination on exemption petitions shall be made upon the basis of the standards and criteria set out in the interim rules with respect to Parts 502, 503, 505 and 507, or upon the provisions of those Parts as subsequently revised, where the application of a modification of a particular rule would result in a more favorable disposition of a particular petition. ERA urges you to file your petitions expeditiously so that ERA may render a timely decision on each petition.

ERA also conducted FUA-related rulemaking proceedings on transitional facilities, uses of natural gas, outdoor decorative lighting and restrictions on the increased use of petroleum. On March 21, 1979, ERA published its Revised Interim Rule to Permit Classification of Certain Powerplants and Installations as Existing Facilities, 44 FR 17464, which established the criteria and procedures whereby ERA would make determinations as to whether a facility is subject to the provisions of Title II of FUA governing new facilities, or the provision of Title III which governs existing facilities. On April 9, 1979, ERA published a final rule establishing an Exemption for Use of Natural Gas by Existing Powerplants

Under the Powerplant and Industrial Fuel Use Act of 1978, 44 FR 1979, which established criteria and expedited procedures by which owners and operators of existing powerplants may petition for a temporary public interest exemption from the prohibitions against use of natural gas contained in Section 301(a) (2) and (3) of FUA. On May 7, 1979, ERA issued its final rule establishing prohibitions on the Sale and Direct Industrial Use of Natural Gas for Outdoor Lighting, pursuant to Section 402 of FUA; concurrently with this rule ERA is issuing its Interim Rule establishing a Prohibition Against the Increased Use of Petroleum by Existing Electric Powerplants pursuant to Section 405 of FUA.

II. Comments (Section 500.2—Definitions)

In the course of its own review and in response to comments received, ERA has revised the definition of many of the terms proposed in § 500.2

The following is a summary of the major revisions.

In the January 29, 1979 **Federal Register** (44 FR 5808, 5812–13) we suggested that for purposes of defining electric powerplant and MFBI under Sections 103(a)(7)(A) and 103(a)(10)(A) of FUA, there would be no minimum size unit for purposes of aggregating units at a single site to determine if the combination of units collectively reached the 250 million Btu's per hour threshold.

We received comments that failure to designate a minimum unit size for purposes of aggregation would cause great economic hardship with relatively little savings in petroleum and natural gas consumption. Some comments suggested that the minimum be raised to 100 million Btu's per hour, while other comments suggested that the 50 million Btu's per hour floor would not result in economic hardships.

We believe that the criteria we have established as to which units we will aggregate towards the 250 million Btu's per hour threshold is a reasonable accommodation which will carry out the purposes of FUA to reduce the consumption of petroleum and natural gas. In establishing the criteria we have taken into account present technological capabilities, and we have attempted to minimize economic disruption.

When you propose to build two or more new units in combination at a single site, we will aggregate towards the 250 million Btu's per hour threshold any such new unit where the heat input equals or exceeds 50 million Btu's per hour.

If the combination of new units equals or exceeds the 250 million Btu's per hour threshold, then each new unit in the combination with a heat input rate equal to or exceeding 50 million Btu's per hour will be subject to the prohibitions of the Act.

The above criteria on aggregation are ERA's policy for the present. We may, in the future, lower the minimum limit size for purposes of aggregation.

As a result of our own inquiry, and the information we have received from manufacturers, it is our opinion that the technology is being developed to permit the economic burning of alternate fuels at heat input levels lower than 50 million Btu's per hour; however, recognizing the possibly optimistic nature of information supplied from vendors, we have taken a conservative position as to the minimum unit heat input rate we will consider for purposes of aggregation. We solicit further comments as to the technology for small alternate fuel-fired units which compare favorably on a life-cycle cost basis with petroleum and natural gas-fired units.

We received comments that ERA did not have the authority, as we proposed, to aggregate new with existing units. The comments also stated that aggregating new with existing units would encourage development of new sites rather than the enlargement of existing sites, and that the advantages of economies of scale would be unduly constrained.

The Act does not support the conclusion that existing and new units in combination with one another at the same site may not be aggregated. The only basis for excluding existing or new units from aggregation is that found in the authority to exclude from aggregation units up to 100 million Btu's per hour. To minimize economic disruption, we have decided to exclude from aggregation to the maximum limit of our authority existing units when it is proposed to add one or more new units in combination with one or more existing units at a single site. When the aggregation consists of new with existing units, we will consider, for purposes of aggregation, only those existing units with a heat input rate which equals or exceeds 100 million Btu's per hour. We will count, for purposes of aggregation, only the new unit(s) which equal or exceed 50 million Btu's per hour.

If the combination of new and existing units equals or exceeds the 250 million Btu's per hour threshold, then each existing unit in the combination with a heat input rate equal to or in excess of 100 million Btu's per hour, and each new unit with a heat input rate equal to or exceeding 50 million Btu's per hour, will be subject to the applicable prohibitions.

In these regulations we are not establishing the criteria for aggregation when there is a combination of existing units at a single site. We are reserving §§ 500.2(c)(3) and (d)(3) in these regulations for such criteria, which we intend to adopt within interim regulations for existing facilities. ERA has determined that the most urgent need is to establish criteria which will be utilized in the planning for new units, and thus, we have focused our attention on those units.

In response to the comments that rental boilers should be excluded from the jurisdiction of FUA, we are establishing the following rule with respect to rental boilers. We will not count for purposes of aggregation or jurisdiction a rental boiler with a heat input rate less than 100 million Btu's per hour if you are using that rental boiler because of an unanticipated equipment outage or emergency as described in § 501.191 of these regulations; a temporary emergency condition as described in § 501.192 of these regulations; or, under the grant of a temporary public interest exemption as described in § 503.25 of these regulations. Rental boilers in excess of 100 million Btu's per hour may also be used if the use is in accordance with those regulations.

We solicited comments in the January 29, 1979, **Federal Register** (44 FR 5808, 5812) on our proposal to consider units at the same site for purposes of aggregation when the units are located within 10 miles of each other.

We received many comments that this proposed test was too broad and ignored technical considerations. In response to these comments, we have revised the site test criteria for purposes of aggregation by establishing a definition for the term "in combination" as used in Sections 103(a)(7)(A) and 103(a)(10)(A) of FUA and have revised the criteria for determining when units are located at the same site.

For aggregation purposes, "in combination" means units which are functionally integrated. The factors we will consider in determining whether units are functionally integrated are (1) whether the units are contributing to the same end product, blend stock, or intermediate product; (2) whether units are part of the same plant or facility producing different products; (3) physical connection of common energy or power systems, other than that provided by a public utility; and (4) any other factors which would indicate

whether the units are functionally integrated. As to whether units are located at the same site, we will consider physical proximity, common ownership, and whether noncontiguous parcels are connected by any easements, pipes or steam lines under common ownership.

We did receive comment that physical connection should be the only factor considered; ERA feels that the other factors described above are relevant and will consider all four in making a determination as to which units are in combination.

In the January 29, 1979 **Federal Register** (44 Fed. Reg. 5808, 5813) we solicited comments on three proposed alternatives concerning internal combustion engines used for the generation of electricity. The alternatives we presented were (1) retaining the November 17, 1978 **Federal Register** (43 Fed. Reg. 53974, 53985) proposal where an internal combustion engine used for the generation of electricity is an MFBI; (2) a redefining of electric powerplant to include an internal combustion unit used for the generation of electricity; and (3) withdrawing the November 17, 1978 proposal and not defining internal combustion used for generating electricity as either a powerplant or MFBI, and rely on legislative clarification.

We received comments that an internal combustion engine used for the generation of electricity is neither an MFBI nor an electric powerplant under the present wording of FUA. We agree. Regulations cannot correct what we believe to have been an unintended gap in FUA coverage. We are therefore deleting internal combustion engines used for the generation of electricity from the definition of MFBI, and also from the definition of electric powerplant. However, we are retaining in the definition of MFBI an internal combustion engine as FUA clearly designates internal combustion engines as MFBI's.

Additionally, we received comments that refinery process heaters should not be considered MFBI's. Refinery process heaters normally do not fall within the categories statutorily designated as MFBI, that is, boilers and certain non-boilers, and as such exempt from the provisions of FUA. To the extent that a refinery process heater does fall within a statutory category of FUA, it will be subject to the provisions of the Act.

We had proposed that steam generators used for crude oil recovery be excluded from the definition of MFBI. A number of comments favored this exclusion, and non opposed it. Some comments suggested that steam generators for crude oil recovery were not boilers and thus not subject to FUA. Other comments stated that these steam generators are moved from location to location, and because of this movement cannot be considered stationary units subject to FUA.

We do not accept the argument that because they are portable, these generators are not stationary, and we have not satisfactorily completed our legal and technical assessment of the contention that they are not boilers. In light of our proposal, the support for the exclusion in the comments and the contribution of steam generators to enhanced crude oil recovery, we are, pending further consideration, excluding steam generators for crude oil recovery from the definition of MFBI. We intend to reassess our treatment of these units. We invite comments on engineering distinctions cognizable under FUA between these steam generators and boilers and on whether these units can use alternate fuels. In particular, we solicit comments on the feasibility of using petroleum coke as a fuel for these units.

We proposed to consider an electric powerplant or an MFBI new if, since April 20, 1977, the cost of reconstruction or refurbishment equals or exceeds 50 percent of the price of a replacement unit. Some comments stated that the 50 percent test was too high, while other comments stated that routine operation and maintenance costs should be excluded.

In response to these comments we have eliminated "refurbishment" as a separate component of reconstruction and have revised the formula as to when reconstruction makes a powerplant or MFBI new.

We will consider a powerplant or MFBI new if, after January 1, 1981, and the preceding two calendar years, the capital expenditure for reconstruction equals or exceeds 50 percent of the replacement cost of an equivalent unit. Therefore, the base 3-year period is to be figured on a "rolling basis," i.e., the then current calendar year plus the preceding 2-year period. Allowable capital expenditure for an electric powerplant is to be in accordance with the Federal Energy Regulatory Commission's Uniform System of Accounts, and, for an MFBI, in accordance with Internal Revenue Service standards.

We will not include routine operation and maintenance expenses as expenditures for reconstruction; however, operation and maintenance expenditures which are capitalized rather than expensed will be included as expenditures for reconstruction.

We have also clarified the definition of construction with regard to repowering of existing combustion turbine powerplants. For the purposes of this Act, we consider the addition of a waste heat or supplementary fired boiler to an existing combustion turbine as the construction of a new combined-cycle powerplant.

We received comments that the fuel used in backup units for municipal solid waste recovery units be excluded from the definition of primary energy source. We disagree since the concept of primary energy source applies only to the unit and not to the backup units considered as part of a system. We do exclude from consideration as a primary energy source the amount of fuel used in any MFBI or powerplant for the purposes enumerated in Section 103(a)(15)(A) of the Act equal in total to five percent of the total energy in Btu's consumed per year by the particular unit. In addition, ERA believes that adequate opportunity to use backup boilers exists in other ways; for example, under the scheduled outage exemption.

ERA proposed that movement of an existing MFBI or powerplant would cause that unit to become a new MFBI or powerplant. We received comments that this was not an appropriate action and agree with those comments. We have deleted that reference in these regulations.

It was suggesed that ERA establish criteria for "alternate-fuel capability," as it pertains to the new construction prohibitions of Title II. ERA agrees, and has done so in a manner which assures that powerplants subject to this prohibition will actually be able to use, in full environmental compliance, an alternate fuel at the time the powerplant becomes operational or upon expiration of a temporary exemption.

ERA also received comments that only gas turbines, and not combustion turbines, were covered by the Act. The terms "gas turbine" and "combustion turbine" are synonymous; therefore, we have not changed the proposed coverage. Whether oil or gas is burned, the turbine is driven by the gases which result from the combustion; the term "gas combustion" refers to those gases rather than to the particular kind of input fuel.

Some comments addressed the applicable environmental requirements definition. The comments ranged from including Federal and state common law in the definition, to including all local

laws, regulations, or ordinances regardless whether they are based on Federal or state laws, and taking the stringency of local/regional environmental requirements into account in deciding whether to grant an exemption for an inability to comply with applicable environmental requirements.

ERA refers to the language in the Conference Report pertaining to permanent exemptions due to certain State or local requirements which states "The conferees intend that the Secretary determine the purposes of the State or local law and he certainly should not grant an exemption under this provision where it is clear that such law was established, for example, to aid the affected powerplant or installation, to preclude the use of coal or alternate fuels in preference for natural gas or petroleum in order to evade the policies, purposes, and prohibitions of this Act." (S. Rep. 95–988, 95 Cong. 2d Sess, p. 85) Exemptions for State and local requirements are discretionary, and the pertinence of such requirements can only be assessed on a case-by-case basis.

By **Federal Register** notices of November 17, 1978 and January 29, 1979, we called for comments on our proposed definition of "alternate fuels". We were particularly concerned with the question of whether indigenous resources, particularly petroleum-related resources, which might otherwise remain unexploited, should be classified as "alternate fuels" as a means of increasing our national energy supplies. We also invited other suggestions regarding other resources that might be classified as alternate fuels.

Many of the comments were directed toward specific types of fuels and in our discussion below we will group the fuel types together as much as possible to avoid repetition.

a. *Certain gases.* Gases such as coal seam methane, Devonian shale gas, and geopressurized methane have been designated, under certain circumstances, as alternate fuels by virtue of their designation as "commercially unmarketable" under Part 507 of these Interim Regulations. The discussion of these and other similar gases is contained in the response to comments under Part 507.

b. *Proposed fuels designated alternate fuels.* The following energy sources were recommended for classification as alternate fuels: (1) Biomass and biomass synthetics, (2) coal synthetics, (3) peat, (4) wind, (5) tide, and (6) hydroelectric. Both FUA and our interim regulations define an alternate fuel as any fuel other than natural gas or petroleum. Under this definition, these six energy sources are alternate fuels.

c. *Steam used in energy production.* Some of the comments recommended that all fuels used in the gathering, production, storage, transmission, or distribution of hydrocarbon gases or liquids be classified as "alternate fuels." We reject the designation of fuels used in these activities as "alternate fuels"; however, FUA specifically exempts any pumps and compressors solely used in connection with these activities from the coverage of the Act by excluding such facilities from the definition of a major fuel-burning installation. In addition to this statutory exclusion, we have specifically removed "steam generators for crude oil production" from our jurisdiction by excluding these units from the definition of a major fuel-burning installation in § 500.2(a) of the interim regulations. We will review the use of natural gas or petroleum as fuels in other activities on the basis of the exemptions contained in the Act.

d. *Steam.* In response to our January 29, 1979 request for comments on the question of whether "steam" should be considered an alternate fuel, the comments pointed out that steam is not, in fact, a fuel, but rather is simply a form of energy which does not fit into the "fuel availability" concept of FUA. If it were classified as an alternate fuel, the comments suggested, it should be so classified only where its use would result in higher overall efficiency and lower overall use of oil or natural gas. In any case, it was noted that such designation would only mean that a petitioner would have one more alternate fuel to consider in the Fuels Decision Report. After considering these comments, we have decided not to designate steam as an alternate fuel at this time.

e. *Electricity.* Electricity, the only source of energy which is not a fuel but which is identified in FUA as an alternate fuel, received similar comments with the additional points that the inclusion of electricity among the alternate fuels (1) is contrary to the Public Utilities Regulatory Policies Act (PURPA) (Pub. L. 95–617) and to the use of cogeneration, and (2) will result in "doubling" the use of fuel. Electricity is specifically designated as an alternate fuel in § 103(a) of FUA and we do not have any discretion regarding its redesignation.

f. *Slurries.* Coal-oil slurries were also suggested for classification as an alternate fuel. Because this type of slurry is composed in part of petroleum, we have determined that coal-oil slurries are not an alternate fuel and that request for use of such fuel will more appropriately be considered under the fuel mixtures provisions of the Act. We do intend to promote the development and use of coal-oil mixtures and will do so under the provisions implementing § 212(d) of FUA (Permanent exemption for certain fuel mixtures containing natural gas or petroleum) and § 213(a)(1) of FUA (General requirement for exemptions: use of mixtures).

g. *"Load balancing" and "displaced gas."* It was suggested that we should, under the alternate fuel definition, permit (1) "load balancing" where facilities will fill in "demand valleys" for natural gas which occur during the season when residential demand for heating is low and (2) the exchange of equivalent amounts of natural gas by agreements. We do not see how the fact that natural gas may be available in excess of demand at certain times necessarily makes it an alternate fuel, permitting it to be used in utility and industrial units where its use would not otherwise be permitted. There are, however, some instances in which we might permit such use, such as in situations that would qualify for the public interest exemption, but the existence of a situation warranting such an exemption must be determined on a case-by-case basis.

We do not see how exchange agreements for "displaced gas" can be viewed as changing the nature of the gas and justifying its designation as an alternate fuel.

h. *Compressed air.* Stored compressed air was discussed in one of the comments as a possible alternate fuel. We recognize the use of compressed air as a conservation measure to be discussed under the "terms and conditions" section implementing § 214(a) of the Act. We do not consider it to be a fuel.

i. *Regional considerations.* We also received comments to the effect that alternate fuel classifications should be made on the basis of the region in which the fuel is used (or to be used) or the use of which the fuel is intended. We have concluded that it would not be administratively possible to enumerate all of the regional considerations and fuel uses that would be necessary to include as criteria for such classifications as those suggested. Regional considerations, while they probably would not be a basis for designating alternate fuels, do bear upon which alternate fuels may be available at a particular site. Accordingly, we intend to entertain discussions of

precisely these types of issues at the prepetition conferences held in advance of the submissions of exemption requests and, on the basis of such discussions, we may waive certain requirements pertaining to the fuels to be considered that would otherwise be mandatory in connection with the submission of such petitions.

j. *Heavy crude oil.* In our previous requests for comments on the alternate fuels definition, we were particularly interested in receiving views concerning petroleum-related fuels which would not or might not otherwise be produced particularly heavy crude oil. Whether we should include some of these energy sources in the definition of alternate fuels has been a difficult question of policy, although a somewhat easier question of law. The major policy argument is familiar: if particular petroleum-related products are excluded from the definition of petroleum, their production and utilization will be encouraged by such action.

In this connection, we have received a great deal of comment, particularly recommending the designation of California heavy crude oil as an alternate fuel. FUA defines the term "petroleum" as crude oil and products derived from crude oil. Heavy crudes are considered to be crude oil under the Emergency Petroleum Allocation Act (Public Law 94–163), the major Federal regulatory statute involving petroleum, regardless whether such crudes are liquid at ordinary temperatures and pressures. (We note parenthetically that these crudes do not have the crystalline molecular structure of solids, but the molecular structure of liquids). Under FUA, heavy crudes are not among those fuels excluded from the definition of petroleum and none of the exclusions from the definition involve any reference to specific gravity or commercial marketability (or lack thereof) except in connection with waste by-products of refineries. Moreover, it is highly unlikely that Congress was unaware of California heavy crude at the time it enacted FUA, yet Congress did not expressly exclude it from the definition of petroleum. Accordingly, we have for purposes of this interim rule not excluded heavy crude oils from the definition of petroleum. We invite further comment on this issue.

We note that under FUA, petroleum coke is not considered to be petroleum. The refining of California heavy crudes produces a great deal of this product. The coke resulting from the refining of heavy crudes may be used as alternate fuel, thus aiding in the reduction of any excess of petroleum coke on the West Coast. Moreover, the opportunity under the Act to burn petroleum coke may well ease the problem of excesses of heavy crude.

Other comments related specifically to recommendations that petroleum from "difficult-to-produce formations," and oil from heavy oil sands and tar sands be classified as alternate fuels. It was further suggested that producers of any heavy crudes from these or other formations should not be required to demonstrate that such oil would not otherwise be produced without being designated as an alternate fuel. Also, comments proposed that, in order to make allowances for heavy crude oils produced or transported with lighter crude oils, the purchasing parties should be permitted to designate the amount of the end product that will be equivalent to the volume input of the lighter crude oil and to designate as "alternate fuel" that amount which consitutes the heavy crude oil itself. Finally, it was suggested that all of the fuels discussed above simply be allowed by rule to be consumed in the public interest rather than being classified as alternate fuels.

After considering these comments and reviewing both the terms of the statutory definitions of petroleum and previous ERA definitions of crude oil under the Emergency Petroleum Allocation Act (Public Law 94–163), it appears that these fuels constitute petroleum within the accepted definition of the term and do not qualify as alternate fuels. The broad legal conclusion may not be sufficiently sensitive to the policy considerations that bear upon these definitions and issues. We invite further analysis on them. As the fuels discussed are, therefore included within the petroleum definition, the other comments noted do not require further change.

K. *Waste oil by-products.* The comments also proposed that reprocessed waste oils and petroleum products should be designated alternate fuels. After a review of the applicable legislative provisions, we have concluded that we have no discretion in this matter and must consider these fuels as petroleum for purposes of FUA.

1. *Commercial unmarketability by-products.* In order to make the commercial unmarketability standard used in the alternate fuels definition [§ 500.2(a)] more definite, we have specified in that definition the criteria which we will use in determining whether a particular waste by-product is of the quality or quantity that will make it commercially marketable. Both overlapping and separate criteria are stated for industrial waste by-products and for a refinery's waste by-products. The criteria for refinery waste by-products are set forth in § 597.4(e) and are incorporated in the alternate fuels definition by reference.

For purpose of this subsection, an industrial waste by-product will be designated as "commercially unmarketable" by reasons of "quality" where (1) the by-product is not a recognized item of commerce in a national market or in the regional or local area in which the facility is located, or (2) the cost of processing, storing and distributing the by-product would not be covered by reasonably expected revenues from its sale. Industrial waste by-products will be designated as "commercially unmarketable" by reason of "quantity" where (1) the quantities are so insufficient or sporadic as not to constitute an adequate and reliable supply to a potential buyer other than the producer, (2) the by-product is produced in quantities significantly less than those normally sold or traded in the appropriate market, or (3) the cost of aggregrating the product into commercial quantities and distributing the by-product would not be covered by reasonably expected revenues from its sale.

We received comments proposing that waste by-products from industrial and refinery operations should be considered "commercially unmarketable" and, thus, alternate fuels, if they would require special handling or treatment in the commercial market due to their potential toxicity or carcinogenicity. We decline to categorically classify such waste by-products as commercially unmarketable and will assess the marketability of such waste by-products on a case-by-case approach based on the criteria set forth above.

Comments further recommended that an inadvertent waste by-product of a primary industrial product operation be classified as an alternate fuel. We reject this proposal on the grounds that all waste by-products of such operations are, by definition, unavoidably produced, but this does not necessarily mean that they are commercially unmarketable. In order to be designated commercially unmarketable, the waste by-product would have to satisfy the quality or quantity criteria set out above.

It was additionally suggested that the heavy residual portion of residual fuel oil be treated as an alternate fuel. As stated in our discussion of the petroleum definition exclusions (§ 507.4), we will treat these residual fuel waste by-

products as petroleum unless the product meets the criteria for exclusion from petroleum set out in § 507.4(e), that is, it is commercially unmarketable. If a producer of such a product is selling the product, such sales indicate that the product is commercially marketable and, hence, a petroleum product subject to the use prohibitions of the Act.

A number of comments were received in response to ERA's proposed electric region groupings for reliability measurements required under the Act. ERA has modified the regulations in certain instances to respond to the comments.

Several commenters contend that Alaska should not be designated as one electric region since there are no significant interconnections between major power supply systems in Alaska. They state that distance and terrain make interconnections extremely difficult if not impossible. ERA concurs with this comment. For reliability measurements in Alaska, ERPA will not require consideration of electric power of utility systems which are not or cannot be economically interconnected. The loss of load probability criteria will be applied to systems which are interconnected with the utility seeking the exception.

A number of comments stated that electric region No. 25 (Northwest Power Pool), consisting of DOE power supply areas 30, 41, 42, 43, 44 and 45, is too large and contains too many physical "barriers" to be considered as one region for the purpose of evaluating loss of load probability. They note that a number of transmission lines within this region are located in mountain passes which are subject to a relatively high probability of interruption of use due to slides and avalanches. In addition, they state that power supply area 41 cannot provide any real assistance to the balance of the region due to transmission line limitations. Upon consideration of these comments, ERA has revised electric region 25 (Northwest Power Pool) to include only DOE Power Supply Areas 30, 42, 43, 44 and 45. Power Supply Area 41 is now included in a new electric region: N. 30, the Idaho-Utah Group.

Several comments ask why a utility should be required to consider ERA's planning regions for measuring reliability when they differ from what has been used in the past. They state that a utility should be permitted to use its own planning area when making its reliability determination.

ERA believes that the decision to make a 30 to 40 year commitment to an oil- or gas-fired plant should be based on the likely evolution of coordinated planning and operation during that period, not simply on the basis of a smaller planning area that has been adequate in the past. There is general agreement that coordination over an area larger than a single system produces reduced cost, improved reliability, and less use of scarce fuels. Therefore, ERA is placing the burden on the petitioning utility to show either that such potential benefits do not exist within his region, or that they cannot be achieved over the relevant time period.

III. Comments (Part 501—Administrative Procedures and Sanctions)

In the Preamble to the Proposed Rules published on November 17, 1978, ERA specifically solicited comments on the extent to which the proposed fees set forth in Part 501 will compensate the Government for costs incurred in performing the analyses necessary to make determinations to grant or deny a particular exemption petition. ERA also solicited comments on the best ways to mesh FUA regulatory programs with other Federal and state regulatory programs.

ERA received a number of written and oral comments on these issues as well as comments on many issues not specifically identified in the Preamble to the proposed procedural rules in Part 501. In order to facilitate an orderly discussion on these comments and ERA's specific responses to them, each will be discussed in the order that they appear in this interim rule.

A. *Subpart A—General Provisions*

A number of comments objected to provisions in Section 502.2(c) which allow ERA to bar a person from participating in ERA proceedings if that person is shown to have made false representations, disrupted proceedings, or lacks authority to represent a party before ERA. ERA has clarified this provision by requiring that the bar for false and misleading statements, affidavits or writings will be applied only when they are made "knowingly". A bar for failure to have specific authority to represent a party has been retained, as has the bar for disruptive activities. ERA believes these are justified first, on the basis that no one should be allowed to represent parties without specific authority and, second on the necessity for orderly proceedings. ERA also notes that criminal provisions for fraudulent statements and disruptive practices in administrative proceedings are available in extreme circumstances. These provisions have been removed from § 501.2 of the proposed rules and incorporated into § 501.34 of this interim rule which specifically sets forth hearing procedures and the role and powers of the presiding officer in ERA proceedings.

Several comments recommended that ERA revise Section 501.3 to distinguish filing requirements that require ERA's acceptance (e.g., exemption petitions), and filing for purposes of meeting time requirements. The provisions in this interim rule have been revised to specify that where time requirements are imposed by DOE, filing for purposes of these requirements will be on the date the document is received by ERA.

Several commenters objected to the requirement in § 501.7(e) that a petitioner be required to notify ERA of all proceedings, transactions and contacts on an issue related to an exemption petition proceeding that are also pending in other Federal, state or municipal proceedings. These comments particularly objected to the requirement in the proposed rules that all contacts with DOE, Federal or state employees that relate to these issues also be included in this notice. ERA was convinced that these notice requirements were too difficult, if not impossible to comply with and has revised this requirement to require only that it be notified of pending Federal, state or municipal proceedings that may relate to its own FUA proceedings.

ERA received a number of comments relating to the treatment of confidential information in § 501.7(f). ERA has revised this section to require persons requesting confidential treatment of specifically identified information to comply with DOE's Freedom of Information regulations which were published as 10 C.F.R. 1004, 44 Fed. Reg. 1908 (January 8, 1979), and has conformed this section to those regulations.

ERA has decided to reject several commenters' suggestions that an administrative appeal provision be incorporated into the regulations. ERA believes that FUA requires judicial review immediately upon issuance of a final agency action and that such review will promote a more timely response to each petitioner's needs.

B. Subpart B—Filing Fees

The majority of comments criticized DOE's fee schedule set forth in § 501.24 as being excessive and not representative of ERA's actual costs in reviewing exemption petitions. Other comments indicated that the high fees would discourage many persons from applying for exemptions for which they would be clearly entitled. In response,

ERA has revised its fee schedule. ERA believes that it is authorized to charge fees for certain actions, and has provided in this interim rule provisions for waiver of the fees where appropriate. Special provisions have also been made for smaller facilities. The schedule makes clear that only a single fee will be charged even though a petition may be considered under the criteria for several exemptions. ERA believe the fee schedule represents substantially less than the anticipated costs of reviewing an exemption petition and plans to review this fee schedule as it gains experience processing petitions.

ERA has rejected the suggestion that existing facilities should be charged no fee, or that no fees should be charged for those exemptions that are mandatory under FUA. However, it should be noted that an existing facility that undertakes a demonstration that they would be eligible for an exemption in a proceeding on a proposed order establishing a prohibition will not be charged a fee under the schedule in this interim rule.

C. Subpart C—Written Comments, Conferences and Public Hearings

Many comments stated that they believed that FUA requires hearing procedures that allow cross examination of government and other witnesses. These comments noted that while FUA references the informal rulemaking provision of the Administrative Procedures Act, 5 U.S.C. 553, Section 702(d)(2) of FUA states that "No rule or order (or denial thereof) may be affirmed unless supported by substantial evidence. ERA does not believe this interpretation reflects case law interpreting the applicability of formal hearing procedures to rulemaking pursuant to 5 U.S.C. 553. The Supreme Court has stated that in rulemaking under 5 U.S.C. 553, the formal procedures set forth in 5 U.S.C. 556 and 557 are required only when the agency's statute provides for a hearing, and explicitly prescribes that determination in that rulemaking be "on the record." *United States* v. *Allegheny-Ludlum Steel Corp.*, 406 U.S. 742, 92 S. Ct. 1941 (1972), *United States* v. *Florida East Coast R. Co.*, 410 U.S. 224, 93 S. Ct. 810 (1973) and *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 98 S. Ct. 1197 (1978). FUA requires a hearing only when requested by an interested party, and ERA is authorized to issue rules and orders ". . . on consideration of the whole record or those parts thereof cited by a party . . ." ERA does not believe this statutory language constitutes a directive, within the meaning the Supreme Court cases cited above, to conduct FUA proceedings under Section 701(d) pursuant to 5 U.S.C. 556 and 557.

ERA has, however, revised a number of specific provisions in the proposed rule designed to facilitate the informal procedures applicable to FUA proceedings. The interim rules make it clear that questions may be asked of government witnesses during the public hearing. ERA encourages, but does not require, that whenever possible questions should be submitted to government witnesses 10 days prior to the hearing in order to facilitate complete and fully responsive answers to those questions. Some commenters wanted to be able to object to questions and answers of participants in the public hearing during the course of testimony. For the reasons cited above, ERA does not believe an opportunity to make objections that would interrupt testimony is required by FUA, or that such attempts to impose judicial exclusionary rules into FUA proceedings are necessary to ensure a record which contains substantial evidence.

Similarly, ERA has rejected a suggestion that its determinations be based only on the evidence set forth in the duly filed written comments and presented at the public hearing. ERA believes that the informal procedures authorized by Section 701 of FUA allow it to consider the whole record, including information and analyses made subsequent to the close of the public comment period. The rules, however, have been revised to indicate that all information relied upon by ERA in making its determinations will be in the public record.

To promote ERA information gathering proceedings, ERA has retained its discretion to hold informal conferences with limited attendance. Unlike the proposed rule, this interim rule describes three kinds of conferences incident to ERA proceedings. Section 501.2 describes prepetition conferences with ERA technical staff which are open only to potential applicants for a petition. A prepetition conference is designed to define the scope of the exemption petition that a specific petitioner must file in order to be accepted by ERA. This will assist a petitioner in avoiding development of unnecessary data, information, or analysis in the preparation of his petition. Second, this interim rule also makes provision for conferences with ERA technical staff in the course of administrative proceedings on a petition, and thirdly, for conferences convened by the presiding officer in an ERA proceeding. These last two kinds of conferences are designed to facilitate resolution of particular issues pending in ERA proceedings. Finally, the interim rule has been revised to indicate clearly that ERA may not substitute an informal conference for a public hearing pursuant to 701(d) if a hearing is properly requested by any interested person.

D. Subpart D—Subpoenas; Witness Fees

One comment questioned the source of ERA's subpoena power under FUA. ERA believes that it has sufficient authority pursuant to Section 711 of FUA and Section 645 of the DOEA to support its subpoena powers. These authorities and provisions for the exercise of subpoena powers have been incorporated into this interim rule by reference to DOE's general rule on subpoenas found in 10 C.F.R. 205.8.

One comment suggested that those persons requesting subpoenas should be required to demonstrate why a particular person is needed to supply certain information. 10 C.F.R. 205.8 allows a subpoena or SRO, prior to the time specified for compliance, and ERA anticipates that this mechanism would be available if a recipient believes that the information could be made available by other means.

Several comments suggested that corporations should be permitted to designate agents to appear in lieu of the subpoenaed witness. 10 C.F.R. 205.8 provides procedures for subpoena recipients to move ERA to quash or modify the subpoena, including an oportunity to petition for a stay of the obligation for compliance pending a decision on the petition to quash or modify. Corporate subpoena recipients wishing to demonstrate that they should not be compelled to personally attend a proceeding may avail themselves of the foregoing procedures, but ERA believes that it must retain the discretion, in appropriate circumstances, to compel the attendance at ERA proceedings of specific named individuals.

E. Subpart E—Prohibition Orders

Although ERA proposed rules and procedures to govern prohibitions for existing facilities in its earlier notices, this interim rule reserves these sections for later publication. Those provisions deal with discretionary application of FUA prohibitions by rule or by order. FUA also contains similar discretionary provisions for new MFBI non-boilers which are covered by this Subpart E, and ERA has decided to include provisions for these new MFBI non-boilers in this interim rule.

F. Subpart F—Exemptions

A number of comments requested that ERA specify a time period within which it must act to accept or reject exemption petitions and make final determinations on those petitions. ERA does not consider it possible to establish specific time periods for its actions under this new regulatory program, therefore, the interim rule has not incorporated specific time periods other than those set forth in § 501.73. ERA believes that it is justified in retaining the flexibility provided by FUA to extend the time for its decision on an exemption petition if the facts and circumstances warrant it and has retained this provision in the interim rule.

Several commenters objected to the provision in the proposed rules that ERA could unilaterally redesignate an exemption petition to request another exemption than that applied for in the original petition. The conference's report to FUA directs ERA to be flexible in its consideration of an exemption petition. Therefore, ERA added this provision to the proposed rules to assist a qualified exemption petitioner in receiving the appropriate exemption. In response to these comments, the interim rule has been revised to require that ERA consult with and receive approval of the petitioner prior to consideration of a petition under criteria for exemptions that have not been specifically applied for.

ERA will both notify and consult with state agencies responsible for powerplant regulation. The provisions for interested persons to request a public hearing on a particular petition has been revised to allow 3 weeks (21 days) after publication of notice of a petition in which to file a request, and the period for public comment has been extended to at least 45 days. Section 501.68(c) has been revised to allow "reasonable time to cure defects in a petition", and to allow a petitioner whose petition was rejected for failure to provide adequate information to refile at a later time.

ERA has not accepted the suggestions of several commenters that it limit its ability to adopt flexible procedures in the course of an administrative proceeding. ERA believes that this flexibility will promote preparation of a more complete record upon which to base its determinations, and intends to exercise this flexibility to allow petitioners and other interested persons to present a full and open explanation for their position in any particular proceeding.

G. Subpart G—Requests for Modification of Rescission of Orders and Rules Issued under FUA

This subpart has been redrafted to provide for both general rulemaking and more specifically for rescission or modification of prohibitions imposed by rule or by order. Anyone may request that ERA initiate a general rulemaking proceeding pursuant to 5 U.S.C. 553(e). However, only owners or operators of affected existing facilities may request rescission or modification of a prohibition rule or prohibition order for an existing powerplant or MFBI. Any person may seek to have a prohibition by rule for new facilities modified or rescinded.

ERA has responded to comments that the 150-day period for ERA action on a petition to modify or rescind a prohibition rule or order is too long by limiting this period to 90 days. Also in accord with several comments, ERA has made it clear that determinations on requests will be made on the information that has been made part of the public record.

H. Subpart H—Requests for Stay

Several comments requested that ERA revise its criteria for grant of a stay to omit the requirement that a petitioner show a substantial likelihood of success on the merits. ERA has revised this provision in this interim rule to require a showing that the question raised is serious.

I. Subparts I and J—Requests for Interpretations and Rulings

Several comments criticized ERA's position in § 501.135(f)(1) that if there is no response to a petition for reconsideration of an interpretation within 60 days it is automatically deemed to be denied. These comments expressed concern that a petition might be lost or misplaced. ERA has revised this provision to require that the Office of General Counsel acknowledge receipt of all petitions, but where 60 days elapse without a substantive response from the Office of General Counsel or any indication that it would be forthcoming, the request for reconsideration should be considered to be denied.

Other commenters complained that the procedures to obtain rulings were too complicated. These provisions are in accord with general procedural regulations governing requests for interpretation that apply to other DOE regulatory programs and ERA has decided to retain these provisions. ERA has also eliminated the cumbersome notice requirements for interpretations in accordance with DOE's general regulations and several comments that argued that this would facilitate filing of interpretation requests.

Finally, a commenter suggested that a person who relies on a ruling should be allowed to continue to do so even if the ruling is modified or rescinded. ERA does not believe this is consistent with good regulatory policy and does not accept this suggestion.

J. Subparts K and L—Enforcement, Investigations, Violations, Sanctions, and Judicial Actions

Several comments noted that the proposed rules expand criminal culpability beyond that provided by Section 721(b) by addition of the phrase "reasonably should have known of noncompliance." ERA has deleted this phrase from the interim rule.

Other comments expressed the belief that remedial orders or notices of violation for anticipated or potential violations are not authorized by FUA. ERA has retained these provisions noting that Section 723(d) authorizes the Secretary to issue orders. Section 721 authorizes issuance of notices of violation (NOV) and ERA believes that if a violation is imminent, issuance of a NOV which does not propose imposition of civil or criminal penalties would be consistent with its enforcement powers. ERA has decided to accept a suggestion that alleged violators be given advance notice of the contents of a NOV by providing them a draft of the NOV that ERA proposes to issue prior to its issuance in final form. However, ERA does not agree with the suggestion of several commenters that there should be no distinction between a proceeding which proposes a civil penalty and, therefore, requires an adjudicatory hearing (unless waived), and a proceeding where no civil penalty is proposed and for which an informal conference may be requested. These comments advocated a right to an adjudicatory hearing in both instances. ERA notes that the provisions of section 723(d) of FUA expressly applies to adjudicatory hearings only when penalty assessments are proposed, thus distinguishing these proceedings from other enforcement proceedings where no money penalties are at issue. Because FUA explicitly directs that an adjudicatory hearing be held in certain instances, ERA believes that it is justified in using more informal enforcement procedures in those instances where FUA is silent as to the hearing requirement.

Finally, ERA has revised the rules to the effect that owners of powerplants

and installations are not subject to the civil penalty provisions, and the special definition of agents of owners and operators has been revised to specify that an agent must have authority to engage in the activity involved in a particular violation.

ERA would like to note that during the initial stages of implementation of FUA regulatory programs, questions regarding ERA enforcement actions may be considered by the Office of Enforcement of ERA in consultation with the Office of Fuels Regulation of ERA. While the Office of Enforcement has primary responsibility for administering ERA's enforcement programs, many enforcement related questions will also be under consideration by the Office of Fuels Regulation as it develops its initial programs for FUA implementation.

K. Subpart M—Use of Natural Gas or Petroleum for Emergency and Unanticipated Equipment Outage Purposes

As a result of comments received pertaining to emergency use of petroleum or natural gas, especially comments regarding Section 405 of FUA, ERA has incorporated a new Subpart M into this Interim Rule which did not appear in the Notice of Proposed Rulemaking published on November 17, 1978.

If you are subject to prohibitions of the Act, this subpart establishes the procedures you must follow when you have used minimum amounts of natural gas or petroleum in your powerplant or installation for unanticipated equipment outages or emergencies under Section 103(a)(15)(B) of the Act, or where you have used natural gas or petroleum as a primary energy source in your peakload powerplant or installation during a temporary emergency condition under Section 404(g) of the Act.

In view of the immediate need to provide you with regulatory procedures for the use of natural gas or petroleum in the event that you suffer a qualifying outage or emergency after May 8, 1979, the effective date of the foregoing statutory provisions, ERA is making this new subpart effective May 8, 1979. Since this subpart is being published for the first time, however, ERA actively solicits your comments on the definitions and procedures provided at the earliest possible date and will if necessary revise this rule promptly on an interim basis.

The provisions in Sections 103(a)(15)(B) and 404(g) of the Act are distinct governing authorities. To reflect these differences, Subpart M provides separate procedures for fuel use under each of the foregoing sections. There may be some circumstances, however, in the case of installations and peakload powerplants, where your right to use natural gas or petroleum in an emergency may be, in the alternative, under either Section 103(a)(15)(B) or Section 404(g). In those instances, you may use the procedures provided for under Section 103(a)(15)(B) rather than those provided under Section 404(g). The former procedures require only notice to ERA of emergency use and brief follow-up progress reports, while procedures under Section 404(g) recognize ERA's authority to limit the duration of your permitted usage and require, in addition to progress reports, the filing of a detailed statement of the circumstances of your emergency condition or outage.

It is important to note that you may be able to use the provisions of this subpart where you must operate a rental boiler for emergency purposes for which you have not obtained an emergency exemption under these regulations.

IV. Procedural matters.

A regulatory analysis of this interim rule set forth below as contemplated by Executive Order No. 12044, is contained within the draft regulatory analysis of the regulation regarding new facilities proposed on November 9, 1978, (43 F.R. 53974, November 17, 1978). A Final Environmental Impact Statement (FEI) has been prepared pursuant to the National Environmental Policy Act (NEPA). Both the draft regulatory analysis and the FEIS may be obtained from ERA, 2000 M Street, N.W., Room B110, Washington, D.C. 20461. (202) 634–2170.

This interim rule and FUA become effective on May 8, 1979. ERA believes that good cause exists to make this interim rule immediately effective in order that an exemption petitioner may begin filing his petition.

These revised rules have been submitted to the Office of Management and Budget (OMB) for clearance under the provisions of the Federal Reports Act. Any compliance with the data collection provisions of these interim rules may require revision or additions as a result of OMB's action.

(Department of Energy Organization Act, Public Law 95–96; Powerplant and Industrial Fuel Use Act of 1978, Public Law 95–620, E.O. 12009, 42 F.R. 4267).

In consideration of the foregoing, § 500.2 and Part 501, Subchapter E, "Alternate Fuels" of Chapter II, Title 10 of the Code of Federal Regulations as proposed on November 17, 1978 are hereby revised and adopted effective May 8, 1979.

Issued in Washington, D.C., May 8, 1979.

David J. Bardin,

Administrator, Economic Regulatory Administration.

In 10 CFR, Chapter II, Subchapter E, Part 500 and Part 501 are hereby adopted as an interim rule.

SUBCHAPTER E—ALTERNATE FUELS

PART 500—POLICY AND DEFINITIONS

Sec.

500.1 [Reserved]

500.2 Definitions.

Authority: Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 565 (42 U.S.C. 7101 et seq.); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95–620, 92 Stat. 3289, (42 U.S.C. 8301 et seq.); E.O. 12009, 42 F.R. 4267.

§ 500.1 [Reserved]

§ 500.2 Definitions.

This section defines certain terms utilized throughout these regulations unless otherwise expressly provided for or the context clearly demands otherwise. The use of the male gender is to include female; the use of singular to include plural.

(a) *General definitions.* For purposes of this Part and Parts 501, 502, 503, 504, 505, 506, 507, 508, and 515, the terms listed:

"The Act" and "FUA" mean the Powerplant and Industrial Fuel Use Act of 1978.

"Action" means a prohibition, by rule or order, in accordance with Sections 202, 301(b) and (c), 302(a) and (b), 401, 402, and 405 of the Act; an order granting or denying an exemption in accordance with Sections 211, 212, 311, and 312 of the Act; a modification or recision of any such order, or rule; an interpretation; a notice of violation; a remedial order; a ruling issued; or a rulemaking undertaken by ERA.

"Affiliate", when used in relation to person, means another person who controls, is controlled by, or is under common control with, such person.

"Aggrieved", for purposes of administrative proceedings, describes and means a person (with an interest sought to be protected under the Act) who is adversely affected by an action proposed or undertaken by DOE.

"Air pollution control agency" means any of the following:

(1) A single State agency designated by the Governor of that State as the official State air pollution control agency;

(2) An agency established by two or more States and having substantial

powers or duties pertaining to the prevention and control of air pollution;

(3) A city, county, or other local government health authority or, in the case of any city, county, or other local government in which there is an agency other than the health authority charged with responsibility for enforcing ordinances or laws relating to the prevention and control of air pollution, such other agency; or

(4) An agency of two or more municipalities located in the same State or in different States and having substantial powers or duties petaining to the prevention and control of air pollution.

"Alternate fuel" means electricity or any fuel, other than natural gas or petroleum. The term includes—

(1) Coal;

(2) Solar energy;

(3) Petroleum coke; shale oil; uranium; biomass; municipal, industrial, or agricultural wastes; wood; and renewable and geothermal energy sources. *(For purposes of this subparagraph (3),* the term "industrial" does not pertain to refineries.)

(4) Liquid, solid, or gaseous waste by-products of refinery or industrial operations which are commercially unmarketable, either by reason of quality or quantity. *(For purposes of this subparagraph (4),* the term waste by-product is defined as an unavoidable by-product(s) of the primary industrial processes or refinery processes.)

(i) Waste by-products of refinery operations are commercially unmarketable if they meet the criteria in § 507.4(e) (Exclusions from the definition of petroleum).

(ii) A waste by-product of industrial operations is commercially unmarketable by reason of—

(A) Quality, where,

(*1*) the by-product is not a recognized item of commerce in a national market or in the regional or local area in which the faciliy is located; or

(*2*) the cost of processing (limited to upgrading the product to commercial quality), storing, and distributing the by-product could not be covered by reasonably expected revenues from its sale; or,

(B) Quantity, where,

(*1*) the quantities of the by-product are so insufficient or sporadic as not to constitute an adequate and reliable supply to a potential buyer other than the producer; or

(*2*) the by-product is produced in quantities significantly less than those quantities normally sold or traded in the appropriate market; or

(*3*) the cost of aggregating the product into commercial quantities through storage and distributing the by-product would not be covered by reasonably expected revenues from its sale.

(5) Any fuel derived from an alternate fuel; and,

(6) Waste gases from industrial operations. *(For purposes of this subsection (6),* the term "industrial" does not pertain to refineries.)

"Applicable environmental requirements" includes—

(1) Any standard, limitation, or other requirement established by or pursuant to Federal or State law (including any final order of any Federal or State court) applicable to emissions of environmental pollutants (including air and water pollutants) or disposal of solid waste residues resulting from the use of coal or other alternate fuels or natural gas or petroleum as a primary energy source or from the operation of pollution control equipment in connection with such use, taking into account any variance of law granted or issued in accordance with Federal law or in accordance with State law to the extent consistent with Federal law; and

(2) Any other standard, limitation, or other requirement established by, or pursuant to, the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, or the National Conservation and Recovery Act, or the National Environmental Policy Act of 1969.

"Base load powerplant" means a powerplant the electric generation of which in kilowatt hours exceeds, for any 12-calendar-month period, such powerplant's design capacity multiplied by 3,500 hours.

"Btu" means British thermal unit.

"Capability to use alternate fuel" for the purpose of the Title II prohibition on construction of new powerplants means that the powerplant to be constructed must be able to use, in compliance with applicable environmental requirements, this alternate fuel as the primary energy source at the time it becomes operational or at the expiration of a temporary exemption. This alternate fuel must be available to the operator at the powerplant site at the time it becomes operational or at the expiration of a temporary exemption. Examples:

(1) High-Btu gas from coal is an alternate fuel within the Fuel Use Act. If you propose to construct a new powerplant which is to use natural gas, you cannot assert, for purposes of the prohibitions on construction of new powerplants without alternate fuel capability, that the powerplant is capable of using high-Btu gas as a primary energy source unless high-Btu gas from coal will be avilable in sufficient quantities to the powerplant at the time of initial operation or upon expiration of a temporary exemption.

(2) You intend to construct a new powerplant that will have a boiler capable of using coal or oil but intend to have the powerplant use oil at the time of operation. Absent an exemption, you would violate the prohibition on construction of new powerplants without alternate fuel capability if you construct without installing coal handling, pollution control, ash removal, etc., systems or if the burning of coal would be in violation of a State SIP—unless you had the appropriate exemptions.

"Clean Air Act" means the Clean Air Act, 42 U.S.C. 7401 *et seq.* (1970), as amended by Public Law 93-319, 88 Stat. 246, and Public Law 95-91, 91 Stat. 685.

"Coal" means anthracite, bituminous and sub-bituminous coal, lignite, and any fuel derivative thereof.

"Cogeneration facility" means an electric powerplant or a major fuel burning installation which produces:

(1) electric power; and

(2) any other form of useful energy (such as steam, gas or heat) which is, or will be, used for industrial, commercial, or space heating purposes.

"Combined cycle unit" means an electric power generating unit that consists of a combination of one or more combustion turbine units and one or more steam turbine units with a substantial portion of the required energy input of the steam turbine(s) provided by the exhaust gas from the combustion turbine unit(s). Use of small amounts of supplemental firing for the steam turbine does not preclude the unit from being a combined cycle unit.

"Conference" means an informal meeting, incident to any proceeding, between DOE and any interested person.

"Construction" means substantial physical activity at the unit site and includes more than clearance of a site or installation of foundation pilings. The addition of a heat recovery or supplemental-fired boiler to an existing combustion turbine constitutes construction of a new combined cycle unit.

"Costs" means total costs, both operating and capital, incurred over the estimated remaining useful life of an electric powerplant or major fuel burning installation, discounted to the present pursuant to rules established in Parts 503, 504, 505 and 506 of these regulations.

"Design capacity or capability" is as defined in subsection (e) of this section.

"DOE" or "the Department" means the United States Department of Energy, as defined in Sections 201 and 301(a) of the DEOA, including the Secretary of Energy or his designee.

"DEOA" means the Department of Energy Organization Act (Public Law 95–91) (42 U.S.C. 7101 *et seq.*), as implemented by Executive Order 12009 (42 F.R. 46267).

"Duly authorized representative" means a person who has been designated to appear before DOE in connection with a proceeding on behalf of a person interested in or aggrieved by that proceeding. The appearance may consist of the submission of applications, petitions, requests, statements, memoranda of law, other documents, or of a personal appearance, oral communication, or any other participation in the proceeding.

The terms "electric powerplant" and "powerplant" mean any stationary electric generating unit, consisting of a boiler, a gas turbine, or a combined cycle unit, which produces electric power for purposes of sale or exchange and—

(1) Has the design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 100 million Btu's per hour or greater; or

(2) Is in a combination of two or more electric generating units which are located at the same site and which in the aggregate have a design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 250 million Btu's per hour or greater;

(3) To determine if your electric generating unit is to be aggregated toward the 250 million Btu per hour threshold and is a powerplant for purposes of subparagraph (2), see § 500.2(c) of this section;

(4) To determine if your electric generating units for purpose of subparagraph (2) of this definition are located at the same site, ERA will consider physical proximity, common ownership or control, and whether non-contiguous parcels are connected by any easements, pipes, or steam lines under common ownership. All powerplants at the same site will be considered in combination.

(5) ERA will not aggregate toward the 250 million Btu's per hour threshold a rental boiler with a heat input rate less than 100 million Btu's per hour if you are using the rental boiler because of:

(i) An unanticipated equipment outage or emergency as described in § 501.191 of these regulations;

(ii) A temporary emergency condition as described in § 501.192 of these regulations; or

(iii) A temporary public interest exemption as described in § 505.15 of these regulations.

"Electric generating unit" does not include—

(1) Any electric generating unit subject to the licensing jurisdiction of the Nuclear Regulatory Commission; and

(2) Any cogeneration facility, less than half of the annual electric power generation of which is sold or exchanged for resale.

"Electric Region" is as defined in paragraph (b) of this section.

"Electric utility" means any person, including any affilitate, or federal agency, who sells electric power.

"EPA" means the Environmental Protection Agency.

"ERA" means the Economic Regulatory Administration of DOE.

"Existing Powerplant or MFBI" means any powerplant or MFBI other than a new powerplant of MFBI.

"Federal Water Pollution Control Act" means 33 U.S.C. 1251, *et seq.*, as amended.

"FERC" means the Federal Energy Regulatory Commission.

"Firm" means a parent company and the consolidated or unconsolidated entities (if any) which it directly or indirectly controls.

"Fluidized bed combustion" means combustion of fuel in connection with a bed of inert material, such as limestone or dolomite, which is held in a fluid-like state by the means of air or other gases being passed through such materials.

"FTC" means the Federal Trade Commission.

"Fuels Decision Report" means the report required under Part 502 of these regulations.

"High-priority user," for purposes of Section 312(j) of the Act means any residential user of natural gas, or any commercial user whose consumption of natural gas on a peak day is less than 50 Mcf.

"Installation" means "major fuel burning installation."

"Intermediate load powerplant" means a powerplant (other than a peakload powerplant), the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 3,500 hours.

"Internal combustion engine" means a heat engine in which the combustion that generates the heat takes place inside the engine proper.

"Interpretation" means a written statement issued by the DOE General Counsel, or his delegate in response to a written request, that applies the regulations, rulings and other precedents previously issued by the DOE to the particular facts of a prospective or completed act or transaction.

The terms "major fuel-burning installation" and "installation" mean a stationary unit consisting of a boiler, gas turbine unit, combined cycle unit, or internal combustion engine which—

(1) Has the design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 100 million Btu's per hour or greater; or

(2) Is in a combination of two or more such units which are located at the same site and which in the aggregate have a design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 250 million Btu's per hour or greater.

(3) To determine if your unit is to be aggregated towards the 250 million Btu's per hour threshold and is a major fuel burning installation for purposes of clause (2) of this definition, see § 500.2(d) of this section.

(4) For purposes of clause (2) of this definition, the term "in a combination" means functionally integrated. In determining if units are functionally integrated ERA will consider the following factors:

(i) Whether the units are contributing to the same end product, blend stock, or intermediate product;

(ii) Whether the units are part of the same plant or facility producing different products;

(iii) Whether the units have a physical connection of common energy or power systems, other than provided by a public utility; and

(iv) Any other factors which would indicate that the units are functionally integrated.

(5) To determine if your units, for purposes of clause (2) of this definition, are located at the same site, ERA will consider physical proximity, common ownership, and whether non-contiguous parcels are connected by any easements, pipes, or steam lines under common ownership.

(6) ERA will not aggregate toward the 250 million Btu's per threshold a rental boiler with a heat input rate less than 100 million Btu's per hour if you are using the rental boiler because of:

(i) An unanticipated equipment outage or emergency as described in § 501.191 of these regulations;

(ii) A temporary emergency condition as described in § 501.192 of these regulations; or

(iii) A temporary public interest exemption as described in § 503.25 of these regulations.

"Major fuel burning installation," "installation," and MFBI do not include—

(1) Any electric powerplant; or

(2) Any pump or compressor used solely in connection with the production, gathering, transmission, storage, or distribution of gases or liquids, but only upon your filing of a written certification of such use with ERA in accordance with procedures specified in §§ 501.7 and 501.11 of the regulations.

(3) Steam generators for crude oil recovery.

"Mcf" means 1,000 cubic feet of natural gas.

"MFBI" means "major fuel burning installation."

"Mixture" when used in relation to fuels used in a unit, means a mixture of petroleum or natural gas and an alternate fuel, or a combination of such fuels used simultaneously or alternatively in such unit.

"Natural gas" is as defined in Part 507 of this subchapter.

"NEPA" means the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321, *et seq.*

"New electric powerplant" means any electric powerplant which was not classified as existing under Part 515 of this Title, or which was reconstructed as defined in this section, or which began construction after November 9, 1978.

"New major fuel burning installation" means any major fuel burning installation not classified as existing under Part 515 of this Title, or which was reconstructed as defined in this section, or which began construction after November 9, 1978.

"Non-boiler" means any stationary unit which is not a boiler and which consists of either a combustion turbine unit, combined cycle unit, or including the case of an MFBI, an internal combustion engine.

"Notice of violation" means a written statement issued to a person by ERA that states one or more alleged violations of the provisions of Parts 500, 501, 502, 503, 504, 505, 506, 507, and 515 of this Chapter or any order.

"Offset" or "emission offset" means emission reductions as defined by EPA's regulations set forth at 40 C.F.R. 51, Appendix 5.

"Order" means a final disposition other than the issuance of a rule issued by ERA pursuant to Parts 500, 501, 502, 503, 504, 505, 506, and 515 of this Chapter.

"Person" means any—

(1) Individual corporation, company, partnership, association, firm, institution, society, trust, joint venture, or joint stock company;

(2) Any State;

(3) Any Federal, State, or local agency or instrumentality (including any municipality) thereof; or

(4) A parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls.

"Petroleum" is as defined in Part 507 of this subchapter.

"Petition" means the formal request for an exemption submitted to ERA under Parts 503, 504, 505, and 506 of these regulations.

"Powerplant" means "electric powerplant."

"Product or process requirements" means that product or process for which the use of an alternate fuel is not technically feasible due to the necessity to maintain satisfactory control of product quality and for which the substitution of steam is not technically feasible due to process requirements.

"Primary energy source" means the fuel or fuels used by any existing or new electric powerplant or major fuel burning installation, except—

(1) Minimum amounts of fuel not to exceed 5 percent of the unit's current year Btu output required for unit ignition startup, testing, flame stabilization and control uses;

(2) Minimum amounts of fuel required to alleviate or prevent—

(i) Unanticipated equipment outages defined as an outage due to equipment failure; and

(ii) Emergencies directly affecting the public health, safety, or welfare which would result from electric power outages. (See Part 501, Subpart M.)

"Proceeding" means a process or activity, and any part thereof, instituted by DOE, either on its own initiative or in response to an application, complaint, petition or request submitted by the owner or operator of a powerplant, major fuel burning installation, or any other person that may lead to an action by DOE.

"Prohibition order" means—

(1) An order issued pursuant to Sections 202(b), 301 (b) and (c), 302 (a) and (b), and 401 of the Act that prohibits a powerplant or major fuel burning installation or a boiler used for space heating purposes from burning natural gas or petroleum products as its primary energy source; or

(2) An order issued pursuant to Section 301(c) and 302(b) of the Act that prohibits excessive use of natural gas or petroleum in mixtures burned by a powerplant or major fuel burning installation as its primary energy source.

"Reconstruction" occurs when—

(1) For electric power plants your capital expenditure as defined by FERC on a cumulative basis for the current calendar year and preceding 2 calendar years equals or exceeds 50 percent of the expenditure for an equivalent replacement unit. Reconstruction shall not include expenditures for routine operation and maintenance. Reconstruction shall include expenditures for items capitalized (i.e., not expensed) according to the FERC Uniform System of Accounts.

(2) For MFBI's your capital expenditure on a cumulative basis for the current calendar year and preceding 2 calendar years equals or exceeds 50 percent of the expenditure for an equivalent replacement unit. Reconstruction shall not include expenditures for routine operation and maintenance. Reconstruction shall include expenditures for items capitalized (i.e., not expensed) according to IRS standards.

"Remedial order" means a directive issued by ERA pursuant to § 501.167.

"SIP" means State Implementation Plan pursuant to Section 110 of the Clean Air Act.

"Site limitation," when used with respect to any powerplant or installation, means a specific physical limitation associated with a particular site which relates to the use of an alternate fuel as a primary energy source for the powerplant or installation, such as—

(1) Inaccessibility to alternate fuels;

(2) Lack of transportation facilities for alternate fuels;

(3) Lack of adequate land or facilities for the handling, use and storage of alternate fuels;

(4) Lack of adequate land or facilities for the control or disposal of wastes from such powerplant or installation, including lack of land for pollution control equipment or devices necessary to assure compliance with applicable environmental requirements; and

(5) Lack of an adequate and reliable supply of water, including water for use in compliance with applicable environmental requirements.

"Solid Waste Disposal Act" means 42 U.S.C. 6901, *et seq.*, as amended.

"State regulatory authority" means any state agency which acts as ratemaking or power supply authority with respect to the sale of electricity by any state regulated electric utility.

"Synthetic fuel" means any fuel derived from an alternate fuel and does not include any fuels derived from petroleum or natural gas.

"Turbine" or "combustion turbine" means an electric power generating unit

that is a combination of a rotary engine driven by a gas under pressure that is created by the combustion of any fuel, with an electric power generator driven by the engine.

"Wetlands areas" means, for purposes of Section 103(a)(12) of the Act, those geographical areas designated as wetlands areas by State or local environmental regulatory authorities, or in the absence of any such geographic designation, those areas that are inundated by surface or ground water with frequency sufficient to support, and under normal circumstances does or would support, a prevalence of vegetation or aquatic life that requires saturated, seasonably saturated or tidally saturated soil conditions for growth or reproduction.

(b) *Electric Region-Electric Region Groupings for Reliability Measurements With Regard to the Powerplant and Industrial Fuel Use Act of 1978*

(1) The following is a list of electric regions for use with regard to the Powerplant and Industrial Fuel Use Act of 1978. The regions are identified by FERC (DOE) Power Supply areas as authorized by Section 202(a) of the Federal Power Act except where noted. They will be reviewed annually by the Economic Regulatory Administration. Each grouping meets one or more of the following criteria:

(i) Existing centrally dispatched pools and hourly power brokers;

(ii) Systems with joint planning and construction agreements;

(iii) Systems with coordination agreements in the areas of—

(A) generation reserve and system reliability criteria

(B) capacity and energy exchange policies

(C) maintenance scheduling

(D) emergency procedures for dealing with capacity or fuel shortages;

(iv) Systems within the same National Electric Reliability Council (NERC) region with historical coordination policies.

The Power Supply Areas (PSA's), referred to in the definition of electric regions, were first defined by the Federal Power Commission in 1936. The most recent reference to them is given in the 1970 National Power Survey, Vol. I, Pg. I–3–16. In cases where a petitioner finds an ambiguity in a regional assignment he shall consult with ERA for an official determination.

Electric Region Groupings and DOE (FERC) Power Supply Areas

1. Allegheny Power System (APS)—7, except Duquesne Light Company
2. American Electric Power System (AEP)—Entire AEP System
3. New England Planning Pool (NEPOOL)—1, 2
4. New York Planning Pool (NYPP)—3, 4
5. Pennsylvania-New Jersey-Maryland Interconnection (PJM)—5, 6
6. Commonwealth Edison Company—14
7. Florida Coordination Group (FCG)—24
8. Middle South Utilities—25
9. Southern Company—22, 23
10. Gulf States Group—35
11. Tennessee Valley Authority (TVA)—20
12. Virginia-Carolina Group (VACAR)—18, 21
13. Central Area Power Coordination Group (CAPCO)—Cleveland Electric Illuminating Company, Toledo Edision Company, Ohio Edison Company, Duquesne Light Company
14. Cincinnati, Columbus, Dayton Group (CCD)—Cincinnati Gas and Electric Company, Columbus and Southern Ohio Electric Company, Dayton Power and Light Company
15. Kentucky Group—19
16. Indiana Group—Indiana Utilities except AEP
17. Illinois-Missouri Group (ILLMO)—15, 40
18. Michigan Electric Coordinated Systems (MECS)—11
19. Wisconsin-Upper Michigan Group (WUMS)—13
20. Mid-Continent Area Power Pool (MAAP)—16, 17, 26, 27, 28
21. Missouri-Kansas Group (MOKAN)—29, 24
22. Oklahoma Group—33, 36
23. Texas Interconnected Systems (TIS)—37, 38
24. Rocky Mountain Power Pool (RMPP)—31, 32
25. Northwest Power Pool (NWPP)—30, 42, 43, 44, 45
26. Arizona-New Mexico Group—39, 48 within Arizona
27. Southern California-Nevada—47, 48 in Nevada and California
28. Northern California-Nevada—46
29. Alaska (non-interconnected systems to be considered separately)—49
30. Idaho-Utah Group—41

(c) *Criteria for determining if your electric generating unit is to be aggregated and is a powerplant.* This paragraph sets out the criteria for determining if your electric generating unit in combination with one or more electric generating units located at the same site is included for purposes of aggregation towards the 250 million Btu's per hour threshold, and is an electric generating unit constituting a powerplant.

(1) *New unit added to existing unit.* (i) If you have one or more electric generating units on a single site and propose to add a new unit or units, ERA will aggregate towards the 250 million Btu's per hour threshold any existing unit with a heat input rate equal to or greater than 100 million Btu's per hour and any new unit with a heat input rate of 50 million Btu's per hour or greater.

(ii) If you have a combination of existing and new electric generating units at a single site which, when aggregated in accordance with the immediately preceding subparagraph, equals or exceeds the 250 million Btu's per hour threshold, ERA will consider as a powerplant each existing electric generating unit with a heat input rate equal to or greater than 100 million Btu's per hour and each new electric generating unit with a heat input equal to or greater than 50 million Btu's per hour, within the combination.

(2) *New units.* (i) If you propose to build one or more new electric generating units in combination at a single site, ERA will aggregate toward the 250 million Btu's per hour threshold any new electric generating unit having a heat input rate equal to or greater than 50 million Btu's per hour.

(ii) If you have a combination of new electric generating units at a single site which, when aggregated in accordance with the immediately preceding subparagraph, equals or exceeds the 250 million Btu's per hour threshold, ERA will consider as a powerplant each new electric generating unit within the combination which has a heat input rate equal to or greater than 50 million Btu's per hour.

(3) *Existing units.* (Reserved for existing units aggregation)

(d) *Criteria for determining if your industrial unit is to be aggregated and is an MFBI.* This paragraph sets out the criteria for determining if your industrial unit in combination with one or more units located at the same site is counted for purposes of aggregation towards the 250 million Btu's per hour threshold and is a unit constituting an MFBI.

(1) *New unit added to existing unit.* (i) If you have one or more units on a single site and propose to add a new unit or units, ERA will aggregate towards the 250 million Btu's per hour threshold any existing unit with a heat input rate equal to or greater than 100 million Btu's per hour and any new unit with a heat input rate of 50 million Btu's per hour or greater.

(ii) If you have a combination of existing and new units at a single site which, when aggregated in accordance with the immediately preceding subparagraph, equals or exceeds the 250 million Btu's per hour threshold, ERA will consider as an MFBI each existing unit with a heat input rate equal to or exceeding 100 million Btu's per hour and each new unit equal to or exceeding 50 million Btu's per hour, within the combination.

(2) *New units.* (i) If you propose to build one or more new units at a single site, ERA will aggregate towards the 250 million Btu's per hour threshold, any new unit having a heat input rate equal to or greater than 50 million Btu's per hour.

(ii) If you have a combination of new units at a single site which, when aggregated in accordance with the immediately preceding subparagraph, equals or exceeds the 250 million Btu's per hour threshold, ERA will consider as an MFBI each unit new within the combination which has a heat input rate equal to or greater than 50 million Btu's per hour.

(3) *Existing units.* (Reserved for existing units aggregation)

(e) *Determination of Powerplant Design Capacity.* (1) Pursuant to Section 103 of the Act, the Federal Regulatory Commission (FERC) has issued an interim rule by which a powerplant may determine its design capacity for purposes of these regulations.

(2) FERC's rules generally applicable to powerplant and industrial fuel use are located in Part 287 of the Commission's regulations (18 CFR 287).

(3) In determining design capacity reference should be made to FERC's rules. For convenience we have republished in this subsection the interim rule published by FERC on February 20, 1979 (44 FR 10366; April 4, 1979, 44 FR 20078) governing determination of design capacity.

SUBCHAPTER J—REGULATIONS UNDER THE POWERPLANT AND INDUSTRIAL FUEL USE ACT OF 1978

PART 287—RULES GENERALLY APPLICABLE TO POWERPLANT AND INDUSTRIAL FUEL USE

§ 287.101 *Determination of powerplant design capacity.* For purposes of this subchapter, a powerplant's design capacity shall be determined as follows:

(a) *Steam-electric generating unit.* The design capacity of a steam-electric generating unit shall be the maximum generator nameplate rating, measured in kilowatts, which has been reported to the Energy Information Administration on EIA Form ——— (formerly FPC Form 12).

(b) *Combustion turbine.* The design capacity of a combustion turbine shall be its peak load rating, measured in kilowatts, as defined by both the American National Standards Institute and by the International Standards Organization. This peak load rating is based on units operating for peaking service with a maximum of 2,000 hours per year operation, with an ambient temperature of 59 degrees Fahrenheit (15 degrees Celsius) and a pressure of 14.696 psia (sea level). If capacity ratings as reported to Energy Information Administration on EIA Form ——— (formerly FPC Form 12) are based on different conditions, such reported ratings will be adjusted to ISO standard conditions.

(c) *Combined cycle unit.* The design capacity, measured in kilowatts, of a combined cycle unit shall be the sum of its combustion turbine base load rating, based on American National Standards Institute and International Standards Organization standard conditions, and the maximum generator nameplate rating of the steam turbine portion of the unit. These capacity ratings should be those reported to the Energy Information Administration on EIA Form ——— (formerly FPC Form 12).

(d) *Internal combustion engine.* The design capacity of an internal combustion engine shall be the capacity rating, measured in kilowatts, which has been reported to the Energy Information Administration of EIA Form ——— (formerly FPC Form 12).

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Authority: Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 565 (42 U.S.C. 7101 et seq.); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95–620, 92 Stat. 3289, (42 U.S.C. 8301 et seq.); E.O. 12009, 42 F.R. 4267.

Subpart A—General Provisions

§ 501.1 Purpose and scope.

Part 501 establishes the procedures to be used and identifies the sanctions that are available in proceedings before the Department of Energy under Parts 501–508 of this Chapter. For purposes of this part, the term "representative" means a duly authorized representative, and references to "you" or "your" refer to a petitioner, a duly authorized representative or other third persons unless the context clearly indicates otherwise.

§ 501.2 Prepetition conference.

(a) ERA encourages owners and operators of powerplants and installations who are, or may be subject to the prohibitions set forth in FUA, and who plan to file a petition for an exemption, or exemptions from any applicable prohibitions, to request a prepetition conference with ERA. The purpose of the prepetition conference is to define the scope of the petition which ERA will accept for filing. Typically, we expect the conference to consider the alternate fuels and sites, combustion technologies, energy conservation measures, scheduling of construction and other matters that should be addressed in a particular exemption petition.

(b) An owner or operator of a powerplant or installation who requests a prepetition conference may appear at that conference personally, or he may appoint a representative to appear on his behalf.

(c) A prepetition conference or a request for a prepetition conference does not commence a proceeding before ERA.

(d) Subsequent to the prepetition conference, ERA will, in accordance with § 502.2 of these regulations, inform a potential petitioner as to the requirements for submission of an acceptable exemption petition.

(e) Because a prepetition conference is solely for the exchange of views, there will be no formal reports or findings by ERA unless ERA, in its discretion, determines that it would be advisable. ERA will, however, record for the public file the occurrence of any prepetition conference.

§ 501.3 Filing of petitions.

(a) The owner or operator of a powerplant or installation, or his representative may file petitions for exemptions with ERA. Any administrative proceeding before ERA commences upon the acceptance (as distinguished from the filing) of a petition by ERA.

(b) Where ERA has imposed a time limit for filing any document, that filing shall be considered to have been accomplished at the time the document is received by ERA.

(c) A petition and its supporting documents will be accepted by ERA if it appears to contain the information required by ERA to make subsequent analyses and determinations as to the merits of that petition. ERA will acknowledge receipt of each petition or document and will notify a petitioner in writing within 30 days of receipt of the petition of the exact date on which a petition has been accepted.

(d) If ERA determines that a petition or its supporting documents is incomplete, it will notify the petitioner to that effect within 30 days of ERA's receipt of the petition. ERA may provide a written explanation as to the defects in the petition and provide the petitioner with a opportunity to cure these defects. ERA will retain at least three copies of incomplete petitions and documents for purposes of internal management and will return any other copies of the incomplete petition or document to petitioner. Rejection of a petition as unacceptable will not render an otherwise timely petition untimely for purposes of filing.

(e) Documents to be filed should be sent by certified mail or hand-delivered to the addresses set forth in § 501.11. Documents sent by wire or facsimile should be confirmed in writing by certified mail or hand-delivered.

(f) ERA will consider documents received after regular business hours to have been filed on the next business day. Regular business hours are 8 a.m. to 4:30 p.m., Eastern time.

(g) Acceptance of your petition or supporting documentation by ERA shall not constitute a determination that you are entitled to a particular exemption.

§ 501.4 Computation of time.

(a) *Days.* (1) When ERA computes time in days under these regulations, ERA will not include the day from which a period of time begins to run. ERA will include the last day of the period, unless it is a Saturday, Sunday, or Federal legal holiday, in which case the period runs until the end of the next weekday that is not a Federal legal holiday.

(b) *Additional time after service by mail.* Whenever DOE serves by mail an order, notice, interpretation or other document, specifying a time period for you to perform an act, refrain from performing an act, or commence a proceeding, you may add 3 days to the period prescribed.

§ 501.5 Extension of time.

ERA may provide for an extension of time to file if you can show good cause for the extension.

§ 501.6 Service.

(a) DOE will serve all orders, notices, interpretations or other documents which it is required to serve, personally or by certified mail, unless otherwise provided in these regulations.

(b) ERA will consider service upn a petitioner's representative to be service upon the petitioner.

(c) Service by certified mail is effective upon mailing. ERA will consider official United States postal receipts from certified mailing as *prima facie* evidence of service.

§ 501.7 General filing requirements.

(a) *Purpose and scope.* This section applies to all documents filed with DOE, by petitioner, and any other parties or participants in proceedings under this part.

(b) *Signing.* (1) You or your representative must sign and verify any petition or other documents in accordance with the provisions set forth in these regulations.

(2) If your representative files any petition or other document, he must certify in the document that he is your duly authorized representative.

(c) *Labeling.* You should clearly label any petition or other document that you file with ERA, both on the document and on the outside of the envelope.

according to the nature of the action involved (e.g., "Fuel Use Act: Application for Exemption").

(d) *Obligation to supply information.* In any ERA proceeding, the petitioner and all parties to the hearing are under a continuing obligation to provide ERA or the presiding officer with any new or newly discovered information that they believe to be relevant and material to that proceeding.

(e) *The same or related matters.* If you file a petition or other document requesting ERA action, you must state whether, to the best of your knowledge, the same or a related issue, act or transaction has been or presently is being considered or investigated by any DOE office, other Federal agency, department or instrumentality or a State or municipal agency.

(f) *Request for confidential treatment.* (1) If you wish to file a document with ERA claiming that some or all of the information contained in the document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (5 U.S.C. 552 as amended) or is otherwise exempt by law from public disclosure, and if you wish to request ERA not to disclose such information, you must comply with the Department of Energy's Freedom of Information Regulations set forth in 10 CFR Part 1004 (44 FR 1908, January 8, 1979).

(2) ERA retains the right to make its own determination with regard to any claim of confidentiality. Notice of the decision by ERA to deny such claim, in whole or in part, and an opportunity to respond will be given to the person claiming confidentiality of information no less than 7 days prior to the public disclosure of such information.

(3) This subsection does not apply where information is being submitted on an ERA form which contains its own instructions as to requests for confidential treatment of information provided.

(4) Each request for confidential treatment must be made with respect to each separately identified document, and must be made at the time that document is first submitted to ERA.

§ 501.8 Filing fees.

If you are submitting a petition which requires a filing fee pursuant to subpart B of these rules, a check payable to the order of the United States Treasurer must accompany the petition before it will be accepted for filing.

§ 501.9 Effective date of orders or rules.

When ERA issues a rule or order under the Act, the rule or order will be effective 60 calendar days after publication in the **Federal Register**, unless it is stayed, modified, suspended, or rescinded.

§ 501.10 Order of precedence.

If there is any conflict or inconsistency between the provisions of this part and any other provisions of parts of this chapter, the provisions of this part will control with respect to procedure.

§ 501.11 Address for filing documents.

(a)(1) Send all petitions, forms, written communications, or other documents to the following address:

Economic Regulatory Administration, Case Control Unit (Fuel Use Act), Box 4629, Room 2313, 2000 M Street, NW., Washington, D.C. 20461.

(2) The DOE National Office has facilities for the receipt of transmission via TWX and FAX to its offices at 12th and Pennsylvania Avenue, NW., and 2000 M Street, NW. [The FAX machines are 3M full duplex 4 or 6 minute (automatic).] For purposes of Parts 500, 501, 502, 503, 504, and 505 of this chapter, all your transmissions should be to the machines at 2000 M Street, NW., except those to be sent to the Office of General Counsel which you should transmit to the machines at 12th and Pennsylvania Avenue, NW.

FAX Numbers

(202) 633–8207 (3M) (12th & Penn.).
(202) 2154–9867 (3M) (2000 M St.).

TWX Numbers

(710) 633–8207 (12th & Penn.).
(710) 254–9867 (2000 M St.).

§ 501.12 ERA public information office.

DOE will make available at Room B–110, 2000 M Street, NW., Washington, D.C., for public inspection and copying—

(a) Each rule, order or other administrative determination which is issued as a final agency action on a matter before ERA, with confidential material deleted;

(b) Any written comments received from interested persons in connection with issuance of a rule, order or other determination, modifications or rescissions or stays of rules, orders or determinations, and verbatim transcripts of any oral comments made at public hearings, or at prepetition conferences where a transcript was made, with appropriate confidential information deleted;

(c) Any comments received during each rulemaking proceeding and a verbatim transcript of any public hearings that may have been held in any rulemaking proceeding with appropriate confidential information deleted; and

(d) Any other information required by statute to be made available for public inspection and copying, and any information that ERA determines should be made available to the public.

§ 501.13 Appeal.

There is no administrative appeal of any final administrative action to which this part applies.

§ 501.14 Notice to Environmental Protection Agency and the Federal Trade Commission.

(a) A copy of any proposed rule or order which imposes a prohibition, or a petition for an exemption or permit, shall be transmitted to the Administrator of the Environmental Protection Agency with a request that EPA comment thereon within the comment period provided to the public. The Administrator of EPA shall be given the same opportunity to comment and question as is given to other interested persons.

(b) A copy of any proposed rule or order which imposes a prohibition with respect to an MFBI, or a petition by an MFBI for an exemption or permit, shall be transmitted to the Federal Trade Commission with a request that the Commission comment thereon within the comment period provided to the public. The Federal Trade Commission shall be given the same opportunity to comment and to question as is given to other interested persons.

Subpart B—Filing Fees

§ 501.20 Purpose.

This subpart provides for submission of fees to be charged for services rendered by ERA in the evaluation of certain petitions. The purpose of the fee is to defray part of the administrative costs of reviewing petitions and other applications. You will be charged a fee whether ERA grants or denies your petition. You will be charged a fee once your petition is accepted even if it is withdrawn; however, if your petition is returned by ERA because it is incomplete, the fee will be returned with it.

§ 501.21 Scope.

You must pay a filing fee when you file a petition for:

(a) An exemption, either permanent or temporary;

(b) A permit for which a fee has been set in subsection 23 of this section; or

(c) An extension of a temporary exemption.

§ 501.22 Payment of fees.

(a) *Time of payment.* You must include with the petition the full amount of the fee. ERA will not accept and will return any petition which does not include the total fee amount.

(b) *Method of payment.* You must pay by check, draft or money order, payable to the United States Treasurer.

§ 501.23 Fee schedule.

(a) *Basic fee.* All petitions covered by § 501.21, above, and not excepted under paragraph (c)(4) of this section shall be accompanied by a basic $1,000 filing fee.

(b) *Supplemental fees.* Petitioners seeking a peakload exemption, any temporary exemption, a permit under Section 504.1(d) of these regulations, or an emergency exemption for a powerplant, will be charged only the basic fee. Petitioners seeking an emergency exemption or any temporary exemption for an MFBI will pay only the basic fee. Petitioners for other exemptions must pay the supplemental fee that is set forth in the following table:

(1) *Supplemental fees—MFBI's.* If the design fuel heat input rate is:

	Less than 250 MM Btu's/hr	Equal to 250 to 1,000 MM Btu's/hr	Greater than 1,000 MM Btu's/hr
Petitions for Fuel Mixture and Cogeneration Exemptions will pay a supplemental fee of	$2,000	$4,000	$6,000
Petitions for all other exemptions will pay a supplemental fee of	5,000	9,000	14,000

(2) *Supplemental fees—powerplants.* If the design fuel heat input rate is:

	Less than 250 MM Btu's/hr	Equal to 250 to 1,000 MM Btu's/hr	Greater than 1,000 MM Btu's/hr
Petitions for Fuel mixture and Cogeneration exemptions will pay a supplemental fee of	$4,000	$8,000	$12,000
Permit applicants under section 504.1(c) of the rules will pay a supplemental fee of	4,000	8,000	12,000
Petitions for all other exemptions will pay a supplemental fee of	10,000	20,000	30,000

(c) *Special applications of fee schedule.* (1) *Extension of temporary exemptions.* The fee required to accompany petitions for extension of temporary exemptions shall be equal to 50 percent of that otherwise required under the basic fee schedule.

(2) *Petitions for multiple exemptions for a single unit.* In cases in which more than one type of exemption is sought for a single unit, the fee required shall be the largest fee for any single exemption requested and not the cumulative fee for all exemptions requested for that unit.

(3) *Petitions for exemption for more than one unit at a single site.* In cases in which exemptions are sought for more than one unit at a single site, the fee required shall be the largest fee for any single exemption requested and not the cumulative fee for all exemptions requested for all units at the site.

(4) *Waivers.* (i) You are not required to pay a filing fee when you file—

(A) A petition for a stay;

(B) A petition for an interpretation;

(C) A petition for a solar mix exemption under § 503.38 or § 505.28.

(D) A petition for a special temporary public interest exemption for the use of natural gas by existing powerplants under Part 508 (44 FR 21230, April 9, 1979); or

(E) A petition or request for any other type of administrative action not specifically covered by § 501.21 of this part.

(ii) ERA may upon application by any interested person, or upon its own initiative, waive the requirements of this subpart in whole or in part if ERA determines that the purpose of the Act is best achieved by doing so. The grounds upon which we might consider waiving certain requirements could include:

(A) A determination that the burden of meeting such requirements could be excessive for a small firm or for a new firm;

(B) A determination that the burden of meeting such requirements could be excessive for a petitioner requesting a certain type of exemption; or

(C) Other reasons as determined by ERA.

Subpart C—Written Comments, Public Hearings and Conferences During the Course of Administrative Proceedings

§ 501.30 Purpose and scope.

This subpart establishes the procedures for requests for, and the conduct of public hearings, for submitting written comments, and requests for, and conduct of conferences pursuant to an administrative proceeding before ERA. Hearings shall be convened at the request of any interested person in accordance with section 701(d) of FUA and shall be held at a time and place to be decided by the presiding officer. Conferences held after the commencement of an administrative proceeding before ERA shall be convened at the discretion of ERA or the presiding officer.

§ 501.31 Written comments.

ERA shall provide a period of at least 45 days for submission of written comments concerning a proposed prohibition rule or order or a petition for an exemption or permit. This period shall commence on the day after publication of the notice in the **Federal Register** in accordance with § 501.4(a) of this part. The period may be extended at the discretion of ERA. Written comments shall be filed in accordance with subpart A of this part.

§ 501.32 Conferences (other than prepetition conferences).

(a) At any time following commencement of a proceeding before ERA, an interested person may request a conference with the staff of ERA to discuss a petition, permit or any other issue pending before ERA. Your request for a conference should generally be in writing and should indicate the subjects to be covered.

(b) When ERA convenes a conference in accordance with this section, any person invited may present views as to the issue or issues involved. You may submit documentary evidence at the conference and such evidence will be included in the administrative record. ERA will not normally have a transcript of the conference prepared but may do so at its discretion.

(c) Because a conference is solely for the exchange of views incident to a proceeding, there will be no formal reports or findings by ERA unless ERA in its discretion determines that it would be advisable. ERA will, however, record

for the public file the occurrence of any conference.

§ 501.33 Requests for a public hearing.

Within 21 days after the publication of a proposed prohibition rule or order or of a notice of the filing of a petition for an exemption or permit, any interested person may submit a written request that ERA convene a public hearing in accordance with section 701 of FUA. This time limit may be extended at the discretion of ERA. Your request for a public hearing must include a description of your interest in the issue or issues involved, and an outline of the anticipated content of your presentation. Your request should, to the extent that you can, identify any witnesses that you contemplate presenting at the hearing and include, if possible, a summary of their anticipated testimony and of the purpose for that testimony.

§ 501.34 Public hearing.

(a) A public hearing under this subsection is not an adjudicatory hearing, and the provisions of Sections 554 and 556 of the Administrative Procedure Act (5 U.S.C. 554, 556) do not apply.

(b) *Opportunity to be heard at a public hearing.* (1) If you are an interested person, you may request, and ERA will provide an opportunity for you to present oral or written data, views and arguments at a public hearing on any proposed prohibition rule or order, or on any petition for an exemption or permit. An interested person may file a request to be listed as a party to a proceeding on the service list prepared by the presiding officer pursuant to § 501.34(d) of this part. A request for a hearing or to participate in a hearing, or to be included on the service list, must be in writing and signed by you. It must include a description of your interest in the issue or issues involved and an outline of the anticipated content of your presentation.

(2) Participants at the public hearing will have the opportunity to present oral or written data, views and arguments.

(3) A person who has requested a public hearing may withdraw his request at any time. If other persons have requested to participate as parties in the public hearing by requesting that they be included in the presiding officer's service list, ERA may cancel the hearing only if these parties agree to cancellation. ERA will give notice, whenever possible, in the **Federal Register** of the cancellation of any hearings for which prior notice had been made.

(c) *Presiding officer.* ERA will appoint a presiding officer to conduct the public hearing.

(d) *Powers of the presiding officer.* The presiding officer is responsible for orderly conduct of the hearing, and for certification of the record of the public hearing. The presiding officer will not prepare any recommended findings, conclusions, or any other recommendations for disposition of a particular case. The presiding officer may:

(1) Administer oaths and affirmations;

(2) Issue administrative subpoenas and rule on motions to modify or withdraw subpoenas which he has issued;

(3) Rule on questions as to relevance and materiality of evidence;

(4) Regulate the course of the public hearing;

(5) Hold conferences for the simplification of issues by consent of the parties;

(6) Require submission of evidence in writing where appropriate;

(7) Establish service lists;

(8) Dispose of procedural requests and similar matters; and

(9) Take other actions authorized by these rules.

The presiding officer may also limit the number of witnesses to be used by any party and may impose reasonable time limits for testimony. The presiding officer shall establish and maintain a service list which contains the names and addresses of all parties to the ERA proceeding. At the time the presiding officer certifies the record, he will provide the staff of ERA with an index of the issues addressed in the record.

(e) *Notice.* ERA will convene a public hearing only after publishing a notice in the **Federal Register** which states the time, place and nature of the public hearing.

(f) *Opportunity to question at the public hearing.* At the public hearing ERA will provide, with respect to disputed issues of material fact, any interested person with an opportunity to question—

(1) Other interested persons who make oral presentations;

(2) Employees and contractors of the United States who have made written or oral presentations or who have participated in the development of the proposed rule or order or in the consideration of the petition for an exemption or permit; and

(3) Experts and consultants who have provided information to any person who makes an oral presentation and which is contained in or referred to in such presentation.

(g) ERA encourages persons who wish to question Government witnesses to submit their questions at least 10 days in advance of the hearing. While ERA does not limit the right of interested persons to question Government witnesses during the hearing, ERA believes that prior submission will promote more fully responsive answers and facilitate production of a complete administrative record for that proceeding.

(h) The presiding officer will allow questions by any interested person to be asked of those making presentations or submitting information, data, analyses or views at the hearing. The presiding officer may also restrict questioning if he determines that such questioning is duplicative or is not likely to result in a timely and effective resolution of issues pending in the administrative proceeding for which the hearing is being conducted.

(i) The presiding officer or ERA may deny, temporarily or permanently, your privilege of participating in a particular ERA proceeding if ERA finds that, with respect to that proceeding:

(1) You have knowingly made false or misleading statements, either orally or in writing;

(2) You have knowingly filed false affidavits or other writings;

(3) You lack the specific authority to represent the person seeking an ERA action; or

(4) You have disrupted or are disrupting a proceeding.

(j) *Evidence.* (1) The presiding officer is responsible for orderly submission of information, data, materials, views or other evidence into the record of the public hearing. The presiding officer may exclude any evidence that is irrelevant, immaterial or unduly repetitious. Judicial rules of evidence do not apply.

(2) Documentary material must be of a size consistent with ease of handling, transportation and filing, and a reasonable number of copies should be made available at the public hearing for the use of interested persons. Fifteen copies shall be furnished to the presiding officer and one copy to each party listed on the service list. Large exhibits that are used during the hearing must be provided in a reduced size if they are to be submitted into the hearing record.

(k) *Transcript.* ERA will have a verbatim transcript made of the public hearing. The hearing record shall remain open for 14 days following the public hearing, during which time the interested persons may submit

additional written statements. ERA may extend the period during which the record remains open. The transcript, together with any written comments submitted in the course of the proceeding, will be made available for public inspection and copying at the ERA Public Information Office, as provided in § 501.12.

(l) *ERA's record and decision.* ERA's administrative record will consist of all relevant evidence presented at the public hearing, the written comments, and any other relevant information in the possession of ERA and made part of the record. ERA will base its determination to issue a rule or order on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with reliable, probative and substantial evidence.

§ 501.35 Public file.

(a) *Contents.* The public file shall consist of the rule, order, or petition, with supporting data and supplemental information, and all data and information submitted by interested persons. Material deemed by ERA to be exempt from public disclosure under the Freedom of Information Act shall be excised from the public file.

(b) *Availability.* The public file shall be available for inspection at Room B-110, 2000 M Street, NW., Washington, D.C. Photocopies may be made available, on request. The charge for such copies shall be made in accordance with a written schedule.

Subpart D—Subpoenas, Special Report Orders, Oaths, and Witnesses

§ 501.40 Issuance.

The Administrator, his duly authorized agent or a presiding officer, in accordance with the provisions of 10 CFR 205.8 and 10 CFR 205.201, and as otherwise authorized by section 711 of FUA and section 645 of the DOEA, may sign, issue and serve subpoenas and issue special report orders; administer oaths and affirmations; take sworn testimony; compel attendance of and sequester witnesses; control dissemination of any record of testimony taken pursuant to this section; subpoena and reproduce books, papers, correspondence, memoranda, contracts, agreements, or other relevant records of tangible evidence including, but not limited to, information retained in computerized or other automated systems in possession of the subpoenaed person.

§ 501.41 Petition to withdraw or modify.

(a) A person to whom a subpoena is directed may apply, prior to the time specified for compliance in the subpoena, for withdrawal or modification of the subpoena in accordance with 10 CFR 205.8, except that if the subpoena is issued by a duly appointed presiding officer, the request to withdraw or modify must be addressed to that presiding officer and its grant or denial will be decided by him.

Subpart E—Prohibition Rules and Orders

§ 501.50 [Reserved]

§ 501.51 Prohibitions by order—existing powerplants. [Reserved]

§ 501.52 Prohibitions by order—existing installations. [Reserved]

§ 501.53 Prohibition by rule—existing powerplants. [Reserved]

§ 501.54 Prohibitions by rule—existing installations. [Reserved]

§ 501.55 [Reserved]§ 501.56 Prohibition by rule or order—new MFBI nonboilers.

(a) *Prohibition by rule.* (1) Pursuant to section 202 of FUA, ERA may prohibit by rule the use of petroleum or natural gas as a primary energy source by new MFBI's that are gas turbine units, combined cycle units or internal combustion engines.

(2) In such a rulemaking, ERA will consider any special circumstances or characteristics of the category of nonboilers that would be prohibited from using natural gas or petroleum as a primary energy source. ERA will specifically (but not exclusively) consider such factors as the overall technical feasibility of category members to burn an alternate fuel as a primary energy source, as well as the size of category members and their location. ERA will consider any other circumstances, characteristics, and factors brought to its attention which ERA determines to be relevant and appropriate to the rulemaking.

(3) The application of any final rule in the case of any new major fuel-burning installation subject to such rule shall be stayed pending resolution (including judicial review) of any petition for an exemption for such installation which is filed with ERA not later than 60 days after such final rule is published under section 702(a) of FUA.

(4) No final rule can be applied to your installation if—

(i) It has received a final order containing a comparable prohibition; or

(ii) It was proposed to receive an order but did not do so due to your demonstration that the installation could qualify for an exemption under the Act.

(iii) A stay pursuant to 202(a) is, by law, in effect pending resolution of any petition for an exemption that has been filed within 60 days after publication of that rule pursuant to section 702(a) of FUA.

(iv) Has petitioned for and been granted an exemption.

(b) *Prohibition by order.* (1) ERA may prohibit by order the use of petroleum or natural gas as a primary energy source in a new major fuel-burning installation consisting of a gas turbine, a combined cycle unit or an internal combustion engine, if that installation has not been identified as a member of a category subject to a final prohibition rule at the time of the issuance of the proposed order.

(2) ERA may not issue a final order to your installation under this subsection if you can demonstrate that you would have been granted an exemption for your installation if the prohibition had been established by rule. If your installation would have been granted a temporary exemption, however, ERA may issue you a final order which will take effect at such time as the temporary exemption would have terminated.

(3) In any case in which an order is not issued by reason of paragraph (b)(2) of this section, or in which the effective date of such order is delayed under such paragraph, ERA shall take such steps as may be necessary to assure the installation involved complies with the same requirements (including provisions of 214(a) of FUA) as would have been applicable if an exemption had been granted based upon grounds for which the order is not issued or the effective date would be delayed.

(c) *Exceptions.* If acquisition or construction began for a nonboiler prior to the date of publication of the proposed rule or proposed order, your nonboiler shall be considered an "existing" nonboiler for purposes of treatment under the Existing Major Fuel-Burning Installations Section (Title III, Subtitle A) of the Act.

(d) *Notice of rules and orders, and public participation.* (1) Pursuant to section 701 of FUA, prior to the issuance of a final rule or order to a new nonboiler, ERA shall publish a proposed rule or order in the **Federal Register**, together with a statement of the reasons for the rule or order. In the case of a proposed rule, ERA will, in identifying categories of new MFBI's, explain and account for any special circumstances or characteristics of each category,

including the technical feasibility of burning coal and/or other alternate fuels and the size or geographic location of installations in the category described by the proposed rule

(2) An owner or operator of an installation that may be subject to an order, may demonstrate that the installation would qualify for an exemption.

(3) ERA shall provide other interested persons with an opportunity to present oral data, views and arguments at a public hearing held in accordance with subpart C of these regulations.

(e) *Record and decision to issue a final rule or order.* (1) ERA's record will consist of all relevant evidence presented at the public hearing, the written comments, and any other relevant information in the possession of ERA and made a part of the record of the proceeding. ERA will base its determination to issue a rule or order on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with reliable, probative and substantial evidence.

(2) ERA shall include in the final rule or order a written statement of the pertinent facts, a statement of the legal basis upon which the final rule is issued, a recitation of the conclusions regarding the required findings, and a summary of the rationale for each finding. The final rule or order shall state the effective date(s) of the prohibition(s) contained therein.

(3) ERA may enclose with a copy of the final rule or order a schedule of steps that should be taken by a stated date (a compliance schedule) to ensure that the affected installation(s) will be able to comply with the prohibitions stated in the rule or order by the effective date. The compliance schedule may require the affected person to take steps with regard to a unit 60 days after service of the final rule or order.

Subpart F—Exemptions

§ 501.60 Purpose and scope.

(a) Title II of FUA prohibits use of natural gas or petroleum in new powerplants and MFBI's unless an exemption pursuant to Subtitle B of Title II is granted. Title II also prohibits the construction of new powerplants without the capability to use coal or any other alternate fuel as a primary energy source unless an exemption is granted.

(1) If you plan to construct a new powerplant, or you own, operate or control a new MFBI consisting of a boiler, or you own, operate or control a new powerplant, this subpart establishes the procedures for filing a petition requesting a temporary or permanent exemption under, respectively, sections 211 and 212 of FUA.

(2) If you own, operate or control a new MFBI other than a boiler, this subpart establishes the procedures for filing a petition requesting a temporary or permanent exemption under, respectively, sections 211 and 212 of FUA.

(3) If you own, operate or control an existing powerplant or MFBI, this subpart provides you with the procedures for filing a petition for temporary or permanent exemption under, respectively, Sections 311 and 312 of FUA.

(4) If you own, operate or control a new powerplant or MFBI, this subpart provides you with the procedures for filing a petition requesting extension of a temporary exemption granted under section 211 of FUA for—

(i) Lack of alternate fuel supply, site limitations or environmental requirements;

(ii) Future use of synthetic fuels;

(iii) Public interest; or

(iv) Use of petroleum by certain installations.

(5) If you own, operate or control an existing powerplant or installation, this subpart provides you with the procedures for filing a petition for extension of a temporary exemption granted under section 311 of FUA for—

(i) Lack of alternate fuel supply, site limitations or environmental requirements;

(ii) Future use of synthetic fuels;

(iii) Use of innovative technologies;

(iv) Units to be retired;

(v) Public interest;

(vi) Peakload powerplants; or

(vii) Powerplants where necessary to maintain reliability of service.

(b) If you are a petitioner for an extension of a temporary exemption, you must apply for this extension at least 90 days prior to the expiration of your temporary exemption.

§ 501.61 Labeling of petition.

(a) If you are filing for a temporary exemption for a new or existing powerplant or installation under this subpart, you must file a written "Petition for Temporary Exemption" which should be clearly labeled as such, both on the petition and on the outside of the envelope in which the petition is transmitted, and signed by the person filing the petition.

(b) If you are filing for a permanent exemption for a new or existing powerplant or installation under this subpart, you must file a written "Petition for Permanent Exemption" which should be clearly labeled as such, both on the petition and on the outside of the envelope in which the petition is transmitted, and signed by the person filing the petition.

(c) If you are filing for extension of a temporary exemption for a new or existing powerplant or installation under this subpart, you must file a written "Petition for Extension (or Renewal) of Temporary Exemption" which should be clearly labeled as such, both on the petition and on the outside of the envelope in which the petition is transmitted, and signed by the person filing the petition.

§ 501.62 What to file.

If you are filing a petition under this subpart, you must send to ERA 15 copies of your petition meeting the requirements of this subpart and of Parts 502, 503, 504, 505, or 506 of this Title including:

(a) A transmittal letter;

(b) Any fees required under Subpart B of this part, unless the fees have been waived;

(c) A Fuels Decision Report if required and in accordance with Part 502 of these regulations; and

(d) Any appropriate forms that may be required by subsequent regulations.

§ 501.63 Where to file.

You must file any petition for exemption or extension of exemption under this subpart with the DOE National Office at the address provided in § 501.11.

§ 501.64 Notice of the commencement of an administrative proceeding on an exemption proceeding.

(a) Upon acceptance of a petition for an exemption, ERA shall publish notice in the **Federal Register** that an administrative proceeding has commenced. The notice will announce the commencement of the proceeding, provide a summary of the exemption petition and provide a period of no less than 45 days for interested persons to file written comments on the exemption petition.

(b) Upon acceptance of a petition, ERA shall notify the appropriate State agencies having primary authority to permit or regulate the construction or operation of a powerplant or, where appropriate, an MFBI which is the subject of the petition. To the maximum extent practicable, ERA shall consult with such agencies.

(c) ERA will transmit a copy of your petition to the Administrator of the

Environmental Protection Agency, and in the case of installations, the Federal Trade Commission.

§ 501.65 Publication of tentative staff determination.

Where a hearing has been requested and prior to that hearing, after any necessary analyses, investigations and corroboration of the facts and conclusions set forth in an exemption petition, ERA will publish in the **Federal Register** a notice of the availability of the technical staff's Tentative Staff Determinations on a particular exemption petition. ERA may also publish notices of the availability of tentative staff determinations where no hearing has been requested and will, in such instances, provide a period of at least 14 days for interested persons to make comments.

§ 501.66 ERA evaluation of the record, decision and order.

(a) The record will consist of the petition and related documents, all relevant evidence presented at the public hearings, all written comments, and any other relevant information in the possession of ERA and made a part of the public record.

(b) ERA may investigate and corroborate any statement in a petition, any other document and any public comments submitted to it. ERA may use any relevant facts in its possession in its evaluation. ERA may request submissions from third persons relevant to your petition or other document. ERA may also request additional information, data or analyses following the hearing if this information is necessary to resolve disputed issues in the record. Any information used by ERA following the hearing shall be made available to the public, unless determined under § 501.7(f) to be confidential.

§ 501.67 Petition redesignations.

ERA intends to be flexible enough to grant a permanent or temporary exemption if a person qualifies, even though that person may not qualify for the exemption he requested or for the full time period of the requested exemption. ERA does not believe a person should be made to reapply for the alternate exemption for which he appears to qualify and will redesignate his petition if he approves of that redesignation. ERA shall give public notice of any redesignation of a petition at least 3 weeks prior to the public hearing.

§ 501.68 Decision and order.

(a)(1) ERA will issue an order either granting or denying your petition for an exemption within 6 months after the end of the period for public comment and hearing applicable to your petition.

(2) ERA may, on its initiative, extend the period for public comment to a date certain by publishing notice in the **Federal Register**, including a statement of the reasons for the extension.

(b)(1) ERA will serve a copy of the order granting or denying a petition for exemption upon you, and upon all persons on the service list maintained by the presiding officer.

(2) ERA will publish a summary of any order granting or denying your petition under this subpart in the **Federal Register** together with a statement of the reasons for the grant or denial.

(c) ERA will base any order granting or denying a petition for exemption upon consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with reliable, probative and substantial evidence.

(d)(1) ERA shall include in any order granting a petition for exemption, except for an order granting an exemption under section 401 of FUA, such terms and conditions as ERA determines appropriate, including terms and conditions requiring the use of effective fuel conservation measures which are practicable and consistent with the purposes of FUA.

(2) ERA will design any terms and conditions included in any temporary exemption issued or extended under sections 211 and 311 of FUA, to ensure among other things that upon expiration of the exemption, the persons and powerplant or installation covered by the exemption will comply with the applicable prohibitions under FUA.

§ 501.69 Judicial review.

If you believe you are aggrieved by any order issued by ERA under this subpart, within 60 days of publication of the final order in the **Federal Register**, you may file a petition for judicial review with the United States Court of Appeals for the Circuit wherein you reside, or have your principal place of business. Exhaustion of administrative remedies for purposes of judicial review does not require you to file a petition pursuant to subpart G for modification or rescission of the order you wish to have reviewed.

Subpart G—Requests for Modification or Rescission of an Order or Rule

§ 501.100 Purpose and scope.

Anyone may request that ERA commence rulemaking proceedings pursuant to 5 U.S.C. 553(e); however, this subpart provides the procedures whereby—

(a) An interested person may request modification or rescission of a prohibition by rule for a new facility;

(b) An owner or operator subject to a specific prohibition imposed by order may request modification or rescission of that order; or

(c) An owner or operator of an existing facility named in a prohibition rule may request modification or rescission of that rule.

§ 501.101 Proceedings to modify or rescind a prohibition by rule or order.

(a) In response to a request duly filed by an interested person, ERA may commence a proceeding to modify or rescind that rule or order. If ERA determines that a request to modify or rescind a rule does not warrant commencement of a proceeding, it will issue the petitioner a brief statement why it does not intend to institute the requested proceedings.

(b) A request for modification or rescission of a prohibition rule or prohibition order must comply with the requirements of § 501.7 and must be filed at the address set forth in § 501.11.

(c) Notice of the request for modification or rescission of a prohibition order must be given by the petitioner to each party to the original proceeding that resulted in the issuance of the original prohibition order for which modification or rescission is sought. If the number of parties to the original proceeding is too large to allow actual notice at a reasonable cost or within a reasonable time, a petitioner may request that ERA give notice to the parties by publication in the **Federal Register**; however, this alternate notice does not bind ERA to commence a proceeding if it subsequently determines that the request is not warranted.

(d) If ERA determines to grant a request to commence a proceeding to rescind or modify a prohibition rule or prohibition order, or ERA on its initiative commences a proceeding for the modification or rescission of an order, it will give notice, either by service of a written notice or by oral communication (which communication must be promptly confirmed in writing) to each person who was served the order that ERA proposes to modify or rescind, or, alternatively, by publication of notice in the **Federal Register**. ERA will give a reasonable period of time for each person notified to file a written response.

(e)(1) A copy of any written comments submitted to ERA with respect to a

petition for modification or rescission of a prohibition rule or prohibition order filed under this subpart must also be sent to the petitioner and you must certify to ERA that you have complied with the requirements of this paragraph.

(2) ERA may notify other persons participating in the proceeding of the comments and provide an opportunity for the persons to respond.

(f) A petition requesting modification or rescission of a prohibition rule or prohibition order must contain a complete statement of all facts that you believe warrant that ERA undertake the action you seek. The petition must also include the names and addresses of all reasonably ascertainable persons who will be affected. Pertinent provisions contained in any documents believed to support a request may be briefly described, however, ERA reserves the right to request and receive copies of any significant documents that will assist in making any determination on the merits of a request. The petition must identify the specific prohibition order or prohibition rule for which modification or rescission is sought. A petition should also state any requests for an informal conference that the petitioner believes will facilitate ERA's determination to commence, or not to commence a proceeding on the petition, or will assist ERA in making any determinations on material issues raised by the petition.

§ 501.102 ERA evaluation of the record, decision and order for modification or rescission of a prohibition order or prohibition rule.

(a) The record will consist of the petition and related documents, evidence presented at any public proceedings, all written comments and any other relevant information in the possession of ERA and made part of the record of the administrative proceedings on the petition. ERA may investigate and corroborate any statement in your petition or related documents and may utilize in its evaluation any relevant facts obtained by its investigations. ERA may solicit or accept submissions from third persons relevant to any petition under this subpart and a petitioner will be afforded an opportunity to respond to these submissions. ERA may on its own initiative convene a conference, if, in its discretion, it considers that a conference will advance its evaluation of the petition.

(b) *Criteria.* ERA's decision to rescind or modify a prohibition order or prohibition rule will be based on a determination that there are significantly changed circumstances with respect to applicability of a particular prohibition to the petitioner. ERA believes that there may be "significantly changed circumstances" if—

(1) Significant material facts that were not known and could not have been known to the petitioner or to ERA at the time of the original proceeding are subsequently discovered;

(2) A law, regulation, interpretation, ruling, order or decision on appeal that was in effect at the time of the proceeding upon which the petition or order is based and which, if it had been made known to ERA would have been relevant to the proceeding and would have substantially altered the outcome is subsequently discovered;

(3) There has been a substantial change in the facts or circumstances upon which an outstanding and continuing prohibition order was based, which change occurred during the interval between issuance of the order and the date of filing of the petition under this subpart, and was caused by forces or circumstances beyond your control.

§ 501.103 Decision and order.

(a) ERA shall issue an appropriate order after considering your petition for modification or rescission of a prohibition order or prohibition rule and other relevant information received during the proceeding.

(b) ERA will either modify or rescind the prohibition order or rule or deny your petition for modification or rescission and will briefly state the pertinent facts and legal basis of the order.

(c) ERA will serve the order upon you, the petitioner, or, if the action was initiated by ERA, upon the owner or operator of the affected powerplant or installation. ERA will publish in the **Federal Register** a notice of issuance of an order modifying or rescinding a prohibition order or rule.

Subpart H—Requests for Stay

§ 501.120 Purpose and scope.

(1) This subpart provides you with the procedures for the request for and granting of a stay by ERA. This subpart does not apply to the mandatory stays provided for in Sections 202(b) and 301(a) of FUA. Your application for stay under this subpart will only be considered incident to a proceeding on a request for modification or rescission of a prohibition order or prohibition rule, or pending filing for judicial review of any order issued under the Act.

(2) You must comply with all final ERA orders, regulations, rulings, and generally applicable requirements unless a petition for a stay is granted.

§ 501.121 Filing and notice of petitions for stays.

(a)(1) The petition must be in writing and comply with the general filing requirements stated in § 501.7, in addition to any other requirements set forth in this subpart.

(2) A claim for confidential treatment of any information contained in the petition for stay or supporting documents must be in accordance with § 501.7(f), and you are to file your petition for stay at the address provided in § 501.11.

(b) ERA will publish notice in the **Federal Register** of receipt of an application for stay under this subpart.

§ 501.122 Contents.

(a) A petition for stay shall contain a full and complete statement of all facts you believe to be pertinent to the act or transaction for which a stay is sought. The facts shall include, but need not be limited to the criteria listed below in § 501.125(b).

(b) You may request a conference regarding the application. If your request is not made at the time the application is filed, you must make it as soon thereafter as possible. Your request and DOE's determination regarding it will be made in accordance with Subpart C of this Part.

§ 501.123 Evaluation of the record.

(a) The record in a proceeding on a petition for stay shall consist of the petition and any related documents, evidence submitted at any public proceedings and any other information in the possession of ERA and made part of the record. DOE may investigate and corroborate any statement in your petition or any other document submitted to it and may utilize in its evaluation any relevant facts obtained by its investigations. DOE may solicit or accept submissions from third persons relevant to the petition for stay or other document and a petitioner will be afforded an opportunity to respond to these submissions. DOE on its initiative may convene a conference, if, in its discretion, it considers that the conference will advance its evaluation of the petition. DOE will process petitions for stay as expeditiously as possible.

(b) *Criteria.* (1) DOE may grant a stay incident to a proceeding on a petition for modification of a prohibition order or prohibition rule if—

(i) Irreparable injury will result in the event that the stay is denied; or

(ii) You have alleged serious questions and have alleged you would suffer hardship if the stay is denied; and

(iii) It would be desirable for reasons of public policy to grant the stay.

(2) DOE may grant a stay pending judicial review if—

(i) Irreparable injury will result in the event that the stay is denied;

(ii) You have raised serious questions and have alleged you would suffer hardship if the stay is denied; and

(iii) It would be desirable for reasons of public policy to grant the stay.

§ 501.124 Decision and order.

(a) DOE will issue an order granting or denying the petition for stay upon consideration of the request and other relevant information received or obtained during the proceeding.

(b) DOE will include in the order a brief written statement setting forth the relevant facts and the basis of the decision, including any appropriate terms and conditions of the stay.

Subpart I—Requests for Interpretation

§ 501.130 Purpose and scope.

This subpart establishes procedures for filing a formal request for an interpretation and the procedures the Office of General Counsel of DOE (OGC) will use to consider your request. Any response, whether oral or written, to a general inquiry or to other than a formal written request for interpretation filed with OGC is not an interpretation and merely provides general information which may not be relied upon in any proceeding to determine compliance with applicable requirements of FUA.

§ 501.131 Filing a request for interpretation.

A proceeding to request an interpretation is commenced by filing a "Request for Interpretation (FUA)." The request must be in writing and must also comply with the general filing requirements stated in § 501.7. Any claims for confidential treatment for any information contained in the request or other related documents must be made pursuant to § 501.7(f). A request for interpretation should be filed with the Office of General Counsel at the address provided in § 501.11.

§ 501.132 Contents of a request for interpretation.

(a) A request for an interpretation must contain a complete statement of all facts you believe to be relevant to the circumstances, acts or transactions that are the subject of your request and to the OGC action you seek. The facts must include the names and addresses of all affected persons (if reasonably ascertainable) and a full discussion of the pertinent provisions and relevant facts contained in any documents submitted with the request. Copies of relevant contracts, agreements, leases, instruments, and other documents relating to your request must be submitted if OGC believes they are necessary for determination of any issue pending in the proceeding under this subpart. When your request pertains to only one step in a larger integrated transaction, you must also submit the facts, circumstances, and other relevant information pertaining to the entire transaction.

(b) You must include in your request a discussion of all relevant legal authorities, rulings, regulations, interpretations and decisions on appeal relied upon to support the particular interpretation you seek.

§ 501.133 DOE evaluation.

(a) The record shall consist of your request for an interpretation and any supporting documents, all relevant evidence presented at any public proceedings, written comments and any information in the possession of OGC or ERA that has been made part of the record.

(1) DOE may investigate and corroborate any statement in a request or related documents and may utilize in its evaluation any relevant facts obtained by the investigation. DOE may solicit or accept submissions from third persons relevant to your request for interpretation or any other document submitted under this subpart and the person requesting an interpretation will be afforded an opportunity to respond to these submissions.

(2) DOE will issue its interpretation on the basis of the information provided in your request, unless that information is supplemented by other information brought to the attention of the General Counsel during the proceeding. DOE's interpretation will, therefore, depend for its authority on the accuracy of your factual statements and you may rely upon it only to the extent that the facts of the actual situation correspond to those upon which the interpretation was based.

(3) DOE may refuse to issue an interpretation, if DOE determines that there is insufficient information upon which to base a decision.

(b) *Criteria.* (1) DOE will base its interpretations as applicable, on the DEOA, and FUA, and the regulations and published rulings of DOE as applied to the specific actual situation.

(2) DOE will take into consideration previously issued interpretations dealing with the same or a related issue.

§ 501.134 Issuance and effect of interpretations.

(a) DOE may issue an interpretation after consideration of the request for interpretation and other relevant information received or obtained during the proceeding.

(b) The interpretation will contain a written statement of the information upon which it is based and a legal analysis of and conclusions regarding the application of rulings, regulations and other precedent to the situation presented in the request.

(c) Only those persons to whom an interpretation is specifically addressed and other persons upon whom the ERA serves the interpretation and who are directly involved in the same transaction or act may rely upon it. No person entitled to rely upon an interpretation shall be subject to civil or criminal penalties stated in Title VII of FUA for any act taken in reliance upon the interpretation, notwithstanding that the interpretation shall thereafter be declared by judicial or other competent authority to be invalid.

(d) DOE may at any time rescind or modify an interpretation on its own initiative. Rescission or modification shall be made by notifying persons entitled to rely on the interpretation that it is rescinded or modified. This notification will include a statement of the reasons for the rescission or modification and, in the case of a modification, a restatement of the interpretation as modified.

(e) An interpretation is modified by a subsequent amendment to the regulations or ruling to the extent that it is inconsistent with the amended regulation or ruling.

(f) Any person who believes he is directly affected by an interpretation issued by OGC, and who believes that he will be aggrieved by its implementation, may submit a request for reconsideration of that interpretation. OGC will acknowledge receipt of all requests for reconsideration, however, this acknowledgement in no way binds OGC to commence any proceedings on the request. If within 60 days of OGC's acknowledgement of the receipt of a request for reconsideration, OGC has not issued either notice of intent to commence a proceeding to reconsider the interpretation, or issued a modification, revision or recission of the

original interpretation, the request for reconsideration is denied. DOE may, in its discretion, issue a formal denial of a request for reconsideration if—

(1) The request has not been filed in a timely manner, and good cause therefor has not been shown; or

(2) The person requesting reconsideration is not aggrieved or otherwise injured substantially by the interpretation; or

(3) It is defective for failure to state and to present facts and legal argument that the interpretation was erroneous in fact or in law, or that it was arbitrary or capricious.

Subpart J—Rulings

§ 501.140 Purpose and scope.

The General Counsel of DOE (OGC) may issue rulings in accordance with the provisions of this subpart. General Counsel will publish each ruling in the Federal Register. You are entitled to rely upon a ruling to the extent provided in this subpart.

§ 501.141 Criteria for issuance.

(a) The General Counsel may issue a ruling whenever—

(1) There has been a substantial number of inquiries with regard to similar factual situations or a particular section of the regulations; or

(2) He determines that it will be of assistance to the public in applying the regulations to a specific situation.

§ 501.142 Modification or rescission.

(a) A ruling may be modified or rescinded by—

(1) Publication of the modification or rescission by OGC in the Federal Register; or

(2) If ERA adopts a rule that supersedes or modifies a prior ruling.

(b) A person shall not be subject to the sanctions or penalties stated in these regulations for actions taken in reliance upon a ruling, notwithstanding that the ruling is subsequently declared to be invalid or no longer applicable. You may not rely upon a ruling after it has been rendered invalid pursuant to issuance of a superseding rule by ERA or after it is rescinded or modified by OGC.

§ 501.143 Comments.

You may file a written comment on or objection to a published ruling at any time with the General Counsel at the address provided in §501.11.

Subpart K—Enforcement

§ 501.160 Purpose and scope.

This subpart provides the procedures by which ERA may initiate enforcement proceedings on its own behalf and the procedures by which complaints may be filed.

§ 501.161 Filing a complaint.

(a) A complaint under this subpart must be submitted in writing over the signature of the person making the complaint in accordance with the general filing requirements stated in § 501.7. ERA will accept oral complaints that otherwise satisfy the requirements of this subpart, but ERA may request written verification.

(b) A complaint shall be filed at the address provided in § 501.11.

§ 501.162 Contents of a complaint.

A complaint must contain a complete statement of all relevant facts pertaining to the act or transaction that is the subject of the complaint. It must also include the names and addresses of all persons involved (if reasonably ascertainable), a description of the events that led to the complaint, and a statement describing the regulation, ruling, order, rule, or interpretation that allegedly has been violated.

§ 501.163 ERA evaluation.

(a) The record shall consist of the complaint and any supporting documents and all other relevant information developed in the course of any investigations or proceedings related to that complaint. ERA may investigate and corroborate any statement in your complaint or related documents submitted, and may utilize in its evaluation any relevant facts obtained by such investigation or from any other source of information. ERA may solicit or accept submissions from third persons relevant to your complaint or other related documents.

(b) *Confidentiality of information.* ERA will treat as confidential information received in any investigation of a complaint, including the identity of the complainant and the identity of any other persons who provide information, to the extent such information is exempt from public disclosure under the Freedom of Information Act, 5 U.S.C. 552. ERA reserves the right to make disclosures that would be in the public interest.

§ 501.164 Decision to initiate enforcement proceedings.

After investigation of a specific complaint or based on any other relevant information received or obtained during an investigation, ERA may issue a notice of violation, determine that no violation has occurred, or take such other action as it deems appropriate. Prior to issuance of a notice of violation and before commencement of an enforcement proceeding, ERA may transmit a draft of the notice of violation to the affected person in order to promote an informal resolution of the violation.

§ 501.165 Commencement of enforcement proceedings.

(a) Whenever, on the basis of any information available, ERA determines that a person is in violation or about to be in violation of any provision of these regulations, ERA may issue a notice of violation stating, in writing, with reasonable specificity the nature of the violation. An enforcement proceeding commences with the issuance of a notice of violation.

(b) *Contents of the notice of violation.* ERA will set forth in the notice of violation the nature of the violation, the relevant facts, the legal basis that ERA believes establishes the violation for the conclusions reached therein. ERA may also include with the notice of violation a copy of a proposed order. The notice of violation will also state whether or not ERA proposes to assess civil penalties.

(1) If ERA is proposing to assess a civil penalty, you will be informed in the notice of violation of your opportunity for a hearing before an Administrative Law Judge, as set forth in § 501.166(a)(1) of this part, before any final determination on the violation and penalty are made by ERA. You will also be informed in the notice of your right to elect to have the procedures of Section 501.166(a)(2), below apply in lieu of the hearing with respect to a final determination on the assessment of any civil penalty.

(2) If ERA is not proposing to assess a civil penalty, you will be informed in the notice of violation of your opportunity for a conference as set forth in Section 501.166(b) before a final determination on the violation is made by ERA. ERA may in its discretion, also provide you with an opportunity for a hearing pursuant of § 501.166(a)(1).

(c) *Service.* ERA will serve the notice of violation in accordance with the provisions set forth in § 501.6.

(d) *Rescission.* If, after issuance of a notice of violation and any related investigation, ERA finds no basis for the belief that a violation has occurred, is continuing to occur, or is about to occur, ERA may rescind the notice of violation by giving written notice to that effect to the recipient.

§ 501.166 Hearings and conferences.

(a) Unless you have elected in writing to have the provisions of paragraph (b)

of this section apply, ERA will commence a proceeding, to assess the penalty and give you an opportunity for a hearing before an Administrative Law Judge pursuant to section 554 of the Administrative Procedure Act (5 U.S.C. 554), before a final determination on the violation and assessment of a penalty is made.

(b) *Election alternative in civil penalty assessment proceedings.* The recipient of a notice of violation in which a civil penalty assessment has been proposed may elect, in writing, within 30 days of receipt of the notice, to waive the administrative proceedings described in paragraph (a) of this section. ERA will make a determination on the proposed civil penalty assessment and issue a final order to that effect within 45 days after receiving notice of the exercise of this election.

§ 501.167 Remedial order.

(a) *General.* ERA will issue a Remedial Order if, after considering all the information received during the proceeding, ERA determines that you have committed, are committing, or are about to commit a violation. A Remedial Order will require the recipient to take such action as ERA determines is necessary to eliminate the violation, to compensate for its effects, and to prevent similar or related violations. A Remedial Order may include revocation of an exemption.

(b) *Contents.* Any Remedial Order issued under this section shall set forth the relevant facts and legal basis of the order and where appropriate, the final penalty assessment and the basis therefore. When you have requested an administrative hearing as provided in § 501.166(a) of this part, the order will include the recommended findings and conclusions of the Administrative Law Judge (ALJ) and the basis for the assessment. ERA will make a final determination as to any penalty assessment or other appropriate remedy based upon the recommended findings and conclusions of the ALJ and other information in the record of the enforcement proceeding. The order will be effective upon service, unless otherwise provided in the order, or stayed pursuant to § 501.120.

(c) *Service.* The ERA will serve a copy of the Remedial Order upon you, any other person who was served a copy of the notice of violation, and all parties to any public proceeding on the notice of violation. ERA will place a copy of each final order, with confidential information deleted on file in the Public Information Office described in § 501.12.

(d) *Judicial review.* Any person against whom a penalty is assessed pursuant to § 501.167(b) may, within 60 calendar days after the date of the order assessing such penalty, institute an action in the United States Court of Appeals for the appropriate judicial circuit for judicial review of such order in accordance with the provisions of section 723 of the Act.

Subpart L—Investigations, Violations, Sanctions and Judicial Actions

§ 501.180 Investigations.

(a) *General.* Pursuant to section 711 of FUA, the DOEA and in accordance with the provisions of 10 CFR 205.201, ERA may initiate and conduct investigations relating to the scope, nature and extent of compliance by any person with the rules, regulations, and orders issued by ERA under the authority of the Act, or any order or decree of court relating thereto, or any other agency action. When the circumstances warrant, ERA may issue subpoenas as provided in Subpart D of this part. ERA may also conduct investigative conferences in conjunction with any investigation.

(b) Any duly designated and authorized representative of ERA has the authority to conduct an investigation and to take such action as he deems necessary and appropriate to the conduct of the investigation.

(c) *Notification.* If any person is required to furnish information or documentary evidence pursuant to a subpoena or special report order, ERA will upon written request inform that person as to the general purpose of the investigation.

(d) *Confidentiality.* ERA shall not disclose any information received during an investigation under this section, including the identity of the person investigated and any other person who provides information, to the extent it is exempt from public disclosure pursuant to 5 U.S.C. 522 and 10 CFR 1004.

§ 501.181 Sanctions.

(a) *General.* (1) A violation of any provision of the regulations issued under the authority of the Act, or any order, rule, exemption or permit issued pursuant thereto will be subject to the penalties and sanctions as provided in Subtitle C of Title VII of FUA.

(2) Each day that any provision of the regulations issued under the authority of the Act or any order, rule, exemption, or permit issued pursuant thereto is violated constitutes a separate violation within the meaning of the provisions of this section relating to civil penalties.

(b) *Criminal fines.* (1) If any person violates this subsection, he will be subject to a fine of not more than $50,000 or imprisonment of not more than 1 year, or both, for each violation.

(2) The ERA may at any time refer a willful violation to the Department of Justice for criminal prosecution.

(c) *Civil penalties.* (1) A violation under this subsection will be subject to the following civil penalties which may be assessed by the ERA:

(i) Any person who operates a powerplant which exceeds the use of natural gas or petroleum allowed by an exemption granted by ERA, will be assessed a civil penalty of up to $3 per MCF of natural gas or $10 per barrel of oil that is used in excess of that allowed by the exemption.

(ii) The civil penalty for violation of any other provision may be up to $25,000 for each violation.

(2) Either the General Counsel of DOE in consultation with the Department of Justice or, where appropriate, the Department of Justice, upon referral by ERA, will prosecute civil penalties.

(3) ERA may compromise and settle, and collect civil penalties whenever it considers it to be appropriate or advisable.

(d) *Corporate personnel.* (1) If you are a director, officer, or agent of a corporation and you willfully authorize, order or perform any act or practice constituting a violation of any provision of the regulations issued under authority of the Act, or any order, rule, or exemption, or permit issued pursuant thereto, you will be subject to the penalties specified in paragraphs (b) and (c) of this section without regard to any penalties to which the corporation may be subject. You will not, however, be subject to imprisonment under paragraph (b) of this section unless you knew of noncompliance by the corporation or had received from the ERA notice of noncompliance by the corporation.

(2) For purposes of this paragraph:

(i) "Agent" includes any employee or other person acting on behalf of the corporation on either a temporary or permanent basis; and

(ii) "Notice of noncompliance" is a final Remedial Order issued under § 501.173 of this Part.

§ 501.182 Injunctions.

Whenever it appears to ERA that any person has committed, is committing, or is about to commit a violation of any regulation, order, rule or exemption issued under the Act, ERA may in accordance with section 724 of the Act bring a civil action in the appropriate

district court of the United States to enjoin such acts or practices. The relief sought may include a mandatory injunction commanding any person to comply with any provision of such order, regulation, rule, exemption or permit the violation of which is prohibited by section 724 of the Act and may also include interim equitable relief.

§ 501.183 Citizen suits.

(a) *General.* A person who believes he is aggrieved by the failure of ERA to perform any nondiscretionary act or duty under the Act may file a Petition for Action for ERA to take such action as he may feel to be proper. A petition must be filed at the address provided in Section 501.11 of this Part. The petition must specify the action requested and set forth the facts and legal arguments that constitute the basis for the request and will serve as notice to ERA pursuant to Section 725 of FUA for purposes of any citizens suit that may be subsequently filed.

(b) *ERA decision.* Within 60 days of receiving the Petition for Action, ERA will notify the person giving notice under this section that it has instituted the action you requested or that other described action is being taken, or that no action is being taken and state the reasons therefor.

Subpart M—Use of Natural Gas or Petroleum for Emergency and Unanticipated Equipment Outage Purposes

§ 501.190 Purpose and scope.

(a) If you operate a—

(1) Powerplant or installation covered by any of the prohibitions of Titles II or III of FUA, § 501.191 of this Subpart establishes procedures you must follow if you use minimum amounts of natural gas or petroleum in order to alleviate or prevent unanticipated equipment outages and emergencies directly affecting the public health, safety, or welfare which would result from electric power outages under section 103(a)(15)(B) of FUA;

(2) Peakload powerplant or an installation covered by any of the prohibitions of Titles II or III of FUA, § 501.192 of this Subpart establishes procedures you must follow for the emergency use of natural gas or petroleum as a primary energy source during a temporary emergency condition under section 404(g) of FUA.

(b) *Explanatory note:* If you operate a rental boiler as a powerplant or installation covered by any of the prohibitions of Titles II or III of FUA, you may be able to use the provisions of this Subpart for the emergency use of natural gas or petroleum where you are unable to obtain an emergency exemption for such facility under these regulations.

§ 501.191 Use of natural gas or petroleum for certain unanticipated equipment outages and emergencies defined in section 103(a)(15)(B) of the Act.

(a) For purposes of this section only:

(1) An "emergency" exists only when there is a direct effect on the public health, safety or welfare which results or would result from an electric power outage;

(2) "Minimum amounts required to alleviate or prevent" shall mean:

(i) For powerplants, the amounts of natural gas or petroleum required to prevent curtailment by the operating utility of noninterruptible electric supply to industrial customers where such utility has, to the maximum extent possible, utilized alternate fuel-fired capacity to prevent such curtailment; and

(ii) For installations, the amounts of natural gas or petroleum required to meet plant protection or human health and safety needs including services to hospitals, public transportation facilities, sanitation, or water supply and pumping; and

(3) "Unanticipated equipment outage" shall mean an outage due to equipment failure.

(b) In the event of the occurrence or reasonably anticipated occurrence of an emergency or of the occurrence of an unanticipated equipment outage in your powerplant or installation, you are automatically permitted to use minimum amounts of natural gas or petroleum in your facility to alleviate the outage or to prevent or alleviate the emergency if you comply with procedures contained in paragraph (c) of this section.

(c) If you use minimum amounts of natural gas or petroleum for purposes specified in this section, you must—

(1) Notify ERA of such use by telegram or telephone within 24 hours after the commencement of such use;

(2) Immediately thereafter confirm such use and describe such purposes in writing, signed by the responsible official of your company; and

(3) File with ERA every two weeks after the initial use of natural gas or petroleum a progress report, describing the status of your emergency or outage condition and your continuing efforts to abate such condition. In appropriate cases, ERA may determine that such a filing is unnecessary.

§ 501.192 Use of natural gas or petroleum during a temporary emergency condition pursuant to section 404(g) of the Act.

(a) For purpose of this section only, a "temporary emergency condition" ("emergency") exists when—

(1) For installations, the use of natural gas or petroleum is necessary for purposes of—

(i) Plant protection;

(ii) Preservation of human health; or

(iii) Continued production which would otherwise be reduced as a result of an interruption of alternate fuel supplies, equipment failures or temporary environmental restrictions; and

(2) For peakload powerplants, the operating utility would be required to curtail noninterruptible electric supply to its industrial customers.

(b) Where you are eligible to use natural gas or petroleum for emergency purposes, in the alternative, under this section or under § 501.191 of this Subpart, you may use the procedures provided in § 501.191.

(c) In the event of occurrence of a temporary emergency condition, you are automatically permitted to use natural gas or petroleum in your peakload powerplant or installation for a period of 4 weeks from commencement of your emergency condition, or until termination of your emergency condition, whichever occurs first, if you—

(1) Notify ERA by telegram or telephone within 24 hours after the commencement of the emergency condition that you require such emergency use of natural gas or petroleum;

(2) Immediately thereafter confirm such use in writing, signed by the responsible officer of your company;

(3) Comply with the requirements of paragraph (e) of this section; and

(4) Are not notified in writing by ERA during such period that your emergency condition—

(i) Does not exist;

(ii) Has terminated; or

(iii) Does not otherwise warrant the use of natural gas or petroleum involved.

(d) You may request an extension of the initial permit period described in paragraph (c) of this section for a period not to exceed 24 months following commencement of your emergency condition, or until termination of your emergency condition, whichever occurs first, if you—

(1) Comply with all requirements of subsections (c) and (e) of this section;

(2) File your request within two weeks from commencement of your emergency condition; and

(3) Are notified in writing by ERA of the grant of your request and the duration of your extension.

(e) If you wish to use natural gas or petroleum for emergency purposes under this section, you must file with ERA, within 2 weeks of the commencement of such use, a written statement certified by the responsible officer of your company, detailing—

(1) The circumstances of the continuing or terminated emergency condition, including a description of the unit(s) in which you have used natural gas or petroleum for such condition, and the extent of such use;

(2) If your emergency condition has terminated, the day on which your facility returned to normal operation;

(3) If your emergency condition is continuing your plans to end the emergency, including an estimate of the time period for which you will be required to operate your facility using natural gas or petroleum as a primary energy source, and the projected extent of such use.

(f) You may continue to use natural gas or petroleum for purposes specified in this section beyond the automatic permit period described in paragraph (c) of this section only if you:

(1) Have received from ERA a written extension authorizing such use, and then only for the period provided in such extension; and

(2) File with ERA periodic progress reports at such intervals as ERA specifies in your written extension.

(g) The administrative provisions of Section 701 of FUA do not apply to this section.

(h) Any hours of emergency operation allowed under this section shall not be included in a peakload powerplant's operating hours for purposes of penalties set forth in section 723(b) of FUA, and any reporting requirements or conditions imposed under any peakload or emergency exemption under FUA are independent of any requirements imposed under this section.

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Part V

Environmental Protection Agency

Toxic Substances Control: Initial and Revised Inventories; Premanufacturing Notification Requirements and Review Procedures

ENVIRONMENTAL PROTECTION AGENCY

Office of Toxic Substances

Availability of TSCA Initial Inventory; Beginning of 210-Day Reporting Period for Revised Inventory

AGENCY: Environmental Protection Agency (EPA or the Agency).

ACTION: Notice of Availability of TSCA Initial Inventory; beginning of 210-day reporting period for Revised Inventory.

SUMMARY: This notice announces that the Initial Inventory of Chemical Substances, compiled under the authority of section 8(a) and (b) of the Toxic Substances Control Act (TSCA), will be published on June 1, 1979. EPA will distribute copies of the Initial Inventory throughout the month of May, in advance of this official publication date. The 210-day reporting period for processors and users of chemical substances and importers of chemical substances as part of mixtures or articles to add substances to the Initial Inventory will begin on June 1, 1979. On July 1, 1979 the premanufacture notification provisions of section 5 of TSCA will take effect for manufacturers and bulk importers of chemical substances for commercial purposes.

This notice explains how to obtain a copy of the Initial Inventory in printed form, microfiche, or computer-readable tape, and presents the Agency's policy for disclosing information from Inventory reports. In addition, this notice addresses reporting for the Revised Inventory, and responds to the significant comments received by EPA on the October 24, 1978 **Federal Register** notice which discussed EPA's policy for the Revised Inventory reporting period and proposed a draft report form. The last section of this notice, entitled "Industry Assistance," provides information on the kinds of materials and services provided by EPA's Industry Assistance Office.

FOR FURTHER INFORMATION CONTACT: Director, Industry Assistance Office, Office of Toxic Substances (TS-799), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Or call the toll-free number 800-424-9065. In Washington, D.C. please call 554-1404.

SUPPLEMENTAL INFORMATION: The inventory reporting regulations (40 CFR Part 710) were promulgated under the authority of section 8(a) of the Toxic Substances Control Act (90 Stat. 2003; 15 U.S.C. 2601 et seq.). These regulations were published in the *Federal Register* on December 23, 1977 (42 FR 64572), and were supplemented on March 6, 1978 (43 FR 9254) and April 17, 1978 (43 FR 16178). These regulations implemented section 8(b) of TSCA, which requires EPA to compile, keep current, and publish a list of chemical substances manufactured, imported, or processed in the United States for a commercial purpose. This notice announces that the TSCA section 8(b) Inventory will be first published on June 1, 1979.

Section 710.6 of the inventory reporting regulations establishes a two-phase reporting schedule designed to prevent duplicative reporting. During the initial reporting period, manufacturers and certain importers reported to EPA concerning chemical substances they manufactured or imported for a commercial purpose since January 1, 1975. Manufacturers and importers reported most chemical substances for the Inventory by the May 1, 1978 reporting deadline. Since that date they have been reporting substances first manufactured or imported for a commercial purpose. Based on these reports, EPA has compiled an Initial Inventory. Manufacturers and importers may continue to report new chemical substances eligible for the Initial Inventory until July 1, 1979.

A second Inventory reporting period lasting 210 days will begin on the official publication date of the Initial Inventory. During this period, a person who processes or uses a chemical substance for a commercial purpose or imports a chemical substance as part of a mixture or article may report a chemical substance that was not included on the published Initial Inventory if the substance was manufactured, imported, or processed for a commercial purpose since January 1, 1975. Substances that are manufactured or imported (in bulk) for a commercial purpose for the first time after July 1, 1979 may not be reported for the Revised Inventory. As of that date, (thirty days after the June 1, 1979 official publication date of the Initial Inventory) the manufacturer or bulk importer of such a substance is subject to the premanufacture notification requirements of section 5(a)(1)(A) of TSCA. These requirements will apply to all persons who intend to manufacture or import (in bulk form) for a commercial purpose, a chemical substance not included on the Inventory. Rules governing premanufacture notification were proposed in the **Federal Register** on January 10, 1979 (44 FR 2242). The Agency has developed an interim policy to govern the submission and review of premanufacture notices until final rules are promulgated.

The premanufacture notification and Revised Inventory reporting requirements apply to any eligible chemical substance which is not included on the Inventory. The published list is not the complete Inventory. The published list alone can never be complete since substances are continually being added to the Inventory. Some substances were reported to late to be included on the published list. In addition, some reported substances were inadequately identified for the Initial Inventory, and publication of these substances has been delayed pending resolution of identity problems. These substances were reported in accordance with the Agency's inventory reporting regulations and are included in the Master Inventory File, which is maintained by EPA. The Initial Inventory includes all substances which are on the published list and other substances reported to EPA before July 1, 1979 in accordance with the inventory reporting regulations. As is discussed in greater detail below, this later category includes substances reported too late to be included on the printed Inventory, substances reported by Colour Index names about which there is some ambiguity, substances reported as products of reactions involving trade name materials, and some substances reported with ambiguous confidentiality claims. The Revised Inventory and premanufacture notification requirements do not apply to these substances.

Anyone who reported a chemical substance that is not on the published Inventory may contact EPA to verify that the substance is included in the Master Inventory File. In addition, persons who may be subject to premanufacture notification requirements may request a determination that a particular chemical substance is or is not on the Inventory. Requests should be directed to the Industry Assistance Office. Persons making such requests must provide complete, descriptive information about the substance. The Agency has provided guidance for identifying chemical substances in the instruction booklet "Reporting for the Chemical Substance Inventory", which may be obtained through the Industry Assistance Office. In response to a request, EPA will determine whether a particular chemical substance is included in the Master Inventory File. In those few cases where the chemical substance identity was ambiguous, EPA has requested the necessary additional information from

the manufacturer of the substance to resolve the identity. Persons who are unable to locate on the published Inventory a substance they process, or import as part of a mixture or article, should report the substance during the 210-day reporting period for the Revised Inventory.

Resolving chemical identity problems has been the major effort in compiling the Initial Inventory. Defining and naming chemical substances often involves a highly specialized vocabulary, detailed knowledge of the origin of substances, and the application of complex nomenclature rules. EPA has worked very closely with the Chemical Abstracts Service (CAS), numerous trade and technical associations, and individual reporting companies to assure that chemical substances are identified as accurately and unambiguously as possible on the Initial Inventory.

There are two classes of identity problems which merit separate discussion. First, some chemical substances were reported by Colour Index names. In processing these reports, EPA found that in many cases, although such names provided useful information about the substances, they did not sufficiently identify them. Information necessary to resolve ambiguities with respect to these substance identities has been requested from the reporting companies, and these substance identities will be published subsequently. Those Colour Index names which were reported for the Initial Inventory and about which there is some ambiguity are listed separately and will be distributed with the printed Initial Inventory as an addendum. These names do not appear on the microfiche or computer-readable versions of the Inventory; however, copies of the printed addendum will be included with these media versions. Persons who may report for the Revised Inventory should not be concerned about reporting substances that appear on this list. However, a person who intends to manufacture or import for the first time a substance which may be described by one of the listed Colour Index names should ask EPA to determine whether the particular substance he intends to manufacture or import is included in the Master Inventory File.

The second class of substances that merit separate discussion are those which were reported as products of reactions involving trade name substances (or mixtures). Where the reporting company was unable to give more than a general discription of the trade name material, and was therefore unable to identify sufficiently the substance it manufactures, EPA must request the precise identity of the trade name material from its manufacturer in order to resolve ambiguities about the identity of the substance. The identities of substances manufactured using these trade name materials will be published when their identities are resolved. EPA will take all necessary steps to protect the confidentiality of the data submitted by the manufacturer of the trade name product. EPA expects that in some cases these substances have already been reported for inclusion on the Inventory by persons who knew the complete identities of the substances.

Finally, some report forms were submitted with ambiguous confidentiality claims. To avoid inadvertent disclosure of confidential information, EPA has decided not to publish the substances identified on these forms on the Inventory until these claims are resolved.

Chemical substances whose identities are confidential for purposes of the Inventory are included on the Initial Inventory under the category "chemical substances with confidential identities." In accordance with the inventory reporting regulations, EPA has published generic names for most of these substances in an appendix to the Initial Inventory. However, generic names for some substances have not yet been approved. The Agency is continuing to review these names, and has been in contact with the affected companies. Since EPA knows the precise identities of these substances, the Agency will have no difficulty in responding to inquiries concerning whether a particular chemical substance is "new" or is already on the Inventory. EPA will only respond to such inquiries after a person establishes a *bona fide* intent to manufacture a chemical substance for a commerical purpose, in accordance with section 710.7 of the inventory reporting regulations. If the particular substance is included on the Inventory, premanufacture notification will not be required of the person proposing to manufacture the substance.

In the next few months, EPA will publish a supplement to the Initial Inventory. This supplement is expected to include substances that were reported for the Initial Inventory but do not appear on the published list for the reasons stated above. It will also include substances that have completed premanufacture review and have begun to be manufactured or imported for commercial purposes.

EPA expects to publish the Revised Inventory sometime in 1980. After publication of the Revised Inventory, it will become unlawful for any person to process or use for a commercial purpose a chemical substance that was manufactured or processed in violation of section 5 of TSCA. Thirty days after publication of the Revised Inventory, the premanufacture notification requirements of section 5 of TSCA will be applied to importers of new chemical substances as part of mixtures.

Initial Inventory

I. Content

The Initial Inventory lists over 44,000 chemical substances, identified by a preferred name and a unique Chemical Abstracts Service (CAS) Registry number. Each preferred name (and, for some substances, an associated definition) identifies a chemical substance or category of chemical substances reported to EPA by manufacturers and importers during the Initial Inventory reporting period. The accompanying indices, in three volumes, are intended to aid in the use of the Initial Inventory by providing different access routes to the published list.

The Initial Inventory is part of a four volume set. The Inventory itself is contained in Volume I, and includes two appendices. Appendix A: Chemical Substance Definitions, further identifies chemical substances whose preferred names alone on the Inventory do not permit their unambiguous identification. Appendix B: Confidential Chemical Substance Identities, lists generic names for substances whose specific chemical identities were claimed as confidential by all persons who reported them for the Inventory. The other three volumes, entitled *User Guide and Indices to the Initial Inventory*, were published for use in conjunction with, but not as a substitute for, the Initial Inventory. The three indices, the Substance Name Index (contained in Volume II and III) and the Molecular Formula and UVCB [1] Indices (contained in Volume IV) provide alternate means for finding substances which are listed on the Inventory.

In addition to these four volumes, EPA has published a two volume *Trademark and Product Name List*, which was compiled from Voluntary Product Trademark Report Form D's submitted to EPA during the Initial Inventory reporting period. This list was compiled solely to assist processors in determining whether to report for the Revised Inventory. Manufacturers who reported their products for inclusion on this list were required to certify that all the reportable chemical substances

[1] Chemical Substances of Unknown of Variable Composition, Complex Reaction Products, and Biological Materials

comprising the product have been reported for the Initial Inventory. If the person reporting the trademark only processed certain components of the product he had to certify that any component not included on the Initial Inventory would be reported by him for the Revised Inventory. (Refer to 43 FR 9254, March 6, 1978.) Therefore, if a processor finds the name of a product he processes on this list, he does not need to report the components for the Revised Inventory.

II. Availability

Due to the high cost of printing and distribution, EPA will provide only one free copy of the Initial Inventory (including the three indices and the Trademark and Product Name List), in printed form to each company, corporation (or subsidiary, division or major department of a large corporation if they are located in different geographical areas), or interested organization while supplies last. EPA encourages persons to request microfiche copies wherever equipment permits, since these copies are less expensive to print and distribute. Companies that have already reserved copies of the Initial Inventory can expect to receive them automatically—there is no need to reorder. Others may order copies by calling the Industry Assistance Office toll-free number listed above. Allow three weeks for delivery.

EPA will place reference copies of the Initial Inventory, in printed form or microfiche (as equipment permits), in the libraries of all large cities, GPO regional depository libraries, State environmental offices, and EPA Regional Offices. The Industry Assistance Office can direct persons to the nearest location. Persons requiring minimal access to the Inventory are encouraged to make use of reference copies, rather than ordering a complete copy of the Inventory from EPA.

Additional copies of the Initial Inventory in printed form may be purchased from:

Superintendent of Documents, Government Printing Office (GPO), Washington, D.C. 20402, Order Desk: 202/783-3238.

Requests for copies of the Initial Inventory and the three indices should specify the document number: GPO No. 055-007-00004-7 and be accompanied by a check or money order in the amount of $34.50 per four volume set. Requests for the two volume Trademark and Product Name List should specify the document number: GPO No. 005-007-00003-9 and be accompanied by a check or money order for $19.50. Requests for the complete, six volume set should specify both document numbers and be accompanied by a check or money order for $54.00. Persons who purchased printed copies of the Inventory from GPO are encouraged to inform EPA's Industry Assistance Office so that EPA can inform such persons of the availability of supplements to the Inventory.

Additional microfiche sets of the Initial Inventory, the three indices, and the Trademark and Product Name List may be obtained through the Industry Assistance Office while supplies last.

The Initial Inventory is also available on computer tape. The tape consists of two sections. The first section of the Inventory lists each substance by CAS Registry Number, preferred name, and, where appropriate, molecular formula. The second section is an alphabetic listing of chemical synonyms appearing in the Inventory. Only synonyms that were reported to EPA for the Inventory are included in this section, unlike the printed version which contans additional synonyms derived from CAS files. The tape does *not* include generic names for confidential substance identities nor the definitions prepared for certain substances, all of which appear in the appendices to the printed Inventory.

The computer readable version of the Inventory may be obtained by written request from:

National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, Sales Desk: 703/557-4650.

Requests should specify the document number EPA/DF-79/005 and be accompanied by check or money order in the amount of $125.00 per tape. Anyone who has a deposit account with NTIS on an American Express card may call the NTIS Sales Desk (703) 557-4620 and place the order by phone. A copy of the documentation for the computer tape may be obtained by calling the Industry Assistance Office.

Information Disclosure From Inventory Reports

The published Inventory only identifies the reported substances. There is no reference on the Inventory either to the company that reported the substance or to the additional data about each substance which was required by the inventory reporting regulations.

The elements of the set of data that exists in EPA's report records (both computerized and hardcopy) about each chemical substance (with the exception of substances reported by persons who were not required to provide every item of information) are: the chemical name and CAS Registry Number of the substance; plant site(s) [2] at which it was manufactured; for each plant site, how much of the substance was manufactured or imported in 1977 (reported by ranges); whether its manufacture was site limited; and whether it was manufactured or imported (activity). In addition, where a plan site was owned by a parent company, the name of the parent company (corporation) was usually reported. To the extent that items of information were claimed by the reporting companies to be confidential business information, EPA will initially honor these claims in answering requests by members of the public for information from Inventory records. Any initial denials for information will be made in accordance with EPA's Public Information procedures, which appear at 40 CFR Part 2 (as amended, 43 FR 39997, September 8, 1978; 44 FR 17673, March 23, 1979).

EPA is planning to create a data base that contains nonconfidential information from the Inventory records. If it is merited by the number of requests for information received, this data base will be set up as an independent operation for answering requests and will be made available on magnetic tape for purchase through the National Technical Information Service.

The confidentiality claims were made on the Inventory report forms in such a fashion that some elements could be individually claimed confidential and links between other elements could be claimed confidential. For instance, the production range, the fact that a substance was manufactured or imported (activity), and the fact that the substance was or was not site limited could be claimed confidential individually. The *link* between plant site or parent company and a particular chemical substance (and its CAS Registry Number) could also be claimed confidential.

In its initial answers to requests for information by members of the public, EPA will disclose only individual record elements or links which have not been claimed confidential. Suppose that in some hypothetical record the links between plant site, parent company, and chemical substance name (including CAS Registry Number) have been

[2] The space provided on the report form for plant site information was also used to report headquarters addresses for importers, small manufacturers, trade associations, or persons who reported optionally. Therefore, the data set for a particular substance does not necessarily include plant site information per se.

claimed confidential and no other elements have been so claimed. In answering an information request for all records about the particular chemical substance, EPA would disclose all nonconfidential elements (production range, site limited, manufacture or import) from the hypothetical record but would reveal no information identifying the plant site or parent company. If, on the other hand, only production range has been claimed confidential, EPA would disclose the plant site and parent company, and whether the substance was manufactured or imported, or site limited, but would not disclose the production.

In addition to the method of disclosure described above, EPA will apply certain other operational disclosure rules. These other operational rules have been formulated after studying possible Inventory confidentality problems, and are as follows:

1. The first operational rule is set forth in the September 8, 1978 amendment to EPA's Public Information procedures (43 FR 39999, section 2.113(d)). In instances where merely stating that a record exists will comprise confidential information, neither the existence nor the nonexistence of the record will be revealed. Instead, the initial answer to a requestor will be that the request is denied because either the record does not exist or it is exempt from disclosure. For example, suppose someone asked for all information on production of ethanol by XYZ Company, and suppose that XYZ Company had reported that it made ethanol but claimed the link between itself and ethanol as confidential. If EPA disclosed that a record existed which was covered by the request, it would be revealing the confidential link between XYZ Company and ethanol. Therefore, in this example EPA would apply its operational rule and answer the request by stating that the request is denied because either the record does not exist or it is exempt from disclosure.

This rule has a corollary. The same answer will be given to the requester *whether or not any record exists* in response to questions where the rule would apply. If it were revealed that a record does not exist when indeed none does, and the special answer were given only where a record exists but revealing its existence would compromise confidentiality, then the operational rule and the special answer it provides would not serve their intended purpose.

2. If either the fact that a substance was manufactured or the fact that it was imported has been claimed confidential in a record, EPA will not disclose whether the substance was manufactured *or* imported. For example, if a substance was manufactured and this fact was claimed confidential, EPA will not reveal either the fact that it was manufactured or the fact that it was *not imported*. Revealing that one or the other statement is not true would indirectly disclose the confidential information.

3. The inventory reporting regulations required persons to indicate whether a reported substance was site limited, and permitted persons to claim the fact that a chemical substance was site limited to be confidential. In processing the Inventory reports, EPA discovered that many companies claimed the fact that a substance was *not* site limited as confidential. EPA will honor both types of site limited claims. Therefore, if either the fact that a substance was site limited or the fact that it was not site limited was claimed as confidential, EPA will answer a request for this information by stating that the fact that a particular chemical substance either was or was not site limited is confidential. If no claim of confidentiality was asserted for this information, EPA will disclose whether or not the substance was reported as site limited.

4. Certain elements of the report records will be treated similarly for purposes of answering requests for information. The reports contained names and addresses for technical contacts at the plant sites. This technical contact information will be treated the same as the plant site name and addresses for disclosure purposes because both pieces of information identify the plant site. In addition, because of an unintended ambiguity in the reporting instructions, claiming the fact of either manufacture or import of a substance as confidential served also to claim corporation (parent company) as confidential. The instructions said that "by checking the box under 'Manufacture' ['Import'] for a particular chemical substance, you assert that the fact that *you* manufacture [import] the chemical substance at the plant site * * * is confidential" (emphasis added). The use of the word "you" made it possible for a reader to assume that not only the fact of manufacture or import but also the connection of the parent company could be claimed confidential at the same time.

5. EPA is not required to create records in response to a Freedom of Information Act request, and EPA will not create records by aggregating data from the Inventory records upon request. The term "aggregation" means, in this context, creating totals or other arithmetic or descriptive statistics which include elements of separate records. EPA is developing aggregation rules, and will propose these rules in the **Federal Register** for public comment in the near future. Each aggregation from Inventory records will be designed to avoid revealing any confidential information. Aggregations must also be designed so that they do not overlap.

Reporting for Revised Inventory

I. Who May Report

In accordance with § 710.3(b) of the inventory reporting regulations, the following persons may report a chemical substance that is not listed on the published Inventory for inclusion on the Revised Inventory:

1. a person who has processed or used a chemical substance (including use in the manufacture of a mixture or article containing that chemical substance) for a commerical purpose since January 1, 1975, or

2. a person who has imported a chemical substance as part of a mixture or article for a commercial purpose since January 1, 1975.

Any person who is permitted to report substances for the Revised Inventory may either report individually or authorize a trade association or other agent to report on his behalf (see § 710.5(f)).

II. When To Report

The reporting period for the Revised Inventory will begin on June 1, 1979 and will end on December 31, 1979. Persons who begin processing a chemical substance or importing a chemical substance a part of a mixture or article FOR THE FIRST TIME after December 31, 1979 may report such substance to EPA at the time processing or importation begins, up to thirty days after publication of the Revised Inventory.

III. How to Determine Whether To Report

The following suggested procedures are provided to assist persons in determining whether to report a substance for the Revised Inventory. There is no obligation to follow these procedures, and persons may use any suitable method to determine whether to report. (Refer to the response to Comment 1 below, under the heading "Significant Comments and Responses.") In general, if a processor has received written certification from his supplier that all the component

chemical substances in the product(s) he processes have been reported for the Inventory, the processor should not be concerned about reporting.

If a person knows the chemical composition of the product he processes or imports, he should consult the Initial Inventory to determine whether all the reportable chemical substances comprising the product are included. EPA encourages persons to read carefully the introductory material in Volume I of the Inventory. Of particular importance is the section entitled "Eligibility Criteria for Inclusion of Chemical Substances on the Inventory," which provides a detailed explanation of what is meant by the term "chemical substance" under TSCA, and the section entitled "Use of the Inventory." If the person determines that one or more component substances are not included on the published Initial Inventory, he should report them for inclusion on the Revised Inventory.

If a person does *not* know the chemical composition of the product he processes, he should consult the Trademark and Product Name List. If the product is listed, the processor can, in good faith, assume that the components are included on the Inventory, and he should not be concerned about reporting. (Refer to the response to Comment 2 below.) If the product is not listed, the processor should ask his supplier to do one of the following: (1) provide him with a letter certifying that all reportable chemical substances comprising the product have been reported for the Inventory, (2) reveal to the processor the identities of the component substances so that the processor may determine whether or not the substances are reportable, and, if they are, report them for the Revised Inventory, or (3) assist the processor in reporting by following the procedure outlined in the instruction booklet, "Reporting for the Chemical Substance Inventory" (May 1979). This procedure is described briefly in the response to Comment 1 below. If the supplier refuses to do any of the above, the processor is encouraged to write a letter to EPA, providing the name and address of the supplier and the name of the trademarked product, and indicating that his supplier has refused to provide him the information necessary to determine whether he should report for the Revised Inventory. EPA will then attempt to obtain the necessary information directly from the supplier. Letters should be addressed to: Document Control Officer, Attn: IMS, Office of Toxic Substances (TS–793), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

An importer of a chemical substance as part of a mixture or article may not know the specific identity of the chemical substance because the foreign supplier may choose to keep it confidential. In this situation, the importer may be assisted in reporting by the foreign supplier by following the procedure outlined in the instruction booklet for the Revised Inventory.

IV. Report Form E

All reports for the Revised Inventory must be submitted on an official Inventory Report Form E. One chemical substance may be reported on each form. EPA has published a revised edition of the original instruction booklet, "Reporting for the Chemical Substance Inventory" to assist persons in completing the form. Persons should determine how many substances they intend to report and order an instruction booklet and the appropriate number of report forms from EPA's Industry Assistance Office.

Persons who choose to report for the Revised Inventory must provide the following information on the form: (1) The name and address of the reporting company (or corporation, trade association or other agent); (2) the specific identity of the chemical substance (including its CAS Registry Number, if known); and (3) the activity the reporting company is engaged in with respect to the chemical substance (i.e., "process" or "import"). Persons should also provide the name, address, and phone number of a technical contact whom EPA may contact to clarify any information submitted on the form. It is extremely important that all information regarding the technical contact be complete and accurate, since a report may require clarification before the substance can be added to the Inventory.

In accordance with § 710.7 of the Inventory reporting regulations, persons who report for the Inventory may claim certain reported information to be confidential. The procedure for asserting confidentiality claims on Form E is discussed in detail in the chapter entitled "Confidentiality" in the instruction booklet.

V. Significant Comments and Responses

EPA received several comments in response to the October 24, 1978 **Federal Register** notice (43 FR 49688) which announced the Agency's policy for the Revised Inventory reporting period and proposed a draft report form. The following summarizes and responds to the significant issues raised in these comments. Comments that concern problems specific to one particular company are not included, as they were referred to EPA's Industry Assistance Office for direct reply.

Comment 1: EPA should not advise processors to ask their suppliers for written certification that the components of trademarked products are on the Inventory, as such requests will serve no other purpose than to create unnecessary paperwork. EPA should not interfere with the business relationship between a processor and his supplier.

Response: EPA *suggested* the procedure outlined in the section headed "Reporting Trademarks" (43 FR 49689) to assist processors in determining whether to report substances that may not be included on the Initial Inventory for inclusion on the Revised Inventory. Processors are not *required* to follow this procedure, and may use any means at their disposal to determine whether to report. EPA does not wish to create burdensome paperwork or interfere in industry business relationships; rather, EPA is concerned that persons take the necessary steps to ensure that they are in compliance with TSCA after the Revised Inventory is published.

In recognition of the difficulties that processors may have in identifying chemical substances, the Agency has revised its report form to encourage suppliers to assist their customers in reporting for the Inventory while at the same time permitting them to withhold from their customers the identities of confidential component substances. Under this procedure, a processor would complete blocks I through III of the report form(s) naming his supplier as the technical contact in block II, and send the form(s) to his supplier. The supplier would then enter the specific chemical identity of the substance(s) on the form(s) and submit the completed form(s) to EPA. Instructions for reporting in this manner are contained in the instruction booklet, "Reporting for the Chemical Substance Inventory" (May 1979). Refer to the section of this notice entitled "How to Determine Whether to Report" under the heading "Reporting for Revised Inventory."

Comment 2: EPA told processors that if a trademark appears on the Trademark and Product Name List, the component chemical substances "should not be reported for the Revised Inventory by anyone other than the person who reported the trademark." A processor or user may report any substance eligible for the Initial Inventory for inclusion on the Revised

Inventory. If a processor must rely on the owner of the trademark to report, he will have no assurance that the substance has been reported for the Inventory.

Response: In the March 6, 1978 supplement to the inventory reporting regulations (44 FR 9254) EPA allowed persons who only processed certain components of a trademarked product to report the trademark for the Trademark and Product Name List if the person amended the Voluntary Product Trademark Report Form D certification statement to certify that any component of the product that was not reported for the Initial Inventory would be reported by him for the Revised Inventory. EPA told processors that the component substances of the trademarked products should not be reported for the Revised Inventory by anyone other than the person who reported the trademark in order to prevent duplicative reporting. If processors reported the components of all products that appear on the Trademark and Product Name List, EPA would be inundated by unnecessary reports. Therefore, EPA discourages persons from reporting chemical substances that are components of products that appear on this list. The person who reported the product name and signed the Form D certification statement is responsible for reporting the components for the Inventory. However, if a processor has reason to believe that a particular component will not be reported for the Revised Inventory he may report the substance himself. EPA recognizes that it is in the processor's best interest to ensure that all the substances he processes are on the Inventory.

Comment 3: EPA should update the Trademark and Product Name List periodically, just as the Inventory will continue to be updated.

Response: The Agency does not intend to update the Trademark and Product Name List. EPA compiled and published the list solely to assist processors in determining whether to report for the Revised Inventory. After the Revised Inventory is published the Agency expects companies to have established an independent network to inform one another of the status of their compliance with TSCA. Since the components of certain products on the list may change over time, it would become increasingly difficult for EPA to be certain that the components of these products were actually included on the Inventory.

Comment 4: EPA should recognize that the terms "processor" and "user" are not synonymous. If the definition of "user" is restricted to one who "processes" a chemical substance for commercial purposes, a person who uses a chemical substance to lubricate or clean machinery, for example, would be prevented from adding the substance to the Inventory, and would risk having his supply of the substance interrupted.

Response: EPA recognizes that there is a distinction between processors and users of chemical substances. This distinction, however, is irrelevant for purposes of Inventory reporting. Under section 8(b) of TSCA, the Inventory is to include substances which have been manufactured (including imported) or processed for commerical purposes in the United States since January 1, 1975. The inventory reporting regulations permit users of chemical substances to report substances that have been manufactured or processed for commercial purposes since 1975, regardless of whether the user of the substance also manufactures or processes the substance. An eligible substance that is used to lubricate or clean equipment may be reported for the Inventory by a user if it has been manufactured or processed since 1975.

Comment 5: If a substance reported by a processor during the 210-day period cannot be manufactured until it is included on the Inventory, the processor risks an interruption in his supply of the substance until the Revised Inventory is published in 1980.

Response: EPA does not wish to impose economic hardships on processors by contributing to the interruption of supplies of chemical substances. Therefore, once a processor reports a substance and receives the postcard from EPA acknowledging receipt of the report form, his supplier may continue to manufacture the substance. However, EPA intends to survey reports from processors to determine whether the supplier is a manufacturer who should have reported the substance for the Initial Inventory. EPA will bring enforcement action, as appropriate, against suppliers who failed to report for the Inventory.

Although manufacture of the substance may continue once the acknowledgement postcard is received, this does not mean that the substance is included on the Inventory at that time. EPA must first determine whether the substance was reported in accordance with the inventory reporting regulations, i.e., the substance is eligible for inclusion on the Inventory. If there are any problems with the report, EPA will notify the submitter, who will be given an opportunity to make necessary corrections to the report. If the submitter does not make the appropriate amendments to the report, EPA cannot process the form and the substance will not be added to the Inventory unless it is reported by someone else. Thereafter, manufacture of the substance for a use subject to premanufacture notification requirements would be illegal.

Comment 6: The Thirty-day period following publication of the Initial Inventory is not long enough for persons to make corrections to the Inventory or to add substances that manufacturers or importers inadvertently omitted.

Response: The thirty-day period between publication of the Initial Inventory and the beginning of premanufacture notification is required by TSCA and is intended to ensure that persons have the Inventory in hand before premanufacture notification takes effect. There is no requirement that EPA give the industry an opportunity to review and correct the Inventory before the premanufacture notification requirements are activated. If a manufacturer discovers that he inadvertently failed to report a substance for the Inventory he should either report it himself during the thirty-day period or check with a processor or user of the substance to see if he has reported it. If a substance is not on the Initial Inventory, the manufacturer of the substance would be subject to premanufacture notification requirements. EPA's Office of Enforcement will investigate the reason why a substance was not reported for the Initial Inventory by its manufacturer. In deciding upon the appropriate enforcement action, EPA will determine whether there was good cause for the omission. If a reported substance is not included on the Inventory by an oversight on EPA's part, the reporting party should notify EPA of the omission as soon as possible. Notification of such an error may be made after the thirty-day period following publication of the Inventory, but should be brought to the Agency's attention as soon as it is detected.

Comment 7: EPA should provide companies that reported for the Initial Inventory a list of the CAS Registry Numbers and preferred names assigned to the reported substances to facilitate locating them on the Inventory.

Response: EPA does not plan to provide reporting companies with such lists. If a company is unable to locate a substance on the Initial Inventory because it does not know the CAS Registry Number by which the substance is ordered on the Inventory, the company should consult the indices to the Inventory. It should first search

for the substance name in the Substance Name Index. In most cases the name reported by the company will appear in this index as a synonym, even though EPA may have chosen a different or "preferred" name for inclusion on the Inventory. Companies can also search for a substnce on the Inventory by using the other indices. (Refer to the Introduction to the Initial Inventory which appears in Volume I, and the User Guide to the three indices to the Initial Inventory.)

In the event that a company cannot locate the reported substance on the Initial Inventory using the indices, it may request verification from EPA that the substance is included in the Master Inventory File. Such requests should be directed to the Industry Assistance Office. EPA will require the inquiring company to provide information necessary to permit the Agency to comply with such a request. The kind of information necessary will be determined on a case-by-case basis, depending, in part, on what information, if any, was claimed confidential on the form.

Industry Assistance

EPA's Industry Assistance Office was established to provide industry with technical, policy, and procedural assistance in complying with TSCA, in accordance with section 26(d) of the Act. This office is prepared to provide the materials and services necessary for Inventory use and reporting. The following is a list of relevant materials which may be obtained through the Industy Assistance Office.

(1) The inventory reporting regulations (42 FR 64572, December 23, 1977)

(2) Supplements to the regulations (43 FR 9254, March 6, 1978; 43 FR 16178, April 17, 1978)

(3) Policy for Revised Inventory Reporting (43 FR 49688, October 24, 1978)

(4) Initial Inventory of Chemical Substances (May 1979); available in printed form or microfiche

(5) User Guide and Indices to the Initial Inventory—three volumes (May 1979); available in printed form or microfiche

(6) Trademark and Product Name List (May 1979)—two volumes; available in printed form or microfiche

(7) Inventory Report Form E (specify quantity)

(8) "Reporting for the Chemical Substance Inventory" (May 1979) instructions for reporting for the Revised Inventory

(9) Documentation for computer-readable version of the Initial Inventory

(10) Guidelines for Creating Proposed Generic Names for Confidential Chemical Substance Identities for the TSCA Inventory.

In addition to the materials listed above, the Industry Assistance Office provides the following services:

(1) Provides assistance in interpreting the inventory reporting regulations.

(2) Responds to inquiries concerning the contents and use of the Inventory.

(3) Handles requests for verification that a reported substance which does not appear on the printed Inventory is included on the most current Inventory maintained by the Chemical Information Division of EPA's Office of Toxic Substances. Requests for verification will be accepted over the telephone; however, all determinations will be transmitted in writing.

(4) Provides assistance in completing the report form.

The Industry Assistance Office may be contacted by calling the toll-free number 800–424–9065. In Washington, D.C. please call 554–1404.

In addition to the Industry Assistance Office, each EPA Regional Office is staffed by persons who can respond to inquiries concerning the inventory reporting regulations, the contents and use of the Inventory, and completion of the report form. The person to contact in each Regional Office is identified below.

Region I

Mr. Robert Dangel, John F. Kennedy Federal Building, Boston, Massachusetts 02203, 617–223–0585.

Region II

Mr. Michael P. Bonchonsky, Raritan Depot, Building 209, Edison, New Jersey 08817, 201–321–6673.

Region III

Mr. Edward Cohen, Curtis Building, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106, 215–597–7668.

Region IV

Mr. Ralph W. Jennings, 345 Courtland Street, N.E., Rm 345, Atlanta, Georgia 30308, 404–881–3864.

Region V

Mr. Karl E. Bremer, 230 South Dearborn Street, Chicago, Illinois 60604, 312–353–2291.

Region VI

Dr. Larry Thomas, First Internation Building, 1201 Elm Street, Dallas, Texas 75270, 214–767–2734.

Region VII

Mr. William Brinck, 324 East 11th Street, 15th Floor, Kansas City, Missouri 64106, 816–374–3036.

Region VIII

Mr. Ralph Larsen, 1860 Lincoln Street, Denver, Colorado 80295, 303–837–3926.

Region IX

Mr. Jerry Gavin, 215 Freemont Street, San Francisco, California 94105, 415–556–3352.

Region X

Dr. James Everts, 1200 6th Avenue, Seattle, Washington 98101, 206–442–1090.

Dated: May 8, 1979.

Steven D. Jellinek,

Assistant Administrator for Toxic Substances.

[FRL 1224–5]

[FR Doc. 79–15113 Filed 5–14–79; 8:45 am]

BILLING CODE 6560–01–M

Toxic Substances Control; Premanufacturing Notification Requirements and Review Procedures; Statement of Interim Policy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Statement of Interim Policy.

SUMMARY: On January 10, 1979, EPA proposed rules and notice forms for premanufacture notification for new chemical substances under § 5 of the Toxic Substances Control Act, 15 U.S.C. § 2604. (44 FR 2242) EPA also established an interim policy for the submittal of premanufacture notices. This interim policy applied to notices for substances intended to be first manufactured or imported for a commercial purpose between the effective date of the premanufacture notification requirement (30 days after publication of the Inventory under § 8(b)) and 90 days thereafter (i.e. 120 days after publication of the Inventory). This notice clarifies certain aspects of that interim policy, modifies it to a limited degree, and extends the interim policy to cover all notices filed prior to the effective date of the premanufacture rules and notice forms. In addition, it details the procedures the Agency intends to follow for premanufacture notices filed under the interim policy. Finally, this notice discusses EPA's policy on contacts with the public concerning premanufacture notification issues, prior to the promulgation of the § 5 rules.

DATES: As announced today elsewhere in this Federal Register, EPA will publish the Initial Inventory on June 1, 1979. The premanufacture notification requirement applies to any new chemical substance manufactured or imported for commercial purposes more than 30 days thereafter, or July 1, 1979. Interested persons may comment on this interim policy on or before June 14, 1979.

ADDRESS: Written comments on this interim policy should bear the document control number OTS–050002C and should be submitted in triplicate to the Document Control Officer (TS–793), Office of Toxic Substances, U.S. Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460. EPA has established a public record for the premanufacture notification rulemaking. The public record is available for inspection in the Office of Toxic Substances Reading Room from 9:00 a.m. to 5:00 p.m. on working days (Room 709E, 401 M St., S.W., Washington, D.C. 20460).

FOR FURTHER INFORMATION CONTACT: Mr. John B. Ritch, Director, Office of Industry Assistance, Office of Toxic Substances (TS–799), U.S. Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460; 800–424–9065 toll free; in Washington, D.C. call 554–1404.

SUPPLEMENTARY INFORMATION On January 10, 1979, EPA proposed regulations to govern submittal of premanufacture notices under § 5 of the Toxic Substances Control Act (TSCA). (44 FR 2242.) Section 5 requires any person who intends to manufacture (or import) a new chemical substance for a commercial purpose to submit a notice to EPA at least 90 days before he commences manufacture. Section 3(a) of the Act defines a "new chemical substance" as any chemical substance which is not included on the "list," or Inventory, of existing substances maintained by EPA under § 8(b). The notification requirement applies to all new chemical substances manufactured or imported on or after the 30th day after EPA first publishes the Inventory. As explained in the notice announcing publication of the Inventory which appears elsewhere in today's **Federal Register**, this effective date for the premanufacture requirement will be July 1, 1979.

In the preamble to the January 10, 1979, proposed regulations, EPA announced an interim policy for the submittal of notices for new chemical substances to be manufactured or imported within the first 90 days after the § 5 requirement becomes effective. (44 FR 2245.) This policy provided for submittal of notices before publication of the Inventory, and applied to a chemical substance believed by a person to be "new," and for which first manufacture or import for commercial purposes was intended between the effective date for premanufacture notification (30 days after publication of the Inventory under § 8(b)), and 90 days thereafter (i.e. 120 days after publication of the Inventory). EPA has received a number of inquiries and comments with regard to the interim policy, including questions concerning the Agency's policy for notices filed after publication of the Inventory.

The purpose of this notice is to clarify the terms of the interim policy, including limited modifications EPA has made in response to a petition from the Manufacturing Chemists Association, and to extend the policy and procedures discussed below to apply to all notices received before the effective date of the premanufacture notification rules.

EPA requests comment on this interim policy. If on the basis of these comments EPA believes that the policy should be modified or further clarified, the Agency will publish another notice in the **Federal Register**.

Overall Policy

Any person who intends to manufacture or import (in bulk) for a commercial purpose a new chemical substance on or after July 1, 1979, must submit to EPA a notice at least 90 days before the start of manufacture or import. The notice must satisfy the requirements of TSCA. EPA's § 5 rulemaking is intended to provide the Agency's detailed interpretation of the requirements of the Act. Pending completion of this rulemaking, EPA obviously can't provide comprehensive guidance. The interim policy therefore provides only limited guidance on submittal of notices prior to the effective date of the premanufacture rules and forms. Persons seeking further clarification concerning the statutory requirements should contact EPA.

In the January 10 interim policy statement, EPA stated that a notice should be filed on the proposed forms and in accordance with the proposed regulations. Some persons interpreted this statement to mean that EPA intended to make effective its proposed § 5 regulations before persons could comment and the Agency could consider the comments and promulgate final rules. Some persons also construed the term "should," used in explaining the interim policy, to mean that persons were required to comply with the terms of the proposal. EPA did not intend this meaning.

The Agency is taking this approach because it would be inappropriate to make these regulations effective pending completion of the rulemaking procedures. EPA has received a large volume of comments on the proposed premanufacture rules and notice forms, and is in the process of reviewing them. The provisions of this interim policy should not be considered an indication of the Agency's final resolution of the issues raised in the rulemaking proposal.

Submitters are free to follow EPA's proposed regulations. EPA will not take any action because a notice does not comply with the proposal. However, the Agency will take appropriate actions on a case-by-case basis in situations where a notice does not meet the statutory requirements.

Persons who manufacture, import or process substances which are included on the Inventory are not required to submit notices prior to manufacturing or processing the substances for new uses. At the present time, only the § 5(a)(1)(A) requirement for notice for a new chemical substance is in effect. A chemical included on the Inventory is not a new chemical substance. Section 5(a)(1)(B) of the Act requires persons to submit notices prior to manufacturing or processing a substance for a use which EPA has determined is a significant new use. In accordance with § 5(a)(2), the Agency must make this determination by rule promulgated after consideration of various factors. At this time, EPA has neither proposed nor promulgated any significant new use rules (SNURs). The Agency intends to utilize SNURs for selected existing chemical substances, and as a tool for followup of certain new chemical substances for which premanufacture notices are submitted under § 5. EPA intends to commence general rulemaking on SNURs during late 1979.

Timing of Premanufacture Review Period

The premanufacture review period will commence upon receipt of a notice which meets the statutory criteria. As soon as EPA receives the notice, the Agency will date stamp it and will transmit a notice of receipt to the submitter which indicates the official date when the notice period commences. The period will run for 90 days, unless the Agency for "good cause" extends the notice review period for up to an additional 90 days, under § 5(c) of the Act.

This position represents a change from the policy announced in the January 10, 1979, **Federal Register** notice. On February 2, 1979, the Manufacturing Chemists Association (MCA) submitted to EPA a petition requesting, among other things, that the Agency modify its policy on the timing of the review period. EPA has included the MCA petition and the Agency's response (dated March 2, 1979) in the public record of the premanufacture

rulemaking, and they are avialable for public inspection in the Office of Toxic Substances Reading Room.

Persons and Substances Subject to Section 5 Requirements

IN general, § 5(a) requires any person who intends to manufacture (including import) a new chemical substance for a commercial purpose to submit a premanufacture notice at least 90 days before he commences manufacture.

The Act contains a lengthy definition of the term "chemical substance" in § 3(a). Substances not falling within this definition are not subject to the premanufacture notification requirement. In addition to this statutory provision, § 710.4 of the inventory reporting requirements ("inventory rules") (42 FR 64572, December 23, 1977) excludes certain chemical substances from the requirement to report for the Inventory of chemical substances under § 8(b). Substances excluded under the inventory reporting rules will be excluded from the premanufacture notification requirements under this interim policy. Persons considering whether to submit a notice should consult TSCA and § 710.4 of the inventory rules to determine whether the premanufacture notification requirement applies.

The premanufacture notification requirement is applicable to both *manufacturers* and *importers* of new substances. Under § 720.10(a)(1) of the proposed rules, EPA stated that the requirement for manufacturers to submit a premanufacture notice included persons who intended to manufacture a substance solely for export from the U.S. EPA has received extensive comment on this requirement, and has not had the time to fully evaluate it. Therefore, in the interim, the premanufacture notification requirement will not apply to manufacture of a substance solely for export. However, EPA expects to include this provision in the final rules if the Administrator determines that such reporting is necessary to accomplish the purpose of TSCA.

In § 710.3 of the inventory rules EPA provides that, until publication of the Revised Inventory, only importers of new substances in "bulk form" will be subject to the premanufacture notification requirement. The inventory rules define "bulk form" to include imports in cans, bottles, drums, barrels, packages, tanks, bags and other containers, but not to include chemical substances imported as part of mixtures or articles. EPA's interim policy will implement the statute in a manner consistent with this limitation on importers' reporting responsibilities.

Information Submittal Requirements

Section § 5(d) of the Act requires that each notice include the following information:

(A) insofar as known to the person submitting the notice or insofar as reasonably ascertainable:

(1) The common or trade name, the chemical identity, and the molecular structure of each chemical substance for which such a notice is submitted.

(2) The categories or proposed categories of use of each such substance.

(3) The total amount of each such substance manufactured or processed, reasonable estimates of the total amount to be manufactured or processed, the amount manufactured or processed for each of its categories of use, and reasonable estimates of the amount to be manufactured or processed for each of its categories of use or proposed categories of use.

(4) A description of the byproducts resulting from the manufacture, processing, use, or disposal of each such substance.

(5) The number of individuals exposed, and reasonable estimates of the number who will be exposed, to such substance in their places of employment and the duration of such exposure.

(6) The manner of method of disposal of the substance. (B) any test data in the possession or control of the person giving such notice which are related to the effect of any manufacture, processing, distribution in commerce, use, or disposal of such substance or any article containing such substance, or of any combination of such activities, on health or the environment, and (C) a description of any other data concerning the environmental and health effects of such substance, insofar as known to the person making the notice or insofar as reasonably ascertainable.

In providing the identity of the new chemical substance, the submitter should follow § 710.5 of the inventory rules, and the instructions EPA has prepared for inventory reporting ("Reporting for the Chemical Substances Inventory," U.S.E.P.A. December 1977, or "Instruction for Reporting for the Revised Inventory.") In particular, substances which have no known CAS number should be identified in accordance with Appendix 5 of the inventory instruction book, or chapter 3 of the instruction book for the Revised Inventory.

Persons who do not submit any data relevant to one of the categories discussed above, or who submit only a small amount of data, are encouraged to indicate in their notice that the missing information is not "known or reasonable ascertainable" or "not in possession or control", as appropriate. This will be preferable to simply failing to provide information for a category, without any explanation.

Procedures for Submittal of Notices

For expeditious handling, and for safe processing of confidential material, persons should submit notices to the following address:

Document Control Officer, Office of Toxic Substances (TS–793 PN), U.S. Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460.

Hand-delivered notices should be directed to: Document Control Officer, Office of Toxic Substances, Rm. 711, East Tower, U.S. Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460.

A notice must be complete, including all referenced attachments and enclosures. It must be in English, or must be accompanied by an English translation certified to be accurate.

Each notice must include a certification, signed by an authorized representative of the submitting company, stating that the manufacturer or importer has complied with the statutory requirements of § 5. The following is an example of acceptable certification language:

I hereby certify that, to the best of my knowledge and belief: (1) I intend to manufacture (or import) for a commercial purpose (other than only in small quantities solely for purposes of research and development) the chemical substance for which this notice is submitted;

(2) all information contained in this notice is complete and truthful as of the date of submittal. Finally, the Agency expects each notice to include a complete identification of the submitter. The following information would constitute a sufficient identification:

(1) *Person Filing Notice*

Name of Authorized Office _____
Title _____
Organization _____
Mailing Address _____
Telephone Number _____

(2) *Incorporation Information*

Legal Title of Organization _____
Place of Incorporation _____
Street _____
City _____
State _____

(3) *Principal Place of Business*

Street ———
City ———
State ———

(4) *Technical Contact*

Name and Title ———
Street ———
State ———
Telephone Number ———

(5) *Parent Company* (Any company that owns or controls 50% or more of the submitter's voting stock).

Name ———
Street ———
City ———
State ———

Notice in the "Federal Register"

Section 5(d)(2) requires EPA to publish in the **Federal Register** a notice of receipt of each premanufacture notice within five days of receipt of the premanufacture notice. Subject to § 14, this notice must include an identification of the new substance, a list of uses or intended uses, and a description of certain test data. As a matter of policy, EPA will publish the notice in the manner described in § 720.32 of the proposed regulations. In addition, the Agency will publish the name of the submitting company, unless this information is claimed confidential. Persons should review the interim confidentiality procedures, below, with regard to EPA's policy on publication of information which a person considers to be confidential.

Notice of Commencement of Manufacture or Import

Any person who submits a notice under this interim policy, and who begins to manufacture or import the new substance for commercial purposes, must submit a notice of this fact to EPA on or about the date when manufacture or import commences so that the Agency can add the substance to the Inventory. At a minimum this notice must include the identity of the substance; the premanufacture document number which the Agency previously assigned to the substance in the § 5(d)(2) **Federal Register** notice; and the date upon which manufacture or import commences. There is no requirement that the notice be submitted in any particular form. It should be addressed to the Document Control Officer, Office of Toxic Substances, at the address indicated above.

This reporting requirement is imposed under § 8(b) of TSCA. That provision states "In the case of a chemical substance for which a notice is submitted under Section 5, such chemical substance shall be included in such list [the Inventory] as of the earliest date (as determined by the Administrator) on which such substances was manufactured or processed in the United States." EPA believes that a submittal of a notice of commencement is a reasonable method to implement this statutory provision.

Confidentiality

Pending the promulgation of § 5 regulations, the assertion and review of confidentiality claims, and the substantive determination of whether information should be disclosed, will be governed by EPA's general rules for confidentiality of business information submitted under TSCA, 40 CFR § 2.306. Section 2.306 incorporates by reference the bulk of the general provisions of 40 CFR Part 2, the Agency's rules for the handling of confidential business information. EPA amended 40 CFR Part 2 on September 8, 1978 (43 FR 39997) and on March 23, 1979 (44 FR 17673). The remainder of this section addresses what EPA believes those provisions require, and how the Agency will implement them. Except as stated to the contrary, EPA will follow the confidentiality procedures of 40 CFR Part 2. The Agency will resolve individual issues not covered by this discussion on a case-by-case basis, in accordance with 40 CFR § 2.306 and relevant provisions of TSCA.

Until the § 5 rules are final and effective, the policy discussed below will apply to all information submitted to EPA under the premanufacture notification program. After the rules are effective, all such information in the possession of the Agency will be subject to those rules. To the extent that EPA imposes new or different requirements in the rules, EPA will give submitters ample opportunity to update or modify confidentiality claims prior to becoming subject to any new requirements.

General Procedures for Asserting Confidentiality

A person may assert a business confidentiality claim for any information required to be submitted to EPA under TSCA, including any information submitted in the premanufacture notice or the notice of commencement of manufacture or import.

In accordance with 40 CFR § 2.203, if a person wishes to assert a business confidentiality claim for all or part of the information submitted to EPA, he must assert this claim when he submits the information. He must assert this claim in the manner described in § 2.203(b) (See below.) The Agency will disclose information covered by such a claim only to the extent, and following the procedures, set forth in 40 CFR Part 2, Subpart B. If the person does not assert a claim of confidentiality at the time he submits the information, EPA will make the information available to the public without further notice to the submitter.

Section 2.203(b) of EPA's business confidentiality regulations prescribes the methods for asserting confidentiality claims. Among other things, confidential portions of otherwise non-confidential documents should be clearly identified. EPA strongly urges the submitter to be as specific as possible in identifying confidential information. Each page of a document should be marked appropriately. In some cases, if non-confidential and confidential material are mixed on a single page, item-by-item markings would be appropriate.

Section 2.203(b) also states that where a portion of an otherwise non-confidential document is asserted to be confidential, the person may submit separate confidential and non-confidential documents to facilitate identification and handling by EPA. The Agency strongly encourages persons to submit two copies of premanufacture notices if some of the information is claimed confidential. Failure to submit two copies will not affect EPA's determination of whether confidential treatment is appropriate. Section 5(d)(1) of TSCA requires the Agency to make non-confidential information in premanufacture notices available to the public. Therefore if a submitter does not file a non-confidential copy, EPA will prepare an excised copy for inclusion in the public file, based upon the submitter's confidentiality claims. Submitter preparation of the public copy will ease the administrative burden on EPA, and will reduce the remote possibility that EPA will inadvertently disclose information which a submitter claims as confidential.

Substantiation of Claims for Certain Types of Information

If a person asserts a confidentiality claim with respect to the specific chemical identity of a new substance, or for health and safety data submitted with the notice, EPA will review the confidentiality claim and may immediately make an initial determination of whether the information is entitled to confidential treatment. EPA will take this action under § 2.204 even prior to the receipt of a request for release of the information, because the Agency has determined that EPA probably will be requested to disclose the information under the Freedom of Information Act (FOIA). Initiation of the procedures of § 2.204

early in the notification period will enable EPA to make all information not entitled to confidential treatment available to the public, and to more effectively meet FOIA response deadlines.

To speed up the process of making this initial determination of confidentiality, EPA strongly urges persons to substantiate their claims with respect to health and safety data and the specific chemical identity of the new chemical substance at the time the information is submitted. If a person wishes to subtantiate his claim for either type of information, his submittal must address the confidentiality questions developed by EPA. Separate questions are included below for use in substantiating claims for health and safety data and for specific chemical identity.

The substantiation must be signed by a responsible company official who has direct knowledge of the information. EPA will regard as confidential any information which the submitter furnishes in response to any of the substantiation questions set forth in this notice, provided the submittal is marked CONFIDENTIAL at the top of each page containing confidential information and provided that, if the information has previously been submitted otherwise, provided that, it is entitled to confidential treatment. If these conditions are met, EPA will not disclose this information without the consent of the submitter unless disclosure is ordered by a federal court.

If a person does not submit appropriate substantiation with his notice EPA automatically will give notice to the submitter under § 2.204(e) that the Agency is making a confidentiality determination. In its notice, EPA will afford the company the opportunity to substantiate its claim by submitting timely comments with respect to the questions which the Agency has developed. Under § 2.204(e) EPA will require the company to furnish substantiation within 15 business days of the company's receipt of the written notice. Persons who submit the appropriate substantiation with the § 5 notice will avoid the difficulties of preparing a thorough substantiation for the Agency in such a short time period. Section 2.205(d) provides that if a company fails to provide substantiation in a timely fashion, EPA shall determine that the company has waived its claim. In this event, the Agency will make such information available to the public without further notice to the submitter.

If the person submits substantiation as discussed above and EPA denies the claim under § 2.306(e), the Agency will transmit a notice of denial to the submitter. This notice will state that EPA intends to make the information available to the public on the 31st day after the notice is received by the submitter.

This discussion is only a brief introduction to the Part 2 procedures which will apply to submitters of confidential information and EPA during the interim period. Persons will be governed by the specific terms of Part 2, and should become aware of those requirements.

Health and Safety Data

If a person asserts a claim of confidentiality for health and safety data submitted with his premanufacture notice, and if the person intends to substantiate his claim, his substantiation must address the following questions:

1. Will disclosure of the information claimed as confidential in your health and safety study disclose a process used in manufacturing or processing a chemical substance or mixture? It so, describe how the information will disclose the process.

2. Will disclosure of the information claimed as confidential in your health and safety study disclose the portions of a mixture comprised by any of the chemical sustances in the mixture? If so, describe how the information will disclose the portions.

3. Will disclosure of the data claimed as confidential in your health and safety study disclose information which is not related in any way to the effects of the substance on health or the environment? If so, describe how the data will disclose this information.

4. Has any of the information claimed as confidential been disclosed in a patent? If so, why should it treated as confidential?

5. Is this information available to the public or your competitors without restriction? If so, why should it be treated as confidential?

6. How do you protect this information from undesired disclosure?

7. Has this information been disclosed to others? If so, what precautions have you taken in regard to these disclosures? Has the information been disclosed to the public or to competitors?

8. In the case of information concerning portions of a mixture comprised by one or more chemical substances, does the mixture leave the control of your company and move in commerce? If so, can the mixture be analyzed to determine the portions of the chemical substances in it?

9. Has EPA, another federal agency, or any federal court made any pertinent confidentiality determinations regarding this information? If so, please attach copies of such determinations.

10. For what period of time should confidential treatment be given? Until a specific date, the occurrence of a specific event, or permanently? Why?

11. What harmful effects to your competitive position, if any, do you think would result from disclosure of the process? The portions? Information not related in any way to the effects of a substance on the health or the environment? How would a competitor use this information? How substantial would the harmful effects of disclosure be? What is the causal relationship between disclosure and the harmful effects?

Uses of the New Chemical Substances

Under § 5(d)(1)(A) of the Act and § 8(a)(2)(B), a submitter must include in his premanufacture notice the "categories or proposed categories or use" of the new chemical substance. He may assert a claim of confidentiality for the information. Until the § 5 rules become final and effective, EPA urges that if the person claims such information to the confidential, he also submit both a generic description of the use and a non-confidential description of the type of exposures which may occur from the use.

If the submitter does not provide EPA any non-confidential use information for inclusion in the § 5(d)(2) **Federal Register** notice, the Agency will develop such a description and will provide the submitter with notice of its intent to release this information. As with information concerning chemical identity discussed below, the notice requirement may prevent inclusion of any use information in the initial § 5(d)(2) notice. If this happens, EPA wil publish an amended § 5(d)(2) **Federal Register** notice with the generic uses when the notification period under § 2.306(e) expires.

In any event, the Agency will not disclose use information if such disclosure would reveal confidential business information under the Agency's business confidentiality rules.

Specific Chemical Identity

Asserting a Confidentiality Claim for the Period Prior to Commencement of Manufacture or Import. A person who submits a premanufacture notice may claim that the specific chemical identity of a substance is confidential for the period prior to the commencement of manufacture or import of the substance

for a commercial purpose. In making this claim the submitter is asserting that the fact that *anyone* intends to manufacture or process the substance for a commercial purpose is confidential. However, a person should not assert a claim of confidentiality for the specific chemical identity if the only confidential fact is the link between the identity and the company. In such a case the submitter should restrict his claim of confidentiality to the link between a particular identity and the submitting company.

If the person intends to substantiate this claim of confidentiality his substantiation must address the following questions:

1. What harmful effects to your competitive position, if any, do you think would result if EPA discloses to the public the identity of the chemical substances which you reported in your premanufacture notice? How could a competitor use such information, given the fact that the link between your company and the chemical identity can be kept confidential? What is the causal relationship between the disclosure and the harmful effects?

2. For what period of time should confidential treatment be given? Until a specific date, the occurrence of a specific event, or permanently? Why?

3. Has the chemical substance been patented? If so, have you granted licenses to others with respect to the patent as it applies to the chemical substance? If the chemical substance has been patented and therefore disclosed through the patent, why should it be treated as confidential during the period prior to manufacture?

4. Has the identity of the chemical substance been kept confidential to the extent that your competitors do not know that it will be manufactured or imported for a commercial purpose *by anyone*?

5. Has the fact that someone is planning to manufacture or import this chemical substance for commercial purposes been made available to the public? (E.g., in technical journals or other publications.)

6. What measures have you taken to prevent undesired disclosure of the fact that you will be manufacturing or importing this substance for a commercial purpose?

7. To what extent has the fact that you will be manufacturing or importing this chemical substance for a commercial purpose been disclosed to others? What precautions have you taken in regard to these disclosures? Has the information been disclosed to the public or to competitors?

8. Have samples of this substance left the premises of your company for any reason? If so, what measures have you taken to guard against discovery of its identity?

9. Has EPA, another federal agency, or any federal court made any pertinent confidentiality determinations regarding this chemical substance? If so, please attach copies of such determinations.

If the submitter claims the specific chemical identity confidential, EPA strongly encourages him to submit a proposed generic name (i.e., less specific), which is only as generic as necessary to protect the confidential identity of the substance, and which reveals to the maximum extent possible toxicologically significant aspects of the molecular structure. In choosing a generic name, the submitter is urged to consult the Agency's *Guidelines for Creating Proposed Generic Names*, included as Appendix II of the January 10, 1979 proposal (44 FR 2278–82). In addition, a person who intends to claim confidentiality for specific chemical identity may seek a determination by EPA of an appropriate generic name, prior to submittal of the premanufacture notice. If the submitter wishes such a determination, he should submit to the Agency the specific chemical identity of the substance, a proposed generic name (after consulting EPA's *Guidelines*), and an explanation of why any more specific name would reveal confidential business information.

Whether or not a proposed generic name is submitted with the premanufacture notice, EPA must develop such a name if the submitter claims the specific chemical identity confidential. The Act requires EPA to publish in the § 5(d)(2) **Federal Register** notice, among other things, information which "identifies the chemical substance for which notice or data has been received." This provision is subject to § 14, so that EPA must use a generic description if the specific chemical identity is claimed confidential. Therefore if EPA receives a notice which claims specific identity confidential but which does not include a proposed generic name, the Agency will choose a name which is only as generic as necessary to protect the confidential identity. Then, under § 14(c) of TSCA and 40 CFR § 2.306(e)(3), EPA will notify the submitter that it intends to disclose the proposed *generic* name in an amended § 5(d)(2) **Federal Register** notice.

EPA's rules require the Agency to provide notice to the submitter before disclosing information claimed to be confidential. Accordingly, if the submitter does not provide a generic name for the substance, the initial **Federal Register** notice will not include *any* identification of the substance for which the premanufacture notice had been submitted. In this case, EPA intends to publish an amended notice in the **Federal Register** with a generic name as soon as the notice period under 40 CFR § 2.306(e)(3) elapses.

If a person submits a generic name, that name will be published in the **Federal Register.** If this generic name is inadequate, EPA will publish an amended notice with a more specific chemical identity after following the procedures discussed above.

Asserting a Confidentiality Claim for the Period After Commencement of Manufacture or Import

A person who submits a premanufacture notice may assert that the specific chemical identity of a substance is confidential for the purposes of the Inventory. In making this claim the submitter is asserting that the fact that *anyone* manufactures, imports, or processes the chemical substance for a commercial purpose is confidential. As discussed above, the person should not assert a claim of confidentiality for the specific chemical identity if the only confidential fact is the link between that identity and the company name. The submitter may make this claim when he submits his premanufacture notice if he intends to commence manufacture within one year from the date of the notice. He must assert the claim no later than the date of submittal of the notice of commencement of manufacture or import. Failure to submit the claim will result in the specific chemical identity being published on the Inventory.

If a person asserts this claim, he must substantiate the claim by submitting detailed answers to the following questions. These questions should be addressed separately from the questions applicable to a claim for the period prior to commencement of manufacture or import.

1. What harmful effects to your competitive position, if any, do you think would result if EPA publishes on the Inventory the identity of the chemical substance? How could a competitor use such information, given the fact that the identity of the substance otherwise would appear on the Inventory of chemical substances with no link between the substance and your company or industry? How substantial would the harmful effects of disclosure be? What is the causal

relationship between the disclosure and the harmful effects?

2. For what period of time should confidential treatment be given? Until a specific date, the occurrence of a specific event, or permanently? Why?

3. Has the chemical substance been patented? If so, have you granted licenses to others with respect to the patent as it applies to the chemical substance? If the chemical substance has been patented and therefore disclosed through the patent, why should it be treated as confidential for purposes of the Inventory?

4. Has the identity of the chemical substance been kept confidential to the extent that your competitors do not know it is being manufactured or imported for a commercial purpose *by anyone?*

5. Is the fact that someone is manufacturing or importing this chemical substance for commercial purposes available to the public? E.g., in technical journals or other publications; in libraries, or state, local, or federal agency public files?

6. What measures have you taken to prevent undesired disclosure of the fact that you are manufacturing or importing this substance for a commercial purpose?

7. To what extent has the fact that you are manufacturing or importing this chemical substance for a commercial purpose been disclosed to others? What precautions have you taken in regard to these disclosures? Has this information been disclosed to the public or to competitors?

8. In what form does this particular chemical substance leave the site of manufacture? (E.g., As part of a product; in an effluent or emission stream.) If so, what measures have you taken to guard against discovery of its identity?

9. If the chemical substance leaves the site of manufacture in a product that is available to either the public or your competitors, can they identify the substance by analyzing the product?

10. For what purpose do you manufacture or import the substance?

11. Has EPA, another federal agency, or any federal court made any pertinent confidentiality determinations regarding this chemical substance? If so, please attach copies of such determinations.

If substantiation does not accompany the claim of confidentiality, EPA will initiate the procedures described above under "General Procedures for Asserting Confidentiality."

Generic Name

If the submitter claims the specific chemical identity of a substance to be confidential during the period prior to commencement of manufacture or import, a generic (i.e. less specific) name must be developed. If the submitter claims confidentiality for specific chemical identity for the Inventory, and if he believes that a narrower generic name than that developed for the period prior to commencement of manufacture would be adequate, the person should propose that name at the time he asserts the claim for the Inventory. Regardless of whether the submitter proposes a revised generic name, if the Agency determines that a narrower name is appropriate EPA will notify the submitter of this fact in the manner described above concerning claims of confidential identity for the period prior to commencement of manufacture.

Disclosure to Persons With Bona Fide Intent To Manufacture

All substances reported to EPA for inclusion on the Initial or Revised Inventories are subject to the inventory rules. In § 710.7(e)(2) of those rules EPA requires that a submitter who claims confidentiality for specific identity for the Initial or Revised Inventories must agree that EPA may disclose the fact that the substance is on the Inventory to another person with a *bona fide* intent to manufacture or import the substance for a commercial purpose. In addition, the inventory rules require the person reporting for the Inventory to have available, and to agree to furnish to EPA upon request, certain information which the Agency could use to resolve uncertainties of identity between the substance on the Inventory and a substance which another person intends to manufacture. Thus although a specific identity reported under the inventory rules is confidential, EPA will disclose to a *bona fide* manufacturer whether the substance is included on the Inventory.

The inventory rules do not apply to substances for which § 5 notices are submitted, and which are to be added to the Inventory upon receipt of a notice of commencement of manufacture or import. In its proposed rules for premanufacture notification , EPA included a procedure for disclosure of certain information to persons with a *bona fide* intent to manufacture which was identical in substance to the procedures established by § 710.7 of the inventory rules. However, these proposed rules are not in effect at this time.

Although there is no requirement under the interim policy that a person who has completed § 5 review and who claims confidentiality for the Inventory agree to EPA's disclosure to a *bona fide* manufacturer that the substance is on the Inventory, submitters are strongly encouraged to state this agreement. When persons do so, the Agency will follow § 710.7(g) of the inventory reporting rules. If a submitter does not agree to allow such disclosure, EPA will not disclosure to a person with a *bona fide* intent to manufacture the substance whether the substance is on the Inventory. Thus to ensure his compliance with § 5, a person with a *bona fide* intent to manufacture or import a chemical substance which has been added to the Inventory following § 5 may be required to submit a premanufacture notice although the substance has completed premanufacture review and is included on the Inventory. EPA developed the procedures for disclosure to persons with a *bona fide* intent to manufacture or import to address just this problem. In fact, representatives of the chemical industry suggested the need for this procedure.

Failure to disclosure identity to *bona fide* manufacturers may impose unnecessary burdens on the *bona fide* manufacturers. However, the chance and degree of inquiry to an original manufacturer who agrees to EPA's procedures is slight. To be informed whether a substance falling within one of the generic names is included on the Inventory, EPA's rules require a person to demonstrate that he has a *bona fide* intent to manufacture or import the substance. To show this, the rules require the person to submit a statement of present intent to manufacture or import, including a description of research and development activities to date and the purpose for which the substance will be manufactured or imported. In addition, EPA requires the inquiring manufacturer to submit an elemental analysis, either an X-ray diffraction pattern or a mass or alternative spectrum of the substance, and any additional information necessary to identify the substance. This approach discourages fishing expeditions by persons without a *bona fide* intent to manufacture or import and thereby protects trade secrets from disclosure to competitors. In addition, if EPA tells the *bona fide* manufacturer that the substance is on the Inventory, the Agency will inform the original manufacturer that someone has made this showing. This will give the original manufacturer similar information about the activities of a *bona fide* manufacturer as that person has with regard to the original manufacturer. The identities of the manufacturers involved will not be disclosed.

A person who submits a confidentiality claim for the identity of a substance on the Inventory should indicate clearly in his claim whether he agrees to disclosure to a person with a *bona fide* intent to manufacture in accordance with § 710.7(g) of the inventory rules. However, regardless of whether he agrees to such disclosure, unless EPA denies his confidentiality claim the Agency will publish the generic name in an appendix to the Inventory, and will not publish the specific identity on the Inventory. If a submitter does not agree that EPA may tell persons with a *bona fide* intent to manufacture whether their particular substances are on the Inventory, the Agency will deny any such request for the information. This interim policy only will be in effect until the premanufacture notification rules are final and effective. At that time, all substances added to the Inventory during the interim period will become subject to the new rules. EPA will provide persons who submitted notices of commencement of manufacture, but who failed to agree to disclosure to *bona fide* manufacturers, an opportunity to agree to the disclosure provisions included in the Agency's final § 5 rules. Failure to indicate such agreement in a timely manner will result in a waiver of the claim, and EPA will include the specific chemical identity on the Inventory.

Substantive Determination on Confidentiality of Specific Chemical Identity

One of the most significant issues in the proposed premanufacture rules is how EPA will handle claims of confidentiality for specific chemical identity, particularly when this information is part of a health and safety study submitted with the premanufacture notice. Until the § 5 rules become final, the only regulations EPA has promulgated pertaining to this area are the Agency's business confidentiality regulations, 40 CFR Part 2, Subpart B. However, in drafting those regulations, EPA did not focus on the particular confidentiality issues raised by the premanufacturing notification requirements.

Pending completion of the § 5 rulemaking, EPA will not disclose specific chemical identity as part of a health and safety study submitted with a premanufacture notice, if such disclosure would reveal confidential business information. This policy will apply both prior to and after a person has commenced manufacture or import of the substance. However, all information submitted to the Agency during the interim period will be subject to the terms of the § 5 rules when they become final.

This interim policy should be distinguished from that contained in § 720.43 of EPA's proposed rules, with respect to confidentiality of specific chemical identity in the period following commencement of manufacture. In § 720.43, EPA proposed that during the period prior to commencement of manufacture the Agency would grant confidential treatment to the specific chemical identity in a health and safety study submitted under § 5 if public disclosure would reveal confidential business information. However, EPA also proposed that after commencement of manufacture, and addition of the chemical to the Inventory, the specific chemical identity contained in a health and safety study would be entitled to confidential treatment only if the information would reveal either confidential processes used in the manufacturing or processing of a chemical substance or mixture, or the confidential portions of chemical substances in a mixture.

The proposed premanufacture rules represnt EPA's current view of the Agency's authority and responsibilities under TSCA. However, EPA recognizes that the Agency's resolution of this issue is one of the most important and controversial issues in the proposal. Industry representatives have maintained that EPA should apply its proposed policy for the period prior to commencement of manufacture or import to the period after commencement as well. On the other hand, representatives of public interest organizations and of organized labor have maintained that specific chemical identity should be disclosed both prior to and after manufacture begins, unless disclosure would reveal confidential processes or portions.

This interim policy will ensure that EPA takes no steps now that could be inconsistent with the Agency's resoulation of this issue in the final § 5 rules. If EPA discloses certain chemical identities prior to promulgation of the rules, and if the final rules do not otherwise mandate such disclosure, the interim disclosure could not be undone. On the other hand, if the Agency does not disclose the identities during the interim policy period and then promulgates a rule consistent with the proposed rules (or authorizing more disclosure), the interim policy will have resulted in a postponement of the release of the specific chemical identity. At most this would delay temporarily the ability of members of the public to examine this information, and to petition EPA to initiate regulatory action.

Compliance and Enforcement

EPA will bring enforcement actions against violators of § 5. In particular, persons who commence manufacture or import prior to notifying the Agency or before the termination period, and persons who fail to submit required data or who make false or misleading statements, will be the subject of enforcement actions. These may include actions for civil penalties, injunctive relief, and possible criminal prosecution. The Agency discussed its general approach to compliance and enforcement in greater detail in the preamble to the proposed premanufacture rules and notice forms (44 FR 2255, January 10, 1979)

Contracts After Close of the Comment Period

During the 75 day public comment period for the proposed rules and notice forms which ended March 26, 1979, interested persons had a variety of opportunities to review and comment upon the proposed rules and forms. EPA held nine public meetings and received written comments from more than 170 persons. In addition, prior to proposal the Agency distributed drafts of its rules and notice forms to interested persons, held a number of public and informal meetings, and received numerous written comments. EPA now is reviewing the transcripts and minutes of the public meetings, the written comments, and other written materials which comprise the public record; and the Agency will prepare its final regulations based on that record.

Until EPA promulgates the rules and forms, the Agency generally will discourage and not participate in discussions and meetings concerning the proposed rules and forms, in order to avoid the possibility of engaging in improper contracts. This includes telephone conversations and informal meetings or discussions. However, if such contacts do occur, EPA participants will make written records of the pertinent facts, including persons involved and the substance of the discussions. These materials will be included in the public record of the rulemaking.

This general policy does not apply to requests for EPA merely to summarize or describe the proposed rules and forms. Likewise it does not limit discussions concerning subjects not covered by the *proposed* regulations,

such as premanufacture testing guidelines and significant new use rules. The policy does not apply to comments or questions focused solely on the Agency's interim policy described elsewhere in this notice. Finally, this policy is not intended to restrict inquiries or comments pertaining to particular premanufacture notices. For example, certain manufacturers may find it helpful to consult with EPA before submitting their premanufacture notice. In addition, EPA expects to receive public comments in response to the § 5(d)(2) **Federal Register** notice of receipt of some premanufacture notices.

Although EPA generally will discourage discussions concerning the terms of the proposed rules and forms, the Agency from time to time nonetheless may determine that such discussions would be useful or necessary. When EPA decides to participate in such a discussion, Agency personnel will prepare an agenda for the meeting, place the agenda in the public record, and publicize the meeting to other interested persons. Any meeting of this type will be open to the public, although active participation may be limited to certain persons. EPA will include the minutes or transcription of the meeting in the public record.

EPA currently intends to hold additional meetings to focus on the development of a revised premanufacture notice form. The Agency has evaluated comments which it received concerning the form and various ways to respond to them. There are many aspects of this issue (e.g., scope of information requested, level of detail), and EPA would find it beneficial to discuss them and possible revisions of the form with interested persons. Thus the Agency will reopen the public comment period for a limited time concerning the forms, but *not* with regard to other rulemaking issues. EPA will announce this additional comment period in the **Federal Register**, including procedures to be followed in requesting meetings and submitting further written comments. The Agency will include in the public record all such comments, plus the transcripts and minutes of any meetings.

Consistent with EPA's approach on discussion of premanufacture notice issues, any person who wishes to meet with EPA personnel to discuss the proposed rules and forms should write a letter to the Agency setting forth an agenda and any materials or issues relevant to both the proposed topic and the need for a meeting. In particular, in light of EPA's general policy to discourage further meetings, the person should indicate why a meeting is needed, and why submittal of further written comment or reliance upon existing parts of the public record would be inadequate.

A person may find it to be necessary to submit additional comments if he develops new information or approaches based upon a reading of others' previously submitted comments, or upon new information or data. EPA will continue to supplement the public record with any such materials, and will consider them to the best of the Agency's ability, given time and resource limitations. Submitters should mark any such comments clearly as being comments for the rulemaking record and should *not* convey the comments as a personal letter or inquiry. The comments should bear the document control number OTS–050002 and should be submitted in triplicate to the Document Control Officer, (TS–793), Office of Toxic Substances, U.S. Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Dated: May 8, 1979.

Steven D. Jellinek,
Assistant Administrator for Toxic Substances.

[FRL 1224–8; OTS–050002C]

[FR Doc. 79–15114 Filed 5–14–79; 8:45 am]

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Tuesday
May 15, 1979

Part VI

Securities and Exchange Commission

Practices in Fixed Price Offerings; Request for Comments and Announcement of Public Hearings

SECURITIES AND EXCHANGE COMMISSION

Practices in Fixed Price Offerings

AGENCY: Securities and Exchange Commission.

ACTION: Request for comments and announcement of hearings.

SUMMARY: The Commission has published notice of a proposed rule change filed by the National Association of Securities Dealers, Inc. which would amend its Rules of Fair Practice governing member practices with respect to fixed price offerings of securities. In view of the importance and complexity of the issues associated with that proposed rule change, the Commission has determined to solicit additional written submissions of data, views and arguments from interested persons, particularly in response to the discussion contained in this release. In addition, the Commission is announcing that it intends to hold public hearings on this subject during September 1979.

DATES: Written comments should be submitted and hearing appearances noted not later than August 1, 1979; public hearings are expected to commence on September 10, 1979.

ADDRESSES: All comments should refer to File No. SR–NASD–78–3 and should be sent with 30 copies to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Public hearings will be held in Room 776 at the above address. All written submissions and hearing transcripts will be made available for public inspection at the Commission's Public Reference Section, Room 6101, 1100 L Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Richard T. Chase, Esq., Office of Self-Regulatory Oversight, Room 341, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549, (202) 755–7620.

SUPPLEMENTARY INFORMATION: Pursuant to Section 19(b)(15 U.S.C. 78s(b)) of the Securities Exchange Act of 1934 ("Act") (15 U.S.C. 78a *et seq.*, as amended by Pub. L. No. 94–29 (June 4, 1975)), the National Association of Securities Dealers, Inc. ("NASD") has filed a proposed rule change ("proposed rule change") concerning the giving and receiving of selling concessions, discounts or other allowances in connection with fixed price offerings of securities. Notice of the proposed rule change was given by Commission release published in the **Federal Register** during August 1978.[1] The proposed rule change is briefly summarized below, and the full text of the proposed rule change is attached as an appendix to this release.

The purpose of this release is to solicit additional written submissions of data, views and arguments from interested persons concerning certain issues raised by the proposed rule change and to announce public hearings with respect to those issues. The Commission has received 43 comment letters on the proposed rule change, including 17 letters requesting that the Commission hold hearings.[2] Because of the importance and complexity of these issues, the Commission considers it appropriate to hold public hearings to explore more fully the matters discussed in this release and other issues raised by the proposed rule change. Written submissions of data, views and arguments, and notifications of appearances at the public hearings, should be made not later than August 1, 1979. The Commission has tentatively scheduled commencement of public hearings for September 10, 1979. The schedule of appearances will be announced by the Commission shortly before the hearings commence. Persons intending to appear should submit the text of any prepared statements not later than four business days prior to their appearance.

I. Introduction and Background

A. Firm Commitment Fixed Price Offerings

In order to establish the basic terminology used in this release, there follows a general description of the underwriting process in a typical firm commitment offering of corporate debt or equity securities, as well as a description of certain sales practices employed by broker-dealers in selling securities in fixed price offerings to institutional customers. In commenting on the issues raised in this release, interested persons should indicate when their analysis is based on circumstances that depart materially from the description provided below.

In a typical firm commitment offering of corporate securities, one or more investment banking firms organize an underwriting syndicate to purchase the securities from the issuer for resale at a specified public offering price established through negotiation with the issuer or competitive bidding. Each member of the syndicate executes an "agreement among underwriters" that designates one or more managing underwriters and fixes the obligations among the members of the syndicate. The syndicate members, through the managing underwriter, also enter into an underwriting agreement with the issuer that sets forth the terms and conditions of the offering and the amount of securities that each member is committed to underwrite.

Syndicate members are compensated for their services by receiving an underwriting discount, or "spread," which is the difference between the price paid to the issuer by the syndicate for the securities and the "initial public offering price" appearing on the cover page of the prospectus.[3] Depending on a number of factors, including the characteristics of the security being distributed, the degree of underwriting risk, the amount of selling effort required and costs associated with the distribution of the securities, the underwriting discount for a particular offering may range from a fraction of 1% to 10% or more of the public offering price.[4] The gross spread is composed of (i) the underwriting compensation, which includes a management fee for the lead underwriter(s), and (ii) the selling concession. The relative size of these components is determined by the syndicate in light of the particular characteristics of the offering. The selling concession in recent years has grown as a percentage of the gross spread, apparently reflecting the increased importance of selling effort to a successful underwriting. To assist the syndicate in distributing the offering, the

[1] Securities Exchange Act Release No. 15020 (August 2, 1978), 43 FR 35446 (1978). The issues associated with the proposed rule change are commonly identified by reference to a judicial decision, *Papilsky* v. *Berndt*, (1976–1977 Transfer Binder) Fed. Sec. L. Rep. (CCH) § 95,627 (S.D.N.Y. 1976), discussed at text accompanying n. 18, *infra*. Accordingly, the complete NASD filing with the Commission containing the proposed rule change is referred to in this release as the "Papilsky filing."

[2] The NASD received a total of 52 comment letters in response to two notices circulated to its members containing drafts of the proposed rule change. In response to publication of notice of the proposed rule change in the **Federal Register**, the Commission has received 22 comment letters. The Commission also received 21 comment letters before formal notice of the proposed rule change was published. All letters received by the Commission and the NASD concerning the proposed rule change are contained in Commission File No. SR–NASD–78–3.

[3] Direct or indirect rebate payments of a portion of the spread appear to be occurring, however, thereby effectively lowering the "initial public offering price" to some purchasers. *See* discussion at text accompanying n. 8, *infra*. The NASD has taken the position that at least certain of these rebates are now improper under its rules. *See* text accompanying n. 20, *infra*.

[4] An interpretation under Article III, Section 1 of the NASD Rules of Fair Practice prohibits member firms from participating in public distributions in which the underwriting arrangements, considering all elements of compensation and other relevant factors, are "unfair or unreasonable."

managing underwriter may select additional dealers to form a selling group. Members of the selling group (which may also include syndicate members) receive the selling concession for such securities as they actually sell and customarily enter into a "selected dealer agreement" setting forth their rights and obligations with respect to the offering.

In addition to the dealers selected by the managing underwriter to form the selling group, other dealers may be included in the selling group at the request of prospective purchasers seeking to place orders with, or designate orders for allocation to, particular firms. "Designated orders" are usually orders for larger amounts of securities placed by institutions with the managing underwriter, with direction that the sale be credited to the account of one or more dealers that are syndicate or selling group members. A designated order is customarily confirmed,[5] and the securities directly delivered, by the managing underwriter. A dealer designated to receive such credit on an order may be added to the selling group where that firm was not a member at the time the order was placed.

As described above, the amount of securities for which a syndicate member is responsible is fixed by agreement. Typically, however, each syndicate member retains control over and directly places only a portion of the securities it has agreed to underwrite, usually referred to as his "retention." The remainder is reserved and placed in a general syndicate account, usually referred to as the "pot," under the control of the managing underwriter. Securities in this account are then allocated and reallocated by the managing underwriter during the offering period among syndicate and selling group members for a variety of reasons, particularly the demonstrated capacity of those members to place the securities with investors. In addition to the public offering conducted directly by the members of the underwriting syndicate and the selling group, underwriting agreements often authorize these members to sell the securities being distributed to other dealers, at a specified discount (a percentage of the selling concession) referred to as the "reallowance," for resale to the public.

In connection with a particular fixed price offering, the underwriters may elect to "stabilize" the market for the offered security during the distribution period. To commence stabilizing, the managing underwriter places a syndicate bid in the primary market for the security to purchase securities offered at that bid price, usually set at or just under the public offering price.[6] The purpose of stabilizing purchases is to facilitate an orderly distribution of the offered securities by preventing or retarding a decline in the market price for such securities during the offering.[7]

The growth of institutional participation in the securities markets has exerted increasing pressure on the fixed price offering system.[8] In connection with distributions, a number of practices have developed which may have the economic effect of granting to institutional and other large purchasers a rebate of some portion of the gross spread in fixed price offerings. Such practices include both direct discounting techniques, such as "overtrading" in swap transactions and certain types of underwriting fee recapture, and indirect compensation arrangements, such as the provision of goods and services in return for so-called "syndicate soft dollars."

In swap transactions, securities are taken in trade from a customer, in lieu of cash, in exchange for the offered securities. A discount from the fixed offering price may be granted to the purchaser of the offered securities where the syndicate member purchases the securities taken in trade at a price exceeding their market value. This "overtrade" is economically equivalent to paying less than the stated offering price for the securities being distributed.

A customer may seek to recapture underwriting fees by designating a broker-dealer affiliate to be included in the selling group. The customer may then purchase the offered security through its affiliate, thereby recapturing the selling concession. Such concession payments to an affiliate enable the customer to obtain direct discounts from the fixed offering price.

A broker-dealer providing research or other services to a customer may be compensated for those services, at least in part, through purchases by the customer in a fixed price offering. The customer can either purchase the securities directly through the broker-dealer or can contact the managing underwriter and "designate" the dealer to receive credit for the order. In these instances, the dealer is compensated indirectly be receiving "soft dollar" concessions for the research or other services it has provided.

B. Background of the Proposed Rule Change

Since the registration of the NASD in 1939 pursuant to the Maloney Act,[9] the NASD has regulated, particularly under Article III, Section 24 of its Rules of Fair Practice,[10] the circumstances in which concessions, discounts or other allowances may be given in fixed price offerings. Section 24, which until filing of the proposed rule change had not been the subject of revision during the 40 years of its existence, provides that:

> [s]elling concessions, discounts, or other allowances, as such, shall be allowed only as consideration for services rendered in distribution and in no event shall be allowed to anyone other than a broker or dealer actually engaged in the investment banking or securities business; provided, however, that nothing in this rule shall prevent any member from selling any security owned by him to any person at any net price which may be fixed by him unless prevented therefrom by agreement.[11]

During this period, Section 24 has received little interpretive attention from the courts or the Commission. In 1941, the NASD imposed sanctions on several member firms that violated the terms of a fixed price underwriting agreement by selling debt securities of Public Service Company of Indiana during the distribution at prices below the public offering price. The NASD charged those members with a violation of Article III, Section 1 of its Rules of Fair Practice, which requires members to "observe high standards of commercial honor and just and equitable principles of trade." In

[5] Any order placed prior to the date of the final prospectus is, as a legal matter, only an "indication of interest," subject to confirmation of sale after the registration statement covering the offering, filed under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), is declared effective.

[6] The syndicate's stabilizing activities during the offering must be conducted in accordance with the provisions of Rule 10b–7 under the Act (17 CFR 240.10b–7).

[7] *See* Rule 10b–7(c) under the Act. The Commission has recognized in the past that stabilization is a form of market manipulation which must be limited and controlled. Securities Exchange Act Release No. 2446 (March 18, 1940) (statement of Commission policy with respect to stabilizing, the "1940 Release"). Accordingly, the Commission has promulgated regulations, designed to curb abuse of the stabilization function in connection with fixed price offerings. *See* 1940 Release and Securities Exchange Act Release No. 5194 (July 5, 1955) (adoption of Rule 10b–7, among other rules).

[8] The manifestation and impact of that participation parallel, in certain respects, the experience gained some years ago with efforts to maintain fixed rates of commission in the secondary markets in the face of increased institutional participation. On the other hand, there are differences between the stock exchanges' establishment of fixed minimum commission rate schedules and the NASD's involvement in fixed price underwritings. *See* Securities Exchange Act Release No. 11203 (January 23, 1975), 40 FR 7394 (1975).

[9] 52 Stat. 1070, 15 U.S.C. 78*o*(c), 78*o*–3, 78q(a), 78cc(b), 78ff(c) (1938).

[10] NASD Rules of Fair Practice Article III, Section 24, NASD Manual (CCH) ¶2174 (1978).

[11] *Id.*

reviewing those sanctions, the Commission held, in *National Association of Securities Dealers, Inc.* ("*PSI*"),[12] that Section 15A(b)(7) of the Act (15 U.S.C. 78o–3(b)(7)) [13] did not permit the NASD to use its disciplinary authority to enforce contracts "designed to restrict a free and open market, even though such contracts may under given conditions fall within an exception to the general public policy against restraints on commerce."[14] In *PSI*, the Commission rejected the NASD's argument that Section 24 supported its interpretation of Article III, Section 1, but noted that the meaning and validity of Section 24 were not directly at issue.[15]

The Commission, however, also expressly rejected any implication that, by invalidating the NASD's rule interpretation, it would similarly seek as a general matter to invalidate or otherwise question the private enforceabiity of customary underwriting agreements to make fixed price offerings. To the contrary, the Commission in *PSI* concluded:

> Thus, if in this case we were faced with the question whether we should or should not prohibit the use of the price-maintenance provisions in question, we would reach the same conclusion that we did with respect to stabilization, *i.e.*, that we should not prohibit such provisions. But the question here is whether the statute permits the NASD, by an interpretation of its rule of fair practice, to add to these familiar restraints and impediments a new form of compulsion—to the end that a member who breaks the price-maintenance agreement shall be subject not only to whatever legal and practical remedies the syndicate manager and members have at their disposal but also to a fine or possible suspension or even expulsion from the NASD.
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> We emphasize that all we are holding is that the NASD erroneously construed its rule as authorization for the disciplining of members for violating price-maintenance agreements. *We are not taking any action calculated to upset the use of such agreements, and we think the fears expressed by the NASD are without substance.* Price-maintenance agreements were in use prior to the creation of this Commission and long before the registration of the NASD. Our present conclusion substracts nothing from any sanctions which might previously have been legally imposed to enforce these agreements. No showing is made that the use of the NASD as an added instrumentality for enforcing price-maintenance agreements is necessary to preserve the present system.[16]

Neither the Commission nor the courts has been called upon to deal directly with the proper interpretation and general applicability of Section 24, unitl recently, [17] A number of cases in the last few years have considered the recapture of commissions by investment companies in a variety of contexts. One of these cases, *Papilsky* v. *Berndt ("Papilsky")*,[18] dealt directly with the recapture of underwriting discounts. In *Papilsky*, a shareholder derivative action was brought against an investment company and its adviser/underwriter for failure to seek such recapture. The court concluded that, in the absence of a contrary ruling from the Commission or the NASD, underwriting recapture was available and legal under Section 24.[19]

As a result of the *Papilsky* decision, several requests were made to the NASD on behalf of investment advisers and investment companies for a ruling on the propriety of recapture under Section 24.[20] The NASD responded to these requests, in November and December 1976, by stating that, in its opinion, Section 24 prohibits underwriting recapture.[21] The Commission, however, wrote the NASD, in February 1977, stating that the NASD "interpretation" of Section 24 raised important issues of general applicability with regard to the public interest, the protection of investors and the appropriateness of burdens on competition, and that prior Commission decisions, including *PSI*, cast doubt on the NASD's authority to adopt a rule having the effect the NASD interpretation would give to Section 24.[22] For those reasons, the Commission stated that the NASD interpretation should be filed as a proposed rule change. After a public meeting with the Commission on May 26, 1977, the NASD agreed to prepare and file the proposed rule change. In July 1978, the NASD made the Papilsky filing following circulation of two exposure drafts to its membership.[23] Pursuant to Section 19(b) of the Act, the proposed rule change cannot become effective unless approved by the Commission after affirmatively finding that it is consistent with the requirements of the Act and Commission rules thereunder applicable to the NASD.[24]

C. Principal Provisions of the Proposed Rule Change

The proposed rule change would amend the NASD's Rules of Fair Practice governing member practices in fixed price offerings. In particular, the proposed rule change would address underwriting recapture, designated orders and swap transactions through amendments to several NASD rules and interpretations.

1. *Article II, Section 1(m).* The term "fixed price offering" would be defined to include any securities offering in the United States at a stated public offering price or prices. The definition would exclude offerings of municipal securities and other "exempted securities," as defined in Section 3(a)(12) of the Act (15 U.S.C. 78c(a)(12)), offerings of mutual fund securities and wholly foreign offerings.

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[12] 19 SEC 424 (1945).

[13] This provision was amended in certain respects by the Securities Acts Amendments of 1975, Pub. L. No. 94–29 (1975), and was redesignated as Section 15A(b)(6) of the Act (15 U.S.C. 78o–3(b)(6)).

[14] 19 SEC at 444. The Commission's conclusion, in *dictum*, that agreements among underwriters to fix the price at which an offering is to be distributed do not generally violate the Sherman Act, 15 U.S.C. 1, was later judicially confirmed in *U.S.* v. *Morgan*, 118 F. Supp. 621 (S.D.N.Y. 1953).

[15] 19 SEC at 445–446.

[16] 19 SEC at 443–444 (emphasis added).

[17] In 1970, the Commission, without addressing the general scope of Article III, Section 24 of the NASD Rules of Fair Practice, affirmed a finding by the NASD that rebates to customers of commissions on the sale of investment company shares violated Section 22(d) of the Investment Company Act of 1940 (15 U.S.C. 80a–22(d)), as well as Section 24. Section 22(d) expressly prohibits a dealer from selling investment company securities at prices below the "public offering price." *Spiro Sideris*, 44 SEC 212 (1970). Also, the Commission did not notify the NASD that Section 24, as the Commission at that time understood the NASD's interpretation of that section, was inconsistent with the Act, pursuant to Section 31(b) of the Securities Acts Amendments of 1975 (Pub. L. 94–25 (June 4, 1975)).

[18] (1976–1977 Transfer Binder) Fed. Sec. L. Rep. (CCH) Paragraph 95,627 (S.D.N.Y. 1976). The holding in *Papilsky* was that the adviser/underwriter of an investment company will be liable for unrecaptured commissions or fees unless it establishes that it fully disclosed to the independent directors that recapture was a possible alternative to other uses of the commissions or fees, and those directors had decided, as a matter of reasonable business judgment, not to seek recapture. *See also Moses* v. *Burgin*, 445 F.2d 369 (1st Cir. 1971) *cert. denied*, 404 U.S. 994 (1971); *Fogel* v. *Chestnutt*, 533 F.2d 731 (2d Cir. 1975), *cert. denied*, 429 U.S. 824 (1976); and *Tannenbaum* v. *Zeller*, 552 F.2d 402 (2d Cir. 1977), *rev'g* 399 F. Supp. 945 (S.D.N.Y. 1975). In *Moses* v. *Burgin*, 316 F. Supp. 31, 47 (D. Mass. 1970), the District Court rejected, on the basis of Section 24, a cause of action relating to underwriting recapture similar to that advanced in *Papilsky*. That decision, however, was reversed on other grounds by the First Circuit.

[19] *Papilsky* at 90,132.

[20] In addition, a number of investment companies and their advisers applied to the Commission for certain exemptions from the Investment Company Act of 1940, including Section 17(a) thereof (15 U.S.C. 80a–17(a)), which restricts securities dealings between registered investment companies and their investment advisers. *See, e.g., Application of Congress Street Fund, Inc. et al.*, August 27, 1976 (File No. 812–3092); *Application of Lord, Abbett & Co., et al.*, August 23, 1976 (File No. 812–4018); and *Application of Fidelity High Yield Municipals, et al.*, May 8, 1978 (File No. 812–4306).

[21] *See, e.g.*, letter from Frank J. Wilson, Senior Vice President and General Counsel of the NASD, to Kenneth B. Cutler of Lord, Abbett & Co. (November 23, 1976).

[22] Letter from George A. Fitzsimmons, Secretary of the Commission, to Gordon S. Macklin, President, NASD, at 2–3 (February 17, 1977).

[23] *See* note 2 *supra*.

[24] *See* Section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)).

2. *Article III, Section 24.* Section 24 now provides, in substance, that selling concessions, discounts or other allowances ("concessions"), as such, can only be given to NASD members[25] actually engaged in the investment banking or securities business as consideration for services rendered in distribution. A proviso to Section 24, however, effectively limits its operation to situations where a member is contractually bound to sell a security at a fixed price.[26]

The NASD asserts in the Papilsky filing that the proposed rule change is "not intended to alter substantially the present scope and application of Section 24." [27] However, the NASD goes on to state that the proposed rule change does clarify that Section 24 applies only to the offering of securities by members at a fixed public offering price and that certain forms of indirect concessions are treated no differently than direct concessions. Thus, the interpretation of section 24 makes very clear that members who agree to offer securities at a stated public offering price cannot devise indirect means to provide select customers with the securities at prices not available to other public investors. The indirect granting of a concession by a device like that contemplated in *Papilsky* has the additional vice of creating a misleading record of the transaction, since the sale is confirmed and recorded at the fixed price while the sharing of the concession—the rebate—is accomplished through other means. [28]

The NASD's authority to regulate member performance of the contractual terms and conditions of fixed price offerings of securities in the manner contemplated by the proposed rule change, whether or not the Papilsky filing reflects only a codification of an existing Section 24 interpretation, constitutes the core legal issue presented by the Papilsky filing.

Specifically, the proposed rule change would amend Section 24 (i) to limit its application expressly to "fixed price offerings," (ii) to extend its prohibition to both the grant and receipt of unqualified concessions, and (iii) to impose documentation, filing and record retention requirements. [29]

In addition, several significant implementing rules and definitions are contained in the proposed interpretation under Section 24. The interpretation would provide that "services in distribution" may be rendered by a broker-dealer either by bearing an under writing risk or by engaging in a selling effort (which must include direct selling contact). The interpretation would also provide that a broker-dealer is deemed to be improperly granting a concession if the broker-dealer furnishes a purchaser of securities with services or products that are commercially available or that are supplied for cash or other agreed upon consideration, unless the broker-dealer receives full consideration for those services or products from sources other than concessions in the fixed price offering.

Certain terms are also defined in the proposed interpretation. A product or service would be "commercially available" if it, or a substantially identical item, is generally available on a commercial basis. A product or service would be considered to be provided "for cash or other agreed upon consideration" if there is an express or implied agreement calling for the customer to compensate the broker-dealer for the product or service. "Full consideration" may be shown by identification of the arrangement for receipt of the consideration, including its source and amount. The broker-dealer would not be required to demonstrate that the agreed upon price represented the fair market price unless the amount of consideration appears on its face to be unreasonably low.

3. *Article III, Section 8.* The proposed rule change would retain the requirement in existing Section 8 that broker-dealers must purchase securities taken in trade at a fair market price or act as agent in the sale of such securities, but would specify the circumstances in which those requirements would be deemed to have been violated. A definition of the term "taken in trade" would make proposed Section 8 applicable whenever an agreement or understanding existed to engage in a swap transaction in connection with a fixed price offering. "Fair market price" would be defined as a price not higher than the lowest independent offer for securities taken in trade for which offer quotations are readily available or, if quotations are not readily available, a price determined by comparison with other securities having similar characteristics. In "an exceptional or unusual case," a price higher than the lowest independent offer would be acceptable if the broker-dealer could demonstrate, taking all relevant factors into consideration, that the price was justified. Section 8 would also be amended to require that a "normal commission" be charged in swap transactions in which a broker-dealer acts as agent in the sale of securities taken in trade.

4. *Article III, Section 36.* Proposed Section 36 would expressly prohibit a member participating in fixed price offerings from selling the securities to (or placing them with) a related person. A "related person" is defined to mean a person or account having a common ownership relationship with the member. Proposed Section 36 would, for example, preclude an institutional purchaser, such as an insurance company, from using an NASD member affiliate to purchase securities in a fixed price offering, thereby enabling it to recapture the concession. Proposed Section 36 would not apply to any related person which is itself subject to that section or which is a non-member foreign broker-dealer agreeing to comply with that section. In addition, the new section would not apply after the termination of a fixed price offering, so long as the member of related person had initially made a *bona fide* public offering of the securities.

II. Purposes of the Proposed Rule Change

In the Papilsky filing, the NASD has advanced several reasons to support its contention that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and that, accordingly, the Commission should approve the proposed rule change. These reasons include making full and accurate disclosure of public offering prices and maintaining the fairness of and public confidence in fixed price offerings. In addition, several commentators have suggested that approval of the proposed rule change is necessary to maintain the fixed price offering system.

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[25] *See* Article III, Section 25 of the NASD Rules of Fair Practice, which provides that no NASD member may deal with any non-member broker-dealer except on the same terms and conditions, including price, as are accorded by such member to the general public. This "incentive to membership" provision is expressly authorized by Section 15A(e) of the Act (15 U.S.C. 70*o*-3(e)).

[26] Typically, the "agreement among underwriters" and the "selected dealer agreement" provide that syndicate and selling group members will, until the syndication is terminated, make a public offering of the subject security at the initial public offering price appearing on the cover of the prospectus.

[27] Papilsky filing, 43 FR at 35450.

[28] *Id.*

[29] The proposed rule change would also eliminate the "as such" parenthetical phrase following the "concessions" enumeration in Section 24. The presence of this phrase, of course, may be inconsistent with the NASD's contention that Section 24 now prohibits indirect discounting practices, such as advisory fee set-offs and soft dollar arrangements. Moreover, that phrase may be consistent with an interpretation limiting the scope of Section 24 to professional intermediaries participating in the distribution process, but not prohibiting customers from receiving discounts. *See PSI*, 19 SEC at 445–446, n. 34.

A. Disclosure of the Fixed Offering Price.

In the Papilsky filing, the NASD asserts that the proposed rule change will enable the NASD to meet its obligations under Sections 15A(b)(2) (15 U.S.C. 78*o*–3(b)(2)) and 15A(b)(6) (15 U.S.C. 78*o*–3(b)(6)) of the Act by preventing fraudulent acts and practices and by fostering full and fair disclosure and commercial honor in connection with fixed price offerings. The NASD maintains that in fixed price offerings the public has come to expect, and the offering documents represent, that all public purchasers will pay the stated public offering price.[30] The NASD has stated that the proposed rule change would assure that all public purchasers pay the stated offering price by prohibiting both the direct and indirect granting of concessions from that fixed price to persons who are not securities professionals rendering services in distribution.[31]

To the extend failure to disclose certain selling practices in the offering documents would be deemed a fraudulent practice, adequate disclosure concerning those selling practices may be an appropriate and sufficient response. If these practices are otherwise lawful, it may be argued that full disclosure, rather than outright prohibition, would satisfy the requirements of the federal securities laws. Interested persons are requested to consider the extent to which the selling practices proscribed by the proposed rule change are facts concerning the plan of distribution which, in the absence of adequate disclosure, may serve to mislead the public with respect to the nature of fixed price offerings. Commentators should specifically address the measures to be used in determining when these practices, or what category of these practices, should be disclosed in the context of a particular offering. Assuming some such disclosure should be made, commentators should also discuss what particular information concerning these practices should be disclosed and assess the effectiveness of any such disclosure.[32] Finally, commentators should also discuss whether regulatory means other than disclosure are necessary or appropriate to further the purposes of the Act.

B. Unfair Discrimination Between Customers

Section 15A(b)(6) of the Act requires that the rules of the NASD not permit unfair discrimination between customers. The NASD has asserted that the proposed rule change would enable it to satisfy this obligation because it would eliminate the possibility that favored customers might be able to obtain all or a part of a dealer's selling concession while other customers paid the full fixed offering price.[33] There is a question, however, whether permitting some customers to bargain for and obtain direct or indirect concessions from fixed offering prices does in fact unfairly discriminate against those customers unable to obtain such concessions.[34]

In evaluating this rationale for the proposed rule change, commentators should discuss any significant economies of scale or transactional cost savings that exist in the purchase of larger amounts of securities in fixed price offerings. In providing this information, commentators should discuss whether decisions by broker-dealers to engage in the practices proscribed by the proposed rule change are based on such cost savings, and whether there are other factors which influence such decisions.

C. Public Confidence in Fixed Price Offerings

The NASD has asserted that, if certain customers receive concessions in fixed price offerings, public confidence in the fairness of the securities markets would be severely undermined, and that to permit such concessions would be contrary to the NASD's obligations under Section 15A(b)(6) of the Act to have rules designed to prevent fradulent practices, to promote just and equitable principles of trade, and to protect investors and the public interest.[35] Such a loss of confidence, it has been argued, might lead smaller investors, aware of the availability of concessions to larger investors, to decide not to purchase securities in public offerings.[36]

The Commission requests interested persons to discuss to what extent smaller investors currently are aware of the availability of direct or indirect concessions to institutions and other larger investors, and whether specific disclosure of such concessions would discourage smaller investors from participating in public offerings. Commentators are also invited to analyze the consequences that any decrease in public confidence concerning the fairness of the securities markets in general, and the underwriting process in particular, would have on the ability of issuers to raise capital through public offerings.

D. Necessity of the Proposed Rule Change To Maintain the Fixed Price Offering System

Several commentators have suggested that an important basis for the proposed rule change is the maintenance of the fixed price offering system itself.[37] Under this rationale, it is asserted that the proposed rule change is necessary, consistent with Section 15A(b)(6) of the Act, to protect investors and the public interest and to remove impediments to and perfect the mechanism of a free and open market. In order to assist the Commission in addressing these questions, commentators are requested to discuss the effects that, alternatively, approval and disapproval of the proposed rule change would have on the fixed price offering system.

The Commission understands that broker-dealers, for some period of time, have been using many of the practices which the proposed rule change seeks to limit or prohibit. Nevertheless, underwriters have continued to conduct fixed price offerings. Accordingly, the Commission requests information regarding the nature and function of the practices that would be prohibited by the proposed rule change. Commentators should discuss the extent to which those practices are currently employed. In addition, they should discuss the extent to which those practices, or any unfavorable consequences resulting from them, are or may be effectively controlled by contractual arrangements among broker-dealers or by other means, and any reasons that such arrangements and means have not been sufficient to

[30] Papilsky filing, 43 FR at 35453.

[31] *Id.* at 35450.

[32] *Compare* comment letters of the Department of Justice at 13 (February 6, 1979); Sanford C. Bernstein & Co., Inc. at 2–3 (October 6, 1978); the American Council of Life Insurance ("ACLI") at 8 (October 10, 1978); Shea & Gardner at 19 (October 10, 1978); and McCarthy, Ried, Crisanti & Maffei, Inc. at 5–6 (October 6, 1978); *with* NASD Notice to Members 77–31, at 19 (September 23, 1977).

[33] Papilsky filing, 43 FR at 35453.

[34] Different rates of commissions and fees are, for example, permitted in transactions on national securities exchanges. *See* Rule 19b–3 under the Act 17 CFR 240.19b–3, and Securities Exchange Act, Release 11203 (January 23, 1975), 40 FR 7394 (1975). In addition, arbitrageurs frequently capture the soliciting dealer fee in tender offers, effectively establishing a sales price per share higher than the tender offer price. *See, e.g.*, Securities Exchange Act Release No. 9395 (November 24, 1971).

[35] Papilsky filing, 43 FR at 35453.

[36] Comment letter of the Securities Industry Association ("SIA") at 14–15 (March 7, 1979).

[37] *See* comment letter of the SIA (March 7, 1979). *See also, e.g.*, comment letters to the NASD of Donaldson, Lufkin & Jenrette at 1 (November 4, 1977); and McDonald & Co. at 1 (November 2, 1977).

control adequately those practices or consequences.

If commentators believe that disapproval of the proposed rule change would result in increased use of those practices that the proposed rule change would restrict, they should state the basis for that conclusion. Commentators should also discuss any harm they believe results from these practices or would result from their increased use, the manner in which such harm would be incurred, and the categories of persons who would be disadvantaged thereby. In particular, commentators should discuss the policy considerations applicable to underwriting fee recapture by certain purchasers and should analyze how disapproval of the proposed rule change would affect the profitability of fixed price offerings or increase the risks to underwriters (*e.g.*, by adversely affecting their ability to engage in stabilization of such offerings). Commentators are also requested specifically to discuss how a reduction in profitability or an increase in risk would affect the willingness or ability of broker-dealers to participate in offerings and increase the cost to issuers of issuing such securities. In considering these questions, commentators should also assess any adverse consequences to the fixed price offering system that might result from approval of the proposed rule change.[38]

The Commission understands that underwriters generally believe their ability to distribute certain offerings successfully, particularly where market conditions may be unfavorable, often depends on their ability to stabilize those offerings. The increased availability of direct or indirect discounts in a fixed price offering might create an economic incentive for institutions to resell the securities so purchased into the stabilizing bid. The continuous net settlement and book entry characteristics of the evolving national system for clearance and settlement have apparently made it nearly impossible for the managing underwriter to trace such sales and thus to enforce certain provisions of the "agreement among underwriters" and the "selected dealer agreement." Under some circumstances, this selling activity may exert substantial pressure on the stabilizing bid.

The Commission solicits comment on the significance of institutional sales into stabilizing bids and the effect the proposed rule change would have on such behavior. Commentators should discuss how such sales might be detected and whether, as a practical matter, the risk of detection effectively discourages such sales. Commentators should also discuss whether regulatory means other than the proposed rule change would effectively limit such practices. Comments are requested on whether a stabilizing bid could be maintained at or near the price paid by the syndicate for securities, rather than at or near the public offering price for such securities, without having a material adverse effect on the distribution of the securities to retail customers. Commentators are also requested to discuss whether they believe disapproval of the proposed rule change would materially increase the risks of stabilizing and, if so, to what extent this would discourage broker-dealer participation in offerings involving higher risk.

[38] *See* discussion at text accompanying ns. 76–80, *infra*.

III. Consistency of the Proposed Rule Change with the Requirements of the Act

To approve the proposed rule change, the Commission is required, pursuant to Section 19(b) of the Act (15 U.S.C. 78s(b)), to find that it is consistent with the requirements of the Act and any Commission rules thereunder applicable to the NASD. The Commission must disapprove the proposed rule change if it is unable to make that affirmative finding. The statutory requirements that the Commission must consider in determining whether to approve the proposed rule change include those set forth in Section 15A(b) of the Act (15 U.S.C. 78*o*–3(b)), particularly subsections 15A (b)(2), (b)(6), and (b)(9). In discussing the proposed rule change, interested persons should consider the requirements of those sections, as discussed below, as well as any other requirements of the federal securities laws that they believe may apply to the proposed rule change, and should analyze the possible ramifications of the proposed rule change in light of the applicable statutory criteria.

A. Fixing Prices or Fees

In analyzing the proposed rule change, the Commission must consider Section 15A(b)(6) of the Act. That section requires that the rules of a national securities association not be designed "to fix minimum profits or to impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members." As discussed above, the Commission in the *PSI* case held that the NASD's attempt, under Article III, Section 1 of its Rules of Fair Practice, to impose sanctions on several of its members for violating the price terms of an underwriting agreement, exceeded the NASD's authority under the predecessor provision of Section 15A(b)(6) of the Act.[39] The NASD asserted in *PSI* that, because the schedule of prices and discounts was imposed by contractual agreement among the member firms, it was not "fixed" or "imposed" by NASD rule.[40] The Commission rejected this argument, concluding that, in bringing disciplinary proceedings under its rules, the NASD was itself imposing the schedule of discounts established by such contracts.[41]

Commentators are requested to discuss whether the proposed rule change would fix minimum profits or impose any schedule or fix rates of commissions, allowances, discounts or other fees in contravention of Section 15A(b)(6) of the Act. In that connection, commentators should discuss any changes occurring in the securities industry since the *PSI* decision that might affect the economic justification for fixed price offerings or practices occurring in such offerings, including the practices sought to be proscribed by the proposed rule change.

B. Enforceability of the Proposed Rule Change

Section 15A(b)(2) of the Act requires that the NASD have the capacity to enforce compliance by its members and their associated persons with its rules. This objective may not be accomplished unless the NASD's rules can be fairly and effectively enforced. Accordingly, in order to assist it in analyzing the proposed rule change, the Commission is seeking comments from interested persons with respect to the enforceability by the NASD of the proposed rule change.

Enforceability of a self-regulatory organization rule is only one of several factors considered by the Commission in approving or disapproving a rule change under Section 19(b) of the Act. Nevertheless, in the context of the proposed rule change, a number of questions have been raised concerning its basic enforceability in today's market environment. Accordingly, commentators are requested to consider whether the proposed rule change, if not enforceable in a uniform and consistent manner, would unfairly discriminate against certain broker-dealers. Interested persons should also consider

[39] 19 SEC 424 (1945). Some of the details of that case are discussed in the text accompanying n. 12, *supra*.

[40] A similar argument has been advanced by the NASD with respect to the proposed rule change. *See* Papilsky filing, 43 FR at 35453.

[41] 19 SEC at 437–438.

whether any identified difficulties result from defects in the specific provisions of the proposed rule change or may be inherent in any regulatory enforcement of fixed price offering agreements.

1. *Section 24.* Under proposed Section 24, in order to receive a selling concession, a broker-dealer must either be an underwriter or engage in some selling effort through "direct selling contact." The proposed interpretation of Section 24, however, does not provide any clear definition or examples of direct selling contact. In analyzing proposed Section 24, commentators should discuss any difficulties they perceive the NASD might encounter in seeking to enforce the direct selling contact requirement.[42]

Under proposed Section 24, a broker-dealer has improperly granted a concession when it has furnished a customer with research or other services that are (i) "commercially available," or (ii) provided "for cash or other agreed upon consideration," and the broker-dealer has not received "full consideration" for those services. The proposed interpretation of Section 24 states that services or products are deemed "commercially available" if they are generally available on a commercial basis. A product or service would be commercially available if it or a "substantially identical" item could be purchased directly or indirectly by the recipient from the broker-dealer providing the service or from a third party.[43] Commentators are requested to discuss the extent ot which the NASD would be able to determine consistently whether services or products are commercially available,[44] particularly research services that may be offered for "soft dollars." Commentators should also discuss any potential difficulties that may arise for broker-dealers seeking to comply with the requirements of this provision.[45]

In order to determine whether a product or service is supplied "for cash or other agreed upon consideration," the NASD must be able to detect any express or implied agreements which give customers concessions from fixed price offerings.[46] Among the Commission's concerns with respect to the enforceability of the proposed rule change, however, are that the detection and proof of the existence of such agreements with customers may well be extremely difficult. Apparently, those agreements are seldom in writing, and often are not even articulated orally.[47] Instead, it is alleged,

> There are courses of conduct that give rise to informal understandings that the services the investor received from broker/dealers will be taken into account both when agency transactions are effected and also when underwritten securities are purchased.[48]

The Commission understands that often the terms of such informal understandings, including the amount of compensation, are unspecified,[49] and payment is not made on an immediate *quid pro quo* basis.[50] The Commission also understands that there are a variety of reciprocal and other techniques that broker-dealers and their customers may be able to employ to circumvent the proposed rule change.[51]

Even if an understanding between a broker-dealer and customer can be identified, it may be difficult to determine whether it constitutes an agreement proscribed by the proposed rule change. The NASD had indicated that proposed Section 24 is intended to reach both obligations that are legally binding and those that are not, including some moral obligations.[52] The NASd also states, however, that some services may permissibly be furnished without compensation in order to promote customer goodwill.

The Commission requests information from commentators concerning the types of arrangements various broker-dealers and their customers maintain with respect to the provision of research and other services. Commentators are also requested to discuss the difficulties the NASD may encounter in establishing that obligations, which are not legally enforceable by the broker-dealers to whom those obligations are owed, nevertheless constitute agreements that would give rise to violations of proposed Section 24.[53]

If a broker-dealer has provided a customer with products or services that are commercially available or are provided for cash or other agreed upon consideration, proposed Section 24 requires a determination of whether the broker-dealer has received "full consideration" for such products or services. Unless the amount of consideration appears on its face to be unreasonably low, it would not be necessary to establish that the agreed upon price represented fair market price.[54] Commentators are requested to evaluate any enforcement problems that may exist in determining receipt of "full consideration" without reference to fair market price. Commentators should discuss particularly any potential problems in applying this requirement to large broker-dealers that have a broad business mix and, accordingly, have a number of frequently overlapping business relationships with the same institutional customer.[55]

2. *Section 8.* Proposed Section 8 is intended to prohibit overtrading in swap transactions effected in connection with fixed price offerings by requiring that a broker-dealer pay a "fair market price" for securities "taken in trade." This Section appears to pose a number of enforcement problems. In addition, broker-dealers may be able to engage in "overtrading" while literally satisfying its requirements.

Proposed Section 8 would allow a broker-dealer, in "an exceptional or unusual case," to pay a price "higher than the lowest independent offer" for securities taken in trade if the price could be justified.[56] Commentators should discuss whether the factors justifying pricing variations in swap transactions are so diverse and difficult to determine that broker-dealers would

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[42] Commentators have suggested, for example, that this requirement could be accommodated by a *pro forma* telephone call in which the broker-dealer recommended the security being distributed. *See* comment letters of Shea & Gardner at 18 (October 10, 1978); and ACLI at 9 (October 12, 1978).

[43] Papilsky filing, 43 FR at 35447. The Commission has established a somewhat less restrictive standard in interpreting Section 28(e) of the Act (15 U.S.C. 78bb(c)). In that context, research services, for example, would not be considered commercially available unless "readily and customarily available and offered to the general public on a commercial basis." *See* Securities Exchange Act Release No. 12251 (March 24, 1976).

[44] *See* comment letters of ACLI at 10 (October 12, 1978); Shea & Gardner at 8 (October 10, 1978); McCarthy, Ried, Crisanti & Maffei, Inc. at 3 (October 6, 1978); and comment letter to the NASD of Lynch, Jones & Ryan at 5 (February 27, 1978).

[45] See comment letter of the ACLI at 10 (October 12, 1978). For instance, any difficulties the NASD may encounter in subsequently determining if a product or services is commercially available would seem ot be compounded for a firm required to make that determination at the time of the transaction. Commentators should also evaluate the costs in time and resources of compliance with the commercially available prohibition.

[46] Papilsky filing, 43 FR at 35448.

[47] *See* comment letter of Shea & Gardner at 14 (October 10, 1978). *See also* comment letter to the NASD of Baker, Watts & Co. at 1 (February 24, 1978).

[48] Comment letter of Shea & Gardner at 14 (October 10, 1978). *See also* comment letter of Continental Bank at 3 (October 10, 1978).

[49] *See* comment letters of Continental Bank at 3 (October 10, 1978); and ACLI at 11 (October 12, 1978).

[50] *See* comment letter of Continental Bank at 3 (October 10, 1978).

[51] *See* comment letter of Sanford C. Bernstein & Co., Inc., Attachment 1 at 3 (October 6, 1978).

[52] Papilsky filing, 43 FR at 35451

[53] *See* comment letters of Shea & Gardner, at 6, 10 (October 10, 1978); ACLI at 10–11 (October 12, 1978); and McCarthy, Ried, Crisanti & Maffei, Inc. at 3, 4–5 (October 6, 1978).

[54] Papilsky filing, FR at 35448.

[55] *See* comment letter of McCarthy, Ried, Crisanti & Maffei, Inc. at 3 October 6, 1978). *See also* comment letter to the NASD of Lynch, Jones & Ryan at 5 (February 27, 1978).

[56] *See* Papilsky filing, 43 FR at 35446.

use this exception to cover overtrades.[57] Proposed Section 8 would require that quotations, for securities that are not quoted on an exchange or in NASDAQ, be obtained from two or more "independent dealers." Commentators are requested to consider whether adequate means exist to surveil the authenticity of these quotations.[58]

Commentators should also consider whether even the objective standards of proposed Section 8 would enable broker-dealers to effect swap transactions that technically comply with proposed Section 8, but would nevertheless constitute overtrades. The Commission understands, for example, that blocks of securities often trade at prices that are discounted from the round lot prices for those securities. The term "fair market price" in Section 8 is defined in terms of the lowest independent offer, which is a round lot price. A failure to reflect the discounted price of the block in a swap transaction could thus result in the granting of a concession through overtrading, without literally violating Section 8. Commentators should consider whether these standards would permit overtrades by allowing customers to sell securities to Broker-dealers in swap transactions at prices higher than the customer would otherwise have obtained in selling those securities.

Commentators are also requested to discuss whether it would be difficult in some circumstances to ascertain that a swap transaction has occurred. While simultaneous swap transactions presumably would not be difficult to detect, it has been asserted that "the new rules would be fairly easy to circumvent through the use of unrelated trades."[59] For instance, uncovering the existence of an agreement or understanding to engage in a swap transaction would appear to be difficult if the parties created no written records of the understanding and the swap was effected through asynchronous transactions. The Commission, accordingly, requests information on techniques that could be used to evade proposed Section 8 and on whether means exist for their detection and prevention. Commentators should also consider whether a regulatory mechanism other than the proposed rule change would be more appropriate or effective in prohibiting overtrading in swap transactions.

Proposed Section 8 would require that a "normal commission" be charged in swap transactions in which a broker-dealer acts as agent. Commentators should consider whether the NASD, in determining what commission should be regarded as "normal," would be able to develop a consistent enforcement policy that would notify broker-dealers as to a permissible level of commission charges in agency swap transactions without also effectively fixing or establishing a schedule of commission rates for such transactions.

C. Unfair Discrimination Between Brokers and Dealers

Section 15A(b)(6) of the Act requires that the rules of the NASD not be designed to permit unfair discrimination between brokers and dealers, and Section 15A(b)(9) states that the NASD's rules may not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Commentators should discuss whether the proposed rule change would have any such discriminatory or anticompetitive effects.

1. *Broker-Dealers that Supply Research.* The proposed rule change may have an adverse impact upon broker-dealers that supply research to institutions and other large investors. Some broker-dealers derive a significant portion of their revenues from sales concessions earned on designated orders placed by institutions to whom such broker-dealers have supplied research.[60] These revenues may be severely curtailed by the proposed rule change.

Proposed Section 24 would require that a broker-dealer perform services in distribution, either by acting as an underwriter or by making a selling effort based upon direct contact, in order to be eligible to receive any selling concession in a fixed price offering. The Commission has been informed that many broker-dealers that supply research to customers may be unable to meet either of these requirements.[61]

Proposed Section 24 would also prohibit a broker-dealer from providing to a customer research or other services that are "commercially available" or that are supplied to that customer or some other person "for cash or other agreed upon consideration" unless the broker-dealer is fully compensated by the customer for such services from sources other than concessions from the sale of securities in a fixed price offering. The Commission understands, however, that the research supplied by broker-dealers to customers who designate them in fixed price offerings is often either commercially available[62] or supplied for cash or other agreed upon consideration.[63] A number of commentators have also suggested that the customers who currently receive such research may be unable or unwilling to pay for it by means other than selling concessions.[64]

The Commission wishes commentators to address these matters. In doing so, commentators should discuss the role of broker-dealers that supply research in the securities distribution process and the impact of the proposed rule change upon those broker-dealers.

2. *Broker-dealers Without In-House Research Capability.* Restrictions in proposed Section 24 with respect to research or other services that are "commercially available" may unfairly discriminate against broker-dealers without "in-house" research capacity in favor of firms with both research and sales capacity.[65] Commentators have suggested that research purchased from third parties is more likely to be deemed "commercially available" than internally generated research because most third party suppliers of research also offer that research to others for cash or other consideration.[66] Because

[57] *See* comment letter to the NASD of Smith Barney, Harris Upham & Co., Inc. at 1 (February 21, 1978). *See generally* comment letters to the NASD of Anthony F. Castellano at 2 (November 4, 1977); McCarthy, Ried, Crisanti & Maffei, Inc. at 4 (October 31, 1977).

[58] *See* comment letter of Transamerica Investment Management Co., Inc. ("Transamerica") at 4 (September 21, 1978). *See also* comment letter to the NASD of McCarthy, Ried, Crisanti & Maffei, Inc. at 4 (October 31, 1977).

[59] *See* comment letter of Transamerica at 5 (September 21, 1978). *See also* comment letter to the NASD of McCarthy, Ried, Crisanti & Maffei, Inc. at 4 (October 31, 1977).

[60] *See* comment letters of ACLI at 5 (October 12, 1978); Continental Bank at 2 (October 10, 1978); and Richard W. Stanley at 3 (September 20, 1978).

[61] *See* discussion at text accompanying notes 76–80, *infra*, and comment letters of ACLI at 2 (October 12, 1978); and Shea & Gardner at 13–14 (October 10, 1978).

[62] *See, e.g.*, comment letters of the ACLI at 10 (October 12, 1978); the Illinois State Board of Investment (September 20, 1978); and Shea & Gardner at 18 (October 10, 1978).

[63] *See, e.g.*, comment letters of the ACLI at 11 (October 12, 1978); the SIA at 9 (March 7, 1979); and Shea & Gardner at 18 (October 10, 1978); and comment letter to the NASD of Lynch, Jones & Ryan at 5 (February 27, 1978).

[64] *See* comment letters of the State of Connecticut, Office of the Treasurer (October 5, 1978); McCarthy, Ried, Crisanti & Maffei, Inc. at 4–5 (October 6, 1978); and Richard W. Stanley at 2 (September 20, 1978). *Cf.* comment letter of the Illinois State Board of Investment (September 20, 1978).

[65] *See* comment letter to the NASD of Lynch, Jones & Ryan at 3 (February 27, 1978); *cf.* comment letters of Chemical Bank (June 9, 1978); The Boston Company of Louisville, Inc. at 1 (May 4, 1978); and Sears Investment Management Co., Attachment at 1 (December 11, 1978).

[66] *See* comment to the NASD of Lynch, Jones & Ryan at 3 (February 27, 1978); *cf.* comment letter of McCarthy, Ried, Crisanti & Maffei, Inc. at 4 (October 6, 1978).

customers may be unwilling to pay for research by means other than selling concessions, it is argued that firms that lack in-house research capabilities may be competitively disadvantaged.[67]

The NASD has stated that the proposed rule change would not discriminate against firms that lack in-house research capability because third party research would not be deemed "commercially available" so long as it is not made available to others, *i.e.*, purchased by the broker-dealer on an exclusive basis. If a firm with an in-house research staff makes its research available to anyone on a commercial basis, that research would also be deemed to be "commercially available."[68]

The Commission wishes interested persons to comment upon the extent to which firms without in-house research capability generally participate in fixed price offerings, their role in such offerings and how their role would be altered by the proposed rule change. Interested persons are also requested to evaluate the extent to which third party research currently is available on an exclusive basis and how its cost compares to that of research which is made "commercially available."

3. *Broker-Dealers Who Have Not Historically Participated in Underwritings.* The Commission also solicits information on whether the proposed rule change would make it more difficult for broker-dealers that historically have not been included by managing underwriters in underwriting syndicates or selling groups, or have been included only to a limited extent, to participate in the future in fixed price offerings.

Several commentators have pointed out that a broker-dealer's participation in a public offering and the size of that participation are often determined by historical patterns of underwriting participation and past relationships with the managing underwriter, rather than by the broker-dealer's capacity to distribute the particular securities.[69] These commentators have suggested that designated orders enable smaller firms to obtain a greater participation in selling groups than they otherwise might attain based on those conventional considerations.[70]

Interested persons are requested to discuss the factors which determine a firm's participation in a fixed price offering. Commentators should also discuss the impact of the proposed rule change on broker-dealers that historically are not included by managing underwriters in syndicate or selling groups, and the effect of any decreased participation by such broker-dealers on the fixed price offering process.

4. *Unfair Discrimination Against Broker-Dealers Related to Institutional Investors.* Proposed Section 36 would prohibit a broker-dealer from selling to or placing with a "related person" securities that are part of a fixed price offering. It appears that a broker-dealer providing investment advice to managed accounts is able to lower its advisory fee in the expectation that there will be recurring opportunities to sell securities from fixed price offerings to such accounts.[71] Commentators should consider whether proposed Section 36 would unfairly discriminate against broker-dealers that could not engage in this practice for related persons, where broker-dealers providing investment advice to unrelated persons were not similarly constrained.

The NASD has indicated that proposed Section 24 is intended to prohibit broker-dealers that manage the accounts of unrelated persons from granting *de facto* discounts on fixed price offerings by reducing their advisory fees to those accounts.[72] The NASD also has maintained that other laws exist that prohibit broker-dealers from action as principals in transactions with managed accounts.[73] For example, broker-dealers are generally prohibited from effecting principal transactions with pension funds they manage.[74] However, broker-dealers generally are not prohibited from effecting principal transactions for managed accounts, provided that there is full disclosure and informed consent.[75]

The Commission requests interested persons to discuss the effects proposed Section 36 would have on broker-dealers affiliated with institutional investors. Commentators should also consider any other legal constraints on broker-dealers placing securities with managed accounts on a principal basis.

D. Creation of Impediments to a Free and Open Market

Section 15A(b)(6) of the Act requires that the rules of the NASD be designed to remove impediments to and perfect the mechanism of a free and open market. Commentators should discuss whether the proposed rule change would create impediments to a free and open market.

1. *Participation of Large Investors in Fixed Price Offerings.* Under the proposed rule change, institutions and other large investors may be required to pay higher prices in fixed price offerings than they currently pay because they no longer could receive concessions. It has been suggested that this increase in cost might cause such investors to reduce their participation in fixed price offerings.[76]

Commentators should discuss how the proposed rule change would affect investor purchasing patterns with respect to fixed price offerings. In particular, commentators are requested to discuss those factors they believe influence investor purchasing practices in fixed price offerings and the type and availability of investment alternatives. Interested persons should also comment on how the response of institutional investors might vary according to the type of investor involved. Commentators are also requested to discuss the effect of any reduction in purchases by large investors on the fixed price offering process.

2. *The Availability of Research.* A number of commentators have suggested that proposed Section 24 would limit the availability of research, and might therefore impair the ability of those receiving research to make prudent investment decisions.[77] The proposed rule change would prevent institutions and other large investors from using designated orders to purchase research from broker-dealers.[78] Interested

[67] Id.

[68] Papilsky filing, 43 FR at 35452, 35455.

[69] *See, e.g.*, comment letter of Sanford C. Bernstein & Co., Inc. at 2 (October 6, 1978); and comment letters to the NASD of Mesirow & Co. at 1 (October 31, 1977); Edelstein, Campbell & Co. at 1 (October 24, 1977); and Cardinal Investment Co. at 1 (October 14, 1977).

[70] *Id.*

[71] *See* comment letter of Shea & Gardner at 11 (October 10, 1978).

[72] Papilsky filing, 43 FR at 35456.

[73] *Id.*

[74] *See* Section 406(a) and 406(b) of the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, and ERISA Prohibited Transaction Exemptions 79-1, 44 FR 5963 (January 30, 1979), and 75-1, 40 FR 50845 (October 31, 1975). *See also* n. 20, *supra*, regarding dealings between investment companies and their advisers.

[75] *See* Section 206(3) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-6(3)), and Rules 206(3)-1 and 206(3)-2 thereunder (17 CFR 275.206(3)-1 and 275.206(3)-2); Section 10(b) of the Act (15 U.S.C. 78j(b)); Rule 10b-5 under the Act (15 CFR 240.10b-5); *Chasins* v. *Smith, Barney & Co., Inc.*, 438 F.2d 1167, 1171-1172 (2d Cir. 1970); *Hughes* v. *Securities & Exchange Comm'n*, 174 F.2d 969, 975-976 (D.C. Cir. 1949); *Cant* v. *A. G. Becker & Co., Inc.*, 374 F. Supp. 36, 45-46 (S.D.N.Y. 1974); *Arleen W. Hughes*, 27 SEC 629 (1948).

[76] *See* comment letter of State Board of Administration of Florida (September 15, 1978).

[77] *See, e.g.*, comment letters of Phoenix Mutual Life Ins. Co. at 2 (October 10, 1978), State of Connecticut, Office of the Treasurer (October 5, 1978); The Third National Bank & Trust Co. (May 5, 1978); and Sears Investment Management Co. at 1 (April 27, 1978).

[78] *See* discussion in text accompanying n. 60, *supra*.

persons are requested to discuss the importance of research to the making of investment decisions. Commentators should also discuss whether any decrease in the ability of investors to obtain research would affect their willingness to purchase securities in fixed price offerings.

3. *Disincentive for Transactions Which May Aid the Securities Distribution Process.* The proposed rule change may discourage broker-dealers from engaging in certain transactions which currently may contribute to the securities distribution process. The NASD has stated, for example, that use of swap transactions is a helpful business practice which may, in the context of public offerings of securities, facilitate the distribution process.[79] Under the proposed rule change, however, broker-dealers may be less willing to engage in swap transactions in fixed price offerings for fear of violating proposed Section 8.[80]

Commentators should discuss the effect of the proposed rule change on the willingness of broker-dealers to engage in swap transactions or other practices that may aid the securities distribution process. Commentators should also consider the effect any decrease in the use of such transactions would have on the fixed price offering system.

* * * * *

Persons wishing to appear at the public hearings should contact Richard T. Chase, Division of Market Regulation, Room 341, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, telephone number (202) 755–7620, not later than August 1, 1979. The public hearings are tentatively scheduled to begin Monday, September 10, 1979, at 10:00 a.m., in Room 776 at the above address. The schedule of appearances will be announced by the Commission shortly before the hearings commence. Persons intending to appear at the hearings should submit the text of any prepared statements not later than four business days prior to their appearance and are invited, at the time of their appearance, to make copies of their statements available to interested persons attending the hearings. Written presentations of views, data and arguments should be submitted not later than August 1, 1979. All submissions should refer to Commission File No. SR–NASD–78–3 and be delivered, together with 30 copies, to George A. Fitzsimmons, Secretary of the Commission, Room 892, at the above address. Copies of all written submissions and hearings transcripts will be made available at the Commission's Public Reference Room, 1100 L Street, NW., Washington, D.C.

By the Commission.

George A. Fitzsimmons,

Secretary.

May 9, 1979.

Text of the Proposed Rule Change

Proposed Amendment to Article II, Section 1 of the Rules of Fair Practice

Article II, Section 1 is proposed to be amended by the addition of a new subsection (m). All other subsections of Section 1 remain unchanged.

"Fixed Price Offering"

(m) The term "fixed price offering" means the offering of securities at a stated public offering price or prices, all or part of which securities are publicly offered in the United States or any territory thereof, whether or not registered under the Securities Act of 1933, except that the term does not include offerings of "exempted securities" or "municipal securities" as those terms are defined in Section 3(a)(12) and 3 (a)(29), respectively, of the Securities Exchange Act of 1934 or offerings of redeemable securities of investment companies registered pursuant to the Investment Company Act of 1940 which are offered at prices determined by the net asset value of the securities.

Proposed Amendment to Article III, Section 8 of the Rules of Fair Practice

Article III, Section 8 is proposed to be amended by adding the language in italics and by deleting the language in brackets.

Section 8

(a) A member, [when a member of a selling syndicate or a selling group, shall purchase] *engaged in a fixed price offering, who purchases or arranges the purchase of* securities taken in trade *shall purchase the securities* at a fair market price at the time of purchase[,] or shall act as agent in the sale of such securities[,] *and charge a normal commission therefor.*

(b) When used in this section—

(1) the term "taken in trade" means the purchase by a member as principal, or as agent for the account of another, of a security from a customer pursuant to an agreement or understanding that the customer purchase securities from the member which are part of a fixed price offering.

(2) the term "fair market price" means—

a. a price which is not higher than the lowest independent offer for the securities at the time of purchase, if offer quotations for the securities are readily available. If such quotations are not ready available, the fair market price may be determined by comparing the security taken in trade with other securities having similar characteristics and of similar quality and for which offer quotations are readily available; or

b. in an exceptional or unusual case, a price higher than the lowest independent offer when all factors relevant to the transaction are taken into consideration, including, among other things, whether a customer of a member has given an indication of interest to purchase the securities taken in trade at a higher price; the member's pattern of trading in the securities or comparable securities at the time of the transaction; the member's position in and the availability of, the securities taken in trade; the size of the transaction; and the amount by which the price paid exceeds the lowest independent offer. In all such cases the burden for demonstrating justification that the higher price was the fair market price shall be on the member.

(3) the term "normal commission" means an amount of commission which the member would normally charge to that customer or a similarly situated customer in transactions having similar characteristics but not involving a security taken in trade.

(c) A member, in determining fair market price pursuant to this Section, shall with respect to—

(1) common stocks, which are traded on a national securities exchange or for which quotations are entered in an automated quotation system, obtain the necessary quotation from the national securities exchange or from the automated quotation system; and

(2) other securities and common stocks not included in subparagraph (1) of this subsection (c) obtain directly or with the assistance of an independent agent necessary quotations from two or more independent dealers.

(d) A member who purchases a security taken in trade shall keep or cause to be kept adequate records to demonstrate compliance with this Section and shall preserve the records for at least 24 months after the transaction. If an independent agent is used for the purpose of obtaining quotations, the member must request the agent to identify the dealers from whom the quotations were obtained and the

[79] Papilsky filing, 43 FR at 35449.

[80] *See* comment letter to the NASD of Johnson, Lane, Space, Smith & Co., Inc., at 2 (November 2, 1977).

time and date they were obtained or request the agent to keep and maintain for at least 24 months a record containing such information.

* * * * *

Interpretation of the Board of Governors

Fair Market Price

A member who, in reliance on subparagraph (b)(2)b of Section 8 of this Article, pays a price for securities taken in trade which is higher than the lowest independent offer will have a heavy burden to demonstrate that the price paid was the fair market price. Subparagraph (b)(2)b lists factors which might be considered relevant to justify paying a price higher than the lowest offer. The existence of only one such factor, however, will not necessarily be sufficient to meet the heavy burden, though in a given case it may be sufficient. In any event, all facts and circumstances must be considered. For example, a member may be able to satisfy the burden of demonstrating that fair market price was paid by showing that the price paid did not exceed the price, less an amount equal to a normal commission on an agency transaction, at which a customer had given the member an indication of interest to purchase the securities, or that the member held a short position in the security purchased, that it desired to cover that short position, that the availability of the security was scarce and that the amount of securities taken in trade could not have been acquired at a lower price.

Adequate Records

If the member purchases sucrities taken in trade at a price which is no higher than the lowest independent offer as determined according to this Section, it will have kept adequate records if it records the time and date quotations were received, the identity of the security to which the quotations pertain, the identity of the dealer from whom, or the exchange or quotation system from which, the quotations were obtained, and the quotations furnished. If a member uses the services of an independent agent to obtain the quotations and the agent does not disclose the identity of the dealers from whom quotations were obtained, the member will have kept adequate records if it otherwise complies with subsection (d) of Section 8 hereof and it records the time and date it received the quotations from the agent, the identity of the agent, and the quotations transmitted by the agent.

If a member, in reliance on subparagraph (b)(2)b of this Section, pays more than the lowest independent offer, it will have kept adequate records if, in addition to the foregoing records, it keeps records of all relevant factors it considered important in concluding that the price paid for the securities was fair market price.

Proposed Amendment to Article III, Section 24 of the Rules of Fair Practice

Article III, Section 24 is proposed to be amended by adding the language in italics and by deleting the language in brackets.

Section 24

In connection with the sale of securities which are part of a fixed price offering—

(a) (Selling concessions, discounts, or other allowances, as such, shall be allowed only as consideration for services rendered in distribution and in no event shall be allowed) *a member may not grant or receive selling concessions, discounts, or other allowances except as consideration for services rendered in distribution and may not grant such concessions, discounts or other allowances* to anyone other than a broker or dealer actually engaged in the investment banking or securities business; *Provided, however,* That nothing in this rule shall prevent any member from selling any security owned by him to any person at any net price which may be fixed by him unless prevented therefrom by agreement.

(b) a member who grants a selling concession, discount or other allowance to another person shall obtain a written agreement from that person that he will make a bona fide public offering of such securities and will otherwise comply with the provisions of this Section, and a member who grants such selling concession, discount or other allowance to a nonmember broker or dealer in a foreign country shall also obtain from such broker or dealer a written agreement to comply with the provisins of Sections 8, 25 and 36 of this Article.

(c) a member who receives an order from any person designating another broker or dealer to receive credit for the sale shall, within 30 days after the end of each calendar quarter, file reports with the Association containing the following information with respect to each fixed price offering which terminated during that calendar quarter: The name of the person making the designation; the identity of the brokers or dealers designated; the identity and amount of securities for which each broker or dealer was designated; the date of the commencement and termination of the offering and such other information as the Association shall deem pertinent.

(d) a member who is designated by its customer for the sale of securities shall keep, and maintain for a period of 24 months, records in such form and manner to show the following information: name of customer making the designation; the identity and amount of securities for which the member was designated; the identity of the manager or managers of the offering, if any; the date of the commencement of the offering and such other information as the Association shall deem pertinent.

* * * * *

Interpretation of the Board of Governors

Services in Distribution

The proper application of Section 24 requires that, in connection with fixed price offerings, selling concessions, discounts or other allowances be paid only to brokers or dealers actually engaged in the investment banking or securities business and only as consideration for services rendered in distribution.

A dealer has rendered services in distribution in connection with the sale of securities from a fixed price offering if the dealer is either an underwriter of a portion of that offering or has engaged in some selling effort with respect to the sale. While furnishing a customer with research or other services might aid a dealer in selling particular securities or securities generally to that customer, the furnishing of such research will not by itself constitute sufficient selling effort to satisfy the provisions of Section 24. Rather, some direct selling contact on a particular offering will be necessary. Even though the furnishing of research to a customer may aid a dealer in the sale of securities, the furnishing of such research under certain circumstances, as described below, could result in the dealer granting that customer a selling concession, discount or other allowance in violation of Section 24.

A broker or dealer who has received or retained a selling concession, discount or other allowance may not grant or otherwise reallow all or part of that concession, discount or allowance to anyone other than a broker or dealer engaged in the investment banking or securities business and only as consideration for services rendered in distribution. The improper grant or reallowance of a selling concession, discount or other allowance might occur

directly or indirectly through such devices as transactions in violation of Section 8 of this Article, or other indirect means as described below.

A member granting a selling concession, discount or other allowance to another person is not responsible for determining whether such other person may be violating Section 24 by granting or reallowing that selling concession, discount or other allowance to another person, unless the member knew, or had reasonable cause to know, of the violation.

Selling Concessions, Discounts, or Allowances

General

A member who, itself or through its affiliate, (i) supplies another person with services or products which are commercially available or are provided by the member or its affiliate to such person or to others for cash or for some other agreed upon consideration, including brokerage commissions, and (ii) also retains or receives selling concessions, discounts or other allowances from purchases by that person or its affiliate of securities from a fixed price offering, is improperly granting a selling concession, discount or other allowance to that person unless the member or its affiliate has been, or has arranged and reasonably expects to be, fully compensated for such services or products from sources other than the selling concession, discount or allowance retained or received on the sale.

Commercially Available

As used in this interpretation, a product or service is "commercially available" if it is generally available on a commercial basis. It would include such things as office space, secretarial services, quotation equipment, news periodicals, certain research products or services, airline tickets, and other items which could be purchased directly or indirectly by the recipient from a third party.

The term includes products or services which a person receives from another for redistribution if the same service or product, or a service or product which is substantially an identical service or product, is offered to others on a commercial basis. Thus, a service or product may be commercially available even though the person engaged in redistributing it does not itself make the service or product commercially available.

This interpretation is not intended to prohibit members from providing products or services which are commercially available but which are not of a substantial value. No question arises under Section 24 if a member furnishes such things as incidental business gifts, food, entertainment, or other items not having a substantial value.

Cash or Other Agreed Upon Consideration

A person will be deemed to be providing services or products for cash or other agreed upon consideration if the service or product, or a substantially identical service or product, is provided to any person for cash or for some other agreed upon consideration. A service or product will be deemed to be provided for an agreed upon consideration if there is an express or implied agreement between the person providing the service or product and the recipient thereof calling for the provider of the service or product to be compensated therefor with an agreed upon or mutually understood source and general amount of consideration. For example, if a person provides another with a service or product and the recipient thereof agrees or represents, expressly or impliedly, that it will compensate the provider of the service or product with a specified amount of consideration, such as brokerage commissions or a range of brokerage commissions depending on the commission rate charged, or with a general minimum amount of brokerage commissions or other consideration, that service or product will be deemed to be offered for an agreed upon consideration. Thus, under such circumstances a member or its affiliate providing such service or product would be required to demonstrate that it was fully compensated for the service or product with consideration other than selling concessions, discounts or other allowances received or retained on the sale of securities from fixed price offerings.

Full Consideration

A member may show that it or its affiliate received or reasonably expects to receive full consideration, independent of selling concessions, discounts or other allowances, for providing certain services and products, by identifying the arrangement for the consideration (including its source and amount) and, if appropriate, the collection process for obtaining it.

In order to demonstrate that the cash, brokerage commissions or other consideration serves as full consideration, records of account should be kept which identify the recipient of the services of products, the amount of cash, brokerage commissions or other consideration paid or to be paid by such person or its affiliate.

Unless the amount of cash, brokerage commissions or other consideration agreed upon appears on its face to be unreasonably low, it will not be necessary for the member or its affiliate to demonstrate that the agreed upon price represented fair market price. Likewise, as long as price differentials are based on factors other than the customer's willingness to, or practice of, purchasing securities from the member out of fixed price offerings, it is not necessary, for purposes of Section 24, that the member or its affiliate charge the same amount to each person to whom they provide the same or similar services or products.

Proposed New Section 36 of Article III and Interpretation Thereof

Article III is proposed to be amended by the addition of a new Section 36 and an interpretation thereof.

Section 36

(a) Except as otherwise provided in subsection (d) of this Section, no member engaged in a fixed price offering of securities shall sell the securities to, or place the securities with, any person or account which is a related person of the member unless such related person is itself subject to this Section or is a nonmember foreign broker-dealer who has entered into the agreements required by Section 24(b) of this Article.

(b) For purposes of this Section 36, a "related person" of a member includes any person or account which directly or indirectly owns, is owned by or is under common ownership with the member.

(c) A person owns another person or account for purposes of this Section if the person directly or indirectly:

(1) has the right to participate to the extent of more than 25 percent in the profits of the other person; or

(2) owns beneficially more than 25 percent of the outstanding voting securities of the person.

(d) The prohibition contained in subsection (a) does not apply to the sale of securities to, or the placement of securities in, a trading or investment account of a member or a related person of a member after termination of the fixed price offering if the member or the related person of the member has made a bona fide public offering of the securities. A member or a related person of a member is presumed not to have made a bona fide public offering

for the purpose of this subsection if the securities being offered immediately trade in the secondary market at a price or prices which are at or above the public offering price.

* * * * *

Interpretation of the Board of Governors

Transactions with Related Persons

A member who is acting, or plans to act, as sponsor of a unit investment trust will not violate Section 36 if it accumulates securities with respect to which the member has acted as a syndicate member, selling group member or reallowance dealer in an acount of the member or related person of the member if, at the time of accumulation, the member in good faith intends to deposit the securities into the unit investment trust at the public offering price and intends to make a bona fide public offering of the participation units of that trust. Members engaged in such activity, however, will continue to be subject to the Board of Governors' Interpretation of Article III, Section 1 of the Rules of Fair Practice concerning Free-Riding and Withholding.

While subsection (d) of Section 36 provides that a person is presumed not to have made a bona fide public offering if, immediately following the termination of the fixed price offering, the securities trade at or above the public offering price, there is no presumption that a person has made a bona fide public offering if, at such time, the securities trade below the public offering price. Whether a person has made a bona fide public offering will be determined on the basis of all relevant facts and circumstances.

[Release Nos. 34-15807, IC-10687; File No. SR-NASD-78-3]
[FR Doc. 79-15078 Filed 5-14-79; 8:45 am]
BILLING CODE 8010-01-M

federal register

Tuesday
May 15, 1979

Part VII

Department of Labor

Mine Safety and Health Administration

Procedures and Requirements for Applying for, Receiving, and Administering State Grants

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 46 and 651

Procedures and Requirements for Applying for, Receiving, and Administering State Grants

AGENCY: Mine Safety and Health Administration, Department of Labor.
ACTION: Final Rule.

SUMMARY: This rule establishes procedures and requirements for applying for, receiving, and administering State grants under Section 503 of the Federal Mine Safety and Health Act of 1977. The rule establishes a new Part 46 of Title 30, Code of Federal Regulations, and replaces the regulations previously authorized under the Federal Coal Mine Health and Safety Act of 1969 and published by the Secretary of Interior in 30 CFR 651.

EFFECTIVE DATE: June 14, 1979.

FOR FURTHER INFORMATION CONTACT: Adam W. Hare, Chief, Branch of Contracts and Grants, Room 723, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203, telephone (703) 235-8454.

SUPPLEMENTARY INFORMATION:

I. Statutory and Rulemaking Background

The Federal Mine Safety and Health Amendments Act of 1977, Pub. L. 95-164, amended the Federal Coal Mine Health and Safety Act of 1969, Pub. L. 91-173, and repealed the Federal Metal and Nonmetallic Mine Safety Act of 1966, Pub. L. 89-577. The resulting law, the Federal Mine Safety and Health Act of 1977 (Mine Act), applies to all coal, metal and nonmetal mines. Under section 503 of the Mine Act, the Secretary is authorized to make grants to States in which coal or other mining takes place to assist the States in developing and enforcing effective coal or other mining health and safety laws and regulations consistent with the provisions of section 506 of the Mine Act and to improve State workers' compensation and occupational disease laws and programs related to coal or other mining. The funds may also be used to promote effective Federal/State coordination and cooperation in the field of mine safety and health. In addition, the Mine Safety and Health Administration (MSHA), through these grants, will assist the States in developing and administering miner training programs, while also providing safety and health training opportunities to State mine inspection agencies. MSHA believes these grant and training programs will strengthen Federal/State coordination in promoting mine safety and health.

To implement section 503 of the Mine Act, the Secretary has established this new Part 46 of Title 30 CFR which sets forth the procedures and requirements for any State in which coal or other mining takes place to apply for, receive, and administer State grants under section 503 of the Act. The proposed rule appeared in 43 FR at 53774 through 53778 (November 17, 1978). Interested persons were given until January 16, 1979, to submit comments. Only one substantive comment was received which is discussed below.

II. Discussion of Comment

One commenter suggested that, in awarding State grants, the Secretary should give priority consideration to those States having no State mine inspection agency. The final rule does not incorporate this suggestion.

Section 503(b) of the Mine Act specifically requires that grant applications shall be submitted by "a State, through its official coal or other mine inspection or safety agency." This agency would then be responsible for administering the grant in a manner consistent with Federal and State fiscal and accounting procedures. At the request of any State, MSHA will be able to provide assistance to the State in establishing a State mine inspection or safety agency and developing a mine safety and health program. On March 9, 1979, the Governor of the commenter's State informed the Secretary that he had designated a State mine inspection agency. Thus, at this point, it is only necessary that the State comply with the requirements contained in this rule for applying for and administering a grant.

III. Effect on Existing Rule

A new Part 46 is established by this rule which sets forth the procedures and requirements for any State in which coal or other mining takes place to apply for, receive and administer State grants under section 503 of the Act. This rule will replace those existing regulations dealing with State grants previously issued by the Secretary of the Interior and published in Chapter VI, Part 651, Title 30, Code of Federal Regulations. Those regulations pertaining to grants by MSHA to States and published in Part 651 of Title 30 will be inapplicable after promulgation of this rule.

IV. Drafting Information

The principal persons responsible for drafting this final rule are: Patricia W. Silvey, Office of Standards, Regulations and Variances, MSHA, Department of Labor; and Bernard R. McGuire, Division of Mine Safety and Health, Office of the Solicitor, Department of Labor.

V. Regulatory Analysis

Note.—It has been determined that this document does not contain a major proposal requiring the preparation of a regulatory analysis under Executive Order 12044, Improving Government Regulations (43 FR 12661, March 24, 1978), or the Department of Labor's final guidelines for implementing the Executive Order (44 FR 5570, January 26, 1979).

Dated: May 2, 1979.

Robert B. Lagather,
Assistant Secretary for Mine Safety and Health.

1. A new Part 46 is added to Subchapter G, Chapter I, Title 30, CFR, as set forth below:

Subchapter G—Filing and Other Administrative Requirements

PART 46—STATE GRANTS FOR ADVANCEMENT OF HEALTH AND SAFETY IN COAL AND OTHER MINES

Subpart A—General

Sec.
46.1 Purpose and scope.
46.2 Definitions.
46.3 Purpose of making and States eligible to receive grants.

Subpart B—Application for Grants

46.4 Manner of submission.
46.5 Delegation of authority.
46.6 Information required.

Subpart C—Approval of Applications and Limitations

46.7 Requirements for approval.
46.8 Defective applications and modifications.
46.9 Limitations.
46.10 Termination.
46.11 Appeals and hearings.

Subpart D—Fiscal and Accounting

46.12 Procedures for obtaining payments.
46.13 Accounting records.
46.14 Procurement standards.
46.15 Property management standards and patents and copyrights.

Subpart E—Reports

46.16 State monitoring of grant-supported activities; reports.
46.17 Acknowledgement of Federal Government participation.

Subpart F—Consultation and Cooperation

46.18 Consultation and cooperation.

Authority: Sections 503 and 508 of the Federal Mine Safety and Health Act of 1977, Pub. L. 91-173 as amended by Pub. L. 95-164.

Subpart A—General

§ 46.1 Purpose and scope.

This part provides the procedures for making grants to States under the provisions of section 503 of the Federal Mine Safety and Health Act of 1977 (Pub. L. 91–173 as amended by Pub. L. 95–164). Additional standards contained in Office of Management and Budget Circular A–102 (Revised) "UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS-IN-AID TO STATE AND LOCAL GOVERNMENTS" dated August 24, 1977, (42 FR 45828–45891) are also applicable to grant instruments entered into between the Federal and State Governments.[1]

§ 46.2 Definitions.

As used in this part and in grants entered into pursuant to this part:

(a) "Government" means the United States of America.

(b) "Secretary" means the Secretary of Labor or his authorized representative.

(c) "MSHA" means the Mine Safety and Health Administration of the U.S. Department of Labor.

(d) "Assistant Secretary" means the Assistant Secretary of Labor for Mine Safety and Health, U.S. Department of Labor or his authorized representative.

(e) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands in which coal or other mining takes place.

(f) "Fiscal Year" means a 12-month period ending on September 30.

(g) "Act" means the Federal Mine Safety and Health Act of 1977, Public Law 91–173 as amended by Pub. L. 95–164.

§ 46.3 Purpose of making and States eligible to receive grants.

(a) The Secretary, in coordination with the Secretary of Health, Education, and Welfare and the Secretary of the Interior, is authorized by section 503(a) of the Act to make grants to any State to: (1) Assist in developing and enforcing effective coal or other mine health and safety laws and regulations; (2) improve State workers' compensation and occupational disease laws and programs related to coal or other mine employment; and (3) promote Federal/State coordination and cooperation in improving the health and safety conditions in coal or other mines.

(b) Grants shall be made to a State through its official coal or other mine inspection or safety agency, and executed by an individual authorized to act for the State Agency.

Subpart B—Application for Grants

§ 46.4 Manner of submission.

(a) An original and two copies of the application for a grant shall be submitted through the State clearinghouse as required by Office of Management and Budget Circular A–95 to the Assistant Secretary of Labor for Mine Safety and Health, U.S. Department of Labor, 4015 Wilson Boulevard, Arlington, Virginia 22203.

(b) The Application for Federal Assistance (Nonconstruction Programs) contained in Attachment M of Office of Management and Budget Circular A–102 (Revised) shall be used when applying for grants.

(c) States shall report deviations from grant budgets and shall request approval for budget revisions in accordance with the provisions of Attachment K, Office of Management and Budget Circular A–102 (Revised).

§ 46.5 Delegation of authority.

General authority and responsibility for the administration and enforcement of mine safety and health programs, including the authority of the Secretary to review applications for grants and to make awards under section 503 of the Act, has been delegated to the Assistant Secretary by Secretary of Labor Order 3–78, effective March 9, 1978. The Assistant Secretary may redelegate authority to such officers and employees as he deems appropriate. The delegation of the Assistant Secretary, therefore, includes the authority to issue, amend, and repeal rules under this part and to provide policy, regulations, and guidlines by which this part is implemented. The Assistant Secretary may, with respect to any grant award, impose additional conditions prior to or at the time of the award when, in his judgment, such conditions are necessary to assure safe and healthful working conditions for individuals working in mines, or to promote the conservation of grant funds.

§ 46.6 Information required.

Applications shall be in the form of proposals, which consistent with the purposes of the Grant must:

(a) Set forth the programs, policies and methods to be followed in carrying out the application in accordance with the purposes of section 503(a) of the Act. An application may provide for: (1) assistance to States in developing and enforcing effective coal or other mine health and safety laws and regulations consistent with the provisions of section 506 of the Act; (2) improvement to State workers' compensation and occupational disease laws and programs related to coal or other mine employment; and (3) promotion of Federal/State coordination and cooperation in improving the health and safety conditions in the coal or other mines.

(b) Designate the State coal or other mine inspection or safety agency as the sole agency responsible for administering the grant throughout the State, and contain satisfactory evidence that such agency will have the authority to carry out the purpose of a grant made under this part.

(c) Give assurances satisfactory to the Assistant Secretary that such agency has or will have an adequate and competent staff of trained inspectors qualified under the laws of such State to make coal or other mine inspections within such State, if relevant.

(d) provide for the extension and improvement of the State program for the improvement of coal or other mine health and safety in the State, and provide that no advance notice of an inspection will be provided to anyone.

(e) Contain assurance satisfactory to the Assistant Secretary that grants provided under this part will supplement, no supplant, existing State coal or other mine health and safety programs.

(f) State the period of time during which each of the programs will be pursued.

(g) Contain a financial plan (budget information) submitted on the "Application for Federal Assistance (non-construction Programs)" contained in Attachment M of Office of Management and Budget Circular A–102 (revised).

(h) Provide such fiscal control and fund accounting procedures as may be necessary to comply with the requirements of this part to assure proper disbursement and accounting of grants made under this part.

(i) Provide the name and title of the person who will direct the program(s).

(j) Provide the approximate number and general qualifications of the personnel who will work on the program(s).

(k) Indicate the location or locations at which the various projects in the program(s) will be pursued.

[1] The Office of Management and Budget Circular No. A–102 is available for inspection at the States Grants Program Office, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203.

(l) Provide assurances satisfactory to the Assistant Secretary that, if the grant is made, the required funds (State share) from non-Federal sources will be forthcoming. State share represents the portion of program costs not borne by the Federal Government. General quidelines for computing State share are defined in Attachment F, Office of Management and Budget Circular A–102 (Revised).

(m) Indicate whether the program(s) or any part of the program(s) have been or will be submitted to other organizations for the purpose of obtaining a grant.

(n) Agree that the official coal or other mine inspection or safety agency designated pursuant to paragraph (b) of this section shall make the reports required by § 46.16 (State monitoring of grant supported activities reports) of this part and shall abide by all other terms and conditions which the Assistant Secretary may prescribe.

Subpart C—Requirements for Approval

The Assistant Secretary shall approve only those applications, requests for renewals or modifications, that meet the requirements set forth in the Act and this part.

§ 46.8 Defective applications and modifications.

(a) Any application, request for renewal or modification, that does not meet the requirements of the Act and this part shall be returned promptly and the State shall be requested to modify, amend, or revise the application as necessary in order to meet the requirements and to resubmit the application or request for renewal.

(b) The Assistant Secretary will not finally disapprove any State application, request for renewal, or modification, amendment, or revision thereof without first affording the State agency reasonable notice and opportunity for a public hearing, as provided in § 46.11 (Appeals and hearings) of this part.

§ 46.9 Limitations.

(a) Applications shall only be considered for programs that meet the purposes and objectives of section 503 of the Act and this part.

(b) Grants shall be made on a fiscal year basis or portion thereof.

(c) Each grant shall be covered by a grant agreement between the Government and the State. The grant agreement shall set forth the purposes, objectives, total estimated cost of the program during the fiscal year for which the grant is to be made, and the approved financial plan.

(d) Federal funds will be granted on the basis of grant applications and pursuant to the grant agreement, and the amount granted to any State for a fiscal year under this section shall not exceed 80 per centum of the amount expended by such State in such year for carrying out the approved grant. The Assistant Secretary may allocate funds between States and may fix the grant at less than 80 per centum, and the percentages may be unequal between grants and between States. Further, no less than one-half of the funds appropriated for grants will be allocated to coal producing States.

(e) None of the funds granted by the Government or provided by the State shall be used for any purpose not specifically provided in the grant agreement or any modification thereof.

(f) Any State accepting a grant or grants under this part shall agree that neither the Government nor any of its officers, agents, or employees shall be responsible or liable for any loss, expense, damage to property, or for death or bodily injury to persons, which may arise from or be incident to any project or grant coming hereunder, and the State shall agree to hold the Government and its officers, agents, or employees harmless from all such claims.

(g) Reimbursement for travel expenses shall be in accordance with the State's regular lawfully established policies and procedures, except that such reimbursable expenses may not exceed those authorized in Standardized Government Travel Regulations (Federal Property Management Regulations, 41 CFR Parts 101 through 107).[2]

(h) The State shall comply with the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d 1970) which provides that no person in the United States shall on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, and with the implementing regulation issued by the Secretary of Labor with the approval of the President (29 CFR Part 31). Any grant for a project which involves a federally assisted contract, as defined in Executive Order 11246, as amended, shall be subject to the condition that the grantee shall comply with the requirements of the Executive Order, as amended, which prohibits discrimination by contractors and subcontractors because of race, color, religion, sex, or national origin, and shall comply with the applicable rules, regulations and procedures. The State shall also make assurance that it will not discriminate on the basis of sex and religion (OMB Circular A–102).

(i) Under the provisions of the Federal Hatch Act (Political Activities Act of August 2, 1939, as amended, 5 U.S.C. §§ 1501–1508 (1976)), all State or local agencies, officers and employees whose principal employment is in connection with activities financed by any grant under this part, irrespective of whether the employees are under a merit system, are prohibited, with certain exceptions, from:

(1) Using official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office.

(2) Directly or indirectly coercing, attempting to coerce, commanding, or advising any other State or local officer or employee to pay, lend, or contribute anything of value to any party, committee, organization, agency, or person for political purposes.

(3) Being a candidate for elective office.

(j) Inquiries with respect to the provisions of the Federal Hatch Act as it affects grants awarded under this part should be directed to the Office of the Assistant Secretary, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203.

§ 46.10 Termination.

(a) A State grant may be terminated by the State upon written notice to the Assistant Secretary, specifying the date upon which the State grant shall be terminated, but which date of termination shall not be less than 30 days from the date of the notice.

(b) Any grant awarded under this part may be revoked or terminated, in whole or in part, by the Assistant Secretary at any time within the period of the grant, whenever the Assistant Secretary finds, after giving due notice to the State and affording the State an opportunity for a hearing under § 46.11 (Appeals and hearings) of this part, that the State has failed to comply with the terms and conditions of the grant agreement or the regulations of this part. The State shall be notified of such findings in writing and given the reasons therefor, together with the effective date.

§ 46.11 Appeals and hearings.

(a) The proposed disapproval by the Assistant Secretary of any initial State application, request for renewal, or

[2] The Federal Property Management Regulations are available for inspection at the State Grants Program Office, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203.

modification, or proposed termination of State grants shall be given to the State by written notice setting forth the reasons for the proposed disapproval or termination. The State, through its designated coal or other mine inspection or safety agency, may appeal such decision by the mailing of a notice of appeal and request for a public hearing to the Assistant Secretary within 30 days after receipt of the notice of proposed disapproval or termination.

(b) A notice of hearing under this section shall be published in the Federal Register and the period of time between such publication and the date fixed for the hearing shall not be less than 30 days. The notice of hearing shall prescribe the rules of the proceeding.

(c) The final decision of the Assistant Secretary disapproving any initial application or modification, or request for renewal, or terminating a grant shall be conclusive unless the State within 30 days from the date of such decision shall file a petition in the United States Court of Appeals for the District of Columbia stating that such decision should be modified or set aside in whole or in part. The filing of a petition shall not stay the application of the decision of the Assistant Secretary except as ordered by the court.

Subpart D—Fiscal and Accounting

§ 46.12 Procedures for obtaining payments.

(a) States shall be paid under one of the methods defined in Attachment J, Office of Management and Budget Circular A–102 (Revised).

(b) States shall comply with the provisions of Attachment A, Office of Management and Budget Circular A–102 (Revised) when operating with Federally advanced funds.

§ 46.13 Accounting records.

(a) State financial management systems for the grant programs shall be maintained in accordance with the provisions of Attachment G, Office of Management and Budget Circular A–102 (Revised).

(b) The State's records relating to each grant, with all supporting and related documents shall, at all reasonable times, be made available, to the following persons, upon request for inspection and audit by such persons: the Assistant Secretary, the Secretary, or by the Comptroller General of the United States or their authorized representatives. If desired, microfilm copies may be substituted in lieu of original records.

(c) The State's records relating to each grant shall be retained and made available until the expiration of three years from the date of the submission of the final expenditure report or, for grants which are renewed annually, from the date of the submission of each annual expenditure report, with the following qualifications:

(1) The records shall be retained beyond the three year period if audit findings have not been resolved.

(2) Records for nonexpendable property which was acquired with Federal grant funds shall be retained for three years after its final disposition.

§ 46.14 Procurement standards.

(a) The State is the responsible authority, without recourse to MSHA, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of a grant. 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.

(b) States may use their own procurement regulations which reflect applicable State and local law, rules and regulations provided that procurements made with Federal grant funds adhere to the standards set forth in Attachment O, Office of Management and Budget Circular A–102 (Revised).

§ 46.15 Property management standards and patents and copyrights.

(a) Except as specified in paragraphs (b) (1) and (2) below, the "Property Management Standards" contained in Attachment N of Office of Management and Budget Circular A–102 (Revised) are applicable to all grants.

(b) Specific standards for control of copyrights and patents are:

(1) If any program produces patentable items, patent rights, processes, or inventions, in the course of work aided by a Federal grant, such fact shall be promptly and fully reported to MSHA. MSHA shall determine whether protection on such invention or discovery shall be sought and how the rights of the invention or discovery—including rights under any patent issued thereon—shall be allocated and administered in order to protect interest consistent with the Act.

(2) Where the grant results in a book or other copyrightable material, any such work normally becomes the property of the Government, and the grantee would not be authorized to secure a copyright thereon. However, educational institutions and individuals in the field of education may be granted the right to publish works arising out of the grant provided that the Government secures a royalty-free, non-exclusive, and irrevocable license to publish, reproduce, use, and dispose of the work, and to authorize or ratify the acts of others to do the same.

Subpart E—Reports

§ 46.16 State monitoring of grant-supported activities; reports.

(a) States shall constantly monitor the performance of grant-supported activities to assure that time schedules are being met, projected work units by time periods are being accomplished, and other performance goals are being achieved. This review shall be made for each program, function, or activity of each grant as set forth in the approved grant application.

(b) States shall submit a quarterly performance report for each grant which briefly presents the following for each program, function, or activity involved:

(1) A comparison of actual accomplishments to the goals established for the period. Where the output of grant programs can be readily quantified, such quantitative data shall be related to cost data for computation of unit costs.

(2) Reasons for slippage in those cases where established goals were not met.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(c) States shall submit financial reports in accordance with Attachment H of Office of Management and Budget Circular A–102 (Revised).

(d) Between the required performance reporting dates, events may occur which have significant impact upon the project or program. In such cases, the State shall inform MSHA as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially affect the ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated and any Federal assistance needed to resolve the situation.

(2) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or

producing more work units than originally projected.

(e) If any performance review conducted by the State discloses the need for change in the budget estimates in accordance with the criteria established in Attachment K, Office of Management and Budget Circular A-102 (Revised), the State shall submit a request for budget revision.

§ 46.17 Acknowledgement of Federal Government participation.

Appropriate acknowledgement shall be given by the State of the Department of Labor's participation in financing each project. Such acknowledgement shall be included in all publications, news releases, and other information media developed to publicize, describe, or report on activities and accomplishments carried out in whole or in part with funds received under provisions of the Act.

Subpart F—Consultation and Cooperation

§ 48.18 Consultation and cooperation.

(a) As contemplated by the Act, the Assistant Secretary will consult and cooperate with the State in accomplishing the purposes of the grant, including, but not limited to, the furnishing of advice and assistance to promote the objectives of the Act and the coordination of projects.

(b) In addition to cooperating in carrying out the purposes of State grants, the Assistant Secretary also shall cooperate with such States in training Federal and State inspectors jointly, and in establishing a system by which States and Federal inspection reports of coal or other mines located in the State are exchanged for the purpose of improving health and safety conditions in such mines.

Subchapter M—Rules and Regulations for the Administration of Grants

PART 651—RULES AND REGULATIONS FOR THE ADMINISTRATION OF GRANTS

2. Part 651 is inapplicable with respect to grants by MSHA to States.

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Tuesday
May 15, 1979

Part VIII

Department of Energy

Economic Regulatory Administration

Prohibition Against Increased Use of Petroleum by Existing Electric Powerplants

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 504

Prohibition Against Increased Use of Petroleum by Existing Electric Powerplants

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Interim rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is promulgating this interim rule to implement Section 405 of the Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95–620, November 9, 1978. The rule prohibits any existing powerplant, which used coal or other alternate fuel as a primary energy source during 1977, from using petroleum as a primary energy source in any calendar year in excess of the quantities used during 1977, unless ERA issues a permit authorizing such increased use. Such permits are to be issued only where the Environmental Protection Agency (EPA) or the State air pollution control agency has certified that the powerplant cannot comply with requirements of the Clean Air Act and the appropriate State regulatory authority has certified that the use of petroleum is necessary to prevent impairment of reliability of electric service.

The rule additionally sets forth the procedures by which applicants may be granted a permit for the increased use of petroleum upon submission to ERA of the required certificates from EPA and the appropriate State regulatory authority. Prohibitions imposed by this interim rule become effective June 15, 1979. Applications for permits may be filed any time after publication of this rule. Written comments on this interim rule will be accepted by ERA until August 15, 1979.

DATES: Effective date: June 15, 1979. Comments due by: August 15, 1979, 4:30 p.m.

ADDRESSES: All comments should be sent to: Department of Energy, Public Hearing Management, Room 2313, 2000 M Street, N.W., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

William L. Webb (Office of Public Information), Economic Regulatory Administration, Department of Energy, Room B–110, 2000 M Street, N.W., Washington, D.C. 20461, (202) 634–2170.
John L. Gurney (Regulations and Emergency Planning), Economic Regulatory Administration, Department of Energy, Room 2130, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254–9766.
Robert L. Davies (Fuels Regulation—Program Office), Economic Regulatory Administration, Department of Energy, Room 7202, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254–3910.
James H. Heffernan (Office of General Counsel), Department of Energy, Room 7136, 12th and Pennsylvania Avenue, N.W., Washington, D.C. 20461, (202) 633–8820.

SUPPLEMENTARY INFORMATION:

I. Background
II. Comments
III. Description of Rule
IV. Comment Procedures
V. Other Procedural Matters

I. Background

The Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) requires the establishment by ERA of a program for the expanded use, consistent with applicable environmental requirements, of coal and other alternate fuels as primary energy sources for new and existing electric powerplants and major fuel burning installations.

The following notices and rules have previously been issued implementing the Act:

Date Issued	Federal Register Citation	Notices and Rules
		A. Notices
November 9, 1978	43 FR 53974 (Nov. 17, 1978)	Proposed rules pertaining to "new" facilities.
November 16, 1978	43 FR 54912 (Nov. 22, 1978)	Proposed rules pertaining to "transitional" facilities.
November 27, 1978	43 FR 56703 (Dec. 4, 1978)	Proposed forms for "transitional" facilities.
January 3, 1979	44 FR 1694 (Jan. 5, 1979)	Proposed rules for a special temporary public interest exemption for the use of natural gas.
January 23, 1979	44 FR 5808 (Jan. 29, 1979)	Proposed rules pertaining to "existing" facilities (including Section 405 of FUA) and extending comment period.
January 31, 1979	44 FR 9053 (Feb. 12, 1979)	Proposed forms for "new" facilities.
March 1, 1979	44 FR 12227 (Mar. 6, 1979)	Extension of public comment for new facilities.
March 26, 1979	44 FR 19427 (Apr. 3, 1979)	Notice of intent to issue interim rules to implement FUA.
April 20, 1979	44 FR 25193 (Apr. 30, 1979)	Notice of OMB clearance of regulations in Part 515.
		B. Rules
March 15, 1979	44 FR 17465 (Mar. 21, 1979)	Revised interim rule for transitional facilities.
April 4, 1979	44 FR 21230 (Apr. 9, 1979)	Final rule for special temporary public interest exemption for use of natural gas.

Section 405 of the Act directs the Secretary to prohibit by rule all existing powerplants, which used coal or another alternate fuel as a primary energy source in 1977, from increasing their use of petroleum above that base year amount unless a permit is issued by ERA authorizing such increased use. The permit will only be issued if: (1) EPA or the State air pollution control agency certifies that the powerplant operator cannot comply with Clean Air Act requirements, including any applicable implementation plan, and the powerplant has established the duration of the need for increased petroleum use; and (2) the appropriate state regulatory authority certifies that the increased use of petroleum by the powerplant is necessary to prevent impairment of reliability of electric service. ERA is authorized to issue the permit "only for such period" as it determines "necessary" to comply with Clean Air Act requirements or prevent impairment of reliability of electric service, whichever occurs first.

II. Comments

A large number of comments were received in response to the proposed rule implementing Section 405, published January 29, 1979, with the proposed rules pertaining to existing facilities.

Several commenters stated that the proposed regulations exceeded the intent of the Act by imposing requirements other than those specified in the Act in that ERA must grant a permit upon submission of the two certificates required under the Act. This view neglects the important duty imposed upon us by Section 405 of the Act which provides that we issue a permit only for the reasonable period determined necessary for the increased use of petroleum. As the commenters correctly pointed out, FUA charges the Administrator of EPA with the responsibility for certifying the need for burning an increased amount of petroleum, but imposes upon ERA the responsibility for issuing the permit only for such duration as the Secretary determines is necessary. To make this determination we must find out when an applicant will be able to resume the use of alternate fuel in compliance with the

Clean Air Act or otherwise avoid impairment of reliability of electric service.

Several commenters felt that we should provide more flexibility to allow increased petroleum use without regard to the permit process (1) where oil would be saved on a system-wide basis, or (2) when 1977 was not a representative year of oil use. The statute is explicit with respect to the prohibition and the use of 1977 as the base year and provides for a permit as the only method of recourse.

Other commenters suggested that the prohibition should not apply if the alternate fuel supply is unavailable due to occurrences such as a coal strike or a severe weather condition. As previously discussed the statute is explicit on when the prohibition applies and what a utility may do to avoid application of the prohibitions imposed. There are, however, emergency authorities provided in Section 404 of the Act which are available in certain circumstances. Moreover, the definition of "primary energy source" excludes the minimum amounts of fuel required to alleviate or prevent (1) unanticipated equipment outages and (2) emergencies directly affecting the public health, safety, or welfare which would result from electric power outages.

Commenters also requested clarification on whether the prohibition would apply to a utility which purchased replacement power during calendar year 1977. Section 405 of the Act applies only to existing powerplants that *used* coal or another alternate fuel as a "primary energy source" in their powerplant during 1977. The purchase of replacement power—power purchased and then resold—does not meet the use test necessary to qualify under the primary energy source definition as set out in the Act since the purchased electricity is not "used" as a fuel in the powerplant. Therefore, to the extent that a utility purchased power during 1977, it would not be subject to the prohibition established under Section 405 for a particular powerplant. However, the fact that the purchase of replacement power is not "use as a primary energy source" for purposes of this section does not excuse either new or existing powerplants from the requirements of Sections 213(c) and 313(b) of the Act. For certain exemptions these Sections specifically require that the powerplant demonstrate there is no alternative supply of electric power available within a reasonable distance and at a reasonable cost which could, if obtained, eliminate the need for an exemption for the use of petroleum or natural gas.

III. Description of the Rule

We are promulgating this interim rule to prohibit the increased use of petroleum in certain existing powerplants as authorized by Section 405 and to set forth the procedures by which an applicant may seek a permit from ERA for the increased use of petroleum.

The prohibition imposed by this rule applies to existing electric powerplants which during 1977 used coal or an alternate fuel as a primary energy source. Such powerplants are prohibited from using petroleum as a primary energy source during any calendar year in excess of the quantities of petroleum used as a primary energy source during 1977, unless ERA issues a permit authorizing such increased use.

Based on public comments, we have categorized the possible candidates under this rule as follows: (1) Powerplants experiencing temporary interruptions of coal or alternate fuel use; and (2) powerplants which are unable to burn coal or other alternate fuel for an indeterminate period of time. In the case of temporary interruptions, ERA will issue the permit only for the minimum reasonable period necessary to come into compliance with applicable requirements of the Clean Air Act without additional consideration of reliability. If you are unable to comply for an indeterminate time period and wish to burn petroleum above the base period amount, then you must demonstrate that you meet the criteria under Title III of the Act for an exemption for reasons relating to the inability to comply with applicable Clean Air Act requirements. In such a case, ERA will grant the permit for the minimum amount of time it takes to eliminate the impairment of reliability of electric service or comply with the applicable air quality requirements.

A. Temporary Interruptions Necessary To Comply With the Clean Air Act and Prevent Impairment of Reliability of Service

Such a powerplant is eligible for a permit if it used coal or alternate fuel as a primary energy source in 1977, ERA has received the necessary certification from EPA or the appropriate state air pollution control agency, ERA has received the necessary certification with regard to reliability from the appropriate state regulatory authority and the powerplant will be able to comply with the prohibition imposed by this rule by the expiration date of the permit.

We will base the duration of the permit under this category on the reasonable length of time required to comply with the requirements of the Clean Air Act. To insure that the powerplant will in good faith comply by the end of the permit period, we will require the submission of a compliance plan along with your permit application.

B. Indeterminate Cessation Due to Inability To Comply With Applicable Environmental Requirements and Prevent Impairment of Reliability of Electric Service

In addition to the certifications described above, an applicant must demonstrate that his powerplant will be unable to comply with applicable environmental requirements for an indeterminate period without the issuance of a permit.

We anticipate that in some cases the inability to comply with the prohibition imposed by this rule might be for the remaining useful life of the powerplant. Therefore, the duration of need to burn petroleum above the base year amount may (depending on the reliability problem) also be for the remaining useful life of the powerplant.

In instances where an applicant is not attempting to burn coal in compliance with the Clean Air Act, he is in effect asserting that the duration of need for a Section 405 permit is the remaining useful life of the powerplant, or such lesser period as is necessary to eliminate any impairment of reliability of electric service. In determining for what period such an applicant will be unable to comply with requirements of the Clean Air Act, ERA will employ the criteria for certain exemptions under Title III of FUA relating to the inability to comply with the Clean Air Act. However, where an applicant establishes that the applicable exemptions criteria are met, the administrative action will be the grant of a 405 permit rather than the grant of an exemption as such.

If you apply for a permit to burn increased amounts of petroleum based on indeterminate cessation of coal burning, we may grant a temporary permit covering the period necessary for you to show and for us to evaluate your demonstration that your powerplant meets the criteria for those exemptions.

In the case of temporary interruptions, we believe it is appropriate under the Act to consider the choice of fuel to be between coal and oil. In the case of indeterminate cessations, however, we believe that the statute contemplates consideration by the certifying authorities of reasonable alternate fuels.

ERA encourages the applicant to request a pre-permit conference be held with EPA and ERA to discuss alternate fuel use strategies and decide which fuels may be feasible.

IV. Comment Procedures

You are invited to participate in this rulemaking by submitting data, views or arguments with respect to this interim rule. Comments should be submitted to the address indicated in the "Addresses" section of this Notice and should be identified on the outside envelope and on documents submitted with designation Powerplant and Industrial Fuel Use Act, "Prohibition on the Increased Use of Petroleum," Docket No. ERA–R78–19C. You should submit 15 copies. All comments received will be available for public inspection in the DOE Reading Room, Room GA–152, Forrestal Building, 1000 Independence Avenue, S.W., between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday. We will consider all comments received by August 15, 1979, 4:30 p.m.

You should identify separately any information or data you consider to be confidential and submit it in writing, one copy only. We reserve the right to determine the confidential status of the information or data and to treat it according to our determination.

V. Other Procedural Matters

A draft regulatory analysis of the proposed regulations under FUA, as contemplated by Executive Order No. 12044, was published as an appendix to the Proposed Rules to Implement the Powerplant and Industrial Fuel Use Act of 1978 (FUA) in the Federal Register, 43 FR 53974 (November 17, 1978). In addition, a Final Environmental Impact Statement (EIS) has been prepared pursuant to the National Environmental Policy Act. Both documents are available for review in Room B–110, 2000 M Street, N.W., Washington, D.C.

The Office of Management and Budget has reviewed this interim rule and has notified ERA that § 504.1 has been cleared pursuant to the terms of the Federal Reports Act for data collection purposes except for the collection of information set forth in § 504.1(d)(3)(i) and (ii) until December 31, 1979.

Authority: Department of Energy Organization Act, Pub. L. 95–91; 91 Stat. 565 (42 U.S.C. 7101 et seq., Powerplant and Industrial Fuel Use Act, Pub. L. 95–620); 92 Stat. 3289, (42 U.S.C. 8301 et seq.).

In consideration of the foregoing, § 504.1, as amended, of Subchapter E of Chapter II, Title 10 of the Code of Federal Regulations, titled "Alternate Fuels," is hereby adopted as an interim rule.

Issued in Washington, D.C., on May 8, 1979.

David J. Bardin,
Administrator, Economic Regulatory Administration.

This document amends Subchapter E, Chapter II, Title 10 CFR (proposed January 29, 1979, 44 FR 5808), by adding Part 504 as set forth below:

PART 504—EXISTING ELECTRIC POWERPLANTS

Subpart A—Restriction on the Increased Use of Petroleum

§ 504.1 Prohibition against the increased use of petroleum.

(a) *Prohibition.*

No existing electric powerplant, which during 1977 used coal or other alternate fuel as a primary energy source, may use petroleum as a primary energy source in any calendar year in excess of the "base year amount" unless ERA issues a permit authorizing such increased use. The "base year amount" means the quantities of petroleum used in the powerplant as a primary energy source during calendar year 1977.

(b) *Policy Note.*

(1) Section 405 of the Act directs ERA by rule to restrain the use of petroleum by powerplants which burned coal or another alternate fuel in 1977, but which are unable to do so in compliance with Clean Air Act requirements and cannot cease operation without impairing reliability of electric service. For example, where an electric powerplant requires a reasonably predictable time period to install pollution control equipment before returning to the use of coal or other alternate fuel, ERA may issue a limited duration permit to use more petroleum as necessary to prevent impairment of reliability. In some cases, however, an electric powerplant may be unable to return to the use of coal or other alternate fuel for an ill-defined time period, or, even permanently. Therefore, ERA in implementing Section 405 of the Act has designed two alternate procedures. Under either procedure, the applicant should provide the information necessary to enable EPA, the State regulatory agency, and ERA to make their decisions.

(2) The Act directs ERA to limit the duration of the permit allowing increased oil consumption above the base year amount to the period it determines is necessary to carry out the statutory mandate. In order to make this determination as to duration, ERA needs to know when an existing powerplant either will be able to resume the use of coal or alternate fuel, or will no longer need to use petroleum to avoid impairment of reliability of electric service notwithstanding that it cannot burn coal or an alternate fuel.

(3) ERA encourages you to plan for any interruption of coal use on a schedule that minimizes the need to burn increased amounts of petroleum and invites informal discussion prior to applying for a permit as to the duration of such increased use.

(c) *Temporary Interruptions Necessary to Comply with the Clean Air Act and Prevent Impairment of Reliability of Service.* (1) Explanatory note: Examples contemplated under this subsection would include those cases where it is necessary to install pollution control equipment, arrange for the delivery of suitable fuel, or bring other units in your system on line.

(2) Eligibility. Existing electric powerplants which are subject to the prohibition imposed by this rule, but which will be able to comply after a temporary interruption are eligible for a permit if:

(i) Your powerplant used coal or other alternate fuel as a primary energy source during 1977;

(ii) You have applied for a variance or other waiver from EPA or the State air pollution control agency to continue the use of coal or other alternate fuel, and a decision with regard to your application has been rendered;

(iii) EPA or the appropriate State air pollution control agency has certified that (A) your powerplant cannot comply with the requirements of the Clean Air Act, including any applicable implementation plan, as defined in Section 110(d) of the Clean Air Act, without issuance of a permit to use petroleum above your base year amount, and (B) you have established the duration of the need for increased petroleum in order to comply;

(iv) The appropriate State regulatory authority has certified that the increased use of petroleum is necessary to prevent impairment of reliability of electric service in that State; and

(v) You will be able to comply with the prohibition imposed by this rule by the expiration of the permit.

(3) Evidence of Certification. ERA shall not issue you a permit unless the following have been submitted to ERA:

(i) A certification from EPA or the appropriate State air pollution control agency stating that the powerplant "cannot comply with the requirements of the Clean Air Act, including any applicable implementation plan, as defined in 110(d) of the Clean Air Act, without the issuance of such a permit" to use petroleum above your base year

amount; and that you have "established the duration of need for increased petroleum in order to comply;" and

(ii) A certification from the appropriate State regulatory authority stating that "the increased use of petroleum by the powerplant is necessary to prevent impairment of reliability of service."

(4) Evidence of Duration. The duration of any permit to increase the use of petroleum granted under this subsection shall be the minimum reasonable length of time necessary to comply with the requirements of the Clean Air Act without impairment of reliability of electric service. To assist ERA in determining this period of time you must submit to ERA along with your application the following statements:

(i) A compliance plan indicating how and in what time period you plan to comply. You must include in your compliance plan the following:

(A) A specific schedule of milestones for bringing the powerplant back into compliance with the applicable environmental requirements.

(B) What steps will be taken to minimize use of petroleum and duration of such use; and

(C) The quantity of petroleum you estimate is required and an estimate of the rate of use by month.

(ii) A statement of why you are unable to burn coal or other alternate fuel in compliance with the Clean Air Act;

(iii) A statement showing whether you attempted to get a variance or other waiver from EPA or the State agency from applicable environmental requirements and if that waiver was denied; and

(iv) The basis, to the extent known to you, for the State agency's reliability certification, including the data and analysis considered, the extent to which the State authority considered reliability in your electric region, and what other factors bearing on reliability were considered.

(5) ERA shall issue the permit for the increased use of petroleum only for the quantity and duration it determines is necessary after review and evaluation of the information set out above.

(6) ERA reserves the right to require whatever additional information may be necessary to enable it to make a determination as to duration.

(d) *Indeterminate Cessations Due to Inability to Comply with Environmental Requirements and Prevent Impairment of Reliability of Electric Service.* (1) Explanatory note: Examples contemplated under this section would include those cases where a financial or physical limitation would preclude your coming into compliance for an indeterminate period of time.

(2) Eligibility. In addition to the criteria enumerated in subparagraphs (c)(2)(i), (ii), (iii), and (iv) above, existing electric powerplants which are subject to the prohibition imposed by this rule, but which are unable to comply with the Clean Air Act requirements after a temporary interruption, are eligible for a permit if they will be unable for specified reasons set out in (d)(3)(ii) to comply with the prohibition imposed by this rule for an indetermine period of time.

(3) Evidence of Certification. In addition to the evidence enumerated in subparagraphs (c)(3)(i) and (ii) above, ERA shall not issue you a permit unless the following have been submitted to ERA:

(i) A statement, to the extent such information is available to you, of the basis for the State agency's certification, including the data and analysis considered, and the extent to which it considered the reliability of your electric region; and

(ii) A showing in accordance with subparts C, D, and E of this Part (as proposed in the **Federal Register** on January 29, 1979, 44 FR 5808) that you would qualify for an exemption for reasons relating to your inability to comply with Clean Air Act requirements because of environmental, financial or physical limitations.[1]

(4) A statement indicating which fuels were presented for consideration to the agency which certified with regard to the Clean Air Act, and, to the extent known by you, why they were rejected as a method of compliance.[2]

(5) Evidence of Duration. The duration of any permit to increase the use of petroleum granted under this subsection shall not exceed the demonstrated need. Such duration shall be for the period you would qualify for an exemption, up to and including the remaining lifetime of the plant, or for the period of time that will be required to eliminate any impairment of reliability of electric service, whichever period is less.

(6) ERA reserves the right to require additional information necessary for a determination of duration.

(7) ERA may issue a temporary permit under this subsection to enable the applicant to demonstrate he would qualify for an exemption under Title III of FUA for reasons relating to the inability to comply with Clean Air Act requirements.

(e) *Administrative Provisions.* (1) Definitions of terms used in this Part are provided in Part 500.

(2) This section establishes general procedures for purposes of this rule. Other procedures which may be applicable to this rule are provided in Part 501. The filing fee for a permit under this subpart is $1,000.

(3) You must submit your application for a permit to the following address: Economic Regulatory Administration, Case Control Unit (Fuels Use Act), Box 4629, 2000 M Street, N.W., Room 2123, Washington, D.C. 20461.

(4) You should clearly label any permit application or document that you file with ERA under this subpart as "FUA Permit Application for the Increased Use of Petroleum" both on the document and on the outside of the envelope in which the document is transmitted.

(f) *Environmental Protection Agency Procedures.* [This subsection is reserved for cross reference or codification of the procedures which EPA will adopt for issuance of certifications applicable to the application for a permit.]

[Docket No. ERA-R-78-19C]

[FR Doc. 79-15217 Filed 5-11-79; 12:55 pm]

BILLING CODE 6450-01-M

[1] OMB clearance under the Federal Reports Act for data requirements in subparts C, D, and E is pending. You may submit the required information prior to OMB clearance; however, if there are any changes in the interim rule for these subparts, you may be asked to submit appropriate changes to your submission.

[2] ERA encourages the applicant to request a pre-permit conference be held with EPA and ERA to discuss alternate fuel use strategies and decide which fuels may be feasible.

federal register

Tuesday
May 15, 1979

Part IX

Department of Housing and Urban Development

Office of Assistant Secretary for Community Planning and Development

Targeted Jobs Demonstration Program; Competiton for Grants

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

Targeted Jobs Demonstration Program; Competition for Grants

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of Competition for Grants.

SUMMARY: Notice is hereby given that letters of intent are now being accepted for a Targeted Jobs Demonstration Program to be carried out under an Interagency Agreement among the following agencies: the Department of Labor, the Department of Housing and Urban Development, the Economic Development Administration of the Department of Commerce, the Department of Transportation, the Small Business Administration and the Community Services Administration.

This demonstration program supports the President's National Urban Policy, announced on March 27, 1978, by encouraging local coordination of Federal programs, so that the maximum feasible number of the jobs created under Federally-assisted community and economic development and transportation projects go to economically-disadvantaged persons who are eligible for assistance under the Comprehensive Employment and Training Act (CETA) program, and the maximum feasible number of spinoff business opportunities created under these projects go to small, minority, or community entrepreneurs.

EFFECTIVE DATE: May 15, 1979.

FOR FURTHER INFORMATION CONTRACT: Bobbie H. Denson, Program Specialist (202) 755–7506.

SUPPLEMENTARY INFORMATION: Under an Interagency Agreement, about $3 million will be made available on a competitive basis for individual grants of up to $100,000 a year for up to two years to general purpose local governments with substantial amounts of federally-assisted development activity which propose to improve the targeting of the job and business opportunities created under these projects upon economically-disadvantaged persons and small and minority, entrepreneurs and community development corporations.

Background

On March 27, 1978 President Jimmy Carter announced a National Urban Policy to Conserve America's Communities. One of the major objectives of this urban policy is to retain or expand private sector investment and jobs in older urban areas. To do so, various incentives are offered to private firms that agree to invest in targeted locations. Major justifications for these incentives are the retention or expansion of job opportunities for economically disadvantaged persons and the creation of business opportunities for small or minority entrepreneurs or community development corporations (CDCs). It is often the case, however, that the maximum potential benefits of economic development activities do not flow to economically disadvantaged persons and small entrepreneurs. Even when one of the criteria used in selecting projects is the number of jobs that will be created for low and moderate income persons, jobs and business opportunities may not go to the targeted groups if project implementation is not coordinated with job training and other employment incentives or with small business development activities.

Purpose

To address this problem, local governments are invited to participate in a demonstration program to strengthen the links between their community and economic development and transportation activities and their employment and training and small business development activities, so that, first and foremost, the maximum feasible number of jobs created under Federally-assisted development projects go to economically disadvantaged persons who are eligible for assistance under the CETA program; [1] and secondarily, the maximum feasible number of spin-off business opportunities created under these projects go to small or minority entrepreneurs or community development corporations.

This program is intended to demonstrate that targeted and strategic local action can increase the likelihood that disadvantaged groups will realize the maximum feasible employment and business opportunities from major and unique Federally-assisted investments in economic and community development, local public works, and mass transit-related development. If this demonstration is successful, such local actions could be replicated by other communities that are the sites of such investments.

[1] For definition of the term "economically disadvantaged," see Appendix A.

Means

A total of $3 million in grants will be made to selected local governments on a competitive basis for activities which they propose to achieve the demonstration program's objectives. In addition, one or more conferences will be held where the successful applicants can share experiences and receive technical assistance.

Administration

This demonstration program is being administered under an Interagency Agreement among the Department of Labor (DOL), the Economic Development Administration (EDA) of the Department of Commerce (DOC), the Department of Housing and Urban Development (HUD), the Department of Transportation (DOT), the Small Business Administration (SBA), and the Community Services Administration (CSA). Lead administrative responsibility for this demonstration will be exercised by HUD.

Direction of the program, including final decisions on grant recipients, will be provided by an interagency committee composed of the DOL Assistant Secretary for Employment and Training, the DOC Assistant Secretary for Economic Development, the HUD Assistant Secretary for Community Planning and Development, the DOT Assistant Secretary for Budget and Programs, the Associate Director for Economic Development at the CSA, and the Associate Administrator for Finance and Investment at SBA. Responsibility for monitoring of grantees will be shared by the participating agencies under the direction of a monitoring board chaired by HUD. Each agency will retain ultimate responsibility for seeing that its funds are used in accordance with its own statutory requirements.

Eligible Applicants

Letters of intent and applications must be submitted by the general purpose unit of local government, but the chief executive officer may designate another local entity to administer the demonstration, as long as the local government remains ultimately responsible for the administration of the grant.

Eligible designess may include, but are not limited to the following:

The prime sponsor of the local CETA program.

The private industry council (PIC) through the prime sponsor.

The community or economic development agency.

The public transportation authority.

A nonpublic organization, community-based organization, or community development corporation with the capacity to assist in implementing linkages between economic development projects and manpower training and small business development activities.

Conditions for Participation

Because the Targeted Jobs Demonstration Program is focused upon jurisdictions with substantial amounts of Federally-assisted community and economic development and transportation-related activity, applicants for participation in this demonstration must first establish their suitability as demonstration sites. They will be asked to supply certain information about each of the Federally-assisted development projects in their jurisdictions. (This information is described in a later section of this Notice.) This information will be reviewed in initial screenings of letters of intent and full applications. Only those letters of intent or applications from jurisdictions found to be suitable sites for the demonstration will be further reviewed with respect to the quality of their proposed activities using the selection factors discussed in a later section of this Notice.

In the course of participation in this demonstration, applicants will be expected to demonstrate their commitment to interagency coordination by negotiating bona fide agreements between the local agencies and bodies responsible for employment and training activities and those responsible for major development projects to target a specific number or percentage of jobs upon CETA-eligible persons and to tailor training programs to prepare CETA-eligible persons for these jobs.

Eligible Activities

Applicants are asked to explain how they propose to use a limited amount of resources to achieve the demonstration program's objectives of assuring that the maximum feasible number of jobs created under federally-assisted development projects go to economically disadvantaged persons who are eligible for CETA training and other assistance, and the maximum feasible number a spin-off business opportunities go to small or minority entrepreneurs or CDCs. The activities undertaken should complement rather than duplicate any existing local efforts to achieve these objectives. Activities may not include loans or grants to the Federally assisted projects, or to spin-off businesses. Neither may demonstration assistance be used to provide direct employment and training assistance to CETA-eligible persons. Eligible activities include, but are not limited to the following:

Provision of technical assistance to local government agencies (including the prime sponsor, the PIC, the community or economic development agency, the public transportation authority, etc.), assisted firms, small businesses and other appropriate entities to carry out the objectives of the demonstration program.

Design of training programs for economically-disadvantaged persons tailored to the needs of private sector employers.

Negotiation of agreements with participating firms to link job opportunities and training programs.

Marketing of Targeted Jobs Tax Credit to private sector firms.

Creation of local procurement policies to further the objectives of the demonstration program.

Development of effective techniques, where appropriate, for helping small and minority business or community development corporations establish equity in the project or related development.

Creation of new institutional arrangements for improving local coordination of these Federal programs.

Creation or expansion of local staffs responsible for meshing economic development, employment, and small business development activities.

Other activities as appropriate to local circumstances.

Selection Factors

The following selection factors will be used to select applicants for awards:

1. The extent to which the applicant's proposed activities effectively target the maximum feasible number of both construction and permanent private sector jobs created under Federally-assisted development projects upon economically disadvantaged persons who are eligible for CETA training and other assistance. (50 points)

2. The extent to which the applicant's proposed activities effectively target the maximum feasible number of spinoff business opportunities created under Federally-assisted development projects upon small or minority entrepreneurs or community development corporations. (15 points)

3. The degree of commitment of all critical local entities, including the prime sponsor and relevant private sector entities, to cooperate in achieving the demonstration program's objectives. (15 points)

4. Evidence that project activities will continue after the demonstration period, as indicated by the amount of local resources (including staff) to be committed to the achievement of the demonstration program's objectives, and by other factors, including local commitments to maintain the effort. (15 points)

5. The extent to which the materials and methods developed by the applicant to achieve the demonstration program's objectives would be transferable to other jurisdictions. (5 points)

Final determination of grant recipients will be made by the interagency committee among applicants qualified for grants on the basis of the selcetion factors, taking into account the desire to ensure that a variety of approaches are demonstrated, an appropriate mix of types of projects is included, and grant recipients are representative by geographical location and size.

Size and Duration of the Grant

The demonstration grants will be awarded for up to two years in conformance with the procedures established by the Joint Funding Simplification Act. Proposed grant budgets should be scaled to the level of effort required by the types of activities undertaken and the number of people and projects to be served. Demonstration projects scheduled to last more than one year will be reviewed at the end of the first year to determine whether sufficient progress has been made to merit continuation of the grant. No grant shall exceed $200,000 for two years.

Application Process

Applicants are invited to participate in a two-stage competition for a demonstration grant. In the first stage, each applicant will be asked to submit a letter of intent. Based on these letters of intent, approximately 50 local governments will be selected to prepare full applications. Grant wards will be made to approximately 15–20 local governments using the selection criteria listed in this Notice.

Letter of Intent

To apply for one of the grants, an applicant should submit an original and five copies of the following: a) a brief (five page maximum) letter of intent signed by the chief elected official which outlines its proposed approach; and b) a brief (five page maximum) appendix which established its suitability as a demonstration site.

a. *Proposed Approach.*—In outlining its proposed approach, the applicant

should briefly answer the following questions:

What are you doing now to target the jobs (and spinoff business opportunities) created under Federally-assisted projects?

What would you do if you received a grant under this demonstration program?

How do you plan to involve the prime sponsor and other critical local entities (including the private sector) in the activities that you proposed to carry out under this demonstration?

Relevant parts of the letter of intent should be specifically referenced to the five selection factors.

b. *Suitability as a Demonstration Site.*—To establish its suitability as a demonstration site, the applicant should list the Federally-assisted community and economic development, major public works, and mass transit-related development projects in its community which will be the focus of the demonstration program effort and, for each project, briefly describe:

(1) *Its stage of implementation.*—To enhance a community's eligibility as a potential site for the demonstration program, a project should be far enough along that specific job needs can be anticipated, but not so far along that there is insufficient lead-time to develop targeted training opportunities or to steer emerging business opportunities to small, minority, or community entrepreneurs.

(2) *The nature of the jobs to be created or opened through job turnover.*—The jobs to be created should require a level of proficiency for which some training is required, but not more than can be achieved by the targeted groups within a reasonable period of time.

(3) *The number or percentage of jobs that will be targeted upon economically disadvantaged persons who are eligible for CETA assistance.*—A total of at least 100 jobs from one or more projects should be projected for targeting to make a special targeting effort worthwhile.

(4) *The nature and availability of potential business opportunities created as spinoffs from the project(s).*—The potential business opportunities should be suitable for small or minority, entrepreneurs or community development corporations. Jurisdictions having greater concentrations of projects creating jobs suitable for economically-disadvantaged persons will receive priority consideration as demonstration sites.

c. *A-95 Clearinghouse Notification.*—At the time that the applicant submits its letter of intent to HUD, it should also send a copy to the State and areawide clearinghouses serving its jurisdiction for concurrent review. A clearinghouse will have 30 days for review, comment and consultation with the applicant prior to sending its comments directly to HUD with a copy to the applicant. The interagency committee will not make a final rating through the selection factors until the clearinghouse comments are received or 30 days have expired from the date that the letter of intent was received by HUD.

Full Application Submission Procedures

When an applicant is notified of its eligibility to submit a full application to participate in the demonstration program, it will receive a package containing necessary application forms and instructions. Applicants will be asked to submit an application consisting in its main outlines of the following:

1. A letter of transmittal containing the signatures of the chief executive of the general purpose local government submitting the application, and the designated project leader who will be primarily responsible for the execution of the project.

2. A one page abstract of the project summarizing the proposal.

3. A description of the proposed Targeted Jobs demstration specifically referenced to the five selection factors, including:

a. A description of current economic development activities which will be the focus of the demonstration effort, including a list of the major Federally-assisted projects in the city and, for each project, a description of:

Its stage of implementation.

The nature of the jobs to be created or opened through job turnover.

The number or percentage of jobs that will be targeted upon economically disadvantaged persons who are eligible for CETA assistance.

The nature and availability of potential business opportunities as spinoffs from the project.

b. A description of existing efforts to coordinate economic development projects and to link the projects and manpower training and small business development activities, and an assessment of their adequacy.

c. The specific activities that the applicant proposes to undertake, together with an explanation of how they will contribute to the achievement of the demonstration program's objectives.

d. Evidence of the active willingness of the prime sponsor and other critical local entites, including relevant private sector entities, to cooperate in achieving the demonstration program's objectives.

e. Plans for assuring that successful institutional arrangements and techniques for linking economic development activities and manpower training and small business development activities will be applied to future Federally-assisted economic development and private sector job creation activities.

f. Plans for assuring that the materials and methods developed by the applicant to achieve the demonstration program's objectives will be transferable to other jurisdictions.

4. A detailed work program which sets forth the proposed use of the grant funds, including a schedule of activities. This work program should identify the staff and other resources that the applicant will contribute to the demonstration from its own funds or from other Federal funds (such as the CETA assistance or Community Development Block Grant funds).

5. Forms and such other requirements as may be necessary to comply with the statutory, regulatory, and administrative requirements of the particular program from which funds will be provided to the applicant.

6. A-95 Clearinghouse Review An applicant should provide the State and areawide clearinghouses serving its jurisdiction with 30 days to review and comment upon its full application, unless the clearinghouse waives this requirement. An applicant should transmit all clearinghouse comments to HUD with its full application. If the applicant has not received any comments before the end of the 30-day review period, it should include a statement indicating that the clearinghouse was notified, and no comments were received.

Timing

A local government which chooses to compete to participate in the Targeted Jobs Demonstration Program should send a letter of intent to:

Assistant Secretary for Community Planning and Development U.S. Department of Housing and Urban Development 451 7th Street, S.W. Attention: Legslative and Urban Policy Staff—Room 7158 Washington, D.C 20410.

Postmarked no later than June 25, 1979. Local governments will be notified of their eligibility to submit a full application no later than July 27, 1979. Each local government will have 45 days in which to prepare its application. To be eligible, applications should be sent to the above address, and postmarked

no later than October 10, 1979. Awards are expected to be announced no later than November 5, 1979.

Reporting Requirements

Each applicant will be responsible for preparation and submission of interim progress reports and a draft and a final report on its demonstration project. The report should describe in appropriate detail the objectives of the project and how they were met, the methods and techniques that were used, the types of problems encountered during the project execution and the methods used to resolve them, and the conclusions and recommendations that are to be drawn from the demonstration. The final report should be in a form and manner prescribed by the interagency committee.

Evaluation

An evaluation of the results of these demonstration projects will be undertaken jointly by the Federal agency sponsors. The evaluation criteria will be developed by the interagency committee. Principal among them will be the degree to which demonstration projects achieve their goals for targeting jobs upon the economically disadvantaged and spin-off business opportunities upon small or minority, entrepreneurs or community development corporations.

Issued at Washington, D.C., May 10, 1979.

Robert C. Embry, Jr.,

Assistant Secretary for Community Planning and Development.

Appendix A

The following definition of the term "economically disadvantaged" appears in the Comprehensive Employment and Training act regulations issued by the Department of Labor and published in the **Federal Register**, Vol. 44, No. 65, April 3, 1979.

"Economically disadvantaged" means a person who is either:

(a) A member of a family which receives public assistance;

(b) A member of a family whose income during the previous 6 months on an annualized basis was such that

(1) The family would have qualified for public assistance, if it had applied for such assistance; or

(2) It does not exceed the poverty level; or

(3) It does not exceed 70 percent of the lower living standard income level;

(c) A foster child on whose behalf State or local government payments are made;

(d) Where such status presents significant barriers to employment,

(1) A client of a sheltered workshop;

(2) A handicapped individual;

(3) A person residing in an institution or facility providing 24 hour support such as a prison, a hospital or community care facility; or

(4) A regular outpatient of a mental hospital, rehabilitation facility or similar institution.

[Docket No. N-79-927]
[FR Doc. 79-15227 Filed 5-14-79; 8:45 am]
BILLING CODE 4210-01-M

federal register

Tuesday
May 15, 1979

Part X

Department of Energy

Economic Regulatory Administration

Middle Distillates for Agricultural Production

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 211

Mandatory Petroleum Allocation Regulations; Amendment to Provide Middle Distillates for Agricultural Production

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final Rule and Notice of Continuation of Rulemaking Proceeding.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is adopting a new Special Rule No. 9 to Part 211, Subpart A, which will permit consumers engaged in agricultural production to obtain their current requirements for middle distillates for the period from the date of issuance of Special Rule No. 9 through July 31, 1979. This amendment is being adopted on an emergency basis in order to prevent the interruption of agricultural production activities, including commercial fishing.

The ERA is continuing this rulemaking proceeding to receive public comment on the amendment adopted today and, in particular, on whether this action should be extended beyond July 31, 1979, and also as to whether any additional actions are necessary to deal with current and any future supply problems. Specifically, we are proposing to amend the Special Rule adopted today and the current regulation establishing allocation priorities for motor gasoline to provide that surface passenger mass transportation services will be entitled to receive their current requirements for middle distillates and motor gasoline.

DATES: Written comments with respect to the proposals on ground passenger mass transportation services are due by May 21, 1979, 4:30 p.m.; written comments with respect to all other issues are due by June 15, 1979, 4:30 p.m.; Requests to speak by May 16, 1979, 4:30 p.m.; Oral statements are due by May 18, 1979, 9:30 a.m.; Hearing: May 18, 1979, 9:30 a.m.

ADDRESSES: All comments, including copies of oral statements, to: Department of Energy, Economic Regulatory Administration, Office of Public Hearing Management, Docket No. ERA–R–79–25, Room 2313, 2000 M Street, Washington, D.C. 20461. Hearing location: Room GE–086, Forrestal Building, 1000 Independence Ave., S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Office of Public Hearing Management), Economic Regulatory Administration, Room 2222A, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254–5201.

William L. Webb (Office of Public Information), Economic Regulatory Administration, Room B110, 2000 M Street, N.W., Washington, D.C. 20461, (202) 634–2170.

William E. Caldwell (Office of Regulations and Emergency Planning), Economic Regulatory Administration, Room 2304, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254–8034.

Alan T. Lockard (Office of Fuels Regulations), Economic Regulatory Administration, Room 6222, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254–7422.

Ben McRae (Office of General Counsel), Department of Energy, Room 6A–127, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–6739.

SUPPLEMENTAL INFORMATION:

I. Background
II. Amendment Adopted
III. Continuation of Rulemaking
IV. Procedural Requirements
V. Written Comment and Public Hearing Procedures

I. Background

We are today adopting on an emergency basis an amendment to our petroleum allocation regulations relating to the allocation of middle distillate fuels. This measure provides that consumers engaged in agricultural production will be entitled to receive their current requirements for middle distillates. This action is based on our findings, discussed more fully below, that consumers of middle distillate fuels engaged in agricultural production are experiencing and will continue to experience in the coming weeks serious supply problems due to the current and projected middle distillate supply inadequacies.

The current tight supply situation for middle distillate fuels is a result of a number of factors. First, in the last quarter of 1978, refiners maximized motor gasoline production at the expense of middle distillates in order to meet an unexpected demand for gasoline and to build up depleted gasoline inventories. Second, due largely to the prolonged interruption of Iranian crude oil exports in the first quarter of this year, crude oil imports to the United States in the first quarter of 1979 were about 700,000 barrels per day less than that needed to maintain petroleum product stocks at desired levels. Consequently, refinery utilization rates declined from 91 percent last December to 87.2 percent in January, 83.8 percent in February, and increased slightly to 84.1 percent in March and 84.9 percent in April. Third, demand for middle distillate fuels increased dramatically during the winter months due to extremely severe weather conditions.

As a result of these factors, middle distillate inventories have been drawn down at excessive rates to meet demand, which has increased 25 percent since 1974. Middle distillate inventories currently total 115 million barrels, an unacceptably low level.

We have taken a number of actions to deal with the middle distillate supply situation. On January 12, 1979, we issued a final rule (44 FR 3467, January 17, 1979) which reinstated special middle distillate set-aside procedures for the period January 12 through March 31, 1979 to insure adequate supplies of middle distillate products to wholesale purchaser-consumers and end-users facing emergency and hardship situations. At that time we believed that the demand for middle distillates would decrease with the advent of warm weather and, as a result, that set-aside procedures would not be necessary after March 31. However, by mid-March, the supply situation had not improved as anticipated and we determined that continued availability of the set-aside procedures after March 31 was necessary to prevent the interruption of adequate supplies of home heating oil in the colder areas of the nation and diesel fuel for agricultural and high-priority transportation purposes. Accordingly, on March 21, 1979, we adopted an amendment on an emergency basis extending the set-aside procedures through June 30, 1979 (44 FR 18640, March 28, 1979).

On April 19, 1979, we published a notice in the **Federal Register** urging all suppliers of middle distillate products to recognize the priority needs for diesel fuel for essential uses and recommending that, to the extent possible, middle distillates be distributed to high priority users on the basis of the priorities provided in the middle distillate allocation regulations which are now in standby-status (44 FR 23275, April 19, 1979). In the April 19 notice, we stated that voluntary action was being urged in order to alleviate continued middle distillate shortages for high priority uses that cannot be adequately addressed by the middle distillate set-aside program.

Finally, we have requested refiners to take voluntary action to build distillate stocks to specified target levels by October 1979, so that total U.S. distillate stocks reach at least 240 million barrels, to insure adequate heating oil supplies for the winter heating season. These

voluntary measures for increasing middle distillate inventory levels, as well as other actions which may be implemented to deal with the general petroleum supply situation, are detailed in DOE's *Response Plan: Reducing U.S. Impact on the World Oil Market (April 1979).*

Despite these measures, information available to us from suppliers of middle distillate fuels at all levels of the distribution chain, state energy offices in numerous states and other Federal agences indicates that the tight supply situation for middle distillates could create serious hardships for many consumers in the coming months. The situation appears must acute or consumers engaged in agricultural production in the midwest. Due to sustained unfavorable weather conditions in the midwest, the planting season, which normally runs from late March through late May and in some areas continues into June, has been delayed by several weeks. The Department of Agriculture has supplied us with data, set forth in the following table, that shows the magnitude of the delay.

Percentage of planting completed by May 4:

	Normal	Actual
Corn	35	13
Spring Wheat	47	13
Cotton	42	26
Rice	81	59
Oats	69	44
Barley	48	20
Sugar Beets	51	37
Potatoes	38	26

Consequently, spring planting operations, which normally take place over a two-month period, must now be completed in the next few weeks and, therefore, the demand for diesel fuel for agricultural purposes during this period will approximately double historical demand. The Department of Agriculture has advised us that any further delay in planting operations due to shortages of diesel fuel could result in a significant reduction in the size of this year's harvest since the failure to complete planting by the optimal date results in decreased yields. In addition, the state energy offices in a number of mdwest states and several associations representing agricultural interests have requested that ERA take action to insure adequate supplies of diesel fuel for consumers engaged in agricultural production.

In order to alleviate this situation, we are taking the action set forth below under section 12(f) of the Emergency Petroleum Allocation Act of 1973 (EPAA, 15 U.S.C. 751 *et seq.*, Pub. L. 93–159, as amended), which permits the reimposition of allocation controls on middle distillates upon determination that it is necessary to and consistent with the attainment of the objectives specified in section 4(b)(1) of the EPAA. In particular, we have determined that this rule will promote the maintenance of agricultural operations, including farming, ranching, dairy, and fishing activities, and services directly related thereto, and the equitable distribution of refined petroleum products among all regions and areas of the United States, and sectors of the petroleum industry, and among all users.

II. Amendment Adopted

For the reasons stated above, we are adopting, on an emergency basis, Special Rule No. 9 to Subpart A of 10 CFR Part 211 that will permit consumers engaged in agricultural production to receive their current requirements for middle distillates during the period from the date of issuance of the Special Rule through July 31, 1979. To achieve this purpose, Special Rule No. 9 provides that, notwithstanding the exemption of middle distillates from regulation, a supplier of middle distillates shall supply at non-discriminatory prices those volumes of middle distillates which a wholesale purchaser or end-user certifies, in accordance with the provision of the Special Rule, to be necessary to meet its current requirements for middle distillates for ultimate use in agricultural production.

For purposes of the Special Rule, a purchaser's current requirements for middle distillates are deemed to include only those volumes necessary for agricultural production. A purchaser's current requirements shall not include any volumes for resale other than those currently required by a wholesale purchaser-reseller for resale for ultimate use in agricultural production. Furthermore, middle distillates received by a purchaser pursuant to this Special Rule may not be used to build an inventory level in excess of its customary inventory maintained in the conduct of its normal business practices.

Certification by purchasers is required in order to insure that any volumes of middle distillates required to be supplied pursuant to Special Rule No. 9 are in fact necessary to maintain agricultural production activities. In determining to whom and the manner in which certifications should be made by a particular class of purchaser, we have considered both potential burdens on suppliers and the nature of that class of purchaser. Accordingly, the certification requirements for end-users differ from those for wholesale purchasers.

Any supplier will be required to supply any end-user upon either oral or written certification that the volumes requested are currently required by the end-user for use in agricultural production. A supplier will be required to supply a wholesale purchaser only if it supplied that wholesale purchaser during the purchaser's base period or is otherwise directed by the ERA to supply the wholesale purchaser. Furthermore, unless otherwise directed by the ERA, a supplier will be required to supply a wholesale purchaser only upon receipt of written certification by the purchaser that the percentage of current requirements represented by the volumes requested does not exceed the percentage of the total volumes of middle distillates purchased or obtained by the purchaser from that supplier in the wholesale purchaser's base period. A wholesale purchaser's base period for use in determining any current supply obligations arising under the Special Rule will be the most recent month prior to May 1979 in which the wholesale purchaser obtained middle distillates from any supplier.

While a supplier will be required under the Special Rule to supply a purchaser only in those instances discussed above, we urge suppliers to give priority to all purchasers who require middle distillates for use in agricultural production. However, a supplier may only certify to its suppliers those volumes of middle distillates which it is required to supply pursuant to the Special Rule or which are supplied pursuant to an agreement between the supplier and a wholesale purchaser-consumer which has been unable to obtain the full amount of its current requirements from its base period suppliers.

In the event a supplier and a wholesale purchaser-consumer or end-user cannot agree on the volume of middle distillates which the supplier is required to supply to the purchaser under the Special Rule, the supplier or purchaser may request from the appropriate State Agricultural Stabilization and Conservation Service Office of the U.S. Department of Agriculture information which would be useful in resolving their differences. Such information would include, for example, what constitutes agricultural production, the amount of planted acreage, any additional land being farmed, the changing types of crops and cropping patterns, any expanded livestock and poultry operations, etc. If the dispute remains unsettled (or if the

dispute is between a supplier and a wholesale purchaser-reseller), the purchaser may request validation of the required volume from the appropriate ERA Regional Office.

At any time we determine that a supplier has not supplied the full volume of middle distillates required to be supplied to a purchaser under the Special Rule, we may order the supplier to supply any additional volumes the purchaser should have received from the supplier.

If, after reasonable efforts, a purchaser is unsucessful in obtaining the full amount of its current requirements from its base period or other suppliers, it may apply to be assigned a supplier. We, however, encourage suppliers and wholesale purchaser-consumers that are unable to obtain their current requirements from their base period suppliers to make every effort to enter mutual agreements in which the supplier provides the wholesale purchaser-consumer with its current requirements. In a State where there is a State energy Office, an application by an end-user for assignment of a supplier should be submitted to the State Office. In all other instances, an application for assignment of a supplier should be submitted to the appropriate ERA Regional Office.

In order to permit us to address supply problems on a more general basis, Special Rule No. 9 provides generally for the redirection of middle distillate supplies if necessary to prevent the interruption of agricultural production activities. Accordingly, we may order the transfer of specified amounts of middle distillates from one area or region of the nation to another or among suppliers. In addition, we may review the inventory practices of a firm and direct an increase or decrease in inventories if we determine that an adjustment is necessary in order to allocate middle distillates supplies consistent with the objectives of the Special Rule.

III. Continuation of the Rulemaking

We have adopted Special Rule No. 9 on an emergency basis to insure that sufficient volumes of middle distillates for use in agricultural production are available during the current planting season. We recognize, however, that serious middle distillate supply problems for agricultural producers may continue after July 31, 1979. Therefore, we request your views as to whether there will be a need to extend Special Rule No. 9.

We believe the availability of fuel may also be a serious problem with respect to other essential uses, especially urban mass transportation. Approximately 40 public transit systems throughout the country are experiencing difficulty in obtaining adequate supplies of diesel fuel and motor gasoline and have indicated that unless the supply picture improves in the near future, curtailment of services may be necessary. In addition, railroads have reported that shortages of diesel fuel supplies may cause significant curtailments in services. Finally, many crude oil producers in Louisiana, Wyoming and California have been forced to limit their production activities due to a shortage of diesel fuel for operation of their rigs.

Since any reduction in the current level of surface passenger mass transportation services would disrupt the nation's efforts to conserve energy and improve the environment, we are proposing that Special Rule No. 9 be expanded to include wholesale purchaser-consumer and end-users that use middle distillates for passenger transportation services. We are also proposing to amend sections 211.103 (b) and (c) of the gasoline allocation regulations to include surface passenger mass transportation services among those uses that are not subject to an allocation fraction in order to increase the availability of gasoline for these uses. In this regard, we welcome your comments as to what types of activities should be included in the term surface passenger mass transportation.

We also request your views as to any other actions we might take to alleviate middle distillate supply problems. Such actions might include the expansion of Special Rule No. 9 to provide for the allocation of middle distillate supplies for essential uses other than agricultural production and surface passenger mass transportation or the imposition of a comprehensive system of allocation controls similar to the system that existed prior to the exemption of middle distillates. In view of the current supply situation and today's reimposition of allocation controls we also request your comments as to any need you believe there to be for the reimposition of some form of price controls on middle distillates. We also welcome your views as to whether we should take action to increase currently inadequate inventory levels by requiring refiners to maintain or achieve specified inventory or refinery yield levels for middle distillates.

In determining whether to take any of the actions discussed above, we would weigh potential effects on the economic viability of independent marketers and competition within the industry generally. We request that any comments include a discussion of these considerations.

IV. Procedural Requirements

A. *Section 501 of the DOE Act*

Under section 501(e) of the Department of Energy Organization Act (DOE Act, 42 U.S.C. 7101 *et seq.*, Pub. L. 95–91, DOE Act), we may waive the prior notice and hearing requirements of subsections (b), (c) and (d) of section 501 upon our finding that strict compliance with these requirements is likely to cause serious harm or injury to the public health, safety or welfare. We believe such a finding can and should be made in this instance. There is a substantial possibility, based upon projections of middle distillate supplies and other available information, that consumers engaged in agricultural production will experience serious hardship in the coming months unless action is taken immediately to insure that they may obtain adequate supplies. However, in accordance with section 501(e) and in order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we have scheduled a public hearing for May 17, 1979. We will receive written comments through May 21 with respect to the proposed amendments on ground passenger mass transportation and through June 15 with respect to all other issues. We will reconsider today's action with regard to the comments received in order to determine whether we should take any further action in this rulemaking proceeding.

B. *Section 404 of the DOE Act*

Section 404(a) of the DOE Act requires that the Federal Energy Regulatory Commission (FERC) be notified whenever the Secretary of energy proposes to prescribe rules, regulations, and statements of policy of general applicability in the exercise of functions transferred to him under section 301 or section 306 of the DOE Act. If the FERC determines, within such period as the Secretary may prescribe, that the proposed action may significantly affect any of its functions under sections 402 (a)(1) or (b) of the DOE Act, the Secretary shall immediately refer the matter to the FERC.

Following an opportunity to review Special Rule No. 9, the FERC has declined to determine that it may significantly affect one of its functions under the sections noted above.

C. *Section 7 of the FEA Act*

Under section 7(a) of the Federal Energy Administration Act of 1974 (15 U.S.C. § 787 *et seq.*, Pub. L. 93–275, as amended), the requirements of which remain in effect under section 501(a) of the DOE Act, the delegate of the Secretary of Energy shall, before promulgating proposed rules, regulations, or policies affecting the quality of the environment, provide a period of not less than five working days during which the Administrator of the Environmental Protection Agency (EPA) may provide written comments concerning the impact of such rules, regulations, or policies on the quality of the environment. Such comments shall be published together with publication of notice of the proposed action.

Prior review by the EPA Administrator may be waived for a period of fourteen days if there is an emergency situation which necessitates that a proposed action be made effective at a date earlier than that which would permit the EPA Administrator the five working days opportunity for prior comment. Notice of any such waiver shall be given to the EPA Administrator and filed with the **Federal Register** with the publication of notice of proposed or final agency action and shall include an explanation of the reasons for such waiver, together with supporting data and a description of the factual situation in such detail as is determined will apprise the EPA and the public of the reasons for such waiver.

We have determined that the five working days opportunity for prior comment by the EPA Administrator should be waived. The reasons for the waiver are the same as those which support making Special Rule No. 9 effective immediately and are set forth in the preceding sections of this preamble. A copy of the amendment and this preamble have been provided to the EPA.

D. *Section 553 of the Administrative Procedure Act*

Section 553(d) of the Administrative Procedure Act requires that a substantive rule not become effective less than thirty days after its publication unless the agency promulgating the rule finds good cause to waive this requirement and publishes this finding together with the rule. We have determined that good cause is found to waive the section 553(d) requirement for the reasons stated above in support of making Special Rule No. 9 immediately.

E. *Executive Order 12044*

The sixty-day advance public comment period required for proposed rulemakings pursuant to Executive Order 12044, entitled "Improving Government Regulations" (43 FR 12661, March 23, 1978) and DOE's implementing procedures, DOE Order 2030 (44 FR 1032, January 3, 1979), have been waived by the Deputy Secretary of Energy as they relate to both the final rule and the proposed rules presented in the preceding sections for the reasons previously stated for making the Special Rule No. 9 effective immediately.

V. Written Comment and Public Hearing Procedures

A. *Written Comments*

You are invited to participate in this proceeding by submitting data, views or arguments with respect to any matters relevant to this notice. Comments should be submitted by the date indicated in the "Dates" section of this notice and to the address indicated in the "Addresses" section of this notice and should be identified on the outside envelope and on the document with the docket number and the designation: "Special Allocation Program for Middle Distillates." Ten copies should be submitted.

Any information or data submitted which you consider to be confidential must be so identified and submitted in writing, one copy only. We reserve the right to determine the confidential status of such information or data and to treat it according to our determination.

B. *Public Hearing*

1. *Procedure for Requests to Make Oral Presentation.* If you have any interest in the matters discussed in this notice, or represent a group or class of persons that has an interest, you may make a oral request for an opportunity to make oral presentation by 4:30 p.m., e.d.t., May 16, 1979. You should also provide a phone number where you may be contacted through the day before the hearing.

If you are selected to be heard, you will be so notified before 4:30 p.m., e.d.t., May 17, 1979, and will be required to submit one hundred copies of your statement to the appropriate address indicated in the "Addresses" section of this notice before 9:30 a.m., e.d.t., May 18, 1979.

2. *Conduct of the Hearing.* We reserve the right to select the persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard.

An ERA official will be designated to preside at the hearing. This will not be a judicial-type hearing. Questions may be asked only by those conducting the hearing. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

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 a hearing, the presiding officer will determine whether the question is relevant, and whether time limitations permit it to be presented for answer. The question will be asked of the witness by the presiding officer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by the ERA and made available for inspection at the DOE Freedom of Information Office, Room Ga–152, James Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. You may purchase a copy of the transcript of the hearing from the reporter.

(Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 751 *et seq.*, Pub. L. 93–159, as amended, Pub. L. 93–511, Pub. L. 94–99, Pub. L. 94–133, Pub. L. 94–163, and Pub. L. 94–385; Federal Energy Administration Act of 1974, 15 U.S.C. § 787 *et seq.*, Pub. L. 93–275, as amended, Pub. L. 94–332, Pub. L. 94–385, Pub. L. 95–70, and Pub. L. 95–91; Energy Policy and Conservation Act, 42 U.S.C. § 6201 *et seq.*, Pub. L. 94–163, as amended, Pub. L. 94–385, and Pub. L. 95–70; Department of Energy Organization Act, 42 U.S.C. § 7101 *et seq.*, Pub. L. 95–91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, Part 211 of Chapter II of Title 10 of the Code of Federal Regulations is amended as set forth below, effective immediately.

Issued in Washington, D.C., May 10, 1979.

David J. Bardin,

Administrator, Economic Regulatory Administration.

The Appendix to Subpart A of Part 211 is amended by adding Special Rule No. 9 to read as follows:

Appendix—Special Rule No. 9

Special Allocation of Middle Distillates for Agricultural Production

1. *Scope.* Notwithstanding the provisions of paragraphs (b) and (c) of § 210.35 of Part 210 of this chapter and of paragraphs (b)(5) and (b)(6) of § 211.1 of this Part, this Special Rule establishes an allocation program for the period May 11, 1979 through July 31, 1979 for middle distillates for use in agricultural production.

2. *Definitions.* For purposes of this Special Rule, the definitions of § 211.51 of Part 211 of this chapter shall apply, except for the following terms:

"Base period" means the first calendar month prior to May 1979 in which a wholesale purchaser purchased or obtained middle distillate volumes.

"Current requirements" means, (a) with respect to a wholesale purchaser-consumer or end-user, the volume of middle distillates needed by the wholesale purchaser-consumer or end-user to meet its present supply requirements for middle distillates for use in agricultural production, but does not include any amounts which the wholesale purchaser-consumer or end-user purchases or obtains for resale or accumulates as an inventory in excess of that purchaser's customary inventory maintained in the conduct of its normal business practices; or, (b) with respect to a wholesale purchaser-reseller, the volume of middle distillates needed by the wholesale purchaser-reseller to meet its present requirements to supply middle distillates to wholesale purchaser-consumers, end-users or other wholesale purchaser-resellers for ultimate use in agricultural production.

"Middle distillates" means any of the following, as defined in § 212.31 of Part 212 of this chapter: No. 1 heating oil, No. 1–D diesel fuel, No. 2 heating oil, No. 2–D diesel fuel and kerosene.

3. *General Rule.* Each supplier of middle distillates shall supply all wholesale purchaser-consumers, all end-users, and all wholesale purchaser-resellers with their current requirements for middle distillates which have been certified to that supplier in accordance with the provisions of this Special Rule.

4. *Certification Requirements.*

(a) *End-users.* An end-user may certify to any supplier its current requirements for middle distillates for agricultural production

(b) *Wholesale purchaser-consumers.* A wholesale purchaser-consumer may certify to its base period supplier its current requirements for middle distillates for ultimate use in agricultural production.

(c) *Wholesale purchaser-resellers.* A wholesale purchaser-reseller may certify to its base period supplier its current requirements for: (i) any end user; (ii) any wholesale purchaser-consumer it supplied during the base period (in accordance with paragraph (d) of this section); (iii) any wholesale purchaser-consumer it agrees to supply under section (7); (iv) any assigned purchasers, and (v) any wholesale purchaser-reseller from which it receives a certification for volumes to be supplied pursuant to this Special Rule.

(d) *Purchasers with more than one base period supplier.*

A purchaser or supplier which purchased or obtained middle distillates during the base period from more than one supplier may certify to each such supplier a percentage of its current requirements for agricultural production which does not exceed the percentage of the total volumes of middle distillates purchased or obtained by the purchaser from that supplier in the base period.

5. *Validation of Certifications.*

In the event that a purchaser and its supplier cannot agree on the volume of middle distillates which the supplier is required to supply to the purchaser under this Special Rule the purchaser may request validation of the required volume from the appropriate ERA Regional Office. From the time the supplier receives certification, the supplier shall supply the purchaser any volumes which are not in dispute. If ERA determines that the purchaser is entitled to volumes in excess of those supplied by the supplier during the period in which certification was in dispute, ERA may order the supplier to supply such increased requirements and to supply the purchaser with additional volumes of middle distillates equal to the amount the purchaser would have received if the increased requirements had been supplied during such period.

6. *Assignment of suppliers.*

Any purchaser which is unable to purchase or obtain its total current requirements for ultimate use in agricultural production may apply to the appropriate ERA Regional Office as provided in Subpart C of Part 205 of this chapter to be assigned a supplier; *provided that,* an end-user in a State in which there is a State Office must apply to that State Office as provided in Subpart Q of Part 205 of this chapter for the assignment of a supplier. The purchaser may be assigned one or more suppliers and the amount of its current requirements to be supplied by each supplier may be specified.

7. *Mutual agreements.* As an alternative to the procedures set forth in sections (5) and (6) of this Special Rule, a supplier of middle distillates may agree to supply that portion of the current requirements of a wholesale purchaser-consumer which has been unable to obtain the full amount of its current requirements from its base period suppliers.

8. *Duration of Supply Obligation.* Any requirement that volumes of middle distillates be supplied to a purchaser prior to the expiration of this Special Rule will remain in effect until satisfied, regardless of the expiration date of this Special Rule.

9. *Redirection of products.* ERA may order the transfer of specified amounts of middle distillates from one area or region to another or among suppliers if necessary to accomplish the objectives of this Special Rule.

10. *Inventories of middle distillates.* ERA may review inventory practices of any firm subject to this Special Rule and direct an increase or decrease in inventories if ERA determines that an adjustment is necessary in order to allocate middle distillates supplies consistent with the objectives of this Special Rule.

11. *Normal business practices; non-discriminatory pricing.* The requirements of paragraphs (a) and (b) of § 210.62 of this chapter shall apply to suppliers to prohibit any practice or any form of discrimination (including price discrimination) which has the effect of circumventing, frustrating or impairing the objectives, purposes and intent of this Special Rule.

[Docket No. ERA–R–79–25]
[FR Doc. 79–15250 Filed 5–11–79; 8:45 am]
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federal register

Tuesday
May 15, 1979

Part XI

Department of Labor

Employment and Training Administration

Comprehensive Employment and Training Act Wage Adjustment Index

DEPARTMENT OF LABOR

Employment and Training Administration

Comprehensive Employment and Training Act (CETA) Wage Adjustment Index

AGENCY: Employment and Training Administration, Labor.
ACTION: Notice.

SUMMARY: This notice promulgates the CETA wage adjustment index for Fiscal Year 1980 as required under Section 122(i)(3) of the Comprehensive Employment and Training Act. This index is to be used by CETA prime sponsors for planning purposes only. A final CETA wage adjustment index for FY 1980 will be published in the **Federal Register** prior to October 1, 1979. The average wage as reflected in the attached listing represents a national increase of only 3½ percent, based on updated wage information.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Anderson, Administrator, Office of Comprehensive Employment Development, Employment and Training Administration, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. 20213, Telephone (202) 376–7006.

Directive: Field Memorandum No. 272–79.
To: All Regional Administrators.
From: Don A. Balcer, Acting Administrator, Field Operations.
Subject: Maximum CETA PSE wages and average wages for fiscal year (FY) 1980.

1. *Purpose.* To transmit the annual area wage adjustment index to be used for planning purposes for FY 1980.

2. *Background.* Section 122(i)(3) of the Act states that "the Secretary shall issue and publish annually an area wage adjustment index based upon the ratio which annual average wages in regular public and private employment in various areas served by recipients bear to the average of all such wages nationally, on the basis of the most satisfactory data the Secretary determines to be available." This wage adjustment index serves two purposes:

1) to determine the maximum wage payable to any public service employee from funds under the Act; and 2) to determine the average annual federally supported wage rate which must be maintained in each prime sponsor area.

In addition, Section 104(e) of the Act requires that all necessary planning materials be provided to prime sponsors by May 15 of each year. Maximum and average wage requirements are necessarily included in this requirement. The basis for the maximum and average wage requirements is the ES 202 report on local wage levels. In meeting the May 15 deadline, the most recent data available for planning purposes is the one year base period July 1977 through June 1978. However, in order to allow the use of the latest possible data for FY 1980 program operations, a final wage index for FY 1980 will be issued in September 1979, based on the period January 1978 through December 1978.

3. *Computation of the Index.* An index value has been computed for each prime sponsor, each Standard Metropolitan Statistical Area, and for each county eligible to be a program agent (at least 50,000 population) in a Balance of State (BOS), consortium and rural concentrated employment program (CEP). Prime sponsors may use the higher of either the SMSA index or the prime sponsor index. Where the SMSA or individual county index for counties eligible to be program agents (at least 50,000 population) within a BOS, consortium or rural CEP prime sponsor is higher than the prime sponsor index, the county or SMSA index may be used.

4. *Format of the Index.* The index figures presented in the attached table represent the highest of the prime sponsor index, the SMSA index, or the individual county index. In addition, maximum wages and average wages are shown for each county based on the highest index figure. In BOS, consortia and rural CEP prime sponsors, the county index and maximum and average wages are shown only for counties eligible to be program agents (at least 50,000 population).

5. *Action Required.* Regional offices are to immediately transmit the attached index to all CETA prime sponsors for use in the planning of FY 1980 PSE programs. The final wage index for FY 1980 will be available prior to October 1, 1979.

6. *Inquiries.* Questions may be directed to Joan Shelly on 8–376–7006.

Attachment.

BILLING CODE 4510-30-M

1977–1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE WAGES

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
ALABAMA					
BIRMINGHAM CONSORTIUM (JEFFERSON COUNTY)					
JEFFERSON	101.1	101.1	99.8	10,110	7,535
HUNTSVILLE CONSORTIUM (MADISON COUNTY)					
MADISON	103.6	103.6	97.0	10,360	7,721
MOBILE CONSORTIUM					
BALDWIN	89.8	68.8	90.9	10,000	7,093
MOBILE	89.8	93.9	90.9	10,000	7,093
MONTGOMERY CONSORTIUM					
AUTAUGA	85.5		85.5	10,000	7,093
ELMORE	85.5		85.5	10,000	7,093
MONTGOMERY	85.5	87.2	85.5	10,000	7,093
TUSCALOOSA COUNTY					
TUSCALOOSA	89.3	89.3	89.3	10,000	7,093
BALANCE OF ALABAMA					
CALHOUN	82.5	86.6	86.6	10,000	7,093
COLBERT	82.5	119.7	100.2	11,970	8,921
CULLMAN	82.5	72.8		10,000	7,093
DALLAS	82.5	71.0		10,000	7,093
ETOWAH	82.5	99.9	99.9	10,000	7,446
HOUSTON	82.5	81.2		10,000	7,093
LAUDERDALE	82.5	73.1	100.2	10,020	7,468
LEE	82.5	83.3		10,000	7,093
LIMESTONE	82.5		97.0	10,000	7,229
MARSHALL	82.5	73.2	97.0	10,000	7,229
MORGAN	82.5	95.6		10,000	7,125
RUSSELL	82.5		80.4	10,000	7,093
ST. CLAIR	82.5		99.8	10,000	7,438
SHELBY	82.5	90.3	99.8	10,000	7,438
TALLADEGA	82.5	84.3		10,000	7,093
WALKER	82.5		99.8	10,000	7,438
ALASKA					
ANCHORAGE MUNICIPALITY DIVISION					
ANCHORAGE DIVISION	174.4	174.4	174.4	17,440	12,998
BALANCE OF ALASKA					
FAIRBANKS DIVISION	177.0	189.1		18,910	14,094
ARIZONA					
TUSCON/PIMA CSRT. (PIMA CN.)					
PIMA	89.0	89.0	89.0	10,000	7,093

1977-1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE WAGES-Continued

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
ARIZONA					
BALANCE OF ARIZONA					
COCHISE	90.4	96.7		10,000	7,207
COCONINO	90.4	78.2		10,000	7,093
NAVAJO	90.4	98.7		10,000	7,356
PINAL	90.4	101.9		10,190	7,595
YAVAPAI	90.4	84.5		10,000	7,093
YUMA	90.4	81.6		10,000	7,093
BAL OF MARICOPA CO LESS PHOENIX					
MARICOPA	96.6	96.6	96.6	10,000	7,200
PHOENIX CITY					
MARICOPA	96.6	96.6	96.6	10,000	7,200
ARKANSAS					
CENTRAL ARKANSAS CONSORTIUM					
PULASKI	89.8	91.0	91.5	10,000	7,093
SALINE	89.8		91.5	10,000	7,093
BALANCE OF ARKANSAS					
BENTON	76.2	77.7	76.3	10,000	7,093
CRAIGHEAD	76.2	76.6		10,000	7,093
CRAWFORD	76.2		82.5	10,000	7,093
CRITTENDEN	76.2	73.9	93.3	10,000	7,093
GARLAND	76.2	74.8		10,000	7,093
JEFFERSON	76.2	87.3	87.3	10,000	7,093
MISSISSIPPI	76.2	71.0		10,000	7,093
SEBASTIAN	76.2	85.6	82.5	10,000	7,093
WASHINGTON	76.2	75.4	76.3	10,000	7,093
CALIFORNIA					
BAL OF ALAMEDA CO LESS OAKLAND AND BERKELEY					
ALAMEDA	116.4	116.4	117.2	11,720	8,735
BERKELEY CITY					
ALAMEDA	116.4	116.4	117.2	11,720	8,735
BUTTE COUNTY					
BUTTE	82.6	82.6		10,000	7,093
BAL OF CONTRA COSTA COUNTY, CO. LESS CITY OF RICHMOND					
CONTRA COSTA	106.7	106.7	117.2	11,720	8,735
FRESNO CSRT. (FRESNO CN.)					
FRESNO	82.2	82.2	82.2	10,000	7,093

1977-1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE WAGES-Continued

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
CALIFORNIA					
GLENDALE CITY					
LOS ANGELES	111.3	111.3	111.3	11,130	8,295
HUMBOLDT COUNTY					
HUMBOLDT	97.9	97.9		10,000	7,296
IMPERIAL COUNTY					
IMPERIAL	78.2	78.2		10,000	7,093
INLAND MANP. ASSOC.					
RIVERSIDE	92.0	86.6	92.0	10,000	7,093
SAN BERNARDINO	92.0	96.2	92.0	10,000	7,170
KERN COUNTY					
KERN	96.8	96.8	96.8	10,000	7,215
LONG BEACH CITY					
LOS ANGELES	111.3	111.3	111.3	11,130	8,295
LOS ANGELES CITY					
LOS ANGELES	111.3	111.3	111.3	11,130	8,295
MARIN COUNTY					
MARIN	95.3	95.3	117.2	11,720	8,735
BAL LOS ANGELES CO LESS GLENDALE,L BCH,PASADENA,LA,&TORRANCE					
LOS ANGELES	111.3	111.3	111.3	11,130	8,295
MERCED COUNTY					
MERCED	75.8	75.8		10,000	7,093
MONTEREY COUNTY					
MONTEREY	88.8	88.8	88.8	10,000	7,093
OAKLAND CITY					
ALAMEDA	116.4	116.4	117.2	11,720	8,735
ORANGE COUNTY MANP. CSRT. (ORANGE CN.)					
ORANGE	102.0	102.0	102.0	10,200	7,602
PASADENA CITY					
LOS ANGELES	111.3	111.3	111.3	11,130	8,295
RICHMOND CITY					
CONTRA COSTA	106.7	106.7	117.2	11,720	8,735
SAN DIEGO RETC (SAN DIEGO CN.)					
SAN DIEGO	97.4	97.4	97.4	10,000	7,259
SAN FRANCISCO CITY/COUNTY					
SAN FRANCISCO	123.1	123.1	117.2	12,000	9,175

1977-1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE WAGES-Continued

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
CALIFORNIA					
SAN LUIS OBISPO COUNTY					
SAN LUIS OBISPO	88.9	88.9		10,000	7,093
SAN MATEO COUNTY					
SAN MATEO	119.8	119.8	117.2	11,980	8,929
SANTA BARBARA COUNTY					
SANTA BARBARA	90.5	90.5	90.5	10,000	7,093
SANTA CLARA VALLEY					
SANTA CLARA	115.0	115.0	115.0	11,500	8,571
SANTA CRUZ COUNTY					
SANTA CRUZ	81.0	81.0	81.0	10,000	7,093
SOLANO COUNTY					
SOLANO	110.7	110.7	104.8	11,070	8,250
SONOMA COUNTY					
SONOMA	91.6	91.6	91.6	10,000	7,093
STANISLAUS COUNTY					
STANISLAUS	87.2	87.2	87.2	10,000	7,093
STOCKTON/SAN JOAQUIN MANP. CSRT. (SAN JOAQUIN CN.)					
SAN JOAQUIN	94.1	94.1	94.1	10,000	7,093
SUNNYVALE CITY					
SANTA CLARA	115.0	115.0	115.0	11,500	8,571
TORRANCE CITY					
LOS ANGELES	111.3	111.3	111.3	11,130	8,295
TULARE COUNTY					
TULARE	73.3	73.3		10,000	7,093
VENTURA COUNTY					
VENTURA	96.0	96.0	96.0	10,000	7,155
BALANCE OF CALIFORNIA					
EL DORADO	85.4	81.9		10,000	7,093
KINGS	85.4	82.4		10,000	7,093
MADERA	85.4	73.5		10,000	7,093
MENDOCINO	85.4	86.8		10,000	7,093
NAPA	85.4	91.6	104.8	10,480	7,811
PLACER	85.4	86.3	107.5	10,750	8,012
SACRAMENTO CONSORTIUM					
SACRAMENTO	112.5	112.5	107.5	11,250	8,385
YOLO COUNTY					
YOLO	88.0	88.0	107.5	10,750	8,012
SHASTA COUNTY					
SHASTA	99.2	99.2		10,000	7,393

1977-1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE WAGES-Continued

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
COLORADO					
ADAMS COUNTY					
ADAMS	99.9	99.9	104.3	10,430	7,773
ARAPAHOE COUNTY					
ARAPAHOE	96.6	96.6	104.3	10,430	7,773
BOULDER COUNTY					
BOULDER	94.3	94.3	104.3	10,430	7,773
COLORADO SPRINGS CONSORTIUM (EL PASO COUNTY)					
EL PASO	83.7	83.7	83.4	10,000	7,093
DENVER CITY/COUNTY					
DENVER	109.4	109.4	104.3	10,940	8,154
JEFFERSON COUNTY CONSORTIUM					
JEFFERSON	102.2	102.2	104.3	10,430	7,773
LARIMER COUNTY					
LARIMER	85.6	85.6	85.6	10,000	7,093
PUEBLO COUNTY					
PUEBLO	100.8	100.8	100.8	10,080	7,513
WELD COUNTY					
WELD	89.8	89.8	89.8	10,000	7,093
BALANCE OF COLORADO					
DOUGLAS	80.3		104.3	10,430	7,773
GILPIN	80.3		104.3	10,430	7,773
MESA	80.3	88.5		10,000	7,093
CONNECTICUT					
BRIDGEPORT CONSORTIUM					
FAIRFIELD	110.5	113.2	113.2	11,320	8,437
NEW HAVEN	110.5	95.4	95.4	11,050	8,236
HARTFORD CONSORTIUM					
HARTFORD	102.8	104.0	101.7	10,400	7,751
TOLLAND	102.8	76.9	101.7	10,280	7,662
NEW HAVEN CONSORTIUM					
NEW HAVEN	95.4	95.4	95.4	10,000	7,110
STAMFORD CONSORTIUM					
FAIRFIELD	113.2	113.2	113.2	11,320	8,437
WATERBURY CITY					
NEW HAVEN	95.4	95.4	95.4	10,000	7,110
BALANCE OF CONNECTICUT					
FAIRFIELD	100.0	113.2	113.2	11,320	8,437
HARTFORD	100.0	104.0	101.7	10,400	7,751
LITCHFIELD	100.0	89.3		10,000	7,453
MIDDLESEX	100.0	91.0	101.7	10,170	7,580
NEW HAVEN	100.0	95.4	95.4	10,000	7,453

1977-1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE WAGES-Continued

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
CONNECTICUT					
BALANCE OF CONNECTICUT					
NEW LONDON	100.0	99.2	99.2	10,000	7,453
TOLLAND	100.0	76.9	101.7	10,170	7,580
WINDHAM	100.0	84.3		10,000	7,453
DELAWARE					
WILMINGTON CITY					
NEW CASTLE	114.4	114.4	114.9	11,490	8,563
DELAWARE MANP. CONSORTIUM					
KENT	105.1	87.0		10,510	7,833
NEW CASTLE	105.1	114.4	114.9	11,490	8,563
SUSSEX	105.1	80.4		10,510	7,833
DISTRICT OF COLUMBIA					
DISTRICT OF COLUMBIA					
DISTRICT OF COLUMBIA	133.2	133.2	118.0	12,000	9,927
FLORIDA					
ALACHUA COUNTY					
ALACHUA	79.7	79.7	79.7	10,000	7,093
BREVARD COUNTY					
BREVARD	99.0	99.0	99.0	10,000	7,378
BROWARD CONSORTIUM (BROWARD COUNTY)					
BROWARD	88.4	88.4	88.4	10,000	7,093
ESCAMBIA COUNTY					
ESCAMBIA	89.0	89.0	88.5	10,000	7,093
HEARTLAND MANPOWER CONSORTIUM					
POLK	84.2	87.3	87.3	10,000	7,093
LEE COUNTY					
LEE	80.6	80.6	80.6	10,000	7,093
LEON/GADSEN CONSORTIUM					
LEON	80.1	81.5	81.2	10,000	7,093
MANATEE COUNTY					
MANATEE	77.6	77.6	77.6	10,000	7,093
MIAMI/DADE CONSORTIUM					
DADE	95.6	96.3	96.3	10,000	7,177
N.E. FLORIDA MANPOWER CONSORTIUM					
BAKER	94.1		92.0	10,000	7,093
DUVAL	94.1	93.9	92.0	10,000	7,093
NASSAU	94.1		92.0	10,000	7,093

1977-1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE WAGES-Continued

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
FLORIDA					
OKALOOSA COUNTY					
OKALOOSA	79.1	79.1		10,000	7,093
ORANGE COUNTY/ORLANDO CONSORTIUM (ORANGE COUNTY)					
ORANGE	88.2	88.2	85.6	10,000	7,093
PALM BEACH COUNTY					
PALM BEACH	90.4	90.4	90.4	10,000	7,093
PASCO COUNTY					
PASCO	70.7	70.7	84.1	10,000	7,093
SARASOTA COUNTY					
SARASOTA	80.4	80.4	80.4	10,000	7,093
SEMINOLE COUNTY					
SEMINOLE	75.5	75.5	85.6	10,000	7,093
PINELLAS COUNTY CONSORTIUM (PINELLAS COUNTY)					
PINELLAS	80.1	80.1	84.1	10,000	7,093
MARION COUNTY					
MARION	75.3	75.3		10,000	7,093
HILLSBOROUGH CONSORTIUM (HILLSBOROUGH COUNTY)					
HILLSBOROUGH	88.8	88.8	84.1	10,000	7,093
VOLUSIA COUNTY					
VOLUSIA	73.0	73.0	73.0	10,000	7,093
BALANCE OF FLORIDA					
BAY	75.4	77.9	77.9	10,000	7,093
CLAY	75.4	74.9	92.0	10,000	7,093
COLLIER	75.4	75.7		10,000	7,093
LAKE	75.4	71.2		10,000	7,093
OSCEOLA	75.4		85.6	10,000	7,093
ST. JOHNS	75.4		92.0	10,000	7,093
ST. LUCIE	75.4	75.6		10,000	7,093
SANTA ROSA	75.4		88.5	10,000	7,093
WAKULLA	75.4		81.2	10,000	7,093
GEORGIA					
ATLANTA CITY					
DEKALB	107.5	99.6	101.8	10,750	8,012
FULTON	107.5	107.9	101.8	10,790	8,042
CLAYTON COUNTY					
CLAYTON	98.6	98.6	101.8	10,180	7,587

1977-1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE WAGES-Continued

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
GEORGIA					
COBB COUNTY					
COBB	92.3	92.3	101.8	10,180	7,587
COLUMBUS AREA CONSORTIUM (GEORGIA PART, COLUMBUS SMSA)					
CHATTAHOOCHEE	81.1		80.4	10,000	7,093
COLUMBUS	81.1	78.5	80.4	10,000	7,093
CSRA CONSORTIUM					
COLUMBIA	80.3		89.3	10,000	7,093
RICHMOND	80.3	87.4	89.3	10,000	7,093
BAL OF DEKALB COUNTY, CO. LESS CITY OF ATLANTA (PART)					
DEKALB	99.6	99.6	101.8	10,180	7,587
BAL OF FULTON COUNTY LESS CITY OF ATLANTA (PART)					
FULTON	107.9	107.9	101.8	10,790	8,042
GWINNETT CO					
GWINETT	94.7	94.7	101.8	10,180	7,587
MID GEORGIA CONSORTIUM					
BIBB	89.6	82.2	91.5	10,000	7,093
HOUSTON	89.6	110.0	91.5	11,000	8,198
JONES	89.6	66.6	91.5	10,000	7,093
TWIGGS	89.6		91.5	10,000	7,093
SAVANNAH/CHATHAM CONSORTIUM (CHATHAM COUNTY)					
CHATHAM	90.5	90.5	89.8	10,000	7,093
BALANCE OF GEORGIA					
BRYAN	75.7		89.8	10,000	7,093
BUTTS	75.7		101.8	10,180	7,587
CARROLL	75.7	78.1		10,000	7,093
CATOOSA	75.7		93.8	10,000	7,093
CHEROKEE	75.7		101.8	10,180	7,587
CLARKE	75.7	83.1		10,000	7,093
DADE	75.7		93.8	10,000	7,093
DOUGHERTY	75.7	90.1	89.6	10,000	7,093
DOUGLAS	75.7		101.8	10,180	7,587
EFFINGHAM	75.7		89.8	10,000	7,093
FAYETTE	75.7		101.8	10,180	7,587
FLOYD	75.7	87.5		10,000	7,093
FORSYTH	75.7		101.8	10,180	7,587
HALL	75.7	75.9		10,000	7,093

1977-1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE WAGES-Continued

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
GEORGIA					
BALANCE OF GEORGIA					
HENRY	75.7		101.8	10,180	7,587
LEE	75.7		89.6	10,000	7,093
LOWNDES	75.7	74.6		10,000	7,093
NEWTON	75.7		101.8	10,180	7,587
PAULDING	75.7		101.8	10,180	7,587
ROCKDALE	75.7		101.8	10,180	7,587
WALKER	75.7	73.4	93.8	10,000	7,093
WALTON	75.7		101.8	10,180	7,587
WHITFIELD	75.7	84.9		10,000	7,093
HAWAII					
HONOLULU CITY/COUNTY					
HONOLULU	90.6	90.6	90.6	10,000	7,093
HAWAII BAL OF STATE					
HAWAII	84.7	85.9		10,000	7,093
MAUI + KALAWAO	84.7	85.0		10,000	7,093
IDAHO					
IDAHO STATEWIDE CONSORTIUM					
ADA	88.5	95.9	95.9	10,000	7,147
BANNOCK	88.5	83.8		10,000	7,093
BONNEVILLE	88.5	90.0		10,000	7,093
CANYON	88.5	78.7		10,000	7,093
ILLINOIS					
CHAMPAIGN CONSORTIUM					
CHAMPAIGN	83.6	84.9	84.9	10,000	7,093
CHICAGO CITY					
COOK	117.7	117.7	115.5	11,770	8,772
BAL OF COOK COUNTY, CO. LESS CHICAGO CITY					
COOK	117.7	117.7	115.5	11,770	8,772
DUPAGE COUNTY					
DU PAGE	109.7	109.7	115.5	11,550	8,608
KANE CO CSRT					
DE KALB	97.6	90.6		10,000	7,274
KANE	97.6	99.0	115.5	11,550	8,608
LAKE COUNTY					
LAKE	106.6	106.6	115.5	11,550	8,608
LA SALLE COUNTY					
LA SALLE	97.0	97.0		10,000	7,229

1977-1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE WAGES-Continued

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
ILLINOIS					
MACON COUNTY					
MACON	113.6	113.6	113.6	11,360	8,467
MADISON COUNTY CONSORTIUM					
MADISON	110.3	111.7	106.9	11,170	8,325
MCHENRY COUNTY					
MCHENRY	94.3	94.3	115.5	11,550	8,608
MCLEAN COUNTY					
MCLEAN	95.3	95.3	95.3	10,000	7,103
PEORIA COUNTY CONSORTIUM					
PEORIA	112.3	112.3	122.1	12,000	9,100
ROCKFORD CONSORTIUM					
BOONE	110.5		110.5	11,050	8,236
WINNEBAGO	110.5	108.9	110.5	11,050	8,236
ROCK ISLAND COUNTY					
ROCK ISLAND	120.1	120.1	111.1	12,000	8,951
SANGAMON COUNTY CONSORTIUM					
SANGAMON	96.1	95.9	95.8	10,000	7,162
SHAWNEE CONSORTIUM					
	80.6			10,000	7,093
ST. CLAIR CONSORTIUM					
ST. CLAIR	96.7	96.3	106.9	10,690	7,967
TAZEWELL COUNTY					
TAZEWELL	144.4	144.4	122.1	12,000	10,762
WILL COUNTY CONSORTIUM					
WILL	111.6	112.4	115.5	11,550	8,608
BALANCE OF ILLINOIS					
ADAMS	91.3	90.0		10,000	7,093
CLINTON	91.3		106.9	10,690	7,967
HENRY	91.3	84.3	111.1	11,110	8,280
JACKSON	91.3	73.9		10,000	7,093
KANKAKEE	91.3	95.2	95.2	10,000	7,095
KNOX	91.3	98.8		10,000	7,364
MENARD	91.3		95.8	10,000	7,140
MONROE	91.3		106.9	10,690	7,967
VERMILION	91.3	104.0		10,400	7,751
WHITESIDE	91.3	110.6		11,060	8,243
WILLIAMSON	91.3	95.0		10,000	7,093
INDIANA					
DELAWARE CONSORTIUM					
DELAWARE	100.3	101.6	101.6	10,160	7,572

1977-1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE WAGES-Continued

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
INDIANA					
ELKHART COUNTY					
ELKHART	97.6	97.6		10,000	7,274
FT. WAYNE CONSORTIUM					
ADAMS	100.0		102.0	10,200	7,602
ALLEN	100.0	104.5	102.0	10,450	7,788
DEKALB	100.0		102.0	10,200	7,602
GARY CITY					
LAKE	126.5	126.5	125.4	12,000	9,428
HAMMOND CITY					
LAKE	126.5	126.5	125.4	12,000	9,428
INDIANAPOLIS CITY / MARION CO					
MARION	109.8	109.8	105.4	10,980	8,183
BAL OF LAKE COUNTY, CO. LESS CITIES OF GARY AND HAMMOND					
LAKE	126.5	126.5	125.4	12,000	9,428
LA PORTE COUNTY					
LAPORTE	94.2	94.2		10,000	7,093
MADISON COUNTY					
MADISON	119.1	119.1	119.1	11,910	8,877
SOUTH BEND CITY					
ST. JOSEPH	97.7	97.7	95.9	10,000	7,282
SOUTHWESTERN CONSORTIUM					
GIBSON	97.6		98.6	10,000	7,349
POSEY	97.6		98.6	10,000	7,349
VANDERBURGH	97.6	95.0	98.6	10,000	7,349
WARRICK	97.6		98.6	10,000	7,349
BAL OF ST. JOSEPH COUNTY, CO. LESS SOUTH BEND CITY					
ST. JOSEPH	97.7	97.7	95.9	10,000	7,282
TIPPECANOE COUNTY					
TIPPECANOE	96.3	96.3	96.3	10,000	7,177
VIGO COUNTY					
VIGO	93.6	93.6	93.0	10,000	7,093
BALANCE OF INDIANA					
BARTHOLOMEW	92.8	120.5		12,000	8,981
BOONE	92.8		105.4	10,540	7,855
CLARK	92.8	84.6	100.7	10,070	7,505
CLAY	92.8		93.0	10,000	7,093
DEARBORN	92.8		105.8	10,580	7,885
FLOYD	92.8	80.9	100.7	10,070	7,505

1977-1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE WAGES-Continued

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
INDIANA					
BALANCE OF INDIANA					
GRANT	92.8	107.7		10,770	8,027
HAMILTON	92.8	87.7	105.4	10,540	7,855
HANCOCK	92.8		105.4	10,540	7,855
HENDRICKS	92.8	85.3	105.4	10,540	7,855
HENRY	92.8	102.9		10,290	7,669
HOWARD	92.8	126.8	124.0	12,000	9,450
JOHNSON	92.8	76.9	105.4	10,540	7,855
KOSCIUSKO	92.8	90.7		10,000	7,093
MARSHALL	92.8		95.9	10,000	7,147
MONROE	92.8	87.2	87.2	10,000	7,093
MORGAN	92.8		105.4	10,540	7,855
PORTER	92.8	118.5	125.4	12,000	9,346
SHELBY	92.8		105.4	10,540	7,855
SULLIVAN	92.8		93.0	10,000	7,093
TIPTON	92.8		124.0	12,000	9,242
VERMILLION	92.8		93.0	10,000	7,093
WAYNE	92.8	91.6		10,000	7,093
WELLS	92.8		102.0	10,200	7,602
IOWA					
BLACKHAWK COUNTY					
BLACK HAWK	109.4	109.4	109.4	10,940	8,154
CENTRAL IOWA REGIONAL ASSN. OF LOCAL GOVERNMENTS					
POLK	95.1	99.1	98.4	10,000	7,386
STORY	95.1	87.5		10,000	7,093
WARREN	95.1		98.4	10,000	7,334
DAVENPORT CITY					
SCOTT	105.9	105.9	111.1	11,110	8,280
LINN COUNTY MANPOWER CONSORTIUM					
LINN	103.7	103.7	103.7	10,370	7,729
WOODBURY COUNTY					
WOODBURY	90.6	90.6	90.3	10,000	7,093
BALANCE OF IOWA					
CLINTON	84.5	90.8		10,000	7,093
DUBUQUE	84.5	108.7	108.7	10,870	8,101
POTTAWATTAMIE	84.5	83.9	94.2	10,000	7,093
SCOTT	84.5	105.9	111.1	11,110	8,280

1977-1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE WAGES-Continued

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
KANSAS					
JOHNSON/LEAVENWORTH CONSORTIUM					
JOHNSON	94.6	95.6	103.9	10,390	7,744
LEAVENWORTH	94.6	86.7		10,000	7,093
KANSAS CITY CONSORTIUM (WYANDOTTE COUNTY)					
WYANDOTTE	109.4	109.4	103.9	10,940	8,154
TOPEKA CONSORTIUM (SHAWNEE COUNTY)					
SHAWNEE	92.4	92.4	91.1	10,000	7,093
WICHITA CITY					
SEDGWICK	96.6	96.6	95.8	10,000	7,200
BALANCE OF KANSAS					
DOUGLAS	80.2	88.1	88.1	10,000	7,093
JEFFERSON	80.2		91.1	10,000	7,093
OSAGE	80.2		91.1	10,000	7,093
RENO	80.2	87.0		10,000	7,093
RILEY	80.2	77.7		10,000	7,093
SEDGWICK	80.2	96.6	95.8	10,000	7,200
KENTUCKY					
BLUE GRASS MANPOWER CONSORTIUM					
BOURBON	89.8		91.6	10,000	7,093
CLARK	89.8		91.6	10,000	7,093
FAYETTE	89.8	93.7	91.6	10,000	7,093
SCOTT	89.8		91.6	10,000	7,093
WOODFORD	89.8		91.6	10,000	7,093
EASTERN KENTUCKY RURAL CEP					
PIKE	104.1	107.3		10,730	7,997
KENTON COUNTY					
KENTON	83.2	83.2	105.8	10,580	7,885
LOUISVILLE/JEFFERSON CONSORTIUM (JEFFERSON COUNTY)					
JEFFERSON	103.5	103.5	100.7	10,350	7,714
BALANCE OF KENTUCKY					
BOONE	84.9		105.8	10,580	7,885
BOYD	84.9	105.6	100.3	10,560	7,870
BULLITT	84.9		100.7	10,070	7,505
CAMPBELL	84.9	89.0	105.8	10,580	7,885
CHRISTIAN	84.9	78.6	78.4	10,000	7,093
DAVIESS	84.9	89.6	89.6	10,000	7,093

1977-1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE WAGES-Continued

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
KENTUCKY					
BALANCE OF KENTUCKY					
GREENUP	84.9		100.3	10,030	7,475
HARDIN	84.9	83.8		10,000	7,093
HENDERSON	84.9		98.6	10,000	7,349
JESSAMINE	84.9		91.6	10,000	7,093
MCCRACKEN	84.9	90.7		10,000	7,093
OLDHAM	84.9		100.7	10,070	7,505
WARREN	84.9	81.1		10,000	7,093
LOUISIANA					
BATON ROUGE CITY/EAST BATON ROUGE PARISH					
EAST BATON ROUGE	101.8	101.8	101.9	10,190	7,595
CALCASIEU/JEFF CONSORTIUM					
CALCASIEU	100.1	102.7	102.7	10,270	7,654
JEFFERSON PARISH					
JEFFERSON	95.3	95.3	98.0	10,000	7,304
LAFAYETTE PARISH					
LAFAYETTE	100.4	100.4	100.4	10,040	7,483
NEW ORLEANS CITY/ORLEANS PARISH					
ORLEANS	99.8	99.8	98.0	10,000	7,438
OUACHITA PARISH					
OUACHITA	92.1	92.1	92.1	10,000	7,093
RAPIDES PARISH					
RAPIDES	78.6	78.6	78.1	10,000	7,093
SHREVEPORT CITY					
CADDO	91.8	91.8	90.0	10,000	7,093
BALANCE OF LOUISIANA					
ACADIA	92.8	72.3		10,000	7,093
ASCENSION	92.8		101.9	10,190	7,595
BOSSIER	92.8	79.6	90.0	10,000	7,093
CADDO	92.8	91.8	90.0	10,000	7,093
GRANT	92.8		78.1	10,000	7,093
IBERIA	92.8	92.8		10,000	7,093
LAFOURCHE	92.8	92.0		10,000	7,093
LIVINGSTON	92.8		101.9	10,190	7,595
ST. BERNARD	92.8	109.1	98.0	10,910	8,131
ST. LANDRY	92.8	76.4		10,000	7,093
ST.MARY	92.8	110.9		11,090	8,265
ST. TAMMANY	92.8	74.8	98.0	10,000	7,304
TANGIPAHOA	92.8	67.6		10,000	7,093
TERREBONNE	92.8	109.0		10,900	8,124

1977-1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE WAGES-Continued

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
LOUISIANA					
BALANCE OF LOUISIANA					
WEBSTER	92.8		90.0	10,000	7,093
WEST BATON ROUGE	92.8		101.9	10,190	7,595
MAINE					
CUMBERLAND COUNTY					
CUMBERLAND	84.5	84.5	85.5	10,000	7,093
KENNEBEC COUNTY					
KENNEBEC	84.1	84.1		10,000	7,093
PENOBSCOT CONSORTIUM					
PENOBSCOT	81.6	83.9		10,000	7,093
YORK COUNTY					
YORK	70.7	70.7		10,000	7,093
CETA BALANCE OF MAINE					
ANDROSCOGGIN	76.2	72.7	72.7	10,000	7,093
AROOSTOOK	76.2	77.4		10,000	7,093
SAGADAHOC	76.2		85.5	10,000	7,093
MARYLAND					
BALTIMORE CONSORTIUM					
ANNE ARUNDEL	101.1	93.7	101.1	10,110	7,535
BALTIMORE	101.1	103.2	101.1	10,320	7,691
CARROLL	101.1	83.8	101.1	10,110	7,535
HARFORD	101.1	91.2	101.1	10,110	7,535
HOWARD	101.1	102.6	101.1	10,260	7,647
BALTIMORE - INDEPENDENT CITY	101.1	103.1	101.1	10,310	7,684
MONTGOMERY COUNTY					
MONTGOMERY	107.4	107.4	118.0	11,800	8,795
PRINCE GEORGES COUNTY					
PRINCE GEORGES	97.8	97.8	118.0	11,800	8,795
WESTERN MARYLAND CONSORTIUM					
ALLEGANY	91.5	93.0		10,000	7,093
FREDERICK	91.5	86.1		10,000	7,093
WASHINGTON	91.5	97.4		10,000	7,259
BALANCE OF MARYLAND					
CECIL	79.7	83.6	114.9	11,490	8,563
CHARLES	79.7	93.6	118.0	11,800	8,795
ST. MARYS	79.7	103.7		10,370	7,729
WICOMICO	79.7	78.0		10,000	7,093
MASSACHUSETTS					
BOSTON CITY					
SUFFOLK	108.8	108.8	100.1	10,880	8,109

1977-1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE WAGES-Continued

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
MASSACHUSETTS					
BROCKTON CONSORTIUM					
BRISTOL	83.4	80.2	80.2	10,000	7,093
NORFOLK	83.4	94.8	100.1	10,010	7,460
PLYMOUTH	83.4	81.2	100.1	10,010	7,460
CAMBRIDGE CONSORTIUM					
MIDDLESEX	103.1	103.1	100.1	10,310	7,684
HAMPDEN COUNTY (SPRINGFIELD) CONSORTIUM					
HAMPDEN	90.0	90.0	88.8	10,000	7,093
LOWELL CONSORTIUM					
MIDDLESEX	103.1	103.1	100.1	10,310	7,684
NEW BEDFORD CONSORTIUM					
BRISTOL	80.3	80.2	80.2	10,000	7,093
PLYMOUTH	80.3	81.2	100.1	10,010	7,460
WORCESTER CONSORTIUM					
WORCESTER	90.2	90.2	90.2	10,000	7,093
FALL RIVER CONSORTIUM					
BRISTOL	80.2	80.2	80.2	10,000	7,093
CETA BALANCE OF MASSACHUSETTS					
BARNSTABLE	94.0	73.3		10,000	7,093
BERKSHIRE	94.0	91.7	91.7	10,000	7,093
BRISTOL	94.0	80.2	80.2	10,000	7,093
ESSEX	94.0	89.7	100.1	10,010	7,460
FRANKLIN	94.0	83.6		10,000	7,093
HAMPSHIRE	94.0	83.9	88.8	10,000	7,093
MIDDLESEX	94.0	103.1	100.1	10,310	7,684
NORFOLK	94.0	94.8	100.1	10,010	7,460
PLYMOUTH	94.0	81.2	100.1	10,010	7,460
SUFFOLK	94.0	108.8	100.1	10,880	8,109
WORCESTER	94.0	90.2	90.2	10,000	7,093
MICHIGAN					
ANN ARBOR CITY					
WASHTENAW	119.2	119.2	119.2	11,920	8,884
BAL OF WASHTENAW CO,LESS ANN ARBOR CITY					
WASHTENAW	119.2	119.2	119.2	11,920	8,884
BAY COUNTY					
BAY	109.4	109.4	109.4	10,940	8,154

1977-1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE WAGES-Continued

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
MICHIGAN					
BERRIEN COUNTY					
BERRIEN	101.7	101.7		10,170	7,580
CALHOUN COUNTY					
CALHOUN	112.8	112.8	110.8	11,280	8,407
DEARBORN CITY					
WAYNE	135.4	135.4	130.2	12,000	10,091
DETROIT CITY					
WAYNE	135.4	135.4	130.2	12,000	10,091
FLINT/GENESSEE CONSORTIUM					
GENESEE	135.8	142.9	138.8	12,000	10,650
LAPEER	135.8	92.2	130.2	12,000	10,121
SHIAWASSEE	135.8	91.3	138.8	12,000	10,345
JACKSON CONSORTIUM					
JACKSON	105.7	110.6	110.6	11,060	8,243
LENAWEE	105.7	101.8		10,570	7,878
KALAMAZOO COUNTY					
KALAMAZOO	107.0	107.0	104.4	10,700	7,975
KENT CONSORTIUM					
ALLEGAN	100.3	88.4		10,030	7,475
IONIA	100.3		112.1	11,210	8,355
KENT	100.3	102.7	100.9	10,270	7,654
LANSING CONSORTIUM					
CLINTON	113.7	90.5	112.1	11,370	8,474
EATON	113.7	90.0	112.1	11,370	8,474
INGHAM	113.7	116.8	112.1	11,680	8,705
LIVONIA CITY					
WAYNE	135.4	135.4	130.2	12,000	10,091
BAL OF MACOMB COUNTY, CO. LESS CITY OF WARREN					
MACOMB	132.6	132.6	130.2	12,000	9,883
MONROE COUNTY					
MONROE	113.6	113.6	111.4	11,360	8,467
MUSKEGON CONSORTIUM					
MUSKEGON	103.4	105.4	103.4	10,540	7,855
OCEANA	103.4		103.4	10,340	7,706
OAKLAND COUNTY					
OAKLAND	120.7	120.7	130.2	12,000	9,704
OTTAWA COUNTY					
OTTAWA	94.4	94.4	100.9	10,090	7,520

1977-1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE WAGES-Continued

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
MICHIGAN					
SAGINAW COUNTY					
SAGINAW	128.7	128.7	128.7	12,000	9,592
ST. CLAIR COUNTY					
ST. CLAIR	102.1	102.1	130.2	12,000	9,704
WARREN CITY					
MACOMB	132.6	132.6	130.2	12,000	9,883
BAL OF WAYNE CO LESS DETROIT,DEARBORN AND LIVONIA					
WAYNE	135.4	135.4	130.2	12,000	10,091
BALANCE OF MICHIGAN					
BARRY	90.9		110.8	11,030	8,258
ISABELLA	90.9	89.5		10,000	7,093
LIVINGSTON	90.9	88.5	130.2	12,000	9,704
MARQUETTE	90.9	94.8		10,000	7,093
MIDLAND	90.9	137.6		12,000	10,255
ST. JOSEPH	90.9	93.5		10,000	7,093
TUSCOLA	90.9	89.4		10,000	7,093
VAN BUREN	90.9	86.9	104.4	10,440	7,781
MINNESOTA					
DAKOTA COUNTY					
DAKOTA	92.1	92.1	104.1	10,410	7,759
DULUTH CITY					
ST. LOUIS	95.3	95.3	93.8	10,000	7,103
BAL OF HENNEPIN CO LESS CITY OF MINNEAPOLIS					
HENNEPIN	105.9	105.9	104.1	10,590	7,893
MINNEAPOLIS CITY					
HENNEPIN	105.9	105.9	104.1	10,590	7,893
BAL OF RAMSEY COUNTY, CO. LESS ST. PAUL CITY					
RAMSEY	109.5	109.5	104.1	10,950	8,161
REGION III CONSORTIUM					
ST. LOUIS	94.1	95.3	93.8	10,000	7,103
RURAL MINNESOTA CEP					
CLAY	73.8		89.3	10,000	7,093
ST. PAUL CITY					
RAMSEY	109.5	109.5	104.1	10,950	8,161
QUAD COUNTIES CONSORTIUM					
ANOKA	94.6	95.6	104.1	10,410	7,759
CARVER	94.6		104.1	10,410	7,759
SCOTT	94.6		104.1	10,410	7,759
WASHINGTON	94.6	96.5	104.1	10,410	7,759

1977-1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE WAGES-Continued

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
MINNESOTA					
BALANCE OF MINNESOTA					
BLUE EARTH	79.9	84.5		10,000	7,093
CHISAGO	79.9		104.1	10,410	7,759
OLMSTED	79.9	98.8	98.8	10,000	7,364
POLK	79.9		79.7	10,000	7,093
SHERBURNE	79.9		82.2	10,000	7,093
STEARNS	79.9	82.5	82.2	10,000	7,093
WRIGHT	79.9	72.5	104.1	10,410	7,759
MISSISSIPPI					
JACKSON CONSORTIUM					
HINDS	88.0	88.9	88.0	10,000	7,093
RANKIN	88.0	81.3	88.0	10,000	7,093
HARRISON COUNTY					
HARRISON	76.1	76.1	80.6	10,000	7,093
BALANCE OF MISSISSIPPI					
DE SOTO	76.7	78.1	93.3	10,000	7,093
FORREST	76.7	78.9		10,000	7,093
HANCOCK	76.7		80.6	10,000	7,093
JACKSON	76.7	98.6	98.6	10,000	7,349
JONES	76.7	82.3		10,000	7,093
LAUDERDALE	76.7	80.7		10,000	7,093
LEE	76.7	76.1		10,000	7,093
LOWNDES	76.7	76.9		10,000	7,093
STONE	76.7		80.6	10,000	7,093
WASHINGTON	76.7	77.8		10,000	7,093
MISSOURI					
INDEPENDENCE CITY					
JACKSON	104.7	104.7	103.9	10,470	7,803
BAL OF JACKSON CO LESS CITIES OF INDEPENDENCE & KANSAS(PART)					
JACKSON	104.7	104.7	103.9	10,470	7,803
JEFFERSON/FRANKLIN CONSORTIUM					
FRANKLIN	82.8	80.9	106.9	10,690	7,967
JEFFERSON	82.8	85.0	106.9	10,690	7,967
KANSAS CITY CONSORTIUM					
CASS	104.8		103.9	10,480	7,811
CLAY	104.8	104.7	103.9	10,480	7,811
JACKSON	104.8	104.7	103.9	10,480	7,811
PLATTE	104.8		103.9	10,480	7,811
RAY	104.8		103.9	10,480	7,811

1977-1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE WAGES-Continued

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
MISSOURI					
SPRINGFIELD CITY					
GREENE	85.6	85.6	84.9	10,000	7,093
ST. CHARLES COUNTY					
ST. CHARLES	88.9	88.9	106.9	10,690	7,967
ST. LOUIS CITY					
ST. LOUIS IND. CITY	112.6	112.6	106.9	11,260	8,392
ST. LOUIS COUNTY					
ST. LOUIS	106.1	106.1	106.9	10,690	7,967
BALANCE OF MISSOURI					
ANDREW	74.7		86.3	10,000	7,093
BOONE	74.7	86.2	86.2	10,000	7,093
BUCHANAN	74.7	87.2	86.3	10,000	7,093
CAPE GIRARDEAU	74.7	84.6		10,000	7,093
CHRISTIAN	74.7		84.9	10,000	7,093
COLE	74.7	79.3		10,000	7,093
GREENE	74.7	85.6	84.9	10,000	7,093
JASPER	74.7	82.3		10,000	7,093
MONTANA					
BUTTE RURAL CEP	94.3			10,000	7,093
BALANCE OF MONTANA					
CASCADE	83.9	88.8	88.8	10,000	7,093
MISSOULA	83.9	90.2		10,000	7,093
YELLOWSTONE	83.9	90.9	90.9	10,000	7,093
NEBRASKA					
LINCOLN CITY					
LANCASTER	81.7	81.7	81.7	10,000	7,093
OMAHA CONSORTIUM (NEBRASKA PART, OMAHA SMSA)					
DOUGLAS	95.4	96.3	94.2	10,000	7,177
SARPY	95.4	78.5	94.2	10,000	7,110
BALANCE OF NEBRASKA					
DAKOTA	76.3		90.3	10,000	7,093
LANCASTER	76.3	81.7	81.7	10,000	7,093
NEVADA					
LAS VEGAS CSRT. (CLARK CN.)					
CLARK	100.1	100.1	100.1	10,010	7,460
WASHOE COUNTY					
WASHOE	99.9	99.9	99.9	10,000	7,446

1977-1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE WAGES-Continued

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
NEVADA					
BALANCE OF NEVADA	93.5			10,000	7,093
NEW HAMPSHIRE					
HILLSBOROUGH COUNTY					
HILLSBOROUGH	88.4	88.4	88.4	10,000	7,093
ROCKINGHAM/STRAFFORD CONSORTIUM					
ROCKINGHAM	86.6	89.6	100.1	10,010	7,460
STRAFFORD	86.6	79.3		10,000	7,093
BALANCE OF NEW HAMPSHIRE					
CHESHIRE	79.0	81.9		10,000	7,093
GRAFTON	79.0	77.8		10,000	7,093
MERRIMACK	79.0	81.4		10,000	7,093
NEW JERSEY					
ATLANTIC COUNTY					
ATLANTIC	84.5	84.5	84.5	10,000	7,093
BERGEN COUNTY					
BERGEN	109.5	109.5	119.3	11,930	8,891
BURLINGTON COUNTY					
BURLINGTON	96.7	96.7	105.1	10,510	7,833
CAMDEN CITY					
CAMDEN	100.6	100.6	105.1	10,510	7,833
BAL OF CAMDEN COUNTY, CO. LESS CAMDEN CITY					
CAMDEN	100.6	100.6	105.1	10,510	7,833
CUMBERLAND COUNTY					
CUMBERLAND	94.3	94.3	94.3	10,000	7,093
ELIZABETH CITY					
UNION	119.5	119.5	115.4	11,950	8,906
BAL OF ESSEX COUNTY, CO. LESS CITY OF NEWARK					
ESSEX	113.3	113.3	115.4	11,540	8,601
GLOUCESTER COUNTY					
GLOUCESTER	98.5	98.5	105.1	10,510	7,833
HUDSON COUNTY CONSORTIUM					
HUDSON	107.0	107.0	107.0	10,700	7,975
BAL OF MERCER COUNTY, CO. LESS TRENTON CITY					
MERCER	104.7	104.7	104.7	10,470	7,803

1977-1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE WAGES-Continued

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
NEW JERSEY					
MIDDLESEX COUNTY					
MIDDLESEX	113.5	113.5	113.5	11,350	8,459
MONMOUTH COUNTY					
MONMOUTH	94.7	94.7	94.7	10,000	7,093
MORRIS COUNTY					
MORRIS	112.7	112.7	115.4	11,540	8,601
NEWARK CITY					
ESSEX	113.3	113.3	115.4	11,540	8,601
OCEAN COUNTY					
OCEAN	85.1	85.1		10,000	7,093
BAL. OF PASSAIC CO., CO. LESS PATERSON CITY					
PASSAIC	102.0	102.0	102.0	10,200	7,602
PATERSON CITY					
PASSAIC	102.0	102.0	102.0	10,200	7,602
SOMERSET COUNTY					
SOMERSET	116.7	116.7	115.4	11,670	8,698
TRENTON CITY					
MERCER	104.7	104.7	104.7	10,470	7,803
BAL OF UNION COUNTY, CO. LESS ELIZABETH CITY					
UNION	119.5	119.5	115.4	11,950	8,906
BALANCE OF NEW JERSEY					
CAPE MAY	96.9	73.1		10,000	7,222
HUNTERDON	96.9	93.0		10,000	7,222
SALEM	96.9	133.5	114.9	12,000	9,950
SUSSEX	96.9	79.3		10,000	7,222
WARREN	96.9	100.2	99.9	10,020	7,468
NEW MEXICO					
ALBUQUERQUE CONSORTIUM (BERNALILLO COUNTY)					
BERNALILLO	90.7	90.7	90.3	10,000	7,093
BALANCE OF NEW MEXICO					
DONA ANA	88.0	87.3		10,000	7,093
LEA	88.0	100.5		10,050	7,490
MCKINLEY	88.0	104.4		10,440	7,781
SANDOVAL	88.0		90.3	10,000	7,093
SAN JUAN	88.0	106.1		10,610	7,908
SANTA FE	88.0	79.4		10,000	7,093
VALENCIA	88.0	93.0		10,000	7,093

1977-1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE WAGES-Continued

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
NEW YORK					
ALBANY CITY					
ALBANY	99.8	99.8	99.6	10,000	7,438
BALANCE OF ALBANY COUNTY, COUNTY LESS ALBANY CITY					
ALBANY	99.8	99.8	99.6	10,000	7,438
BROOME COUNTY					
BROOME	96.7	96.7	98.2	10,000	7,319
BUFFALO CITY					
ERIE	102.4	102.4	103.6	10,360	7,721
CHAUTAUQUA CONSORTIUM					
ALLEGANY	86.9	90.1		10,000	7,093
CATTARAUGUS	86.9	83.0		10,000	7,093
CHAUTAUQUA	86.9	88.2		10,000	7,093
CHEMUNG COUNTY					
CHEMUNG	91.2	91.2	91.2	10,000	7,093
DUTCHESS COUNTY					
DUTCHESS	109.8	109.8	109.8	10,980	8,183
ERIE CONSORTIUM					
ERIE	102.4	102.4	103.6	10,360	7,721
ROCHESTER CITY					
MONROE	116.4	116.4	110.7	11,640	8,675
BAL OF MONROE CO., CO. LESS ROCHESTER CITY					
MONROE	116.4	116.4	110.7	11,640	8,675
NASSAU CONSORTIUM					
NASSAU	101.3	101.3	99.3	10,130	7,550
HEMPSTEAD TOWN - LONG BEACH CITY CONSORTIUM					
NASSAU	101.3	101.3	99.3	10,130	7,550
NEW YORK CITY					
	122.0			12,000	9,093
NIAGARA COUNTY					
NIAGARA	109.9	109.9	103.6	10,990	8,191
ONEIDA COUNTY					
ONEIDA	90.3	90.3	89.8	10,000	7,093
BAL OF ONONDAGA COUNTY, CO. LESS SYRACUSE CITY					
ONONDAGA	101.9	101.9	101.2	10,190	7,595
ORANGE COUNTY					
ORANGE	87.7	87.7		10,000	7,093

1977-1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE WAGES-Continued

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
NEW YORK					
OSWEGO COUNTY					
OSWEGO	106.8	106.8	101.2	10,680	7,960
RENSSELAER COUNTY					
RENSSELAER	87.2	87.2	99.6	10,000	7,423
ROCKLAND COUNTY					
ROCKLAND	92.6	92.6	119.3	11,930	8,891
SARATOGA COUNTY					
SARATOGA	92.2	92.2	99.6	10,000	7,423
SCHENECTADY COUNTY					
SCHENECTADY	115.0	115.0	99.6	11,500	8,571
STEUBEN COUNTY					
STEUBEN	107.0	107.0		10,700	7,975
ST. LAWRENCE COUNTY					
ST. LAWRENCE	97.3	97.3		10,000	7,252
SUFFOLK CONSORTIUM (SUFFOLK COUNTY)					
SUFFOLK	96.4	96.4	99.3	10,000	7,401
SYRACUSE CITY					
ONONDAGA	101.9	101.9	101.2	10,190	7,595
ULSTER COUNTY					
ULSTER	93.3	93.3		10,000	7,093
WESTCHESTER CONSORTIUM					
PUTNAM	109.4	85.5	119.3	11,930	8,891
WESTCHESTER	109.4	110.5	119.3	11,930	8,891
YONKERS CITY					
WESTCHESTER	110.5	110.5	119.3	11,930	8,891
BALANCE OF NEW YORK					
CAYUGA	84.2	85.4		10,000	7,093
CLINTON	84.2	85.9		10,000	7,093
COLUMBIA	84.2	77.3		10,000	7,093
FULTON	84.2	75.3		10,000	7,093
GENESEE	84.2	91.6		10,000	7,093
HERKIMER	84.2	87.1	89.8	10,000	7,093
JEFFERSON	84.2	86.7		10,000	7,093
LIVINGSTON	84.2	85.8	110.7	11,070	8,250
MADISON	84.2	78.3	101.2	10,120	7,542
MONTGOMERY	84.2	77.2	99.6	10,000	7,423
ONTARIO	84.2	81.5	110.7	11,070	8,250
ORLEANS	84.2		110.7	11,070	8,250
OTSEGO	84.2	77.4		10,000	7,093
SULLIVAN	84.2	69.2		10,000	7,093
TIOGA	84.2		98.2	10,000	7,319

1977-1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE WAGES-Continued

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
NEW YORK					
BALANCE OF NEW YORK					
TOMPKINS	84.2	87.5		10,000	7,093
WARREN	84.2	82.7		10,000	7,093
WASHINGTON	84.2	96.5		10,000	7,192
WAYNE	84.2	86.6	110.7	11,070	8,250
NORTH CAROLINA					
ALAMANCE COUNTY					
ALAMANCE	77.0	77.0	77.0	10,000	7,093
BUNCOMBE COUNTY					
BUNCOMBE	82.2	82.2	81.5	10,000	7,093
CHARLOTTE CITY					
MECKLENBURG	98.0	98.0	92.9	10,000	7,304
CUMBERLAND COUNTY					
CUMBERLAND	80.2	80.2	80.2	10,000	7,093
DAVIDSON COUNTY					
DAVIDSON	77.8	77.8	91.6	10,000	7,093
DURHAM CITY					
DURHAM	97.0	97.0	91.3	10,000	7,229
GASTON COUNTY					
GASTON	81.4	81.4	92.9	10,000	7,093
GREENSBORO CONSORTIUM (GUILFORD COUNTY)					
GUILFORD	91.2	91.2	91.6	10,000	7,093
ONSLOW COUNTY					
ONSLOW	71.5	71.5		10,000	7,093
RALEIGH CONSORTIUM					
JOHNSTON	81.6	68.0		10,000	7,093
WAKE	81.6	88.4	91.3	10,000	7,093
BAL OF WAKE COUNTY, CO. LESS CITY OF RALEIGH					
WAKE	88.4	88.4	91.3	10,000	7,093
WINSTON SALEM CONSORTIUM (FORSYTH COUNTY)					
FORSYTH	103.3	103.3	91.6	10,330	7,699
ROBESON COUNTY					
ROBESON	67.9	67.9		10,000	7,093
BALANCE OF NORTH CAROLINA					
BRUNSWICK	77.3		86.5	10,000	7,093
BURKE	77.3	77.1		10,000	7,093
CABARRUS	77.3	72.6		10,000	7,093
CALDWELL	77.3	76.7		10,000	7,093
CATAWBA	77.3	79.3		10,000	7,093

1977-1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE WAGES-Continued

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
NORTH CAROLINA					
BALANCE OF NORTH CAROLINA					
CLEVELAND	77.3	80.4		10,000	7,093
COLUMBUS	77.3	74.1		10,000	7,093
CRAVEN	77.3	88.7		10,000	7,093
CURRITUCK	77.3		87.4	10,000	7,093
DURHAM	77.3	97.0	91.3	10,000	7,229
EDGECOMBE	77.3	79.3		10,000	7,093
HALIFAX	77.3	72.7		10,000	7,093
HARNETT	77.3	68.3		10,000	7,093
HENDERSON	77.3	78.7		10,000	7,093
IREDELL	77.3	74.3		10,000	7,093
LENOIR	77.3	79.9		10,000	7,093
MADISON	77.3		81.5	10,000	7,093
MECKLENBURG	77.3	98.0	92.9	10,000	7,304
NASH	77.3	75.3		10,000	7,093
NEW HANOVER	77.3	85.0	86.5	10,000	7,093
ORANGE	77.3	89.2	91.3	10,000	7,093
PITT	77.3	75.4		10,000	7,093
RANDOLPH	77.3	74.6	91.6	10,000	7,093
ROCKINGHAM	77.3	78.8		10,000	7,093
ROWAN	77.3	80.1		10,000	7,093
RUTHERFORD	77.3	74.7		10,000	7,093
STOKES	77.3		91.6	10,000	7,093
SURRY	77.3	69.0		10,000	7,093
UNION	77.3	75.9	92.9	10,000	7,093
WAYNE	77.3	73.7		10,000	7,093
WILKES	77.3	74.2		10,000	7,093
WILSON	77.3	81.8		10,000	7,093
YADKIN	77.3		91.6	10,000	7,093
NORTH DAKOTA					
NORTH DAKOTA STATEWIDE CONSORTIUM					
BURLEIGH	84.1	90.6		10,000	7,093
CASS	84.1	92.7	89.3	10,000	7,093
GRAND FORKS	84.1	83.8	79.7	10,000	7,093
WARD	84.1	81.6		10,000	7,093
OHIO					
AKRON CONSORTIUM					
MEDINA	108.7	86.6	114.2	11,420	8,511
SUMMIT	108.7	111.3	108.9	11,130	8,295

1977-1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE WAGES-Continued

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
OHIO					
ALLEN COUNTY					
ALLEN	106.6	106.6	100.5	10,660	7,945
ASHTABULA COUNTY					
ASHTABULA	95.6	95.6		10,000	7,125
BUTLER COUNTY					
BUTLER	115.7	115.7	115.7	11,570	8,623
CANTON CONSORTIUM					
STARK	103.9	105.7	105.0	10,570	7,878
WAYNE	103.9	96.1		10,390	7,744
CINCINNATI CITY					
HAMILTON	110.1	110.1	105.8	11,010	8,206
CLARK COUNTY					
CLARK	98.0	98.0	95.6	10,000	7,304
CLERMONT/WARREN CONSORTIUM					
CLERMONT	85.0	90.6	105.8	10,580	7,885
WARREN	85.0	79.4	105.8	10,580	7,885
CLEVELAND CONSORTIUM					
CUYAHOGA	116.2	116.8	114.2	11,680	8,705
GEAUGA	116.2	91.8	114.2	11,620	8,660
COLUMBUS CONSORTIUM (FRANKLIN CO.)					
FRANKLIN	102.0	102.0	100.4	10,200	7,602
DAYTON CITY					
MONTGOMERY	115.1	115.1	110.4	11,510	8,578
GREENE COUNTY					
GREENE	91.4	91.4	110.4	11,040	8,228
BAL OF HAMILTON, CO LESS CINCINNATI CITY					
HAMILTON	110.1	110.1	105.8	11,010	8,206
LAKE COUNTY					
LAKE	101.7	101.7	114.2	11,420	8,511
LICKING/DEL CONSORTIUM					
DELAWARE	96.3	89.1	100.4	10,040	7,483
LICKING	96.3	99.9		10,000	7,446
LORAIN COUNTY					
LORAIN	117.2	117.2	117.2	11,720	8,735
MONTGOMERY-PREBLE CONSORTIUM					
MONTGOMERY	113.7	115.1	110.4	11,510	8,578
PREBLE	113.7		110.4	11,370	8,474

1977-1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE WAGES-Continued

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
OHIO					
NORTH EAST OHIO MANPOWER CONSORTIUM					
COLUMBIANA	110.6	88.8		11,060	8,243
MAHONING	110.6	104.0	113.8	11,380	8,482
TRUMBULL	110.6	124.8	113.8	12,000	9,301
PORTAGE CO					
PORTAGE	92.5	92.5	108.9	10,890	8,116
RICHLAND/MORROW CSRT					
RICHLAND	104.1	105.7	105.7	10,570	7,878
SCIOTO COUNTY					
SCIOTO	89.0	89.0		10,000	7,093
TOLEDO CONSORTIUM					
LUCAS	113.1	114.1	111.4	11,410	8,504
WOOD	113.1	107.2	111.4	11,310	8,429
BALANCE OF OHIO					
ATHENS	95.2	85.2		10,000	7,095
AUGLAIZE	95.2		100.5	10,050	7,490
BELMONT	95.2	98.9	99.5	10,000	7,416
CARROLL	95.2		105.0	10,500	7,826
CHAMPAIGN	95.2		95.6	10,000	7,125
DARKE	95.2	81.9		10,000	7,095
ERIE	95.2	105.0		10,500	7,826
FAIRFIELD	95.2	90.1	100.4	10,040	7,483
FULTON	95.2		111.4	11,140	8,303
HANCOCK	95.2	102.8		10,280	7,662
HURON	95.2	93.4		10,000	7,095
JEFFERSON	95.2	111.5	121.8	12,000	9,078
LAWRENCE	95.2	93.1	100.3	10,030	7,475
MADISON	95.2		100.4	10,040	7,483
MARION	95.2	101.9		10,190	7,595
MIAMI	95.2	91.6	110.4	11,040	8,228
MUSKINGUM	95.2	88.1		10,000	7,095
OTTAWA	95.2		111.4	11,140	8,303
PICKAWAY	95.2		100.4	10,040	7,483
PUTNAM	95.2		100.5	10,050	7,490
ROSS	95.2	101.7		10,170	7,580
SANDUSKY	95.2	100.0		10,000	7,453
SENECA	95.2	106.6		10,660	7,945
TUSCARAWAS	95.2	93.2		10,000	7,095
VAN WERT	95.2		100.5	10,050	7,490
WASHINGTON	95.2	94.3	96.3	10,000	7,177

1977-1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE WAGES-Continued

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
OKLAHOMA					
BAL. OF CLEVELAND CO. LESS OKLAHOMA CITY (PART)					
CLEVELAND	74.7	74.7	94.7	10,000	7,093
COMANCHE COUNTY					
COMANCHE	77.6	77.6	77.6	10,000	7,093
OKLAHOMA CITY CONSORTIUM					
CANADIAN	96.6		94.7	10,000	7,200
CLEVELAND	96.6	74.7	94.7	10,000	7,200
MC CLAIN	96.6		94.7	10,000	7,200
OKLAHOMA	96.6	97.9	94.7	10,000	7,296
OKLAHOMA COUNTY, CO. LESS CITY OF OKLAHOMA (PART)					
OKLAHOMA	97.9	97.9	94.7	10,000	7,296
TULSA CONSORTIUM					
CREEK	104.2	82.7	102.7	10,420	7,766
OSAGE	104.2		102.7	10,420	7,766
TULSA	104.2	105.7	102.7	10,570	7,878
BALANCE OF OKLAHOMA					
GARFIELD	82.5	90.3		10,000	7,093
KAY	82.5	97.0		10,000	7,229
LE FLORE	82.5		82.5	10,000	7,093
MC CLAIN	82.5		94.7	10,000	7,093
MAYES	82.5		102.7	10,270	7,654
MUSKOGEE	82.5	89.6		10,000	7,093
PAYNE	82.5	68.8		10,000	7,093
POTTAWATOMIE	82.5	75.0	94.7	10,000	7,093
ROGERS	82.5		102.7	10,270	7,654
SEQUOYAH	82.5		82.5	10,000	7,093
WAGONER	82.5		102.7	10,270	7,654
OREGON					
BAL OF CLACKAMAS CO. LESS PORTLAND CITY (PART)					
CLACKAMAS	98.5	98.5	105.2	10,520	7,841
JACKSON/JOSEPHINE CSRT.					
JACKSON	93.2	93.8		10,000	7,093
LANE COUNTY					
LANE	98.0	98.0	98.0	10,000	7,304
MID WILLAMETTE VALLEY CONSORTIUM					
MARION	92.5	92.8	92.6	10,000	7,093
POLK	92.5		92.6	10,000	7,093

1977-1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE WAGES-Continued

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
OREGON					
MULTNOMAH/WASHINGTON CONSORTIUM					
MULTNOMAH	103.6	107.8	105.2	10,780	8,034
WASHINGTON	103.6	98.2	105.2	10,520	7,841
PORTLAND CITY					
CLACKAMAS	107.8	98.5	105.2	10,780	8,034
MULTNOMAH	107.8	107.8	105.2	10,780	8,034
BALANCE OF OREGON					
BENTON	94.9	97.4		10,000	7,259
COOS	94.9	103.7		10,370	7,729
DOUGLAS	94.9	103.4		10,340	7,706
JOSEPHINE	94.9	88.2		10,000	7,093
KLAMATH	94.9	96.2		10,000	7,170
LINN	94.9	106.9		10,690	7,967
UMATILLA	94.9	83.5		10,000	7,093
PENNSYLVANIA					
BAL OF ALLEGHENY COUNTY, CO. LESS PITTSBURGH CITY					
ALLEGHENY	112.1	112.1	111.1	11,210	8,355
BEAVER COUNTY					
BEAVER	123.5	123.5	111.1	12,000	9,204
BERKS COUNTY					
BERKS	94.1	94.1	94.1	10,000	7,093
BUCKS COUNTY					
BUCKS	98.0	98.0	105.1	10,510	7,833
CENTRE COUNTY					
CENTRE	87.8	87.8		10,000	7,093
CHESTER COUNTY					
CHESTER	102.7	102.7	105.1	10,510	7,833
DELAWARE COUNTY					
DELAWARE	101.8	101.8	105.1	10,510	7,833
ERIE CITY					
ERIE	97.6	97.6	97.6	10,000	7,274
BAL OF ERIE COUNTY, CO. LESS ERIE CITY					
ERIE	97.6	97.6	97.6	10,000	7,274
FAYETTE COUNTY					
FAYETTE	86.8	86.8		10,000	7,093
FRANKLIN COUNTY					
FRANKLIN	89.0	89.0		10,000	7,093

1977-1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE WAGES-Continued

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
PENNSYLVANIA					
BAL OF LACKAWANNA COUNTY, CO. LESS SCRANTON CITY					
LACKAWANNA	82.3	82.3	84.2	10,000	7,093
LANCASTER CONSORTIUM					
LANCASTER	90.2	90.3	90.3	10,000	7,093
LEBANON	90.2	89.9		10,000	7,093
LAWRENCE COUNTY					
LAWRENCE	93.2	93.2		10,000	7,093
LEHIGH VALLEY CONSORTIUM					
LEHIGH	101.6	99.8	99.9	10,160	7,572
NORTHAMPTON	101.6	104.3	99.9	10,430	7,773
LUZERNE COUNTY					
LUZERNE	85.0	85.0	84.2	10,000	7,093
LYCOMING CONSORTIUM					
LYCOMING	90.1	89.9	89.9	10,000	7,093
MERCER CONSORTIUM					
CRAWFORD	98.0	86.6		10,000	7,304
MERCER	98.0	103.2		10,320	7,691
VENANGO	98.0	102.7		10,270	7,654
MONTGOMERY COUNTY					
MONTGOMERY	106.1	106.1	105.1	10,610	7,908
NORTHUMBERLAND COUNTY					
NORTHUMBERLAND	86.4	86.4		10,000	7,093
PHILADELPHIA CITY/COUNTY					
PHILADELPHIA	109.6	109.6	105.1	10,960	8,168
PITTSBURGH CITY					
ALLEGHENY	112.1	112.1	111.1	11,210	8,355
SCHUYLKILL CONSORTIUM					
CARBON	75.7	74.4	99.9	10,000	7,446
SCHUYLKILL	75.7	76.2		10,000	7,093
SCRANTON CITY					
LACKAWANNA	82.3	82.3	84.2	10,000	7,093
SOUTHERN ALLEGANY CONSORTIUM					
BLAIR	91.3	84.1	84.1	10,000	7,093
CAMBRIA	91.3	101.9	98.8	10,190	7,595
SOMERSET	91.3	89.2	98.8	10,000	7,364
SUSQUEHANNA CONSORTIUM					
CUMBERLAND	97.5	93.1	97.5	10,000	7,267
DAUPHIN	97.5	101.2	97.5	10,120	7,542
PERRY	97.5		97.5	10,000	7,267

1977-1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE WAGES-Continued

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
PENNSYLVANIA					
TRI-COUNTY CONSORTIUM (BUTLER CONSORTIUM)					
ARMSTRONG	101.6	96.0		10,160	7,572
BUTLER	101.6	104.8		10,480	7,811
INDIANA	101.6	100.7		10,160	7,572
WASHINGTON COUNTY					
WASHINGTON	105.7	105.7	111.1	11,110	8,280
WESTMORELAND COUNTY					
WESTMORELAND	100.2	100.2	111.1	11,110	8,280
YORK COUNTY					
YORK	95.7	95.7	92.6	10,000	7,133
BALANCE OF PENNSYLVANIA					
ADAMS	85.7	72.0	92.6	10,000	7,093
BRADFORD	85.7	89.0		10,000	7,093
CLEARFIELD	85.7	89.1		10,000	7,093
COLUMBIA	85.7	81.3		10,000	7,093
MCKEAN	85.7	87.6		10,000	7,093
MONROE	85.7	86.1	84.2	10,000	7,093
SUSQUEHANNA	85.7		98.2	10,000	7,319
RHODE ISLAND					
PROVIDENCE CITY					
PROVIDENCE	83.9	83.9	82.6	10,000	7,093
BALANCE OF RHODE ISLAND					
BRISTOL	81.7		82.6	10,000	7,093
KENT	81.7	78.1	82.6	10,000	7,093
NEWPORT	81.7	74.5		10,000	7,093
PROVIDENCE	81.7	83.9	82.6	10,000	7,093
WASHINGTON	81.7	80.4	82.6	10,000	7,093
SOUTH CAROLINA					
SOUTH CAROLINA STATEWIDE CONSORTIUM					
AIKEN	82.9	95.6	89.3	10,000	7,125
ANDERSON	82.9	81.5		10,000	7,093
BEAUFORT	82.9	71.7		10,000	7,093
BERKELEY	82.9	92.9	86.6	10,000	7,093
CHARLESTON	82.9	86.6	86.6	10,000	7,093
DARLINGTON	82.9	88.8		10,000	7,093
DORCHESTER	82.9		86.6	10,000	7,093
FLORENCE	82.9	80.7		10,000	7,093
GREENVILLE	82.9	89.1	87.4	10,000	7,093
GREENWOOD	82.9	81.2		10,000	7,093
HORRY	82.9	62.2		10,000	7,093

1977-1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE WAGES-Continued

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
SOUTH CAROLINA					
SOUTH CAROLINA STATEWIDE CONSORTIUM					
LAURENS	82.9	79.0		10,000	7,093
LEXINGTON	82.9	83.3	85.0	10,000	7,093
ORANGEBURG	82.9	74.4		10,000	7,093
PICKENS	82.9	79.2	87.4	10,000	7,093
RICHLAND	82.9	85.5	85.0	10,000	7,093
SPARTANBURG	82.9	87.5	87.4	10,000	7,093
SUMTER	82.9	72.0		10,000	7,093
YORK	82.9	85.6		10,000	7,093
SOUTH DAKOTA					
SOUTH DAKOTA STATEWIDE CONSORTIUM					
MINNEHAHA	76.9	89.2	89.2	10,000	7,093
PENNINGTON	76.9	79.3		10,000	7,093
TENNESSE					
CHATTANOOGA CITY					
HAMILTON	97.8	97.8	93.8	10,000	7,289
BAL OF HAMILTON COUNTY, CO. LESS CHATTANOOGA CITY					
HAMILTON	97.8	97.8	93.8	10,000	7,289
KNOXVILLE CONSORTIUM (KNOX COUNTY)					
KNOX	86.1	86.1	94.7	10,000	7,093
MEMPHIS CONSORTIUM (SHELBY COUNTY)					
SHELBY	94.8	94.8	93.3	10,000	7,093
NASHVILLE/DAVIDSON COUNTY (DAVIDSON COUNTY)					
DAVIDSON	92.8	92.8	89.4	10,000	7,093
SULLIVAN COUNTY					
SULLIVAN	100.7	100.7	89.3	10,070	7,505
BALANCE OF TENNESSEE					
ANDERSON	79.3	121.0	94.7	12,000	9,018
BLOUNT	79.3	103.0	94.7	10,300	7,677
BRADLEY	79.3	73.2		10,000	7,093
CARTER	79.3		89.3	10,000	7,093
CHEATHAM	79.3		89.4	10,000	7,093
DICKSON	79.3		89.4	10,000	7,093
GREENE	79.3	71.2		10,000	7,093
HAWKINS	79.3		89.3	10,000	7,093
MADISON	79.3	85.6		10,000	7,093

1977-1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE WAGES-Continued

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
TENNESSE					
BALANCE OF TENNESSEE					
MARION	79.3		93.8	10,000	7,093
MONTGOMERY	79.3	78.2	78.4	10,000	7,093
ROBERTSON	79.3		89.4	10,000	7,093
RUTHERFORD	79.3	82.1	89.4	10,000	7,093
SEQUATCHIE	79.3		93.8	10,000	7,093
SUMNER	79.3	81.1	89.4	10,000	7,093
TIPTON	79.3		93.3	10,000	7,093
UNICOI	79.3		89.3	10,000	7,093
UNION	79.3		94.7	10,000	7,093
WASHINGTON	79.3	77.1	89.3	10,000	7,093
WILLIAMSON	79.3		89.4	10,000	7,093
WILSON	79.3		89.4	10,000	7,093
TEXAS					
ALAMO CONSORTIUM					
BEXAR	85.1	87.4	86.4	10,000	7,093
COMAL	85.1		86.4	10,000	7,093
GUADALUPE	85.1		86.4	10,000	7,093
GULF COAST AREA MANPOWER CONSORTIUM					
BRAZORIA	102.5	121.9	115.7	12,000	9,085
FORT BEND	102.5	111.1	115.7	11,570	8,623
LIBERTY	102.5		115.7	11,570	8,623
MONTGOMERY	102.5	87.1	115.7	11,570	8,623
WALLER	102.5		115.7	11,570	8,623
CAMERON COUNTY					
CAMERON	71.1	71.1	71.1	10,000	7,093
CAPITAL AREA MANPOWER CONSORTIUM					
HAYS	83.6		85.8	10,000	7,093
TRAVIS	83.6	87.1	85.8	10,000	7,093
WILLIAMSON	83.6	70.9		10,000	7,093
CENTRAL TEXAS MANPOWER CONSORTIUM					
BELL	79.3	79.0	77.6	10,000	7,093
CORYELL	79.3		77.6	10,000	7,093
COASTAL BEND MANPOWER CSRT					
NUECES	91.5	95.4	95.0	10,000	7,110
SAN PATRICIO	91.5	91.0	95.0	10,000	7,093

1977-1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE WAGES-Continued

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
TEXAS					
DALLAS CITY					
DALLAS	106.0	106.0	101.2	10,600	7,900
DALLAS COUNTY CONSORTIUM					
DALLAS	106.0	106.0	101.2	10,600	7,900
EL PASO CONSORTIUM (EL PASO COUNTY)					
EL PASO	79.5	79.5	79.5	10,000	7,093
FT. WORTH CONSORTIUM					
TARRANT	97.3	97.3	101.2	10,120	7,542
GALVESTON COUNTY					
GALVESTON	106.2	106.2	106.2	10,620	7,915
BALANCE OF HARRIS CO LESS PASADENA CSRT AND HOUSTON CITY					
HARRIS	116.3	116.3	115.7	11,630	8,668
HIDALGO COUNTY CONSORTIUM					
HIDALGO	67.8	68.0	68.0	10,000	7,093
HOUSTON CITY					
HARRIS	116.3	116.3	115.7	11,630	8,668
GREATER PASADENA CONSORTIUM					
HARRIS	116.3	116.3	115.7	11,630	8,668
NORTH TEXAS STATE PLANNING REGIONAL CONSORTIUM					
CLAY	80.8		84.2	10,000	7,093
WICHITA	80.8	84.6	84.2	10,000	7,093
PERMIAN BASIN CONSORTIUM					
ECTOR	102.5	103.9	103.9	10,390	7,744
MIDLAND	102.5	111.8	111.8	11,180	8,332
REGION XI CONSORTIUM					
MC LENNAN	79.6	82.3	82.3	10,000	7,093
S.E. TEXAS COMPREHENSIVE MANPOWER CONSORTIUM					
HARDIN	113.7		113.7	11,370	8,474
JEFFERSON	113.7	114.4	113.7	11,440	8,526
ORANGE	113.7	118.3	113.7	11,830	8,817
BAL OF TARRANT CO LESS FT WORTH CSRT AND GRAND PRAIRIE(PART)					
TARRANT	97.3	97.3	101.2	10,120	7,542

1977-1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE WAGES-Continued

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
TEXAS					
SOUTH PLAINS ASSOCIATION OF GOVERNMENTS					
LUBBOCK	80.8	81.0	81.0	10,000	7,093
TEXARKANA CONSORTIUM (ARKANSAS-TEXAS)					
LITTLE RIVER	86.2		86.2	10,000	7,093
MILLER	86.2		86.2	10,000	7,093
BOWIE	86.2	89.1	86.2	10,000	7,093
TEXAS PANHANDLE EMPLOYMENT AND TRAINING ALLIANCE CONSORTIUM					
POTTER	91.7	92.2	90.1	10,000	7,093
RANDALL	91.7	78.7	90.1	10,000	7,093
WEBB COUNTY					
WEBB	68.9	68.9	68.9	10,000	7,093
WEST CENTRAL TEXAS CSRT					
CALLAHAN	79.2		81.4	10,000	7,093
JONES	79.2		81.4	10,000	7,093
TAYLOR	79.2	82.3	81.4	10,000	7,093
EAST TEXAS MANPOWER CONSORTIUM					
GREGG	86.7	91.4	93.6	10,000	7,093
HARRISON	86.7		93.6	10,000	7,093
SMITH	86.7	90.7	90.7	10,000	7,093
BALANCE OF TEXAS					
ANGELINA	81.0	89.4		10,000	7,093
BRAZOS	81.0	75.5	75.5	10,000	7,093
COLLIN	81.0	81.0	101.2	10,120	7,542
DENTON	81.0	74.7	101.2	10,120	7,542
ELLIS	81.0	81.6	101.2	10,120	7,542
GRAYSON	81.0	84.0	84.0	10,000	7,093
HOOD	81.0		101.2	10,120	7,542
JOHNSON	81.0	72.0	101.2	10,120	7,542
KAUFMAN	81.0		101.2	10,120	7,542
PARKER	81.0		101.2	10,120	7,542
ROCKWALL	81.0		101.2	10,120	7,542
TOM GREEN	81.0	78.6	78.6	10,000	7,093
VICTORIA	81.0	91.6		10,000	7,093
WISE	81.0		101.2	10,120	7,542

1977-1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE WAGES-Continued

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
UTAH					
UTAH STATEWIDE CONSORTIUM					
DAVIS	92.2	105.6	94.4	10,560	7,870
SALT LAKE	92.2	94.1	94.4	10,000	7,093
TOOELE	92.2		94.4	10,000	7,093
UTAH	92.2	89.4	89.4	10,000	7,093
WEBER	92.2	81.8	94.4	10,000	7,093
VERMONT					
VERMONT STATEWIDE CONSORTIUM					
CHITTENDEN	83.1	96.6		10,000	7,200
RUTLAND	83.1	80.3		10,000	7,093
VIRGINIA					
ALEXANDRIA CITY					
ALEXANDRIA	100.6	100.6	118.0	11,800	8,795
ARLINGTON COUNTY					
ARLINGTON	134.6	134.6	118.0	12,000	10,032
FAIRFAX-LOUDOUN CONSORTIUM					
FAIRFAX	101.7	103.9	118.0	11,800	8,795
LOUDOUN	101.7	91.8	118.0	11,800	8,795
FAIRFAX CITY	101.7		118.0	11,800	8,795
FALLS CHURCH	101.7		118.0	11,800	8,795
HENRICO COUNTY CONSORTIUM					
CHESTERFIELD	92.9	103.7	94.8	10,370	7,729
HANOVER	92.9	79.7	94.8	10,000	7,093
HENRICO	92.9	89.7	94.8	10,000	7,093
PENNINSULA CONSORTIUM					
JAMES CITY	92.8		92.5	10,000	7,093
YORK	92.8		92.5	10,000	7,093
HAMPTON	92.8	95.4	92.5	10,000	7,110
NEWPORT NEWS	92.8	95.0	92.5	10,000	7,093
WILLIAMSBURG	92.8		92.5	10,000	7,093
PRINCE WILLIAM COUNTY CONSORTIUM					
PRINCE WILLIAM	95.0	84.0	118.0	11,800	8,795
MANASSAS CITY	95.0		118.0	11,800	8,795
MANASSAS PARK CITY	95.0		118.0	11,800	8,795
RAMPS CONSORTIUM					
CHARLES CITY	95.8		94.8	10,000	7,140
GOOCHLAND	95.8		94.8	10,000	7,140
NEW KENT	95.8		94.8	10,000	7,140
POWHATAN	95.8		94.8	10,000	7,140
RICHMOND	95.8	96.3	94.8	10,000	7,177

1977-1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE WAGES-Continued

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
VIRGINIA					
ROANOKE CONSORTIUM					
BOTETOURT	87.5		87.1	10,000	7,093
CRAIG	87.5		87.1	10,000	7,093
ROANOKE	87.5	86.6	87.1	10,000	7,093
ROANOKE CITY	87.5	83.9	87.1	10,000	7,093
SALEM	87.5		87.1	10,000	7,093
STAMA CONSORTIUM					
CHESAPEAKE	87.6	84.1	87.4	10,000	7,093
NORFOLK	87.6	91.8	87.4	10,000	7,093
PORTSMOUTH	87.6	96.9	87.4	10,000	7,222
SUFFOLK	87.6		87.4	10,000	7,093
VIRGINIA BEACH	87.6	71.5	87.4	10,000	7,093
BALANCE OF VIRGINIA					
ALBERMARLE	82.2	91.7		10,000	7,093
AMHERST	82.2		87.8	10,000	7,093
APPOMATTOX	82.2		87.8	10,000	7,093
AUGUSTA	82.2	92.9		10,000	7,093
CAMPBELL	82.2		87.8	10,000	7,093
DINWIDDIE	82.2		91.4	10,000	7,093
GLOUCESTER	82.2		92.5	10,000	7,093
HENRY	82.2	88.5		10,000	7,093
MONTGOMERY	82.2	84.3		10,000	7,093
PITTSYLVANIA	82.2	88.8		10,000	7,093
PRINCE GEORGE	82.2	105.3	91.4	10,530	7,848
ROCKINGHAM	82.2	73.1		10,000	7,093
SCOTT	82.2		89.3	10,000	7,093
WASHINGTON	82.2		89.3	10,000	7,093
BRISTOL	82.2		89.3	10,000	7,093
COLONIAL HEIGHTS	82.2		91.4	10,000	7,093
HOPEWELL	82.2		91.4	10,000	7,093
LYNCHBURG	82.2	88.3	87.8	10,000	7,093
PETERSBURG	82.2		91.4	10,000	7,093
WASHINGTON					
CLARK COUNTY					
CLARK	105.7	105.7	105.2	10,570	7,878
KING/SNOHOMISH CONSORTIUM					
KING	114.1	115.0	114.1	11,500	8,571
SNOHOMISH	114.1	107.2	114.1	11,410	8,504

1977-1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE WAGES-Continued

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
WASHINGTON					
KITSAP COUNTY					
KITSAP	115.1	115.1		11,510	8,578
BAL OF PIERCE COUNTY, CO. LESS TACOMA CITY					
PIERCE	102.4	102.4	102.4	10,240	7,632
SPOKANE CSRT. (SPOKANE CN.)					
SPOKANE	97.4	97.4	97.4	10,000	7,259
TACOMA CITY					
PIERCE	102.4	102.4	102.4	10,240	7,632
YAKIMA COUNTY					
YAKIMA	86.3	86.3	86.3	10,000	7,093
BALANCE OF WASHINGTON					
BENTON	102.5	128.6	120.6	12,000	9,585
COWLITZ	102.5	120.0		12,000	8,944
FRANKLIN	102.5		120.6	12,000	8,988
GRAYS HARBOR	102.5	108.9		10,890	8,116
LEWIS	102.5	100.6		10,250	7,639
SKAGIT	102.5	95.6		10,250	7,639
THURSTON	102.5	104.5		10,450	7,788
WHATCOM	102.5	98.7		10,250	7,639
WEST VIRGINIA					
WEST VIRGINIA STATEWIDE CONSORTIUM					
BROOKE	100.7		121.8	12,000	9,078
CABELL	100.7	93.7	100.3	10,070	7,505
FAYETTE	100.7	99.0		10,070	7,505
HANCOCK	100.7		121.8	12,000	9,078
HARRISON	100.7	94.9		10,070	7,505
KANAWHA	100.7	106.9	107.0	10,700	7,975
MC DOWELL	100.7	125.3		12,000	9,339
MARION	100.7	97.7		10,070	7,505
MARSHALL	100.7		99.5	10,070	7,505
MERCER	100.7	90.7		10,070	7,505
MONONGALIA	100.7	93.5		10,070	7,505
OHIO	100.7	86.3	99.5	10,070	7,505
PUTNAM	100.7		107.0	10,700	7,975
RALEIGH	100.7	97.6		10,070	7,505
WAYNE	100.7		100.3	10,070	7,505
WIRT	100.7		96.3	10,070	7,505
WOOD	100.7	97.6	96.3	10,070	7,505

1977-1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE WAGES-Continued

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
WISCONSIN					
MADISON/DANE CONSORTIUM (DANE CO.)					
DANE	96.9	96.9	96.9	10,000	7,222
MARATHON COUNTY					
MARATHON	95.4	95.4		10,000	7,110
MILWAUKEE COUNTY					
MILWAUKEE	108.7	108.7	106.8	10,870	8,101
NORTHWEST WISCONSIN CEP					
DOUGLAS	74.9		93.8	10,000	7,093
OUTAGAMIE COUNTY					
OUTAGAMIE	96.6	96.6	98.3	10,000	7,326
ROCK COUNTY					
ROCK	103.9	103.9		10,390	7,744
TRICO CETAC					
KENOSHA	101.3	103.9	103.9	10,390	7,744
RACINE	101.3	107.6	107.6	10,760	8,019
WALWORTH	101.3	78.7		10,130	7,550
WINNE/FOND CONSORTIUM					
FOND DU LAC	95.6	86.3		10,000	7,125
WINNEBAGO	95.6	100.8	98.3	10,080	7,513
WOW CONSORTIUM					
OZAUKEE	100.0	96.3	106.8	10,680	7,960
WASHINGTON	100.0	87.7	106.8	10,680	7,960
WAUKESHA	100.0	104.2	106.8	10,680	7,960
BALANCE OF WISCONSIN					
BROWN	84.0	98.2	98.2	10,000	7,319
CALUMET	84.0		98.3	10,000	7,326
CHIPPEWA	84.0		87.9	10,000	7,093
DODGE	84.0	90.2		10,000	7,093
EAU CLAIRE	84.0	91.0	87.9	10,000	7,093
GRANT	84.0	69.2		10,000	7,093
JEFFERSON	84.0	87.2		10,000	7,093
LA CROSSE	84.0	86.6	86.6	10,000	7,093
MANITOWOC	84.0	86.4		10,000	7,093
PORTAGE	84.0	86.3		10,000	7,093
ST. CROIX	84.0		104.1	10,410	7,759
SHEBOYGAN	84.0	93.7		10,000	7,093
WOOD	84.0	99.6		10,000	7,423
WYOMING					
WYOMING STATEWIDE CONSORTIUM					
LARAMIE	101.0	89.4		10,100	7,528
NATRONA	101.0	112.8		11,280	8,407

BILLING CODE 4510-30-C

77-1978 PRIME SPONSOR, COUNTY, AND SMSA WAGE INDEXES (NATIONAL AVERAGE ANNUAL WAGES OF $11,826 = 100.0), MAXIMUM AND AVERAGE GES-Continued

	PRIME SPONSOR INDEX	COUNTY INDEX	SMSA INDEX	MAXIMUM WAGES	AVERAGE WAGES
PUERTO RICO					
BAYAMON MUNICIPIO	65.4			10,000	7,093
CAGUAS MUNICIPIO	65.4			10,000	7,093
CAROLINA MUNICIPIO	65.4			10,000	7,093
MAYAGUEZ MUNICIPIO	65.4			10,000	7,093
PONCE MUNICIPIO	65.4			10,000	7,093
SAN JUAN CONSORTIUM	65.4			10,000	7,093
BALANCE OF PUERTO RICO	65.4			10,000	7,093
VIRGIN ISLANDS				10,000	7,093
GUAM				10,000	7,093
SAMOA				10,000	7,093
TRUST TERRITORIES OF THE PACIFIC ISLANDS				10,000	7,093
NORTHERN MARIANNAS				10,000	7,093

Signed this 11th day of May 1979 at Washington, D.C.

Ernest G. Green,

Assistant Secretary for Employment and Training.

Signed this 9th day of May 1979 at Washington, D.C.

Robert Anderson,

Administrator, Office of Comprehensive Employment Development.

[FR Doc. 79-15162 Filed 5-14-79; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 675, 676, 677, 678, and 679

Comprehensive Employment and Training Act Regulations; Correction

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule relating to comprehensive employment and training act regulations published at 44 FR 19990, April 3, 1979.

EFFECTIVE DATE: May 15, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Anderson, Administrator, Office of Comprehensive Employment Development, Employment and Training Administration, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. 20213, Telephone (202) 376-7006.

SUPPLEMENTARY INFORMATION: In FR Doc. 79-10290, appearing at page 19990 in the issue of April 3, 1979, make the following changes:

1. On page 19996, in the third column, in § 679, in table of contents, "679.3–4" is changed to read: "679.3–4 Organizational position."

2. On page 19997, in the second column, "Artificial Barriers to Employment," line eleven, insert "required" after "tasks".

3. On page 20001, in the second column, in § 675.5–5 *Eligibility requirements for Title II–D programs,* line 3, "must" is changed to read "shall."

4. On page 20001, in the third column, in § 675.5–6, line two "must" is changed to read "shall."

5. On page 20011, in the first column, line one (1) in paragraph "(m)" after "§ 676.23" is changed to read "§ 676.23(1)(1)."

6. On page 20012, in § 676.25–3(c)(1)(ii), in the third column, in line six, after "in the case of (c)" is changed to read "in the case of (C)."

7. On page 20012, in § 676.25–3(c)(1)(ii), in the third column after "same" in the second and seventh line, the phrase "or substantially equivalent is inserted.

8. On page 20013, in § 676.25–3(c)(5), in the first column, in line six insert a period "(.)" after "agencies" and delete remainder of sentence.

9. On page 20015, in § 676.26–1(c)(5)(ii), in the second column, line fifteen "or until the next prime sponsor budgetary cycle" is changed to read" "until the next employing agency budgetary cycle."

10. On page 20020, in § 676.30(a), in the second column, line nine, the word "through" is moved to precede "assuring."

11. On page 20020, in the third column, § 676.31(b), line twelve (12), add: "Until such time as these requirements are published in the Federal Register, the appropriate OMB Circular A–102 and A–110 provisions will apply."

12. On page 20022, in § 676.40–1(c)(4), in the third colmn, line six, add a sentence after "construction." "Such costs shall be charged to the administration cost category."

13. On page 20023, in § 676.40–1(g) in the first column, in line six "676.27(c)(1)" should read "676.27(c)."

14. On page 20023, in § 676.40–2(c)(4), in the second column, last word in paragraph is misspelled, correct to read "except."

15. On page 20023, in § 676.41–1(d), in the third column, first word in paragraph misspelled correct to read "training."

16. On page 20024, in § 676.41–2(a), line eight, "tuition" is misspelled.

17. On page 20024, in § 676.41–3(c), in the third column, line twelve, after "services" insert "allowances."

18. On page 20026, in § 676.47(d), in the first column, first line "producers" is changed to read "procedures."

19. On page 20028, in § 676.68(a), in the second column, line two "reflect" is changed to read "reject."

20. On page 20028, in § 676.68(a), in the second column, line seven insert after "patronage" the phrase "whether or not the political service or patronage * * *."

21. On page 20028, in § 676.69(a)(2), in the second column line eight after "partisan" insert "or nonpartisan."

22. On page 20032, in the first column, in § 676.82, in line 12 after "for" delete "CETA" and insert "ETA."

23. On page 20032, in § 676.83(a), in the second column, line eight after "subrecipients" insert a period "(.)," then insert the following words before "procedures"—"Such complaint * * *."

24. On page 20032, in § 676.83(a)(1), in the second column, line seventeen the second "or" should be changed to read "of."

25. On page 20033, in § 676.84(d), line twelve after "the" insert "CETA" before "employees."

26. On page 20034, in the first column, in line ten, "§ 676.90(f)" should read "§ 676.91(f)."

27. On page 20036, in the first column, in § 676.89(b), in line twelve after "filed" insert "with him/her."

28. On page 20036, in the second column, in § 676.89(e) change reference "§ 676.89(a)" to read "676.90(a)."

29. On page 20036, in § 676.89, third column, "§ 676.89 Hearings" is changed to read "§ 676.90 Hearings."

30. On page 20037, in § 676.90, in the first column, "676.90 Post hearing procedures is changed to read "676.91 Post hearing procedures."

31. On page 20037, in § 676.91, in the third column, "§ 676.91 Final action: judicial review" is changed to read "§ 676.92 Final action: judicial review."

32. On page 20037, in § 676.92, third column, "§ 676.92 Other authority" is changed to read "§ 676.93 Other authority."

33. On page 20040, after § 677.24 insert § 677.25 and § 677.26 which were inadvertently omitted:

§ 677.25 Compensation and benefits to participants.

(a) Except as provided in paragraph (b), participants in OJT, classroom training, or combined activities and receiving other services, shall receive compensation in accordance with § 676.26, as appropriate.

(b) Participants in upgrading programs shall not be compensated at a rate lower than that received before entering the program.

§ 677.26 Reimbursement to employers.

(a) Reimbursement to employers shall be as provided in § 676.25, except as provided in paragraph (b).

(b) The reimbursement rate for OJT in upgrading programs shall not exceed 40 percent of the participant's wage for the portion of time spent in OJT, except when documented in the manner described in § 676.25–2(f)(3).

34. On page 20046, in § 678.3(h), in the third column, line fourteen delete "(i)" from reference. Change to read "677.53(c)(3)."

35. On page 20048, in § 678.7(d), in the first column, line four, the word "any" is changed to read "and."

36. On page 20048, in the second column, line seven of the table of contents in Part 679 "§ 679.3–4 Organization of position" is changed to read "§ 679.3.4 Organizational Position."

Signed at Washington, D.C. the 10th day of May 1979.

Ernest G. Green,

Assistant Secretary for Employment and Training.

[FR Doc. 79-15275 Filed 5-14-79; 8:49 am]

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Reader Aids

Federal Register

Vol. 44, No. 95

Tuesday, May 15, 1979

INFORMATION AND ASSISTANCE

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/OHMO	USDA/FSQS		DOT/OHMO	USDA/FSQS
DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
CSA	MSPB*/OPM*		CSA	MSPB*/OPM*
	LABOR			LABOR
	HEW/FDA			HEW/FDA

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

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

***NOTE: As of 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.)**

REMINDERS

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

Rules Going Into Effect Today

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Food and Drug Administration—

16204 3–16–79 / Emergency permit control for production of acidified foods

TRANSPORTATION DEPARTMENT

Coast Guard—

22456 4–16–79 / Navigation requirements for certain inland waters and for western rivers demarcation line

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last Listing May 14, 1979

Slip Laws

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96th Congress, 1st Session, 1979

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