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federal register

Tuesday
December 11, 1979

Highlights

71399 **Scouting Recognition Week** Presidential proclamation

71462 **Citizen Education for Cultural Understanding Program** HEW/OE invites applications for new projects for fiscal year 1980; Apply by 2–25–80

71468 **National Displaced Homemakers Program** Labor/ETA solicits applications for grants under the Comprehensive Employment and Training Act; deadline to apply extended to 2–1–80

71413 **Intercollegiate Athletics: Sex Discrimination** HEW/Secretary/Civil Rights Office issues policy interpretation of Title IX Education Amendments of 1972; effective 12–11–79

71790, 71793, 71794 **Disaster Assistance** FEMA sets forth rules on Community Disaster Loans, General Insurance Requirements, and Fire Suppression Assistance; effective 1–10–80 (Part VIII of this issue) (3 documents)

71430 **Taxes** Treasury/IRS and ATF proposes a rule relating to the timeliness of tax returns, payments and deposits; comments by 2–11–80

71612 **Distilled Spirits** Treasury/ATF issues temporary rule implementing the Distilled Spirits Tax Revision Act of 1979; effective 1–1–80 (Part II of this issue)

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71454 **Environmental Research** EPA solicits institutional letters of intent to develop Long-Term Exploratory Research Centers; deadline for letters of intent 1–30–80

71742 **Environment** HEW/FDA proposes policies for compliance with the National Environmental Policy Act; comments by 2–11–80 (Part IV of this issue)

71438 **Motor Common Carriers of Property** ICC proposes to establish temporary rule permitting service to intermediate points along authorized regular service routes; comments by 1–10–80

71780 **Air Pollution** EPA issues rules regarding recommendation for alternative emission reduction options; effective 12–11–79 (Part VII of this issue)

71754 **Institutional Health Services** HEW/PHS sets forth requirements on appropriateness of existing services by health systems agency and state agency; effective 12–11–79 (Part V of this issue)

71429 **Income Tax** Treasury/IRS proposes rules on treatment of outdoor advertising displays as real property; comments by 2–11–80

71401 **Food Service Equipment Assistance Program** USDA/FNS restores Food and Nutrition Service regulations; effective 12–11–79

71495 **Motor Carrier** ICC issues notice to prepare statement for regulatory reform initiatives; comments by 1–10–80

71446 **Textile Products From Taiwan** CITA adjusts the import levels for certain cottons; effective 12–6–79

71728 **Diagnostic Radiology Facilities** HEW/FDA issues rule recommending voluntary establishment of quality assurance programs; effective 12–11–79 (Part III of this issue)

71547 **Sunshine Act Meetings**

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Presidential Documents

Title 3—

The President

Proclamation 4706 of December 7, 1979

Scouting Recognition Week, 1979

By the President of the United States of America

A Proclamation

Scouting teaches boys and girls self-reliance, physical fitness and good citizenship. It fosters character development and nurtures a love and understanding of nature and of other people.

Scouting has a long and proud tradition of service and leadership training. Many of our Nation's most accomplished men and women in every field of endeavor are former Scouts, and cite Scouting as one of their most important early experiences.

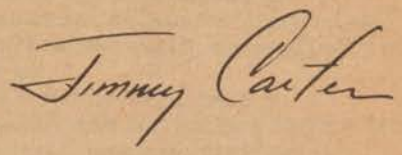
Through the years Scouts have broadened their activities to meet the changing needs of young Americans and help them prepare for useful and rewarding lives.

In recent years Scouts have been particularly active in promoting energy awareness and conservation, and are continuing this important effort. They are also planning activities designed to aid in taking an accurate census next year.

By House Joint Resolution 448, the Congress has designated the week of December 3 through December 9, 1979 as "Scouting Recognition Week."

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, call upon all Americans to recognize the contributions of Scouting and to support Scouting programs in their communities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of December, in the year of our Lord nineteen hundred seventy-nine, and of the Independence of the United States of America the two hundred and fourth.



[FR Doc. 79-38130
Filed 12-10-79; 10:33 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 44, No. 239
Tuesday, December 11, 1979

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.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 230

[Amdt. 3]

Food Service Equipment Assistance Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This document restores to Food and Nutrition Service regulations on the food service equipment assistance program several paragraphs which were designated incorrectly in previous interim amendments to the regulations.

EFFECTIVE DATE: Effective December 11, 1979.

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

SUPPLEMENTARY INFORMATION: On June 29, 1979 in Volume 44 of the **Federal Register** page 37899 Amendment 2, Part 230 was published. Amendment 2 added new paragraphs (b) and (c) to § 230.8 Use of Funds. On October 26, 1979 in Volume 44 of the **Federal Register** page 61562, interim regulations to § 230.8 paragraphs (b), (c), (d) and (e) were published, thereby superceding paragraphs (b) and (c) as set forth in Amendment 2. This action was inadvertently caused by the simultaneous clearance of two dockets to amend Part 230 regulations. This amendment, Amendment 3, restores to the record the contents of § 230.8(b) and (c) as set forth by Amendment 2, but renumbers these paragraphs as new paragraphs (f) and (g) under § 230.8.

Accordingly, Part 230 is amended as follows:

Previous §§ 230.8(b) and 230.8(c) as set forth in Amendment 2 and deleted by the interim rule of October 26, 1979 are restored as new paragraphs (f) and (g) as follows:

§ 230.8 Use of funds.

* * * * *

(f) Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property provided under this part, whether received directly or indirectly from the Department shall—

(1) If such funds, assets, or property are of a value of $100 or more, be fined not more than $10,000 or imprisoned not more than 5 years or both; or

(2) If such funds, assets, or property are of a value of less than $100, be fined not more then $1,000 or imprisoned not more than one year or both.

(g) Whoever receives, conceals, or retains to his use or gain funds, assets, or property provided under this part, whether received directly or indirectly from the Department knowing such funds, assets, or property have been embezzled willfully misapplied, stolen, or obtained by fraud, shall be subject to the same penalties provided in paragraph (f) of this section.

Note.—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 not been prepared because this regulatory action is deemed to be technical and corrective in nature in that it restores to the record regulatory provisions for which (1) impact statements have been developed, and (2) which were inadvertently omitted.

(Sec. 10(a), Pub. L. 95–627, 92 Stat. 3623 (42 U.S.C. 1760)); (sec. 10(d)(1), Pub. L. 95–627, 92 Stat. 3625, 3626 (42 U.S.C. 1757)); (sec. 14, Pub. L. 95–627, 92 Stat. 3625–3626)

Dated: December 4, 1979.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 79–37989 Filed 12–10–79; 8:45 am]

BILLING CODE 3410–30–M

Agricultural Marketing Service

7 CFR Part 928

Papayas Grown in Hawaii; Expenses and Rate of Assessment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action authorizes expenses and a rate of assessment for the 1980 fiscal period, to be collected from handlers to support activities of the Papaya Administrative Committee which locally administers the Federal marketing order covering papayas grown in Hawaii.

DATES: Effective January 1, 1980, through December 31, 1980.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This document is issued under Marketing Order No. 928 (7 CFR Part 928), regulating the handling of papayas grown in Hawaii. This marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendations and information submitted by the committee, established under this marketing order, and upon other information. It is found that the expenses and rate of assessment, as hereafter provided, will tend to effectuate the declared policy of the act.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), as the order requires that the rate of assessment for a particular fiscal year shall apply to all assessable papayas handled from the beginning of such year. To enable the committee to meet fiscal obligations, approval of the expenses and assessment rate is necessary. Handlers and other interested persons were given an opportunity to submit information and views on the expenses and assessment rate at an open meeting of the committee. It is necessary to effectuate the declared purposes of the act to make these provisions effective as specified.

Further, in accordance with procedures in Executive Order 12044, the emergency nature of this regulation warrants publication without opportunity for further public comment. The regulation has not been classified significant under the USDA criteria for implementing the Executive Order. An Impact Analysis is available from Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

§ 928.209 Expenses and rate of assessment.

(a) Expenses that are reasonable and likely to be incurred by the Papaya Administrative Committee during the period January 1, 1980, through December 31, 1980, will amount to $408,000.

(b) The rate of assessment for said year payable by each handler in accordance with § 928.41 is fixed at $0.006 per pound of papayas.

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

Dated: December 5, 1979.

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-37956 Filed 12-10-79; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1049

[Milk Order No. 49; Docket No. AO-319-A30]

Milk in the Indiana Marketing Area; Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action changes the present order provisions for milk in the Indiana marketing area based on proposals by three cooperative associations that were considered at a public hearing held July 24, 1979. The amendments increase the funding rate of the Advertising and Promotion program of the order and tie such rate to the level of the blend price to producers. The amendments are necessary to reflect current marketing conditions and to insure orderly marketing in the area.

EFFECTIVE DATE: The order provisions set forth herein shall become effective on April 1, 1980, except that the provisions amending § 1049.121 (e) and (f) shall become effective on March 1, 1980.

FOR FURTHER INFORMATION CONTACT: Martin J. Dunn, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C., 202–447–7311.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued July 6, 1979, published July 11, 1979 (44 FR 40520).

Recommended decision: Issued September 13, 1979, published September 19, 1979 (44 FR 54303).

Final decision: Issued November 7, 1979, published November 14, 1979 (44 FR 65594).

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Indiana marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

(3) The issuance of the order amending the order relative to the advertising and promotion program is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

Order relative to handling. It is therefore ordered that on and after the effective dates hereof the handling of milk in the Indiana marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

1. In § 1049.61, paragraphs (c) through (h) and (j) are revised and new paragraphs (k) and (l) are added to read as follows:

§ 1049.61 Computation of uniform price (including weighted average price).

* * * * *

(c) Add an amount equal to one-half of the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1049.60(f);

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price";

(f) For the months of January through March and August, subtract from the weighted average price computed in paragraph (e) of this section the withholding rate for the Advertising and Promotion program as computed in § 1049.121(e). The result shall be the "uniform price" for the applicable month;

(g) For the months specified in paragraphs (h) and (i) of this section, subtract from the amount resulting from the computations pursuant to paragraphs (a) through (c) of this section an amount computed by multiplying the hundredweight of milk specified in paragraph (d)(2) of this section by the weighted average price;

(h) Subtract for each month of April through July the amount obtained by multiplying the hundredweight of producer milk included in these computations by 20 cents. The amount so subtracted, and the interest subsequently earned thereon (less any money not available for crediting under this paragraph because of insufficient payment by a handler to the producer-settlement fund) shall be credited to the producer-settlement fund and remain as an obligated amount until disbursed pursuant to paragraph (i) of this section;

* * * * *

(j) Divide the resulting sum by the hundredweight of producer milk included in these computations;

(k) Subtract the withholding rate for the Advertising and Promotion program as computed in § 1049.121(e); and

(l) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

§ 1049.71 [Amended]

2. In § 1049.71(a)(2)(ii) the words "plus 5 cents" are deleted.

3. Section 1049.75 is revised to read as follows:

§ 1049.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk received or which is deemed to have been received at a pool plant shall be reduced according to the location of the pool plant at the rates set forth in § 1049.52(a), except that the adjusted uniform price plus the withholding rate for the Advertising and Promotion program computed in § 1049.121(e), and, for the months of April through July plus an additional 20 cents, or for the months of September through December minus the amount computed pursuant to § 1049.61(i) shall be not less than the Class III price for the month.

(b) For purposes of computations pursuant to §§ 1049.71 and 1049.72 the weighted average price shall be adjusted at the rates set forth in § 1049.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class III price.

§ 1049.76 [Amended]

4. In § 1049.76(a)(4) the words "plus 5 cents" are deleted.

5. In § 1049.113, paragraph (c)(1) is revised to read as follows:

§ 1049.113 Selection of Agency members.

* * * * *

(c) * * *

(1) In June of each year the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more Agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

* * * * *

6. In § 1049.120, paragraphs (b) and (c) are revised and a new paragraph (d) is added to read as follows:

§ 1049.120 Procedure for requesting refunds.

* * * * *

(b) Except as provided in paragraphs (c) and (d) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July and October, respectively.

(c) Except as provided in paragraph (d) of this section, a dairy farmer who first acquires producer status under this part after the 15th day of December, March, June or September, as the case may be, and prior to the end of the ensuing calendar quarter may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such calendar quarter pursuant to § 1049.121(b).

(d) A dairy farmer who, with respect to any calendar quarter, has appropriately filed a request for the refund of program assessments on his marketings of milk under another order that provides for an advertising and promotion program will be eligible on the basis of his request filed under the other order for a similar refund with respect to his producer milk marketed under this order during such quarter for which deductions were made pursuant to § 1049.121(b).

7. Section 1049.121 is revised to read as follows:

§ 1049.121 Duties of the market administrator.

Except as specified in § 1049.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) In July of each year, conduct a referendum to determine representation on the Agency pursuant to § 1049.113(c).

(b) Each month set aside into an advertising and promotion fund, separately accounted for, an amount equal to the withholding rate for the month as set forth in paragraph (e) of this section times the amount of producer milk included in the uniform price computation for such month. The amount set aside shall be disbursed as follows:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraph (b)(2) and (3) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amount of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed the rate per hundredweight determined pursuant to paragraph (e) of this section on the volume of milk pooled by any such producer for which deductions were made pursuant to this paragraph.

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1049.120. Such refund shall be computed by multiplying the rate specified in paragraph (e) of this section by the hundredweight of such producer's milk pooled for which deductions were made pursuant to this paragraph for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1049.110 through 1049.122).

(d) Audit the Agency's records of receipts and disbursements.

(e) As soon as possible after the beginning of each year, compute the rate of withholding by multiplying the simple average of the monthly "weighted average prices" for the last quarter of the preceding year by 0.75 percent and rounding to the nearest whole cent. This rate shall apply during the 12-month period beginning with April of the current year.

(f) As soon as possible after the rate of withholding is computed, notify in writing each producer currently on the market and any new producer that subsequently enters the market of the withholding rate. This notification shall be repeated annually thereafter only if

there is any change in the rate from the previous period.

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

Effective date. The order provisions set forth herein shall become effective on April 1, 1980, except that the provisions amending § 1049.121(e) and (f) shall become effective on March 1, 1980.

Signed at Washington, D.C., on December 5, 1979.

P. R. "Bobby" Smith,

Assistant Secretary for Marketing and Transportation Services.

[FR Doc. 79–37967 Filed 12–10–79; 8:45 am]

BILLING CODE 3410–02–M

Agricultural Marketing Service

Agricultural Stabilization and Conservation Service

7 CFR Part 1260

[Amdt. 1]

Procedure for the Conduct of Referendums in Connection With Beef Research and Information Order

AGENCIES: Agricultural Marketing Service and Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to amend the regulations for conducting referendums with respect to any Beef Research and Information Order or amendment issued pursuant to The Beef Research and Information Act. This amendment provides for (1) voting by secret ballot, (2) reducing the registration period from 12 days to 10 days, (3) reducing the voting period from 12 days to 4 days, (4) reducing the number of producers needed to approve the issuance of a Beef Research and Information Order from two-thirds to a majority of the producers voting in a referendum, (5) reducing the time allowed for challenging a producer's eligibility to register and vote; and (6) reducing the time for the county ASCS executive director to make a determination on challenges. Several editorial changes were also made to reflect a recent Departmental reorganization. The amendments would provide for confidentiality in balloting and would shorten the periods for registration, voting, challenging, and determination of challenges.

EFFECTIVE DATE: December 11, 1979.

FOR FURTHER INFORMATION CONTACT: Robert Cook, Emergency and Indemnity Programs Division, ASCS, USDA, 4095 South Building, Washington, D.C. 20013 (202) 447–7997.

SUPPLEMENTARY INFORMATION: The Beef Research and Information Act (7 U.S.C. 2901), hereafter "The Act", provides that the Secretary of Agriculture shall issue a Beef Research and Information Order applicable to producers and slaughterers of cattle to effectuate the declared policy of the Act if the issuance of an Order is approved or favored by cattle producers in a referendum conducted among cattle producers. As enacted, the Act required that 50 percent of the registered producers has to cast votes and that two thirds of the producers voting in the referendum had to approve the Order, for the Order to become effective.

Rules for conducting referendums pursuant to the Act were published in the **Federal Register** on May 17, 1977, and a referendum was held in June (registration) and July (voting) 1977. In that referendum, the required two-thirds of the producers voting did not approve the Order. In August 1978, the Act was amended, and now requires that a majority, instead of two-thirds, of the producers voting in a referendum must favor the Order for it to be approved. Section 1260.203 is amended to reflect this change in the law. The proposal for amending the referendum regulations was published in the **Federal Register** on August 7, 1979 (44 FR 46288) and interested persons were invited to submit comments on the proposal by October 9, 1979. A total of 78 responses were received. Except for the change to permit voting by secret ballot, the correspondents generally were opposed to the proposed changes. Thirty-five responses (45%) were opposed to a referendum of any kind. Forty-four responses (56%), including 14 State farm groups, were opposed to shortening the registration and voting periods to 4 days. Twelve responses (15%) opposed the change permitting approval of the referendum by a simple, rather than a two-thirds majority. Three cattlemen's associations favored the amendments as published. With respect to the comments opposing a referendum under the Act, it should be noted that the Secretary, under section 9 of the Act, is required to conduct a referendum as soon as practicable for the purpose of ascertaining whether the issuance of an Order is approved or favored by cattle producers. In this connection, a proposed Order was published on April 23, 1979, and public hearings on the proposed Order were, thereafter, held throughout the country. On September 21, 1979, a Recommended Decision and proposed Order was published in the **Federal Register** for 45 days of public comment.

There is no latitude with respect to the change in the regulations permitting a majority approval in the referendum since this change is mandated by the amendment to the Act.

The reasons given by the commentors for opposing the shortening of the registration and voting periods to 4 days were that it would restrict the number of producers who would be able to vote and that it favors large producers. After due consideration of these comments, it has been determined that the length of the registration period should be 10 days and the voting period should be 4 days. The 10 day registration period will allow adequate time for all producers to register.

It is believed that the 4 day voting period will provide a more efficient voting procedure and reduce the cost and administrative burden of conducting the referendum. A 4 day voting period will not give preference to any group of producers, whether large or small, but all producers will be affected equally by the 4 day voting period. It is expected that the referendum will be widely publicized by this Department, producer organizations and others well in advance of the referendum with special emphasis on the registration and voting periods so that producers will have adequate time to arrange their schedules to register and vote during the allotted periods. Since local, state, and national elections are conducted on a one day basis, it is further felt that a four day voting period should be adequate. Moreover, if it is difficult or inconvenient for a producer to vote in person at the ASCS county office, the producer may request a ballot by mail which may be marked and returned to the ASCS county office by mail with a postmark not later than midnight of the final day of the voting period.

The amendment will also reduce the time allowed for making challenges as to eligibility to register and vote, and for making determinations on such challenges. The period during which challenges may be made will end as of the beginning of the voting period rather than the end of the voting period. There will still be sufficient time for challenges since challenges may be made anytime during the 10-day registration period as well as during the ten days between the registration and voting periods. The period for the county ASCS executive director to make a determination on a challenge will terminate at the end of the voting period rather than on the date of the opening of the ballot box. The county ASCS executive director will still have the four days of the voting period to make a decision should a challenge be made on the last day prior to the beginning of the voting period.

Final Rule

Accordingly, 7 CFR Part 1260—Beef Research and Information, Subpart—Procedure for the Conduct of Referendums in Connection with Beef Research and Information Order is amended to read as follows:

§ 1260.201 [Amended]

1. Section 1260.201 is amended as follows:

(a) By substituting for the word "Programs" in paragraph (d) the words "State and County Operations".

(b) By substituting for the word "12-day" in paragraph (m) the word "10-day."

(c) By substituting for the word "12-day" in paragraph (n) the word "4-day."

§ 1260.203 [Amended]

2. Section 1260.203 is amended by substituting for the words "not less than two thirds" the words "a majority".

3. Section 1260.208 is amended by revising paragraph (b) to read as follows:

§ 1260.208 Voting.

* * * * *

(b) *Voting.* Voting may be in person or by mail. A producer wishing to vote by mail may request the county ASCS office to mail the producer a ballot. Ballots will be issued only to eligible cattle producers who have registered to vote. Ballots will not be provided prior to the voting period except to producers requesting ballots to vote by mail. Each registered cattle producer voting shall obtain and cast a ballot on Form ASCS-151A with the county ASCS office where that producer registered to vote. The ballot shall be marked to indicate "yes" or "no". Producers voting in person shall place their own ballots in the ballot box and have their names checked off the registration list. Producers voting by mail shall mark their ballots and place them in an envelope marked BEEF BALLOT. This envelope shall be placed in a second envelope marked BEEF REFERENDUM. Producers shall print and sign their names on the second envelope and mail the ballot to the county ASCS office where the producer registered to vote. Upon receiving the ballot, the county office shall open the outer envelope, place the envelope marked BEEF BALLOT in the ballot box unopened and note on the registration list that the producer has voted.

§ 1260.209 [Amended]

4. Section 1260.209 is amended as follows:

(a) By substituting for the words "end of the voting period" at the end of paragraph (a) the words "beginning of the voting period".

(b) By substituting for the words "opening of ballot box" at the end of paragraph (b) the words "end of the voting period".

(c) After the first sentence in paragraph (c), insert a new sentence to read as follows: "Challenged ballots shall be placed in the envelope marked BEEF BALLOT which in turn shall be placed in the envelope marked BEEF REFERENDUM with the name of the producer and the word "challenged" written in large letters across the envelope and placed in the ballot box.

§ 1260.211 [Amended]

5. Section 1260.211 is amended as follows:

(a) By deleting the word "unsigned," and the comma after the word "mutilated" in paragraph (b).

(b) By deleting the material after the words "interfere with the tabulation" and putting a period after the word "tabulation" in paragraph (c).

§ 1260.214 [Amended]

6. Section 1260.214 is amended by substituting for the word "Programs" in paragraph (a) the words "State and County Operations".

This rule has been reviewed under the USDA criteria established to implement E.O. 12044 and has been determined nonsignificant. A pre-hearing investigation (draft impact analysis) was prepared in connection with the Department's decision to hold a public hearing on the proposed Beef Research and Information Order. This analysis is available from Ralph Tapp, AMS, USDA, (202) 447-3970. In addition, a Recommended Decision concerning a proposed Beef Research and Information Order was published in the **Federal Register** on September 21, 1979.

(Sec. 17, Pub. L. 94-294, 90 Stat. 537 (7 U.S.C. 2916))

Signed at Washington, D.C., on December 4, 1979.

Ray Fitzgerald,

Acting Administrator, Agricultural Stabilization and Conservation Service.

William T. Manley,

Administrator, Agricultural Marketing Service.

[FR Doc. 79-37787 Filed 12-10-79; 8:45 am]

BILLING CODE 3410-05-M

Rural Electrification Administration

7 CFR Part 1701

REA Bulletins; Electric Distribution Borrowers' Financial and Statistical Report

AGENCY: Rural Electrification Administration.

ACTION: Final rule.

SUMMARY: REA hereby revises REA Bulletin 108-1, "Electric Distribution Borrower's Financial and Statistical Report." The revised bulletin will provide REA and others with more accurate information, which can be used in analyzing the borrowers' operations, especially conservation activities.

EFFECTIVE DATE: December 4, 1979.

FOR FURTHER INFORMATION CONTACT: Edward Moran, telephone number (202) 447-3234.

SUPPLEMENTARY INFORMATION: REA regulations are issued pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.). A Notice of Proposed Rulemaking was published in the **Federal Register** on August 24, 1979, Vol. 44, No. 166, page 49695. However, no public comments were received in response to the notice.

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 the Director, Electric Borrowers' Management Division, Rural Electrification Administration, Room 3342, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

Dated: December 4, 1979.

Robert W. Feragen,

Administrator.

[FR Doc. 79-37877 Filed 12-10-79; 8:45 am]

BILLING CODE 3410-15-M

7 CFR Part 1701

REA Bulletins; Power Supply Borrowers and Distribution Borrowers with Generating Facilities Operating Report

AGENCY: Rural Electrification Administration.

ACTION: Final rule.

SUMMARY: REA hereby revises REA Bulletin 108-2, Operating Report—Power Supply Borrowers and Distribution Borrowers with Generating Facilities.

The bulletin was last revised in 1977 and at that time changed from a monthly to an annual report. We are now changing the format to provide yearly and/or year-to-date information with respect to load and demand data as well as certain labor and production data. We are requesting information which will enable REA to better analyze the borrowers' finances.

EFFECTIVE DATE: December 4, 1979.

FOR FURTHER INFORMATION CONTACT: Edward Moran, telephone number (202) 447–3234.

SUPPLEMENTARY INFORMATION: REA regulations are issued pursuant to the Rural Electrification Act, as amended (7 U.S.C. et seq.). A Notice of Proposed Rulemaking was published in the **Federal Register** on August 24, 1979, Vol. 44, No. 166, page 49696. However, no public comments were received in response to the notice.

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 the Director, Electric Borrowers' Management Division, Rural Electrification Administration, Room 3342, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

Dated: December 4, 1979.

Robert W. Feragen,

Administrator.

[FR Doc. 79-37876 Filed 12-10-79; 8:45 am]

BILLING CODE 3410-15-M

Animal and Plant Health Inspection Service

9 CFR Part 112

Label Requirements for Certain Canine Vaccines

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This amendment requires that a statement concerning the occurence of corneal opacity be added to carton labels or enclosures for all biological products containing modified live canine hepatitis virus or modified live canine adenovirus type 2.

Uniform label statements that indicate whether or not corneal opacity has been associated with each product are required. The addition of such statements to the labeling provides more complete information concerning the characteristics of these products to the user.

EFFECTIVE DATE: This amendment becomes effective January 10, 1980.

FOR FURTHER INFORMATION CONTACT: Dr. R. J. Price, Biologics Licensing and Standards Staff, USDA, APHIS, VS, Room 827, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8245.

SUPPLEMENTARY INFORMATION: Modified live canine hepatitis and canine adenovirus type 2 vaccines have been licensed for use in dogs for the prevention of infectious canine hepatitis. Dogs vaccinated with some of these products occasionally develop an adverse reaction in the form of transient corneal opacity. This reaction may be rather severe in some instances and can result in permanent damage to the eye. Such adverse reaction has not been associated with all of the above products, however, and it is therefore important to the user of the products to be informed about the characteristics of each of the available vaccines. This amendment requires that a uniform statement concerning the occurrence of corneal opacity be added to carton labels or circulars for these products. Either a statement indicating corneal opacity may occur following the administration of the product or one indicating corneal opacity has not been associated with the use of the product is required.

On August 7, 1979, a notice of the proposed rulemaking was published in the **Federal Register** at 44 FR 46290.

Comments were solicited and four responses were received. One response was favorable to the proposal as written. One response suggested that the word "transient" be deleted from the statement "Occasionally transient corneal opacity may occur following the administration of this product," since permanent corneal opacity may develop in dogs due to natural infection with virulent hepatitis virus or other secondary bacterial organisms coincidential to the use of such products. This suggestion was rejected, since the intent of the statement is to indicate the possible adverse reactions that may occur that are directly due to the use of the product. Corneal opacities associated with the use of these vaccines are generally considered to be transient in nature; therefore, the proposed statement is considered to be more appropriate. Licensees may provide additional information in their labeling concerning the various other etiologies of corneal opacity if they so desire.

One response supported the statement indicating that transient corneal opacities may occur, but objected to the provision that data may be submitted to demonstrate that the use of some of these products is not associated with the development of corneal opacity. To require all licensees of this product to add a statement that the development of corneal opacity is associated with the use of their product would be arbitrary and could result in inaccurate or false labeling for some products. This suggestion was, therefore, rejected since it would not accomplish the purpose of providing label information that is complete and accurate concerning the characteristics of these products.

One response stated that the proposal was acceptable but made the suggestion that, in the case of products that are not associated with the development of corneal opacity, no statement be required on the labeling, since such was not considered to be necessary. It was intended in the proposed rulemaking that the issue of corneal opacity be addressed in the labeling of all modified live virus products intended for the prevention of canine hepatitis, so that the user would be more completely informed when selecting a product for use. The lack of any statement on the labels of some products with respect to opacity was not considered to be effective enough to accomplish this purpose.

After due consideration of all relevant matters, including the proposal set forth in the aforesaid notice, and pursuant to the authority contained in the Virus-Serum-Toxin Act of March 4, 1913 (21 U.S.C. 151–158), the amendment of Part 112, Subchapter E, Chapter I, Title 9 of the Code of Federal Regulations, as contained in the aforesaid notice, is hereby adopted with the following exceptions:

1. The spelling of "bear" has been corrected.

2. In the last sentence, the word "such" has been deleted and "may" has been changed to "shall."

Section 112.7 is amended by adding paragraph (m) to read:

§ 112.7 Special additional requirements.

* * * * *

(m) In the case of a biological product containing modified live canine hepatitis virus or modified live canine adenovirus type 2, the carton label or enclosure shall bear the following statement: "Occasionally transient corneal opacity may occur following the administration of this product." *Provided,* That, if acceptable data have been filed with Veterinary Services to indicate that the development of corneal opacity is not

associated with the use of a product, the following alternate statement shall be used: "Data indicate that the development of corneal opacity is not associated with the use of this product."

(21 U.S.C. 151 and 154; 37 FR 28477, 28646; 38 FR 19141.)

Done at Washington, D.C., this 3rd day of December 1979.

Note.—This final rule 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 "significant" under those criteria. A Final Impact Analysis Statement has been prepared and is available from USDA, APHIS, VS, Room 827, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

M. T. Goff,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 79-37816 Filed 12-10-79; 8:45 am]

BILLING CODE 3410-34-M

9 CFR Part 112

Certain Desiccated Poultry Vaccines; Revised Packaging Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This amendment revises the packaging requirements in § 112.6 of the regulations to permit the diluent for certain desiccated poultry vaccines to be packaged and shipped separately from the vaccine under certain conditions.

This revision is a relaxation of the present requirement. Its purpose is to permit the marketing of new diluent packaging systems for use with poultry vaccines that are intended to be administered individually to birds using automatic vaccinating equipment.

EFFECTIVE DATE: This amendment becomes effective January 10, 1980.

FOR FURTHER INFORMATION CONTACT: Dr. R. J. Price, Biologics Licensing and Standards Staff, USDA, APHIS, VS, Room 827, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8245.

SUPPLEMENTARY INFORMATION: Regulations concerning the packaging of desiccated vaccines in § 112.6 presently require that each final container of desiccated biological product, except Marek's Disease Vaccine, be packaged in a carton with an accompanying container of diluent, if such is required for rehydration of the product before administration.

An exception to this requirement was provided for Marek's Disease Vaccine because of the special handling and packaging that are required for marketing.

A new diluent container has been developed that provides a "closed system" for the rehydration and administration of products. This system is specifically applicable to poultry vaccines that are administered individually to birds using automatic vaccinating equipment. It is the opinion of the Department that the concept of a "closed system" for rehydration and administration of these vaccines has merit, as it will minimize the amount of bacterial contamination often encountered when using the systems that are presently available.

Because of transportation and packaging problems, however, the marketing of this new diluent container for the "closed system" is not economically feasible if it must shipped together with the vaccine.

The purpose of this amendment is to facilitate the introduction of this new development by revising the present packaging requirements to permit diluent for desiccated poultry vaccines intended to be administered individually to birds using automatic vaccinating equipment to be packaged and shipped separately from the vaccine.

Although diluent is permitted to be shipped separately, this amendment still requires that the proper amount of diluent necessary for rehydration of the vaccine be provided to the user.

On August 7, 1979, notice of proposed rulemaking was published in the **Federal Register** at 44 FR 46290.

Comments on this proposal were solicited and three responses were received. All three of these responses favored the proposal as written.

After due consideration of all relevant matters, including the proposal set forth in the aforesaid notice, and pursuant to the authority contained in the Virus-Serum-Toxin Act of March 4, 1913 (21 U.S.C. 151-158), the amendment of Part 112, Subchapter E, Chapter I, Title 9 of the Code of Federal Regulations, as contained in the aforesaid notice is hereby adopted.

Section 112.6 is amended by revising paragraph (a) and by adding paragraph (f) to read:

§ 112.6 Packaging desiccated products.

(a) Except as prescribed in paragraphs (e) and (f) of this section and § 112.8, each final container of a desiccated biological product, produced by a licensee or a subsidiary, or presented for importation by a permittee, shall be packaged in a carton with an accompanying container of diluent if such diluent is required for rehydration of the product before administration.

* * * * *

(f) Diluent for desiccated poultry vaccines to be administered individually to birds using automatic vaccinating equipment shall be prepared and labeled in accordance with the regulations, except that such diluent need not be packaged in the same carton with the vaccine for shipment, in which case the licensee shall provide the proper amount of diluent to the user.

(21 U.S.C. 151 and 154, 37 FR 28477, 28646; 38 FR 19141.)

Done at Washington, D.C., this 3rd day of December 1979.

Note.—This final rule 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 "significant" under those criteria. A Final Impact Analysis Statement has been prepared and is available from USDA, APHIS, VS, Room 827, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

M. T. Goff,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 79-37817 Filed 12-10-79; 8:45 am]

BILLING CODE 3410-34-M

9 CFR Part 113

Revision of Erysipelothrix Rhusiopathiae Bacterin Potency Test

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This amendment revises the potency test in the standard requirement for Erysipelothrix Rhusiopathiae Bacterin by amending the test procedures for 2 ml dose products and by amending the statistical method that is used to judge the validity of test results. The procedure for interpretation of test results is also amended.

When serials of bacterin with very high potency are tested by the present standard requirement, the test is often judged to be invalid because of the statistical procedure that is used. This amendment provides a simplified statistical procedure for judging test validity which is considered to be more appropriate for this purpose and which eliminates the need for retesting that occurs when serials of product are tested.

EFFECTIVE DATE: This amendment becomes effective January 14, 1980.

FOR FURTHER INFORMATION CONTACT: Dr. R. J. Price, Biologics Licensing and Standards Staff, USDA, APHIS, VS,

Room 827, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8245.

SUPPLEMENTARY INFORMATION: The present standard requirement for Erysipelothrix Rhusiopathiae Bacterin contains a potency test that consists of a vaccination-challenge test which is conducted in mice. In this test, the number of mice protected by the test bacterin is compared to the number of mice protected by a standard reference bacterin. Before such comparisons can be made, however, test data must be evaluated to determine if the results are statistically valid. The statistical procedure that is used for this determination in the present standard is complex and does not provide the flexibility that is needed to make a proper determination when the potency of the test bacterin greatly exceeds the potency of the standard reference bacterin. When such products are tested, results are often determined to be statistically invalid although the products should be considered to be satisfactory. Since a product must be shown to be satisfactory through valid test data before it is released for marketing, numerous retests are often required. This amendment simplifies the statistical procedures used to determine the validity of test results and provides a procedure which is more appropriate. This new procedure provides for a valid evaluation of results when a very high potency product is tested and thus avoids the unnecessary retesting that occurs when using the present procedure. Some editorial changes are also made to update the interpretation of results for this test so that they are consistent with the validity test procedures.

The present standard requirement requires that bacterins with a 2 ml recommended dose for swine be diluted 1:2.5 with physiological saline solution and then tested the same as bacterins with a 5 ml recommended dose. This amendment revises this procedure and requires that a mouse dose for the test be 1/10 of the least dose recommended on the label for swine.This new procedure eliminates unnecessary dilution of 2 ml dose products and provides for more valid and consistent test results.

On August 3, 1979, a notice of proposed rulemaking was published in the **Federal Register** at 44 FR 45635.

Comments were solicited and three responses were received, all of which were favorable to the proposal as written. Two of the responses contained a suggestion that was considered appropriate and constructive. This suggestion has been incorporated in this final rule and is explained in the discussion of changes below.

After due consideration of all relevant matters, including the proposal set forth in the aforesaid notice, and pursuant to the authority contained in the Virus-Serum-Toxin Act of March 4, 1913 (21 U.S.C. 151–158), the amendment of Part 113, Subchapter E, Chapter I, Title 9 of the Code of Federal Regulations, as contained in the aforesaid notice, is hereby adopted with the following exceptions:

Since the results of the test involved in this rulemaking are determined by comparing the total number of surviving mice treated with the Standard with the total number of surviving mice treated with the Unknown, the number of mice used to initiate the test can influence the final test result. Paragraph (d)(2) has, therefore, been amended by changing "at least 16 mice" to "16 mice." This change standardizes the number of mice to be used for the test and provides a more uniform and valid test procedure.

Section 113.104 is amended by revising the introductory portion of paragraphs (d)(1), (d)(2), (d)(4), and (d)(5) and deleting subparagraphs (d)(4)(i), (ii), (iii), (iv), and (v) to read:

§ 113.104 Erysipelothrix Rhusiopathiae Bacterin.

* * * * *

(d) * * *

(1) A mouse dose in this test shall be 1/10 of the least dose recommended on the label for swine. Such swine dose shall not be less than 1 ml. At least three threefold dilutions shall be made with the Unknown. Dilutions shall be made with physiological saline solution.

(2) For each dilution of the Standard and each dilution of the Unknown, a group of 16 mice, each weighing 16 to 20 grams, shall be used. Each mouse in a group shall be injected subcutaneously with one mouse dose of the appropriate dilution.

* * * * *

(4) Test for valid assay: At least two dilutions of the Standard shall protect more than 0 percent and two dilutions shall protect less than 100 percent of the mice injected. The lowest dilution of the Standard shall protect more than 50 percent of the mice. The highest dilution of the Standard shall protect less than 50 percent of the mice.

(5) Determine the total number of surviving mice in three consecutive dilutions of the Standard that satisfy validity require requirements of subparagraph (4). Determine the total number of surviving mice in the same three dilutions of the Unknown. If the total number of survivors for the Standard exceeds the total number of survivors for the Unknown by a number greater than six, the Unknown is unsatisfactory.

* * * * *

(21 U.S.C. 151 and 154, 37 FR 28477, 28646; 38 FR 19141.)

Done at Washington, D.C., this 5th day of December 1979.

Note.—This final rule 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 "significant" under those criteria. A Final Impact Analysis Statement has been prepared and is available from USDA, APHIS, VS, Room 827, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

M. T. Goff,

Acting Deputy Administrator Veterinary Services.

[FR Doc. 79–37961 Filed 12–10–79; 8:45 am]

BILLING CODE 3410–34–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9115]

George's Radio & Television Company, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: This order, among other things, requires a Washington, D.C. retailer of furniture and home appliances to cease failing to properly designate written warrantees; clearly identify in written warrantees the product, parts, components, and properties covered or excluded; the items or services furnished by the warrantor; and a statement advising that the warrantee provides purchasers with specific legal rights. The firm must make the text of written warrantees readily available to prospective purchasers prior to sale; and conspicuously post signs advising consumers that all warrantees are not the same, and that written warrantees are available for their review. Additionally, the firm is required to instruct its employees as to their obligations under the law, and to institute a surveillance program designed to detect violations of the order.

DATES: Complaint issued July 25, 1978. Final order issued November 7, 1979.[1]

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

FOR FURTHER INFORMATION CONTACT:
FTC/PR, Michael E.K. Mpras, Washington, D.C. 20580. (202) 523–1642.

SUPPLEMENTARY INFORMATION: In the Matter of George's Radio and Television Company, Inc., a corporation. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart-Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533–20 Disclosures; 13.533–25 Displays, in-house; 13.533–37 Formal regulatory and/or statutory requirements; 13.533–45 Maintain records; 13.533–75 Warranties. Subpart-Failing To Comply With Affirmative Statutory Requirements: § 13.1048 Failing to comply with affirmative statutory requirements; 13.1048–35 Magnuson-Moss Warranty Act. Subpart-Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1852 Formal regulatory and statutory requirements; 13.1852–55 Magnuson-Moss Warranty Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46; interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 110(b), 88 Stat. 2190 (15 U.S.C. 2310))

The Final Order, including further order requiring report of compliance therewith, is as follows:

[Docket No. 9115]

George's Radio & Television Co. Inc.

Final Order

This matter has been heard by the Commission upon the appeal of complaint counsel from the initial decision and upon complaint counsel's brief in support of its appeal. The parties submitted a joint motion to waive oral argument, which was granted. Complaint counsel have argued only for certain modifications in the order recommended by the administrative law judge, and respondent's counsel has stated in writing that respondent agrees to the proposed order and does not oppose complaint counsel's appeal.

The Commission has granted complaint counsel's appeal, because we believe the violations established in the record warrant the modifications in the order that complaint counsel have proposed. These include specific requirements for the manner of implementing a binder system and affirmative disclosures about warranties, both on signs to be posted in the stores and in the warranties themselves. These requirements, and the others hereby imposed, are necessary to ensure compliance with the Magnuson-Moss Warranty Act ("Warranty Act") (15 U.S.C. 2301 *et seq.*), as implemented by the Commission's Rule on the Disclosure of Written Consumer Product Warranty Terms and Conditions ("Disclosure Rule") (16 CFR Part 701), and the Commission's Rule on Pre-Sale Availability of Written Warranty Terms ("Pre-Sale Rule") (16 CFR part 702), and with Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45). Therefore,

It is ordered, That the initial decision of the administrative law judge be adopted as Findings of fact and Conclusions of Law of the Commission, except for the last two sentences on page 16, the first paragraph on page 17, and the last sentence of each of the following findings: 39, 49.

It is further ordered, That the following order to cease and desist be entered:

Order

I. Definitions

For the purpose of this Order the definitions of the terms "consumer product" and "written warranty" as defined in section 101 of the Warranty Act shall apply. The definition of the term "binder" as defined in § 702.1(g) of the Pre-Sale Rule shall apply.

II.

It is ordered, That respondent George's Radio and Television Co., Inc., a corporation, its successors and assigns, and its officers, representatives, agents and employees, directly or indirectly, through any corporation, subsidiary, division or any other device in connection with the advertising, offering for sale and sale of appliances, furniture and any other merchandise and services, do forthwith cease and desist from:

1. Offering or granting a written warranty upon consumer products actually costing the consumer in excess of $10.00 which is not clearly and conspicuously designated exclusively as either a "full (statement of duration) warranty" or a "limited warranty."

2. Offering or granting a written warranty upon consumer products actually costing the consumer in excess of $15.00, which fails to clearly and conspicuously disclose, in a single document, in simple and readily understood language, the following items of information:

(a) A clear description and identification of products, parts, characteristics, components or properties covered by, and where necessary for clarification excluded from, the warranty. For purposes of this paragraph, identification of products shall be by brand name, except, if respondent offers the identical warranty on all brands of a particular product it sells, then a statement to that effect will be sufficient identification of the products covered;

(b) A statement of what the warrantor will do in the event of a defect, malfunction or failure to comply with the written warranty, including the items or services the warrantor will pay for or provide, and where necessary for clarification, those which the warrantor will not pay for or provide;

(c) The point in time or event on which the warranty term commences, if different from the purchase date, and the time period or other measurement of warranty duration. If the warranty runs concurrently with the warranty offered by the manufacturer, then that fact shall be disclosed in simple and readily understood language on the face of the warranty document;

(d) A statement in the following language:

> This warranty is offered by [name of respondent]. Compare this with the warranty offered by the manufacturer.
>
> This statement shall be the first paragraph of any warranty offered by respondent and shall be printed in bold face type;

(e) A statement in the following language:

> This warranty gives you specific legal rights, and you may also have other rights which vary from state to state.

3. Failing to make available for the prospective buyer's review, prior to sale, the text of any written warranty offered or granted by the respondent.

4. Failing to make available for the prospective buyer's review, prior to sale, the text of any written warranties offered or granted by the manufacturers of consumer products sold by respondent.

5. Choosing to implement a binder system to satisfy the requirements of Paragraphs 3 and 4 above unless the binder system includes, at a minimum, one binder located in each department of the retail outlet, and such binder includes at least one copy of each written warranty applicable to consumer products sold in that particular department.

6. Choosing to implement a binder system to satisfy the requirements of Paragraphs 3 and 4 above unless, in implementing a binder system, respondent:

(a) Provides the prospective buyer with ready access to such binder system;

(b)(1) Displays the binders in a manner reasonably calculated to elicit the prospective buyer's attention or

(2) (A) Make such binder available to prospective buyers upon request, and

(B) Places signs reasonably calculated to elicit the prospective buyer's attention in prominent locations within each store, advising such prospective buyers of the availability of binders, including instructions for obtaining access;

(c) Indexes such binders according to product; and

(d) Clearly entitles such binders as "Warranties" or other similar title.

It is further ordered, That respondent:

A. Post a sign, with approximate minimum dimensions of two feet (length) by two feet (width), with the following information printed in black against a solid white background:

Important!

Not all warranties are the same. You can see manufacturers' warranties and store warranties before you buy. Please ask.

B. Post the sign describe in Paragraph A. above:

(1) In a manner reasonably calculated to elicit the prospective buyer's attention;

(2) For a period of not less than two years from the effective date of the order;

(3) In each department of its retail outlets that sells consumer products costing over $15.00 and carrying a written warranty;

(4) In a uniform manner; and

(5) Printed as follows:

(i) The word "Important" shall serve as the title of the notice and shall be printed in capital letters in 42 point boldface type followed by an exclamation mark.

(ii) The next phrase shall be printed on a separate line in capital letters and in 42 point boldface type.

(iii) The next two phrases shall be printed on a separate line and in 24 point medium face type.

C. Deliver a copy of this order to cease and desist to all present and future salesperson, store managers and other representatives engaged in the direct sale of consumer products to consumers on behalf of respondent and secure a signed statement acknowledging receipt of this order from each such person.

D. Instruct, in writing, all present and future salesperson, store managers and other representatives engaged in the direct sale of consumer products to consumers on behalf of respondent as to their specific obligations and duties under the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act (15 U.S.C. 2301 *et seq.*), all present and future implementing Rules promulgated under the Act and the order, and secure a signed statement acknowledging receipt of the written instructions from each such person.

E. Institute a program of continuing surveillance to reveal whether respondent's salesmen, store managers, and other representatives engaged in the direct sale of consumer products to consumers are engaged in practices which violate this order.

F. Maintain, for a period of not less than three (3) years from the effective date of the order, complete business records, including but not limited to, records described in Paragraphs C. and D. above, to be furnished upon request to the staff of the Federal Trade Commission, relating to the manner and form of its continuing compliance with the terms and provisions of this order.

G. Notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent 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 the order.

H. File with the Commission, within sixty (60) days after service upon it of this order, a report in writing, setting forth in detail the manner and form in which its has complied with this order.

By the Commission. Commissioner Bailey did not participate.

Synopsis of Determinations for 15 U.S.C. § 45 (m)(1)(B), George's Radio and Television Company, Inc., Docket No. 9115

1. It is an unfair or deceptive act or practice and a violation of section 103 of the Magnuson-Moss Warranty Act (15 U.S.C. 2303), and section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to offer or grant a written warranty on consumer products which cost the consumer more than $10.00, if such warranty is not clearly and conspicuously designated exclusively as either a "full (statement of duration) warranty" or a "limited warranty".

2. It is an unfair or deceptive act or practice and a violation of the Rule on Disclosure of Written Consumer Product Warranty Terms and Conditions ("Warranty Disclosure Rule") (16 CFR Part 701) and section 5 of the Federal Trade Commission Act to offer or grant a written warranty on consumer products which cost the consumer more than $15.00 if such warranty fails to disclose, in a single document, in simple and readily understood language, the following items of information:

(a) A clear description and identification of products, parts, characteristics, components or properties covered by, and, where necessary for clarification, those excluded from, the warranty, as set forth in § 701.3(a)(2) of the Warranty Disclosure Rule;

(b) A statement of what the warrantor will do in the event of a defect, malfunction or failure to comply with the written warranty, including the items or services the warrantor will pay for or provide, and where necessary for clarification, those which the warrantor will not pay for or provide, as set forth in § 701.3(a)(3) of the Warranty Disclosure Rule;

(c) The point in time or event on which the warranty term commences, if different from the purchase date, and the time period or other measurement of warranty duration, as set forth in § 701.3(a)(4) of the Warranty Disclosure Rule;

(d) A statement in the following language:

This warranty gives you specific legal rights, and you may also have other rights which vary from state to state, as set forth in § 701.3(a)(9) of the Warranty Disclosure Rule.

3. It is an unfair or deceptive act or practice and a violation of § 702.3(a)(1) of the Rule on Pre-Sale Availability of Written Warranty Terms ("Pre-Sale Rule") (16 CFR 702.3(a)(1)) and section 5 of the Federal Trade Commission Act to fail to make available for the prospective buyer's review, prior to sale, the text of any written warranty offered on consumer products which cost the consumer more than $15.00.

4. It is an unfair or deceptive act or practice and a violation of § 702.3(a)(1)(ii) of the Pre-Sale Rule (16 CFR 702.3(a)(1)(ii)) and section 5 of the FTC Act to implement a binder system, in satisfying the obligation to make available for the prospective buyer's review, prior to sale, the text of the manufacturer's written warranty terms, unless the binder system includes, at a minimum, one binder located in each department of the retail outlet, and such binder includes at least one copy of each written warranty applicable to consumer products sold in that particular department.

5. It is an unfair or deceptive act or practice and a violation of § 702.3(a)(1)(ii) of the Pre-Sale Rule (16 CFR 702.3(a)(1)(ii)) and section 5 of the FTC Act to implement a binder system, in satisfying the obligation to make available for the prospective buyer's review, prior to sale, the text of the manufacturer's written warranty terms, unless the seller:

(a) Provides prospective buyers with ready access to such binder(s);

(b)(1) Displays such binder(s) in a manner reasonably calculated to elicit the prospective buyer's attention; or

(2)(A) Makes the binder(s) available to the prospective buyers on request; and

(B) Places signs reasonably calculated to elicit the prospective buyer's attention in prominent locations within the store, advising such prospective buyers of the availability of the binder(s), including instructions for obtaining access;

(c) Indexes such binder(s) according to product or warrantor; and

(d) Clearly entitles such binder(s) as "Warranties" or other similar title.

Carol M. Thomas,

Secretary.

[FR Doc. 79-37834 Filed 12-10-79; 8:45 am]

BILLING CODE 6750-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Federal Hazardous Substances Act Labeling Requirements; Partial Grant of Enforcement Stay for Combustible Paint Products

AGENCY: Consumer Product Safety Commission.

ACTION: Grant of petition; partial stay of enforcement.

SUMMARY: The Commission partially grants a petition from the National Paint and Coatings Association (Petition HP 79-3) requesting that the requirement under the Federal Hazardous Substances Act that combustible paint products bear on their main panel a statement of the combustibility hazard be applied only to products manufactured after October 5, 1979. The request was granted only as to containers containing 1 pint or less. This action was taken because: (1) The statement of the combustibility is present on the containers in an area other than the main panel, (2) the cost of requiring relabeling does not seem to be justified by the benefit to consumers of having the warning on the main panel, and (3) the burden of correcting the labels could fall primarily on retailers and distributors rather than on the manufacturers who initially labeled the product.

FOR FURTHER INFORMATION CONTACT: Charles M. Jacobson, Directorate for Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207; phone (301) 492-6400.

SUPPLEMENTARY INFORMATION: Section 2(f)1.(A) of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1261(f)1.(A), defines the term "hazardous substance" to include any substance or mixture of substances that is "combustible." Under section 2(p)(1) of the act, a hazardous substance which is intended, or packaged in a form suitable, for use in the household or by children is required to bear a label that includes an affirmative statement of the principal hazard or hazards (such as "Combustible"). The regulations issued under the act require that this affirmative statement of combustibility be placed on the main panel of the label (16 CFR 1500.121(a)).

Prior to the creation of the Consumer Product Safety Commission (CPSC), the Commissioner of Food and Drugs administered the Federal Hazardous Substances Act. In 1971, the National Paint and Coatings Association petitioned the Food and Drug Administration (FDA) for an exemption from the FHSA front panel labeling requirement for combustible paint products. This request was not acted on before the CPSC was created, but the FDA informally suspended enforcement of the requirement while the petition was being considered. After responsibility for administering the FHSA was transferred to the Consumer Product Safety Commission, NPCA again petitioned for this exemption on May 17, 1974. On March 23, 1976, the NPCA amended the petition to request the exemption only for those products having viscosities greater than 150 Saybolt Universal Seconds at 100°F. On October 6, 1977, the Commission voted to deny the petition for exemption. However, in order to avoid any unnecessary burden on manufacturers and to assure that all affected companies would have sufficient time to bring their products into compliance, the Commission decided to delay enforcement of the requirement as to these products for 24 months from the date of the petition's denial. This means that all combustible paint products in the chain of distribution on October 6, 1979, would have been required to bear on their main panel a statement of the combustibility hazard.

On July 23, 1979, the Commission received a petition from NPCA requesting that the statement of policy be modified so that only products manufactured on or after October 6, 1979, would be subject to enforcement, rather than all products in the chain of distribution on October 6, 1979. Alternatively, NPCA requested that enforcement be delayed until 90 days after December 29, 1979, or action on the petition, whichever is later. NPCA stated that although paint manufacturers would be able to comply with the requirement by October 6, 1979, as to current production, changeover of all products in the chain of distribution was a considerably greater task than had been anticipated. NPCA argued that to attempt to bring the relatively small number of remaining noncomplying products into compliance (by overprinting or affixing a sticker label to the main panel of noncomplying products) would be an economic hardship and administrative burden on manufacturers, distributors, and retailers. The problem was described as most acute in the smaller sizes of containers which remain in the chain of distribution longer than larger size containers.

After considering the petition in light of the factors specified in the Commission's regulations governing consideration of emergency exemption requests (16 CFR 1009.9), the Commission concluded that some relief was appropriate because: (1) The statement of the combustibility is present on the containers in an area other than the main panel, (2) the cost of requiring relabeling does not seem to be justified by the benefit to consumers of having the warning on the main panel, and (3) the burden of correcting the labels could fall primarily on retailers and distributors rather than on the manufacturers who initially labeled the product. Accordingly, the Commission decided not to enforce the requirement for front panel labeling of the combustibility hazard of paint products in sizes of 1 pint or less that are manufactured before October 6, 1979.

This relief is not extended to those products that would be deemed to be "flammable" or "extremely flammable" under the FHSA.

The relief was also not extended to containers larger than 1 pint since fewer of these larger sizes remain in the marketplace and since the hazard from the combustible nature of the product would be greater for the larger size containers.

Conclusion

Therefore, the Commission announces that the front panel labeling requirement for the hazard of combustibility will not be enforced as to paint products in containers of 1 pint or less that are manufactured before October 6, 1979.

Dated: December 5, 1979.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 79-37951 Filed 12-10-79; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

21 CFR Parts 510, 520, 522, 526, and 558

Animal Drugs, Feeds, and Related Products—Norwich-Eaton Pharmaceuticals; Change of Sponsor Name

Correction

In FR Doc. 79-35981, published on page 67113, on Friday, November 23, 1979, in the third column, in § 510.600(c)(2) reads:

"Firm Name, Address and Drug Labeler Code

* * * * *

Norwich-Eaton Pharmaceuticals, Division of Morton-Norwich Products, Inc., P.O. Box 191, Norwich, NY 13815—000149",

* * * * *

Should be corrected to read:

"Drug Labeler Code, Firm Name and Address

* * * * *

000149—Norwich-Eaton Pharmaceuticals, Division of Morton-Norwich Products, Inc., P.O. Box 191, Norwich, NY 13815.

* * * * *

BILLING CODE 1505-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Government National Mortgage Association

24 CFR Part 300

[Docket No. R-79-751]

List of Attorneys-in-Fact

AGENCY: Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: This amendment updates the current list of attorneys-in-fact by amending paragraph (c) of 24 CFR 300.11. These attorneys-in-fact are authorized to act for the Association by executing documents in its name in conjunction with servicing GNMA's mortgage purchase programs, all as more fully described in paragraph (a) of 24 CFR 300.11.

EFFECTIVE DATE: February 6, 1980.

ADDRESSES: Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Linane, Office of General Counsel, on (202) 755-7186.

SUPPLEMENTARY INFORMATION: Notice and public procedure on this amendment are unnecessary and impracticable because of the large volume of legal documents that must be executed on behalf of the Association.

Part 300—GENERAL

§ 300.11 [Amended]

1. Paragraph (c) of § 300.11 is amended by adding the following names to the current list of attorneys-in-fact:

Name and region

Barbara Berry—Atlanta, Georgia.
Fran Gusmus—Dallas, Texas.
Susan T. Smith—Dallas, Texas.

2. Paragraph (c) of § 300.11 is amended by deleting the following names from the current list of attorneys-in-fact:

Name and region

S. C. Crabb—Dallas, Texas.
Michael C. Parker—Dallas, Texas.

(Sec. 309(d), National Housing Act, 12 U.S.C. 1723a(d); and sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d))

Issued at Washington, D.C., November 30, 1979.

R. Frederick Taylor,

Executive Vice President, Government National Mortgage Association.

[FR Doc. 79-37897 Filed 12-10-79; 8:45 am]

BILLING CODE 4210-01-M

24 CFR Part 300

[Docket No. R-79-752]

List of Attorneys-in-Fact

AGENCY Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: This amendment updates the current list of attorneys-in-fact by amending paragraph (c) of 24 CFR 300.11. These attorneys-in-fact are authorized to act for the Association by executing documents in its name in conjunction with servicing GNMA's mortgage purchase programs, all as more fully described in Paragraph (a) of 24 CFR 300.11.

EFFECTIVE DATE: February 6, 1980.

ADDRESSES: Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Linane, Office of General Counsel, on (202) 755-7186.

SUPPLEMENTARY INFORMATION: Notice and public procedure on this amendment are unnecessary and impracticable because of the large volume of legal documents that must be executed on behalf of the Association.

§ 300.11 [Amended]

1. Paragraph (c) of § 300.11 is amended by adding the following name to the current list of attorneys-in-fact:

Name	Region
Robert L. Smithers, Jr.	Dallas, Tex.

(Sec. 309(d), National Housing Act, 12 U.S.C. 1723a(d), sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)))

Issued at Washington, D.C., November 30, 1979.

R. Frederick Taylor,

Executive Vice President, Government National Mortgage Association.

[FR Doc. 79-37896 Filed 12-10-79; 8:45 am]

BILLING CODE 4210-01-M

POSTAL SERVICE

39 CFR Part 601

Procurement of Property and Services; Amendments to Postal Contracting Manual on Cleaning Services Contracts

AGENCY: Postal Service.

ACTION: Final rule

SUMMARY: The Postal Service announces the establishment of a uniform policy for entering into and administering cleaning services contracts. New, revised, or replacement forms for such contracts have been included in the Manual.

EFFECTIVE DATE: October 28, 1979.

FOR FURTHER INFORMATION CONTACT: William J. Jones, (202) 245-4603.

SUPPLEMENTARY INFORMATION: The Postal Contracting Manual, which has been incorporated by reference in the **Federal Register** (see CFR 601.100), has been amended by the issuance of Transmittal Letter 29, dated September 28, 1979.

In accordance with 39 CFR 601.105 notice of these changes is hereby published in the **Federal Register** as an amendment to that section and the text of the changes is filed with the Director, Office of the Federal Register. Subscribers to the basic Manual will receive these amendments from the Government Printing Office. (For other availability of the Postal Contracting Manual, see 39 CFR 601.104.)

Description of these amendments to the Postal Contracting Manual follows:

1. The following new, revised, or replacement forms for cleaning services contracts have been included in section 16 and shall be used immediately:

(a) Form 7331, May 1979, Solicitation, Offer, and Award—Cleaning Services.

(b) Form 7335, August 1979, Cleaning Service Requirements.

(c) Form 7356, May 1979, Representations and Certifications—Cleaning Services Contracts.

(d) Form 7360, May 1979, Biweekly Report of Contractor Performance—Cleaning Services Contracts.

(e) Form 7420, May 1979, General Provisions—Cleaning Services Contracts.

Note.—Previous editions of Form 7331 are obsolete and shall be destroyed.

2. Section 22, Part 7, has been revised to establish uniform policy for entering into and administering cleaning services contracts.

In consideration of the foregoing, 39 CFR 601 is amended by adding the following to §601.105:

§ 601.105 Amendments to the Postal Contracting Manual.

Transmittal letter	Dated	FEDERAL REGISTER publication
* * * * * * *		
29	Sept. 28, 1979	44 FR

(5 U.S.C. 552(a), 39 U.S.C. 401, 404, 410, 411, 2008)

Note.—Incorporation by reference provisions approved by the Director of the **Federal Register** on December 3, 1971, and extended at 42 FR 29488, June 9, 1977, 43 FR 22717, May 26, 1978, and at 44 FR 31976, June 4, 1979 (corrected at 44 FR 32369, June 6, 1979).

Fred Eggleston,

Assistant General Counsel Legislative Division

[FR Doc. 79-37842 Filed 12-10-79; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office for Civil Rights

Office of the Secretary

45 CFR Part 86

Title IX of the Education Amendments of 1972; a Policy Interpretation; Title IX and Intercollegiate Athletics

AGENCY: Office for Civil Rights, Office of the Secretary, HEW.

ACTION: Policy interpretation.

SUMMARY: The following Policy Interpretation represents the Department of Health, Education, and Welfare's interpretation of the intercollegiate athletic provisions of Title IX of the Education Amendments of 1972 and its implementing regulation. Title IX prohibits educational programs and institutions funded or otherwise supported by the Department from discriminating on the basis of sex. The Department published a proposed Policy Interpretation for public comment on December 11, 1978. Over 700 comments reflecting a broad range of opinion were received. In addition, HEW staff visited eight universities during June and July, 1979, to see how the proposed policy and other suggested alternatives would apply in actual practice at individual campuses. The final Policy Interpretation reflects the many comments HEW received and the results of the individual campus visits.

EFFECTIVE DATE: December 11, 1979

FOR FURTHER INFORMATION CONTACT: Colleen O'Connor, 330 Independence Avenue, Washington, D.C. (202) 245-6671

SUPPLEMENTARY INFORMATION:

I. Legal Background

A. The Statute

Section 901(a) of Title IX of the Education Amendments of 1972 provides:

> No person in the United States shall, on the basis of sex, be excluded from participation, in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

Section 844 of the Education Amendments of 1974 further provides:

> The Secretary of (of HEW) shall prepare and publish * * * proposed regulations implementing the provisions of Title IX of the Education Amendments of 1972 relating to the prohibition of sex discrimination in federally assisted education programs which shall include with respect to intercollegiate athletic activities reasonable provisions considering the nature of particular sports.

Congress passed Section 844 after the Conference Committee deleted a Senate floor amendment that would have exempted revenue-producing athletics from the jurisdiction of Title IX.

B. The Regulation

The regulation implementing Title IX is set forth, in pertinent part, in the Policy Interpretation below. It was signed by President Ford on May 27, 1975, and submitted to the Congress for review pursuant to Section 431(d)(1) of the General Education Provisions Act (GEPA).

During this review, the House Subcommittee on Postsecondary Education held hearings on a resolution disapproving the regulation. The Congress did not disapprove the regulation within the 45 days allowed under GEPA, and it therefore became effective on July 21, 1975.

Subsequent hearings were held in the Senate Subcommittee on Education on a bill to exclude revenues produced by sports to the extent they are used to pay the costs of those sports. The Committee, however, took no action on this bill.

The regulation established a three year transition period to give institutions time to comply with its equal athletic opportunity requirements. That transition period expired on July 21, 1978.

II. Purpose of Policy Interpretation

By the end of July 1978, the Department had received nearly 100 complaints alleging discrimination in athletics against more than 50 institutions of higher education. In attempting to investigate these complaints, and to answer questions from the university community, the Department determined that it should provide further guidance on what constitutes compliance with the law. Accordingly, this Policy Interpretation explains the regulation so as to provide a framework within which the complaints can be resolved, and to provide institutions of higher education with additional guidance on the requirements for compliance with Title IX in intercollegiate athletic programs.

III. Scope of Application

This Policy Interpretation is designed specifically for intercollegiate athletics. However, its general principles will often apply to club, intramural, and interscholastic athletic programs, which are also covered by regulation.[1]

[1] The regulation specifically refers to club sports separately from intercollegiate athletics. Accordingly, under this Policy Interpretation, club

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Accordingly, the Policy Interpretation may be used for guidance by the administrators of such programs when appropriate.

This policy interpretation applies to any public or private institution, person or other entity that operates an educational program or activity which receives or benefits from financial assistance authorized or extended under a law administered by the Department. This includes educational institutions whose students participate in HEW funded or guaranteed student loan or assistance programs. For further information see definition of "recipient" in Section 86.2 of the Title IX regulation.

IV. Summary of Final Policy Interpretation

The final Policy Interpretation clarifies the meaning of "equal opportunity" in intercollegiate athletics. It explains the factors and standards set out in the law and regulation which the Department will consider in determining whether an institution's intercollegiate athletics program complies with the law and regulations. It also provides guidance to assist institutions in determining whether any disparities which may exist between men's and women's programs are justifiable and nondiscriminatory. The Policy Interpretation is divided into three sections:

- *Compliance in Financial Assistance (Scholarships) Based on Athletic Ability:* Pursuant to the regulation, the governing principle in this area is that all such assistance should be available on a substantially proportional basis to the number of male and female participants in the institution's athletic program.
- *Compliance in Other Program Areas (Equipment and supplies; games and practice times; travel and per diem; coaching and academic tutoring; assignment and compensation of coaches and tutors; locker rooms, and practice and competitive facilities; medical and training facilities; housing and dining facilities; publicity; recruitment; and support services):* Pursuant to the regulation, the governing principle is that male and female athletes should receive equivalent treatment, benefits, and opportunities.
- *Compliance in Meeting the Interests and Abilities of Male and Female Students:* Pursuant to the regulation, the governing principle in this area is that the athletic interests and abilities of male and female students must be equally effectively accommodated.

V. Major Changes to Proposed Policy Interpretation

The final Policy Interpretation has been revised from the one published in proposed form on December 11, 1978. The proposed Policy Interpretation was based on a two-part approach. Part I addressed equal opportunity for participants in athletic programs. It required the elimination of discrimination in financial support and other benefits and opportunities in an institution's existing athletic program. Institutions could establish a presumption of compliance if they could demonstrate that:

- "Average per capita" expenditures for male and female athletes were substantially equal in the area of "readily financially measurable" benefits and opportunities or, if not, that any disparities were the result of nondiscriminatory factors, and
- Benefits and opportunities for male and female athletes, in areas which are not financially measurable, "were comparable."

Part II of the proposed Policy Interpretation addressed an institution's obligation to accommodate effectively the athletic interests and abilities of women as well as men on a continuing basis. It required an institution either:

- To follow a policy of development of its women's athletic program to provide the participation and competition opportunities needed to accommodate the growing interests and abilities of women, or
- To demonstrate that it was effectively (and equally) accommodating the athletic interests and abilities of students, particularly as the interests and abilities of women students developed.

While the basic considerations of equal opportunity remain, the final Policy Interpretation sets forth the factors that will be examined to determine an institution's actual, as opposed to presumed, compliance with Title IX in the area of intercollegiate athletics.

The final Policy Interpretation does not contain a separate section on institutions' future responsibilities. However, institutions remain obligated by the Title IX regulation to accommodate effectively the interests and abilities of male and female students with regard to the selection of sports and levels of competition available. In most cases, this will entail development of athletic programs that substantially expand opportunities for women to participate and compete at all levels.

The major reasons for the change in approach are as follows:

(1) Institutions and representatives of athletic program participants expressed a need for more definitive guidance on what constituted compliance than the discussion of a presumption of compliance provided. Consequently the final Policy Interpretation explains the meaning of "equal athletic opportunity" in such a way as to facilities an assessment of compliance.

(2) Many comments reflected a serious misunderstanding of the presumption of compliance. Most institutions based objections to the proposed Policy Interpretation in part on the assumption that failure to provide compelling justifications for disparities in per capita expenditures would have automatically resulted in a finding of noncompliance. In fact, such a failure would only have deprived an institution of the benefit of the presumption that it was in compliance with the law. The Department would still have had the burden of demonstrating that the institution was actually engaged in unlawful discrimination. Since the purpose of issuing a policy interpretation was to clarify the regulation, the Department has determined that the approach of stating actual compliance factors would be more useful to all concerned.

(3) The Department has concluded that purely financial measures such as the per capita test do not in themselves offer conclusive documentation of discrimination, except where the benefit or opportunity under review, like a scholarship, is itself financial in nature. Consequently, in the final Policy Interpretation, the Department has detailed the factors to be considered in assessing actual compliance. While per capita breakdowns and other devices to examine expenditures patterns will be used as tools of analysis in the Department's investigative process, it is achievement of "equal opportunity" for which recipients are responsible and to which the final Policy Interpretation is addressed.

A description of the comments received, and other information obtained through the comment/consultation process, with a description of Departmental action in response to the major points raised, is set forth at Appendix "B" to this document.

VI. Historic Patterns of Intercollegiate Athletics Program Development and Operations

In its proposed Policy Interpretation of December 11, 1978, the Department

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teams will not be considered to be intercollegiate teams except in those instances where they regularly participate in varsity competition.

published a summary of historic patterns affecting the relative status of men's and women's athletic programs. The Department has modified that summary to reflect additional information obtained during the comment and consultation process. The summary is set forth at Appendix A to this document.

VII. The Policy Interpretation

This Policy Interpretation clarifies the obligations which recipients of Federal aid have under Title IX to provide equal opportunities in athletic programs. In particular, this Policy Interpretation provides a means to assess an institution's compliance with the equal opportunity requirements of the regulation which are set forth at 45 CFR 86.37(c) and 86.41(c).

A. Athletic Financial Assistance (Scholarships)

1. *The Regulation*—Section 86.37(c) of the regulation provides:

> [Institutions] must provide reasonable opportunities for such award [of financial assistance] for members of each sex in proportion to the number of students of each sex participating in * * * inter-collegiate athletics.[2]

2. *The Policy*—The Department will examine compliance with this provision of the regulation primarily by means of a financial comparison to determine whether proportionately equal amounts of financial assistance (scholarship aid) are available to men's and women's athletic programs. The Department will measure compliance with this standard by dividing the amounts of aid available for the members of each sex by the numbers of male or female participants in the athletic program and comparing the results. Institutions may be found in compliance if this comparison results in substantially equal amounts or if a resulting disparity can be explained by adjustments to take into account legitimate, nondiscriminatory factors. Two such factors are:

a. At public institutions, the higher costs of tuition for students from out-of-state may in some years be unevenly distributed between men's and women's programs. These differences will be considered nondiscriminatory if they are not the result of policies or practices which disproportionately limit the availability of out-of-state scholarships to either men or women.

b. An institution may make reasonable professional decisions concerning the awards most appropriate for program development. For example, team development initially may require spreading scholarships over as much as a full generation (four years) of student athletes. This may result in the award of fewer scholarships in the first few years than would be necessary to create proportionality between male and female athletes.

3. *Application of the Policy*—a. This section does not require a proportionate number of scholarships for men and women or individual scholarships of equal dollar value. It does mean that the total amount of scholarship aid made available to men and women must be substantially proportionate to their participation rates.

b. When financial assistance is provided in forms other than grants, the distribution of non-grant assistance will also be compared to determine whether equivalent benefits are proportionately available to male and female athletes. A disproportionate amount of work-related aid or loans in the assistance made available to the members of one sex, for example, could constitute a violation of Title IX.

4. *Definition*—For purposes of examining compliance with this Section, the participants will be defined as those athletes:

a. Who are receiving the institutionally-sponsored support normally provided to athletes competing at the institution involved, e.g., coaching, equipment, medical and training room services, on a regular basis during a sport's season; and

b. Who are participating in organized practice sessions and other team meetings and activities on a regular basis during a sport's season; and

c. Who are listed on the eligibility or squad lists maintained for each sport, or

d. Who, because of injury, cannot meet a, b, or c above but continue to receive financial aid on the basis of athletic ability.

B. Equivalence in Other Athletic Benefits and Opportunities

1. *The Regulation*—The Regulation requires that recipients that operate or sponsor interscholastic, intercollegiate, club, or intramural athletics, "provide equal athletic opportunities for members of both sexes." In determining whether an institution is providing equal opportunity in intercollegiate athletics, the regulation requires the Department to consider, among others, the following factors:

(1) [3]

(2) Provision and maintenance of equipment and supplies;

(3) Scheduling of games and practice times;

(4) Travel and per diem expenses;

(5) Opportunity to receive coaching and academic tutoring;

(6) Assignment and compensation of coaches and tutors;

(7) Provision of locker rooms, practice and competitive facilities;

(8) Provision of medical and training services and facilities;

(9) Provision of housing and dining services and facilities; and

(10) Publicity

Section 86.41(c) also permits the Director of the Office for Civil Rights to consider other factors in the determination of equal opportunity. Accordingly, this Section also addresses recruitment of student athletes and provision of support services.

This list is not exhaustive. Under the regulation, it may be expanded as necessary at the discretion of the Director of the Office for Civil Rights.[4]

2. *The Policy*—The Department will assess compliance with both the recruitment and the general athletic program requirements of the regulation by comparing the availability, quality and kinds of benefits, opportunities, and treatment afforded members of both sexes. Institutions will be in compliance if the compared program components are equivalent, that is, equal or equal in effect. Under this standard, identical benefits, opportunities, or treatment are not required, provided the overall effect of any differences is negligible.

If comparisons of program components reveal that treatment, benefits, or opportunities are not equivalent in kind, quality or availability, a finding of compliance may still be justified if the differences are the result of nondiscriminatory factors. Some of the factors that may justify these differences are as follows:

a. Some aspects of athletic programs may not be equivalent for men and women because of unique aspects of particular sports or athletic activities. This type of distinction was called for by the "Javits' Amendment"[5] to Title IX, which instructed HEW to make "reasonable (regulatory) provisions considering the nature of particular sports" in intercollegiate athletics.

Generally, these differences will be the result of factors that are inherent to the basic operation of specific sports. Such factors may include rules of play, nature/replacement of equipment, rates of injury resulting from participation,

[2] See also § 86.37(a) of the regulation.

[3] 86.41(c) (1) on the accommodation of student interests and abilities, is covered in detail in the following Section C of this policy Interpretation.

[4] See also § 86.41(a) and (b) of the regulation.

[5] Section 844 of the Education Amendments of 1974, Pub. L. 93-380, Title VIII, (August 21, 1974) 88 Stat. 612.

nature of facilities required for competition, and the maintenance/upkeep requirements of those facilities. For the most part, differences involving such factors will occur in programs offering football, and consequently these differences will favor men. If sport-specific needs are met equivalently in both men's and women's programs, however, differences in particular program components will be found to be justifiable.

b. Some aspects of athletic programs may not be equivalent for men and women because of legitimately sex-neutral factors related to special circumstances of a temporary nature. For example, large disparities in recruitment activity for any particular year may be the result of annual fluctuations in team needs for first-year athletes. Such diferences are justifiable to the extent that they do not reduce overall equality of opportunity.

c. The activities directly associated with the operation of a competitive event in a single-sex sport may, under some circumstances, create unique demands or imbalances in particular program components. Provided any special demands associated with the activities of sports involving participants of the other sex are met to an equivalent degree, the resulting differences may be found nondiscriminatory. At many schools, for example, certain sports—notably football and men's basketball—traditionally draw large crowds. Since the costs of managing an athletic event increase with crowd size, the overall support made available for event management to men's and women's programs may differ in degree and kind. These differences would not violate Title IX if the recipient does not limit the potential for women's athletic events to rise in spectator appeal and if the levels of event management support available to both programs are based on sex-neutral criteria (e.g., facilities used, projected attendance, and staffing needs).

d. Some aspects of athletic programs may not be equivalent for men and women because institutions are undertaking voluntary affirmative actions to overcome effects of historical conditions that have limited participation in athletics by the members of one sex. This is authorized at § 86.3(b) of the regulation.

3. *Application of the Policy—General Athletic Program Components*—a. *Equipment and Supplies (§ 86.41(c)(2)).* Equipment and supplies include but are not limited to uniforms, other apparel, sport-specific equipment and supplies, general equipment and supplies, instructional devices, and conditioning and weight training equipment.

Compliance will be assessed by examining, among other factors, the equivalence for men and women of:

(1) The quality of equipment and supplies;

(2) The amount of equipment and supplies;

(3) The suitability of equipment and supplies;

(4) The maintenance and replacement of the equipment and supplies; and

(5) The availability of equipment and supplies.

b. *Scheduling of Games and Practice Times (§ 86.41(c)(3)).* Compliance will be assessed by examining, among other factors, the equivalence for men and women of:

(1) The number of competitive events per sport;

(2) The number and length of practice opportunities;

(3) The time of day competitive events are scheduled;

(4) The time of day practice opportunities are scheduled; and

(5) The opportunities to engage in available pre-season and post-season competition.

c. *Travel and Per Diem Allowances (§ 86.41(c)(4)).* Compliance will be assessed by examining, among other factors, the equivalence for men and women of:

(1) Modes of transportation;

(2) Housing furnished during travel;

(3) Length of stay before and after competitive events;

(4) Per diem allowances; and

(5) Dining arrangements.

d. *Opportunity to Receive Coaching and Academic Tutoring (§ 86.41(c)(5)).* (1) Coaching—Compliance will be assessed by examining, among other factors:

(a) Relative availability of full-time coaches;

(b) Relative availability of part-time and assistant coaches; and

(c) Relative availability of graduate assistants.

(2) Academic tutoring—Compliance will be assessed by examining, among other factors, the equivalence for men and women of:

(a) The availability of tutoring; and

(b) Procedures and criteria for obtaining tutorial assistance.

e. *Assignment and Compensation of Coaches and Tutors (§ 86.41(c)(6)).*[6] In general, a violation of Section 86.41(c)(6) will be found only where compensation or assignment policies or practices deny male and female athletes coaching of equivalent quality, nature, or availability.

Nondiscriminatory factors can affect the compensation of coaches. In determining whether differences are caused by permissible factors, the range and nature of duties, the experience of individual coaches, the number of participants for particular sports, the number of assistant coaches supervised, and the level of competition will be considered.

Where these or similar factors represent valid differences in skill, effort, responsibility or working conditions they may, in specific circumstances, justify differences in compensation. Similarly, there may be unique situations in which a particular person may possess such an outstanding record of achievement as to justify an abnormally high salary.

(1) Assignment of Coaches—Compliance will be assessed by examining, among other factors, the equivalence for men's and women's coaches of:

(a) Training, experience, and other professional qualifications;

(b) Professional standing.

(2) Assignment of Tutors—Compliance will be assessed by examining, among other factors, the equivalence for men's and women's tutors of:

(a) Tutor qualifications;

(b) Training, experience, and other qualifications.

(3) Compensation of Coaches—Compliance will be assessed by examining, among other factors, the equivalence for men's and women's coaches of:

(a) Rate of compensation (per sport, per season);

(b) Duration of contracts;

(c) Conditions relating to contract renewal;

(d) Experience;

(e) Nature of coaching duties performed;

(f) Working conditions; and

(g) Other terms and conditions of employment.

(4) Compensation of Tutors—Compliance will be assessed by examining, among other factors, the equivalence for men's and women's tutors of:

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[6] The Department's jurisdiction over the employment practices of recipients under Subpart E, §§ 86.51–86.61 of the Title IX regulation has been successfully challenged in several court cases. Accordingly, the Department has suspended enforcement of Subpart E. Section 86.41(c)(6) of the regulation, however, authorizes the Department to consider the compensation of coaches of men and women in the determination of the equality of athletic opportunity provided to male and female athletes. It is on this section of the regulation that this Policy Interpretation is based.

(a) Hourly rate of payment by nature of subjects tutored;
(b) Pupil loads per tutoring season;
(c) Tutor qualifications;
(d) Experience;
(e) Other terms and conditions of employment.

f. *Provision of Locker Rooms, Practice and Competitive Facilities (§ 86.41(c)(7)).* Compliance will be assessed by examining, among other factors, the equivalence for men and women of:
(1) Quality and availability of the facilities provided for practice and competitive events;
(2) Exclusivity of use of facilities provided for practice and competitive events;
(3) Availability of locker rooms;
(4) Quality of locker rooms;
(5) Maintenance of practice and competitive facilities; and
(6) Preparation of facilities for practice and competitive events.

g. *Provision of Medical and Training Facilities and Services (§ 86.41(c)(8)).* Compliance will be assessed by examining, among other factors, the equivalence for men and women of:
(1) Availability of medical personnel and assistance;
(2) Health, accident and injury insurance coverage;
(3) Availability and quality of weight and training facilities;
(4) Availability and quality of conditioning facilities; and
(5) Availability and qualifications of athletic trainers.

h. *Provision of Housing and Dining Facilities and Services (§ 86.41(c)(9)).* Compliance will be assessed by examining, among other factors, the equivalence for men and women of:
(1) Housing provided;
(2) Special services as part of housing arrangements (e.g., laundry facilities, parking space, maid service).

i. *Publicity (§ 86.41(c)(10)).* Compliance will be assessed by examining, among other factors, the equivalence for men and women of:
(1) Availability and quality of sports information personnel;
(2) Access to other publicity resources for men's and women's programs; and
(3) Quantity and quality of publications and other promotional devices featuring men's and women's programs.

4. *Application of the Policy—Other Factors (§ 86.41(c)).* a. *Recruitment of Student Athletes.*[7] The athletic recruitment practices of institutions often affect the overall provision of opportunity to male and female athletes. Accordingly, where equal athletic opportunities are not present for male and female students, compliance will be assessed by examining the recruitment practices of the athletic programs for both sexes to determine whether the provision of equal opportunity will require modification of those practices.

Such examinations will review the following factors:
(1) Whether coaches or other professional athletic personnel in the programs serving male and female athletes are provided with substantially equal opportunities to recruit;
(2) Whether the financial and other resources made available for recruitment in male and female athletic programs are equivalently adequate to meet the needs of each program; and
(3) Whether the differences in benefits, opportunities, and treatment afforded prospective student athletes of each sex have a disproportionately limiting effect upon the recruitment of students of either sex.

b. *Provision of Support Services.* The administrative and clerical support provided to an athletic program can affect the overall provision of opportunity to male and female athletes, particularly to the extent that the provided services enable coaches to perform better their coaching functions.

In the provision of support services, compliance will be assessed by examining, among other factors, the equivalence of:
(1) The amount of administrative assistance provided to men's and women's programs;
(2) The amount of secretarial and clerical assistance provided to men's and women's programs.

5. *Overall Determination of Compliance.* The Department will base its compliance determination under § 86.41(c) of the regulation upon an examination of the following:
a. Whether the policies of an institution are discriminatory in language or effect; or
b. Whether disparities of a substantial and unjustified nature exist in the benefits, treatment, services, or opportunities afforded male and female athletes in the institution's program as a whole; or
c. Whether disparities in benefits, treatment, services, or opportunities in individual segments of the program are substantial enough in and of themselves to deny equality of athletic opportunity.

C. Effective Accommodation of Student Interests and Abilities.

1. *The Regulation.* The regulation requires institutions to accommodate effectively the interests and abilities of students to the extent necessary to provide equal opportunity in the selection of sports and levels of competition available to members of both sexes.

Specifically, the regulation, at § 86.41(c)(1), requires the Director to consider, when determining whether equal opportunities are available—

Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes.

Section 86.41(c) also permits the Director of the Office for Civil Rights to consider other factors in the determination of equal opportunity. Accordingly, this section also addresses competitive opportunities in terms of the competitive team schedules available to athletes of both sexes.

2. *The Policy.* The Department will assess compliance with the interests and abilities section of the regulation by examining the following factors:
a. The determination of athletic interests and abilities of students;
b. The selection of sports offered; and
c. The levels of competition available including the opportunity for team competition.

3. *Application of the Policy—Determination of Athletic Interests and Abilities.*

Institutions may determine the athletic interests and abilities of students by nondiscriminatory methods of their choosing provided:
a. The processes take into account the nationally increasing levels of women's interests and abilities;
b. The methods of determining interest and ability do not disadvantage the members of an underrepresented sex;
c. The methods of determining ability take into account team performance records; and
d. The methods are responsive to the expressed interests of students capable of intercollegiate competition who are members of an underrepresented sex.

4. *Application of the Policy—Selection of Sports.*

In the selection of sports, the regulation does not require institutions

[7] Public undergraduate institutions are also subject to the general anti-discrimination provision at § 86.23 of the regulation, which reads in part:

"A recipient * * * shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient may be required to undertake additional recruitment efforts for one sex as remedial action * * * and may choose to undertake such efforts as affirmative action * * *"

Accordingly, institutions subject to § 86.23 are required in all cases to maintain equivalently effective recruitment programs for both sexes and, under § 86.41(c), to provide equivalent benefits, opportunities, and treatment to student athletes of both sexes.

to integrate their teams nor to provide exactly the same choice of sports to men and women. However, where an institution sponsors a team in a particular sport for members of one sex, it may be required either to permit the excluded sex to try out for the team or to sponsor a separate team for the previously excluded sex.

a. Contact Sports—Effective accommodation means that if an institution sponsors a team for members of one sex in a contact sport, it must do so for members of the other sex under the following circumstances:

(1) The opportunities for members of the excluded sex have historically been limited; and

(2) There is sufficient interest and ability among the members of the excluded sex to sustain a viable team and a reasonable expectation of intercollegiate competition for that team.

b. Non-Contact Sports—Effective accommodation means that if an institution sponsors a team for members of one sex in a non-contact sport, it must do so for members of the other sex under the following circumstances:

(1) The opportunities for members of the excluded sex have historically been limited;

(2) There is sufficient interest and ability among the members of the excluded sex to sustain a viable team and a reasonable expectation of intercollegiate competition for that team; and

(3) Members of the excluded sex do not possess sufficient skill to be selected for a single integrated team, or to compete actively on such a team if selected.

5. *Application of the Policy—Levels of Competition.*

In effectively accommodating the interests and abilities of male and female athletes, institutions must provide both the opportunity for individuals of each sex to participate in intercollegiate competition, and for athletes of each sex to have competitive team schedules which equally reflect their abilities.

a. Compliance will be assessed in any one of the following ways:

(1) Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or

(2) Where the members of one sex have been and are underrepresented among intercollegiate athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities of the members of that sex; or

(3) Where the members of one sex are underrepresented among intercollegiate athletes, and the institution cannot show a continuing practice of program expansion such as that cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

b. Compliance with this provision of the regulation will also be assessed by examining the following:

(1) Whether the competitive schedules for men's and women's teams, on a program-wide basis, afford proportionally similar numbers of male and female athletes equivalently advanced competitive opportunities; or

(2) Whether the institution can demonstrate a history and continuing practice of upgrading the competitive opportunities available to the historically disadvantaged sex as warranted by developing abilities among the athletes of that sex.

c. Institutions are not required to upgrade teams to intercollegiate status or otherwise develop intercollegiate sports absent a reasonable expectation that intercollegiate competition in that sport will be available within the institution's normal competitive regions. Institutions may be required by the Title IX regulation to actively encourage the development of such competition, however, when overall athletic opportunities within that region have been historically limited for the members of one sex.

6. *Overall Determination of Compliance.*

The Department will base its compliance determination under § 86.41(c) of the regulation upon a determination of the following:

a. Whether the policies of an institution are discriminatory in language or effect; or

b. Whether disparities of a substantial and unjustified nature in the benefits, treatment, services, or opportunities afforded male and female athletes exist in the institution's program as a whole; or

c. Whether disparities in individual segments of the program with respect to benefits, treatment, services, or opportunities are substantial enough in and of themselves to deny equality of athletic opportunity.

VIII. The Enforcement Process

The process of Title IX enforcement is set forth in § 86.71 of the Title IX regulation, which incorporates by reference the enforcement procedures applicable to Title VI of the Civil Rights Act of 1964.[8] The enforcement process prescribed by the regulation is supplemented by an order of the Federal District Court, District of Columbia, which establishes time frames for each of the enforcement steps.[9]

According to the regulation, there are two ways in which enforcement is initiated:

- *Compliance Reviews*—Periodically the Department must select a number of recipients (in this case, colleges and universities which operate intercollegiate athletic programs) and conduct investigations to determine whether recipients are complying with Title IX. (45 CFR 80.7(a))
- *Complaints*—The Department must investigate all valid (written and timely) complaints alleging discrimination on the basis of sex in a recipient's programs. (45 CFR 80.7(b))

The Department must inform the recipient (and the complainant, if applicable) of the results of its investigation. If the investigation indicates that a recipient is in compliance, the Department states this, and the case is closed. If the investigation indicates noncompliance, the Department outlines the violations found.

The Department has 90 days to conduct an investigation and inform the recipient of its findings, and an additional 90 days to resolve violations by obtaining a voluntary compliance agreement from the recipient. This is done through negotiations between the Department and the recipient, the goal of which is agreement on steps the recipient will take to achieve compliance. Sometimes the violation is relatively minor and can be corrected immediately. At other times, however, the negotiations result in a plan that will correct the violations within a specified period of time. To be acceptable, a plan must describe the manner in which institutional resources will be used to correct the violation. It also must state acceptable time tables for reaching interim goals and full compliance. When agreement is reached, the Department notifies the institution that its plan is acceptable. The Department then is obligated to review periodically the implementation of the plan.

An institution that is in violation of Title IX may already be implementing a corrective plan. In this case, prior to informing the recipient about the results of its investigation, the Department will determine whether the plan is adequate.

[8] Those procedures may be found at 45 CFR 80.6–80.11 and 45 CFR Part 8.

[9] *WEAL* v. *Harris*, Civil Action No. 74–1720 (D. D.C., December 29, 1977).

If the plan is not adequate to correct the violations (or to correct them within a reasonable period of time) the recipient will be found in noncompliance and voluntary negotiations will begin. However, if the institutional plan is acceptable, the Department will inform the institution that although the institution has violations, it is found to be in compliance because it is implementing a corrective plan. The Department, in this instance also, would monitor the progress of the institutional plan. If the institution subsequently does not completely implement its plan, it will be found in noncompliance.

When a recipient is found in noncompliance and voluntary compliance attempts are unsuccessful, the formal process leading to termination of Federal assistance will be begun. These procedures, which include the opportunity for a hearing before an administrative law judge, are set forth at 45 CFR 80.8–80.11 and 45 CFR Part 81.

IX. Authority

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374, 20 U.S.C. 1681, 1682; sec. 844, Education Amendments of 1974, Pub. L. 93–380, 88 Stat. 612; and 45 CFR Part 86)

Dated: December 3, 1979.

Roma Stewart,

Director, Office for Civil Rights, Department of Health, Education, and Welfare.

Dated: December 4, 1979.

Patricia Roberts Harris,

Secretary, Department of Health, Education, and Welfare.

Appendix A—Historic Patterns of Intercollegiate Athletics Program Development

1. Participation in intercollegiate sports has historically been emphasized for men but not women. Partially as a consequence of this, participation rates of women are far below those of men. During the 1977–78 academic year women students accounted for 48 percent of the national undergraduate enrollment (5,496,000 of 11,267,000 students).[1] Yet, only 30 percent of the intercollegiate athletes are women.[2]

The historic emphasis on men's intercollegiate athletic programs has also contributed to existing differences in the number of sports and scope of competition offered men and women. One source indicates that, on the average, colleges and universities are providing twice the number of sports for men as they are for women.[3]

2. Participation by women in sports is growing rapidly. During the period from 1971–1978, for example, the number of female participants in organized high school sports increased from 294,000 to 2,083,000—an increase of over 600 percent.[4] In contrast, between Fall 1971 and Fall 1977, the enrollment of females in high school decreased from approximately 7,600,000 to approximately 7,150,000 a decrease of over 5 percent.[5]

The growth in athletic participation by high school women has been reflected on the campuses of the nation's colleges and universities. During the period from 1971 to 1976 the enrollment of women in the nation's institutions of higher education rose 52 percent, from 3,400,000 to 5,201,000.[6] During this same period, the number of women participating in intramural sports increased 108 percent from 276,167 to 576,167. In club sports, the number of women participants increased from 16,386 to 25,541 or 55 percent. In intercollegiate sports, women's participation increased 102 percent from 31,852 to 64,375.[7] These developments reflect the growing interest of women in competitive athletics, as well as the efforts of colleges and universities to accommodate those interests.

3. The overall growth of women's intercollegiate programs has not been at the expense of men's programs. During the past decade of rapid growth in women's programs, the number of intercollegiate sports available for men has remained stable, and the number of male athletes has increased slightly. Funding for men's programs has increased from $1.2 to $2.2 million between 1970–1977 alone.[8]

4. On most campuses, the primary problem confronting women athletes is the absence of a fair and adequate level of resources, services, and benefits. For example, disproportionately more financial aid has been made available for male athletes than for female athletes. Presently, in institutions that are members of both the National Collegiate Athletic Association (NCAA) and the Association for Intercollegiate Athletics for Women (AIAW), the average annual scholarship budget is $39,000. Male athletes receive $32,000 or 78 percent of this amount, and female athletes receive $7,000 or 22 percent, although women are 30 percent of all the athletes eligible for scholarships.[9]

Likewise, substantial amounts have been provided for the recruitment of male athletes, but little funding has been made available for recruitment of female athletes.

Congressional testimony on Title IX and subsequent surveys indicates that discrepancies also exist in the opportunity to receive coaching and in other benefits and opportunities, such as the quality and amount of equipment, access to facilities and practice times, publicity, medical and training facilities, and housing and dining facilities.[10]

5. At several institutions, intercollegiate football is unique among sports. The size of the teams, the expense of the operation, and the revenue produced distinguish football from other sports, both men's and women's. Title IX requires that "an institution of higher education must comply with the prohibition against sex discrimination imposed by that title and its implementing regulations in the administration of any revenue producing intercollegiate athletic activity."[11] However, the unique size and cost of football programs have been taken into account in developing this Policy Interpretation.

Appendix B—Comments and Responses

The Office for Civil Rights (OCR) received over 700 comments and recommendations in response to the December 11, 1978 publication of the proposed Policy Interpretation. After the formal comment period, representatives of the Department met for additional discussions with many individuals and

[1] *The Condition of Education 1979*, National Center for Education Statistics, p. 112.

[2] Figure obtained from Association for Intercollegiate Athletics for Women (AIAW) member survey, *AIAW Structure Implementation Survey Data Summary*, October 1978, p. 11.

[3] U.S. Commission on Civil Rights, Comments to DHEW on proposed Policy Interpretation; Analysis of data supplied by the National Association of Directors of Collegiate Athletics.

[4] Figures obtained from National Federation of High School Associations (NFHSA) data.

[5] *Digest of Education Statistics 1977–78*, National Center for Education Statistics (1978), Table 40, at 44. Data, by sex, are unavailable for the period from 1971 to 1977; consequently, these figures represent 50 percent of total enrollment for that period. This is the best comparison that could be made based on available data.

[6] Ibid, p. 112.

[7] These figures, which are not precisely comparable to those cited at footnote 2, were obtained from *Sports and Recreational Programs of the Nation's Universities and Colleges*, NCAA Report No. 5, March 1978. It includes figures only from the 722 NCAA member institutions because comparable data was not available from other associations.

[8] Compiled from NCAA *Revenues and Expenses for Intercollegiate Athletic Programs*, 1978.

[9] Figures obtained from *AIAW Structure Implementation Survey Data Summary*, October, 1978, p. 11.

[10] 121 Cong. REc. 29791–95 (1975) (remarks of Senator Williams); Comments by Senator Bayh, Hearings on S. 2106 Before the Subcommittee on Education of the Senate Committee on Labor and Public Welfare, 94th Congress, 1st Session 48 (1975); "Survey of Women's Athletic Directors," AIAW Workshop (January 1978).

[11] See April 18, 1979, Opinion of General Counsel, Department of Health, Education, and Welfare, page 1.

groups including college and university officials, athletic associations, athletic directors, women's rights organizations and other interested parties. HEW representatives also visited eight universities in order to assess the potential of the proposed Policy Interpretation and of suggested alternative approaches for effective enforcement of Title IX.

The Department carefully considered all information before preparing the final policy. Some changes in the structure and substance of the Policy Interpretation have been made as a result of concerns that were identified in the comment and consultation process.

Persons who responded to the request for public comment were asked to comment generally and also to respond specifically to eight questions that focused on different aspects of the proposed Policy Interpretation.

Question No. 1: Is the description of the current status and development of intercollegiate athletics for men and women accurate? What other factors should be considered?

Comment A: Some commentors noted that the description implied the presence of intent on the part of all universities to discriminate against women. Many of these same commentors noted an absence of concern in the proposed Policy Interpretation for those universities that have in good faith attempted to meet what they felt to be a vague compliance standard in the regulation.

Response: The description of the current status and development of intercollegiate athletics for men and women was designed to be a factual, historical overview. There was no intent to imply the universal presence of discrimination. The Department recognizes that there are many colleges and universities that have been and are making good faith efforts, in the midst of increasing financial pressures, to provide equal athletic opportunities to their male and female athletes.

Comment B: Commentors stated that the statistics used were outdated in some areas, incomplete in some areas, and inaccurate in some areas.

Response: Comment accepted. The statistics have been updated and corrected where necessary.

Question No. 2: Is the proposed two-stage approach to compliance practical? Should it be modified? Are there other approaches to be considered?

Comment: Some commentors stated that Part II of the proposed Policy Interpretation "Equally Accommodating the Interests and Abilities of Women" represented an extension of the July 1978, compliance deadline established in § 86.41(d) of the Title IX regulation.

Response: Part II of the proposed Policy Interpretation was not intended to extend the compliance deadline. The format of the two stage approach, however, seems to have encouraged that perception; therefore, the elements of both stages have been unified in this Policy Interpretation.

Question No. 3: Is the equal average per capita standard based on participation rates practical? Are there alternatives or modifications that should be considered?

Comment A: Some commentors stated it was unfair or illegal to find noncompliance solely on the basis of a financial test when more valid indicators of equality of opportunity exist.

Response: The equal average per capita standard was not a standard by which noncompliance could be found. It was offered as a standard of presumptive compliance. In order to prove noncompliance, HEW would have been required to show that the unexplained disparities in expenditures were discriminatory in effect. The standard, in part, was offered as a means of simplifying proof of compliance for universities. The widespread confusion concerning the significance of failure to satisfy the equal average per capita expenditure standard, however, is one of the reasons it was withdrawn.

Comment B: Many commentors stated that the equal average per capita standard penalizes those institutions that have increased participation opportunities for women and rewards institutions that have limited women's participation.

Response: Since equality of average per capita expenditures has been dropped as a standard of presumptive compliance, the question of its effect is no longer relevant. However, the Department agrees that universities that had increased participation opportunities for women and wished to take advantage of the presumptive compliance standard, would have had a bigger financial burden than universities that had done little to increase participation opportunities for women.

Question No. 4: Is there a basis for treating part of the expenses of a particular revenue producing sport differently because the sport produces income used by the university for non-athletic operating expenses on a non-discriminatory basis? If, so, how should such funds be identified and treated?

Comment: Commentors stated that this question was largely irrelevant because there were so few universities at which revenue from the athletic program was used in the university operating budget.

Response: Since equality of average per capita expenditures has been dropped as a standard of presumed compliance, a decision is no longer necessary on this issue.

Question No. 5: Is the grouping of financially measurable benefits into three categories practical? Are there alternatives that should be considered? Specifically, should recruiting expenses be considered together with all other financially measurable benefits?

Comment A: Most commentors stated that, if measured solely on a financial standard, recruiting should be grouped with the other financially measurable items. Some of these commentors held that at the current stage of development of women's intercollegiate athletics, the amount of money that would flow into the women's recruitment budget as a result of separate application of the equal average per capita standard to recruiting expenses, would make recruitment a disproportionately large percentage of the entire women's budget. Women's athletic directors, particularly, wanted the flexibility to have the money available for other uses, and they generally agreed on including recruitment expenses with the other financially measurable items.

Comment B: Some commentors stated that it was particularly inappropriate to base any measure of compliance in recruitment solely on financial expenditures. They stated that even if proportionate amounts of money were allocated to recruitment, major inequities could remain in the benefits to athletes. For instance, universities could maintain a policy of subsidizing visits to their campuses of prospective students of one sex but not the other. Commentors suggested that including an examination of differences in benefits to prospective athletes that result from recruiting methods would be appropriate.

Response: In the final Policy Interpretation, recruitment has been moved to the group of program areas to be examined under § 86.41(c) to determine whether overall equal athletic opportunity exists. The Department accepts the comment that a financial measure is not sufficient to determine whether equal opportunity is being provided. Therefore, in examining athletic recruitment, the Department will primarily review the opportunity to recruit, the resources provided for recruiting, and methods of recruiting.

Question No. 6: Are the factors used to justify differences in equal average per capita expenditures for financially

measurable benefits and opportunities fair? Are there other factors that should be considered?

Comment: Most commentors indicated that the factors named in the proposed Policy Interpretion (the "scope of competition" and the "nature of the sport") as justifications for differences in equal average per capita expenditures were so vague and ambiguous as to be meaningless. Some stated that it would be impossible to define the phrase "scope of competition", given the greatly differing competitive structure of men's and women's programs. Other commentors were concerned that the "scope of competition" factor that may currently be designated as "non-discriminatory" was, in reality, the result of many years of inequitable treatment of women's athletic programs.

Response: The Department agrees that it would have been difficult to define clearly and then to quantify the "scope of competition" factor. Since equal average per capita expenditures has been dropped as a standard of presumed compliance, such financial justifications are no longer necessary. Under the equivalency standard, however, the "nature of the sport" remains an important concept. As explained within the Policy Interpretation, the unique nature of a sport may account for perceived inequities in some program areas.

Question No 7: Is the comparability standard for benefits and opportunities that are not financially measurably fair and realistic? Should other factors controlling comparability be included? Should the comparability standard be revised? Is there a different standard which should be considered?

Comment: Many commentors stated that the comparability standard was fair and realistic. Some commentors were concerned, however, that the standard was vague and subjective and could lead to uneven enforcement.

Response: The concept of comparing the non-financially measurable benefits and opportunities provided to male and female athletes has been preserved and expanded in the final Policy Interpretation to include all areas of examination except scholarships and accommodation of the interests and abilities of both sexes. The standard is that equivalent benefits and opportunities must be provided. To avoid vagueness and subjectivity, further guidance is given about what elements will be considered in each program area to determine the equivalency of benefits and opportunities.

Question No. 8: Is the proposal for increasing the opportunity for women to participate in competitive athletics appropriate and effective? Are there other procedures that should be considered? Is there a more effective way to ensure that the interest and abilities of both men and women are equally accommodated?

Comment: Several commentors indicated that the proposal to allow a university to gain the status of presumed compliance by having policies and procedures to encourage the growth of women's athletics was appropriate and effective for future students, but ignored students presently enrolled. They indicated that nowhere in the proposed Policy Interpretation was concern shown that the current selection of sports and levels of competition effectively accommodate the interests and abilities of women as well as men.

Response: Comment accepted. The requirement that universities equally accommodate the interests and abilities of their male and female athletes (Part II of the proposed Policy Interpretation) has been directly addressed and is now a part of the unified final Policy Interpretation.

Additional Comments

The following comments were not responses to questions raised in the proposed Policy Interpretation. They represent additional concerns expressed by a large number of commentors.

(1) *Comment:* Football and other "revenue producing" sports should be totally exempted or should receive special treatment under Title IX.

Response: The April 18, 1978, opinion of the General Counsel, HEW, concludes that "an institution of higher education must comply with the prohibition against sex discrimination imposed by that title and its implementing regulation in the administration of any revenue producing activity". Therefore, football or other "revenue producing" sports cannot be exempted from coverage of Title IX.

In developing the proposed Policy Interpretation the Department concluded that although the fact of revenue production could not justify disparity in average per capita expenditure between men and women, there were characteristics common to most revenue producing sports that could result in legitimate non-discriminatory differences in per capita expenditures. For instance, some "revenue producing" sports require expensive protective equipment and most require high expenditures for the management of events attended by large numbers of people. These characteristics and others described in the proposed Policy Interpretation were considered acceptable, non-discriminatory reasons for differences in per capita average expenditures.

In the final Policy Interpretation, under the equivalent benefits and opportunities standard of compliance, some of these non-discriminatory factors are still relevant and applicable.

(2) *Comment:* Commentors stated that since the equal average per capita standard of presumed compliance was based on participation rates, the word should be explicitly defined.

Response: Although the final Policy Interpretation does not use the equal average per capita standard of presumed compliance, a clear understanding of the word "participant" is still necessary, particularly in the determination of compliance where scholarships are involved. The word "participant" is defined in the final Policy Interpretation.

(3) *Comment:* Many commentors were concerned that the proposed Policy Interpretation neglected the rights of individuals.

Response: The proposed Policy Interpretation was intended to further clarify what colleges and universities must do within their intercollegiate athletic programs to avoid discrimination against individuals on the basis of sex. The Interpretation, therefore, spoke to institutions in terms of their male and female athletes. It spoke specifically in terms of equal, average per capita expenditures and in terms of comparability of other opportunities and benefits for male and female participating athletes.

The Department believes that under this approach the rights of individuals were protected. If women athletes, as a class, are receiving opportunities and benefits equal to those of male athletes, individuals within the class should be protected thereby. Under the proposed Policy Interpretation, for example, if female athletes as a whole were receiving their proportional share of athletic financial assistance, a university would have been presumed in compliance with that section of the regulation. The Department does not want and does not have the authority to force universities to offer identical programs to men and women. Therefore, to allow flexibility within women's programs and within men's programs, the proposed Policy Interpretation stated that an institution would be presumed in compliance if the average per capita expenditures on athletic scholarships for men and women, were equal. This same flexibility (in scholarships and in other areas) remains in the final Policy Interpretation.

(4) *Comment:* Several commentors stated that the provision of a separate dormitory to athletes of only one sex, even where no other special benefits were involved, is inherently discriminatory. They felt such separation indicated the different degrees of importance attached to athletes on the basis of sex.

Response: Comment accepted. The provision of a separate dormitory to athletes of one sex but not the other will be considered a failure to provide equivalent benefits as required by the regulation.

(5) *Comment:* Commentors, particularly colleges and universities, expressed concern that the differences in the rules of intercollegiate athletic associations could result in unequal distribution of benefits and opportunities to men's and women's athletic programs, thus placing the institutions in a posture of noncompliance with Title IX.

Response: Commentors made this point with regard to § 86.6(c) of the Title IX regulation, which reads in part:

"The obligation to comply with (Title IX) is not obviated or alleviated by any rule or regulation of any * * * athletic or other * * * association * * *"

Since the penalties for violation of intercollegiate athletic association rules can have a severe effect on the athletic opportunities within an affected program, the Department has re-examined this regulatory requirement to determine whether it should be modified. Our conclusion is that modification would not have a beneficial effect, and that the present requirement will stand.

Several factors enter into this decision. First, the differences between rules affecting men's and women's programs are numerous and change constantly. Despite this, the Department has been unable to discover a single case in which those differences require members to act in a discriminatory manner. Second, some rule differences may permit decisions resulting in discriminatory distribution of benefits and opportunities to men's and women's programs. The fact that institutions respond to differences in rules by choosing to deny equal opportunities, however, does not mean that the rules themselves are at fault; the rules do not prohibit choices that would result in compliance with Title IX. Finally, the rules in question are all established and subject to change by the membership of the association. Since all (or virtually all) association member institutions are subject to Title IX, the opportunity exists for these institutions to resolve collectively any wide-spread Title IX compliance problems resulting from association rules. To the extent that this has not taken place, Federal intervention on behalf of statutory beneficiaries is both warranted and required by the law. Consequently, the Department can follow no course other than to continue to disallow any defenses against findings of noncompliance with Title IX that are based on intercollegiate athletic association rules.

(6) *Comment:* Some commentors suggested that the equal average per capita test was unfairly skewed by the high cost of some "major" men's sports, particularly football, that have no equivalently expensive counterpart among women's sports. They suggested that a certain percentage of those costs (e.g., 50% of football scholarships) should be excluded from the expenditures on male athletes prior to application of the equal average per capita test.

Response: Since equality of average per capita expenditures has been eliminated as a standard of presumed compliance, the suggestion is no longer relevant. However, it was possible under that standard to exclude expenditures that were due to the nature of the sport, or the scope of competition and thus were not discriminatory in effect. Given the diversity of intercollegiate athletic programs, determinations as to whether disparities in expenditures were nondiscriminatory would have been made on a case-by-case basis. There was no legal support for the proposition that an arbitrary percentage of expenditures should be excluded from the calculations.

(7) *Comment:* Some commentors urged the Department to adopt various forms of team-based comparisons in assessing equality of opportunity between men's and women's athletic programs. They stated that well-developed men's programs are frequently characterized by a few "major" teams that have the greatest spectator appeal, earn the greatest income, cost the most to operate, and dominate the program in other ways. They suggested that women's programs should be similarly constructed and that comparability should then be required only between "men's major" and "women's major" teams, and between "men's minor" and "women's minor" teams. The men's teams most often cited as appropriate for "major" designation have been football and basketball, with women's basketball and volleyball being frequently selected as the counterparts.

Response: There are two problems with this approach to assessing equal opportunity. First, neither the statute nor the regulation calls for identical programs for male and female athletes. Absent such a requirement, the Department cannot base noncompliance upon a failure to provide arbitrarily identical programs, either in whole or in part.

Second, no subgrouping of male or female students (such as a team) may be used in such a way as to diminish the protection of the larger class of males and females in their rights to equal participation in educational benefits or opportunities. Use of the "major/minor" classification does not meet this test where large participation sports (e.g., football) are compared to smaller ones (e.g., women's volleyball) in such a manner as to have the effect of disproportionately providing benefits or opportunities to the members of one sex.

(8) *Comment:* Some commenters suggest that equality of opportunity should be measured by a "sport-specific" comparison. Under this approach, institutions offering the same sports to men and women would have an obligation to provide equal opportunity within each of those sports. For example, the men's basketball team and the women's basketball team would have to receive equal opportunities and benefits.

Response: As noted above, there is no provision for the requirement of identical programs for men and women, and no such requirement will be made by the Department. Moreover, a sport-specific comparison could actually create unequal opportunity. For example, the sports available for men at an institution might include most or all of those available for women; but the men's program might concentrate resources on sports not available to women (e.g., football, ice hockey). In addition, the sport-specific concept overlooks two key elements of the Title IX regulation.

First, the regulation states that the selection of sports is to be representative of student interests and abilities (86.41(c)(1)). A requirement that sports for the members of one sex be available or developed solely on the basis of their existence or development in the program for members of the other sex could conflict with the regulation where the interests and abilities of male and female students diverge.

Second, the regulation frames the general compliance obligations of recipients in terms of program-wide benefits and opportunities (86.41(c)). As implied above, Title IX protects the individual as a student-athlete, not as a basketball player, or swimmer.

(9) *Comment:* A coalition of many colleges and universities urged that there are no objective standards against which compliance with Title IX in intecollegiate athletics could be measured. They felt that diversity is so great among colleges and universities that no single standard or set of standards could practicably apply to all affected institutions. They concluded that it would be best for individual institutions to determine the policies and procedures by which to ensure nondiscrimination in intercollegiate athletic programs.

Specifically, this coalition suggested that each institution should create a group representative of all affected parties on campus.

This group would then assess existing athletic opportunities for men and women, and, on the basis of the assessment, develop a plan to ensure nondiscrimination. This plan would then be recommended to the Board of Trustees or other appropriate governing body.

The role foreseen for the Department under this concept is:

(a) The Department would use the plan as a framework for evaluating complaints and assessing compliance;

(b) The Department would determine whether the plan satisfies the interests of the involved parties; and

(c) The Department would determine whether the institution is adhering to the plan.

These commenters felt that this approach to Title IX enforcement would ensure an environment of equal opportunity.

Response: Title IX is an anti-discrimination law. It prohibits discrimination based on sex in educational institutions that are recipients of Federal assistance. The legislative history of Title IX clearly shows that it was enacted because of discrimination that currently was being practiced against women in educational institutions. The Department accepts that colleges and universities are sincere in their intention to ensure equal opportunity in intercollegiate athletics to their male and female students. It cannot, however, turn over its reponsibility for interpreting and enforcing the law. In this case, its responsibility includes articulating the standards by which compliance with the Title IX statute will be evaluated.

The Department agrees with this group of commenters that the proposed self-assessment and institutional plan is an excellent idea. Any institution that engages in the assessment/planning process, particularly with the full participation of interested parties as envisioned in the proposal, would clearly reach or move well toward compliance. In addition, as explained in Section VIII of this Policy Interpretation, any college or university that has compliance problems but is implementing a plan that the Department determines will correct those problems within a reasonable period of time, will be found in compliance.

[FR Doc. 79-37965 Filed 12-10-79; 8:45 am]

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Proposed Rules

Federal Register
Vol. 44, No. 239
Tuesday, December 11, 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

Agricultural Stabilization and Conservation Service

7 CFR Part 723

Proclamations of Marketing Quotas for the 1980–81, 1981–82 and 1982–83 Marketing Years—Maryland (Type 32) and Cigar-Filler (Type 41) Tobaccos

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Secretary of Agriculture is preparing to proclaim national marketing quotas for Maryland (type 32) and Cigar-Filler (type 41) tobaccos. These announcements are required by law to be made by February 1, 1980. You are invited to submit written comments and other information with respect to the determination of the quotas and related matters.

DATES: Written comments must be received by January 10, 1980 in order to be sure of consideration.

ADDRESSES: Send comments to the Director, Price Support and Loan Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, ASCS, (202) 447–6733.

SUPPLEMENTARY INFORMATION: The Agricultural Adjustment Act of 1938, as amended ("the Act") requires the Secretary to proclaim national marketing quotas for Maryland (type 32) and cigar-filler (type 41) tobaccos for the 1980–81, 1981–82, and 1982–83 marketing years. Within 30 days after the proclamation of such national marketing quotas a referenda will be conducted of farmers engaged in the 1979 production of each of such kinds of tobacco to determine whether they favor or oppose marketing quotas for such years. A national marketing quota, national acreage allotment, national factor for apportioning the national acreage allotment (less reserve) to old farms, and the amount of the national reserve and parts thereof available for new farms and for making corrections and adjusting inequities in old farm allotments will be determined and announced for each of these kinds of tobacco for the 1980–81 marketing year.

The Act (7 U.S.C. 1312(a)) provides that the Secretary shall proclaim not later than February 1 of any marketing year with respect to these kinds of tobacco, a national marketing quota for each of the next three succeeding marketing years whenever he determines with respect to such kinds of tobacco—

(1) That a national marketing quota has not previously been proclaimed and the total supply as of the beginning of such marketing year exceeds the reserve supply level therefor;

(2) That such marketing year is the last year of three consecutive years for which marketing quotas previously proclaimed will be in effect;

(3) That amendments have been made in provisions for establishing farm acreage allotments which will cause material revision of such allotments before the end of the period for which quotas are in effect; or

(4) That a marketing quota previously proclaimed for such marketing year is not in effect because of disapproval by producers: *Provided,* That if such producers have disapproved national marketing quotas for three successive years subsequent to 1952, thereafter a national marketing quota shall not be proclaimed hereunder which would be in effect for any marketing year within the three-year period for which national marketing quotas previously proclaimed were disapproved by producers, unless prior to November 10 of the marketing year one-fourth or more of the farmers engaged in the production of the crop of tobacco harvested in the calendar year in which such marketing year begins petition the Secretary, in accordance with such regulations as he/she may prescribe, to proclaim a national marketing quota for each of the next three succeeding marketing years.

Producers of both Maryland (type 32) and cigar-filler (type 41) tobaccos have disapproved national marketing quotas for three successive years subsequent to 1952. Quotas for these kinds of tobacco were last proclaimed for the 1977–78, 1978–79, and 1979–80 marketing years (42 FR 6817). Producers of both Maryland (type 32) and cigar-filler (type 41) tobaccos disapproved marketing quotas in separate referenda held during the period February 22–25, 1977 (42 FR 27208).

Section 301(b)(15) of the Act (7 U.S.C. 1301(b)(15)) defines "tobacco" as each one of the kinds of tobacco listed below comprising the types specified as classified in Service and Regulatory Announcement Numbered 118 (Part 30 of this title) of the former Bureau of Agricultural Economics of the Department:

Flue-cured tobacco, comprising types 11, 12, 13 and 14;
Fire-cured tobacco, comprising type 21;
Fire-cured tobacco, comprising types 22, 23, and 24;
Dark air-cured tobacco, comprising types 35 and 36;
Virginia sun-cured tobacco, comprising type 37;
Burley tobacco, comprising type 31;
Maryland tobacco, comprising type 32;
Cigar-filler and cigar-binder tobacco, comprising types 42, 43, 44, 45, 46, 51, 52, 53, 54 and 55; and
Cigar-filler tobacco, comprising type 41.

Section 312(b) of the Act (7 U.S.C. 1312(b)) provides that the Secretary shall determine and announce, not later than the first day of February 1980 with respect to the kinds of tobacco covered by this notice, the amount of the national marketing quota which will be in effect for the 1980–81 marketing year in terms of the total quantity of tobacco which may be marketed which will make available during such marketing year a supply of each kind of tobacco equal to the reserve supply level. Section 312(b) provides further that the amount of the 1980–81 national marketing quota (determined pursuant to such section) may, not later than March 1, 1980, be increased by not more than 20 percent if the Secretary determines that such increase is necessary in order to meet market demands or to avoid undue restrictions of marketings in adjusting the total supply to the reserve supply level.

The Act (7 U.S.C. 1301(b)) defines the "total supply" of tobacco for any marketing year as the carry over at the beginning of the marketing year (or on January 1 of such marketing year in the case of Maryland tobacco), plus the estimated production in the United States during the calendar year in which such marketing year begins. "Reserve supply level" is defined as the normal

supply plus 5 percent thereof. "Normal supply" is defined as a normal year's domestic consumption and exports, plus 175 per centum of a normal year's domestic consumption and 65 percent of a normal year's exports. A "normal year's domestic consumption" is defined as the yearly average quantity produced in the United States and consumed in the United States during the 10 marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption. A "normal year's exports" is defined as the yearly average quantity produced in the United States which was exported from the United States during the 10 marketing years immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports.

The Act (7 U.S.C. 1312(c)) requires that within 30 days after national marketing quotas are proclaimed under section 312(a) of the Act for a kind of tobacco, the Secretary shall conduct a referendum of farmers engaged in the production of the crop of such kind of tobacco harvested immediately prior to the holding of the referendum to determine whether such farmers are in favor of or opposed to quotas for the next three succeeding marketing years. If more than one-third of the farmers voting in a referendum for a kind of tobacco oppose quotas, such results shall be proclaimed by the Secretary and the national marketing quotas so proclaimed shall not be in effect but results shall in no way affect or limit the subsequent proclamation and submission to a referendum, as otherwise provided in section 312 of the Act (7 U.S.C. 1312), of national marketing quotas.

The Act (7 U.S.C. 1313(g)) authorizes the Secretary to convert the national marketing quota into a national acreage allotment on the basis of the national average yield for the five years immediately preceding the year in which the national marketing quota is proclaimed, and to apportion the national acreage allotment (less a reserve of not to exceed 1 percent thereof for new farms and for making corrections and adjusting inequities in old farm allotments) among old farms.

The Act (7 U.S.C. 1313(g)) also provides that any acreage of tobacco harvested in excess of the farm acreage allotment for the year 1955 or any subsequent crop shall not be taken into account in establishing farm acreage allotments.

Proposed Rule

The subjects and issues involved in making the determinations described in this notice are:

1. The amount of the national marketing quota for each kind of tobacco for the 1980–81 marketing year.

2. The conversion of the national marketing quotas into national acreage allotments and apportionment of same, less reserve of not to exceed 1 percent, among old farms.

3. The amounts of the national acreage allotments to be reserved for new farms, and for making corrections and adjusting inequities in old farm allotments.

4. The date(s) or period(s) of the two referenda on quotas for the 1980–81, 1981–82, and 1982–83 marketing years for Maryland (type 32) and cigar-filler (type 41) tobacco, and whether either or both of the referenda should be conducted at polling places rather than by mail ballot (31 FR 12011).

All written submissions made pursuant to the notice will be made available for public inspection from 8:15 a.m. to 4:45 p.m. Monday through Friday, in Room 3741, U.S.D.A. South Building, 14th and Independence Avenue, SW., Washington, D.C.

This amendment has not been classified "significant", and is being published under emergency procedures, as authorized by Executive Order 12044 and Secretary's Memorandum No. 1955, without a full 60-day comment period. It has been determined by Jerome F. Sitter, Director, Price Support and Loan Division that an emergency situation exists which warrants less than a full 60-day comment period on this proposal because quotas must be proclaimed for these kinds of tobacco by February 1, 1980.

A Draft Impact Analysis has been prepared and is available from Robert L. Tarczy, Price Support and Loan Division, Room 3741, South Building, P.O. Box 2415, Washington, D.C. 20013.

Signed at Washington, D.C., on December 4, 1979.

John W. Goodwin,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 79-37806 Filed 12-10-79; 8:45 am]

BILLING CODE 3410-05-M

Animal and Plant Health Inspection Service

9 CFR Part 113

Viruses, Serums, Toxins, and Analogous Products; Amended Potency Tests; Leptospira and Clostridium Bacterin Standards

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed amendment would revise the potency tests in eight standard requirements. Four standard requirements for leptospira bacterins and four standard requirements for clostridium bacterins and bacterin-toxoids would be revised to permit the use of more animals than are required for the challenge phase of a test when initiating potency tests. This proposal would permit the use of one or two extra vaccinates and one or two extra controls. The number of animals required for challenge would remain unchanged.

During potency testing under the present standards, if a test animal dies due to causes not attributable to the product, the test may be declared a "no test" because insufficient animals remain for challenge. This proposed amendment would provide a means of avoiding such "no tests."

Procedures for the injection of guinea pigs used in the potency tests in the four standard requirements for clostridium bacterins and bacterin-toxoids would also be revised by increasing the time interval between the first and second injection of product from 9 to 10 days to 21 to 23 days. Data provided to the Department indicates this proposed revision would increase the level of protection seen in the test guinea pigs, while retaining an acceptable dose-response relationship and would improve the correlation of the test with protection in the host animal.

A change would also be made in the standard requirement for Clostridium Sordellii Bacterin to clarify and correct its intended meaning.

DATE: Comments must be received on or before February 11, 1980.

ADDRESS: Interested parties are invited to submit written data, views, or arguments regarding the proposed regulation to: Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 828–A, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. R. J. Price, 301–436–8245.

SUPPLEMENTARY INFORMATION: Present standard requirements for leptospira bacterins and clostridium bacterins require that potency tests be initiated with the same number of test animals as required for challenge. If one or more of the test animals dies between vaccination and challenge due to causes not attributable to the product, the test may be ruled as a "no test" because an insufficient number of animals remain for challenge. This proposed amendment would add flexibility to the potency tests for these products by permitting the initiation of such tests with more test animals than is needed for challenge. Therefore, it would provide added assurance that if an occasional death occurs after the test is initiated, there would still be an adequate number of survivors for completion of the test. In this manner, a "no test" result would be avoided, providing that at least 10 animals are still remaining for the challenge phase.

Potency tests provided in the present standard requirements for clostridium bacterins and bacterin-toxoids consist of vaccination-challenge tests conducted in guinea pigs. For such tests to be valid, they must demonstrate an acceptable dose-response relationship and correlate with efficacy in the host. Data developed by veterinary biologics licensees indicates an acceptable dose-response relationship can be maintained and correlation with protection in the host can be improved by changing the time interval that is used in these tests between the injection of the first and second dose of product. Increasing the present injection interval of 9 to 10 days to an interval of 21 to 23 days has been shown to increase the level of protection seen in guinea pigs without reducing the validity of the test. Data also indicate this change results in a potency test that more adequately reflects the expected product efficacy in the host animal.

On December 2, 1977, an amendment to § 113.94 was published in 42 FR 61246. This amendment added a potency test to the standard requirement for products containing Clostridium Sordellii Bacterin-Toxoid. It provided that potency of these products could be evaluated by using either the test written into the filed Outline of Production or the two-stage test provided in the amendment. The supplementary information indicated that host animals, such as calves, may be used in tests done according to filed Outlines of Production. It was the Department's intent that in potency tests conducted according to filed Outlines of Production in lieu of the standard guinea pig test provided in the regulations, only the use of host animals would be allowed. This is to assure that only valid and reliable procedures are used in evaluating products for potency. This proposed amendment would, therefore, clarify and correct this intent by changing the introductory paragraph of § 113.94(c) to indicate if an alternate test is provided in the Outline of Production, it must be a host animal test.

§§ 113.86–113.89 and 113.91–113.94 [Amended]

1. The first letter in each word of the headings for §§ 113.86, 113.87, 113.88, 113.89, 113.91, 113.92, 113.93, and 113.94 are to be capitalized.

2. Section 113.86 would be amended by revising paragraphs (c)(1), (c)(2), and (c)(3) to read:

§ 113.86 Leptospira Pomona Bacterin.

* * * * *

(c) * * *

(1) *Vaccinates.* Inject each of at least 10 but not more than 12 young adult hamsters, each weighing 50 to 90 grams, with 0.25 ml of the diluted bacterin either subcutaneously or intramuscularly, in accordance with the label recommendations for use.

(2) *Controls.* Retain at least 10 but not more than 12 additional hamsters from the same group as unvaccinated controls.

(3) *Challenge.* From 14 to 18 days postvaccination, challenge each of 10 vaccinates and each of 10 controls intraperitoneally with a suspension of virulent *Leptospira Pomona* organisms, using a dose of 10–10,000 hamster LD_{50} as determined by titration.

* * * * *

3. Section 113.87 would be amended by revising paragraphs (c)(1), (c)(2), and (c)(3) to read:

§ 113.87 Leptospira Icterohaemorrhagiae Bacterin.

* * * * *

(c) * * *

(1) *Vaccinates.* Inject each of at least 10 but not more than 12 young adult hamsters, each weighing 50 to 90 grams, with 0.25 ml of the diluted bacterin either subcutaneously or intramuscularly, in accordance with the label recommendations for use.

(2) *Controls.* Retain at least 10 but not more than 12 additional hamsters from the same group as unvaccinated controls.

(3) *Challenge.* From 14 to 18 days postvaccination, challenge each of 10 vaccinates and each of 10 controls intraperitoneally with a suspension of virulent *Leptospira icterohaemorrhagiae* organisms using a dose of 10–10,000 hamster LD_{50} as determined by titration.

* * * * *

4. Section 113.88 would be amended by revising paragraphs (c)(1), (c)(2), and (c)(3) to read:

§ 113.88 Leptospira Canicola Bacterin.

* * * * *

(c) * * *

(1) *Vaccinates.* Inject each of at least 10 but not more than 12 young adult hamsters, each weighing 50 to 90 grams, with 0.25 ml of the diluted bacterin either subcutaneously or intramuscularly, in accordance with the label recommendations for use.

(2) *Controls.* Retain at least 10 but not more than 12 additional hamsters from the same group as unvaccinated controls.

(3) *Challenge.* From 14 to 18 days postvaccination, challenge each of 10 vaccinates and each of 10 controls intraperitoneally with a suspension of virulent *Leptospira canicola* organisms using a dose of 10–10,000 hamster LD_{50} as determined by titration.

* * * * *

5. Section 113.89 would be amended by revising paragraphs (c)(1), (c)(2), and (c)(3) to read:

§ 113.89 Leptospira Grippotyphosa Bacterin.

* * * * *

(c) * * *

(1) *Vaccinates.* Inject each of at least 10 but not more than 12 young adult hamsters, each weighing 50 to 90 grams, with 0.25 ml of the diluted bacterin either subcutaneously or intramuscularly, in accordance with the label recommendations for use.

(2) *Controls.* Retain at least 10 but not more than 12 additional hamsters from the same group as unvaccinated controls.

(3) *Challenge.* From 14 to 18 days postvaccination, challenge each of 10 vaccinates and each of 10 controls intraperitoneally with a suspension of virulent *Leptospira grippotyphosa* organisms using a dose of 10–10,000 hamster LD_{50} as determined by titration.

* * * * *

6. Section 113.91 would be amended by revising paragraphs (c)(1) and (c)(2) to read:

§ 113.91 Clostridium Chauvoei Bacterin.

* * * * *

(c) * * *

(1) Each of at least 8 but not more than 10 guinea pigs, each weighing 300 to 500 grams, shall be injected subcutaneously with a guinea pig dose. A second guinea pig dose shall be injected 21 to 23 days after the first

dose. Each guinea pig dose shall be one-fifth of the dose recommended on the label for a calf.

(2) *Clostridium chauvoei* challenge material, available upon request from Veterinary Services, shall be used for challenge 14 to 15 days following the last injection of the product. Each of eight vaccinates and each of five additional nonvaccinated guinea pigs for controls shall be injected intramuscularly with approximately 100 LD_{50} of challenge material. This dose shall be determined by statistical analysis of results of titrations of the challenge material. The vaccinates and controls shall be observed for 3 days postchallenge and all deaths recorded.

* * * * *

7. Section 113.92 would be amended by revising paragraphs (c)(1) and (c)(2) to read:

§ 113.92 Clostridium Haemolyticum Bacterin.

* * * * *

(c) * * *

(1) Each of at least 8 but not more than 10 guinea pigs, each weighing 300 to 500 grams, shall be injected subcutaneously with a guinea pig dose. A second guinea pig dose shall be injected 21 to 23 days after the first dose. Each guinea pig dose shall be one-fifth of the dose recommended on the label for a calf.

(2) *Clostridium haemolyticum* challenge material, available upon request from Veterinary Services, shall be used for challenge 14 to 15 days following the last injection of the product. Each of eight vaccinates and each of five additional nonvaccinated guinea pigs for controls shall be injected intramuscularly with approximately 100 LD_{50} of challenge material. This dose shall be determined by statistical analysis of results of titrations of the challenge material. The vaccinates and controls shall be observed for 3 days postchallenge and all deaths recorded.

* * * * *

8. Section 113.93 would be amended by revising paragraphs (c)(1) and (c)(2) to read:

§ 113.93 Clostridium Novyi Bacterin-Toxoid.

* * * * *

(c) * * *

(1) Each of at least 8 but not more than 10 guinea pigs, each weighing 300 to 500 grams, shall be injected subcutaneously with a guinea pig dose. A second guinea pig dose shall be injected 21 to 23 days after the first dose. Each guinea pig dose shall be one-fifth of the dose recommended on the label for a calf.

(2) *Clostridium novyi* challenge material, available upon request from Veterinary Services, shall be used for challenge 14 to 15 days following the last injection of the product. Each of eight vaccinates and each of five additional nonvaccinated guinea pigs for controls shall be injected intramuscularly with approximately 100 LD_{50} of challenge material. This dose shall be determined by statistical analysis of results of titrations of the challenge material. The vaccinates and controls shall be observed for 3 days postchallenge and all deaths recorded.

* * * * *

9. Section 113.94 would be amended by revising the introductory portion of paragraph (c) and paragraphs (c)(1) and (c)(2) to read:

§ 113.94 Clostridium Sordellii Bacterin-Toxoid.

* * * * *

(c) *Potency test.* Bulk or final container samples of completed product from each serial shall be tested for potency by one of the following methods: A host animal test written into the filed Outline of Production, or the two-stage test provided in this paragraph.

(1) Each of at least 8 but not more than 10 guinea pigs, each weighing 300 to 500 grams, shall be injected subcutaneously with a guinea pig dose. A second guinea pig dose shall be injected 21 to 23 days after the first dose. Each guinea pig dose shall be one-fifth of the dose recommended on the label for a calf.

(2) *Clostridium sordellii* challenge material, available upon request from Veterinary Services, shall be used for challenge 14 to 15 days following the second injection of the product. Each of eight vaccinates and each of five additional nonvaccinated guinea pigs for controls shall be injected intramuscularly with approximately 100 LD_{50} of challenge material. This dose shall be determined by statistical analysis of results of titrations of the challenge material. The vaccinates and controls shall be observed for 3 days postchallenge and all deaths recorded.

* * * * *

All written submissions made pursuant to this notice will be made available for public inspection at the address listed in this document during regular hours of business (8 a.m. to 4:30 p.m., Monday to Friday, except holidays) in a manner convenient to the public business (7 CFR 12.7(b)).

Done at Washington, D.C., this 3rd day of December 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 "significant" under those criteria. A Draft Impact Analysis Statement has been prepared and is available from Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 828–A, Federal Building, Hyattsville, MD 20782.

M. T. Goff,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 79-37818 Filed 12-10-79; 8:45 am]

BILLING CODE 3410-34-M

Food Safety and Quality Service

9 CFR Part 319

Pizza Standard; Solicitation of Information

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Solicitation of information.

SUMMARY: The Food Safety and Quality Service is seeking information from all interested members of the public to advise on the need for modification of the pizza standard contained in the Federal meat inspection regulations. The Agency has received requests to revise the standard to adjust the amount of meat to be required, and to make new provisions for the labeling of cheese-like substances. Prior to deciding what, if anything, to propose with respect to these matters, the Agency will consider all comments in response to this notice.

DATE: Comments and information must be received on or before February 11, 1980.

ADDRESS: Written comments to: Executive Secretariat, ATTN: Annie Johnson, Food Safety and Quality Service, U.S. Department of Agriculture, Room 3807, South Agriculture Building, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Irwin Fried, Acting Director, Meat and Poultry Standards and Labeling Division, Compliance Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–6042.

SUPPLEMENTARY INFORMATION:

Comments

Interested persons are invited to submit comments and information concerning this request. Written comments must be sent in duplicate to the Executive Secretariat. Comments

should bear reference to the date and page number of this issue of the **Federal Register**. All comments submitted pursuant to this notice will be made available for public inspection in the office of the Executive Secretariat during regular hours of business.

Background

Pizza which include meat are subject to the jurisdiction of the Food Safety and Quality Service (FSQS), as meat food products pursuant to the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*). Section 7(c) of the Act authorizes the Secretary of Agriculture to prescribe standards of identity or composition for such products.

The Department's standard for pizza, since it was first adopted almost a decade ago, has been modified only once to permit the use of mechanically processed product. In 9 CFR 319.600, "Pizza with Meat" is defined as "* * * a bread base meat food product with tomato sauce, cheese, and meat topping. It shall contain cooked meat from not less than 15 percent raw meat. Mechanically Processed (Species) Product may be used in accordance with § 319.6." A similar definition is included in the regulations for "Pizza with Sausage" although the meat content requirement for this product is 12 percent cooked or 10 percent dry sausage.

In 1973, the Animal and Plant Health Inspection Service, the predecessor agency of FSQS, published a proposal to change the standard of composition for products labeled "pizza" (38 FR 16363–16364). That proposal would have allowed the use of uncooked meat in pizza products, and required that the currently unspecified content of cheese in this food item be specified at 12 percent. In response to that notice, the Department received 80 comments. Thirty-eight were from consumers of which approximately half opposed the use of uncooked meat as it might affect wholesomeness. Twenty-one processors commented. Most of the industry commenters strongly opposed the 12 percent cheese requirement and/or the inability to use cheese-like substances. Twenty-one other comments were received from State officials, trade organizations, Congressmen, consumer organizations, and the academic community. Most of these expressed opposition to one or more of the proposal's provisions. The proposal was never finalized.

Recently, the Department has received a request from industry to modify the pizza standard. Jeno F. Paulucci, representing Jeno's Pizza, Duluth, Minnesota, has petitioned the Secretary requesting that the pizza standard be revised to provide for three new classes of pizza: (1) "Pizza with meat sauce", containing no less than 6 percent fresh meat; (2) "pizza flavored with meat", containing no less than 3 percent fresh meat; and (3) "pizza", containing no less than 3 percent fresh meat.

The Wisconsin Cheese Makers Association has also petitioned the Department to provide informative labeling for products containing cheese-like ingredients. It is their contention that consumers expect pizza to contain cheese. Unless such item is properly labeled, this Association suggests that consumers could be deceived if a cheese-like ingredient is used on a pizza that looks like cheese. The use of a cheese-like ingredient is now only listed in the statement of ingredients.

The Administrator believes that there may be other viewpoints on these specific issues and that there also may be other aspects of the present pizza standard which are of concern to the general public. Therefore, before deciding whether to propose any modifications of the present standard, the Administrator is requesting that interested parties present their view on this matter. These comments will assist the Department in regulating a popular food product so as to assure that it is not adulterated and properly labeled.

Done at Washington, D.C., on December 4, 1979.

Donald L. Houston,

Administrator, Food Safety and Quality Services.

[FR Doc. 79-37756 Filed 12-10-79; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 46

[Docket No. RM80-9]

Interlocking Positions Under Section 211 of the Public Utility Regulatory Policies Act of 1978; Extension of Time To File Comments

December 6, 1979.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of extension of time to file comments.

SUMMARY: Deadline for filing of comments regarding the above-identified proposed rulemaking is extended from Monday, December 10, 1979 to Friday, December 21, 1979. (44 FR 66205, November 19, 1979.)

DATE: Comments due December 21, 1979.

ADDRESS: Comments should be directed to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.W., Washington, D.C. 20426 and should reference Docket No. RM80-9.

FOR FURTHER INFORMATION CONTACT:

Colette K. Bohatch, Regulatory Development, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357-8079

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-37957 Filed 12-10-79; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

21 CFR Ch. I

[Docket No. 79N-0200]

Lead in Food; Advance Notice of Proposed Rulemaking; Extension of Comment Period

Correction

In FR Doc. 79-36230, appearing in the issue of Tuesday, November 27, 1979, at page 67673, make the following correction on page 67674, the first column, the fourth blocked paragraph designated as "FOR FURTHER INFORMATION CONTACT:", the second line, correct "(HEF-334)" to read "(HFF-334)".

BILLING CODE 1505-01-M

21 CFR Part 333

[Docket No. 75N-0183]

Topical Antimicrobial Products for Over-the-Counter Use; Amended Reopening of the Administrative Record

AGENCY: Food and Drug Administration.

ACTION: Amended Reopening of the Administrative Record.

SUMMARY: This document amends a notice that was published in the **Federal Register** of Friday, October 26, 1979 reopening the administrative record for topical antimicrobial products for over-the-counter (OTC) human use.

FOR FURTHER INFORMATION CONTACT:

William E. Gilbertson, Bureau of Drugs (HFD-510), Food and Drug Administration, Department of Health,

Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4960.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 9, 1979 (44 FR 13041), the Food and Drug Administration (FDA) published a notice reopening the administrative record of the proposed monograph establishing conditions for the safety, effectiveness, and labeling of OTC topical antimicrobial drug products for human use, for example, antibacterial soaps, surgical scrubs, skin cleanser, and first-aid preparations. Interested persons were invited to submit new or additional data and comments by June 7, 1979 and reply comments by July 9, 1979. In that notice, the agency announced that FDA would publish an updated tentative final order and monograph based on a review and evaluation of these new submissions and on a reevaluation of existing data.

In the **Federal Register** of October 26, 1979 (44 FR 61609), FDA published a notice reopening the administrative record again for this category of drugs from October 26, 1979 to March 26, 1980 to permit interested persons to submit further new data on those conditions classified in Category II or Category III in a previously published tentative final order (43 FR 1210, January 6, 1978). Comments on these new data may be filed with the Hearing Clerk, FDA, on or before May 27, 1980, at which time the administrative record will be closed. In that notice the agency inadvertently omitted reference to FDA's commitment to publish an updated tentative final order and monograph prior to a final monograph. Therefore, this notice reaffirms that commitment.

The updated tentative final order and monograph will be based on the administrative record developed through May 27, 1980. Following publication of an updated tentative final order and monograph, interested persons will be given 30 days in which to file written objections and requests for an oral hearing. Additional data on conditions addressed in the updated tentative final monograph, but not considered in the panel report or in the tentative final monograph published on January 6, 1978, may also be submitted during a period of time to be specified in the revised tentative final order.

Dated: December 3, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-37740 Filed 12-10-79; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 7

[LR-268-76]

Election To Treat Outdoor Advertising Displays as Real Property

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the involuntary conversion of real property. These proposed regulations provide rules regarding the making of an election to treat property that constitutes certain outdoor advertising displays as real property for income tax purposes. Changes to the applicable law were made by the Tax Reform Act of 1976. The regulations would provide the guidance needed to make the election allowed by law.

DATES: Written comments and requests for public hearings must be delivered or mailed by February 11, 1980. The amendments are proposed to be effective for taxable years beginning after December 31, 1970.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–268–76), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Douglas W. Charnas of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202–566–3346).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) and the Temporary Income Tax Regulations under the Tax Reform Act of 1976 (26 CFR Part 7) under section 1033 of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 2127 of the Tax Reform Act of 1976 (Pub. L. 94–455, 90 Stat. 1920) and are to be issued under the authority contained in sections 1033 and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1920, 26 U.S.C. 1033; 68A Stat. 917, 26 U.S.C. 7805).

Explanation of Provisions

Section 2127 of the Tax Reform Act of 1976 amended section 1033 to allow taxpayers an election to treat property that constitutes certain outdoor advertising displays as real property. In general, the election is available for taxable years beginning after December 31, 1970, including, in the case of an election made by the 180th day after finalization of the proposed regulations, taxable years which otherwise would be closed because the period for filing a claim for credit or refund has expired. No election may be made, however, with respect to any property for which (i) the investment credit under section 38 has been claimed, or (ii) an election of additional first-year depreciation allowance for small businesses under section 179 (a) is in effect.

Under the proposed regulations, the election is to be made by attaching a statement to the return (or amended return) for the first taxable year to which the election is to apply. Once made it is irrevocable without the consent of the Commissioner and applies to all outdoor advertising displays of the taxpayer which may be made the subject of an election under section 1033 (g)(3), including all outdoor advertising displays acquired or constructed by the taxpayer in a taxable year after the taxable year for which the election is made.

These proposed regulations would also supersede certain temporary regulations (26 CFR 7.0 (c)(6)) relating to the election.

Comments and Requests for Public Hearing

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

Drafting Information

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

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

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

§ 1.1033(a)–1 [Amended]

Paragraph 1. Paragraph (b) of § 1.1033(a)–1 is amended by striking out "§ 1.1033(f)–1" and inserting in lieu thereof "§ 1.1033(g)–1".

§ 1.1033(a)–2 [Amended]

Par. 2. Paragraph (c)(3) of § 1.1033(a)–2 is amended by stiking out "section 1033(f)(4)" and inserting in lieu thereof "section 1033(g)(4)", and by striking out "§ 1.1033(f)–1" and inserting in lieu thereof "§ 1.1033(g)–1".

§ 1.1033(g)–1 Redesignated as § 1.1033(h)–1.

Par. 3. Section 1.1033(g)–1 is redesignated as § 1.1033(h)–1 and is amended by striking out "§ 1.1033(f)–1" and inserting in lieu thereof "§ 1.1033(g)–1".

Par. 4. Section 1.1033(f)–1 is redesignated as section 1.1033(g)–1 and is amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d) and by adding a new paragraph (b) to read as set forth below:

§ 1.1033(g)–1 Condemnation of real property held for productive use in trade or business or for investment.

* * * * *

(b) *Election to treat outdoor advertising displays as real property* — (1) *In general.* Under section 1033(g)(3) of the Code, a taxpayer may elect to treat property which constitutes an outdoor advertising display as real property for purposes of chapter 1 of the Code. The election is available for taxable years beginning after December 31, 1970. In the case of an election made on or before the 180th day after the date of publication of this notice of proposed rulemaking as a Treasury decision, the election is available whether or not the period for filing a claim for credit or refund under section 6511 has expired. No election may be made with respect to any property for which (i) the investment credit under section 38 has been claimed, or (ii) an election of additional first-year depreciation allowance for small business under section 179(a) is in effect. The election once made applies to all outdoor advertising displays of the taxpayer which may be made the subject of an election under this paragraph, including all outdoor advertising displays acquired or constructed by the taxpayer in a taxable year after the taxable year for which the election is made. The election applies with respect to dispositions during the taxable year for which made and all subsequent taxable years (unless an effective revocation is made pursuant to paragraph (b)(2)(ii)).

(2) *Election*—(i) *Time and manner of making election*—(A) *In general.* Unless otherwise provided in the return or in the instructions for a return for a taxable year, any election made under section 1033(g)(3) shall be made by attaching a statement to the return (or amended return if filed on or before the 180th day after the date of publication of this notice as a Treasury decision) for the first taxable year to which the election is to apply. Any election made under this paragraph must be made not later than the time, including extensions thereof, prescribed by law for filing the income tax return for such taxable year or 180 days after the date of publication of this notice as a Treasury decision, whichever occurs last. If a taxpayer makes the election for a taxable year for which he or she has previously filed a return, the return for that taxable year and all other taxable years affected by the election must be amended to reflect any tax consequences resulting from the election. However, no return for a taxable year for which the period for filing a claim for credit or refund under section 6511 has expired may be amended to make any changes other than those resulting from the election.

(B) *Statement required when making election.* The statement required when making the election must clearly indicate that the election to treat outdoor advertising displays as real property is being made.

(ii) *Revocation of election by Commissioner's consent.* An election under section 1033(g)(3) shall be irrevocable unless consent to revoke is obtained from the Commissioner. In order to secure the Commissioner's consent to revoke an election, the taxpayer must file a request for revocation of election with the Commissioner of Internal Revenue, Washington, D.C. 20224. The request for revocation shall include—

(A) The taxpayer's name, address, and taxpayer identification number,

(B) The date on which and taxable year for which the election was made and the Internal Revenue Service office with which it was filed,

(C) Identification of all outdoor advertising displays of the taxpayer to which the revocation would apply (including the location, date of purchase, and adjusted basis in such property),

(D) The effective date desired for the revocation, and

(E) The reasons for requesting the revocation.

The Commissioner may require such other information as may be necessary in order to determine whether the requested revocation will be permitted. The Commissioner may prescribe administrative procedures (subject to such limitations, terms and conditions as he deems necessary) to obtain his consent to permit the taxpayer to revoke the election. The taxpayer may submit a request for revocation for any taxable year for which the period of limitations for filing a claim for credit or refund or overpayment of tax has not expired.

(3) *Definition of outdoor advertising display.* The term "outdoor advertising display" means a rigidly assembled sign, display, or device that constitutes, or is used to display, a commercial or other advertisement to the public and is permanently affixed to the ground or permanently attached to a building or other inherently permanent structure. The term includes highway billboards affixed to the ground with wood or metal poles, pipes, or beams, with or without concrete footings.

(4) *Character of replacement property.* For purposes of section 1033(g), an interest in real property purchased as replacement property for a compulsorily or involuntarily converted outdoor advertising display (with respect to which an election under this section is in effect) shall be considered property of a like kind as the property converted even though a taxpayer's interest in the replacement property is different from the interest held in the property converted. Thus, for example, a fee simple interest in real estate acquired to replace a converted billboard and a 5-year leasehold interest in the real property on which the billboard was located qualifies as property of a like kind under this section.

PART 7—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1976

Par. 5. Paragraph (c)(6) of § 7.0 is hereby deleted.

Jerome Kurtz,

Commissioner of Internal Revenue.

[FR Doc. 79-37847 Filed 12-10-79; 8:45 am]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

26 CFR Parts 1, 31, 36, 46, 48, 49, 154, 301, and 601

[CC:LR-1406]

Timely Mailing and Paying; Proposed Rulemaking

AGENCY: Internal Revenue Service and Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the timeliness of tax returns, payments and deposits. Changes to the applicable tax law were made by the Act of November 2, 1966, the Revenue and Expenditure Control Act of 1968, the Tax Reform Act of 1976, and the Act of October 28, 1977. The regulations would provide the public with the guidance needed to benefit from the provisions of those Acts and would affect all taxpayers.

DATES: Written comments and request for a public hearing must be delivered or mailed by February 11, 1980. The amendments are proposed to be effective for deposits mailed after June 28, 1968 and returns, other documents, and payments mailed after November 2, 1966, except as otherwise provided.

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

FOR FURTHER INFORMATION CONTACT: Geoffrey B. Lanning of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T, 202–566–3909, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document generally contains proposed amendments to the Regulations on Procedure and Administration under sections 6302, 6402, and 7502 of the Internal Revenue Code of 1954. These amendments are designed to conform the regulations to changes made by section 5(a) of the Act November 2, 1966 (Pub. L. 89–713; 80 Stat. 1110), section 106(a) of the Revenue and Expenditure Control Act of 1968 (82 Stat. 266), section 1210(a) of the Tax Reform Act of 1976 (90 Stat. 1711), and section 3 of the Act of October 28, 1977 (Pub. L. 95–147; 91 Stat. 1228), and are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Explanation of Proposed Regulations

Prior to amendment in 1966, section 7502 generally provided that if the requirements of that section were met, a claim, statement, or other document (other than a return) delivered by mail after the last date prescribed for filing the document would be considered timely filed if it was timely mailed. The Act of November 2, 1966, amended section 7502 to provide generally the same rules for the payment of taxes and the filing of returns. The Revenue and Expenditure Control Act of 1968 amended section 7502 to provide similar rules for deposits of tax.

The proposed amendments to the regulations contained in this document would conform the regulations to the expanded scope of section 7502 and would provide guidance with respect to the mailing and delivery requirements that must be met under section 7502.

The proposed amendments would also conform the regulations to reflect the addition of building and loan associations and credit unions as financial institutions that the Secretary of the Treasury may authorize to accept tax deposits.

Comments and Requests for a Public Hearing

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

Drafting Information

The principal author of these proposed regulations was Geoffrey B. Lanning of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other office of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Proposed amendments to the regulations.

The proposed amendments to 26 CFR Parts 1, 31, 36, 46, 48, 49, 154, 301 and 601 are as follows:

§ 1.1461–3 [Amended]

Paragraph 1. Paragraph (c) of § 1.1461–3 is amended by striking out "commercial banks" and inserting in lieu thereof "financial institutions".

§ 1.6151–1 [Amended]

Par. 2. Paragraph (d)(1) of § 1.6151–1 is amended by striking out "commercial banks" and inserting in lieu thereof "financial institutions".

Par. 3. Paragraph (d)(2) of § 1.6151–1 is amended by striking out "such banks" and inserting in lieu thereof "such financial institutions".

§ 1.6152–1 [Amended]

Par. 4. Paragraph (a)(3) of § 1.6152–1 is amended by striking out "commercial banks" and inserting in lieu thereof "financial institutions".

§ 1.6154–4 [Amended]

Par. 5. Section 1.6154–4 is amended by striking out "commercial banks" and inserting in lieu thereof "financal institutions".

§ 1.6302–1 [Amended]

Par. 6. Paragraph (a) of § 1.6302–1 is amended by adding to the end thereof the following sentence: "A deposit required to be made by this section may be deposited, at the election of the corporation, with a commercial bank, trust company, domestic building and loan association, or credit union authorized by the Secretary to accept tax deposits".

Par. 7. Paragraph (b) of § 1.6302–1 is amended to read as follows:

§ 1.6302–1 Use of Government depositaries in connection with corporation income and estimated income taxes.

* * * * *

(b) *Depositary forms.* A deposit required to be made by this section shall be made separately from a deposit required by any other section. A corporation may make one, or more than one, remittance of the amount required by this section to be deposited. Each remittance shall be accompanied by a Federal Tax Deposit, Corporation Income Taxes, form (FTD Form 503) which shall be prepared according to the instructions that apply to such form. The remittance, together with FTD Form 503, shall be forwarded to a Federal Reserve bank or, at the election of the corporation, to a financial institution authorized under Treasury Department Circular No. 1079 (31 CFR Part 214) to accept remittances of the tax for transmission to a Federal Reserve Bank. The timeliness of the deposit will be determined by the date stamped on the Federal Tax Deposit form by the Federal Reserve bank or the authorized financial institution or, if section 7502(e) applies, by the date the deposit is treated as received under section 7502(e). Each corporation making deposits under this section shall report on the return or declaration, for the period with respect to which such deposits are made, information regarding such deposits according to the instructions that apply to such return or declaration. Amounts deposited under this section shall be considered as payment of the tax.

* * * * *

§ 1.6302-2 [Amended]

Par. 8. Paragraph (a)(1) of § 1.6302-2 is amended by striking out "commercial bank" wherever it appears and inserting in lieu thereof "financial institution".

Par. 9. Paragraph (b)(1)(ii) of § 1.6302-2 is amended to read as follows:

§ 1.6302-2 Use of Government depositaries for payment of tax withheld on nonresident aliens and foreign corporations.

* * * * *

(b) *Depositary forms* —(1) *Remittances.* * * *

(ii) *Deposits for 1968 and later years.* Each remittance of amounts required to be deposited by paragraph (a) of this section for years after 1967 shall be accompanied by a Federal Tax Deposit, Tax Withheld at Source on Nonresident Aliens, Foreign Corporations, Tax-Free Covenant Bonds, form (FTD Form 512) which shall be prepared according to the instructions that apply to such form.

The remittance, together with FTD Form 512, shall be forwarded to a Federal Reserve bank or, at the election of the withholding agent, to a financial institution authorized under Treasury Department Circular No. 1079 (31 CFR Part 214) to accept remittances of the tax for transmission to a Federal Reserve bank. The timeliness of the deposit will be determined by the date stamped on the Federal Tax Deposit form by the Federal Reserve bank or the authorized financial institution or, if section 7502 (e) applies, by the date the deposit is treated as received under section 7502 (e). Each withholding agent making deposits under this section shall report on the return, for the period with respect to which such deposits are made, information regarding such deposits according to the instructions that apply to such return.

* * * * *

§ 31.6071(a)-1 [Amended]

Par. 10. Paragraphs (a)(1) and (c) of § 31.6071(a)-1 are amended by striking out "commercial bank" wherever it appears and inserting in lieu thereof "financial institution".

§ 31.6151-1 [Amended]

Par. 11. Paragraph (b) of § 31.6151-1 is amended by striking out "commerical banks" and inserting in lieu thereof "financial institutions".

§ 31.6302(c) [Amended]

Par. 12. Paragraph (a)(1)(i) and (iv) and (3)(iii) of § 31.6302(c)-1 is amended by striking out "commercial bank" wherever it appears and inserting in lieu thereof "financial institution".

§ 31.6302(c)-2 [Amended]

Par. 13. Paragraph (a) § 31.6302(c)-2 is amended by striking out "commercial bank" wherever it appears and inserting in lieu thereof "financial institution".

Par. 14. Paragraph (b)(3) of § 31.6302(c)-2 is amended to read as follows:

§ 31.6302 (c)-2 Use of Government depositaries in connection with employee and employer taxes under Railroad Retirement Tax Act.

* * * * *

(b) *Depositary forms.* * * *

(3) *Deposits for 1968 and later years.* Each remittance of amounts required to be deposited for periods after 1967 shall be accompanied by a Federal Tax Deposit, Railroad Retirement Taxes, form (FTD Form 507) which shall be prepared according to the instructions that apply to such form. The remittance, together with FTD Form 507, shall be forwarded to a Federal Reserve bank or, at the election of the employer, to a financial institution authorized under Treasury Department Circular No. 1079 (31 CFR Part 214) to accept remittances of the taxes for transmission to a Federal Reserve bank. The timeliness of the deposit will be determined by the date stamped on the Federal Tax Deposit form by the Federal Reserve bank or the authorized financial institution or, if section 7502(e) applies, by the date the deposit is treated as received under section 7502(e). Each employer making deposits under this section shall report on the return, for the period with respect to which such deposits are made, information regarding such deposits according to the instructions that apply to such return and pay at that time (or deposit by the due date of such return) the balance, if any, of the taxes due for such period.

* * * * *

§ 31.6302 (c)-3 [Amended]

Par. 15. Paragraph (a) of § 31.6302(c)-3 is amended by striking out "commercial bank" wherever it occurs and inserting in lieu thereof "financial institution".

Par. 16. Paragraph (b)(2) of § 31.6302(c)-3 is amended to read as follows:

§ 31.6302 (c)-3 Use of Government depositaries in connection with tax under the Federal Unemployment Tax Act.

* * * * *

(b) *Depositary forms.* * * *

(2) *Use of Federal Unemployment Tax Deposit Form.* Each remittance of amounts required to be deposited under this section shall be accompanied by a prepunched and preinscribed Federal Unemployment Tax Deposit form (FTD Form 508) which shall be prepared according to the instructions that apply to such form. The employer shall forward such remittance, together with FTD Form 508, to a Federal Reserve bank or, at the employer's election, to a financial institution authorized in accordance with Treasury Department Circular No. 1079 (31 CFR Part 214) to accept remittances of the taxes for transmission to a Federal Reserve bank. The timeliness of deposits is determined by the date stamped on the Federal Tax Deposit form by the Federal Reserve bank or the authorized financial institution or, if section 7502(e) applies, by the date the deposit is treated as received under section 7502(e)

* * * * *

§ 36.3121(l)(10)-4 [Amended]

Par. 17. Section 36.3121(l)(10)-4 is amended by striking out "commercial bank" and inserting in lieu thereof "financial institution".

§ 46.6071(a)-1 [Amended]

Par. 18. Paragraph (a) of § 46.6071(a)-1 is amended by striking out "commercial bank" and inserting in lieu thereof "financial institution".

§ 46.6151-1 [Amended]

Par. 19. Section 46.6151-1 is amended by striking out "commercial banks" and inserting in lieu thereof "financial institutions".

§ 46.6302(c)-1 [Amended]

Par. 20. Paragraph (a)(2) of § 46.6302(c)-1 is amended by striking out "commercial bank" and inserting in lieu thereof "financial institution".

§ 46.6302(c)-1 [Amended]

Par. 21. Paragraph (c)(3) of § 46.6302(c)-1 is amended to read as follows:

§ 46.6302(c)-1 Use of Government depositaries.

* * * * *

(c) *Depositary forms.* * * *

(3) *Deposits for 1968 and later years.* Each remittance of amounts required to be deposited for periods after 1967 shall be accompanied by a Federal Tax Deposit, Excise Taxes, form (FTD Form 504) which shall be prepared according to the instructions that apply to such form. The remittance, together with FTD Form 504, shall be forwarded to a Federal Reserve bank or, at the election of the person making the remittance, to a financial institution authorized in accordance with Treasury Department Circular No. 1079 (31 CFR Part 214) to accept remittances of the taxes for transmission to a Federal Reserve bank. The timeliness of the deposit is

determined by the date stamped on the Federal Tax Deposit form by the Federal Reserve bank or the authorized financial institution or, if section 7502(e) applies, by the date the deposit is treated as received under section 7502(e). Each person making deposits under this section shall report on the return, for the period with respect to which such deposits are made, information regarding such deposits according to the instructions that apply to such return and pay at that time (or deposit by the due date of such return) the balance, if any, of the taxes due for such period.

* * * * *

§ 48.6071(a)-1 [Amended]

Par. 22. Paragraph (a) of § 48.6071(a)-1 is amended by striking out "commercial bank" and inserting in lieu thereof "financial institution".

§ 48.6151-1 [Amended]

Par. 23. Section 48.6151-1 is amended by striking out "commercial banks" and inserting in lieu thereof "financial institutions".

§ 48.6302(c)-1 [Amended]

Par. 24. Paragraph (a)(2) of § 48.6302 (c)-1 is amended by striking out "commercial bank" and inserting in lieu thereof "financial institution".

Par. 25. Paragraph (c)(3) of § 48.6302(c)-1 is amended to read as follows:

§ 48.6302 (c)-1 Use of Government depositaries.

* * * * *

(c) *Depositary forms.* * * *

(3) *Deposits for 1968 and later years.* Each remittance of amounts required to be deposited for periods after 1967 shall be accompanied by a Federal Tax Deposit, Excise Taxes, form (FTD Form 504) which shall be prepared according to the instructions that apply to such form. The remittance, together with FTD Form 504, shall be forwarded to a Federal Reserve bank or, at the election of the person making the remittance, to a financial institution authorized under Treasury Department Circular No. 1079 (31 CFR Part 214) to accept remittances of the taxes for transmission to a Federal Reserve bank. The timeliness of the deposit is determined by the date stamped on the Federal Tax Deposit form by the Federal Reserve bank or the authorized financial institution or, if section 7502(e) applies, by the date the deposit is treated as received under section 7502(e). Each person making deposits under this section shall report on the return, for the period with respect to which such deposits are made, information regarding such deposits according to the instructions that apply to such return and pay at that time (or deposit by the due date of such return) the balance, if any, of the taxes due for such period.

* * * * *

§ 49.6151-1 [Amended]

Par. 26. Paragraph (a) of § 49.6151-1 is amended to striking out "commercial banks" and inserting in lieu thereof "financial institutions".

§ 49.6302(c)-1 [Amended]

Par. 27. Paragraph (a)(2) of § 49.6302 (c)-1 is amended by striking out "commercial bank" and inserting in lieu thereof "financial institution".

Par. 28. Paragraph (c)(3) of § 49.6302 (c)-1 is amended to read as follows:

§ 49.6302 (c)-1 Use of Government depositaries.

* * * * *

(c) *Depositary forms.* * * *

(3) *Deposits for 1968 and later years.* Each remittance of amounts required to be deposited for periods after 1967 shall be accompanied by a Federal Tax Deposit, Excise Taxes, form (FTD Form 504) which shall be prepared according to the instructions that apply to such form. The remittance, together with FTD Form 504, shall be forwarded to a Federal Reserve bank or, at the election of the person making the remittance, to a financial institution authorized under Treasury Department Circular No. 1079 (31 CFR Part 214) to accept remittances of the taxes for transmission to a Federal Reserve bank. The timeliness of the deposit is determined by the date stamped on the Federal Tax Deposit form by the Federal Reserve bank or the authorized financial institution or, if section 7502(e) applies, by the date the deposit is treated as received under section 7502(e). Each person making deposits under this section shall report on the return, for the period with respect to which such deposits are made, information regarding such deposits according to the instructions that apply to such return and pay at that time (or deposit by the due date of such return) the balance, if any, of the taxes due for such period.

* * * * *

§ 154.2-1 [Amended]

Par. 29. Paragraph (f)(3) of § 154.2-1 is amended by striking out "commercial bank" and inserting in lieu thereof "financial institution" and by striking out "authorized bank" and inserting in lieu thereof "authorized financial institution".

Par. 30. Paragraph (a) of § 301.6302-1 is amended to read as follows:

§ 301.6302-1 Manner or time of collection of taxes.

(a) *Certain employment and excise taxes.* For provisions relating to the manner or time of collection of certain employment and excise taxes and the use of Federal Reserve banks and authorized financial institutions in connection with the payment of such taxes, see the regulations relating to the particular tax. The timeliness of a deposit is determined by the date stamped on the Federal Tax Deposit form by the Federal Reserve bank or the authorized financial institution or, if section 7502(e) applies, by the date the deposit is treated as received under section 7502(e).

* * * * *

§ 301.6302-1 [Amended]

Par. 31. Paragraph (b) of § 301.6302-1 is amended by striking out "commercial banks" wherever it appears and inserting in lieu thereof "financial institutions".

§ 301.6402-4 [Amended]

Par. 32. The last sentence of § 301.6402-4 is amended to read as follows:

"The provisions of section 6405 (relating to reports of refunds of more than $200,000 to the Joint Committee on Taxation) do not apply to the overpayment described in this section caused by timely payments of tax which exceed the amount of tax shown on a return."

§ 301.7502 [Deleted]

Par. 33. Section 301.7502 is deleted.

Par. 34. Section 301.7502-1 is amended to read as follows:

§ 301.7502-1 Timely mailing of documents and payments treated as timely filing and paying.

(a) *General rule.* Section 7502 provides that, if the requirements of such section are met, a document or payment (within the meaning of paragraph (b) of this section) is deemed to be filed or paid on the date of the postmark stamped on the cover in which such document or payment was mailed. Thus, if the cover containing such document or payment bears a timely postmark, the document or payment is considered timely filed or paid although it is received after the last date, or the last day of the period, prescribed for filing such document or making such payment. However, if a document or payment is not considered timely filed or timely paid under section 7502, the document or payment is not deemed to be filed or paid on the date of the postmark stamped on the cover in which

such document or payment was mailed. Thus, section 7502 does not apply to determine the period of time during which there is a failure to file a return or pay a tax for purposes of computing the penalties and additions to tax imposed by section 6651. Except as provided in section 7502(e) and § 301.7502–2, relating to the timely mailing of deposits, section 7502 is applicable only to those documents or payments that come within the definition of such terms provided by paragraph (b) of this section and only if the document or payment is mailed in accordance with paragraph (c) of this section and is delivered in accordance with paragraph (d) of this section.

(b) *Document and payment defined.* (1)(i) The term "document", as used in this section, means any return, claim, statement, or other document required to be filed within a prescribed period or on or before a prescribed date under authority of any provision of the internal revenue laws, except as provided in paragraph (b)(1)(ii), (iii) or (iv) of this section.

(ii) The term does not include returns, claims, statements, or other documents that are required under any provision of the internal revenue laws or the regulations thereunder to be delivered by any method other than mailing. For example, if under regulations certain documents relating to alcohol excise taxes must be delivered by hand to an internal revenue officer located on the premises of the person required to file the documents, section 7502 does not apply to determine the timeliness of the filing of such documents if they are mailed.

(iii) The term does not include any document filed in any court other than the Tax Court, but the term does include any document filed with the Tax Court, including a petition for redetermination of a deficiency and a petition for review of a decision of the Tax Court.

(iv) The term does not include any document that is required to be filed with a bank or other depositary under section 6302(c). However, see § 301.7502–2 for special rules relating to the timeliness of deposits and documents required to be filed with deposits.

(2)(i) The term "payment", as used in this section, means any payment required to be made within a prescribed period or on or before a prescribed date under the authority of any provision of the internal revenue laws, except as provided in paragraph (b)(2)(ii), (iii), (iv) or (v) of this section.

(ii) The term does not include any payment that is required under any provision of the internal revenue laws or the regulations thereunder to be delivered by any method other than mailing.

(iii) The term does not include any payment, whether it is made in the form of currency or other medium of payment, unless it is actually received and accounted for. For example, if a check is used as the form of payment, this section does not apply unless such check is honored upon presentation.

(iv) The term does not include any payment to any court other than the Tax Court.

(v) The term does not include any deposit that is required to be made with a bank or other depositary under section 6302(c). However, see § 301.7502–2 for rules relating to the timeliness of deposits.

(c) *Mailing requirements.* (1) Section 7502 is not applicable unless the document or payment is mailed in accordance with the following requirements:

(i) The document or payment must be contained in an envelope or other appropriate wrapper, properly addressed to the agency, officer, or office with which the document is required to be filed or to which the payment is required to be made.

(ii) The document or payment must be deposited within the prescribed time in the mail in the United States with sufficient postage prepaid. For this purpose, a document or payment is deposited in the mail in the United States when it is deposited with the domestic mail service of the U.S. Postal Service. The domestic mail service of the U.S. Postal Service, as defined by the postal regulations, includes mail transmitted within, among, and between the United States, its possessions, and Army-Air Force (APO) and Navy (FPO) post offices (see 39 CFR 2.1). Section 7502 does not apply to any document or payment that is deposited with the mail service of any other country.

(iii)(A) If the postmark on the envelope or wrapper is made by the U.S. Postal Service, such postmark must bear a date on or before the last date, or the last day of the period, prescribed for filing the document or making the payment. If the postmark does not bear a date on or before the last date, or the last day of the period, prescribed for filing the document or making the payment, the document or payment is considered not to be timely filed or paid, regardless of when the document or payment is deposited in the mail. Accordingly, the sender who relies upon the applicability of section 7502 assumes the risk that the postmark will bear a date on or before the last date, or the last day of the period, prescribed for filing the document or making the payment, but see paragraph (c)(2) of this section with respect to the use of registered mail or certified mail to avoid this risk. If the postmark on the envelope or wrapper is made by the U.S. Postal Service and is not legible, the person who is required to file the document or make the payment has the burden of proving the time when the postmark was made. Furthermore, in case the cover containing a document or payment bearing a timely postmark made by the U.S. Postal Service is received after the time when a document or payment postmarked and mailed at such time would ordinarily be received, the sender may be required to prove that it was timely mailed.

(B) If the postmark on the envelope or wrapper is made other than by the U.S. Postal Service, (*1*) the postmark so made must bear a legible date on or before the last date, or the last day of the period, prescribed for filing the document or making the payment and (*2*) the document or payment must be received by the agency, officer, or office with which it is required to be filed not later than the time when a document or payment contained in an envelope or other appropriate wrapper that is properly addressed and mailed and sent by the same class of mail would ordinarily be received if it were postmarked at the same point of orgin by the U.S. Postal Service on the last date, or the last day of the period, prescribed for filing the document or making the payment. However, in case the document or payment is received after the time when a document or payment so mailed and so postmarked by the U.S. Postal Service would ordinarily be received, such document or payment is treated as having been received at the time when a document or payment so mailed and so postmarked would ordinarily be received if the person who is required to file the document or make the payment establishes (*i*) that it was actually deposited in the mail before the last collection of the mail from the place of deposit which was postmarked (except for the metered mail) by the U.S. Postal Service on or before the last date, or the last day of the period, prescribed for filing the document or making the payment, (*ii*) that the delay in receiving the document or payment was due to a delay in the transmission of the mail, and (*iii*) the cause of such delay. If the envelope has a postmark made by the U.S. Postal Service in addition to the postmark not so made, the postmark which was not made by the U.S. Postal Service is to be disregarded, and

whether the envelope was mailed in accordance with this subdivision (B) shall be determined solely by applying the rule of paragraph (c)(1)(iii)(A) of this section.

(2) If the document or payment is sent by U.S. registered mail, the date of registration of the document or payment is treated as the postmark date. If the document or payment is sent by U.S. certified mail and the sender's receipt is postmarked by the postal employee to whom such document or payment is presented, the date of the U.S. postmark on such receipt is treated as the postmark date of the document or payment. Accordingly, the risk that the document or payment will not be postmarked on the day that it is deposited in the mail may be overcome by the use of registered or certified mail.

(3) As used in this section, the term "the last date, or the last day of the period, prescribed for filing the document or making the payment" includes any extension of time granted for such action. When the last date, or the last day of the period, prescribed for filing the document or making the payment falls on a Saturday, Sunday, or legal holiday, section 7503 is also applicable, so that, in applying the rules of this paragraph, the next succeeding day that is not a Saturday, Sunday, or legal holiday is treated as the last date, or the last day of the period, prescribed for filing the document or making the payment.

(d) *Delivery.* (1) Section 7502 is not applicable unless the document or payment is delivered by U.S. mail to the agency, officer, or office with which the document is required to be filed or to which payment is required to be made. However, in the case of a document (but not a payment) sent by registered or certified mail, proof that the document was properly registered or that a postmarked certified mail sender's receipt was properly issued therefor and that the envelope or wrapper was properly addressed to such agency, officer, or office constitutes prima facie evidence that the document was delivered to such agency, officer, or office.

(2) Section 7502 is applicable only when the document or payment is delivered after the last date, or last day of the period, prescribed for filing the document or making the payment. Thus, section 7502 is applicable when a claim for credit or refund is delivered after the last day of the period specified in section 6511 or in any other corresponding provision of law relating to the limit on the amount of credit or refund that is allowable. For example, taxpayer A was required to file an income tax return for 1974 on or before April 15, 1975, but A secured an extension until June 15, 1975, to file such return. A filed the return on June 15, 1975, but no tax was paid at such time because the tax liability disclosed by the return had been completely satisfied by the income tax that had been withheld on A's wages and by the payment of estimated tax that was remitted with A's application for extension of time to file the return. On June 14, 1978, A mailed in accordance with the requirements of this section a claim for refund of a portion of this 1974 tax. The envelope containing the claim was postmarked on such day, but it was not delivered to the internal revenue service center until June 16, 1978. Under section 6511 A's claim for refund is timely if filed within three years from June 15, 1975. Thus, since A's claim for refund was mailed in accordance with the requirements of this section and was delivered after the last day of the period specified in section 6511, section 7502 is applicable and the claim is deemed to have been filed on June 14, 1978.

(e) *Applicability.* Section 7502 and this section apply to any payment or document (as those terms are defined in paragraph (b) of this section) mailed and delivered in accordance with the requirements of this section in an envelope or other appropriate wrapper bearing a postmark dated after November 2, 1966. For rules relating to the applicability of section 7502 with respect to mail postmarked before November 3, 1966, see 26 CFR Part 301.7502–1(e), revised as of April 1, 1978.

Par. 35. There is added immediately following § 301.7502–1 the following new section:

§ 301.7502–2 Timely mailing of deposits.

(a) *General rule.* Section 7502(e) provides that, if the requirements of such section are met, a deposit is deemed to be received on the date the deposit was mailed. If the date of mailing is on or before the second day preceding the date prescribed for making the deposit, the deposit will be considered timely received even though it is received after the date prescribed for making the deposit. If the date of mailing is not on or before the second day preceding the date prescribed for making the deposit, the deposit will not be considered timely received unless it is actually received on or before the date prescribed for making the desposit. Section 7502(e) only applies to deposits mailed to the bank, trust company, domestic building and loan association, or credit union authorized to receive such deposit. Thus, section 7502(e) does not apply to any remittance mailed to an internal revenue service center. Section 7502(e) applies to only those deposits mailed after June 28, 1968, that come within the definition of such term provided in paragraph (b) of this section, that are mailed in accordance with the requirements of paragraph (c) of this section, and that are delivered in accordance with paragraph (d) of this section.

(b) *Deposit defined.* The term "deposit", as used in this section, means any deposit of tax required to be made and any document required to be filed on or before a prescribed date under regulations prescribed by the Commissioner under section 6302(c).

(c) *Mailing requirements*—(1) *In general.* Section 7502(e) does not apply unless the deposit is mailed in accordance with the requirements of paragraph (c)(2) of this section.

(2) *Requirements.* The date of mailing must fall on or before the second day preceding the prescribed date for making the deposit (including any extension of time granted for making such deposit). For example, if a deposit is due on or before January 15, the date of mailing must fall on or before January 13. The deposit must be contained in an envelope or other appropriate wrapper approved for use in the mails by the U.S. Postal Service, properly addressed to the bank, trust company, domestic building and loan association or credit union authorized to receive such deposit. The deposit must be desposited with sufficient postage prepaid on or before such second day in the mail in the United States within the meaning of § 301.7502–1(c)(1)(ii).

(3) *Registered and certified mail.* The provisions of § 301.7502–1(c)(2) apply to a deposit sent by U.S. registered mail or U.S. certified mail as if such deposit were a "payment", except that the date of registration or the date of the postmark on the sender's receipt shall be considered the date of mailing of such deposit.

(d) *Delivery.* Section 7502(e) does not apply unless the deposit is actually delivered by U.S. mail to the authorized financial institution with which such deposit is required to be made and is accepted by such financial institution. For rules relating to the acceptance of deposits by authorized financial institutions, see 31 CFR 214.6 and 214.7.

The fact the deposit is sent by U.S. registered or U.S. certified mail does not constitute prima facie evidence that the deposit was delivered to the financial institution authorized to receive the deposit. Section 7502(e) does not apply unless the deposit is delivered after the date prescribed for making the deposit.

§ 601.401 [Amended]

Par. 36. Paragraph (a)(5) of § 601.401 is amended by striking out *"Commercial banks"* and inserting in lieu thereof *"financial institutions"* and by striking out "commercial bank" wherever it appears in paragraph (a)(5) (iv) and (v) and inserting in lieu thereof "financial institution".

G. R. Dickerson,

Director of Bureau of Alcohol, Tobacco and Firearms.

Jerome Kurtz,

Commissioner of Internal Revenue.

[FR Doc. 79-37846 Filed 12-10-79; 8:45 am]

BILLING CODE 4830-01-M

Internal Revenue Service

26 CFR Part 20

[LR-203-76 Part IV]

Definition of Gross Cash Rentals for Valuation of Certain Farm Real Property According to Actual Use; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations defining "gross cash rental" for purposes of electing to value certain farm real property according to its actual use.

DATES: The public hearing will be held on January 16, 1980, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by January 2, 1980.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW. Washington, D.C. The outlines of oral comments on the proposed regulations should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-203-76, Part IV), 1111 Constitution Avenue, NW., Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: George Bradley or Charles Hayden of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224; telephone 202-566-3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations defining "gross cash rentals" for purposes of electing to value certain farm real property according to its actual use under section 2032A(e)(7) of the Internal Revenue Code of 1954. The proposed regulations appeared in the **Federal Register** for Monday, September 10, 1979, at page 52696 (44 FR 52696).

On July 19, 1978, the **Federal Register** published proposed Income Tax Regulations (26 CFR Part 1) under section 1402 and Estate Tax Regulations (26 CFR Part 20) under section 2032A (43 FR 31039). On April 3, 1979, the Internal Revenue Service held public hearings on the proposed regulations. On September 10, 1979, a notice withdrawing the portion of the proposed regulations concerning the definition of "gross cash rental" was published in the **Federal Register** (44 FR 52698). The current proposed regulations replace the withdrawn definition of "gross cash rental."

The rules of § 601.601(a)(3) of the Statement of Procedural Rules (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the September 10, 1979, notice of proposed rulemaking, and who desire to present oral comments at the hearing on the proposed regulations, must submit an outline of the comments to be presented at the hearing and the time they wish to devote to each subject. As stated above, outlines must be delivered or mailed by January 2, 1980. Each speaker will be limited to 10 minutes for an oral presentation exclusive of time taken by questions from the panel for the Government and answers to these questions.

Because of controlled access restrictions, those attending the hearing cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978.

By direction of the Commissioner of Internal Revenue:

Robert A. Bley,

Director, Legislation and Regulations Division.

[FR Doc. 79-37846 Filed 12-10-79; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 65

[FRL 1372-8]

Proposed Delayed Compliance Order for Pervel Industries, Inc., Plainfield, Connecticut

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to issue an administrative order to Pervel Industries, Inc., pursuant to section 113(d)(4) of the Clean Air Act, 42 U.S.C. 7413(d)(4). The order requires Pervel to bring air emissions from its manufacturing processes into compliance with certain regulations contained in the federally-approved Connecticut State Implementation Plan (SIP). Because Pervel is unable to comply with these regulations at this time, the proposed order would establish an expeditious schedule requiring final compliance by May 1, 1980. Interim requirements include production trials by December 1, 1979, submittal of emission data within 30 days of effective date of the order, and 50% reduction of violative emissions by March 1, 1980. Source compliance with the Order would preclude suits under the federal enforcement and citizen suit provision of the Clean Air Act for violation of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on EPA's proposed issuance of the Order.

DATES: Written comments must be received on or before January 10, 1980, and requests for a public hearing must be received on or before December 26, 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.

ADDRESSES: Comments and requests for a public hearing should be submitted to Director, Enforcement Division, EPA, Region I, Room 2103, John F. Kennedy Building, Boston, MA 02203, Attn: Air Compliance Clerk. Material supporting this order and public comments received in response to this notice may be inspected and copied (for appropriate

charges) at this address during normal business hours.

for further information contact: Mr. Michael J. Parise, attorney (617/223–5470) or Mr. Steven P. Fradkoff, engineer (617/223–5610), both at EPA, Region I, Room 2103, JFK Building, Boston, MA 02203.

SUPPLEMENTARY INFORMATION: Pervel Industries, Inc. conducts urethane coating of fabric as one of its manufacturing processes. The proposed order addresses emissions from the drying of urethane resins which are subject to 19–508–20(f)(4) of the Connecticut Regulations for the Abatement of Air Pollution. The regulation limits the emissions of organic solvent, and is part of the federally-approved Connecticut State Implementation Plan. The order requires final compliance with the regulation by May 1, 1980, and the source has consented to its terms.

The proposed order satisfies the applicable requirements of section 113(d) of the Clean Air Act (the Act). If the order is issued, source compliance with its terms would preclude further EPA enforcement action under Section 113 of the Act against the source for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provisions of the Act (section 304) would be similarly precluded. However, source compliance with the order will not preclude assessment of any non-compliance penalties under section 120 of the Act, unless the source is otherwise entitled to an exemption under Section 120(a)(2)(B) or (C).

Comments received by the date specified above will be considered in determining whether EPA should issue the order. Testimony given at any public hearing concerning the order will also be considered. After the public comment period and any public hearing, the Administrator of EPA will publish in the **Federal Register** the Agency's final action on the Order in 40 CFR Part 65.

(42 U.S.C. 7413, 7601.)

Dated: November 19, 1979.

William Adams,

Regional Administrator, Region I.

I. The text of the Order reads as follows:

Environmental Protection Agency—Region I

[Order No. A–SS 76–206]

In the matter of Pervel Industries, Inc., Plainfield, Connecticut; Proceedings under Section 113 of the Clean Air Act, 42 U.S.C. 7413.

This order is issued pursuant to section 113(d)(4) of the Clean Air Act, 42 U.S.C. 7413(d)(4). This order contains a schedule for compliance, interim requirements, and reporting requirements. Public notice, opportunity for a public hearing, and thirty days notice to the State of Connecticut have been provided pursuant to section 113(d)(1) of the Act.

Findings

1. Section 19–508–20(f)(4) of the Connecticut Regulations for the Abatement of Air Pollution ("Regulations") limits the amount of organic solvents which may be discharged into the atmosphere from any machine or equipment in which any non-photo-chemically reactive organic solvent is employed or applied.

2. Section 19–508–20(f)(4) of the Regulations is part of the Connecticut implementation plan submitted to and approved by EPA pursuant to section 110 of the Act, and is therefore a "requirement of an applicable plan," as that phrase is used in section 113(a)(1) of the Act.

3. Pervel Industries, Inc., located in Plainfield, Connecticut, conducts urethane coating of fabrics as one of its manufacturing processes. During the drying of the coated fabric, organic solvent is emitted into the atmosphere in amounts exceeding the 800 lb/day limit established by the Regulations. These violations have been documented by data submitted by Pervel and by state and federal inspections.

4. On November 17, 1975, the Regional Administrator of EPA notified Pervel that it was in violation of section 19–508–20(f) of the Connecticut Regulations for the Abatement of Air Pollution. On December 30, 1975, representatives of Pervel conferred with EPA concerning the violations, pursuant to section 113(a)(4) of the Act.

5. On January 22, 1976, the Regional Administrator of EPA issued an administrative order to Pervel. In accordance with its terms, Pervel submitted a proposed schedule of compliance. The order was modified on June 17, 1977, incorporating this schedule which included a final compliance date for the urethane coating operations of October 1, 1979. The order required certain process and equipment alterations to achieve compliance with the regulations.

6. Section 113(d)(12) of the amended Clean Air Act voided all orders which provided for final compliance deadlines beyond July 1, 1979 unless modified within one year of enactment to conform with the amended provisions of section 113. All provisions of the June 17, 1977 order will be satisfactorily complied with prior to July 1, 1979 with the exception of those relating to the urethane coating operations. It is necessary at this time, therefore, to issue a new administrative order pursuant to section 113(d)(12) of the new Clean Air Act regarding the reduction of emissions for urethane operations.

7. Pervel is presently engaged in certain innovative process and production equipment changes which are expected to result in significant emission reduction. Specifically, Pervel is developing new water base coating formulations which will substantially reduce, if not eliminate, the emissions of organic solvent from its urethane coating operations. The development of such a water base coating constitutes a new means of emission limitation within the meaning of section 113(d)(4).

8. On April 27, 1978, Pervel requested that a delayed compliance order be granted, with a final compliance date of March 1981. This request was subsequently modified, proposing a compliance date of May 1, 1980.

9. It has been determined on the basis of submittals by Pervel on April 27, July 27, and August 15, 1978, that this new means of emission reduction is not likely to be used but for this ORDER. This technology is likely to be adequately demonstrated, within the meaning of section 111(a)(1), and as required by section 113(d)(4), no later than May 1, 1980. There is a substantial likelihood of achieving greater continuous emission reduction than that which would otherwise be required of the Company. Full compliance by Pervel with the requirements of the Connecticut implementation plan would be impracticable prior to, or during, installation of said new means of emission reduction. Pervel will, however, insofar as it is practicable, comply with the applicable emission limits during the entire effective period of this Order.

Order

After a thorough investigation of all relevant facts, including public comment, it is determined that the schedule for compliance set forth in this ORDER is as expeditious as practicable, and that the terms of this ORDER comply with section 113(d) of the Act.

It Is Hereby Ordered

I. That Pervel Industries, Inc. will comply with the Connecticut implementation plan regulations in accordance with the following schedule for implementation of process and production equipment modification presently being developed by Pervel as a means of emission reduction:

1. Initiate production trials with reformulated coating no later than five (5) days after the effective date of this Order.

2. Complete production trials with reformulated coating by December 1, 1979.

3. Within thirty days of the effective date of this Order, submit emissions data showing daily emissions from the urethane coating operation during days of operation for the period beginning December 1, 1978 and ending February 28, 1979.

4. By March 1, 1980, reduce by 50 percent the amount of organic solvent emitted from urethane coating operations in excess of 800 lbs./day. This calculation will be based upon the average daily emissions as reported pursuant to No. 3, above.

5. Achieve full compliance with all applicable air pollution control regulations by May 1, 1980.

6. Submit a progress report to the Director

of the Enforcement Division not later than November 1, 1979. (report received)

II. That Pervel is not relieved by this ORDER from compliance with any requirement imposed by the Connecticut implementation plan, EPA, and/or the courts pursuant to section 303 during any period of imminent and substantial endangerment to the health of persons.

III. That Pervel shall comply with the following reporting requirements on or before the dates specified below:

A. Not later than five days after any date for achievement of an incremental step or final compliance specified in this order, Pervel shall notify EPA in writing of its compliance, or noncompliance and reasons therefore, with the requirement. If delay is anticipated in meeting any requirement of this order, Pervel shall immediately notify EPA in writing of the anticipated delay and reasons therefore. Notification to EPA of any anticipated delay does not excuse the delay.

B. All submittals and notification to EPA pursuant to this order shall be made to: Director, Enforcement Division, U.S. Environmental Protection agency, J.F.K. Federal Building, Room 2103, Boston, Massachusetts 02203, Attn: Air Compliance Clerk.

IV. Pervel is hereby notified that failure to achieve final compliance by May 1, 1980, may result in a requirement to pay a noncompliance penalty under section 120 of the Act. In the event of such failure, Pervel will be formally notified, pursuant to section 120(b)(3) and any regulations promulgated thereunder, of its noncompliance.

V. This order shall be terminated in accordance with section 113(d)(8) of the Act if the Administrator determines on the record, after notice and hearing, that an inability to comply with section 19-508-20(f)(4) of the Regulations no longer exists.

VI. Violation of any requirement of this order shall result in one or more of the following actions:

A. Enforcement of such requirement pursuant to sections 113(a), (b), or (c) of the Act, including possible judicial action for an injunction and/or penalties and, in appropriate cases, criminal prosecution.

B. Revocation of this order, after notice and opportunity for a public hearing, and subsequent enforcement of section 19-508-20(f)(4) of the Regulations in accordance with the preceding paragraph.

C. If such violation occurs on or after May 1, 1980, notice of noncompliance and subsequent action pursuant to section 120 of the Act.

VII. This order is effective December 11, 1979. Pervel Industries, Inc. consents to the issuance of the subject order and acknowledges that it is a reasonable means to comply with the applicable regulations.

Date: October 11, 1979.

M. K. White,

Administrator

[FR Doc. 79-37869 Filed 12-10-79; 8:45 am]

BILLING CODE 6560-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

41 CFR Part 24-1

[Docket No. R-79-753]

Procurement Responsibility and Authority—Selection, Designation and Termination of Designation of Contracting Officers; Transmittal of Proposed Rule to Congress

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of transmittal of proposed rule to Congress under Section 7(o) of the Department of HUD Act.

SUMMARY: Recently enacted legislation authorizes Congress to review certain HUD rules for fifteen (15) calendar days of continuous session of Congress prior to each such rule's publication in the **Federal Register**. This Notice lists and summarizes for public information a proposed rule which the Secretary is submitting to Congress for such review.

FOR FURTHER INFORMATION CONTACT: Burton Bloomberg, Director, Office of Regulations, Office of General Counsel, 451 7th Street, SW., Washington, D.C. 20410, (202) 755-6207.

SUPPLEMENTARY INFORMATION: Concurrently with issuance of this Notice, the Secretary is forwarding to the Chairmen and Ranking Minority Members of both the Senate Banking, Housing and Urban Affairs Committee and the House Banking, Finance and Urban Affairs Committee the following rulemaking document:

41 CFR Part 24-1, Subpart 24-1.4—Procurement Responsibility and Authority—Selection, Designation and Termination of Designation of Contracting Officers

This proposed rule would set forth detailed criteria for the appointment of Contracting Officers. It revises the existing policy and guidelines by providing specific requirements for selection, designation and termination of designation of contracting officers.

(Sec. 7(o), Department of HUD Act, 42 U.S.C. 3535(o), sec. 324, Housing and Community Development Amendments of 1978)

Issued at Washington, D.C., December 5, 1979.

Moon Landrieu,

Secretary, Department of Housing and Urban Development.

[FR Doc. 79-37843 Filed 12-10-79; 8:45 am]

BILLING CODE 4210-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1041

Interpretation—Certificates and Permits; Intermediate Point Restrictions

[Ex Parte No. MC-132]

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Interstate Commerce Commission has decided to institute a rulemaking proceeding to establish a temporary rule of construction [effective for a period of 180 days] permitting [but not requiring] regular-route motor common carriers of property to serve all intermediate points on their authorized regular service routes. The proposed temporary rule is expected to reduce energy consumption in the transportation industry through improved operating efficiencies and assure that an adequate level of transportation service is maintained during the current fuel shortage. Also, the Commission is seeking comments on the desirability of making the proposed changes permanent.

DATES: Comments must be filed with the Commission on or before January 10, 1980.

PROPOSED EFFECTIVE DATE: Upon publication of a final rule in the **Federal Register**.

ADDRESSES: Send an original and 15 copies (if possible) of comments to: Office of Proceedings, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Karlheinz Morell, Telephone: (202) 275-7905, or Donald J. Shaw, Telephone: (202) 275-7292.

SUPPLEMENTARY INFORMATION: A fuel energy shortage exists within the United States. Shortages in fuel supplies and the precipitous increases in the price of diesel fuel have recently caused disruptions in service to those shippers dependent on motor carrier transportation.

Events earlier this year upset the delicate balance in the diesel fuel supply of the Nation. The Department of Energy gave a priority allocation of fuel to agriculturally oriented users and placed the supply of diesel fuel for truckers (and the entire transportation industry) in jeopardy. Major dislocations occurred in the normal supply chains. Severe reductions in supply to trucking users caused major shortages, closings of truck stops, limitations on fuel

purchases, and a resort to spot market supplies at highly elevated costs. Ultimately, frustration at the impact of this combination of factors precipitated an owner-operator "strike" which drew attention to the special problems confronting these small businessmen at the end of the fuel supply chain.

The Department of Energy's priority allocation order was subsequently lifted and supplies, although very tight, became more readily available to the trucking industry. Nevertheless, the adequacy of supply available to users of middle distillates for heating, diesel truck supplies, and other uses continues to be tenuous and appears likely to be exacerbated as trucking operations continue to grow.

Limited opportunity exits to shift refining capacity to increase total diesel supply. Recognizing the limitation in supply, the President has made the need to reduce consumption an urgent national mandate.

Our action today is part of an overall effort to assure that an adequate level of transportation service is maintained during the current fuel shortage and to reduce energy consumption in the transportation industry through improved operating efficiencies. One way to accomplish both goals is to modify the manner in which regular-route, general commodities carriers are permitted to operate.

Regular-route motor common carriers of general commodities have traditionally been granted operating authority to handle freight in regularly scheduled service along designated routes between named termini. Frequently points on these routes are intentionally omitted from the operating authorities issued by the Commission. In our Bureau of Economics' 1965 study, *Profile of Motor Carriers of Property Industry Subject to ICC Regulation* it was found that, while 11,014 regular-route operating authorities in the sample required service between all intermediate points, 7,467 regular-route authorities.

The regulated highway freight system in the first quarter of 1979 transported 172,552,000 tons of intercity freight and operated 4,126,755,000 equipment miles. The general freight carriers (those whose operations are basically restricted to prescribed routes and points of service on those routes) account for 34.5 percent of the total tons and 1,928,272,000 or 46.7 percent of the miles. [ATA Division of Reserch and Economics, *Motor Carrier Statistical Summary First Quarter 1979.*]

The total number of outstanding certificates which limit or restrict against service at intermediate points is not known. Nor is it precisely known how traffic moves to and from points which are restricted in a carrier's regular-route certificate. It would seem clear, however, that the shippers located at the restricted intermediate points receive less competitive service and have fewer options to move their goods. Also, carriers not holding authority to serve a point directly participate in the traffic moving to and from that point by interlining with other carriers which do hold their authority.

To preclude a carrier from picking up or delivering traffic on its route while a second carrier serves those points which the first carrier is foreclosed from serving, results in overall inefficient operations and needless fuel consumption. The extent to which this occurs is impossible to quantify. The 1965 study, however, gives some indication that this is a widespread condition.

To estimate the diseconomy, however, one may assume that a point not served by one carrier is being served by another in substitution, thereby increasing the probability of unnecessary interline service and some duplication of truck miles where carriers operating through a point could otherwise serve that point if full authority for pickup and delivery were available.

Current figures show that about 29 percent of all general freight motor carrier tonnage (65,977,000 tons annually) is being moved on an interline basis. *TRINC'S* Blue Book of the Trucking Industry 1976 Edition, page S–3. Most of this interline traffic is moving to or from points not categorized as "intermediate". Some percentage of this traffic however is being interlined as a direct result of one of the participating carriers not holding authority to serve certain intermediate points on its regular-routes. Even if only 5 percent of the total traffic interlined falls within this category, it would equate to 3,298,850 tons of freight and, assuming 30 mile movements for an average ton, 98,965,500 ton miles.

The movement of freight by truck has been estimated to require 1 gallon of diesel fuel for each 50 net ton miles of transportation. Leilich, Prokopy, and Ruiwa, *Industrial Energy Studies of Ground Freight Transportation*, 1974. Therefore, assuming that 5 percent of all interlined traffic could be handled directly by one of the carriers, as an intermediate drop-off in connection with its normal scheduled service over its regular routes, up to 1,939,310 gallons of fuel could be saved on an annual basis. Accordingly, the proposed temporary rule has the potential for vast savings in energy.

The purpose of the proposed temporary rule is to reduce energy demand by improving the operating efficiencies of regular-route motor carriers of property. However, not all regular-route operations will be more fuel efficient as a result of this rule. Therefore, if the authority conferred by the proposed rule were mandatory, it could, in certain instances, be counterproductive and force carriers to perform less efficient operations. To give carriers the needed flexibility to adjust their operations in a manner that will improve their overall operating efficiencies the proposed rule should be permissive.

Proposed Rule

We propose to adopt the following temporary rule:

§ 1041. Regular-route, general-commodity certificates—temporary rule of construction.

All certificates of public convenience and necessity authorizing the transportation of general commodities, with or without exceptions, over a regular service route or routes, issued by this Commission, shall be construed as permitting, but not requiring, service at all intermediate points on and within one airline mile of the route or routes to the extent not otherwise authorized for a period of 180 days.

Comments and Procedural Matters

Oral hearings do not appear to be necessary at this time and none are contemplated. Anyone wishing to present views and evidence, either in support of or in opposition to this proposal, is invited to submit written data, views, or arguments. An original and 15 copies (wherever possible) shall be filed with the Commission within 30 days after publication of this notice in the **Federal Register**. At this time, we are proposing to establish a temporary rule, effective for a period of 180 days. We do, however, invite all interested persons to comment on the desirability of making these changes permanent. We also invite comments on the issue of whether the proposed rule should be permissive in nature.

The Commission intends to reach a decision on this matter within a short time after comments are received. If a final rule is adopted, it will be made effective upon publication in the **Federal Register**. The purpose of the proposed rule is to relieve restrictions in outstanding authorities and, therefore, would not require the normal 30 days notice before its effective date. See 5

U.S.C. 553(d)(1). Also, any delay in the effective date would prevent carriers from taking full advantage of this fuel conservation measure during the winter months when the demand for middle distillates is greatest. There, if a final rule is adopted there is good cause to make it effective upon publication. See 5 U.S.C. 553(d)(3). Appropriate tariffs would, of course, have to be in effect before service could commence.

We do not believe that the proposed rule will have an adverse effect on the quality of the human environment. This is, however, a major regulatory action under the Energy Policy and Conservation Act of 1975. Affected carriers should be able to improve their operating efficiencies, which would lead to substantial energy savings. It is extremely difficult to quantify the potential energy savings at this time beyond the data and assumptions already set forth in this decision. We therefore request comments on the energy policy and conservation issues. A more detailed energy analysis will be issued when we serve our decision on the need for the temporary rule.

Written materials submitted will be available for public inspection at the offices of the Interstate Commerce Commission, 12th and Constitution Avenue, N.E., Washington, DC, during regular business hours.

Notice to the general public of this matter will be given by depositing a copy of this notice in the office of the Secretary of the Commission for public inspection, and by filing a copy with the Director, Office of the Federal Register.

This notice of proposed rulemaking is promulgated under the authority contained in 49 U.S.C. 10321, 10922 and 11101 and 5 U.S.C. 553 and 559.

Decided: November 20, 1979.

By the Commission, Chairman O'Neal, Vice Chairman Stafford, Commissioners Gresham, Clapp, Christian, Trantum, Gaskins, and Alexis. Vice Chairman Stafford absent and not participating. Commissioner Clapp concurring.

Agatha L. Mergenovich,

Secretary.

Commissioner Clapp Concurring:

Although I think that it is important for the Commission to develop a plan promptly, my own inclination would be to put this on a standby basis. I will reserve judgment, however, until we have received comments.

[FR Doc. 79-37941 Filed 12-10-79; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

Atlantic Groundfish; Permit Sanctions

Correction

In FR Doc. 79-36999, published at page 69312, on Monday, December 3, 1979, on page 69314, in the first column, paragraph 5 reading "Add a new § 561.4(e) as follows:" should be corrected to read "Add a new § 651.4(e) as follows:".

BILLING CODE 1505-01-M

Notices

Federal Register
Vol. 44, No. 239
Tuesday, December 11, 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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Potsdam Relief Route, St. Lawrence County, N.Y.; Public Information Meeting

Notice is hereby given pursuant to § 800.6(b)(3) of the Council's regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800), that on December 18, 1979, at 7:00 p.m., a public information meeting will be held at the Town of Potsdam Offices located at the corner of Elm and Market Street, Potsdam, New York.

The meeting is being called by the Executive Director of the Council in accordance with § 800.6(b)(3) of the Council's regulations. The purpose of the meeting is to provide an opportunity for representatives of national, State, and local units of government, representatives of public and private organizations, and interested citizens to receive information and express their views concerning the proposed Potsdam Relief Route, St. Lawrence County, New York, an undertaking assisted by the Federal Highway Administration that will adversely affect the Potsdam Depot, Potsdam, New York, a property eligible for the National Register of Historic Places. Consideration will be given to the undertaking, its effects on National Register or eligible properties, and alternate courses of action that could avoid, mitigate, or minimize any adverse effects on such properties.

The following is a summary of the agenda of the meeting:

I. An explanation of the procedures and purpose of the meeting by a representative of the Executive Director of the Council.
II. A description of the undertaking and an evaluation of its effects on the property by the Federal Highway Administration.
III. A statement by the New York State Historic Preservation Officer.
IV. Statements from local officials, private organizations, and the public on the effects of the undertaking on the property.
V. A general question period.

Speakers should limit their statement to 5 minutes. Written statements in furtherance of oral remarks will be accepted by the Council at the time of the meeting. Additional information regarding the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1522 K Street, NW, Suite 430, Washington, D.C. 20005, 202–254–3967.

Dated: December 7, 1979.

Robert R. Garvey, Jr.,

Executive Director.

[FR Doc. 79-38121 Filed 12-10-79; 9:02 am]

BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Flue-Cured Tobacco; Notice of Referendum

Notice is hereby given that on December 18, 1979, a referendum will be held of farmers engaged in the production of the 1979 crop of flue-cured tobacco. Notice was given (44 FR 57932) that consideration would be given to data, views and recommendations in establishing the 1980 national quota, the national reserve, and the date or period for holding the referendum and whether the referendum should be conducted at polling places rather than by mail ballot. No comments were received with respect to the holding of he referendum.

It is hereby determined that the referendum will be held at polling places on Tuesday, December 18, 1979. The purpose of this referendum is to determine wheher flue-cured farmers are in favor of or opposed to marketing quotas for the 1980–81, 1981–82, and 1982–83 marketing years. The referendum will be conducted in accordance with the provisions of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1312(c)), and the regulations contained in 7 CFR 717.

Signed at Washington, D.C. on: December 4, 1979.

John W. Goodwin,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 79-37781 Filed 12-10-79; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Huron-Manistee National Forests Land and Resource Management Plan; Intent To Prepare an Environmental Impact Statement

In the matter of Huron-Manistee National Forests Land and Resource Management Plan, Crawford, Iosco, Lake, Manistee, Mason, Mecosta, Montcalm, Muskegon, Newaygo, Oceana, Oscoda, Wexford, and Ogemaw Counties, Michigan; Notice of Intent to Prepare an Environmental Impact Statement.

Pursuant to the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture will prepare an environmental impact statement for a Land and Resource Management Plan for the Huron-Manistee Forests in Michigan.

The plan is being prepared in accordance with requirements of the Secretary's regulations developed pursuant to the National Forest Management Act of 1976. It will propose management direction for the natural and human resources on the Huron-Manistee National Forests.

The planning process will begin with identification of public issues, management concerns, and resource use and development opportunities. Planning criteria will be developed, and data will be collected and analyzed to determine how the identified issues and concerns can be resolved. An assessment of the capability of the land to produce resource outputs, and a determination of the public's future demands for these outputs will be made. Methods for resolving the identified public issues will be developed from this information, and will be used to formulate alternatives.

Alternatives will display a range of resource outputs at several expenditure levels. Each alternative will represent a cost-effective combination of

management practices which can best meet the objectives of the alternative. In addition, each identified major public issue will be addressed; each alternative will specify methods to restore renewable resources; and a no-change alternative will be included.

A preferred alternative will be selected by ranking the alternatives according to their physical, biological, social, and economic effects. It will include the best combination of resource uses on the Forest, and will also provide for a continuous monitoring and evaluation process.

A draft environmental impact statement will be released around August 1982. The final land and resource management plan and environmental impact statement will be released approximately 6 months later.

Public participation will be an integral part of the planning process. Meetings to identify issues to be addressed will be held early in the process. Dates and locations for these meetings will be announced thru the news media and mailings to interested agencies, organizations and individuals.

Steve Yurich, Regional Forester of the Eastern Region, is the responsible official and Wayne K. Mann, Forest Supervisor for the Huron-Manistee National Forests, is the person in charge of the project.

Further information about the planning process or written comments on this Notice of Intent should be directed to: Forest Supervisor, Huron-Manistee National Forests, 421 South Mitchell Street, Cadillac, Michigan 49601, Telephone: (616) 775–2421.

Dated: November 26, 1979.

James H. Freeman,

Director, Planning, Programming and Budgeting.

[FR Doc. 79-37883 Filed 12-10-79; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

Sunflower Electric Cooperative, Inc.; Proposed Loan Guarantee

Under the authority of Pub. L. 93–32 (87 STAT. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 20–22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $510,617,000 to Sunflower Electric Cooperative, Inc., of Hays, Kansas. These funds will be used to finance a project consisting of a 280 MW coal-fired generating unit, approximately 160 miles of 345 kV transmission line and related facilities and headquarters facilities.

Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed project, including the engineering and economic feasibility studies and the proposed schedule for the advances to the borrower of the guaranteed loan funds from Mr. Arthur J. Schnose, Manager, Sunflower Electric Cooperative, Inc., P.O. Box 980, Hays, Kansas 67601.

In order to be considered, proposals must be submitted January 10, 1980, to Mr. Schnose. The right is reserved to give such consideration and make such evaluation or other disposition of all proposals received, as Sunflower Electric and REA deem appropriate. Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 20–22 are available from the Director, Office of Information and Public Affairs, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

Dated at Washington, D.C., this 3rd day of December, 1979.

Robert W. Feragen,

Administrator, Rural Electrification Administration.

[FR Doc. 79-37859 Filed 12-10-79; 8:45 am]

BILLING CODE 3410-15-M

Plains Electric Generation and Transmission Cooperative, Inc.; Proposed Loan Guarantee

Under the authority of Pub. L. 93–32 (87 STAT. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 20–22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $319,000,000 to Plains Electric Generation and Transmission Cooperative, Inc., of Albuquerque, New Mexico. These loans will be used to finance a project consisting of a 210 MW coal-fired generating unit, approximately 37 miles of 115 kV transmission line, switching facilities, and related transmission sytem improvements.

Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed project, including the engineering and economic feasibility studies and the proposed schedule of advances to the borrower of the guaranteed loan funds from Mr. Stanley K. Bazant, Manager, Plains Electric Generation and Transmission Cooperative, Inc., 2401 Aztec Road, N.E., Albuquerque, New Mexico 87747.

In order to be considered, proposals must be submitted January 10, 1980, to Mr. Bazant. The right is reserve to give such consideration and make such evaluation or other disposition of all proposals received, as Plains Electric Generation and Transmission Cooperative, Inc., and REA deem appropriate. Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 20–22 are available from the Director, Office of Information and Public Affairs, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

Dated at Washington, D.C., this 4th day of December, 1979.

Robert W. Feragen,

Administrator, Rural Electrification Administration.

[FR Doc. 79-37860 Filed 12-10-79; 8:45 am]

BILLING CODE 3410-15-M

Soil Conservation Service

Little River Watershed, S.C.; Intent To Prepare an Environmental Impact Statement

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

FOR FURTHER INFORMATION CONTACT: Mr. George E. Huey, State Conservationist, Soil Conservation Service, 1835 Assembly Street, Columbia, South Carolina 29201, telephone number (803) 765–5681.

NOTICE: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the Little River Watershed proposal, Laurens County, South Carolina.

To reduce floodwater damages in and around Laurens, South Carolina, a floodwater retarding structure is being considered. Other alternatives being evaluated include channel enlargement, land acquisition, and flood-proofing. The retarding structure would commit about 150 acres of land presently used as woodland and pastureland to sediment pool and temporary flood water storage. The most significant change whould be the clearing of 50 acres and restricting the use of another 100 acres for temporary floodwater storage.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation of agencies and individuals in the preparation of plans. The draft environmental impact statement will be developed by Mr. George E. Huey, State Conservationist, Soil Conservation Service, 1835 Assembly Street, Columbia, South Carolina 29201, telephone number (803) 765–5681.

Dated: December 3, 1979.

(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))

Victor H. Barry, Jr.,

Deputy Administrator for Programs.

[FR Doc. 79-37839 Filed 12-10-79; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

Connecticut 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 Connecticut Advisory Committee (SAC) of the Commission will convene at 7:00 p.m. and will end at 9:00 p.m., on January 17, 1980 at the Holiday Inn, East Hartford, Connecticut.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the New England Regional Office of the Commission, 55 Summer Street, 8th Floor, Boston, Massachusetts 02110.

The purpose of this meeting is program planning.

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

Dated at Washington, D.C., December 6, 1979.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79-37964 Filed 12-10-79; 8:45 am]

BILLING CODE 6335-01-M

Vermont 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 Vermont Advisory Committee (SAC) of the Commission will convene at 7:30 p.m. and will end at 9:30 p.m., on January 22, 1980, at the Tavern Motor Inn, Montpelier, Vermont 05602.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the New England Regional Office of the Commission, 55 Summer Street, 8th Floor, Boston, Massachusetts 02110.

The purpose of this meeting is the Franco-American project; closing the Ethnic Gap questionnaires on teacher preparation; the census project; and legislative update.

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

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

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79-37962 Filed 12-10-79; 8:45 am]

BILLING CODE 6335-01-M

Washington 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 Washington Advisory Committee (SAC) of the Commission will convene at 9:00 a.m. and will end at 12:00 p.m., on January 18, 1980, at the Federal Building, 915 Second Avenue, Room 2854, Seattle, Washington 98174.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Northwestern Regional Office of the Commission, 915 Second Avenue, Room 2852, Seattle, Washington 98174.

The purpose of this meeting is to discuss Tacoma-Pierce County Employment Study recommendations; and Affirmative Action Monitoring Project.

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

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

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79-37963 Filed 12-10-79; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

National Bureau of Standards

Proposed Changes Pertaining to the Interface Standards Exclusion List

In a notice published in the **Federal Register** on June 29, 1979 (44 FR 37968), the National Bureau of Standards announced the availability of an initial exclusion list pertaining to Federal Information Processing Standards Publication 60, I/O Channel Interface; Federal Information Processing Standards Publication 61, Channel Level Power Control Interface; and Federal Information Processing Standards Publication 62, Operational Specifications for Magnetic Tape Subsystems. The exclusion list also pertains to Federal Information Processing Standards Publication 63, Operational Specifications for Rotating Mass Storage Subsystems, approval of which by the Secretary of Commerce was announced in the **Federal Register** on August 27, 1979 (44 FR 50078). The June 29, 1979, notice solicited written comments or recommendations from interested parties regarding the initial exclusion list. Comments specifically identifying candidate systems which should be added or removed from the initial exclusion list were especially encouraged.

As a result of a review and analysis of comments received in response to that announcement, NBS is proposing the following additions to and removal from the exclusion list:

Manufacture	Model
Additions	
NCR	System 15.
NCR	System 150.
Pertec	XL40 Series.
Pertec	XL20 Series.
Pertec	1800 Series.
Pertec	PCC 2000 series.
Prime	450.
Prime	550.
Prime	650.
Prime	750.
Tektronix	4050 series graphic computing system.
Tektronix	4052 graphic computing system.
Tektronix	4054 graphic computing system.
Tektronix	4080 series interactive graphics terminal.
Tektronix	MEG 121.
Tektronix	MEG 131.
Tektronix	WP1110 digitizing oscilloscope system.

Manufacture	Model
Tektronix	WP1200 digitizing oscilloscope system.
Tektronix	WP2200 transient digitizer.
Tektronix	WP2250 programmable digitizer system.
Tektronix	S-3030 automated test system.
Tektronix	S-3270 automated LSI system.
Tektronix	S-3250 automated LSI test system.
Removal	
Pertec	MITS/ALTAIR 8800B.

Interested parties will be allowed until January 25, 1980, to submit written comments regarding the proposed changes. Such written comments should be submitted to the Director, ICST, Attention: Interface Standards Exclusion List, National Bureau of Standards, Washington, D.C. 20234. Following review of comments received in response to this notice, NBS will make a determination on the proposed changes and will announce that determination in a subsequent notice published in the **Federal Register.**

NBS is maintaining a mailing list of vendors, Federal agencies, and other interested parties to whom copies of the current exclusion list are sent on a regular basis. Parties on the mailing list will also be sent copies of the proposed changes and the announcement of the determination on the proposed changes. Those who wish to be included on the mailing list should send a written request to the address noted above for submission of comments in response to this notice.

The exclusion list will be used in conjunction with the applicability provisions of the Federal I/O channel level interface standards. This list and the exclusion criteria are not a part of the standards themselves, but are provided for in the standards.

Dated: December 6, 1979.

Ernest Ambler,

Director.

[FR Doc. 79-37802 Filed 12-10-79; 8:45 am]

BILLING CODE 3510-13-M

Verification Procedures for I/O Channel Level Interface Standards

On February 16, 1979, notice was given in the **Federal Register** (44 FR 10098–10101) that the Secretary of Commerce had approved three Federal Information Processing Standards: (1) I/O Channel Interface Standard, (2) Channel Level Power Control Interface Standard, and (3) Operational Specifications for Magnetic Tape Subsystems, designated Federal Information Processing Standards Publication (FIPS PUB) 60, FIPS PUB 61, and FIPS PUB 62, respectively. On August 27, 1979, notice was given in the **Federal Register** (44 FR 50078–50079) that the Secretary of Commerce had approved the Federal Information Processing Standard, Operational Specifications for Rotating Mass Storage Subsystems, designated FIPS PUB 63. these standards each include provision for verification of conformance to be made by demonstration or other means acceptable to the Government prior to acceptance of equipment having an interface required to conform.

The National Bureau of Standards intends to provide a verification service for these standards that is expected to result in equipment being placed on a list to be maintained and distributed by the General Services Administration for use in Federal ADP procurement.

Since there is widespread use in the computer industry of interfaces that are believed to conform or that are similar to the interface defined by these standards, the principal initial means for verification will be a review by the Government of equipment interface documentation. For each of the above standards for which review is requested, a determination in one of the following categories will result.

I. The documentation provided has been compared to the standard and no significant deviations have been identified. The equipment identified will be included on the verification list maintained by GSA. Any subsequent indication, based on attempts to use equipment actually delivered or to test that equipment with suitable instrumentation, that the equipment does not conform to the standard will result in removal from the verification list.

II. Review of the documentation provided shows significant deviations from the standard. In this case, the nature of such deviations will be clearly summarized with specific details provided.

III. Inadequate documentation has been provided to complete the review.

The result of each review will be reported to the supplier submitting the equipment documentation and to GSA, and will be publicly available.

The general policy for test procedures is specified in Part 200 of Title 15, Code of Federal Regulations, and in the publication "Calibration and Test Services of the National Bureau of Standards" (NBS Special Publication 250). Procedures for formally requesting services, and use of a certificate are included. Specific instructions for a manufacturer desiring a formal review are provided below.

NBS does not approve, recommend, or endorse any commercial product. NBS in no way guarantees that equipment reviewed conforms to the standard. However, a manufacturer may certify that equipment bearing the same identification as the equipment reviewed by NBS, for which no significant deviations were identified, conforms to the standard. Such a claim will make the equipment eligible for procurement and use by Government agencies. However, no express or implied agreement for such procurement can be nor is made by NBS.

In accordance with Federal law (15 U.S.C. 275a), fees are chargeable for services performed by the National Bureau of Standards. Fees will include the cost of labor, materials, and contractor support, if needed, used in performing the review and in issuing a validation certificate. NBS labor costs will include administrative and engineering personnel participating in the review; labor rates will be determined by the cost of the personnel, including applicable overhead. Materials cost will be actual cost to NBS. Travel costs, when necessary, will be actual costs to NBS. Bills will be issued upon completion or termination of the review. A verification certificate will be issued upon receipt of payment.

The initial service will provide for review for interfaces for which documentation has been provided to NBS for its permanent retention along with a suitable statement from the supplier that it has evaluated its interface and believes it to be in conformance with the specific standards (initially, FIPS 60, 61, or 62) against which the documentation is to be reviewed. This service will later be made available to verify conformance with FIPS 63 for interfaces for which a similar statement and documentation have been provided. Any supplier desiring to initiate such a review must make a request identifying by make and model the interface and providing the documentation. The Government will provide, within 20 days, an estimate of the costs which will be incurred to perform the review. If the costs are subsequently authorized by the supplier, the review will be performed on a fully reimbursable basis.

At a later time, NBS may make additional provisions for verification, possibly including procedures for supplier self-verification, employing equipment already on the GSA verification list for that purpose. NBS is developing interface instrumentation which is expected to be employed by

Federal agencies. This interface instrumentation will be employed especially in cases where conformance with one or more of these standards for delivered equipment is in question as a result of the inability of equipment to function successfully in conjunction with equipment connected to it that is already on the GSA verification list.

Persons requesting this service or desiring any further information about this announcement may contact Dr. John P. Riganati, Chief, System Components Division, Center for Computer Systems Engineering, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234, (301) 921–2705.

Dated: December 6, 1979.

Ernest Ambler,

Director.

[FR Doc. 79–37861 Filed 12–10–79; 8:45 am]

BILLING CODE 3510–13–M

Office of the Secretary

[Dept. Organization Order 1–1]

Mission and Organization of the Department of Commerce

This order effective November 26, 1979 amends the material appearing at 35 FR 19704 of December 29, 1970.

Department Organization Order 1–1 dated December 15, 1970 is hereby further amended as shown below. The purpose of this amendment is to update the list of Secretarial Officers.

In **Section 3.** *Organization Structure,* subparagraph .01a. is revised to read as follows:

"a. The Office of the Secretary consists of the Secretary and the Secretarial Officers, designated staff immediately serving these officials, and a number of 'Departmental offices' which have Departmentwide functions or perform special program functions directly on behalf of the Secretary. The Secretarial Oficers are:

"Under Secretary,
"General Counsel,
"Assistant Secretary for Administration,
"Assistant Secretary for Congressional Affairs,
"Assistant Secretary for Policy,
"Administrator, National Oceanic and Atmospheric Administration,
"Assistant Secretary for Industry and Trade,
"Assistant Secretary for Maritime Affairs,
"Assistant Secretary for Commuications and Information,
"Assistant Secretary for for Tourism,
"Assistant Secretary for Science and Technology,
"Assistant Secretary for Economic Development,
"Chief Economist, and
"Inspector General."

Effective date: November 26, 1979.

Elsa A. Porter,

Assistant Secretary for Administration.

[FR Doc. 79–37953 Filed 12–10–79; 8:45 am]

BILLING CODE 3510–17–M

[Dept. Organization Order 25–1]

United States Travel Service; Statement of Organization, Functions, and Delegations of Authority

This order effective November 4, 1979 supersedes the material appearing at 43 FR 57174 of December 6, 1978 and 44 FR 66232 of November 19, 1979.

Section 1. Purpose

.01 This Order prescribes the organization and assignment of functions within the United States Travel Service (USTS). The scope of authority and functions of USTS are set forth in Department Organization Order 10–7.

.02 This revision, reflecting a major reorganization and reassignment of functions:

a. Abolishes the Offices of Market Development and International Operations, the Advertising and Media Services, and Marketing and Conventions Divisions, and assigns their functions to the newly established Office of Marketing and Field Operations (Section 5.).

b. Places the Regional Offices and the International Congress Office under the Office of Marketing and Field Operations (Section 5.).

c. Abolishes the Office of Policy and Research and the Office of Governmental Affairs, deletes their domestic tourism functions, and assigns the remainder of their functions to the newly established Office of Management and Administration (Section 6.).

d. Abolishes the Office of Administration and assigns its functions to the Office of Management and Administration (Section 6.).

Section 2. Organization Structure

The principal organization structure and lines of authority shall be as depicted on the attached organization chart (Exhibit 1). A copy of the organization chart is on file with the original of this document in the Office of the Federal Register.

Section 3. Office of the Assistant Secretary

.01 The *Assistant Secretary for Tourism* (hereinafter the "Assistant Secretary") has overall responsibility for the policies and direction of USTS. The Assistant Secretary establishes basic policies and objectives for USTS, chairs the Department's Travel Advisory Board, establishes and maintains relations with government and industry officials at all levels to facilitate tourism policies and programs, and advises the Secretary and the Under Secretary on all matters related to tourism.

.02 The *Deputy Assistant Secretary for Tourism* (hereinafter the "Deputy Assistant Secretary") serves as the principal advisor to the Assistant Secretary and performs the duties of the Assistant Secretary in the latter's absence or disability, or in the event of a vacancy in that office; supervises and directs day-to-day operations of USTS including Congressional liaison, provides policy guidance for programs and projects developed within USTS, makes recommendations to the Assistant Secretary on all matters related to tourism, and carries out other responsibilities as assigned by the Assistant Secretary.

Section 4. Management and Policy Council

The *Management and Policy Council* consists of the Assistant Secretary, the Deputy Assistant Secretary, and the Directors of the Office of Marketing and Field Operations, and Management and Administration; and provides a management forum for the Assistant Secretary and the Deputy Assistant Secretary to plan, coordinate, and manage the principal activities of USTS. The Council provides a forum for the clarification of policies, the discussion of issues, planning functions as required, the expressions of alternative viewpoints and options, and the assignment of responsibilities for carrying out policy and program decisions made by the Assistant Secretary.

Section 5. Office of Marketing and Field Operations

.01 The *Office of Marketing and Field Operations* plans and develops marketing programs based on international tourism policies as approved by the Office of the Assistant Secretary; develops specific program plans and procedures for implementation; recommends to the Office of the Assistant Secretary allocation of budget resources for the offices abroad; and directs the

implementation of approved programs, projects, and procedures to promote international travel to the United States from USTS-designated markets abroad. The Office supervises the overall operations of the Regional Offices and the International Congress Office; develops and coordinates international advertising, media relations, trade and consumer information programs, and the production and distribution of all information materials; reviews and recommends action on market development and supporting programs; develops, coordinates, and processes all familiarization and inspection tours for representatives of the travel trade and the media; develops and supervises joint USTS/industry promotion programs; plans and develops programs to motivate and persuade U.S. Associations to host International Congresses and to increase foreign attendance at conventions, trade shows and other events to be held in the U.S.; develops incentive travel programs for implementation by USTS offices abroad; and maintains working relationships with U.S. travel industry representatives for development of cooperative programs. The Office also coordinates with the Office of Management and Administration in the collection of travel data from selected foreign markets to be used in analyzing and formulating effective marketing strategies and programs; provides information, advice and assistance to the Office of the Assistant Secretary by establishing and maintaining relations with government officials at all levels, particularly those of tourism offices in regions, states, territories and local governments; and develops, coordinates, and implements programs with these entities.

.02 *Regional Offices* perform the primary role in implementing programs of USTS in their respective markets, and are responsible for travel information and services to be provided to the foreign travel trade and to the consumer. Regional Offices develop marketing strategies for their markets and prepare annual marketing plans for approval by headquarters. They are responsible for implementing and monitoring all travel promotion programs such as research, market development, consumer information, sales promotion, advertising and product information in their primary and special markets.

.03 The *International Congress Office* is responsible for implementing the International Conventions Program in countries abroad. The Office identifies international conventions and congresses which are prime prospects for selecting the U.S. as a site for their meetings; motivates and persuades those prospects to hold congresses in the U.S.; promotes foreign attendance at national U.S. conventions; and collects, analyzes, and furnishes International Association profile data for sales follow-up by headquarters as well as State and city convention and visitors bureaus.

Section 6. Office of Management and Administration

The *Office of Management and Administration* advises and assists the Office of the Assistant Secretary in developing and implementing overall policies in the areas of administrative, personnel, and financial matters; ensures that proper administrative and financial procedures are carried out; performs budget formulation and execution functions; develops and conducts administrative evaluations and management analyses to assist the Office of the Assistant Secretary in assuring that effective managment practices are utilized throughout USTS; and provides administrative services as required to execute policy and program operations. The Office also develops policies, legislative positions, and strategies in the area of international agreements; represents the Department as official participants in international tourism meetings; collects, analyzes, and provides economic and tourism data; develops, coordinates, and administers joint data collection projects; assists in establishing overall USTS performance goals; develops program evaluation studies to determine individual program effectiveness; reviews and recommends action on research projects proposed in markets abroad; and administers international visitor facilitation programs and the matching grants program. In addition, the Director is responsible for assisting the Deputy Assistant Secretary in carrying out the day-to-day operations of USTS.

Effective date: November 4, 1979.

Elsa A. Porter,

Assistant Secretary for Administration.

[FR Doc. 79-37954 Files 12-10-79; 8:45 am]

BILLING CODE 3510-17-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Levels for Certain Cotton Textile Products From Taiwan

December 5, 1979.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Increasing by the application of swing the import levels established for cotton coats in Category 333/334/335 and the applicable sublimits, cotton knit shirts and blouses in Category 340, and cotton trousers in Category 347/348 and the applicable sublimits, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1979.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on January 4, 1978 (43 FR 884), as amended on January 25, 1978 (43 FR 3421), March 3, 1978 (43 FR 8828), June 22, 1978 (43 FR 26773), September 5, 1978 (43 FR 39408), January 2, 1979 (44 FR 94), March 22, 1979 (44 FR 17545), and April 12, 1979 (44 FR 21843)).

SUMMARY: The bilateral agreement of June 8, 1978, as amended, concerning cotton, wool and man-made fiber textile products exported from Taiwan provides for percentage increases in certain specific ceilings during an agreement year (swing). Pursuant to the terms of the bilateral agreement, the import levels for Categories 333/334/335, 338/339, 340 and 347/348 are being adjusted for the twelve-month period which began on January 1, 1979 and extended through December 31, 1979.

EFFECTIVE DATE: December 6, 1979.

FOR FURTHER INFORMATION CONTACT: Shirley Hargrove, Trade and Industry Assistant, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-5423).

SUPPLEMENTARY INFORMATION: On December 28, 1978, there was published in the **Federal Register** (43 FR 60633) a letter dated December 22, 1978 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, which established levels of restraint for certain specified categories of cotton, wool and man-made fiber textile products, including Categories 333/334/335, 338/339, 340 and 347/348, produced or manufactured in Taiwan, which may be entered into the United States for consumption or withdrawn from warehouse for consumption during the twelve-month period which began on January 1, 1979 and extends through December 31, 1979. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the levels of restraint established for cotton textile products in Categories 333/334/335, 338/339, 340, and 347/348 during that period. The level for Categories 338/339 has been adjusted to

account for 1977 overshipments amounting to 16,243 dozen.

Paul T. O'Day,

Acting Chairman, Committee for the Implementation of Textile Agreements.

December 5, 1979.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C.

Dear Mr. Commissioner: On December 22, 1978, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption, of cotton, wool and man-made fiber textile products in certain specific categories, produced or manufactured in Taiwan and exported to the United States during the agreement year which began on January 1, 1979, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Arrangement Regarding International Trade in Textiles done in Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Textile Agreement of June 8, 1978, as amended, concerning cotton, wool and man-made fiber textile products exported from Taiwan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972 as amended by Executive Order 11951 of January 6, 1977, you are directed to amend, effective on December 6, 1979, the levels of restraint established in the directive of December 22, 1978, for Categories 333/334/335, 338/339, 340 and 347/348 to the following levels:

Category and Amended Twelve-Month Levels of Restraint[2]

333/334/335—101,564 dozen of which not more than 53,191 dozen shall be in Category 333/334 and not more than 63,608 dozen shall be in Category 335.
338/338—478,901 dozen.
340—637,609 dozen.
5347/348—840,320 dozen of which not more than 412,709 dozen shall be in Category 347 and not more than 637,691 dozen shall be in Category 348.

The actions taken with respect to Taiwan, and with respect to imports of cotton textile products from Taiwan have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Paul T. O'Day,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 79-37833 Filed 12-10-79; 8:45 am]

BILLING CODE 3510-25-M

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 8, 1978, as amended, concerning cotton, wool and man-made fiber textile products from Taiwan which provide, in part, that: (1) Within the aggregate and group limits, specific ceilings may be exceeded by designated percentages; (2) these same levels may be increased for carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

[2] The levels of restraint have not been adjusted to reflect any imports after December 31, 1978.

Importers' Textile Advisory Committee; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1976) notice is hereby given that a meeting of the Importers' and Retailers' Textile Advisory Committee will be held on January 10, 1980 at 10:30 a.m. in Room 5611, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

The Committee was established by the Secretary of Commerce on August 13, 1963 to advise U.S. Government officials of the effects on import markets of cotton, wool and man-made fiber textile agreements.

The agenda for the meeting will be as follows: 1. Review of import trends. 2. Implementation of textile agreements. 3. Report on conditions in the domestic market. 4. Other business.

A limited number of seats will be available to the public on a first-come basis. The public may file written statements with the Committee before or after each meeting. Oral statements may be presented at the end of the meeting to the extent time is available.

Copies of the minutes of the meeting will be available on written request addressed to the ITA Freedom of Information Officer, Freedom of Information Control Desk, Room 3012, U.S. Department of Commerce, Washington, D.C. 20230.

Further information concerning the Committee may be obtained from Arthur Garel, Director, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230, telephone 202/377-5078.

Dated: December 3, 1979.

Arthur Garel,

Director, Office of Textiles.

[FR Doc. 79-38129 Filed 12-10-79; 10:26 am]

BILLING CODE 3510-25-M

DEPARTMENT OF DEFENSE

Department of the Army

Command and General Staff College Advisory Committee; Meeting

In accordance with section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463) announcement is made of the following committee meeting:

Name: Command and General Staff College (CGSC) Advisory Committee.
Date: 9-11 January 1980.
Place: College Conference Room, Bell Hall, Ft. Leavenworth, KS 66027.
Time: 2000-2200, 9 January 1980; 0900-1630, 10 January 1980; 0900-1130, 11 January 1980.
Proposed Agenda: 2000-2200, 9 January 1980: Review of CGSC educational program. 0900-1630, 10 January 1980: Continuation of review. 0900-1000, 11 January 1980: Continuation of review. 1000-1130, 11 January 1980: Executive session.

The purpose of the meeting is for the Advisory Committee to examine the entire range of College operations and, where appropriate, to provide advice and recommendations to the College Commandant and Faculty.

The meeting will be open to the public to the extent that space limitations of the meeting space permit. Because of these limitations, interested parties are requested to reserve space by contacting the Committee's Executive Secretary.

Philip J. Brookes,

Executive Secretary, CGSC Advisory Committee.

[FR Doc. 79-37882 Filed 12-10-79; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers; Department of the Army

Intent To Prepare Draft Supplement No. 2 to the Final Environmental Impact Statement for Red River Waterway Project, Mississippi River to Shreveport, La., Reach

AGENCY: U.S. Army Corps of Engineers, DOD, New Orleans District.

ACTION: Notice of intent to prepare a draft supplement environmental impact statement.

SUMMARY: 1. *Proposed Action.* The proposed work to be analyzed in this statement is the construction and operation of the Red River Waterway Project which consists of a 9- by 200-foot navigation channel, with five locks and dams and related bank stabilization extending from the Mississippi River to Shrveport, Louisiana. The navigation feature will consist of a stabilized channel 236 miles in length which is generally confined within the limits of the existing river channel. The locks will

have clear dimensions of 84 feet by 685 feet usable chamber length. The total lift will be approximately 141 feet.

2. *Alternatives.* Alternatives to bank stabilization and navigation, such as no action and developing other modes of transportation, were discussed in supplement No. 1 to the EIS. Supplement No. 2 will consider the impacts of alternative lock and dam locations and pool elevations for providing navigation and bank stabilization from the Mississippi River to Shreveport, Louisiana. Mitigation requirements for alternative plans will also be considered.

3. *Scoping Process.* a. Public meetings were held on 15, 16, and 17 August 1972 in Jefferson, Texas, Shreveport and Alexandria, Louisiana, respectively, for the purpose of eliciting expressions of needs and preferences regarding the authorized and alternative courses of action within the Mississippi River to Shreveport, Louisiana, reach of the project. The registered attendance was 119 in Jefferson, 107 in Shreveport, and 123 in Alexandria. During these meetings, the three alternative courses were presented: (1) The authorized navigation and complementary bank stabilization plan from the Mississippi River to Shreveport, Louisiana; (2) the Overton-Red Waterway project, a land-cut alternative from the Mississippi River to Shreveport, Louisiana; and (3) no-action. Various informal meetings have been held with the state and Federal fish and wildlife authorities in evaluating the project effects on fish and wildlife resources and in formulating a lildlife mitigation plan. Informal meetings have also been held with the representatives of various environmental groups, landowners, and other special interest groups throughout the planning process. Public meetings will be scheduled for the spring of 1980. These meetings will be held in Alexandria and Shreveport, Louisiana, and will afford the opportunity for governmental and private organizations as well as the public at large to offer comments and guidance in project planning which will be reflected in this supplement. It will address in a comparative manner the impacts of the alternative lock and dam siting plans which were not covered, or adequately addressed, in the first EIS supplement for this reach of the Red River Project.

b. Significant issues for the alternative lock and dam locations and pool elevations to be addressed in the supplement include: Project costs, real estate requirements including flowage easements for navigation pools, impingement of navigation pools on existing levees, rural and urban ground water damages, maintenance dredging, impact on fishery, and impact on wildlife habitat.

c. It will be necessary for the U.S. Fish and Wildlife Service to perform a Habitat Evaluation Procedure for the alternative plans for inclusion in the supplement.

d. Periodic reviews will be held with various Federal, state, and local agencies; they will be kept apprised of the progress.

4. *Scope Meetings.* The meetings scheduled for spring of 1980 are considered scoping meetings. Although the times have not been set, they will probably be held in May of that year. A formal public notice providing the time, date, and location of these meetings will be released at least one month prior to the scheduled dates.

5. *Availability.* The draft supplement is scheduled to be available to the public in October 1980.

ADDRESS: Questions concerning the proposed action and draft supplement can be directed to Mr. Dave Reece, U.S. Army Corps of Engineers, Environmental Quality Section (LMNPD–RE), P.O. Box 62267, New Orleans, Louisiana, 70160, telephone (504) 838–2522.

Thomas A. Sands,

Colonel, CE District Engineer.

November 29, 1979.

[FR Doc. 79–37885 Filed 12–10–79; 8:45 am]

BILLING CODE 3710–84–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Otis Ainsworth; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of a Proposed Remedial Order (PRO) which was issued to Otis Ainsworth, 807 West 15th Street, Laurel, Mississippi 39440, on November 15, 1979. This PRO charges Otis Ainsworth with pricing violations in the amount of $506,818.00 connected with the sale of crude oil during the period November 1973, through December 1977, in the State of Mississippi.

A copy of the November 15, 1979, PRO, with confidential information deleted, may be obtained from James C. Easterday, District Manager of Enforcement, 1655 Peachtree Street, N.E., Atlanta, Georgia 30309, Phone: (404) 881–2661. Within 15 days of publication of this Notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, NW., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Atlanta, Georgia, on the 26th day of November 1979.

James C. Easterday,

District Manager.

[FR Doc. 79–37858 Filed 12–10–79; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Cases Filed; Week of October 26, 1979 through November 2, 1979

Notice is hereby given that during the week of October 26, 1979 through November 2, 1979 the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under the DOE's procedural regulations, 10 CFR, Part 205, any person who will be aggrieved by the DOE action sought in such cases may file with the DOE written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

December 6, 1979.

Melvin Goldstein,

Director, Office of Hearings and Appeals.

Date	Name and location of applicant	Case No.	Type of submission
Oct. 26, 1979	Acomi Corporation, Marblehead, Massachusetts	BMR–0008	Request for Modification. If granted: The September 19, 1979, Decision and Order issued to Acomi Corporation would be modified regarding the firm's supply obligations.
Oct. 26, 1979	Acomi Corporation, Marblehead, Massachusetts	BES–0111 and BST–0011.	Request for Stay and Temporary Stay. If granted: The September 19, 1979, Decision and Order (Case No. DEX–0191) issued to Acomi Corporation would be stayed pending review of an Application for Modification (Case No. BMR–0008).

Date	Name and location of applicant	Case No.	Type of submission
Oct. 26, 1979	Dechert, Price & Rhoads, Philadelphia, Pennsylvania.	BFA-0032	Appeal of an Information Request Denial. If granted: The August 23, 1979, Information Request Denial issued by the Office of Utility and Industrial Energy Applications to Dechert, Price & Rhoads would be rescinded and the firm would receive access to certain DOE documents.
Oct. 26, 1979	Getty Oil Company, New York, New York	BRH-0009 and BRD-0009.	Motion for Discovery and Motion for Evidentiary Hearing. If granted: An evidentiary hearing would be convened and discovery would be granted with respect to a Proposed Remedial Order (Case No. DRO-0382) issued to Getty Oil Company.
Oct. 26, 1979	Lawrence & Sons Oil Co., Inc., Panama City, Florida.	BEE-0237	Allocation Exception. If granted: Lawrence & Sons Oil Co., Inc., would be granted an exception from the provisions of 10 CFR 211, permitting the firm to receive an increased allocation of unleaded motor gasoline for the purpose of blending gasohol.
Oct. 26, 1979	Romana Gas Authority, Romana, Oklahoma	BEE-0242	Exception to the Reporting Requirements. If granted: Ramona Gas Authority would not be required to file Form EIA-50.
Oct. 29, 1979	Architectural Woodwork Institute, Arlington, Virginia.	BEE-0248	Exception to the Emergency Building Temperature Restrictions. If granted: The Architectural Woodwork Institute would receive an exception from the provisions of 10 CFR 490, with respect to the Emergency Building Temperature Restrictions.
Oct. 29, 1979	Department of Aging, Harrisburg, Pennsylvania	BEE-0262	Exception to the Emergency Building Temperature Restrictions. If granted: The Department of Aging would receive an exception from the provisions of 10 CFR 490, the Emergency Building Temperature Restrictions.
Oct. 29, 1979	Emergency Small Independent Refineries Task Force, Washington, D.C.	BSG-0002	Motion for Special Redress. If granted: The Emergency Small Independent Refineries Task Force would receive an exception from the provisions of 10 CFR 211, with respect to the Crude Oil Buy/Sell Program and the Entitlements Program.
Oct. 29, 1979	Exxon Company, U.S.A., Washington, D.C.	BEA-0034 and BES-0034.	Appeal of an ERA Assignment Order. If granted: The October 9, 1979, Assignment Order issued by the Economic Regulatory Administration Region IV to Exxon Company would be rescinded regarding the firm's supply obligations to Marine Oil Company.
Oct. 29, 1979	Mobil Oil Corporation, New York, New York	BEA-0035	Appeal of Allocation Notice. If granted: The September 28, 1979, Allocation Notice issued by the Economic Regulatory Administration under the Canadian Crude Oil Allocation Program, 10 CFR 214, for the allocation period commencing October 1, 1979, would be rescinded.
Oct. 29, 1979	Navajo Refining Company, Washington, D.C	BEE-0247	Allocation Exception. If granted: Navajo Refining Company would receive an exception from the provisions of 10 CFR 211.67, with respect to the firm's entitlements purchase obligations.
Oct. 30, 1979	Casson, Calligaro & Mutryn, Washington, D.C.	BFA-0037	Appeal of an Information Request Denial. If granted: The DOE's October 1, 1979, Information Request Denial issued by the Economic Regulatory Administration would be rescinded and Casson, Calligaro & Mutryn would receive access to certain DOE documents.
Oct. 30, 1979	Consumers Service Stations, Tulsa, Oklahoma	BEE-0259	Allocation Exception. If granted: Consumers Service Stations would be granted an exception from the provisions of 10 CFR 211, permitting the firm to receive an increased allocation of unleaded motor gasoline for the purpose of blending gasohol.
Oct. 30, 1979	Daigh Automotive Engineering Corporation, Wilmington, California.	BXE-0255	Extension of relief granted in *Daigh Automotive Engineering Corp.*, 3 DOE Par. (August 1, 1979). If granted: Daigh Automotive Engineering Corporation would continue to receive an increased allocation of motor gasoline for the purposes of automotive testing.
Oct. 30, 1979	Dow Chemical, U.S.A., Washington, D.C	BEE-0285	Allocation Exception. If granted: Dow Chemical, U.S.A., would receive an exception from the provisions of 10 CFR 211.65, regarding the Buy/Sell Program.
Oct. 30, 1979	Energy Cooperatives, Inc., Rosemont, Illinois	BED-0011	Motion for Discovery. If granted: Discovery would be granted to Energy Cooperatives, Inc., with respect to information which Chevron U.S.A., Inc., has or will file in response to Energy Cooperatives, Inc.'s Application for Exception relief.
Oct. 30, 1979	Good Hope Refineries, Inc., Washington, D.C.	BEE-0250	Allocation Exception. If granted: Good Hope Refineries, Inc., would receive an exception from the provisions of 10 CFR 211.67, with respect to the firm's entitlements purchase obligations.
Oct. 30, 1979	Haber Oil Products, Pleasant Hill, California	BEE-0253	Allocation Exception. If granted: Haber Oil Products would be granted an exception from the provisions of 10 CFR 211, permitting the firm to receive an increased allocation of unleaded motor gasoline for the purpose of blending gasohol.
Oct. 30, 1979	Jackson Oil Company, Baltimore, Maryland	BEE-0260	Allocation Exception. If granted: Jackson Oil Company would receive an exception from the provisions of 10 CFR 211, permitting the firm an increased allocation of home heating oil.
Oct. 30, 1979	Milner Super Gas, Inc., Aiken, South Carolina	BEE-0252	Allocation Exception. If granted: Milner Super Gas, Inc., would be granted an exception from the provisions of 10 CFR 211, permitting the firm to receive an increased allocation of unleaded motor gasoline for the purpose of blending gasohol.
Oct. 30, 1979	Mobil Oil Corporation, Washington, D.C	BEX-0006	Supplemental Order. If granted: An evidentiary hearing would be convened in connection with the appeals of certain Canadian allocation program notices filed by Mobil Oil Corporation (Case No. DEA-0589, DEA-0387, and DEA-0235).
Oct. 30, 1979	Oil Products Company, Inc., Council Bluffs, Iowa	BEE-0258	Allocation Relief. If granted: Oil Products Co., Inc., would be granted an exception from the provisions of 10 CFR 211, permitting the firm to receive an increased allocation of unleaded motor gasoline for the purpose of blending gasohol.
Oct. 30, 1979	Union Oil Company of California	BEH-0001	Motion for Evidentiary Hearing. If granted: An Evidentiary Hearing would be convened on behalf of Union Oil Company of California with respect to a Proposed Decision and Order issued to Howie Oil Company (Case No. DEE-2549).
Oct. 31, 1979	Giant Industries, Inc., Phoenix, Arizona	BEE-0272	Allocation Exception. If granted: Giant Industries, Inc., would receive an exception from the provisions of 10 CFR 211.65, permitting the firm to receive an allocation of crude oil under the Buy/Sell Program.
Oct. 31, 1979	Inexco Oil Company, Washington, D.C	BEE-0270	Price Exception. If granted: Inexco Oil Company would receive an exception from the provisions of 10 CFR 212, Subpart L, with respect to the permissible average markup for crude oil purchased and sold by marketers.
Oct. 31, 1979	Puerto Rico Water Resources Authority, San Juan, Puerto Rico.	BEE-0271	Allocation Exception. If granted: The Puerto Rico Water Resources Authority would receive an exception from the provisions of 10 CFR 211.67, permitting the firm to receive entitlement benefits with respect to residual fuel oil imported into Puerto Rico.
Oct. 31, 1979	R. H. Engelke, San Antonio, Texas	BXE-0265	Extension of relief granted in *R. H. Engelke*, DOE Par. (June 13, 1979). If granted: R. H. Engelke would be permitted to continue to sell the crude oil produced from the Bertha Copsey Lease, located in Jackson County, Texas, at upper tier ceiling prices.
Oct. 31, 1979	Western Refining Company, Denver, Colorado	BEE-0263	Allocation Exception. If granted: Western Refining Company would receive an exception from the provisions of 10 CFR 211.67, with respect to the firm's entitlements purchase obligations.
Nov. 1, 1979	Cities Services Company, Tulsa, Oklahoma	BEA-0038	Appeal of the Entitlements Notice. If granted: The July 1979 Entitlements Notice issued by the Economic Regulatory Administration would be rescinded with respect to the National Domestic Crude Oil Supply Ratio which effects the entitlement purchase obligations of Cities Service Company.
Nov. 1, 1979	E. I. du Pont de Nemours and Company	BEE-0309 and BEE-0310.	Exception from the Emergency Building Temperature Restrictions. If granted: E. I. du Pont de Nemours and Company would receive an exception from the provisions of 10 CFR 490, the Emergency Building Temperature Restrictions.
Nov. 1, 1979	Fina Jobbers Association, Inc., Washington, D.C.	BEX-0007	Supplemental Order. If granted: Fina Jobbers Association, Inc., and American Petrofina Inc., would show cause why the temporary exception granted on August 29, 1979, should not be rescinded and why Application for Exception should not be discussed.

Date	Name and location of applicant	Case No.	Type of submission
Nov. 1, 1979	Fina Jobbers Association, Inc., and American Petrofina Inc., Washington, D.C.	BMR-0009	Motion for Modification. If granted: The August 29, 1979, Decision and Order (Case No. DEL-5568) issued by the Office of Hearings and Appeals would be modified, requiring Fina to supply motor gasoline to each class member according to their adjusted base period volume rather than its actual purchases from the firm. The Order would also be modified, permitting Fina jobbers to determine whether they desire to be recognized as members of the class of September 1, 1979.
Nov. 1, 1979	Fina Jobbers Association, Inc., and American Petrofina, Inc., Washington, D.C.	BMR-0010	Motion for Modification. If granted: The August 28, 1979, Decision and Order (Case No. DEL-5568) issued by the Office of Hearings and Appeals would be modified, with respect to the stay of the obligations of suppliers to supply American Petrofina, Inc., with motor gasoline.
Nov. 1, 1979	F S Services, Inc., Bloomington, Illinois	BEE-0274 and BEL-0274.	Price Exception and Request for Temporary Exception. If granted: F S Services, Inc., would receive an exception from the provisions of 10 CFR 212.83, permitting the firm to pass through incremental expenses relating to the blending, storage, distribution, and marketing of gasohol. The firm would receive a Temporary Exception pending a final determination of its application for exception.
Nov. 1, 1979	Fullbright and Jaworski, Washington, D.C	BFA-0039	Appeal of Information Request Denial. If granted: The September 27, 1979, Information Request Denial issued by the Office of Special Counsel for Compliance to Fullbright and Jaworski would be rescinded and the firm would be granted access to certain DOE documents.
Nov. 1, 1979	Giant Industries, Inc., Phoenix, Arizona	BEL-0272	Temporary Exception. If granted: Giant Industries, Inc., would receive a Temporary Exception from the provisions of 10 CFR 211.65, permitting the firm to receive an allocation of crude oil under the Buy/Sell Program pending a final determination of its Application for Exception.
Nov. 2, 1979	United Oil Company, Washington, D.C	BSG-0003	Petition for Special Redress. If granted: The DOE would review the proceedings involved in a Proposed Remedial Order issued to United Oil Company (Case No. DRO-0241) by the Office of Enforcement Northeast District.

Notices of Objection Received

[Week of October 26, 1979 thru November 2, 1979]

Date	Name and location of applicant	Case No.
10/29/79	Kelly Lakeside Standard Service, Suring, Wis.	BEO-0075
10/26/79	Gold Key Shell, Fort Lauderdale, Fla.	BEO-0074
10/29/79	Archie's Standard Service, New Hope, Minn.	BEO-0072
10/29/79	Philip David Dowd Sunoco, Scottsburg, Ind.	BEO-0073
10/29/79	Keaton's Shell Service, Chicago, Ill.	BEO-0068
10/29/79	Acme Amoco, Traver City, Mich	BEO-0077
10/29/79	Rawji's Texaco Service, Studio City, Calif.	DEE-8007
10/29/79	Kansas-Nebraska Natural Gas Co., Washington, D.C.	DEE-4485
10/30/79	American Management Associations, New York, N.Y.	DEE-7750
10/30/79	Mower County Senior Citizens Center, Austin, Minn.	BEO-0084
10/30/79	Rehoboth Amoco, Rehoboth, Del	BEO-0092
10/30/79	Earl B. Plank, Los Angeles, Calif	BEO-0083
10/30/79	Viger's Shell Service, Lincoln Park, Mich.	DEE-6332
10/30/79	New Jersey Highway Authority, Woodbridge, N.J.	DXE-8279
10/30/79	Lantern Lane Shell, Houston, Tex	DEE-7192
10/30/79	H & S Gulf, Fruitdale, Tex	BEO-0091
10/30/79	Woodruff Standard Service, Woodruff, Wis.	BEO-0085
10/30/79	Ken's Standard, Pevely, Miss	BEO-0079
10/30/79	Sam's Standard Service, Flint, Mich.	BEO-0078
10/30/79	Main Street Chevron Service, Morro Bay, Calif.	BEO-0080
10/30/79	The Oasis, Inc., Hartland, Mich	BEO-0081
10/30/79	Frank Thompson's Chevron Service Ctr., Spokane, Wash.	BEO-0082
10/31/79	Independent Oil & Tire Company, Elyria, Ohio.	DEE-4273
10/30/79	Jacob's Service Station, Bloomington, Minn.	BEO-0086
10/30/79	Vince Pisopo, Glen Ellyn, Ill	BEO-0087
10/30/79	Nashotah Garage, Nashotah, Wis	BEO-0088
10/30/79	Budd's Standard Service, Platteville, Wis.	BEO-0089
10/31/79	Baxter's Marathon Service, Indianapolis, Ind.	BEO-0096
10/31/79	Kents Standard Service, Hays, Kans.	BEO-0095
10/31/79	Eastern Shore Oil Company, Washington, D.C.	DEE-7886
11/1/79	Three Forks Exxon, Three Forks, Mont.	BEO-0102
11/1/79	Tri C Arco, Arlington Heights, Ill	BEO-0098
11/1/79	Peavine Exxon, Kilgore, Tex	BEO-0099
11/1/79	Rocco's Arco, Bridgeview, Ill	BEO-0100
11/1/79	Long Island Gasoline Retailers Assoc., Jericho, N.Y.	DEE-5858
11/1/79	Anderson's Exxon, Ocean City, Md	DEE-2127
11/1/79	Johnston Petroleum Products, Everett, Wash.	BEO-0101

List of Cases Involving the Standby Petroleum Product Allocation Regulations for Motor Gasoline

Week of October 26 through November 2, 1979

If granted: The following firms would receive an exception which would increase their base period allocation of motor gasoline.

October 26, 1979

Avis Rent A Car, BEE-0236, Indiana.
Booth Oil Co., BEE-0240, Oregon.
Boss Oil, BEE-0238, Minnesota.
Naph-Sol Refining Co., Inc., BEE-0243, Michigan.
Oakville Amoco Station, BEE-0241, Maryland.

October 29, 1979

Bob Becker's Union 76, BEE-0244, Florida.
Tuscaloosa City Schools, BEE-0246, Alabama.

October 30, 1979

Brown's Exxon, BEE-0257, Georgia.
Daeco, BXE-0255, California.
Harrison Gas & Oil Inc., BEE-0245, California.
Orlaski's Service Stations, BEE-0280, Pennsylvania.
Shell Oil Co., BEE-0273, Ohio.

October 31, 1979

Budget Oil Company, BEE-0268, Minnesota.
Central Service & Repair Inc., BEE-0269, Maryland.
Isabella Arco, BEE-0264, California.
Mickey's Anchor, BEE-0277, Massachusetts.
Mt. Reba, Inc., BEE-0275, California.
Petrolics, Inc., BEE-0266, Texas.
Rodelo's Service, BEE-0267, California.

November 2, 1979

Red Bluff Mobil Service Center, BXE-0283, Texas.

Items Retrieved, 20.

[FR Doc. 79-37960 Filed 12-10-79; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decisions and Orders; November 12 through November 16, 1979

Notice is hereby given that during the period November 12 through November 16, 1979, the Proposed Decisions and Orders which are summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to Applications for Exception which had been filed with that Office.

Under the procedures which govern the filing and consideration of exception applications (10 CFR, Part 205, Subpart D), any person who will be aggrieved by the issuance of the Proposed Decision and Order in final form may file a written Notice of Objection within ten days of service. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual

notice, whichever occurs first. The applicable procedures also specify that if a Notice of Objection is not received from any aggrieved party within the time period specified in the regulations, the party will be deemed to consent to the issuance of the Proposed Decision and Order in final form. Any aggrieved party that wishes to contest any finding or conclusion contained in a Proposed Decision and Order must also file a detailed Statement of Objections within 30 days of the date of service of the Proposed Decision and Order. In that Statement of Objections an aggrieved party must specify each issue of fact or law contained in the Proposed Decision and Order which it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these Proposed Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m. e.s.t., except federal holidays.

Melvin Goldstein,

Director, Office of Hearings and Appeals.

December 6, 1979.

Proposed Decision and Orders

Central Florida Gas Corp., White Haven, Fla.; DEE-8022, reporting requirements

Central Florida Gas Corporation (Central Florida) filed an Application for Exception from the reporting requirements set forth in Form EIA-149 ("Natural Gas Supply, Requirements, and Usage.") If granted, the firm would not be required to complete and submit the Form. On November 15, 1979, the DOE issued a Proposed Decision and Order which determined that exception relief should be denied.

City of Long Beach, Calif., Long Beach, Calif.; DXE-8240, crude oil

City of Long Beach, California filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would result in an extension of exception relief previously granted and would permit the firm to sell a certain portion of the crude oil which it produces from the Fault Block III Unit for the benefit of the working interest owners at upper tier ceiling prices. On November 15, 1979, the DOE issued a Proposed Decision and Order which determined that an extension of exception relief should be granted.

Farm Fuel Products Corp., Spencer, Iowa; DEE-7059, motor gasoline

Farm Fuel Products Corporation (FFP) filed an Application for Exception from the provisions of 10 CFR, Part 211. The exception request, if granted, would permit FFP to receive a base period allocation of unleaded motor gasoline to be used in the production of an alcohol blend for mixing gasohol. On November 16, 1979, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

Fasgo, Inc. Brookhaven, Pa.; DEE-7922, motor gasoline

Fasgo, Inc. (Fasgo) filed an Application for Exception from the provisions of 10 CFR 211.105(a)(2). The exception request, if granted, would permit Fasgo to utilize the procedures of 10 CFR 211.105(d) to designate the Mobil Oil Corporation as the sole base period supplier for two retail gasoline outlets operated by the firm. On November 15, 1979, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

Gama, Arlington, Va., DEE-8028, testing requirements

GAMA, the Gas Appliance Manufacturers Association, Inc., filed an Application for Exeception from the testing requirements set forth in 10 CFR 430, the Energy Conservation Program for Consumer Products. If granted, GAMA's member firms would not be required to perform energy efficiency and fuel utilization tests on combination heating and cooling units when either the heating or the cooling units exceed the applicable specification for classification as a consumer product. On November 15, 1979, the DOE issued a Proposed Decision and Order which determined that GAMA's application should be denied.

George H. Coates, Starr County, Tex., BEE-0138, natural gas liquids

George H. Coates filed an Application for Exception from the provisions of 10 CFR 212, Subpart K. The exception request, if granted, would permit Coates to increase its selling price for natural gas liquids above the price permitted by DOE regulations. On November 15, 1979, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

Grace Petroleum Corp., Oklahoma City, Okla., DXE-8238, crude oil

Grace Petroleum Corporation filed an Application for Exception from the provisions of 10 CFR, Part 292, Subpart D. The exception request, if granted, would result in an extension of exception relief previously granted and would permit the firm to sell a certain portion of the crude oil which it produces from the C.I. Lovett Lease for the benefit of the working interest owners at upper tier ceiling prices. On November 15, 1979, the DOE issued a Proposed Decision and Order and tentatively determined that an extension of exception relief should be granted.

Gulf Oil Corp., Tulsa, Okla., DXE-8239, crude oil

Gulf Oil Corporation filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would result in an extension of exception relief previously granted and would permit the firm to sell a certain portion of the crude oil which it produces from the Kiefer Unit for the benefit of the working interest owners at upper tier ceiling prices. On November 15, 1979, the DOE issued a Proposed Decision and Order and tentatively determined than an extension of exception relief should be granted.

Pennsylvania and Southern Gas Co., Sayre, Pa.; DEE-8127.
Lone Star Gas Co., Dallas, Tex.; DEE-8285.
Anderson Clayton Oilseed, Processing Division, Phoenix, Ariz.; DEE-8296.
City Public Service, Board of San Antonio, Tex., San Antonio, Tex.; DEE-8297, reporting requirements.

The four petitioners identified above filed Applications for Exception from the reporting requirements set forth in Form EIA-149 ("Natural Gas Supply, Requirements and Usage"). In their exception requests, the applicants ask that the Office of Hearings and Appeals issued an Order relieving them of their obligation to prepare and submit Form EIA-149. On November 15, 1979, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

R. W. Tyson Producing Co., Inc., Jackson, Miss., DEE-4500-05, crude oil

R. W. Tyson Producing Co., Inc. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit the firm to sell a certain portion of the crude oil produced for the benefit of the working interest owners from six properties located in Jones County, Mississippi, at market prices. On November 16, 1979, the DOE issued a Proposed Decision and Order which determined that the exception relief should be granted.

United Specialites Co., Houston, Tex., DXE-8222, crude oil

United Specialties Company filed an Application for Exception from the provisions of 10 CFR, part 212, Subpart D. The exception request, if granted, would result in an extension of exception relief previously granted and would permit the firm to sell a certain portion of the crude oil which it produces from the State of Texas Tract No. 723-A Lease for the benefit of the working interest owners at upper tier ceiling prices. On November 15, 1979, the DOE issued a Proposed Decision and Order which determined that an extension of exception relief should be granted.

Petitions Involving the Motor Gasoline Allocation Regulations

Week of November 12 through November 16, 1979

The following firms filed Applications for Exception from the provisions of the Motor Gasoline Allocation Regulations. The exception requests, if granted, would result in an increase in the firms' base period allocation of motor gasoline. The DOE issued Proposed Decisions and Orders which determined that the exception requests be granted.

Company Name and Case No.

Cave Springs Chevron No. 8044; DEE-6878.
Fasgo, Inc.; DEE-7922.
J & B Automotive; DXE-6585.

Pine Grove Exxon; BXE-0278.
Sharon Motors; DEE-6724.
The Carport; DEE-5570.
Thompson's Texaco; DEE-6629.

Petitions Involving the Motor Gasoline Allocation Regulations

Week of November 12 through November 16, 1979

The following firms filed Applications for Exception from the provisions of the Motor Gasoline Allocation Regulations. The exception requests, if granted, would result in an increase in the firms' base period allocation of motor gasoline. The DOE issued Proposed Decisions and Orders which determined that the exception requests be denied.

Company Name and Case No.

Economy Oil Co.; DEE-3745.
Action Gas Co.; DXE-8324.
Bartel Oil Co.; DEE-6858.
Boulevard Gulf; DEE-3798.
Drum Hill Gulf; DEE-5635.
Environmentals, Inc.; DEE-5995.
H. A. Wallace; DEE-6840.
James P. Burns; DEE-3641.
Joe Rucker; DEE-7247.
Johnny's Sunoco; DEE-6450.
Johnson's Gulf; DEE-5629.
Mat Hurwitz & Sons; DEE-7482.
North Side Services; DEE-3341.
PCH Co.; DXE-3409.
George W. Prescott Publishing Co.; DEE-7696.
Will-Mart Shell; DEE-4367.
Pinehurst Citigo; DEE-3524.
Ray's Standard Serv.; DEE-6303.
Ace Pest Control; DEE-6629.
Air Conditioning Systems; DEE-5871.
All-Dade Driveway Maintenance; DEE-7615.
Bay Export Services; DEE-6419.
Bell of Pennsylvania; BEE-0073.
Brown & Root, Inc.; DEE-4532.
Budget Rent a Car of St. Louis; DEE-7631.
Burgman Supply Co.; DEE-6446.
Central Delivery Service of Massachusetts, Inc.; DEE-7423.
Central New York State Park and Recreation Comm.; DEE-6163.
Chromalloy; DEE-4245.
D & W Sanitation Service; DEE-6796.
General Rental Co.; DEE-6846.
Hawthorne Mazda; DEE-5773.
Montebello Land & Water Co.; DEE-5572.
Pacific Soils Engineering, Inc.; DEE-6195.
Perry M. Alexander Construction Co.; DEE-7225.
Plasticrete Block & Supply Corp.; DEE-7420.
Polaris Plating, Inc.; DEE-6622.
Sav-Way Auto Leasing & Rental, Inc.; DEE-4627.
Sears Roebuck & Co.; DEE-5805.
Smithkline Clinical Labs; DEE-5436.
Southern Tours; DEE-6337.
Van Nuys Publishing Co.; DEE-6254.
Weatherite; DEE-6511.
Ted's Rent-a-Car; DEE-6105.
Greenhorne & O'Mara, Inc.; DEE-6901.
Pacific Galvanizing; DEE-7055.
Bay Alarm Co.; DEE-5617.
Benton Brothers Film Express, Inc.; DEE-7732.
Kim Electric Service; DEE-5830.
Affiliated Brokers, Inc.; DXE-5949.
Budget Rent-a-Car of Louisville; DEE-6992.
New Jersey Bell Telephone Co.; BEE-0118.
Michael Feldman; DEE-7697.
Grazzolo Drug & Chemical Co.; DEE-7311.
Temp Rite Engineering Co.; DEE-3536.
Hyster Company; DEE-6514.
Hartge Yachtyard; DEE-7566.
Somerset District; DEE-6715.
Spruce Creek Golf & Country Club; DEE-3606.
Federal Express Corp.; DEE-6526.
Brooks, Inc.; DEE-6784.
A. J. LeBlanc Heating Co., Inc.; DXE-7687.
Tri-City Rentals, Inc.; DEE-7494.
Coca Cola Bottling of Southeastern New England, Inc.; DEE-5406.
Johnson Roofing Inc.; DEE-6176.
Tab Transportation, Inc.; DEE-4153.
Greenlawn Transport; DEE-6078.
Bieber Lighting Corp.; DXE-6222.
Charles George Trucking Co., Inc.; DEE-7685.
Ogden Food Service Corp.; DEE-7056.
Jerry Cox Co.; DEE-7944.
Marie Groticelli; DEE-7185.
Metz Gulf Service; DEE-6646.
Bob's Marina Service; DEE-5390.
Don's Dodge Street Car Wash; DEE-6642.
Irv's Service Center; DXE-6111.

[FR Doc. 79-37959 Filed 12-10-79; 8:45 am]
BILLING CODE 6450-01-M

Issuance of Proposed Decisions and Orders; November 19 through November 23, 1979

Notice is hereby given that during the period November 19 through November 23, 1979, the Proposed Decisions and Orders which are summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to Applications for Exception which had been filed with that Office.

Under the procedures which govern the filing and consideration of exception applications (10 CFR, Part 205, Subpart D), any person who will be aggrieved by the issuance of the Proposed Decision and Order in final form may file a written Notice of Objection within ten days of service. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. The applicable procedures also specify that if a Notice of Objection is not received from any aggrieved person within the time period specified in the regulations, the person will be deemed to consent to the issuance of the Proposed Decision and Order in final form. Any aggrieved person that wishes to contest any finding or conclusion contained in a Proposed Decision and Order must also file a detailed Statement of Objections within 30 days of the date of service of the Proposed Decision and Order. In that Statement of Objections an aggrieved person must specify each issue of fact or law contained the Proposed Decision and Order which it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these Proposed Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., e.s.t., except federal holidays.

Melvin Goldstein,

Director, Office of Hearings and Appeals.

December 6, 1979

Aminoil USA, Inc., Washington, D.C., DEE-2187, crude oil

Aminoil USA, Inc. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit the firm to sell a certain portion of the crude oil produced for the benefit of the working interest owners from the North Bolsa Lease located in Huntington Beach, California, at upper tier ceiling prices. On November 23, 1979, the DOE issued a Proposed Decision and Order and tentatively determined that exception relief should be granted.

Furrh, Moon and Hines, Jackson, Miss., DEE-4103, crude oil

James B. Furrh, Robert Moon and E. R. Hines, filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit the applicants to sell crude oil produced from a currently undeveloped tract at market prices. On November 20, 1979 the DOE issued a Proposed Decision and Order in which it determined that the exception request should be dismissed without prejudice to a refiling at a later date.

H-30, Inc., Wichita, Kans., DEE-5735, crude oil

H-30 Inc., filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The H-30 request, if granted, would permit the firm to retroactively certify the crude oil produced from the Lukens lease during the period August 1976 through November 1978 as new crude oil. On November 21, 1979, the DOE tentatively determined that the H-30 request should be denied.

Marshall Oil company, Wake Forest, N.C., DEE-7869, gasohol

Marshall Oil company filed an Application for Exception from the provisions of the Mandatory Petroleum Allocation Regulations, 10 CFR Part 211. The exception request, if granted, would permit Marshall to purchase 700,000 gallons of unleaded motor gasoline per month over and above its base period allocation. On November 23, 1979, the U.S. Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

William T. Burton Industries, Inc., Sulphur, La., DEE-0886, crude oil

On March 7, 1978, William T. Burton Industries, Inc. filed an Application for

Exception from the provisions of 10 CFR 212.72 and 212.131(a)(2). The exception request, if granted, would permit Burton to recertify a portion of the crude oil which it produced and sold from the Simon Pass Field in St. Martin Parish, Louisiana during the period between September 1973 and December 1976, as new crude oil and would also permit the firm to retroactively charge upper tier ceiling prices for that crude oil. On November 21, 1979, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

Petitions Involving the Motor Gasoline Allocation Regulations

The following firms filed Applications for Exception from the provisions of the Motor Gasoline Allocation Regulations. The exception requests, if granted, would result in an increase in the firms' base period allocation of motor gasoline. The DOE issued Proposed Decisions and Orders which determined that the exception requests be granted.

Company Name, Case No., and Location

C&B Exxon, DXE–8243; Huntsville, Ala.
Delta Pet. Corp., DEE–2368; Ft. Lauderdale, Fla.
Lipscomb Oil Co., DEE–2858; Greenville, Miss.
Rally Oil Co., DEE–2542; Washington, D.C.
Ray's Auto Station, DEE–7528; Pawtucket, R.I.

Petitions Involving the Motor Gasoline Allocation Regulations

The following firms filed Application for Exception from the provisions of the Motor Gasoline Allocation Regulations. The exception requests, if granted, would result in an increase in the firms' base period allocation of motor gasoline. The DOE issued Proposed Decisions and Orders which determined that the exception requests be denied.

Company Name, Case No., and Location

Bullock's Exxon, DEE–7541; Mason, Ohio
Colorado Cty, Oil Co., DEE–6656; Columbus, Tex.
Ferndale Shell, DEE–5976; Ferndale, Md.
Fork Shell Service, DEE–5126; Fork, Md.
Greenfield's Service, DEE–5647; Monroe, Conn.
Lloyd Link, DEE–7762; Kingston Springs, Tenn.
Norris Supply Co., DEE–5596; Sparks, Nev.
Saveway Super Service, DEE–3522; Washington, D.C.
Service Oil Co., DEE–5996; Harrisburg. Pa.
Wilsey Auto Service, DEE–7358; St. Petersburg, Fla.

[FR Doc. 79–37958 Filed 12–10–79; 8:45 am]
BILLING CODE 6450–01–M

Office of the Special Counsel for Compliance

Proposed Consent Order With Getty Oil Company

AGENCY: Department of Energy (DOE).

ACTION: Notice of proposed consent order and opportunity for public comment.

SUMMARY: The Office of the Special Counsel for Compliance (OSC) hereby gives the notice required by 10 CFR 205.199J that it entered into a consent order with Getty Oil Company on December 4, 1979. The consent order resolves all issues of compliance with the DOE Petroleum Price and Allocation Regulations, with the exceptions noted below, for the period August 19, 1973, through December 31, 1978. To remedy any overcharges that may have occurred during the period, Getty Oil Company agrees to $75 million in remedies.

As required by the regulation cited above, OSC will receive comments on the consent order for a period of not less than 30 days following publication of this notice (January 10, 1980). OSC will consider any comments received before determining whether to make the consent order final. Although the consent order has been signed and accepted by the parties, the OSC may, after the expiration of the comment period, withdraw its acceptance of the consent order and attempt to obtain a modification of the consent order or issue the consent order as proposed.

COMMENTS: Comments must be received by 5:00 p.m., January 14, 1980 to be considered. Address comments to: Getty Consent Order Comments, Office of Special Counsel, Department of Energy, 1200 Pennsylvania Avenue NW., Rm. 3109, Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT: Richard B. Wolf, Deputy Solicitor to the Special Counsel for Compliance, Department of Energy, 1200 Pennsylvania Avenue NW., Washington, D.C. 20461, 202–633–9165.

Copies of the consent order may be received free of charge by written request to: Getty Consent Order Request, Office of Special Counsel, Department of Energy, 1200 Pennsylvania Avenue NW., Rm. 3109, Washington, D.C. 20461.

Copies may also be obtained in person at the same address or at the Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue SW., Room GB–145.

SUPPLEMENTARY INFORMATION: Getty Oil Company is one of the 34 major refiners presently subject to audit by the Special Counsel to determine compliance with the DOE Petroleum Price and Allocation Regulations (Regulations). Getty Oil engages in the production, refining and marketing of crude oil and refined petroleum products. The audit included a review of Getty's records relating to compliance with the Regulations during the period August 19, 1973 through December 31, 1978. During the audit, questions and issues were raised and enforcement documents were issued. This consent order resolves all issues not previously resolved, with the exceptions noted below, concerning the allocation and sale of covered products during the audit period, whether or not raised in a previous enforcement action.

Conclusion of OSC Audit

The consent order addresses all aspects of Getty's compliance with applicable price and allocation regulations pertaining to the production, refining and marketing of crude oil, motor gasoline, residual fuel oil, No. 2 heating oil, No. 2 diesel fuel, natural gas liquids (NGL), natural gas liquid products (NGLP) and other refined petroleum products. OSC's audit examined all areas of compliance including but not limited to: The sales and certifications of crude oil, including property determinations; the calculation of monthly increased costs of product, including NGLs and NGLPs; nonproduct costs increases; the determination of, and rices charged to, different classes of purchaser; and the crude oil transfer pricing, entitlements and mandatory oil import regulations. Three matters have been excepted from the settlement: Crude oil issues associated with the Kern River field as set forth in a Notice of Probable Violation, Case No. 940R00054, June 27, 1978; claims against Getty as described in the Decision and Order in Getty Oil Company, 1DOE ¶ 8.102 (October 7, 1977), and *Getty Oil Company* v. *Department of Energy*, Civ,. No. 77–434 (D. Del.); and issues concerning costs reported by Getty for interaffiliate purchases of natural gas liquids or natural gas liquid products. In addition, although DOE does not agree with Getty's regulatory interpretation, as part of the consent order agreement DOE will withdraw its enforcement proceeding and discharge claims against Getty relating to Getty's calculation of the increased cost of foreign proprietary crude oil through September 1, 1979.

Neither OSC nor Getty has retreated from the positions taken previously on the issues addressed by this consent order and each believes that its position on these issues is meritorious. Notwithstanding DOE's position to the contrary, Getty Oil maintains that it has calculated its costs and determined its maximum allowable prices in accordance with applicable statutes and regulations. The parties desire, however, to resolve the issues raised without resort to complex, lengthy and expensive compliance actions. OSC

believes that the terms and conditions of this consent order provide a satisfactory resolution of disputed issues and an appropriate conclusion of the Getty audit, and thus the consent order is in the best interests of the United States.

Terms and Conditions of the Consent Order

Getty has agreed to pay $25 million into an escrow fund that will be used to defray heating oil costs of economically disadvantaged persons. In addition, Getty will reduce its banks of gasoline and propane price increases in the amount of $50 million. The consent order covers all outstanding compliance issues under the DOE's pricing and allocation regulations except for natural gas liquid products pricing and one previous enforcement action that is pending in federal court. The details of the agreement follow.

1. Getty's payment of $25 million will be deposited in an escrow account with National Savings and Trust Company, Washington, D.C., as escrow agent. Getty will not have any claim on or right to participate in the withdrawal, distribution or investment of the excrow fund. It is intended that the funds, including any accumulated interest, will be used to defray heating oil costs of low income persons.

2. Getty's banks of gasoline and propane costs will be reduced by a total of $50 million. The precise manner of such reduction will be promptly agreed upon by DOE and the company. The bank reduction will be carried forward by Getty to all subsequent months. Normally, banked costs may be passed through to purchasers in future prices, an opportunity for higher prices which is no longer available to Getty because of the Consent Order.

Getty and OSC have excluded three significant matters from the settlement. The Notice of Probable Violation against Getty, issued June 27, 1978, involving crude oil produced at the Kern River field remains pending. The United States District Court action in *Getty Oil Company* v. *Department of Energy*, Civ. No. 77-434 (D. Del.) and the underlying Office of Hearings and Appeals decision and order are unresolved. Finally, issues relating to the propriety of the costs reported by Getty or its predecessors for interaffiliate purchases of natural gas liquids or natural gas liquid products or shrinkage costs under 10 CFR Part 212, Subpart K, have not been settled.

The consent order also provides details concerning the conclusion of the audit and procedures concerning enforcement of the provisions of the consent order. Upon becoming final after consideration of public comments, the order will be a final order of DOE to which Getty has waived its right to an administrative or judicial appeal. The consent order does not constitute an admission by Getty or a finding by OSC of a violation of any price and allocation statute or regulation.

Submission of Written Comments

Interested persons are invited to submit written comments concerning this consent order to the address noted above. All comments received by 5:00 p.m. on January 14, 1980 will be considered by OSC before determining whether to adopt the consent order as a final order. Modifications of the consent order which, in the opinion of OSC, significantly change the terms or impact of the consent order will be published for comment.

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures of 10 CFR 205.9(f).

Issued in Washington, D.C., December 4, 1979.

Paul L. Bloom,

Special Counsel for Compliance.

[FR Doc. 79-37800 Filed 12-10-79; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1372-7]

Solicitation for Institutional Letters of Intent To Develop Long-Term Exploratory Research Centers

The U.S. Environmental Protection Agency's Office of Research and Development has begun to establish a series of Institutional Centers to focus on long-term environmental problems and provide support for ongoing EPA programs. Three such Centers have initiated studies in the areas of Groundwater Research, Effects of Pollution on Human Health and Advanced Pollution Control Technology. Three new centers focusing on Inter-Media Transport of Pollutants, Integrated Ecosystem Studies and Ultimate Waste Elimination will be funded in 1980.

This *Notice* describes the existing and proposed centers, the mechanism of formation and support, and the application procedure. *Deadline* for *Letters of Intent* is *January 30, 1980.*

Introduction

The U.S. Environmental Protection Agency (EPA) was established in December of 1970 and was charged with a single overall mission—the protection and enhancement of the environment. The Agency was created by Presidential Reorganization Order involving the transfer and integration of 15 separate units of previously existing agencies. A single organization entity was thereby established for the control of environmental pollution, drinking water quality, environmental radiation and noise, solid wastes, pesticides, and other toxic substances. The purpose was to mount an integrated national attack on environmental pollution and to allow progression toward a full understanding of the total environment as a single system consisting of separate but interrelated parts.

The Office of Research and Development (ORD) functions as the principal scientific component of EPA. Its fundamental role is to produce scientific data and technical tools on which to base sound national policy in the development of effective pollution control strategies and the promulgation of adequate and viable environmental standards. ORD's research is supplemented by general scientific and technical research in other Federal agencies, the academic community, and elsewhere. ORD also supports the Agency's involvement in many international organizations with mutual environmental research and development (R&D) concerns.

Exploratory Research Centers

Public Law 95-155, section 6(b) of EPA's Research and Development Act of 1978 contained a Congressional request for examination of alternative approaches for conducting long-term environmental research within EPA. In response, in April 1978 EPA published a report to the President and the Congress entitled "Laboratories Needed to Support Long-Term Research in EPA" (EPA 600/8-78-003). Subsequent Congressional action on EPA's FY-1979 and FY-1980 Appropriations Bills provided funds under ORD's Anticipatory Research Program for the establishment of Institutional Centers.

To start this program ORD in FY-1979 established three new, innovative, exploratory research centers to focus on long-term environmental problems. The projected annual budget for each center is $0.5 million, under EPA's Anticipatory Research Program. The Centers have been established at the University of Pittsburgh, the University of Illinois, and one under a consortium arrangement between the University of Oklahoma, Oklahoma State University, and Rice University. It is headquartered at the University of Oklahoma. Research at the University of Pittsburgh will focus on the human effects of pollution. Advanced pollution control technology

will be the emphasis of research at the University of Illinois, Champaign-Urbana. There will be a concentration on groundwater research (e.g., drinking water, leachate problems) through the Rice-Oklahoma-Oklahoma State consortium.

The center concept is intended to obtain the assistance of the best available researchers to establish a focal point of continuing research in specific areas fundamental to environmental sciences.

The focus of center programs will generally be on long-term (3-5 years or longer) exploratory research which provides the link between basic and applied research as related to EPA's mission. The intent of EPA in employing the center mechanism is to integrate and build upon existing expertise and resources which are already developed. Center programs will be expected to provide an added capability and potential for accomplishments greater than those possible by support of individual projects alone. ORD plans to develop additional centers in this Fiscal Year to concentrate in the areas of Ultimate Waste Elimination, Intermedia Transport, and Integrated Ecosystems Studies.

Centers will be supported primarily through institutions or organizations with well-established expertise in a specified research area, and a demonstrated commitment to such research. Support will therefore require moderate staff increases and limited investments in facilities and equipment.

Centers and their programs shall have a multimedia and multidisciplinary orientation, either by virtue of the expertise available on the center staff or by arrangements with the parent institution, other institutions or individuals. Centers can be based within a single institution or within a consortium. Centers must have a firm basis within the institution that has a common interest in the public need as perceived by EPA and its advisors. This commonality of interest should be shared by leaders within the institution and EPA.

Center programs must be responsive to the long-term needs as perceived by all EPA laboratories whose activities are related to the center objectives. While each EPA laboratory has a central research emphasis, it is not an exclusive one. Thus, care must be exercised in order that center programs be representative of this diversity of EPA activities. Centers will therefore become, as intended, EPA-wide research resources rather than a resource responsible to a single laboratory.

In order to qualify as a center, the applicant institution must demonstrate an administrative structure that will foster successful scientific and administrative management. A key figure is the center director, who must be a recognized scientific or technical leader/manager and who must make a major time commitment to the scientific programs and administration of the center. Because the center funds will be in addition to the funds of the institution's ongoing programs, the center director must have the ability to coordinate center activities in a manner that will benefit the overall program.

The scope of center activities includes: (1) Serving as a resource for EPA laboratories within a given research area;

(2) Filling of research gaps and addressing areas requiring expansion;

(3) Stimulation of EPA's applied research programs;

(4) Providing a bridge between EPA and the academic/scientific community; and

(5) Serving as a source of new talent.

In general, center resources are not to be used to provide augmented support for ongoing projects within the purview of the center staff per se. Likewise, center resources are not generally to be used to augment ongoing EPA short-term or applied programs. Exception to these restrictions may occur, for example, if an ongoing program is long-term, fills an objective of the center, and requires a substantially expanded effort.

The experience of other Agencies with similar center programs suggests three elements are of critical importance if the intent of center activities both in terms of the agency and institutional objectives and needs is to be accomplished. These are:

(1) The active participation of a Policy board whose membership includes as a minimum: EPA headquarters personnel, the appropriate EPA laboratory(s), and the Center director. This board has the responsibility of providing overall guidance to the center and periodically reviewing progress.

(2) A dedicated Center Director whose responsibility includes design and conduction of a research program consistent with the guidelines developed by the Policy Board.

(3) Periodic interaction of the Center Director with a scientific advisory committee for purposes of programmatic review and recommendations.

The scientific advisory committee members should be external to the Agency and the institution and be broadly representative of the national perception of the research area.

Mechanism of Support

Support will take the form of a cooperative agreement as provided for by the Federal Grant and Cooperative Agreement Act of 1977 (Public Law 95-224).

Cooperative agreements differ from grants and contracts in that substantial involvement of the sponsoring agency in the center's direction and investigations takes place on a continuing basis. This involvement extends to exchange of center and agency personnel as appropriate to objectives of the center. As in a joint venture between two private parties, the whole range of factors affecting the venture and its outcome are the subject of negotiation. Responsibility for assuring performance is shared by the agency and the center.

Cooperative agreements are subject to provisions of EPA's General Grant Regulations (40 CFR Part 30 and Part 40, Research and Demonstration Grant Resolutions), and to special conditions to be set in each agreement executed by the authorized official of the center and EPA.

In the long-term, a minimum of $500,000 per year of support for each center is anticipated. However, budget considerations may require a more limited support in the initial years. The support covers both direct and indirect costs. Execution of a cooperative agreement requires the recipient institution to contribute not less than five percent of the allowable project costs.

Application and Selection Process

Because of the time and resources required for preparation of detailed proposals, each applicant is required to submit a letter of intent prior to generation of a proposal. Criteria and guidelines for preparation of this letter are presented in this notice under the subheading, Letter of Intent. The EPA contact is: MR. EDWARD A. SCHUCK (RD-675), Director, Center Support Program, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

The *original* and *nine (9) copies* of letters of intent are due at this contact point by January 30, 1980. Please provide a stamped, self-addressed envelope so that we may acknowledge receipt of your letter.

For each proposed center a committee composed of internal and external scientists, appointed by the Assistant Administrator, ORD, will rank all letters and select several of the top applicants. These latter will be notified of their eligibility to submit a formal proposal and be supplied with instructions for

proposal preparation. All applicants submitting letters of intent will be notified of the outcome of the review process not later than April 15, 1980.

Letter of Intent

A. General

In order to be eligible for consideration the letter of intent must adhere to the following format and limitations. (Further details on each centers research activities are presented in subsections B, C, and D.)

I. *Staff*—Identity of proposed center director, his time commitment, his staff and their working relationships.

II. *Strategy*—Plan for building upon the institution's expertise and resources.

III. *Program*—Description of present scientific program and proposed center activities.

IV. *Management*—Proposed approach for operating center and coordination with EPA.

V. *Background*—Experience of staff and institution in the area of proposed center activities.

VI. *Facilities*—Resources of the institution and their availability for use by the Center.

VII. *Local Review Statement*—A one to two page letter signed by the institution's chief executive officer which indicates how the proposed center relates to overall institutional goals, the institution's general support for the proposed effort, and its willingness to provide the necessary institutional resources for successful implementation of the center.

VIII. *Curriculum Vitae*—Curriculum vitae of the proposed center director and summarized (two pages for each one) curriculum vitae of key staff members (no more than five staff members).

That portion of the letter of intent covered by Section I thorugh VI should not exceed 15 double-spaced pages typed on one side only. Sections VII and VIII may be single spaced. *Do not append additional material to the letter of intent as it will not be forwarded to the review committee.*

Highly detailed descriptions of ongoing or proposed programs should be avoided in the letter of intent. The review committee will primarily focus their evaluations on the institution's stated intent and ability to meet the need as broadly stated in this Notice. If the review committee requires further information, all eligible institutions (those submitting letters of intent by the stated deadline) will be given the opportunity for additional response.

B. Intermedia Transport Research Center

EPA has traditionally supported research to investigate the movement of materials between the land, water and atmosphere. Certain of these such as nitrogen materials (compounds) etc., have received considerable attention. However, the chemical/physical processes which govern the movement of toxic chemicals is not nearly as well understood. Nor are the consequences of such exchanges and the impact or interaction of these pollutants with natural ecosystems.

During the past decades the growth of the power and chemical industries alone resulted in both an increased volume volume and diversity of emissions. As these products are dispesed into the biosphere they interact with each other and may produce undersirable reaction products. This complex relationship can best be understood by examining the various components in depth. Thus, an understanding of the sunlight-induced reactions that air pollutants frequently undergo which produce physical and chemical changes is necessary to an understanding of the intermedia transport process, since directly emitted oxides of sulfur and nitrogen are transformed in the atmosphere to produce acidic particles and vapors. These atmospheric reaction products are primarily responsible for acid rain. Likewise, volatile organic compounds can be transformed in the atmosphere to more or less toxic organic gases and aerosols and be deposited on land or water surfaces. Pollutants removed from the atmosphere by virture of gravitational fallout, impaction, or washout also end up as land and water contaminants. Some of these, such as lead, are relatively inert and remain in place on land surfaces with minimal interaction with solid or plants. Others, like particulate mercury compounds from coal-fired electric power facilities, interact with soil or organisms and plants to form the volatile and toxic gases methyl and ethyl mercury. Thus, we now recognize that there exists the need for better understanding of the chemical and physical processes which govern these and other intermedia transfers along with their long-term environmental effects and impact for human health.

Recent awareness of potential adverse effects of acid rain has focused considerable attention on the interaction between compounds of sulfur and nitrogen in the atmosphere and soils, biota, water and sediments. As a consequence EPA, under its Anticipatory Research Program, has mounted an intense research effort to detemine causes and effects of acid precipitation. Much less effort has gone into investigation of the interactions and cycling of other atmospheric constituents, e.g., organics, and most metals. Thus, the research of this Center would focus on the interactions of those pollutants, i.e., organics, metals, and other particulates, which are little understood. The investigations should be directed to the interface of these pollutants with land masses and large water bodies. Questions such as the following should be considered:

What organic and inorganic chemicals are deposited as a result of dry and wet fall out?

How does temperature, humidity, vegetation growth and other factors influence the pollutant condensing process?

How are chemicals purposefully placed on the land by man entrained into the atmosphere?

What are the mechanisms of action which control the exchange of pollutants between the land, atmosphere and large water bodies?

Are chemicals accumulating in the atmosphere which have heretofore not been recognized?

Will some of man's interventions into natural biogeochemical cycle lead to serious long term impact?

What can be done to ameliorate the effects of man's intervention into natural biogeochemical processes?

Investigations of well researched pollutants and phenomena as well as those pollutants or issues currently under intense study should be minimized. Acid rain, lead, and ozone as well as runoff should only be considered to the extent they influence the interactions of the pollutants under investigation. The essential purpose of this center would be to advance the basic understanding of these phenomenon in order to influence environmental decision making.

In planning and conducting its research activities the Center will work closely with the EPA's Environmental Sciences Research Laboratory in Research Triangle Park, North Carolina and other EPA labs concerned with the cycling of pollutants.

C. Ecosystems Research Center

Decisions on protecting the environment have been based largely upon data from individual biological species or individual physical/chemical processes. Usually, little or no pertinent information has been available from the level of the biological community or ecosystem. Even when systems level information has been available, its

significance has been very difficult to interpret. Indeed, the assumption is still not generally accepted that there are systems level processes or phenomena which are critical for maintaining desirable communities or ecosystems.

Although there has been considerable interest on the part of decisionmakers in ecosystem level data, ecologists have not been generally successful in providing such data in useful form. This may be due to the complexity of the systems and the expense of generating data, or it may be due to sparsity of simplifying ecological concepts. During the past several years, interest in ecological data and assessment has sharply increased as public and private officials face increasingly difficult decisions regarding the benefits of additional levels of pollution control or the significance of chronic, low-level or intermittent exposure to harmful substances. Among the questions being asked are:

Are there systems level functions which are critical to the maintenance of desirable ecosystems or communities?

Are there systems level structural properties, e.g., food webs, which are critical to ecosystem functioning?

Are these structural properties or functions more sensitive to stress than individual components of the system?

How can ecosystems be described in terms of their value to man? For example, are there characteristics of ecosystems that can be evaluated to determine if, in response to stress, they contribute to different conditions, but of equal value to man?

Are there inherently stable or unstable states for ecosystems relating to their value for man?

Assuming there are sets of conditions to which ecosystems return when stressed, are there limits beyond which they can be stressed and not return? What is their rate of return to their original state?

How can an ecosystem be most simply and economically characterized to determine whether or not it is under stress and, if so, how severe and how persistent a stress?

What is the significance of variations in the severity or timing, e.g., continuous versus intermittent, of the stress?

Can an ecosystem's "condition" be usefully estimated by describing only its physical and chemical characteristics?

What systems level process or phenomena are significant for the transport and fate of toxic substances?

Are there certain components of ecosystems which are more useful or accurate in predicting toxic exposure levels than others?

The purpose of an Ecosystems Research Center would be to conduct the theoretical and empirical research necessary to answer these and other fundamental ecological questions relevant to public and private decisions on environmental protection. The Center would aim to advance the capability of ecological science to develop and apply systems level concepts in a manner useful to environmental protection decisions. A capability to assess and integrate both the terrestrial and aquatic ecosystem is necessary.

In planning and conducting research activities the Center will work closely with the EPA laboratories in Corvallis, Oregon; Duluth, Minnesota; Athens, Georgia; Ada, Oklahoma; Las Vegas, Nevada, and coordinate its activities with EPA's Science Advisory Boards Ecology Committee and the ecosystem studies conducted by the National Science Foundation.

D. Research on Waste Elimination

As technologies advance, so do the variety, quantity and complexity of unwanted by-products. Reducing or disposing the wastes, which are often toxic, has become a major and rapidly growing problem. The opportunity for accident and human exposure will increase as the population grows and chemical production increases. Heightened public awareness of these risks and resistance to their acceptance can be expected to mount rapidly, perhaps explosively.

Until recently the improper disposal of many hazardous wastes dispersed these wastes into the air and water. However, the ability of the environment to accept such materials without damage is limited. Recognition of the degradation of our air and water led to control methods to prevent pollution from entering these media. The control efforts generally employed techniques such as filtration, extraction and precipitation. Although such techniques change the character or concentration of the pollutants, they often create other problems of waste disposal. As a consequence, these concentrated manufacturing or environmental control, liquid and solid wastes are applied to land or buried in shallow landfills and deep wells. At best, such disposal practices represent a delaying tactic, since they have a great potential for subsequent water and air pollution.

A reexamination of the basic approaches for eliminating wastes is warranted. The expense of controlling waste and the unknown environmental effect of disposal implies the future need to reduce, eliminate or reuse the unwanted by-products. Alternative low-waste production processes may have costs which appear to be prohibitive until the longer term costs are considered. The inevitable future costs of correcting environmental effects resulting from improper disposal practices must be added to the cost of high-waste production process.

The purpose of this center would be to develop new approaches to reduce, eliminate or reuse hazardous by-product pollutants. Such approaches would eventually be utilized by environmental control programs. A complete range of institutional and technological approaches might be pursued. Questions which should be addressed include:

Can the manufacturing processes or process characteristics that produce hazardous waste materials be described and categorized?

Are there new pollution avoidance methods, i.e., clean technologies, which could be developed and used commercially?

Are there new approaches to recycle or reuse which would enable hazardous waste to be utilized as raw materials?

Are there manufacturing process controls that will prevent or reduce the formulation of hazardous wastes?

Are there new destructive technologies which could be developed to dispose of hazardous wastes?

The Center will work closely with EPA's Industrial Environmental Research Laboratories in Cincinnati, Ohio, and Research Triangle Park, North Carolina, the Municipal Environmental Research Laboratory in Cincinnati, Ohio, the Advanced Control Technolody Research Center at the University of Illinois, as well as with industrial research organizations with similar interests and programs. EPA is interested in understanding the proposer's qualifications in industrial processes and the experience in the broad spectrum of hazardous waste generation. Experience in organic chemical manufacturing is of particular interest.

The Agency may seek to broaden the mission of this center at a future date to include consideration of unique environmental transformation processes, measurement methods and health effects of hazardous wastes. Individual parties are urged to identify capabilities in these related areas.

Dated: November 29, 1979.

Stephen J. Gage,

Assistant Administrator for Research and Development.

[FR Doc. 79-37867 Filed 12-10-79; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL RESERVE SYSTEM

BankAmerica Corp.; Proposed Expansion of Nonbank Activities of BA Insurance Co., Inc.

BankAmerica Corporation, San Francisco, California has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to expand the nonbank activities of its subsidiary BA Insurance Company, San Francisco, California to include underwriting credit life insurance limited to reinsuring a home life insurance program. These activities would be performed from offices of Applicant's subsidiary in San Francisco, California, and the geographic area to be served is the State of California. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of San Francisco.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than January 4, 1980.

Board of Governors of the Federal Reserve System, December 4, 1979.

William N. McDonough,

Assistant Secretary of the Board.

[FR Doc. 79-37865 Filed 12-10-79; 8:45 am]

BILLING CODE 6210-01-M

Beutler, Inc.; Formation of Bank Holding Company

Beutler, Inc., Ness City Kansas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 55 percent or more of the voting shares of The First State Bank, Ness City, Kansas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 2, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 3, 1979.

William N. McDonough,

Assistant Secretary of the Board.

[FR Doc. 79-37866 Filed 12-10-79; 8:45 am]

BILLING CODE 6210-01-M

Great Southern Bancshares, Inc.; Formation of Bank Holding Company

Great Southern Bancshares, Inc., Houston, Texas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of Great Southern Bank, Houston, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 4, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 4, 1979.

William N. McDonough,

Assistant Secretary of the Board.

[FR Doc. 79-37863 Filed 12-10-79; 8:45 am]

BILLING CODE 6210-01-M

Louisburg Bancshares, Inc.; Formation of Bank Holding Company

Louisburg Bancshares, Inc., Louisburg, Kansas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Bank of Louisburg, Louisburg, Kansas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 4, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 4, 1979.

William N. McDonough,

Assistant Secretary of the Board.

[FR Doc. 79-37864 Filed 12-10-79; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Eastmet Corp.; Early Termination of Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the 30-day waiting period of the premerger notification rules.

SUMMARY: Eastmet Corporation is granted early termination of the 30-day waiting period provided by law and the premerger notification rules with respect to its proposed aquisition of U.I.P. Corporation. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by U.I.P. Corporation. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: November 28, 1979.

FOR FURTHER INFORMATION CONTACT: Joan S. Truitt, Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202–523–3894).

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act and § 803.11 of the rules implementing the Act permit the agencies, in individual cases, to terminate this waiting period prior to its expiration and require that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 79-37841 Filed 12-10-79; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Ad Hoc Panel for Review of Qualifications of Candidates for the Position of Archivist of the United States; Establishment

Establishment of Ad Hoc Panel. This notice is published in accordance with the provisions of section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) and advises of the establishment of an Ad Hoc Panel for review of the qualifications of all applicants for the position of Archivist of the United States. The Administrator of General Services has determined that this panel is in the public interest.

Designation. Ad Hoc Panel for Review of Qualifications of Candidates for the Position of Archivist of the United States.

Purpose. To develop qualifications criteria, to review the qualifications of all applicants for the position of Archivist of the United States, and to make recommendations as appropriate to the Deputy Administrator of General Services, Chairman of the Executive Selection Panel, with respect to those applicants considered best qualified for the position. The objective is to utilize the experience and expertise of various experts in the fields of archival science, history, records management, and information science.

General Information. Pursuant to Office of Management and Budget Circular A–63, the Committee Management Secretariat has authorized a period of less than fifteen days between publication of this notice and the filing of the committee charter.

Dated: December 3, 1979.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 79-37837 Filed 12-10-79; 8:45 am]

BILLING CODE 6820-34-M

Ad Hoc Panel for Review of Qualifications of Candidates for the Position of Archivist of the United States; Meeting

Notice is hereby given of the convening of the Qualifications Review Panel for the position of Archivist of the United States on December 19, 1979, and on January 15, 1980, from 9:00 a.m. to 4:30 p.m. in Room 6137 General Services Administration, 18th and F Streets NW., Washington, D.C. The panel will:

On Wednesday, December 19, 1979, (1) determine how best to fill the Archivist position; (2) determine qualifications of Archivist position.

On Tuesday, January 15, 1980, (3) review applications for the Archivist position and recommend those candidates best qualified.

For items (1) and (2) above, the meeting will be opened to the public. During deliberations under item (3), the meeting will be closed to the public in accordance with exemption (6) of the Government in The Sunshine Act (5 U.S.C. 552b(c)).

Pursuant to OMB Circular A–63, a period of less than 15 days between publication of this Notice and the date the meeting is scheduled to be held is necessary because of scheduling difficulties.

Dated: December 4, 1979.

W. M. Paz,

Assistant Administrator for Human Resources and Organization.

[FR Doc. 79-37836 Filed 12-10-79; 8:45 am]

BILLING CODE 6820-34-M

Federal Property Resources Service

Conducting Stockpile Transactions Competitively; GSA's Policy

The purpose of this notice is to announce, in general, GSA policy and procedures to be followed under the Strategic and Critical Materials Stock Piling Revision Act of 1979, Pub. L. 96–41, which became law on July 30, 1979. This Act revises the basic Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98–98h–1) and consolidates other stockpiling authority.

This act provides the standards and guidelines for managing and operating the National Defense Stockpile, a Government-owned reserve of strategic and critical materials. By Executive Order 12155, dated September 10, 1979, the President delegated his authority to manage the stockpile to the Administrator of General Services. The stockpile is operated under policy guidance from the Federal Emergency Management Agency.

Strategic and critical materials are retained in the stockpile to meet the national defense needs for a period of not less than 3 years in the event of a national emergency. Legislative authorization is required before disposal or acquisition of any material for the National Defense Stockpile can be made. For acquisitions, congressional authority as well as appropriations are necessary.

For stockpile acquisitions and disposals, the Act stipulates that to the maximum extent feasible—

(1) Competitive procedures shall be used;

(2) Efforts shall be made to avoid undue disruption of markets of producers, processors and consumers and to protect the Government against avoidable loss; and

(3) Disposals shall be made for domestic consumption.

To implement the Act, GSA is putting into effect the following internal GSA policies:

(1) Acquisitions and disposals shall be conducted by the formal advertising method unless compelling circumstances require other methods;

(2) Competitive negotiation methods shall be used only if the formal advertising method is not feasible; and

(3) Noncompetitive methods shall be used only if formal advertising and competitive negotiations are not feasible.

In implementing the above policies GSA will exercise its acquisition authority, in accordance with Federal procurement practices, by either formal advertising or competitive negotiation as provided in 41 CFR 1–2.1 and 41 CFR 1–3.1 and 1–2.2; likewise excess stockpile materials will be disposed of by either formal advertising or competitive negotiation and such disposals will be patterned, to the extent applicable, on regulations governing the disposal of surplus personal property (see Federal Property Management Regulations, 41 CFR 101–45). The application of the foregoing regulations will be determined to apply to the

degree that such regulations are consistent with, and do not impair, the objectives of the stockpile program and the Act.

Under the Act the Administrator may waive the requirement that acquisition of strategic and critical materials be made in accordance with established Federal procurement practices or that the disposal be made by formal advertising and competitive negotiation procedures. Such waiver will be based on a finding and determination that usual competitive procedures are not feasible for the particular procurement or disposal.

The foregoing waiver authority of the Administrator will be exercised as follows:

Any acquisition or disposal to be effected by competitive negotiations shall be the subject of a finding and determination which justifies that the formal advertising method is not feasible for the particular stockpile transaction. The finding shall incorporate all information necessary to substantiate the decision and be signed by the Commissioner, Federal Property Resources Service (FPRS).

In the case where acquisition or disposal is to be made through noncompetitive negotiations, a finding and determination justifying the decision that neither the formal advertising nor the competitive negotiation method is feasible for the particular stockpile transaction shall be made. The finding shall incorporate all information necessary to substantiate the decision and will be signed by the Commissioner, FPRS.

In accordance with provisions of the Act, written notice from GSA to the Committees on Armed Services of the Senate and House of Representatives will be furnished when proposed methods of disposal or acquisition by GSA necessitate waiver of established Federal procurement practices with respect to acquisitions or competitive procedures with respect to disposals. Such notice will also be furnished when a proposed acquisition or disposal may disrupt the usual markets of producers, processors and consumers of a particular commodity or when the acquisition or disposal is to protect the Government against avoidable loss. Additionally, when a proposed disposal is not to be made for domestic consumption, the Committees will be notified. Such notices will be furnished to the respective Committees thirty days prior to obligating the United States and will specify the reasons why the usual procedures are not considered feasible.

In addition to the foregoing policies and procedures governing acquisitions and disposals, the Act encourages the use of barter of stockpile material when acquiring needed strategic and critical materials where such arrangements are practical and in the best interests of the Government. GSA will therefore, to the extent practicable, utilize available excess stockpile material for transfer under a barter arrangement at fair market value. Consistent with the underlying policy considerations of the Act and in consonance with the foregoing guidelines, barter arrangements, where feasible, will be formally advertised or competitively negotiated. The same findings and determinations supporting the particular method effecting any barter transaction by competitive or noncompetitive methods will apply as outlined for other acquisitions and disposals.

Dated: November 26, 1979.

Roy Markon,

Commissioner.

[FR Doc. 37836 Filed 12-10-79; 8:45 am]

BILLING CODE 6820-96-M

[GSA Bulletin FPR 37, Federal Procurement Supplement 2]

Additions to List of Companies Not in Compliance With Voluntary Wage and Price Standards

November 16, 1979.

To: Heads of Federal Agencies.

Subject: Companies Not in Compliance with the Voluntary Wage and Price Standards.

1. *Purpose.* This supplement adds additional companies to the list of companies that have been determined to be in noncompliance with the Voluntary Wage and Price Standards formulated pursuant to Executive Order 12092.

2. *Expiration date.* This bulletin contains information of a continuing nature and will remain in effect until canceled.

3. *Substance.* The following companies are added to the companies listed in paragraph 4 of GSA Bulletin FPR 37, dated August 17, 1979, and Supplement 1, dated September 14, 1979.

American Hoechst Corporation, Route 202–206 North, Somerville, New Jersey 08876.

SCOA Industries, Inc., 155 East Broad Street, Columbus, Ohio 43215.

National Electrical Contractors Association (Oregon-Columbia Chapter), 201 S.W. Arthur Street, Portland, Oregon 97201.

Gerald McBride,

Assistant Administrator for Acquisition Policy.

[FR Doc. 79-37886 Filed 12-10-79; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. 79G-0372]

Novo Laboratories, Inc.; Filing of Petition for Affirmation of GRAS Status

Correction

In FR Doc. 79-36392, appearing in the issue of Tuesday, November 27, 1979, on page 67731, in the last column, the last paragraph, the last line, correct "MC" to read "MD".

BILLING CODE 1505-01-M

[Docket No. 79P-0342]

Laser Products Corp.; Approval of Variance for Laser-Armed Firearms

Correction

In FR Doc. 79-36217, appearing in the issue of Tuesday, November 27, 1979, on page 67731, in the middle column, under the third blocked paragraph, designated as "SUPPLEMENTARY INFORMATION", the 12th line down, correct "(§ 1040.10(f)(4), by inserting a closed parenthesis after the ")" and before the comma; and on the same page, same column, same paragraph, 13th line down, correct "(§ 104.10(f)(5)(ii) by inserting a "0" after the "4" and before the point.

BILLING CODE 1505-01-M

[Docket No. 75N-0232]

Food Flavoring; Additional Flavoring Substances in Gras Review; Extension of Effective Date for Compliance With Bulk Flavor Ingredient Declaration Requirements

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document announces the addition of 54 flavoring substances to the agency's safety review of substances that are generally recognized as safe (GRAS) and the extension of the effective date for compliance with a bulk flavor-labeling regulation for these ingredients. The flavors are listed in the Flavor and Extract Manufacturers' Association (FEMA) GRAS List No. 12 (published in *Food Technology*, July 1979).

DATE: Compliance with bulk labeling requirements by July 1, 1981.

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: In notices published in the Federal Register of July 26, 1973 (38 FR 20051) and March 28, 1978 (43 FR 12941), the Food and Drug Administration (FDA) announced that, as part of its GRAS review program, Scientific Literature Reviews (SLR's) were being prepared on several chemical classes of flavoring ingredients. The July 26, 1973 notice also announced that these reviews would include all flavoring ingredients listed in §§ 182.10, 182.20, 182.30, 182.40, 182.50, 182.60, and Part 172, Subpart F (21 CFR 182.10, 182.20, 182.30, 182.40, 182.50, 182.60, and Part 172, Subpart F) or flavoring ingredients otherwise submitted to the agency.

In the **Federal Register** of February 3, 1976 (41 FR 4954), FDA extended until July 1, 1979, the effective date for compliaance with bulk labeling requirements of § 101.22(g)(2) (21 CFR 101.22(g)(2)) for those flavor ingredients that are listed as GRAS in a reliable industry association list and are included by FDA in its review of GRAS food ingredients. The July 1, 1979 effective date for compliance with § 101.22(g)(2) was recently extended to July 1, 1981 in a notice published in the **Federal Register** of July 31, 1979 (44 FR 44940) in order to allow the agency adequate time to complete its safety evaluation of these flavoring ingredients.

The February 3, 1976 **Federal Register** notice also announced a procedure under which FDA would accept additional substances for incorporation into its safety review and thereby bring the additional substances within the category of substances that are subject to the delayed effective date for compliance with § 101.22(g)(2). The procedure provided for the inclusion of additional flavoring ingredients if the SLR for each chemical class of flavors is appropriately amended before the safety evaluation begins. In this way, all available data for each chemical class of flavors will be included and evaluated at the same time. If individual flavor ingredients cannot be added to the SLR's by these provisions, extension of the effective date for compliance with bulk labeling requirements and exemptions from specific ingredient listing as specified in § 101.22(g)(2) will not be granted except by FDA approval of food additive or GRAS affirmation petitions for the ingredients.

In the February 3, 1976 **Federal Register** notice, the FDA recognized as reliable industry GRAS lists the FEMA GRAS Lists III and 4 through 9, which were published in *Food Technology* of February 1965, May 1979, May 1972, January 1973, November 1973, September 1974, and August 1975, respectively. In **Federal Register** notices of October 18, 1977 (42 FR 55643) and May 26, 1978 (43 FR 22784), FDA also recognized as reliable industry association GRAS lists the FEMA GRAS Lists Nos. 10 and 11, which were published in *Food Technology* of January 1977 and February 1978, respectively. Furthermore, the substances included in the FEMA GRAS Lists Nos. 10 and 11 were determined to have been added to the FDA's safety review of flavors in accordance with the procedure outlined in the February 3, 1976 **Federal Register** notice, whereby the inclusion of additional flavoring ingredients can be made only if the SLR for each chemical class of flavors is appropriately amended before the safety evaluation begins.

FEMA has recently published its GRAS List No. 12 (*Food Technology*, Vol. 33, No. 7, July 1979), comprising an additional 54 flavoring substances. FEMA has included 13 of these ingredients in already-completed SLR's and the remaining 41 have been submitted as supplements to previously prepared SLR's. The 54 flavoring ingredients that constitute the FEMA GRAS List No. 12 are the following:

2-Acetyl-5-methylfuran
Benzenethiol
Benzyl disulfide
Benzyl methyl sulfide
2-(2-Butyl)-4,5-dimethyl-3-thiazoline
Butyl salicylate
Cyclohexylmethyl pyrazine
Δ-Damascone
ϵ-Decalactone
3-Decanol
Dihydro-β-ionol
Dihydro-α-ionone
Dihydro-β-ionone
4,5-Dimethyl-2-ethyl-3-thiazoline
4,5-Dimethyl-3-hydroxy-2,5-dihydrofuran-2-one
4,5-Dimethyl,2-isobutyl-3-thiazoline
2-*trans*-5-*cis*-Dodecadienal
ϵ-Dodecalactone
Ethyl *trans*-2-decenoate
Ethyl *trans*-4-decenoate
2-Ethyl-4-hydroxy-5-methyl-3(2*H*)furnaone
Ethyl *trans*-2-octenoate
1-Hexen-3-ol
3-Hexenyl phenylacetate
4-Hydroxy-5-methyl-3(*H*) furanone
α-Ionol
β-Ionol
cis-5-Isopropenyl-*cis*-2-methylcyclopentan-1-carboxaldehyde
2-Methoxy-4-propylphenol
3-Methyl-2-butenal
trans-2-Methyl-2-butenoic acid
3-Methyl-2-buten-l-ol
2-Methylbutyl acetate
p-Methylcinnamaldehyde
4-Methyl-2-pentyl-1,3-dioxolane 2-Methyl-4-phenyl-2-butanol
2-Methyl-3-thioacetoxy-4,5-dihydrofuran
4-(Methylthio)butanol
2-[(Methylthio)methyl]-2-butenal
3-Octen-2-ol
2-Octen-4-one
1-Octen-3-yl butyrate
Octyl 2-methylbutyrate
Phenethyl 2-methylbutyrate
5-Phenylpentanol
2-Propionylpyrrole
2-Propionylthiazole
Propyl 2,4-decadienoate
Propyl 2-methyl-3-furyl disulfide
p-Propylphenol
Thiazole
2-*trans*-4-*cis*-7-*cis*-Tridecadienal
2,6,6-Trimethyl-1&2-cyclohexen-1-carboxaldehyde
D-Xylose

The Commissioner of Food and Drugs has determined that the 54 ingredients have been properly added to the safety review. The effective date of compliance with § 101.22(g)(2) for these ingredients is extended to July 1, 1981.

SDLR's on all synthetic flavor ingredients have been completed and are currently being reviewed and evaluated by FDA scientists. Therefore, by the terms of the procedures for including new flavors in this review (see 41 FR 4954), no additional synthetic flavors will be included as supplements to SLR's. By the terms of this procedure, all such additional synthetic flavoring ingredients will be exempted from § 101.22(g)(2) only by FDA approval of food additive or GRAS affirmation petitions for the ingredients.

Dated: November 30, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-37835 Filed 12-10-79; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 79F-0419]

Tate & Lyle Process Technology, Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Tate & Lyle Process Technology, Ltd., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of acrylate-acrylamide resins as a flocculent in the clarification of corn starch hydrolyzate.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Bureau of Foods (HFF–334), Department of Health,

Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9A3454) has been filed by Tate & Lyle Process Technology, Ltd., Cosmos House, Bromley Common, Bromley BR2 9NA, England, proposing that § 173.5 *Acrylate-acrylamide resins* (21 CFR 173.5) be amended to provide for the safe use of acrylate-acrylamide resins as a flocculent in the clarification of corn starch hydrolyzate.

The potential environmental impact of this action is being reviewed. If this petition results in a regulation, and the agency concludes that an environmental impact statement is not required. The notice of availability of the environmental impact analysis report statement of exemption, and environmental assessment, as applicable, will be published in the **Federal Register** regulation, as permitted by 21 CFR 25.25(b).

Dated: November 30, 1979.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 79-37718 Filed 12-10-79; 8:45 am]

BILLING CODE 4110-03-M

Health Resources Administration

Graduate Medical Education National Advisory Committee; Notice of Filing of Annual Report

Notice is hereby given that pursuant to section 13 of Pub. L. 92–463, the Annual Report for the following Health Resources Administration Federal Advisory Committee has been filed with the Library of Congress:

Graduate Medical Education National Advisory Committee

Copies are available to the public for inspection at the Library of Congress, Special Forms Reading Room, Main Building, or weekdays between 9:00 a.m. and 4:30 p.m. at the Department of Health, Education, and Welfare, Department Library, North Building, Room 1436, 330 Independence Avenue, SW., Washington, D.C. 20201, Telephone (202) 245–6791. Copies may be obtained from Mr. Paul Schwab, Executive Secretary for Graduate Medical Education National Advisory Committee, Room 10–27, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, Telephone (301) 436–7170.

Dated: December 4, 1979.

James A. Walsh,

Associate Administrator for Operations and Management.

[FR Doc. 79-37840 Filed 12-10-79; 8:45 am]

BILLING CODE 4110-83-M

Office of Education

Citizen Education for Cultural Understanding Program; Closing Date for Transmittal of Applications for Fiscal Year 1980

Applications are invited for new projects under the Citizen Education for Cultural Understanding Program.

Authority for this program is contained in Section 603 of the National Defense Education Act of 1958, as amended (20 U.S.C. 512a).

This program issues awards to any public or private agency or organization including, but not limited to, institutions of higher education, State and local educational agencies, professional associations, educational consortia, and organizations of teachers.

The purpose of the awards is to stimulate locally designed educational programs to increase the understanding of students in the United States about the cultures, actions, and policies of other nations in order to allow them to better evaluate the international and domestic impact of major policies of the United States and other nations.

Closing Date for Transmittal of Applications: Applications for awards must be mailed or hand delivered by February 25, 1980.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Office of Education, Application Control Center, Attention: 13.581, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Commissioner of Education.

If an application is sent through the U.S. Postal Service, the Commissioner does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand: An application that is hand-delivered must be taken to the U.S. Office of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturday, Sunday, or Federal holidays.

Applications that are hand delivered will not be accepted after 4:30 p.m. on the closing day.

Program Information: Funds under this program may be used to carry out the following activities:

(1) The in-service training of teachers and other educational personnel with regard to the cultures, actions, and policies of other nations;

(2) The compilation of existing information and resources about other nations in forms useful to various types of educational programs; or

(3) The dissemination of information and resources pertaining to the cultures, actions, and policies of other nations to educators and education officials upon their request.

Available Funds and Program Priorities: It is estimated that $2 million will be available for this program for fiscal year 1980. This will provide for up to 20 major grants averaging approximately $100,000 each; up to 20 mid-level grants averaging approximately $60,000 each; and/or up to 40 mini-grants averaging approximately $25,000 each.

However, these estimates do not bind the U.S. Office of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

For all levels of funding priority will be given to those projects which propose new programs, or modify existing programs, to increase students' understanding, knowledge and information about the cultures, actions and policies of other nations and/or issues of global concern to enhance their ability to make informed judgments with respect to the policies and actions of the United States, through:

(1) Inservice training of teachers and other education personnel, and/or

(2) Dissemination of information to educators and education officials. Specifically, priority will be given to projects which:

(a) Are developed by or in conjunction with local or State education agencies;

(b) Offer clear evidence of regional or state-wide training and dissemination activities;

(c) Demonstrate the potential to produce educational impact through television, radio, film, print or other mass media programs;

(d) Are conducted as part of community, adult or continuing education programs.

The applications for all grants will be evaluated competitively under the funding criteria in 45 CFR Part 146a and 100a.26.

There are no continuation grants in the Citizen Education for Cultural Understanding Program for this year, and awards will be made for a one-year period.

Application Forms: Application forms and program information packages are expected to be ready for mailing by January 2, 1980. They may be obtained by writing to the Division of International Education, U.S. Office of Education (Room 3919, Regional Office Building #3), 400 Maryland Avenue SW., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages.

Applicable Regulations: Regulations applicable to this program include the following:

(a) Regulations for the Citizen Education for Cultural Understanding Program (45 CFR Part 146a) published in the **Federal Register** on May 12, 1978, and as amended on May 2, 1979.

(b) Office of Education General Provisions Regulations 45 CFR Parts 100 and 100a.

Note.—The proposed Education Division General Administrative Regulations (EDGAR) were published in the **Federal Register** on May 4, 1979 (44 FR 26298). When EDGAR becomes effective, it will supersede the General Provisions Regulations for Office of Education Programs. If EDGAR takes effect before grants are made under this program, those grants will be subject to the following provisions of EDGAR: Subpart A (General); Subpart E (What Conditions Must be Met by a Grantee?); Subpart F (What are the Administrative Responsibilities for a Grantee?); and Subpart G (What Procedures Does the Education Division Use to Get Compliance?).

Further Information: For further information contact Dr. Stewart Tinsman, Division of International Education, U.S. Office of Education (Room 3082, Regional Office Building #3), 400 Maryland Avenue, S.W., Washington, D.C. 20202, Telephone: (202) 245–2661.

(20 U.S.C. 512a)

(Catalog of Federal Domestic Assistance Program No. 13.581, Citizen Education for Cultural Understanding Program.)

Dated: December 6, 1979.

John Ellis,

Executive Deputy Commissioner for Educational Programs.

[FR Doc. 79-37898 Filed 12-10-79; 8:45 am]

BILLING CODE 4110-02-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[W-69992]

Wyoming; Application

November 30, 1979.

Notice is hereby given that pursuant to Sec. 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Cities Service Gas Company of Oklahoma City, Oklahoma filed an application for a right-of-way to construct two 4½ inch pipelines for the purpose of transporting natural gas across the following described public lands:

Sixth Principal Meridian, Wyoming

T. 21 N., R. 90 W.,
Sec. 10, NE¼, NE¼, NE¼NW¼.
T. 22 N., R. 92 W.,
Sec. 12, E½SW¼,
Sec. 24, E½W½.

The proposed pipelines will transport natural gas from the Champlin 573 A–1 and the P–Federal 3–12 Wells to points of connection with existing pipelines.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

Harold G. Stinchcomb,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-37894 Filed 12-10-79; 8:45 am]

BILLING CODE 4310-84-M

[W-69595 and W-69619]

Wyoming; Applications

November 29, 1979.

Notice is hereby given that pursuant to Sec. 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Panhandle Eastern Pipe Line Company of Brighton, Colorado and Mountain Fuel Supply Company of Salt Lake City, Utah filed applications for rights-of-way to construct two 4" buried pipelines and related facilities and a 4½" buried pipeline, respectively, for the purpose of transporting natural gas across the public lands described below for each application:

Panhandle Eastern Pipe Line Co.

Serial No.	Pipe size	Land description, Sixth Principal Meridian, Wyoming
W-69595.....	Two 4 in and related facilities.	T. 19 N., R. 103 W., Secs. 10 and 14, Sweetwater County.

Mountain Fuel Supply Co.

Serial No.	Pipe size	Land description, Sixth Principal Meridian, Wyoming
W-69619.....	4½ in.....	T. 19 N., R. 104 W., Sec. 2, Sweetwater County

Panhandle Eastern's proposed pipelines and related facilities will transport natural gas from the proposed Husky Well Nos. 26 and 27 located in sections 10 and 14 to points of connection with existing pipelines located in sections 15 and 23, all within T. 19 N., R. 103 W., Sweetwater County, Wyoming.

Mountain Fuel Supply Company's proposed pipeline will transport natural gas from their existing pipeline to Colorado Interstate Gas Company's existing pipeline, all located within section 2, T. 19 N., R. 104 W., Sweetwater County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, Highway

187 North, P.O. Box 1869, Rock Springs, Wyoming 82901.

Harold G. Stinchcomb,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-37878 Filed 12-10-79; 8:45 am]

BILLING CODE 4310-84-M

[W-69993)

Wyoming; Application

November 30, 1979.

Notice is hereby given that pursuant to Sec. 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Montana-Dakota Utilities Company of Bismarck, North Dakota filed an application for a right-of-way to construct a 4-inch pipeline for the purpose of transporting natural gas across the following described public lands:

Sixth Principal Meridian, Wyoming

T. 54 N., R. 95 W.,
Sec. 31, lot 3, NE¼SW¼, NW¼SE¼.
T. 54 N., R. 96 W.,
Sec. 36 lot 3.

The proposed pipeline will transport natural gas from the Emblem State No. 1 Well located in section 36, T. 54 N., R. 96 W., to a point of connection with an existing pipeline located in the NW¼SE¼ of section 31, T. 54 N., R. 95 W., Big Horn County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1700 Robertson Avenue, P.O. Box 119, Worland, Wyoming 82401.

Harold G. Stinchcomb,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-37879 Filed 12-10-79; 8:45 am]

BILLING CODE 4310-84-M

[W-69600, W-69610, W-69618, W-69626, W-69627, W-69628, W-69629]

Wyoming; Applications

November 28, 1979.

Notice is hereby given that pursuant to Sec. 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Gas Company of Colorado Springs, Colorado filed applications for rights-of-way to construct, operate, maintain, repair, replace and remove 4½" O.D. buried pipelines and related facilities consisting of 4' x 6' meter houses and metering and dehydration facilities for the purpose of transporting natural gas across the following described public lands:

Serial No.	Pipe size	Land description Sixth Principal Meridian, Wyoming
W-69600	4½ in	T. 17 N., R. 83 W., Sec. 34, Carbon County.
W-69610	4½ in and related facilities.	T. 14 N., R. 92 W., Secs. 1 and 2, Carbon County.
W-69618	4½ in and related facilities.	T. 15 N., R. 94 W., Sec. 30, 31 and 32, Sweetwater County.
W-69626	4½ in	T. 15 N., R. 92 W., Sec. 25, Carbon County.
W-69627	4½ in and related facilities.	T. 15 N., R. 94 W., Secs. 14 and 15, Sweetwater County.
W-69628	4½ in and related facilities.	T. 18 N., R. 92 W., Sec. 30, Carbon County.
W-69629	4½ in and related facilities.	T. 14 N., R. 96 W., Sec. 27, Sweetwater County.

The proposed pipelines and related facilities located entirely within a 50' right-of-way width will serve to transport natural gas from several wells to points of connection with existing pipeline facilities all located within Carbon and Sweetwater Counties, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

Harold G. Stinchcomb,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-37880 Filed 12-10-79; 8:45 am]

BILLING CODE 4310-84-M

[W-69272, W-69593, W-69603, W-69605, W-69633 W-69948]

Wyoming; Applications

November 29, 1979.

Notice is hereby given that pursuant to Sec. 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Northwest Pipeline Corporation of Salt Lake City, Utah filed applications for rights-of-way to construct 4½" and 6⅝" buried pipelines and related facilities consisting of aboveground meters and dehydrators located at well sites for the purpose of transporting natural gas across the following described public lands:

Serial No.	Pipe size	Land description Sixth Principal Meridian, Wyoming
W-69272	6⅝ in	T. 17 N., R. 118 W., sec. 18. T. 17 N., R. 119 W., secs. 14, 20 and 22, Uinta County.
W-69593	6⅝" and two 4½ in.	T. 24 N., R. 111 W., secs. 3 and 4. T. 25 N., R. 111 W., Secs. 14, 23, 24, 25, 35, and 36, Sweetwater County.
W-69603	4½ in	T. 27 N., R. 112 W., secs. 23, 24 and 26, Sublette County.
W-69605	4½ in	T. 25 N., R. 110 W., secs. 27 and 28, Sweetwater County.
W-69633	4½ in	T. 19 N., R. 112 W., sec. 12, Sweetwater County.
W-69948	4½ in	T. 19 N., R. 113 W., sec. 4. T. 20 N., R. 113 W., sec. 32, Lincoln County.

The proposed pipelines and related facilities will serve to transport natural gas from several wells as additions to Northwest Pipeline Corporation's existing gathering system within Uinta, Sublette, Sweetwater and Lincoln Counties, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, Highway 187 North, P. O. Box 1869, Rock Springs, Wyoming 82901.

Harold G. Stinchcomb,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-37881 Filed 12-10-79; 8:45 am]

BILLING CODE 4310-84-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 December 30, 1979. Pursuant to § 60.13 of 36 CFR Part 60, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, Heritage Conservation and Recreation Service, U.S. Department of the Interior, Washington, DC 20243. Written

comments or a request for additional time to prepare comments should be submitted by December 21, 1979.

Carol Shull,

Acting Chief, Registration Branch.

DELAWARE

New Castle County

Smyrna vicinity, *Fleming House*, NE of Smyrna on DE 9.

ILLINOIS

Ford County

Paxton, *Paxton First Schoolhouse*, 406 E. Franklin St.

Richland County

Olney, *Ridgway, Robert, House*, 1030 S. Morgan St.

Winnebago County

Rockford, *East Rockford Historic District*, U.S. 20 and U.S. 51.

INDIANA

Vanderburg County

Evansville, *Ridgway Building*, 313–315 Main St.

NEBRASKA

Douglas County

Omaha, *St. Philomena's Cathedral and Rectory*, 1335 S. 10th St.

NEW HAMPSHIRE

Strafford County

Dover, *Strafford County Farm Alms House, County Jail, Laundry and Boiler Houses*, County Farm Rd.

NEW YORK

Bronx County

Bronx, *Mott Haven Historic District*, An irregular pattern along Alexander Ave. and E. 140th St.

NORTH CAROLINA

Alamance County

Burlington, *Southern Railway Passenger Station*, Main and Webb Sts.

Buncombe County

Asheville, *Biltmore Industries, Inc.*, Grovewood Rd.

Currituck County

Shawboro vicinity, *Culong*, S of Shawboro on SR 1147.

Guilford County

Greensboro, *Hillside (Julian Price House)* 301 Fisher Park Circle.

Halifax County

Enfield vicinity, *Strawberry Hill*, E of Enfield on SR 1100.

Martin County

Hamilton, *Hamilton Historic District*, NC 125.

Nash County

Rocky Mount, *Rocky Mount Mills*, NC 43 and NC 48.

Wake County

Raleigh, *Norburn Terrace*, 216 Lafayette St.
Raleigh, *St. Augustine's College Campus*, Oakwood Ave.

OHIO

Seven Early Office Buildings at Central Square Thematic Resources. Reference—see individual listings under Mahoning County.

Allen County

Delphos, *St. John Catholic Church*, 110 N. Franklin St.

Athens County

Millfield vicinity, *Weethee Historic District*, N of Millfield.

Brown County

Ripley, *Parker, John P., House*, 300 Front St.

Butler County

Oxford, *Kumler, Elias, House*, 120 S. Main St.

Clark County

Springfield, *Bookwalter, Francis, House*, 611 S. Fountain Ave.
Springfield, *Third Presbyterian Church (Northminster Presbyterian Church)* 714 N. Limestone St.

Columbiana County

East Fairfield, *Eckis, Nicholas, House*, High St.

Coshocton County

West Lafayette vicinity, *Miller, Daniel, House*, W of West Lafayette at 52357 County Rd. 16.

Franklin County

Columbus, *Sharp House*, 935 Broad St.

Guernsey County

New Concord vicinity, *Harper, Samuel, Stone House*, N of New Concord on SR 416.

Hamilton County

Cincinnati, *Showboat Majestic*, Broadway St.

Mahoning County

Youngstown, *Central Tower Building (Seven Early Office Buildings at Central Square Thematic Resources)* 1 Federal Plaza West.
Youngstown, *Federal Building (Seven Early Office Buildings at Central Square Thematic Resources)* 18 N. Phelps St.
Youngstown, *First National Bank Building (Seven Early Office Buildings at Central Square Thematic Resources)* 6 Federal Plaza West.
Youngstown, *Mahoning National Bank Building (Seven Early Office Buildings at Central Square Thematic Resources)* 23 Federal Plaza West.
Youngstown, *Realty Building (Seven Early Office Buildings at Central Square Thematic Resources)* 47 Federal Plaza.
Youngstown, *Stambaugh Building (Seven Early Office Buildings at Central Square Thematic Resources)* 44 Federal Plaza.
Youngstown, *Wick Building (Seven Early Office Buildings at Central Square Thematic Resources)* 34 Federal Plaza West.

Marion County

Morral vicinity, *Bretz Farm*, 197 Morrall-Kirkpatrick Rd.

Montgomery County

Dayton, *Dunbar Historic District*, N. Summit St.

Muskingum County

Adamsville vicinity, *Hunter, James, Stone House*, E of Adamsville on Mercer Rd.
Stovertown vicinity, *St. John's Evangelical Lutheran Church*, S of Stovertown on OH. 555
Zanesville, *Harper-Cosgrave Block*, N. 3rd St.

Scioto County

Portsmouth, *Greenlawn Cemetery Chapel*, Offnere St.

Stark County

Hartville, *Hartville Hotel*, 101 N. Prospect St.

OREGON

Marion County

Salem, *Adolph Block*, 360—372 State St.
Salem, *Gill, J. K., Building*, 356 State St.

TENNESSEE

Hardeman County

Bolivar, *Bills-McNeal Historic District*, Irregular pattern along Lafayette, McNeal, Bills, Union, Lauderdale and Washington Sts.

Hardin County

Savannah, *Savannah Historic District*, An irregular pattern along Main, Deford, Guinn, Church, College, Williams and Cook Sts.

Lauderdale County

Ripley, *Wardlaw-Steele House*, 128 Wardlaw Pl.

Overton County

Livingston, *Overton County Courthouse*, Court Sq.

Rutherford County

Murfreesboro, *Childress-Ray House*, 225 N. Academy St.

TEXAS

Burnet County

Marble Falls, *Roper Hotel*, TX 281 and 3rd St.

Travis County

Austin, *Boardman-Webb-Bugg House*, 602 W. 9th St.

UTAH

Salt Lake County

Salt Lake City, *Chapman Branch Library*, 577 S. 900 West.

Sevier County

Salina vicinity, *Gooseberry Valley Archeological District*, E of Salina.

Wayne County

Hanksville vicinity, *Bull Creek Archeological District.*

VERMONT

Windham County

Brattleboro, *Brooks House (Hotel Brooks)* 4 High St. and 128 Main St.

WISCONSIN

Brown County

Suamico, *Henry House (Weed Mill Boarding House)* 1749 Riverside Dr.

Rock County

Janesville, *East Milwaukee Street Historic District,* N. Parker Dr. and E. Milwaukee St.
Janesville, *North Main Street Historic District,* N. Main St. and N. Parker Dr.

Waukesha County

Oconomowoc, *Oconomowoc Depot,* 115 Collins St.

[FR Doc. 79-37562 Filed 12-10-79; 8:45 am]

BILLING CODE 4310-03-M

National Park Service

Eleanor Roosevelt National Historic Site, Hyde Park, N.Y.; General Management Plan Finding of No Significant Impact

A review of alternatives report in which the National Park Service outlines its preferred alternative for the General Management Plan for Eleanor Roosevelt National Historic Site is now available at the North Atlantic Regional Office, 15 State Street, Boston, MA 02109; Federal Hall National Memorial, 26 Wall Street, New York, NY 10005; or the Superintendent's Office, Home of Franklin D. Roosevelt and Vanderbilt Mansion National Historic Sites, Hyde Park, NY 12538.

An assessment of the alternatives was made available in August 1979. Public and other agency commentaries were considered in identifying the preferred alternative which is a composite of selected elements from each of the alternatives. The preferred plan provides for the preservation of all existing facilities; nonintrusive bus access and parking facilities; public restrooms and quarters for a few resident conferees and site-management personel; the installation of an independent waste water disposal system; public visitation primarily by guided tours originating from the Home of Franklin D. Roosevelt National Historic Site; and the management of conferences and the production of crafts by the cooperating organization, Eleanor Roosevelt's Val-Kill, Inc.

The assessment and the review of alternatives report evaluate and discuss the probable affects of the plan. The National Park Service finds that no significant impact will be caused, therefore, no environmental impact statement will be prepared. No implementation of the preferred plan will be initiated prior to 30 days from the date of this notice.

Dated: November 28, 1979.

Richard W. Marks,

Acting Regional Director, National Park Service.

[FR Doc. 79-37952 Filed 12-10-79; 8:45 am]

BILLING CODE 4310-70-M

Water and Power Resources Service

Safety of Dams Report on Modification of Stony Gorge Dam, Orland Project, Calif.; Public Information Meeting

In accordance with section 5 of the Reclamation Safety of Dams Act of 1978, Pub. L. 95-578, the Water and Power Resources Service is preparing a report on proposed modifications at Stony Gorge Dam in Glenn County, California. The modifications are considered to be necessary to ensure the safety of the dam. A public meeting to discuss the alternative modifications is scheduled for 7:00 p.m., January 10, 1980, at the City Hall in Willows, California.

Six alternatives are being considered.

—A spillway through the north end of the dam with an ungated overflow crest. Discharges would flow into Stony Creek immediately downstream from the dam.
—A spillway through the saddle at the north end of the reservoir with a gated overflow crest. Discharges would flow into Stony Creek approximately 2 miles downstream from the dam.
—A spillway through the saddle south of the dam with an ungated overflow crest. Discharges would first flow into Briscoe Creek and eventually into Stony Creek immediately downstream from the dam.
—Modify the existing dam to allow it to be overtopped without endangering the safety of the structure.
—A tunnel spillway with a side channel or glory hole intake under the north abutment of the dam.
—A series of gated conduits through the dam to act as emergency outlets.

Details of the alternatives will be presented at the January 10 meeting. The meeting will include a question and answer period. Further information regarding the meeting may be obtained by contacting Cliff Quinton, MP-430, Water and Power Resources Service, 2800 Cottage Way, Sacramento, CA 95825, telephone (916) 484-4210.

Dated: December 6, 1979.

Clifford I. Barrett,

Assistant Commissioner, Water and Power Resources Service

[FR Doc. 79-37828 Filed 12-10-79; 8:45 am]

BILLING CODE 4310-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 79-16]

James Waymon Mitchell; Revocation of Registration

On June 4, 1979, the Administrator of the Drug Enforcement Administration (DEA) directed to James Waymon Mitchell, M.D., the Respondent herein, an Order to Show Cause as to why the Respondent's DEA Certificate of Registration (AM7929740) should not be revoked for reason that the Tennessee Board of Medical Examiners on September 11, 1978, ordered the suspension of his license to practice medicine in the State of Tennessee, thereby terminating his authority to prescribe, dispense, administer or otherwise handle controlled substances in Tennessee. The suspension of Respondent's medical license is grounds for revocation of his DEA Certificate of Registration under 21 U.S.C. 824(a)(3). The Order to Show Cause was returned as undeliverable, and Respondent was personally served on July 2, 1979. Respondent requested a hearing in a letter dated July 30, 1979. In response, the Hearing Clerk, on August 6, 1979, sent Respondent a copy of 21 CFR 1316.47 and a letter requesting Respondent to provide the Administrative Law Judge the specific information with respect to the issues or objections which Respondent wished to be heard, as required by this Section. The letter requested Respondent provide the Administrative Law Judge this information by August 20, 1979. Respondent did not send the information requested, nor otherwise inform the Administrative Law Judge of other issues which he requested to be heard.

On September 27, 1979, counsel for the Government filed a Motion for Summary Judgment, pointing out that Respondent had failed to identify any issues of fact calling for an evidentiary hearing. Government counsel submitted with the motion a copy of the Order of Suspension entered by the Tennessee Board of Medical Examiners on September 11, 1978. The Order suspended Dr. Mitchell's license to practice medicine in Tennessee, apparently indefinitely, on two conditions. First, Respondent must spend a period of time in a psychiatric hospital and receive treatment by a psychiatrist approved by the board. Second, Dr. Mitchell must take 150 hours of continuing education approved by the American Medical Association.

On October 30, 1979, the Honorable Francis L. Young, Administrative Law Judge, certified to the Administrator, pursuant to 21 CFR 1316.65, the record in this matter, together with his opinion, and recommendations, and a recommended decision. Pursuant to 21 CFR 1316.66, the Administrator hereby publishes his Final Order in this matter, based upon the opinion, and recommendation set forth below.

On October 2, 1979, Judge Young entered an order terminating the proceedings, and recommended that the Administrator of DEA issue a Final Order revoking Respondent's DEA registration effective immediately. Judge Young found that Respondent had not responded to the Hearing Clerk's request nor otherwise advised as to the existence of any issues or questions of fact which he would raise and with respect to which he desires to be heard. The Administrative Law Judge concluded that Dr. Mitchell is not licensed to practice medicine and to prescribe or otherwise dispense controlled substances in the State of Tennessee, the jurisdiction in which he is registered with DEA. Judge Young accordingly concluded that Respondent is not entitled to have a DEA registration, and that DEA has no authority to grant him such registration under 21 U.S.C. 823(f).

Judge Young found, as a matter of law, that Dr. Mitchell's DEA Registration should be revoked, and there is no longer any statutory authority for DEA to register Respondent. Judge Young further found that, since Respondent had failed to advise of any issue of fact which would call for an evidentiary hearing, DEA is under no obligation to hold a "plenary, adversary administrative proceeding involving evidence, cross-examination of witnesses, etc." *U.S.* v. *Consolidated Mines and Smelting Co., Ltd.*, 455 F.2d 432, 453 (9th Cir. 1971); Opinion And Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of Administrative Law Judge in *In The Matter of David Sachs, M.D.*, DEA Docket No. 77–2, and the Administrator's Final Order in that case dated June 1, 1977, published at 42 FR 29112 (1977).

The Administrator hereby adopts the Administrative Law Judge's recommendation that Respondent's registration be revoked pursuant to 21 U.S.C. 824(a)(2). Having reviewed the record of this matter in its entirety, and having concluded that the subject registration should be revoked for reason that Respondent's Tennessee medical license has been suspended, it is the decision of the Administrator that said registration be revoked. Accordingly, pursuant to the authority vested in the Attorney General by Section 824 of Title 21, United States Code, and redelegated to the Administrator of the Drug Enforcement Administration, the Administrator hereby orders that the Certificate of Registration AM7929740 previously issued to James Waymon Mitchell, M.D., be, and is, hereby revoked, effective January 10, 1980.

Dated: November 29, 1979.

Peter B. Bensinger,

Administrator.

[FR Doc. 79–37949 Filed 12–10–79; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 78–21]

Taft Street Drugs; Revocation of Registration

On November 13, 1978, the Administrator of the Drug Enforcement Administration (DEA) issued to Taft Street Drugs (Respondent), and to Charles C. Cox, R.Ph., its owner and operator, an Order to Show Cause proposing to revoke the Respondent's DEA Certificate of Registration, AC2673564, and to deny the Respondent's pending application for a new annual registration as a retail pharmacy dispensing controlled substances. The Order to Show Cause specified, as reason for the action proposed therein, Mr. Cox's conviction of felony offenses relating to controlled substances. The Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and this matter was placed on the docket of the Administrative Law Judge.

A hearing date was not set initially because Mr. Cox was incarcerated when the Order to Show Cause was issued. Subsequently, it was learned that on September 4, 1979, Mr. Cox was to be transferred from the Federal Correctional Institution at Sandstone, Minnesota, to the Community Treatment Center in Chicago, Illinois, where Mr. Cox would be readily available to participate in a hearing. Accordingly, the Administrative Law Judge scheduled a hearing to commence on September 12, 1979, in Chicago.

On August 22, 1979, the Administrative Law Judge, indicating his concern over the fact that no prehearing statement had been filed on behalf of the Respondent, ordered that a prehearing conference be held in Washington, D.C., on August 31, 1979. Late in the day on August 30, 1979, counsel for the Respondent advised the Administrative Law Judge's office that the Respondent had decided not to contest the revocation of its registration and that the said attorney would not be present for the scheduled prehearing conference. In view of this advice, and other communications between Respondent's counsel and counsel for the Government, the Administrative Law Judge cancelled both the hearing and the prehearing conference and has reported this matter to the Administrator for disposition in accordance with Title 21, Code of Federal Regulations, §1301.54(e), which provides that: "If all persons entitled to a hearing or to participate in a hearing waive or are deemed to waive their opportunity for the hearing or to participate in the hearing, the Administrator may cancel the hearing, if scheduled, and issue his final order pursuant in §1301.57 without a hearing." The Administrative Law Judge subsequently received a written withdrawal of the Respondent's request for a hearing.

Accordingly, pursuant to 21 CFR 1301.57 and 1316.67, as amended, the Administrator hereby issues his final order in this matter based upon the findings of fact and conclusions of law set forth below.

The Administrator finds that on September 22, 1978, in the United States District Court for the Northern District of Indiana, Hammond Division, in Docket No. H–CR–78–3, Charles C. Cox, R.Ph., the owner and operator of the Respondent pharmacy, was convicted of one count of conspiracy, in violation of 21 U.S.C. 846, and seven counts of knowingly, intentionally and unlawfully dispensing Schedule II controlled substances, in violation of 21 U.S.C. 841(a)(1), all felony offenses relating to controlled substances. The Administrator concludes, as a matter of law, that there is a lawful basis for the revocation of the Respondent's DEA Registration and for the denial of its pending application for such registration. The file in this matter contains more than sufficient information to cause the Administrator to conclude that such revocation and denial are required in this case. The Respondent has submitted no information which would cause the Administrator to conclude that any lesser remedy would adequately protect the public interest. For these reasons, it is the Administrator's decision that the Respondent's registration must be revoked and its pending application for registration denied.

Accordingly, pursuant to the authority vested in the Attorney General by

Sections 303 and 304 of the Controlled Substances Act, 21 U.S.C. 823 and 824, and redelegated to the Administrator of the Drug Enforcement Administration in Title 28, Code of Federal Regulations, §0.100, the Administrator hereby orders that the application of Taft Street Drugs, for registration as a retail pharmacy under the Controlled Substances Act, be, and it hereby is, denied, effective immediately. The Administrator further orders that DEA Certificate of Registration AC 2673564, previously issued to Taft Street Drugs, be, and it hereby is, revoked, effective immediately.

Dated: November 29, 1979

Peter B. Bensinger,

Administrator, Drug Enforcement Administration.

[FR Doc. 79-37950 Filed 12-10-79; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

National Displaced Homemakers Program Under the Comprehensive Employment and Training Act; Extension of Deadline for Grant Applications

On Friday, October 26, 1979, the Department of Labor published a notice in the **Federal Register** (44 FR 61932) to solicit grant applications in connection with the National Displaced Homemakers Program. The notice stated that the deadline for filing grant applications was 4:30 p.m., December 10, 1979. This deadline was subsequently extended to December 21, 1979 (44 FR 66098). Due to unexpected delays in mailing grant application materials, the Department has found it necessary to further extend the filing deadline. Accordingly, completed applications will be accepted if postmarked no later than February 1, 1980.

As explained in the Solicitation for Grant Application, only one application per organization or agency will be considered for funding. Any applicant which has filed an application may substitute a revised application postmarked no later than February 1, 1980.

Signed at Washington, D.C., this 4th day of December, 1979.

Ernest G. Green,

Assistant Secretary for Employment and Training.

[FR Doc. 79-37942 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-79-160—C]

Jim Walter Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Jim Walter Resources, Inc., P.O. Box C-79, Birmingham, AL 35283 has filed a petition to modify the application of 30 CFR 75.326 (Aircourses and belt haulage entries) to its No. 3 Mine, located in Jefferson County, Alabama, in accordance with section 101(c) of the Federal Mine Safety and Health Act of 1977, Public Law 91-173, as amended by Public Law 95-164.

The substance of the petition is as follows:

1. The petitioner operates both continuous miner and longwall sections.

2. The coal seam contains large quantities of methane (CH_4); the porosity of the seam is high, but the permeability is low.

3. Future additional sections and track branches will require more air for dilution of methane from the already severely limited intake capacity of track entries, leaving only one entry for intake air.

4. To reduce the risk of methane buildup in the belt entries, the petitioner proposes to use air from the belt entries, to supplement intake air for diluting methane at the working faces. Thus, there would be increased air volume in the last open crosscut, while providing extra flexibility to occasionally direct additional air for diluting methane at some needed working face(s).

5. To control and monitor the air quality in the belt entries and the belt entry air used as intake air, the petitioner proposes to install an Energetics Science Inc., Ecolyzer Model 4000, or equivalent, system for monitoring carbon monoxide (CO) every 20 minutes, coupled to a remotely installed datalogger 2000, or equivalent, and alert signal which are located at a surface work station of a responsible person having a telephone or other equivalent communications system to all miners who work in the vicinity of the CO monitor. The CO monitor would be visually inspected at least once each day and calibrated every 30 days. The petitioner will keep a written record of all examinations for at least 1 year.

6. The petitioner will employ the automatic fire warning devices required by 30 CFR 75.1103.

7. The petitioner will comply with the respirable dust requirement of 30 CFR 75.100(e) in belt entries used for supplemental intake air.

8. The petitioner will continue to isolate intake air entries from belt entries used to supplement the intake air thereby maintaining the integrity of the intake air excape route.

9. In the event of failure or malfunction of the CO monitor, a miner trained and qualified in the use of a Bacharach carbon monoxide detector, or equivalent, will monitor the air at 15 minute intervals whenever any person is in by the defective monitor; however, the belt conveyors would continue to operate.

10. An additional intake entry should be completed and connected during November 1979. Another return air is projected for November 1980.

Request for Comments

Persons interested in this petition may furnish written comments on or before January 10, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 631, 4015 Wilson Boulevard, Arlington, VA 22203. Copies of the petition are available for inspection at that address.

Dated: November 30, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 79-37943 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-79-164-C]

Itmann Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.321 (fans) to its Itmann Coal Company, Mine No. 1 located in Wyoming County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of the petition follows:

1. The petitioner requests permission to continue the regular operation of an area of the mine in which the ventilation is insignificantly affected by the stopping of one fan in another area of the mine.

2. The mine is ventilated by four fans. Two fans primarily ventilate an area known as Pinacle Mains, A-1 Right and A-1 Left. Two other fans primarily ventilate another area known as Guyan Right and Guyan 2 Panel.

3. It is implied that when four fans are operating, some excess ventilation capacity exists. The petitioner states that if one of the Pinacle Mains area fans stop, there will be no adverse effect on the ventilation of the Guyan Right and Guyan 2 Panel. Similarly, no

adverse effect will result to the Pinnacle Mains ventilation if one of the Guyan Right and Guyan 2 Panel fans stop.

4. If one of the fans in one area stops, the petitioner will comply with 30 CFR 75.321 for that area, but requests permission to continue regular operation of the other area.

5. The petitioner states that if any two fans stop, all provisions of 30 CFR 75.321 will be complied with throughout the mine.

Requests for Comments

Persons interested in this petition may furnish written comments on or before January 10, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: November 30, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 79-37945 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-79-159-C]

United States Steel Corp.; Petition for Modification of Application of Mandatory Safety Standard

United States Steel Corp., 600 Grant Street, Pittsburgh, PA 15230 has filed a petition to modify the application of 30 CFR 75.305 (hazardous conditions) to its Robena Mine No. 3 located in Greene County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of the petition follows:

1. Because the mine is old with many worked-out areas, certain return air entries between Bailey Shaft and Blaker Shaft which ventilate only abandoned areas have deteriorated with resulting roof falls.

2. It is considered virtually impossible to examine these return air entries as required by the standard without great personal risk to the examiner. Attempts at restoring these entries have been unsatisfactory and further attempts are considered to be not feasible.

3. As an alternative to weekly examinations of the return entries, the petitioner proposes to establish a number of air quality measuring stations, record daily measurements, and maintain each station, and the access to it, in a safe and travelable condition. Immediate corrective action shall be taken if a marked variation in air quality in the return air entries occurs as determined by the readings taken at each measuring station.

Requests for Comments

Persons interested in this petition may furnish written comments on or before January 10, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: November 30, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 79-37944 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Oregon State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator), under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On December 28, 1972, notice was published in the **Federal Register** (37 FR 28628) of the approval of the Oregon plan and the adoption of Subpart O of Part 1952 containing the decision. The Notice of Approval of Revised Developmental Schedule was further published on April 1, 1974 in the **Federal Register.**

The Oregon plan provides for the adoption of State standards which are at least as effective as those which are presently or will, in the future, be promulgated under section 6 of the Occupational Safety and Health Act of 1970. An initial public hearing was held on September 29, 1977 and temporary rules were adopted governing the use of Thiram. A second public hearing to consider adoption of permanent rules for the use of Thiram was held on January 4, 1978 for the purpose of affording interested persons an opportunity to present written and oral data statements and arguments concerning the proposed adoption. After hearing testimony, considering the evidence, and reviewing the need for such rules, the Thiram standard was adopted on March 6, 1978, upon the filing of an Order of Adoption with the Secretary of the State of Oregon.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that there is no comparable Federal standards and that, therefore, the State standard exceeds Federal requirements.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Workers Compensation Board, Labor and Industries Building, Salem, Oregon 97310; and the Technical Data Center, Room N2349R, 3rd and Constitution Avenue N.W., Washington, D.C. 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Oregon State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standard is one for which there is no comparable Federal standard and therefore the State standard exceeds the Federal standards.

2. The standard was adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective December 11, 1979.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Seattle, Washington this 13th day of July, 1979.

John A. Granchi,

Acting Regional Administrator.

[FR Doc. 79-37947 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-26-M

Oregon State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of

1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On December 28, 1972, notice was published in the **Federal Register** (37 FR 28628) of the approval of the Oregon plan and the adoption of Subpart D to Part 1952 containing the decision. The Notice of Approval of Revised Developmental Schedule was further published on April 1, 1974, in the **Federal Register** (39 FR 11881).

The Oregon plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act.

By letter dated July 6, 1979 from Darrel D. Douglas, Administrator of the Accident Prevention Division, Workers' Compensation Department, to James W. Lake, Regional Administrator, Occupational Safety and Health Administration, and incorporated as part of the plan, the State submitted State standards comparable to 29 CFR 1910.1044, 1, 2, Dibromo-3-Chloropropane, as published in the **Federal Register** (43 FR 11514) dated March 17, 1978. These standards, which are contained in Chapter 437–110–031 OAR became effective January 5, 1979.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are at least as effective as the comparable Federal standards and accordingly should be approved. The significant areas of difference are: § 1910.1044(c), the State has included a short-term exposure limit which the Federal regulation does not have; and § 1910.1044(e)(2), the State requires regulated areas where *any* exposure to DBCP occurs. Other minor areas of differences are editorial in nature and do not change the effectiveness of the standard.

The detailed standards comparison is available at the locations specified below.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6002, 909 First Avenue, Federal Office Building, Seattle, Washington 98174; Workers' Compensation Department, Room 204, Labor and Industries Building, Salem, Oregon 97310; and the Technical Data Center, Room N2349R, 3rd Street and Constitution Avenue N.W., Washington, D.C. 20210.

4. *Public participation.* Under 29 CFR 1953.2(c) the Assistant Secretary may prescribe alternate procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Oregon plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason: The standards were adopted in accordance with the procedural requirements of State law.

The decision is effective December 11, 1979.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Seattle, Washington this 13th day of July 1979.

Ronald T. Tsunehara,

Acting Regional Administrator.

[FR Doc. 79–37948 Filed 12–10–79; 8:45 am]

BILLING CODE 4510–26–M

Puerto Rico State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18 (c) of the Act and 29 CFR Part 1902. On August 30, 1977, notice was published in the **Federal Register** (42 FR 43628) of the approval of the Puerto Rico plan and the adoption of Subpart FF to Part 1952 containing the decision.

The Puerto Rico plan provides for the adoption of Federal standards as State standards by reference. Section 1953.20 of 29 CFR provides that "where any alteration in the Federal program could have an adverse impact on the 'at least as effective as' status of the State program, a program change supplement to a State plan shall be required."

In response to a Federal standard change, the State has submitted by letter dated June 1, 1979, from Assistant Secretary John Cinque to Assistant Regional Asministrator Richard Andree, and incorporated as part of the plan, State standards comparable to the Occupational Safety and Health Administration Permanent Standards for Cotton Dust in Cotton Gins (29 CFR 1910, 1046 and 29 CFR 1928.21), as published in the **Federal Register** (43 FR 27418) dated June 23, 1978, and corrections as published in the **Federal Register** (43 FR 28474) dated June 30, 1978 and (43 FR 35035) dated August 8, 1978; the State revocated Selected General and Special (Cooperage and Laundry Machinery, and Bakery Equipment) Industry Safety and Health Standards (29 CFR Part 1910), as published in the **Federal Register** (43 FR 49726) dated October 24, 1978. These standards, which are contained in the Puerto Rico Regulations, Number Four (equivalent to 29 CFR Part 1910) and Number Eleven (equivalent to 29 CFR Part 1910) and Number Eleven (equivalent to 29 CFR Part 1928), were promulgated by resolution adopted by the Puerto Rico Department of Labor and Human Resources on July 20, 1978, pursuant to the Puerto Rico Act Number 16 and Chapter 43 of the Puerto Rico Rules and Regulations Act of 1958.

2. *Decision.* Through review of the State submission in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards and accordingly are hereby approved.

3. *Location of supplement for inspection and copying.* A copy of the standard supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 3445, 1515 Broadway, New York, New York 10036; Puerto Rico Department of Labor and Human Resources, 414 Barbosa Avenue, Hato Rey, Puerto Rico 00917; and the Technical Data Center, Room N2439R, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

4. *Public Participation.* Under 29 CFR 1953.2 (c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Puerto Rico State plan as a proposed change and making the Assistant Regional Director's approval effective

upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirement of State law and further participation would be unnecessary.

The decision is effective December 11, 1979.

(Sec. 18 Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at New York City, New York. This eighteenth day of June 1979.

Alfred **Barden,**

Regional Administrator.

[FR Doc. 79-37946 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-M

Office of the Secretary

[TA-W-6159]

AMM Industries, Inc.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on October 9, 1979 in response to a worker petition received on October 2, 1979 which was filed by the International Ladies' Garment Workers Union on behalf of workers and former workers producing ladies' sportswear and dresses at AMM Industries, Incorporated, Harrison, New Jersey. The investigation revealed that the plant primarily produces dresses, skirts, blazers, blouses, pants and vests. It is concluded that all of the requirements have been met.

U.S. imports of Women's, Misses' and Children's knit dresses increased absolutely from January-June 1978 to January-June 1979. U.S. imports of women's and misses' dresses increased absolutely and relative to domestic production in 1978 compared to 1977.

U.S. imports of Women's, Misses' and Children's knit skirts increased absolutely and relative to domestic production from 1977 to 1978 and increased absolutely in the January-June 1979 period compared to the same period of 1978. U.S. imports of women's, misses' and children's skirts increased absolutely and relative to domestic production in 1978 compared to 1977.

U.S. imports of Women's, Misses' and Children's coats and jackets increased absolutely and relative to domestic production in each year from 1976 through 1978 compared to the preceding year.

U.S. imports of Women's, Misses' and Children's blouses and shirts increased absolutely in each year from 1974 through 1978 compared to the preceding years and increased relative to domestic production in 1978 compared to 1977.

U.S. imports of Women's, Misses' and Children's slacks and shorts increased absolutely and relative to domestic production from 1977 to 1978.

Women's vests are included in the import and production category of Women's, Misses' and Children's suits. U.S. imports of Women's, Misses' and Children's suits increased absolutely and relative to domestic production from 1977 to 1978.

The Departmental investigation revealed that customers decreased purchases of ladies' dresses and suits from AMM Industries in 1978 compared to 1977 and in January-September 1979 compared to the same period in 1978. The Department of Labor conducted a random sample of retail customers who purchased ladies' dresses and suits (skirts and tops) from AMM Industries Incorporated. The survey revealed that, in aggregate, customers increased their purchases of imported ladies' dresses and suits both on an absolute basis and as a percentage of their total demand in 1978 as compared to 1977 and in the January-September period of 1979 compared to the January-September period of 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with ladies' dresses, skirts and tops producted at AMM Industries, Incorporated, Harrison, New Jersey contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of AMM Industries, Incorporated, Harrison, New Jersey who became totally or partially separated from employment on or after September 28, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 30th day of November 1979.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 79-37899 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6135]

Amoruso Dress Co., Inc.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of elibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was intitiated on October 2, 1979 in response to a worker petition received on September 27, 1979 which was filed on behalf of workers and former workers producing women's dresses and suits at Amoruso Dress Company, Incorporated, Brooklyn, New York. The investigation revealed that the plant also produced women's coordinated jackets, skirts, blouses and pants. It is concluded that all of the requirements have been met.

U.S. imports of women's and misses' dresses increased absolutely and relative to domestic production in 1978 compared to 1977.

U.S. imports of women's, misses', and children's coats and jackets increased absolutely and relative to U.S. production in each year from 1975 through 1978 compared to the preceding years.

U.S. imports of women's, misses', and children's skirts increased absolutely and relative to domestic production in 1978 compared to 1977.

U.S. imports of women's, misses', and children's blouses and shirts increased absolutely and relative to domestic production in 1978 compared to 1977.

U.S. imports of women's, misses', and children's slacks and shorts increased absolutely and relative to domestic production in each year from 1974 through 1978 compared to the preceding years.

A Departmental survey was conducted with manufacturers from whom Amoruso Dress Company, Incorporated received contract work. The survey revealed that the manufacturer from whom Amoruso received work, for many years, closed in

December 1977. A secondary survey was conducted with retail customers of this manufacturer. The secondary survey revealed that customers, representing a substantial portion of the manufacturer's sales declines, increased their reliance on foreign sources for their supply of ladies' dresses and suits in 1977 compared to 1976 and decreased their purchases from the manufacturer during that same time period.

The closure of the manfacturer, which represented Amoruso's major source of business through 1977, had an adverse effect on Amoruso's financial position, ultimately leading to Amoruso's closure in November 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's dresses and coordinated jackets, skirts, blouses and pants produced at Amoruso Dress Company, Incorporated, Brooklyn, New York contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Amoruso Dress Company, Incorporated, Brooklyn, New York who became totally or partially separated from employment on or after September 22, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of December 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-37900 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5719 and 5760]

Amstar Corp., American Sugar Division, Boston, Mass., Refinery, Brooklyn, N.Y., Refinery, Philadelphia, Pa., Refinery, Baltimore, Md., Refinery, Chalmette, La., Refinery; Affirmative Determination Regarding Application for Reconsideration

On November 3 and 9, 1979, workers requested administrative reconsideration of the Department of Labor's Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers of Amstar Corporation's American Sugar Division refineries at Baltimore, Maryland, and Chalmette, Louisiana. This Notice of Determinations was published in the **Federal Register** on October 12, 1979, (44 FR 59002).

The workers claim in their application for reconsideration that the Baltimore, Maryland, and Chalmette, Louisiana, refineries, contrary to what the Department understood, supplied the bulk of their refined sugar to market areas where Amstar Corporation workers were found meeting all the statutory criteria for trade adjustment assistance.

Conclusion

After review of the application, I conclude that the claim of the workers is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this 5th day of December 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-37901 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6137]

Ancur Textile Printing Corp.; Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on October 2, 1979 in response to a worker petition received on September 27, 1979 which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers producing screen printed fabrics at Ancur Textile Printing Corporation, East Newark, New Jersey. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

U.S. imports of finished fabric declined absolutely in the first six months of 1979 when compared with the same period in 1978. Imports have remained at or below two percent of domestic production in each of the last four full years.

Ancur Textile Printing Corporation was a commission printer of fabric, whose sales were to fabric converters. The Department surveyed all of Ancur Textile's customers. Most of these customers did not purchase imported fabric during the period under investigation.

Conclusion

After careful review, I determine that all workers of Ancur Textile Printing Corporation, East Newark, New Jersey 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 5th day of December 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-37902 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6168, 6211, and 6212]

The Anderson Co. of Indiana; Notice of Negative Determinations Regarding Eligibility To Apply for Workers Adjustments Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

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.

Investigations were initiated on October 9, 1979 and October 16, 1979 in response to worker petitions received on October 2, 1979 which was filed on behalf of workers and former workers producing automobile windshield wipers at the Anderson Company of Indiana; Gary, Indiana (TA-W-6168), Valparaiso, Indiana plant (TA-W-6211) and its Burns Harbor, Indiana warehouse (TA-W-6212). All three facilities operate in an integrated manner. The investigation revealed that windshield wiper blades, arms and refills are produced. In the following determinations, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or

threat thereof, and to the absolute decline in sales or production.

Total sales by the Anderson Company increased in 1978 from 1977.

The Department conducted a survey of some of the customers buying windshield wiper blades, arms and refills from the Anderson Company. Most of these customers did not purchase any imports in 1977, 1978 or 1979. Two customers decreased purchases from the Anderson Company and increased purchases of imports. For one of these customers, purchases of imports constituted a negligible proportion of its total purchases of windshield wiper blades, arms and refills. The decline in purchases from Anderson Company by the other customer who increased purchases of imports represented an insignificant proportion of the Anderson Company's total decline in sales in the first nine months of 1979.

Conclusion

After careful review, I determine that all workers of the Gary, Valparaiso and Burns Harbor, Indiana facilities of the Anderson Company of Indiana 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 6th day of December 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-37904 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6292]

Bethlehem Steel Corp., South San Francisco Plant; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 30, 1979 in response to a worker petition received on October 22, 1979 which was filed by the United Steelworkers of America on behalf of workers and former workers engaged in employment related to the production of carbon steel products at the San Francisco Works of the Bethlehem Steel Corporation. The investigation revealed that the correct name of the plant is the South San Francisco Plant.

All workers of the South San Francisco Plant separated on or after October 27, 1975 were certified eligible to apply for adjustment assistance benefits on April 18, 1977 (TA-W-1234). The South San Francisco plant officially shutdown on September 30, 1977. Nine workers were retained on the company's payroll to handle the phasing out of activities connected with the plant shutdown. Seven of these nine workers were laid off on September 28, 1979. The original certification (TA-W-1234) was extended to encompass these workers. Since all workers of the South San Francisco Plant are covered under an existing certification, a new investigation would serve no purpose. Therefore, it is recommended that this investigation be terminated.

Signed at Washington, D.C. this 6th day of December 1979.

Harold A. Bratt,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-37907 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6256]

Brown Shoe Co.; Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on October 24, 1979 in response to a worker petition received on October 18, 1979 which was filed on behalf of workers and former workers producing women's shoes at the Potosi, Missouri plant of Brown Shoe Company. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The Department's investigation revealed that average employment of production workers at the Potosi, Missouri plant of Brown Shoe Company increased from 1977 to 1978 and increased in the first nine months of 1979 compared with the same period of 1978. Average employment increased in each of the first three quarters of 1979 compared with the same periods of 1978. Any total or partial separations that occurred at the plant from 1977 to the present were a result of seasonal fluctuations.

Conclusion

After careful review, I determine that all workers of the Potosi, Missouri plant of Brown Shoe Company are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of December 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-37908 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6177]

Cohen Brothers Specialties, Inc.; Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on October 15, 1979 in response to a worker petition received on October 9, 1979 which was filed by the Amalgamated Clothing and Textile Worker's Union on behalf of workers and former workers producing men's formal wear at Cohen Brothers Specialties, Incorporated, New York, New York. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Industry sources indicated that imports of formal wear are negligible. Since these items are made-to-order, importing them would be difficult.

A Department survey of the customers of Cohen Brothers Specialties, Incorporated revealed that none of the customers surveyed purchased imported men's formal wear from 1977 through 1979.

Conclusion

After careful review, I determine that all workers of Cohen Brothers Specialties, Incorporated, New York, New York are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 5th day of December 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-38038 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6228]

Dickerson Trucking Co., Inc., Dehue, W. Va.; Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on October 18, 1979, in response to a worker petition received on October 16, 1979, which was filed on behalf of workers and former workers hauling coal, rock and gravel.

The investigation revealed that Dickerson Trucking Company, Inc., is engaged in providing the service of transportation of coal.

Thus, workers of Dickerson Trucking Company, Inc. do not produce an article within the meaning of section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Dickerson Trucking Company, Inc. by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

Dickerson Trucking Company, Inc. and its customers have no controlling interest in one another. The subject firm is not corporately affiliated with any other company.

All workers engaged in transportation of coal at Dickerson Trucking Company, Inc. are employed by that firm. All personnel actions and payroll transactions are controlled by Dickerson Trucking Company, Inc. All employee benefits are provided and maintained by Dickerson Trucking Company, Inc. Workers are not, at any time, under employment or supervision by customers of Dickerson Trucking Company, Inc. Thus, Dickerson Trucking Company, Inc., and not any of its customers, must be considered to be the "workers' firm".

Conclusion

After careful review, I determine that all workers of Dickerson Trucking Company, Inc., Dehue, West Virginia are denied eligibilty to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 5th day of December 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-37911 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6229]

Dietrich Brothers, Inc.; Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on October 18, 1979 in response to a worker petition received on October 15, 1979 which was filed on behalf of workers and former workers producing fabricated structural steel, reinforcing bars and ornamental iron at Dietrich Brothers, Inc., Baltimore, Maryland. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Dietrich Brothers obtains its contracts for the production of fabricated structural steel for building projects through competitive bidding. The Department of Labor's survey of the contracts upon which Dietrich Brothers bid unsuccessfully in 1978 and 1979 disclosed that none of the contracts was awarded to a foreign firm.

Conclusion

After careful review, I determine that all workers of Dietrich Brothers, Incorporated, Baltimore, Maryland 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 5th day of December 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-37912 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6149, 6150]

Donaldson Manufacturing Co. Inc.; Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on October 4, 1979 in response to a worker petition received on September 26, 1979 which was filed on behalf of workers and former workers producing ladies' dresses and sportswear at the Donaldson, Pennsylvania and Cumbola, Pennsylvania plants of Donaldson Manufacturing Company, Incorporated. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

A survey was conducted by the Department of Labor of the major manufacturers for whom Donaldson Manufacturing Company performed contract work. The survey revealed that none of the manufacturers purchased imported ladies' dresses or sprotswear

or contracted out to foreign sources in 1977, 1978 and the first ten months of 1979. Manufacturers accounting for the the majority of Donaldson's decline in contract work from the first half of 1978 to the first half of 1979 indicated increased sales in 1979 compared to 1978.

Conclusion

After careful review, I determine that all workers of the Donaldson, Pennsylvania and Cumbola, Pennsylvania plants of Donaldson Manufacturing Company, Incorporated are denied eligibility to apply for adjustment assistance under Tile II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 30th day of November 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-37913 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6189]

E. Weinshel & Brother Manufacturing Co.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on October 15, 1979, in response to a worker petition received on October 9, 1979, which was filed by the Amalgamated Clothing and Textile Workers' Union on behalf of workers and former workers producing vests, raincoats and outerwear for men and women at E. Weinshel and Brother, Milwaukee, Wisconsin. The investigation revealed that the plant produced primarily men's topcoats and jackets. It is concluded that all of the requirements have been met.

U.S. imports of men's and boys' outer coats and jackets increased in quantity and relative to domestic production from 1976 to 1977. Imports remained relatively constant in quantity and decreased slightly relative to domestic production from 1977 to 1978. Imports decreased in quantity in the January–June period of 1979, compared with the same period of the previous year. U.S. imports of women's, girls' and infants' cloth raincoats increased in quantity and relative to domestic production from 1977 to 1978, and decreased in quantity in the January–June period of 1979, compared with the same period of the previous year.

The Department of Labor conducted a survey of major customers of E. Weinshel and Brother Manufacturing Company. The survey revealed that customers decreased contract orders of men's topcoats and jackets from Weinshel and increased contract orders of men's topcoats and jackets from foreign contractors in the January–September period of 1979, compared with the same period of the previous year.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's topcoats and jackets produced at E. Weinshel and Brother Manufacturing Company, Milwaukee, Wisconsin contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of E. Weinshel and Brother Manufacturing Company, Milwaukee, Wisconsin who became totally or partially separated from employment on or after October 3, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of December 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-37914 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6178]

Eastern Knitting Mills; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on October 15, 1979 in response to a worker petition received on October 9, 1979 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing men's knitted sweaters and shirts at Eastern Knitting Mills, Blenheim, New Jersey. It is concluded that all of the requirements have been met.

U.S. imports of men's and boys' sweaters, knit cardigans, and pullovers increased both absolutely and relative to domestic production from 1977 to 1978. The ratio of imports of sweaters to domestic production exceeded 94 percent in 1978.

Total company imports of men's sweaters and knit shirts by Eastern and its parent company, Somerset Knitting Mills of Philadelphia, increased substantially in both quantity and value in the February through September period of 1979 compared to the like period in 1978. The ratio of the sales value of the imports to total sales by both Eastern and Somerset increased in the February through September period of 1979 compared to the like period in 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's sweaters and men's knit shirts produced at Eastern Knitting Mills, Blenheim, New Jersey contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Eastern Knitting Mills, Blenheim, New Jersey who became totally or partially separated from employment on or after October 2, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 5th day of December 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-37915 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6258]

Eastmoor Co., Inc.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on October 24, 1979 in response to a worker petition received on October 22, 1979 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing pants and skirts, blouses and jackets at Eastmoor Company, Incorporated, Michigan City, Indiana. The investigation revealed that the plant produced primarily pants and skirts. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses', and children's slacks and shorts increased absolutely and relative to domestic production in each year from 1975 through 1978 compared to the preceding year.

U.S. imports of women's, misses', and children's skirts increased absolutely and relative to domestic production in 1978 compared to 1977.

U.S. imports of women's, misses', and children's blouses and skirts increased absolutely in each year from 1975 through 1978 compared to the preceding year and increased relative to U.S. production in 1978 compared to 1977.

U.S. imports of women's, misses', and children's coats and jackets increased absolutely and relative to domestic production in each year from 1975 through 1978 compared to the preceding year.

The investigation revealed that Eastmoor Company produced primarily ladies' pants and skirts during the 1977 through September 1979 period.

In a survey conducted by the Department of Commerce, customers accounting for a significant proportion of Eastmoor's sales declines indicated that they had decreased purchases of ladies' pants and skirts from Eastmoor and had increased purchases of imported ladies' pants and skirts in 1978 compared to 1977. The Department of Commerce on July 5, 1979 certified Eastmoor Company, Incorporated as eligible to apply for firm adjustment assistance.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with ladies' pants and skirts produced at Eastmoor Company, Incorporated, Michigan City, Indiana contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Eastmoor Company, Incorporated, Michigan City, Indiana who became totally or partially separated from employment on or after October 11, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 30th day of November 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-37916 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6347]

Excel Corp.; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 18, 1979 in response to a worker petition received on October 18, 1979 which was filed by the International Association of Machinists and Aerospace Workers on behalf of workers and former workers engaged in the production of window assemblies at the Elkhart, Indiana plant of the Excel Corporation.

On October 11, 1979, a petition was filed on behalf of the same group of workers (TA-W-6230).

Since the identical group of workers is the subject of the ongoing investigation TA-W-6230, a new investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 30th day of November 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-37917 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-m

[TA-W-6124]

First Place Juniors, Inc.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on October 1, 1979 in response to a worker petition received on September 18, 1979 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' dresses and ladies' sportswear at First Place Juniors, Incorporated, New York, New York. The investigation revealed that ladies' sportswear included jackets, skirts, blouses, vests and slacks. It is concluded that all of the requirements have been met.

U.S. imports of women's and misses' dresses increased absolutely and relative to domestic production in 1978 compared to 1977.

U.S. imports of women's, misses' and children's coats and jackets increased absolutely and relative to U.S. production in each year from 1975 through 1978 compared to the preceding years.

U.S. imports of women's, misses' and children's skirts increased absolutely and relative to domestic production in 1978 compared to 1977.

U.S. imports of women's, misses', and children's blouses and shirts increased absolutely and relative to domestic production in 1978 compared to 1977.

U.S. imports of women's, girls' and infants' cotton vests increased absolutely in each year from 1975 through 1978 compared to the preceding years.

U.S. imports of women's, misses', and children's slacks and shorts increased absolutely and relative to domestic production in each year from 1974 through 1978 compared to the preceding years.

A Departmental survey was conducted with major customers of First Place Juniors, Incorporated. The survey revealed that major customers increased their reliance on foreign sources for supply of ladies' dresses, jackets, shirts, blouses, vests and slacks in 1978, compared to 1977 and in the first quarter of 1979 compared to the first quarter of 1978 and decreased their reliance on domestic sources during these same time periods. The customers have further increased their reliance on foreign sources since First Place Juniors ceased operations.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with ladies' dresses and ladies' jackets, skirts, blouses, vests and slacks produced at First Place Juniors, Incorporated, New York, New York contributed importantly to the decline in sales or production and

to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of First Place Juniors, Incorporated, New York, New York who became totally or partially separated from employment on or after September 6, 1978 and before May 15, 1979, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974. Workers separated on or after May 15, 1979 are denied eligibility to apply for adjustment assistance.

Signed at Washington, D.C., this 30th day of November 1979.

C. Michael Aho,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-37918 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6245]

International Shoe Co.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on October 23, 1979 in response to a worker petition received on October 12, 1979 which was filed by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America on behalf of workers and former workers receiving and transshipping materials and finished shoes at the Gratiot Street Truck Terminal of International Shoe Company, St. Louis, Missouri. It is concluded that all of the requirements have been met.

U.S. imports of nonrubber footwear, including men's, women's and children's shoes, increased absolutely and relative to domestic production and consumption in 1978 compared to 1977 and in the first half of 1979 compared to the same period of 1978.

Workers at the Gratiot Street Truck Terminal receive supplies and raw materials and transport these materials and finished shoes to and from the company's production facilities and warehouse. In previous determinations involving a majority of production facilities of the International Shoe Company, workers were certified eligible to apply for adjustment assistance. Among the most recent certifications, eligibility applies to workers producing children's shoes (TA-W-4506, issued February 21, 1979), men's shoes (TA-W-4559, issued February 27, 1979) and women's shoes (TA-W-6061, issued November 16, 1979).

In each of these investigations, surveys of customers revealed that customers decreased their purchases of men's, women's and children's shoes from International Shoe Company and increased their purchases of imported men's, women's and children's shoes in 1978 compared to 1977 and in 1979 compared to 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's, women's and children's shoes produced at International Shoe Company, St. Louis, Missouri contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of the Gratiot Street Truck Terminal of International Shoe Company, St. Louis, Missouri who became totally or partially separated from employment on or after July 28, 1979 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 30th day of November 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-37919 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or 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 December 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 later than December 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, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 3rd day of December 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
Angel Knitwear, Inc., No. 1 (ILGWU)	North Bergen, N.J	11/26/79	11/20/79	TA-W-6,510	Sweaters.
Angie Dress Shop (ILGWU)	East Newark, N.J	11/26/79	11/20/79	TA-W-6,511	Contractor of ladies dresses.
Bellissima Knitwear, Inc. (ILGWU)	North Bergen, N.J	11/26/79	11/20/79	TA-W-6,512	Suits and skirts.
Campos Dress (ILGWU)	Newark, N.J	11/26/79	11/20/79	TA-W-6,513	Contractor of ladies' dresses.
Cheryl Lee, Inc. (ILGWU)	Elizabeth, N.J	11/26/79	11/20/79	TA-W-6,514	Girl's dresses.
Coronet Manufacturing Company (ILGWU)	Union City, N.J	11/26/79	11/29/79	TA-W-6,515	Men's and women's sweaters.
Creative Fashions Corporation (ILGWU)	Avenel, N.J	11/26/79	11/20/79	TA-W-6,516	Scarves and blouses.
Dickerson Sportswear, Inc. (ILGWU)	Newark, N.J	11/26/79	11/20/79	TA-W-6,517	Contractor of ladies dresses and sportswear.
Diolinda Sportswear, Inc. (ILGWU)	Newark, N.J	11/26/79	11/20/79	TA-W-6,518	Ladies' blouses.
Grand Garment Company, Inc. (ILGWU)	Elizabeth, N.J	11/26/79	11/20/79	TA-W-6,519	Contractor of ladies' dresses and sportswear.
Holliday Fashions (ILGWU)	Bloomfield, N.J	11/26/79	11/20/79	TA-W-6,520	Ladies' dresses.
Just Sew, Inc. (ILGWU)	Rockaway, N.J	11/26/79	11/20/79	TA-W-6,521	Contractor of ladies' blouses.
Kanner Dress Company, Inc. (ILGWU)	Elizabeth, N.J	11/26/79	11/20/79	TA-W-6,522	Ladies' sportswear.
Lafayette Casuals, Inc. (ILGWU)	Elizabeth, N.J	11/26/79	11/20/79	TA-W-6,523	Contractor of ladies' blouses.
Lafayette Sportswear (ILGWU)	Elizabeth, N.J	11/26/79	11/20/79	TA-W-6,524	Contractor of ladies' sportswear.
Maria Scafa Sportswear, Inc. (ILGWU)	West Orange, N.J	11/26/79	11/20/79	TA-W-6,525	Contractor of ladies' sportswear.
Maxim Knitting Mills, Inc. (ILGWU)	Jersey City, N.J	11/26/79	11/20/79	TA-W-6,526	Sweaters.
Tedima Knitwear Fashions, Inc. (ILGWU)	Fairview, N.J	11/26/79	11/20/79	TA-W-6,527	Knit sweaters and dresses.

[FR Doc. 79-37903 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or 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 December 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 later than December 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, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 30th day of November 1979.

Harold A. Bratt,

Acting Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Barbara Leslie, Inc. (ILGWU)	Florence S.C	11/26/79	11/20/79	TA-W-6,486	Cotton house dresses.
Brin Machinery & Equipment Corp. (workers)	Newark, N.J	11/27/79	11/21/79	TA-W-6,487	Electrical push buttons.
Corning Distribution Company (workers)	Corning, Ark	11/27/79	11/21/79	TA-W-6,488	Packing and warehousing of auto components to jobbers.
General Tire & Rubber Co., Industrial Products Division (URW).	Logansport, Ind	11/24/79	11/12/79	TA-W-6,489	Silent bloc motor mount assembly and channeling beltstrip.
Gingert Laces, Inc. (workers)	Haledon, N.J	11/23/79	11/21/79	TA-W-6,490	Knitted laces scarves.
Irwin and Us (ILGWU)	Hauppague, N.Y	11/27/79	11/21/79	TA-W-6,491	Ladies' sportswear.
Jones & Laughlin Steel Corp. (USWA)	Louisville Ohio	11/27/79	11/26/79	TA-W-6,492	Stainless steel and sheets and coils.
Kinnerit Contracting, Inc. (ILGWU)	New York, N.Y	11/26/79	11/21/79	TA-W-6,493	Women's clothing.
Motor Wheel Corp. (UAW)	Newark, Del	11/27/79	11/16/79	TA-W-6,494	Wheels automobiles.
Pretty Bags, Inc. (workers)	New York, N.Y	11/26/79	11/21/79	TA-W-6,495	Ladies' handbags.
Renco Manufacturing, Inc. (company)	Long Branch, N.J	11/28/79	11/26/79	TA-W-6,496	Girls' coats.
S & M Manufacturing Company (workers)	Fayetteville, Tenn	11/28/79	11/14/79	TA-W-6,497	Ladies' dresses and sportswear.
Shellburne Shirt Co., Inc. (ACTWU)	Fall River, Mass	11/28/79	11/21/79	TA-W-6,498	Men's dress shirts also ladies' blouses.
Sherman Manufacturing Company (ILGWU)	Darlington, S.C	11/26/79	11/20/79	TA-W-6,499	Cotton house dresses.

[FR Doc. 79-37905 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has

instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether abosolute 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 December 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 later than December 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, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 30th day of November 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
Best Made, Inc. (ILGWU)	Carteret, N.J.	11/26/79	11/20/79	TA-W-6,500	Contractors of ladies' and girls' blouses.
Carteret Novelty Company (ILGWU)	Carteret, N.J.	11/26/79	11/20/79	TA-W-6,501	Blouses.
E & F Associates (ILGWU)	Newark	11/26/79	11/20/79	TA-W-6,502	Slacks and skirts.
Elizabeth Undergarment (ILGWU)	Hackettstown, N.J	11/26/79	11/20/79	TA-W-6,503	Slips and undergarments.
Felicia Frocks (ILGWU)	Newark, N.J.	11/26/79	11/20/79	TA-W-6,504	Sport dresses.
Gasby Fashions, Inc. (ILGWU)	Newark, N.J.	11/26/79	11/20/79	TA-W-6,505	Contractor of ladies' blouses, skirts, and pants.
Kent Knitting Mills, Inc. (ILGWU)	Jersey City, N.J.	11/26/79	11/20/79	TA-W-6,506	Contractor of ladies' sweaters.
Qual Fashions Contractors, Inc. (ILGWU)	Newark, N.J.	11/26/79	11/20/79	TA-W-6,507	Ladies' rainwear, also coats and jackets.
Roan Contractors (ILGWU)	Roselle, N.J.	11/26/79	11/20/79	TA-W-6,508	Ladies' skirts, blouses and jackets.
Superior Electric Products Corp. (IBEW)	Cape Girardeau, Mo.	11/26/79	11/19/79	TA-W-6,509	Small household electrical appliances.

[FR Doc. 79-37906 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened or partial separation of a significant 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 December 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 later than December 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, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 6th day of December 1979.

Harold A. Bratt,

Acting Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Cannon Corp. (workers)	Milroy, Ind.	12/3/79	11/28/79	TA-W-6,542	Interior decorative trim parts for automobiles.
Chrysler Corp., Detroit Universal (UAW)	Detroit, Mich.	11/26/79	11/14/79	TA-W-6,543	Universal joints.
Chrysler Corp., Interplant Transportation (UAW).	Detroit, Mich.	11/26/79	11/14/79	TA-W-6,544	Transporting part from plant to plant.
Chrysler Corp., Vernor Tool & Die (UAW)	Detroit Mich.	11/26/79	11/14/79	TA-W-6,545	Dyes, jigs, and fixtures.
Chrysler Corp., Winfield Foundry (UAW)	Detroit, Mich.	11/26/79	11/14/79	TA-W-6,546	Castings.
Chrysler Corp., Trenton Engine (UAW)	Trenton, Mich.	11/26/79	11/14/79	TA-W-6,547	Engines.

Appendix—Continued

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Chrysler Corp., California Emission (UAW)	Los Angeles, Calif	11/26/79	11/14/79	TA-W-548	Emissions testing.
Chrysler Corp., General Office (UAW)	Highland Park, Mich	11/26/79	11/14/79	TA-W-6,549	General office.
Chrysler Corp., Engineers, Proving Ground (UAW).	Chelsea, Mich	11/26/79	11/14/79	TA-W-6,550	Engineering testing.
Firestone Tire & Rubber Company (URW)	Salinas, Calif	11/29/79	11/16/79	TA-W-6,551	Passenger radial tires, bias passenger tires and light truck tires.
Janet Knitting Mills, Inc. (ILGWU)	Jersey City, N.J	11/26/79	11/20/79	TA-W-6,552	Contractors of ladies' and children's sweaters.
M & G Convoy, Inc. (Teamsters)	Murrysville, Pa	11/23/79	11/10/79	TA-W-6,553	Transports Chrysler cars.
Realfit Dress Company (ILGWU)	East Orange, N.J	11/26/79	11/20/79	TA-W-6,554	Contractors of ladies' blouses.
Valentino Fashions, Inc. (ILGWU)	North Bergen, N.J	11/29/79	11/26/79	TA-W-6,555	Ladies' coats.
Western Trails, Inc. (workers)	Bend, Oreg	11/30/79	11/27/79	TA-W-6,556	Outerwear for men and women.

[FR Doc. 79-37909 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firms 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 the 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 a Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 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 later than December 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, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 4th day of December 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
Chester Pants Corp. (workers)	Brooklyn, N.Y.	11/27/79	11/23/79	TA-W-6,528	Men's pants.
Donara Sportswear Company, Inc. (ACTWU)	Donara, Pa	11/28/79	11/26/79	TA-W-6,529	Men's outerwear.
Essex International, Inc. (USWA)	Clare, Mich	11/7/79	10/31/79	TA-W-6,530	Wire harnesses—Chrysler cars and trucks.
Glardin Dress Company, Inc. (ILGWU)	Bloomfield, N.J	11/26/79	11/20/79	TA-W-6,531	Contractor of ladies' dresses.
Guterl Special Steel Corp., Simmonds Steel Division (USWA).	Lockport, N.Y	11/20/79	11/14/79	TA-W-6,532	High alloy special steel.
K-W Equipment Rental (USWA)	Buffalo, N.Y	11/20/79	11/13/79	TA-W-6,533	Rent and lease trucks.
Knitone Mills, Inc. (ILGWU)	West New York, N.J	11/26/79	11/20/79	TA-W-6,534	Sweaters.
Kulp-Waco (USWA)	Buffalo, N.Y	11/20/79	11/13/79	TA-W-6,535	Material haulers.
Manila Mining Co. (workers)	Ramage, W. Va	11/9/79	11/6/79	TA-W-6,536	Metallurgical coal.
Needlecraft Dress Manufacturing Corp. (workers).	Fall River, Mass	11/29/79	11/26/79	TA-W-6,537	Dresses.
Steven Knitting Mills, Inc. (workers)	Hialeah, Fla	11/29/79	11/2/79	TA-W-6,538	Double knit fabrics.
U.S. Steel Corp (USWA)	Pittsburg, Calif	11/28/79	11/26/79	TA-W-6,539	Rod and wire products.
Weldon Manufacturing Company of Pa. (workers).	Williamsport, Pa	11/29/79	11/26/79	TA-W-6,540	Men's robes and pajamas.
Yale Steel Corp. (USWA)	Wallingford, Conn	11/29/79	11/26/79	TA-W-6,541	Steel reinforcement bars and smooth rounds.

[FR Doc. 79-37910 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6162 and TA-W-6162A]

Jersey Miniere Zinc Co.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on October 9, 1979 in response to a worker petition received on October 2, 1979 which was filed by the United Steelworkers of America on behalf of workers and former workers producing zinc ore and concentrate at the Jersey Miniere Zinc Company mine at Gordonsville, Tennessee. The investigation was expanded to include the Elmwood, Tennessee mine of Jersey Miniere Zinc Company. It is concluded that all of the requirements have been met.

U.S. imports of slab zinc increased absolutely and relative to domestic production from 1977 to 1978. The ratio of U.S. imports to domestic production of slab zinc was 141.0 in 1978.

All company production of zinc concentrate from the Elmwood, Tennessee mine is sent to the Clarksville, Tennessee refinery.

The Gordonsville mine has not yet produced zinc and is currently in the development stage. The mine was scheduled to begin producing zinc in August 1979, and to ship all zinc concentrate produced to the company's refinery in Clarksville, Tennessee. The refinery converts zinc concentrate into slab zinc. Prior to August 1979 Jersey Miniere Zinc cut back the mine's development schedule, postponing Gordonsville's commencement date indefinitely.

As an alternative to the commencement of zinc production at the Gordonsville mine, Jersey Miniere Zinc began importing zinc concentrate in the third quarter of 1979. In that quarter, company imports exceeded production at the Elmwood mine in both quantity and value. Presently, it is more advantageous for the company to import zinc rather than produce it at the Gordonsville mine. The company is importing zinc concentrate at a price lower than the projected cost of producing it at the Gordonsville mine.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with zinc ore and concentrate produced at Jersey Miniere Zinc Company, Gordonsville and Elmwood, Tennessee contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Gordonsville and Elmwood, Tennessee, Jersey Miniere Zinc Company, who became totally or partially separated from employment on or after June 1, 1979 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 5th day of December 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-37920 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6181]

Magerman Trousers, Inc.; Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on October 15, 1979 in response to a worker petition received on October 9, 1979 which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers formerly producing trousers at Magerman Trousers, Incorporated, Philadelphia, Pennsylvania. The investigation revealed that the trousers were for men's suits. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

U.S. imports of men's and boy's tailored suits decreased absolutely and relative to domestic production in 1978 compared to 1977 and decreased absolutely in the first six months of 1979 compared to the same period of 1978.

Magerman Trousers, Incorporated is a contractor that produces trousers for men's suits. The Department surveyed manufacturers of Magerman Trousers, Incorporated. The survey revealed that sales of the manufacturers decreased. A survey of the customers of the manufacturers revealed that most customers did not purchase imported men's suits. Those customers who did purchase imported men's suits constituted an insignificant proportion of the manufacturers' sales.

Conclusion

After careful review, I determine that all workers of Magerman Trousers, Incorporated, Philadelphia, Pennsylvania are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of December 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-37921 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6165]

Meco Knitting Mills; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on October 9, 1979 in response to a worker petition received on October 2, 1979 which was filed on behalf of workers and former workers producing ladies' and men's sweaters on a contract basis at Meco Knitting Mills, Brooklyn, New York. The investigation revealed that the company primarily produces ladies' sweaters. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses' and children's sweaters increased relative to domestic production from 1977 to 1978. The ratio of imports of sweaters to

domestic production was 115 percent or greater in 1976, 1977 and 1978.

A Department of Labor investigation revealed that Meco Knitting Mills primarily produces ladies' sweaters on a contract basis. The Department conducted a survey of the manufacturers from whom Meco receives contract work. The survey revealed that manufacturers representing a substantial portion of Meco's sales reduced contract work with Meco from 1977 to 1978. These manufacturers also increased their purchases of imports of ladies' sweaters in 1978 compared to 1977.

The investigation also revealed that while both Meco's sales and the average number of production workers employed declined from 1977 to 1978, both sales and employment increased in the January through November period of 1979 when compared to the same period in 1978. The declines in sales and employment from 1977 to 1978 can be attributed to increased aggregate imports of ladies' sweaters and to the increased reliance of Meco's manufacturers on foreign produced sweaters. However, this influence from imports did not continue into 1979 as both sales and employment at Meco increased.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with ladies' sweaters produced at Meco Knitting Mills, Brooklyn, New York contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Meco Knitting Mills, Brooklyn, New York who became totally or partially separated from employment on or after September 20, 1978 and before January 31, 1979 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974. Workers separated on or after January 31, 1979 are denied eligibility to apply for adjustment assistance.

Signed at Washington, D.C. this 30th day of November 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-37922 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6153]

Merit Plastics, Inc., East Canton Division; Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on October 4, 1979, in response to a worker petition received on September 24, 1979, which was filed on behalf of workers and former workers producing plastic auto parts at Merit Plastics, Incorporated, East Canton, Ohio. The investigation revealed that the East Canton, Ohio plants combined with the Winesburg and Dover, Ohio plants form the East Canton Division of Merit Plastics, Incorporated. All of these facilities of the company produce plastic auto parts. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Industry sources indicate that U.S. imports of plastic auto parts were negligible in 1977, 1978 and 1979.

Total company sales in value of plastic auto parts at the East Canton Division of Merit Plastics, Incorporated increased from 1977 to 1978, and increased in the first nine months of 1979 compared to the same period of 1978.

Petitioners allege that increased imports of automobiles have caused decreases in production and employment at the East Canton Division of Merit Plastics, Incorporated. Although imported automobiles incorporate plastic auto parts, imports of the whole product are not "like or directly competitive" with their component parts.

Imports of plastic auto parts must be considered in determining import injury to workers producing plastic auto parts at the East Canton Division of Merit Plastics, Incorporated, East Canton, Ohio.

Conclusion

After careful review, I determine that all workers at the East Canton Division of Merit Plastics, Incorporated, East Canton, Ohio are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 30th day of November 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-37923 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6084]

National Mines Corp., Pocahontas Division; Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on September 21, 1979 in response to a worker petition received on September 3, 1979 which was filed by the United Mine Workers of America on behalf of workers and former workers mining coal at the Pocahontas Division, Wyoming County, West Virginia of the National Mines Corporation. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Evidence developed during the course of the investigation revealed that National Mines Corporation sells all of its coal to a single domestic steel producer who converts the coal to coke. During 1979 some of the steel producer's coke batteries were shutdown temporarily while others were shutdown permanently.

The steel producer significantly increased purchases of domestic coke in

1978 compared to 1977 and in the first eight months of 1979 compared to the first eight months of 1978. The steel producer is beginning a planned long-term trend to increase its reliance on domestic coke.

Conclusion

After careful review, I determine that all workers of the National Mines Corporation, Pocahontas Division, Wyoming County, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 30th day of November 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-37924 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5826]

Newark Textile Printing, Inc.; Notice of Negative Determination Regarding Application for Reconsideration

By the application dated November 8, 1979, a former worker requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of former workers producing finished fabric at Newark Textile Printing, Inc., East Newark, New Jersey. The determination was published in the **Federal Register** on October 16, 1979 (44 FR 59682).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

A former worker claims in his application for reconsideration that the Department was inconsistent with its determinations relative to workers at Newark Textile Printing, Inc., East Newark, New Jersey, TA-W-5826, and to workers at the Union Textile Printers, Secaucus, New Jersey, TA-W-1631. The former worker also challenges the veracity of the Department's customer survey.

The department's review of the investigative file revealed that workers at Newark Textile Printing, Inc., East Newark, New Jersey, were denied eligibility because they did not meet the "contributed importantly" test of section 222 of the Trade Act of 1974. The Department's survey of Newark Textile's customers, which represented nearly half of Newark Textile's 1979 sales revealed that they did not increase their purchases of imported finished fabric while at the same time decreasing their commission work with Newark Textile Printing.

The former worker claimed that the Department was inconsistent in citing the low ratio of imports of finished fabric to domestic production since at least 1974. The Department would point out that it did not deny workers at Newark Textile as a result of the less than two percent ratio of imports to domestic production but only used this fact to illustrate the generaly low level of import competition in finished fabric. The Department sees little validity in the former worker's claim of inconsistency between the two cases since all the statutory criteria including the "contributed importantly" test were met for workers at the Union Textile Printers, whereas the "contributed inportantly" test was not met for workers at Newark Textile Printing. Case determinations are not made on an industry-wide basis but on the basis of an appropriate worker group.

With respect to the former worker's challenge to the veracity of the Department's survey of Newark Textile's customers, it should be noted that the Department's survey represented customers accounting for a substantial share of Newark Textile's 1978 and 1979 sales with several customers indicating reasons other than import competition for their cutting back work with Newark Textile Printing.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of fact or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C., this 30th day of November 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-37925 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6183]

Olin Corp., Brass Group, New Haven Brass Mill; Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 174 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on October 15, 1979 in response to a worker petition received on October 9, 1979 which was filed by the International Association of Machinists and Aerospace Workers on behalf of workers and former workers producing brass alloy (sheet and strip) at the New Haven Brass Mill, New Haven, Connecticut. The investigation revealed that Olin Corporation, Brass Group, New Haven Brass Mill, New Haven, Connecticut produces copper-base alloy sheet and strip. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute declirte in sales or production.

U.S. imports of copper-base alloy sheet and strip declined both absolutely and relative to domestic production in the first half of 1979 compared with the same period in 1978.

Employment at the New Haven Brass Mill increased in 1978 compared with 1977 and during the first half of 1979 compared with the same period in 1978. A strike at the mill began in July 1979.

Copper-base alloy sheet and strip is produced by the Brass Group of Olin Corporation at two facilities, New Haven, Connecticut and East Alton, Illinois. In September 1979, a corporate dicision was made to close the New Haven mill and consolidate production at East Alton.

No product lines will be dropped. The East Alton mill began absorbing New Haven production in the third quarter of 1979, during the strike.

Production of copper-base alloy sheet and strip by the Brass Group of Olin Corporation increased in 1978 compared

with 1977 when the effect of a strike at the East Alton, Illinois plant is properly accounted for. In view of the substantial adverse impact of the East Alton, Illinois strike upon Brass Group production during the first quarter 1978, copper-base alloy production for the first three quarters of 1979 was compared with the similar period in 1977 instead. This comparison revealed that production by the Brass Group was greater during the first three quarters of 1979 than during the same period in 1977 in spite of the strike at the New Haven Brass Mill which began on July 15, 1979.

Conclusion

After careful review, I determine that all workers of the New Haven Brass Mill, New Haven, Connecticut of Olin Corporation, Brass Group 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 5th day of December 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-37926 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6222]

Publix Shirt Corp.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on October 17, 1979 in response to a worker petition received on October 10, 1979 which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers producing men's and boys' shirts at the Huntingdon, Tennessee plant of Publix Shirt Corporation. It is concluded that all of the requirements have been met.

Evidence developed in the course of the investigation revealed that U.S. imports of men's and boys' woven dress, business, sport and uniform shirts increased in 1978 compared to 1977, and increased in the first half of 1979 compared to the same period of 1978.

Publix Shirt Corporation's imports of men's and boys' shirts increased in 1979 compared to 1978. This increase in imports represented more than 100 percent of the company's 1978 to 1979 domestic sales decline in men's and boys' shirts.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's and boys' woven shirts produced at the Huntingdon, Tennessee plant of Publix Shirt Corporation contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of the Huntingdon, Tennessee plant of Publix Shirt Corporation, who became totally or partially separated from employment on or after April 1, 1979 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of December 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-37927 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6167]

RCA Corp., Consumer Electronics Division; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on October 9, 1979 in response to a worker petition received on October 2, 1979 which was filed by the International Brotherhood of Electrical Workers on behalf of workers and former workers producing color television sets at the Bloomington, Indiana plant of the Consumer Electronics Division of RCA Corporation. The investigation revealed that workers are engaged in the production of components and subassemblies (parts) for color televisions, and in the final assembly of color televisions. It is concluded that, with respect to components and subassemblies, all of the requirements have been met.

U.S. imports of chassis for monochrome and color televisions increased in terms of quantity and value in 1978 compared with 1977, and increased during the first half of 1979 compared with the same period in 1978.

U.S. imports of printed circuit boards increased in terms of quantity in 1978 compared with 1977, and increased during the first half of 1979 compared with the same period in 1978.

U.S. imports of tuners increased relative to domestic production in 1978 compared with 1977.

Company imports of components and subassemblies, including chassis, increased in 1977 compared with 1976, increased in 1978 compared with 1977, and increased in 1979 (full year based on estimates from orders) compared with 1978.

Company imports represent an increasing share of the firm's color television chassis, subassembly and component demand. The Company has increasingly transferred the more labor intensive operations of component production to company facilities offshore. Employment declines at the Bloomington plant are related to the firm's decreased domestic component demand.

With respect to final assembly operations, sales and production of RCA finished color televisions assembled at the Bloomington plant increased in 1977 compared with 1976, increased in 1978 compared with 1977 and increased in 1979 (full year based on estimates from orders) compared with 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with color television components and subassemblies (parts) produced at the Bloomington, Indiana plant of the Consumer Electronics Division of RCA Corporation contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of the Bloomington, Indiana plant of RCA Corporation, Consumer Electronics Division who became totally or partially separated from employment related to the production of color television components and subassemblies (parts) on or after October 4, 1979 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of December 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-37928 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6184]

RCA Corp., Solid State Division; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on October 15, 1979 in response to a worker petition received on October 9, 1979 which was filed by the International Union of Electrical, Radio, and Machine Workers on behalf of workers and former workers producing power solid state devices at RCA Corporation, Solid State Division, Mountaintop, Pennsylvania. It is concluded that all of the requirements have been met.

U.S. imports of transistors increased in 1978 compared to 1977 and during January–June 1979 compared to January–June 1978.

Company imports of power transistors increased in 1978 compared to 1977 and during January–October 1979 compared to the same period of 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with power solid state devices produced at RCA Corporation, Solid State Division, Mountaintop, Pennsylvania contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of RCA Corporation, Solid State Division, Mountaintop, Pennsylvania who became totally or partially separated from employment on or after June 30, 1979 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 30th day of November 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-37929 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6068-6071]

Reltoc Manufacturing Co., Inc.; Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on September 20, 1979 in response to a worker petition received on September 18, 1979 which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers producing men's slacks and jeans at the Winfield, Alabama plant (TA-W-6068); at the Carbon Hill, Alabama plant (TA-W-6069); at the Florence, Alabama plant (TA-W-6070); and at the Beaverton, Alabama plant (TA-W-6071) of Reltoc Manufacturing Company, Incorporated. The investigation revealed that the Winfield and Beaverton plants produce both men's slacks and jeans; the Florence plant produces only men's jeans; and the Carbon Hill plant produces only men's jackets.

In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

U.S. imports of men's and boys' dress and sport trousers, jeans and dungarees, and dress coats and sportcoats decreased absolutely in the first nine months of 1979 compared with the same period of 1978.

The Department surveyed a list of customers of Reltoc Manufacturing Company, Incorporated that represents a significant proportion of the subject firm's sales. The survey revealed that the customers either decreased their purchases of imported men's slacks, jeans and jackets or increased their purchases from the subject firm.

Conclusion

After careful review, I determine that all workers at the Winfield, Carbon Hill, Florence and Beaverton, Alabama plants of Reltoc Manufacturing Company, Incorporated are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of December 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-37930 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6238]

Sands Fashions, Inc.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on October 18, 1979 in response to a worker petition received on October 16, 1979 which was filed on behalf of workers and former workers producing ladies' leather and suede coats at Sands Fashions, Incorporated, New York, New York. It is concluded that all of the requirements have been met.

U.S. imports of men's, women's and children's leather coats and jackets, which includes suede coats, increased both absolutely and relative to domestic production in 1978 compared to 1977.

A survey conducted by the Department revealed that several of Sands Fashions' customers decreased purchases from Sands Fashions and increased purchases of imported ladies' leather coats from 1977 to 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with ladies' leather coats produced at Sands Fashions, Incorporated, New York, New York contributed importantly to the decline in sales or production and to the

total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Sands Fashions, Incorporated, New York, New York who became totally or partially separated from employment on or after October 11, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of December 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-37931 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6173 and 6174]

Sharpe Manufacturing Co.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on October 10, 1979 in response to a worker petition received on September 24, 1979 which was filed by the Amalgamated Clothing and Textile Workers' Union on behalf of workers and former workers producing women's outerwear at the Sharpe Manufacturing Company, Minneapolis, Minnesota and Brainerd, Minnesota. The investigation revealed that the plants primarily produce women's and children's coats. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses' and children's coats and jackets increased absolutely and relative to domestic production in 1978 compared to 1977.

Company imports of women's and children's coats increased in 1978 compared to 1977 and in 1979 compared to 1978. These increases in company imports coincided with declines in production and employment at the Minneapolis and Brainerd, Minnesota plants of the Sharpe Manufacturing Company.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's and children's coats produced at the Minneapolis and Brainerd, Minnesota plants of the Sharpe Manufacturing Company contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of the Sharpe Manufacturing Company, Minneapolis, Minnesota and Brainerd, Minnesota who became totally or partially separated from employment on or after September 20, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 30th day of November 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-37932 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6317]

Shenango, Inc.; Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on October 31, 1979 in response to a worker petition received on October 30, 1979 which was filed by the United Steelworkers of America Local Union on behalf of workers and former workers producing ingot molds and stools at the Buffalo, New York plant of Shenango, Incorporated. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The Buffalo, New York plant of Shenango, Incorporated produces cast iron ingot molds and stools that are sold to domestic steel producers for transferring raw material from steel furnaces to rolling mills.

Imports of ingot molds and stools, and not imports of steel products, must be considered in determining import injury to workers producing ingot molds and stools at the Buffalo, New York plant of Shenango, Incorporated.

U.S. imports of ingot molds and stools are negligible.

Conclusion

After careful review, I determine that all workers at the Buffalo, New York plant of Shenango, Incorporated are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of December 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-37933 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6253]

Smart Maid Coat & Suit Corp.; Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on October 23, 1979 in response to a worker petition received on October 10, 1979 which was filed by the International Ladies' Garment Workers Union on behalf of workers and former workers producing misses' and juniors' coats at Smart Maid Coat and Suit Corporation, New York, New York. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Evidence developed in the course of the investigation revealed that reductions in employment at Smart Maid were the result of seasonal factors.

Smart Maid is a manufacturer engaged in the sale of women's wool coats and raincoats. The only in-house production operations performed by Smart Maid consists of cutting wool to be distributed to its contractors. The production season for wool coats normally runs from March through the end of October of each year. Layoffs of cutters by Smart Maid occur during the slow period.

Compared to the same quarter of the previous year, the average number of cutters employed by Smart Maid either increased or remained the same in each quarter from the first quarter of 1978 through the third quarter of 1979. Average weekly hours have remained steady during the same period. All declines in employment can be traced to the normal seasonal slowdown.

Conclusion

After careful review, I determine that all workers of Smart Maid Coat and Suit Corporation, New York, New York are denied eligibility to apply for adjustment assistance under Title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 30th day of November 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-37934 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6157]

Stafford Printers, Division of Gaynor-Stafford Industries, Inc.; Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on October 4, 1979 in response to a worker petition received on October 1, 1979 which was filed by the Machine Printers and Engravers Association on behalf of workers and former workers producing print and finish synthetic fabrics for women's wear. The investigation revealed that the Stafford Printers Division of Gaynor-Stafford Industries, Incorporated, Stafford Springs, Connecticut produces finished fabric. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

U.S. impoorts of finished fabric have remained at or below two percent of domestic production in each of the last four full years.

Customers of the three sales divisions of Gaynor-Stafford Industries, Incorporated who were surveyed indicated that they did not decrease purchases of finished fabric from the subject firm and increase imports of finished fabric during the period under investigation.

Conclusion

After careful review, I determine that all workers of the Stafford Printers Division of Gaynor-Stafford Industries, Incorporated, Stafford Springs, Connecticut are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 3rd day of December 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-37935 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6266]

Textron, Inc., Talon Division; Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on October 24, 1979 in response to a worker petition received on October 5, 1979 which was filed on behalf of workers and former workers producing Talon zippers at Textron, Incorporated, Talon Division, Meadville, Pennsylvania. In the following determination, at least one of the criteria has not been met.

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

U.S. imports of zippers increased both absolutely and relative to domestic production during 1978 compared with 1977. Imports decreased both absolutely and relative to domestic production during the first six months of 1979 compared with the first six months of 1978.

The Department conducted a survey of customers of the Talon Division. Nearly all of the surveyed customers indicated that they did not increase purchases of imported zippers while reducing purchases from Talon. Customers who did increase purchases of imports represented only a small percentage of Talon's total sales decline in 1979 and 1978.

Conclusion

After careful review, I determine that all workers of Textron, Incorporated, Talon Division, Meadville, Pennsylvania are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 30th day of November 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-37936 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-59-5948]

Winn Branch Coal Co.; Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on August 30, 1979 in response to a worker petition received on August 21, 1979 which was filed on behalf of workers and former workers mining coal at the Winn Branch Coal Company, Winn Branch, Kentucky, In the following determination, without regard to whether any of the other criteria have

been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Evidence developed in the course of the investigation revealed that since the Winn Branch Coal Company had mined coal for only seven months, it is not possible to discern any trends in production or to statistically measure the impact of imports.

The Winn Branch Coal Company entered into a contract agreement with another company to mine coal in July of 1978. The Winn Branch Coal Company mined coal for this company until January 1979 when it was instructed to cease mining operations. Since the Winn Branch Coal Company has mined coal for less than one year, the impact of imports can not be accurately measured.

Conclusion

After careful review, I determine that all workers of Winn Branch Coal Company, Winn Branch Kentucky are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of December 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-37937 Filed 12-10-79; 8:45 am]

BILLING CODE 4510-28-M

NUCLEAR REGULATORY COMMISSION

[Dockets Nos. 50-373 and 50-374]

Commonwealth Edison Co. (LaSalle County Station, Units 1 and 2); Director's Denial of Request

By petition dated August 21, 1979, Jan L. Kodner, Esq. on behalf of Citizens Against Nuclear Power, *et al.*, requested, pursuant to 10 CFR 2.206 of the Commission's regulations that the Director of Nuclear Reactor Regulation institute a proceeding to suspend or revoke construction permits for the LaSalle County Station, Units 1 & 2, until confirmatory review of possible design changes to the facilities containment systems are completed.

After consideration of the information submitted by Citizens Against Nuclear Power *et al.*, I have concluded that sufficient information now exists to establish acceptance criteria for the design and evaluation of the Mark II containment system at the LaSalle facility. Consequently, the request to institute a proceeding to suspend or revoke the construction permits is denied.

A copy of this determination will be placed in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. 20555 and the local public document room for the LaSalle County Station at Illinois Valley Community College, Rural Route #1, Oglesby, Illinois 61348.

Dated at Bethesda, Md., this 4th day of December 1979.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 79-37888 Filed 12-10-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. PRM-150-1]

Chem-Nuclear Systems, Inc.; Denial of Petition for Rulemaking

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Denial of Petition for Rule Making.

By letter dated December 9, 1977, Mr. John L. West, on behalf of Chem-Nuclear Systems, Inc., filed with the Nuclear Regulatory Commission a petition for rule making (PRM 150-1).

The Petition

Under the NRC's regulation, "Exemptions and Continued Regulatory Authority in Agreement States Under Section 274," 10 CFR Part 150, any person who holds a specific license from an Agreement State where the licensee maintains an office for directing a license and at which radiation safety records are normally maintained, is granted a general license to conduct the same activity in non-Agreement States (10 CFR 150.20(a)). Among the conditions imposed on the general license, 10 CFR 150.20(b)(3) states that any person who engages in activities in non-Agreement States under the general license shall not possess or use radioactive materials, or engage in authorized activities for more than 180 days in any calendar year.

In the letter of December 9, 1977, the petitioner requested that the Commission amend 10 CFR Part 150 by removing 10 CFR 150.20(b)(3).

Basis for the Request

As the basis for the request, the petitioner stated that the 180 days per calendar year limitation creates additional paperwork and expense for Chem-Nuclear Systems and may in the future limit the performance of its services to public utilities.

The petitioner noted that if licensed activities are appropriate and in the public interest for 180 days of the year, they would remain so for the balance of the year as well, and as a matter of public policy, all of the reasons why such activities are considered proper for a substantial portion of the year tend to argue against the limit of 180 days on such activities.

Request for Comments on Petition

A notice of filing of petition for rule making was published in the **Federal Register** on February 8, 1978 (43 FR 5442). The comment period expired April 10, 1978. No letters of comment were received in response to the notice.

Previous Actions

Under section 274b. of the Atomic Energy Act of 1954, as amended, the Commission is authorized to enter into an agreement with the Governor of any State providing for discontinuance of the regulatory authority of the Commission under Chapters 6, 7, and 8, and section 161 of the Act with respect to byproduct materials, source materials, and special nuclear materials (in quantities not sufficient to form a critical mass).

The agreement entered into provides, among other things, that the Commission and the Agreement State will use their best efforts to develop rules, regulations, and procedures by which reciprocal recognition of licenses covering agreement materials will be accorded.

The Commission first implemented the reciprocal recognition provision when it established on February 14, 1962 (27 FR 1351), new 10 CFR 150.20, "Recognition of State licenses," granting a general license to any person (holding a valid specific license from an Agreement State) to conduct the licensed activity in non-Agreement States. One condition of that general license was that the general licensee must not, in any non-Agreement State, possess or use radioactive material or engage in activities authorized under the general license for more than 20 days in any period of 12 consecutive months.

In the first 6 years of experience with the reciprocity general license, just over 100 notifications were filed by Agreement State specific licensees for conducting activities in non-Agreement States. Following a review of this experience, the Commission proposed on December 20, 1969 (34 FR 19996) to amend 10 CFR 150.20 to increase the time from 20 days in any period of 12 consecutive months to 180 days in any calendar year.

In the preamble to the proposed rule, the Commission addressed the issue of administrative and financial burdens:

The limitation of 20 days in 12 consecutive months has discouraged use of the general license by Agreement State specific licensees who are engaged in transient field operations of uncertain duration, and results in the issuance by the Commission and Agreement States of multiple specific licenses for the same activity. Thus persons conducting transient operations throughout the United States may obtain specific licenses covering the same activity from the AEC and each of the 21 Agreement States. Under such circumstances multiple specific licenses impose an administrative and financial burden upon licensees and the license-issuing agencies without significant improvement of the health and safety aspects of the transient operations.

The Commission, however, did not intend to eliminate entirely the administrative and financial burdens but rather to reduce them as much as possible consistent with protecting the public health and safety. Accordingly, it proposed to increase the time for engaging in activities in non-Agreement States under 10 CFR 150.20:

To facilitate use of the general license in § 150.20 and to reduce the number of specific licenses which need to be issued by the Commission and Agreement States for the same activity, the Commission has under consideration amendments of the general license in § 150.20 to permit Agreement State specific licensees to engage in activities in non-Agreement States up to 180 days in any calendar year.

The Commission provided additional discussion of the increase in time on May 20, 1970 (35 FR 7725), in the preamble to the final rule to amend 10 CFR 150.20:

This increase in time will encourage the use of the general license by Agreement States specific licensees who are engaged in transient field operations.

* * * * *

The Commission expects that the amendments of the general license in § 150.20 will permit a greater number of Agreement State specific licensees to use the general license, reduce the need for multiple specific licenses, and reduce the number of reports required of persons proposing to engage in activities under the general license. The amendments will simplify licensing of radioactive materials without compromising health and safety.

Recently, about 130 Agreement State specific licensees per year (compared to 100 total in the first 6 years) have been conducting in non-Agreement States transient field operations such as industrial radiography, decontamination services, pickup and transportation of prepackaged radioactive wastes, well logging, tracer studies, and similar servies. Not all of the increased use of the reciprocity general license can be attributed to the increase in time to 180 days in any calendar year because the number of Agreement State specific licensees has increased significantly in the last 9 years.

In view of the Commission's statements when it adopted amended 10 CFR 150.20(b)(3) to increase the time to 180 days in any calendar year for the conduct of activities in non-Agreement States, the Commission selected a balance point between a restrictive time limitation (20 days in 12 consecutive months) that discouraged use of the reciprocity general license and no time limitation (the effect if the petitioner's request were granted) that would have eliminated the need for multiple specific licenses.

Long-term field operatons of this type should be controlled through specific licensing either by NRC or the Agreement States. Conversely, it is appropriate and reasonable to give weight to Agreement State licenses by general licensing of operations which are clearly of a short term and transitory nature. The regulatory burden of processing every short-term operation to a specific license would be prohibitive, and would not lead to any significant improvement in pubic health and safety. The problem is to find the proper balance, that is, the proper breakpoint at which an operation ceases to short term and begins to take on a more permanent character. Regulatory experience with the 180-day breakpoint previously adopted by the Commission would indicate that it is a reasonable breakpoint even though somewhat arbitrarily arrived at. Petitioner has not made a case to change this breakpoint nor does our reexamination of licensing experience lead to the conclusion that it should be changed.

Grounds for Denial

The Commission has given careful consideration to this petition for rule making (PRM 150–1) and has decided to deny the petition on the grounds that the limit of 180 days in any calendar year should not be removed from 10 CFR 150.20 because it is still appropriate to have a breakpoint between NRC's recognition of Agreement State licenses for transient field operations in non-Agreement States and issuance of NRC licenses for longer-term activities and transient operations throughout the United States.

Copies of the petition for rule making, the Commission's letter of denial, and the value/impact analysis prepared in connection with the denial are available for public inspection at the Commission's Public Document Room at 1717 H Street NW., Washington, D.C. Single copies of the value/impact analysis may be obtained from J. J. Henry, SD Task Leader, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dated at Bethesda, Maryland this 20th day of November, 1979.

For the Nuclear Regulatory Commission.

Lee V. Gossick,

Executive Director for Operations.

[FR Doc. 79-37890 Filed 12-10-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-155]

Consumers Power Co. (Big Rock, Point Nuclear Plant) Request for Action Under 10 CFR 2.206

Notice is hereby given that by petition dated November 4, 1979, Ms. JoAnn Bier and Ms. Shirley Johns requested that an order be issued to Consumers Power Company to delay restart of the Big Rock Point facility until seven alleged safety questions, identified in the petition, were resolved. The petition was not received by the Commission before restart of the Big Rock facility. Consequently, the petition is being treated as a request for an order to show cause why the operating license for the Big Rock facility should not be suspended pending resolution of the issues raised. This petition is being treated as a request for action under 10 CFR 2.206 of the Commission's regulations, and accordingly, action will be taken on the petition within a reasonable time.

Copies of the petition are available for inspection in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. 20555 and in the local public document room at Charlevoix Public Library, 107 Clinton Street, Charlevoix, Michigan 49720.

Dated at Bethesda, Maryland this 4th day of December, 1979.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 79-37892 Filed 12-10-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-302]

Florida Power Corp., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 26 to Facility

Operating License No. DPR–72, issued to the Florida Power Corporation (FPC), City of Alachua, City of Bushnell, City of Gainsville, City of Kissimmee, City of Leesburg, City of New Smyrna Beach and Utilities Commission, City of New Smyrna Beach, City of Ocala, Orlando Utilities Commission and City of Orlando, Sebring Utilities Commission, Seminole Electric Cooperative, Inc., and the City of Tallahasee (the licensees) which revised the Technical Specifications for operation of the Crystal River Unit No. 3 Nuclear Generating Plant (the facility) located in Citrus County, Florida. The amendment becomes effective 90 days after issuance of provide time to train additional fire brigade members.

This amendment modifies the Technical Specifications to require a five man fire brigade. The evaluation relating to this change is contained in the Commission's document entitled "Evaluation of Minimum Fire Brigade Shift Size" dated June 8, 1979, which was transmitted to FPC by letter from the Commission dated August 28, 1979.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated October 1, 1979, (2) Amendement No. 26 to License No. DPR–72, and (3) the Commission's letters to FPC dated August 28, 1979, and November 27, 1979. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C., and at the Crystal River Public Library, Crystal River, Florida. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 27th day of November 1979.

For the Nuclear Regulatory Commission.

Robert W. Reid,

Chief Operating Reactors Branch # 4, Division of Operating Reactors.

[FR Doc. 79–37889 Filed 12–10–79; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–309–SP]

Maine Yankee Atomic Power Co.; Establishment of Atomic Safety and Licensing Board To Preside in Proceeding

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register** (37 F.R. 28710) and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

Maine Yankee Atomic Power Co.

(Maine Yankee Atomic Power Station)

Proposed Issuance of Amendment to Facility Operating License No. DPR–36

This action is in reference to an Order published by the Commission on October 24, 1979, in the **Federal Register** (44 Fed. Reg. 61273–61274) entitled, "Maine Yankee Atomic Power Co.; Proposed Issuance of Amendment to Facility Operating License."

The Chairman of this Board and his address is as follows:

Robert M. Lazo, Esq., Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

The other members of the Board and their addresses are as follows:

Dr. Cadet H. Hand, Jr., Director, Bodega Marine Laboratory, University of California, P.O. Box 247, Bodega Bay, California 94923.

Mr. Gustave A. Linenberger, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dated at Bethesda, Maryland, this 3rd day of December, 1979.

Robert M. Lazo,

Acting Chairman, Atomic Safety and Licensing Board Panel.

[FR Doc. 79–37894 Filed 12–10–79; 8:45 am]

BILLING CODE 7590–01–M

[NUREG CP–0009]

Proceedings of the Radiological Emergency Preparedness Trainee Conference; Issuance and Availability of Report

The Ofice of State Programs, Nuclear Regulatory Commission, has issued the proceedings of a training seminar it sponsored on July 24–25, 1979 in Kansas City, Missouri, for Federal officials involved in the review of State and local radiological emergency response plans. The major purpose of the seminar was to discuss the methods used to review response plans for accidents involving radioactive materials.

A single copy of NUREG CP–0009, "Proceedings of the Radiological Emergency Preparedness Conference," will be provided free of charge, while the supply lasts, upon written request of a full participant in an ongoing NRC proceeding. The request must identify the requester as a participant and should be addressed to the Director, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555. Copies may be purchased at current rates from the GPO Sales Program, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555 or the National Technical Information Service, Springfield, Virginia 22161.

A copy of the report is available for public inspection at the NRC Public Document Room, 1717 H Street NW., Washington, D.C.

Dated at Bethesda, Maryland this 27th of November 1979. For the Nuclear Regulatory Commission.

Robert G. Ryan,

Director, Office of State Programs.

[FR Doc. 79–37893 Filed 12–10–79; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–296]

Tennessee Valley Authority; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 28 to Facility Operating License No. DPR–68 issued to the Tennessee Valley Authority (the licensee), which revised Technical Specifications for operation of the Browns Ferry Nuclear Plant, Unit No. 3, located in Limestone County, Alabama. The amendment is effective as of the date of issuance.

This amendment changes the Technical Specifications to: (1)

incorporate the limiting conditions for operation during the third fuel cycle, (2) reflect facility modifications made during the current refueling outage to eliminate the low pressure coolant injection loop selection logic (an action which the Commission required to be accomplished and the design for which the Commission approved in Amendment No. 23 to Operating License No. DPR–68 dated May 11, 1979), (3) reflect rerouting of the reactor water cleanup system piping to reduce thermal cycling on the feedwater nozzles (and thus provide increased margin against the inititation and propagation of cracks in these nozzles), and (4) reflect replacement of two of the 11 safety-relief valves with valves of an improved design that will provide a slightly increased simmer margin (e.i., the two replacement valves will be set to relieve at 1150 psig rather than 1125 psig).

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR Section 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated August 6, 1979, as supplemented by two letters dated September 26, 1979 and letters dated October 10, 1979 and October 25, 1979, (2) Amendment No. 28 to License No. DPR–68, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room 1717 H Street, N.W., Washington, D.C. and at the Athens Public Library, South and Forrest, Athens, Alabama 35611. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland this 30th day of November 1979.

For the Nuclear Regulatory Commission.

Thomas A. Ippolito,

Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 79–37891 Filed 12–10–79; 8:45 am]

BILLING CODE 7590–01–M

[Dockets Nos. 50–338SP and 50–339SP]

Virginia Electric & Power Co. (North Anna Nuclear Power Station, Units 1 and 2); Proposed Amendment to Operating License NPF–4 To Permit Storage Pool Modification

Order

December 5, 1979.

The pending appeal of intervenors Potomac Alliance and Citizens Energy Forum, Inc., is hereby calendared for oral argument at *9:30 a.m. on Thursday, January 3, 1980 in the NRC Public Hearing Room, 5th floor, 4350 East-West Highway, Bethesda, Maryland.* A total of one hour will be allotted to each side for the presentation of argument. The appellants may reserve a portion of their time for rebuttal.

In preparing for argument, counsel may assume that the members of the Board will be reasonably familiar with the record below, as well as with the positions of the respective parties on the appeal (as reflected in their briefs). For this reason, there will be no necessity for any counsel to devote a portion of his argument to a detailed recitation of the background of the controversy.

Each party is to notify the Secretary to this Board, by letter mailed no later than December 21, of the name of the counsel who will present argument on its or their behalf.

It is so ordered.

For the Appeal Board.

C. Jean Bishop,

Secretary to the Appeal Board.

[FR Doc. 79–37895 Filed 12–10–79; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Privacy Act; New Systems

The purpose of this notice is to give members of the public an opportunity to comment on Federal agency proposals to establish or alter personal data systems subject to the Privacy Act of 1974.

The Act states that "each agency shall provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effects on such proposal on the privacy and other personal or property rights of individuals . . ."

OMB policies implementing this provision require agencies to submit reports on proposed new or altered systems to Congress and OMB 60 days prior to the issuance of any data collection forms or instructions, 60 days before entering any personal information into the new or altered systems, or 60 days prior to the issuance of any requests for proposals for computer and communications systems or services to support such systems—whichever is earlier.

The following reports on new or altered systems were received by OMB between November 12, 1979 through November 23, 1979. Inquiries or comments on the proposed new systems or changes to existing systems should be directed to the designated agency point-of-contact and a copy of any written comments provided to OMB. The 60 day advance notice period begins on the report date indicated.

Department of Labor

System Names:

(1) MSHA Education and Training Activities Report,

(2) Coal Mine Safety and Health Management Information System.

Report Date:

August 20, 1979 (Not received in ISP until November 16, 1979)

Point-of-Contact:

Sofia Petters, Office of the Secretary, Department of Labor, Washington, DC 20210.

Summary:

The first is a new system to be maintained by the Mine Safety and Health Administration in order to provide MSHA management with comprehensive personnel, time utilization, and work history records to determine workloads and scheduling, as well as budget and staffing needs. Information will be used only within the Mine Safety and Health Administration. The second system will include records on MSHA personnel and officials at surface and underground coal mine installations, and will be used to assess mine violations and compliance, as well as staffing, workload, budgetary, and personnel training needs.

Department of Housing and Urban Development

System Names:

(1) Mobile Home Standards Complaint, Production, and Compliance Analysis System,

(2) Income Certification Evaluation Data Files.

Report Date:

November 5, 1979.

Point-of-Contact:

Mr. Robert English, Departmental Privacy Act Officer, Department of Housing and Urban Development, Washington, DC 20410.

Summary:

The Mobile Home system will be used to assist in the enforcement and administration of the Federal Mobile Home Construction and Safety Standards Program through monitoring of complaints and manufacturer performance regarding complaints. Records will be maintained on purchasers of mobile homes, and will be disseminated as necessary to HUD-approved State administrative agencies who participate in the enforcement of the statute. The second system will be used to evaluate the effectiveness and accuracy of income certification for eligibility for various HUD-administered housing projects.

Department of State

System Name:

Parking Permit and Car Pool Records.

Report Date:

November 8, 1979.

Point-of-Contact:

Mr. Frank M. Machak, Department of State, Washington, DC 20520.

Summary:

This new system of records will be used by the State Department to control the allocation of parking spaces within the State Department buildings and facilitiate the formation of carpools for employees of the State Department, Agency for International Development, and U.S. Arms Control and Disarmament Agency.

Department of Defense

System Name:

Unit Training Records.

Report Date:

November 14, 1979.

Point-of-Contact:

Mr. William Cavaney, Executive Secretary, Defense Privacy Board, 1735 N Lynn Street, Arlington, VA 22209.

Summary:

The Air Force proposes this new system of records to record annual or other periodic training in subjects "unique to or required by the type of unit." The records, to be maintained on Air Force active duty and reserve and National Guard personnel and civilian employees, will be used to manage local training programs which are governed by Air Force or local command directives.

Waiver Requests

OMB procedures permit a waiver of the advance notice requirement when the agency can show that the delay caused by the 60 day advance notice would not be in the public interest. It should be noted that a waiver of the 60 day advance notice period does not relieve an agency of the obligation to publish notice describing the system and to allow 30 days for public comment on the proposed routine uses of the personal information to be collected. A waiver of the 60 day advance notice provision was requested by agencies for the following reports received between November 12, 1979 and November 23, 1979. Public inquires or comments on the proposed new or altered systems should be directed to the designated agency point-of-contact and a copy of any written comments provided to OMB. Comments on the operation of the waiver procedure should be direct to OMB.

Department of the Treasury

System Name:

Legislative Affairs Vote Tracking System.

Report Date:

November 20, 1979.

Point-of-Contact:

Ruth Hargraves, Office of Legislative Affairs, Department of the Treasury, Washington, DC 20220.

Summary:

The Department of the Treasury proposes this new system of records to track Treasury-related votes on the Congress and other background information, such as party, State, and district of Members of Congress, voting records on Treasury related legislation, and ratings by selected public interest organizations. All of this information is currently available as a matter of public record.

Waiver Status:

No action as of November 30, 1979.

Department of Defense

System Name:

Uniformed Services University of the Health Sciences.

Report Date:

November 9, 1979.

Point-of-Contact:

Mr. William Cavaney, Executive Secretary, Defense Privacy Board, 1735 N Lynn Street, Arlington, VA 22209.

Summary:

The Department of the Treasury proposes this new system of records to track Treasury-related votes on the Congress and other background information, such as party, State, and district of Members of Congress, voting records on Treasury-related legislation, and ratings by selected public interest organizations. All of this information is currently available as a matter of public record.

Waiver Status:

No action as of November 30, 1979.

David R. Leuthold,

Budget and Management.

[FR Doc. 79-37968 Filed 12-10-79; 8:45 am]

BILLING CODE 3110-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Granting of Relief From Disabilities Incurred by Conviction

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF).

ACTION: Notice of Granting of Relief From Disabilities Incurred by Conviction.

SUMMARY: The persons named in this notice have been granted relief by the Director, Bureau of Alcohol, Tobacco and Firearms, from their disabilities imposed by Federal laws. As a result, these persons may lawfully acquire, transfer, receive, ship, and possess firearms if they are in compliance with applicable laws of the jurisdiction in which they live.

FOR FURTHER INFORMATION CONTACT: Special Agent in Charge Michael L. Hall, Firearms Enforcement Branch, Investigations Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20026 (202-566-7457).

SUPPLEMENTARY INFORMATION: In accordance with 18 U.S.C. 925(c), the persons named in this notice have been granted relief from disabilities imposed by Federal laws with respect to the acquisition, transfer, receipt, shipment, or possession of firearms incurred by reason of their convictions of crimes punishable by imprisonment for a term exceeding one year.

It has been established to the Director's satisfaction that the circumstances regarding the convictions and each applicant's record and reputation are such that the applicants will not be likely to act in a manner dangerous to public safety, and that the granting of the relief will not be contrary to the public interest.

The following persons have been granted relief:

Aanensen, Dennis G., Mile 112½ Sterling Highway, Soldotna, Alaska, convicted on June 10, 1974, in the Waupaca County Branch II Court, Waupaca, Wisconsin.

Abatangelo, Mark N., 4856 Del Monte, San Diego, California, convicted on May 12, 1969, in the United States District Court, Tucson, Arizona.

Adell, Michael A., W. 198 N16949 Ridgeway Drive, Jackson, Wisconsin, convicted on June 13, 1974, in the County Court, Marinette County, Wisconsin.

Akridge, James C., P.O. Box 331, Alapaha, Georgia, convicted on October 15, 1975, in the United States District Court, Middle District of Georgia, Valdosta Division.

Allen, Herbert R., II, 5414 Rivershore Drive, Tampa, Florida, convicted on February 8, 1971, in the United States District Court, Southern District of Texas.

Alwine, Cabot L., 1832 9th Avenue, Olympia, Washington, convicted on May 22, 1968, in the Superior Court of the State of Washington in and for the County of Thurston, Olympia, Washington.

Anderson, Paula D., Apt. 12–A, Hawkins Place, Pittsburg, Texas, convicted on October 8, 1973, in the United States District Court of Hunt County, 196th Judicial District of Texas.

Ashor, Jacob, 218 W. Hildale, Detroit, Michigan, convicted on August 8, 1967, in the Recorder's Court for the City of Detroit, Michigan.

Ballard, J. C., Route 4, Wills Point, Texas, convicted on June 29, 1962, in the United States District Court, Eastern District of Texas.

Bates, Wayne, 1259 Horton Drive, Mobile, Alabama, convicted on May 28, 1964, in the Montgomery County Circuit Court, Montgomery, Alabama.

Baumgartner, David L., 4019½ Luverne Street, Duluth, Minnesota, convicted on February 12, 1970, in the Wilkin County District Court, Brackinridge, Minnesota; and on March 17, 1972, in the St. Louis County District Court, Duluth, Minnesota.

Beeler, Ronald H., 3402 South 1st Street, Union Gap, Washington, convicted on October 24, 1973, in the Washoe County Second Judicial District Court, Reno, Nevada.

Bell, Otis S., 5034 Bricker, Houston, Texas, convicted on or about May 27, 1976, in the 176th District Court of Harris County, Texas.

Bias, Jewel W., 1322 Ruby Avenue, Kansas City, Kansas, convicted on December 9, 1954, in the Circuit Court of Ray County, Richmond, Missouri; on September 1, 1957, and on November 8, 1968, in the Wyandotte District Court, Kansas City, Kansas.

Blank, Robert M., 4702 Nicholson Road, Franksville, Wisconsin, convicted on April 14, 1952, in the United States District Court, Eastern District of Missouri.

Borsch, Walter R., Jr., P.O. Box 627, St. Joseph, Louisiana, convicted on August 16, 1971, in the United States District Court, Western District, Alexandria Division, Alexandria, Louisiana.

Brantley, Edward M., 1621 Brantley Road, Fort Myers, Florida, convicted on October 12, 1973, in the United States District Court, Middle District of Florida, Tampa, Florida.

Brule, Leslie G., 2707 Gerome Street, Yakima, Washington, convicted on August 2, 1971, in the Superior Court, Yakima County, Washington.

Bruner, Gerald D., 607 E. McKissock, Knob Noster, Missouri, convicted on June 3, 1970, in the Circuit Court of Holt County, Missouri.

Bruner, Mark C., 3845 Reed Street, Garden City, Idaho, convicted on October 14, 1975, in the District Court of the Sixth Judicial District, Pocatello, Idaho.

Bullard, James H., Route 1, Edgewood, Texas, convicted on October 26, 1972, and on February 9, 1970, in the Sixth Judicial District Court of Fannin County, Texas.

Busell, Charles M., 843 Victoria Avenue, Lincoln, Nebraska, convicted on October 27, 1967, in the District Court of Hall County, Nebraska.

Buzzanco, Charles D., 4724 Cherry Street, Erie, Pennsylvania, convicted on November 1, 1962, and on October 7, 1963, in the Court of Quarter Sessions, Erie County, Pennsylvania.

Carman, Stephen R., 12008 Maybrook Street, Whittier, California, convicted on June 21, 1968, in the Superior Court, Los Angeles County, California.

Carney, Roy M., Route 4, Box 557, Picayune, Mississippi, convicted on December 3, 1962, in the United States District Court, Southern District of Mississippi.

Carr, Walter D., 1678 Pierpont, Avenue, Charleston, South Carolina, convicted on March 7, 1974, in the Court of General Sessions, Charles County, South Carolina.

Chojnacki, John B., 1704 Harcor Drive, Pittsburgh, Pennsylvania, convicted on January 29, 1964, in the Court of Oyer and Terminer and General Jail Delivery, County of Allegheny, Pennsylvania.

Cockrell, Paul K., Route 3, Fredrick, Ohio, convicted on May 9, 1975, in the Court of Common Pleas, Ashland County, Ohio.

Condon, Gary E., 508 S. Willow, Douglass, Kansas, convicted on April 13, 1961, in the Superior Court for the State of Washington for the County of King, Washington.

Crawford, Norvel, 3543 West Outerdrive, Detroit, Michigan, convicted on February 28, 1952, in the United States District Court for the Eastern District of Michigan, Southern Division.

Cuthbertson, Robert P., 19 Elm Street, Millbury, Maine, convicted on or about January 31, 1957, in the Worcester County Superior Court, Worcester, Massachusetts.

Davis, Frank H., Jr., 703 East 5th Street, North Platte, Nebraska, convicted on July 21, 1975, in the District Court of Lincoln County, Nebraska.

DeMarco, Raymond J., 858 Park Avenue, Fairfield, Alabama, convicted on December 3, 1959, in the Volusia County Circuit Court, Deland, Florida; and on September 4, 1963, in the Jefferson County Circuit Court, Birmingham, Alabama.

DeVassie, John R., 326 Hager Street, Hubbard, Ohio, convicted on October 15, 1943, in the Cuyahoga County Court of Common Pleas, Cleveland, Ohio.

Disney, Walter D., Sr., R.D. 1, Box 343, Orrstown, Pennsylvania, convicted on April 22, 1970, in the Court of Common Pleas, Criminal Division, Franklin County, Pennsylvania.

Dunn, James L., Route 6, Georgetown Pike, Lexington, Kentucky, convicted on November 13, 1972, in the Graves County Circuit Court, Kentucky.

DuVall, David R., 11824 MacCorkle Avenue, Chesapeake, West Virginia, convicted on February 7, 1972, in the United States District Court, Southern District, West Virginia.

Elliott, Howard, J., 415 Alpine Way, Talent, Oregon, convicted on June 14, 1955, on June 26, 1961, and on February 18, 1963, in the Superior Court of California, Shaster County.

Fogle, Robert L., Route 2, Box 1, Neeses, South Carolina, convicted on April 10, 1961, in the United States District Court, Orangeburg, South Carolina.

Foley, Lanny L., Route 2, Box 205AA, Ferrum, Virginia, convicted on May 5, 1975, in the United States District Court for the Western Judicial District of Virginia, Roanoke, Virginia.

Foster, James T., Route 7, Box 117, North Wilkesboro, North Carolina, convicted on April 27, 1933, on May 27, 1937, on May 20, 1949, on November 22, 1955, and on May 22, 1959, in the United States District Court, Wilkesboro, North Carolina.

Gober, Joseph R., 1453 Westbury Drive, Macon, Georgia, convicted on October 7, 1974, in the United States District Court, Middle Judicial District, Macon, Georgia.

Georgeton, Leonard C., 131 NE. 100 Street, Portland, Oregon, convicted on July 10, 1951, in the Circuit Court of Oregon, Multnomah County; on August 5, 1952, in the Circuit Court, Linn County, Oregon; and on July 12, 1954, in the District Court, Marion County.

Grant, Malloyd, 3012 Seamon Avenue, Baltimore, Maryland, convicted on or about July 7, 1954, in the District Court of Maryland, Baltimore City.

Gravitt, Henry F., R.R. No. 2, Pea Ridge Road, Moberly, Missouri, convicted on June 7, 1966, in the Randolph County Circuit Court, Huntsville, Missouri.

Grover, Mark H., Route 2, Box 161, Hoquiam, Washington, convicted on June 23, 1971, in the Superior Court, Grays Harbor County, Washington.

Hampton, John W., Jr., R.D. 5, Box 162, Waynesboro, Pennsylvania, convicted on

August 22, 1962, in the Adams County Criminal Court, Gettysburg, Pennsylvania.

Harrell, Robert L., 1300 W. 7th Avenue, Anchorage, Alaska, convicted on September 4, 1973, in the Circuit Court of Hendricks County, Indiana.

Harris, Howard C., 2205 Butterfield Road, Space 243, Yakima, Washington, convicted on July 28, 1948, in the Superior Court of the State of Washington in and for Yakima County.

Harris, Willie L., 14201 Oak Park Boulevard, Oak Park, Michigan, convicted on or about October 8, 1937, in the United States District Court, Middle District of Alabama; on or about October 1, 1939, in the United States District Court, Middle District of Alabama; and in October 1946 in the Court of Common Pleas, Cuyahoga County, Ohio.

Hert, James L., 1607 S. 9th Avenue, Yakima, Washington, convicted on July 16, 1954, in the District Court for the City and County of Denver, Colorado.

Hicks, Duaine B., 912 South 8th Street, Pasco, Washington, convicted on November 16, 1973, in the Whatcom County Superior Court, Bellingham, Washington.

Horney, Larry C., 5550 Denney Avenue, North Hollywood, California, convicted on March 8, 1965, in the Superior Court for the County of Los Angeles.

Hummel, Edward, 6156 Garrett Avenue, Cornwells Heights, Pennsylvania, convicted on March 5, 1968, in the Bucks County Criminal Court, Doylestown, Pennsylvania.

Hutchinson, William D., Route 1, Box 156–D, Wellston, Oklahoma, convicted on October 24, 1949, in the Union Circuit Court, Union County, Kentucky.

Jones, Robert T., 267 Silver Street, Manchester, New Hampshire, convicted on December 9, 1975, in the Superior Court, Hillsborough County, New Hampshire.

Karg, Leroy, 1300 North Concord Street, South St. Paul, Minnesota, convicted on December 13, 1976, in the District Court, First Judicial District, Dakota County, Minnesota.

Kennedy, Karl P., 28251 Terrence Drive, Livonia, Michigan, convicted on June 26, 1961, in the District Court, Third Judicial District, Lancaster County, Nebraska.

Kenworthy, Charles N., 6113 W. Coldwater Road, Flushing, Michigan, convicted on March 26, 1975, in the Genesee County Circuit Court, Michigan.

Kitchell, Lonny S., 437 NW. 35th, Redmond, Oregon, convicted on November 10, 1975, in the Circuit Court of the State of Oregon for Lane County.

Landgraf, Larry L., Route 2, Garden City, Kansas, convicted on February 18, 1972, in the District Court for Scott County, Kansas.

Lizotte, Isidore, 4205 Aller, Yakima, Washington, convicted on March 10, 1950, and on April 6, 1953, in the Yakima County Superior Court, Yakima County, Washington.

McCloud, Jay W., Sr., Route 1, Box 282A, Bloomingdale, Michigan, convicted in April 1953, in the Circuit Court of Van Buren County, Michigan.

McComas, Clifford M., 5701 E. 97th, Anchorage, Alaska, convicted on or about October 30, 1968, in the Alaska Superior Court, Third Judicial District.

Majerus, Frank M., N. 219 Flora, Box 224, Greenacres, Washington, convicted on September 27, 1966, in the Municipal Court of the City of Sacramento, California.

Mann, Ronald K., Route 1, Box 8, New Castle, Virginia, convicted on July 14, 1958, in the Circuit Court, Campbell County, Virginia; on August 12, 1960, in the Circuit Court, Appomattox County, Virginia; and on June 2, 1962, in the Circuit Court, Appomattox County, Virginia.

Marcott, Robert A., 2551 S. 91st, West Allis, Wisconsin, convicted on June 8, 1977, in the United States District Court, Eastern District of Wisconsin, Milwaukee, Wisconsin.

Margadonna, Thomas A., 1741 N. 1st Street, Jacksonville, Florida, convicted on September 10, 1965, in the Criminal Court, Duval County, Florida.

Miller, Stephen D., 3937 North Sixth Street, Harrisburg, Pennsylvania, convicted on May 12, 1970, in the Dauphine County Criminal Court, Harrisburg, Pennsylvania.

Minor, Davage, 2960 21st Avenue, Gary, Indiana, convicted on December 17, 1971, in the United States District Court for the Northern District of Indiana, Hammond Division.

Mobley, Ernest I., Route 4, Box 370, Tampa, Florida, convicted on December 1, 1939, and on January 23, 1947, in the United States District Court, Tampa, Florida.

Montgomery, Nehemiah, 9612 Prairie Street, Detroit, Michigan, convicted on March 3, 1960, in the United States District Court, Eastern District of Michigan.

Mullaley, John F., 47 Navarre Street, Roslindale, Massachusetts, convicted on December 29, 1958, in the West Roxbury Court, Boston, Massachusetts.

Muse, Bill, Route 4, Box 162AA, Pittsburg, Kansas, convicted on April 14, 1972, in the District Court of Crawford County, Kansas.

Norton, Gene T., 114 Lakeview Terrace, Colonial Heights, Virginia, convicted on November 5, 1964, in the Martinsville City Circuit Court, Martinsville, Virginia; and on May 11, 1965, in the United States District Court, Western District of Virginia, Roanoke, Virginia.

Oski, Pete, 204 E. Rundell, Pontiac, Michigan, convicted on April 30, 1954, in the Superior Court, King County, Washington; on September 13, 1955, and on October 24, 1958, in the Ingham County Circuit Court, Michigan.

Owens, Edward E., 1409 Pad Street, Lenoir, North Carolina, convicted on October 13, 1969, in the Superior Court, Caldwell County, North Carolina.

Paschedag, Edward W., 19A Carol Louise Lane, Caseyville, Illinois, convicted on April 6, 1972, in the Circuit Court of the Third Judicial Circuit, Madison County, Illinois.

Pine, Vernon S., Jr., 24 Main Street, Wallace, Idaho, convicted on December 22, 1971, in the Superior Court of California for the County of Sacramento.

Pool, Tom S., Route 1, Box 113, San Saba, Texas, convicted on January 28, 1975, in the 104th District Court, Taylor County, Texas.

Presnell, Donald R., 8532 Littlerock Road SW., Olympia, Washington, convicted on March 12, 1975, in the Superior Court of the State of Washington in and for Grays Harbor County.

Pruitt, Garvey E., Route 1, Box 253, Traphill, North Carolina, convicted on November 6, 1969, in the United States District Court, Winston-Salem, North Carolina.

Ray, James P., 606 Whitney, Poteau, Oklahoma, convicted on November 8, 1963, in the United States District Court, District of New Mexico, Albuquerque, New Mexico; and on March 4, 1965, in the District Court of Leflore County, Poteau, Oklahoma.

Reed, John, 69 Lux Street, Rochester, New York, convicted on August 5, 1972, in the Livingston County Court, New York.

Riddick, Jesse L., Jr., 4216 Hacienda Street, Norfolk, Virginia, convicted on March 3, 1969, in the United States District Court, Norfolk, Virginia.

Riggins, John, 706 S. 4th Street, Yakima, Washington, convicted on August 16, 1968, in the Superior Court, Yakima County, Washington.

Robinson, Bessie, M., 3521 John C. Lodge B. 404, No. 822, Detroit, Michigan, convicted on April 27, 1951, in the United States District Court, Detroit, Michigan, and on May 6, 1954, in the United States District Court, Detroit, Michigan.

Robinson, Jay W., 10476 Highway 160 E., Alamosa, Colorado, convicted on March 29, 1963, in the Court of Common Pleas, Montgomery County, Pennsylvania.

Robinson, Robert L., Route 3, Box 253A, Kemp, Texas, convicted on July 31, 1969, in the Dallas County Criminal District Court, Dallas, Texas.

Ronding, Brian N., 2411 Florence Avenue, Duluth, Minnesota, convicted on October 29, 1957, in the District Court of Minnesota, St. Louis County.

Salisbury, Robert C., 129 Sylvester Street, Pasco, Washington, convicted on July 17, 1970, in the Multnomah County Circuit Court, Portland, Oregon.

Scott, Billie H., 1135 Cass Street, Gary, Indiana, convicted on July 21, 1972, in the United States District Court, Hammond, Indiana.

Seiler, David V., 1829 Spaight Street, Madison, Wisconsin, convicted on March 13, 1975, in the Dane County Circuit Court, Madison, Wisconsin.

Shew, James T., Route 3, Box 447–A, North Wilkesboro, North Carolina, convicted on November 17, 1954, in a United States District Court, North Carolina; on November 18, 1957, in the United States District Court, Wilkesboro, North Carolina; and on June 4, 1957, in the United States District Court, Greensboro, North Carolina.

Shew, Jessie C., Route 3, Box 438, Wilkesboro, North Carolina, convicted on May 21, 1963, in the United States District, Wilkesboro, North Carolina.

Siegel, James R., 830 W. Bonneville, Pasco, Washington, convicted on December 5, 1952, in the Superior Court, King County, Washington.

Sigers, Leo, 701 East Depot Street, Marion, Kentucky, convicted on May 28, 1948, in the Muhlenberg Circuit Court, Greenville, Kentucky.

Simcox, Michael, 430 Center Street, Millersburg, Pennsylvania, convicted on

December 4, 1973, in the Court of Common Pleas, Criminal Division, Clinton County, Pennsylvania.

Sobanja, Frederick R., Box 36, Maple Hills, Grand Marais, Minnesota, convicted on January 20, 1969, in the District Court for the Fifth Judicial District in the County of Blue Earth, State of Minnesota.

Sroczyk, Joseph E., 3637 Whitehall Lane, Philadelphia, Pennsylvainia, convicted on March 13, 1962, in the Camden Municipal Court, Camden, New Jersey.

Stoe, Andrew F., 104 Brown Street, Penn Yan, New York, convicted on November 13, 1957, in the Monroe County Court, Monroe County, Rochester, New York.

Stubblefield, Lloyd D., 2437 Edison Avenue, Granite City, Illinois, convicted on October 21, 1957, in the Circuit Court for the Seventh Judicial Circuit, County of Macoupin, State of Illinois.

Swegles, Donald E., 8334 Neubourg Drive, Stockton, California, convicted on June 10, 1976, in the Superior Court, Stanislaus County, California.

Taylor, Jesse L., 5401 2nd Court East, Tuscaloosa, Alabama, convicted on April 7, 1970, in the Circuit Court of the Fourth Judicial Circuit of Alabama, Hale County, Greensboro, Alabama.

Ulasewicz, Anthony T., Box 151, Star Route, Town of Day, Hadley, New York, convicted on February 18, 1977, in the United States District Court for the Eastern District of New York.

Vander Meer, John H., 407 North Walnut, Ellensburg, Washington, convicted on January 15, 1974, in the Superior Court of the State of Washington in and for the County of Kittitas.

Vinson, James R., 722 Lexington Avenue, Indianapolis, Indiana, convicted on September 25, 1935, in the Allen County Circuit Court, Kentucky.

Way, Gary G., P.O. Box 826, Basin, Wyoming, convicted on September 6, 1962, in the United States District Court for the District of Wyoming.

Wertis, Raymond A., 330 NE. 160 Terrace, North Miami Beach, Florida, convicted on March 11, 1974, in the United States District Court, Miami, Florida.

Westphal, Robert W., Route 1, Box 1440, Ellensburg, Washington, convicted on June 18, 1962, in the Superior Court for the State of Washington in the County of Yakima.

Wheeler, Ronald A., 4080 W. 1st Street, Space 137, Santa Ana, California, convicted on November 20, 1961, in the Superior Court of California for Los Angeles County.

White, Ronald C., 8503 Colonial Drive, Stockton, California, convicted on December 27, 1956, in the Calaveras County Superior Court, San Andreas, California.

Williams, Robert H., 1401 River Road, Box #9, Elizabeth City, North Carolina, convicted on March 17, 1975, in the Camden County Superior Court, Camden, North Carolina.

Wilson, Cornelius E., 1923 Mandeville Street, New Orleans, Louisiana, convicted on December 9, 1970, in the United States District Court for the Eastern District of Louisiana.

Wolk, Harold G., 4011 County D, West Bend, Wisconsin, convicted on August 15, 1972, in Rusk County, County Court, Wisconsin.

Woodman, Robert P., P.O. Box 427, Mead, Washington, convicted on January 23, 1975, in the Superior Court, State of Washington, Spokane County.

Worsham, Robert W., Route 2, Box 522, Willis, Texas, convicted on February 14, 1975, in the District Court for the Ninth Judicial District of Texas, Montgomery County, Texas.

Compliance With Executive Order 12044

This notice of granting of relief does not meet the Department's criteria for significant regulations as set forth in the Federal Register November 8, 1978.

Signed: November 15, 1979.

G. R. Dickerson,

Director.

[FR Doc. 79-37955 Filed 12-10-79; 8:45 am]

BILLING CODE 4810-31-M

Internal Revenue Service

[Delegation Order No. 42 (Rev. 13)]

Revenue Representative Supervisors; Delegation of Authority

AGENCY: Internal Revenue Service.

ACTION: Delegation of Authority.

SUMMARY: Authorizes Revenue Representative Supervisors to sign consents fixing the period of limitations on assessments or collection. The text of the Delegation Order appears below.

EFFECTIVE DATE: December 4, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Donald R. Schumacher, Internal Revenue Service, 1111 Constitution Avenue, NW., Room 7527, Washington, D.C. 20224.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the Federal Register for Wednesday, November 8, 1978.

J. R. Starkey,

Acting Director, Collection Division.

Date of issue: December 4, 1979.

Effective Data: December 4, 1979.

Subject: Authority to Execute Consents Fixing the Period of Limitations on Assessment or Collection Under Provisions of the 1939 and 1954 Internal Revenue Codes.

1. Pursuant to authority vested in the Commissioner of Internal Revenue by Treasury Department Order No. 120, dated July 31, 1950; Order No. 150-2, dated May 15, 1952; 26 CFR 301.6501(c)-1; 26 CFR 301.6502-1; 26 CFR 301.6901-1(d); and 26 CFR 301.7701-9; the authority to sign all consents fixing the period of limitations on assessment or collection is delegated to the following officials:

a. Regional Directors of Appeals;

b. Service Center Directors;

c. District Directors;

d. Director of International Operations.

2. This authority may be redelegated but not below the following levels for each activity:

a. Service Centers—Chief, Accounting Branch; Chief, Correspondence and Processing Section; Revenue Officers; and Chief, Quality Review Staff.

b. Collection—Chiefs, Office Branches and Office Groups; Revenue Officers; Chiefs, Technical and Office Compliance Branches and Groups; Revenue Representative Supervisors;

c. Examination—Reviewers, Grade GS-11; Group Managers; Case Managers; and Returns Program Managers;

d. Criminal Investigation—Chiefs, Criminal Investigation Divisions, except this authority in streamlined districts is limited to the District Director;

e. Appeals—Appeals Officers;

f. Office of International Operations—Representatives at foreign posts; Revenue Agents, Tax Auditors, and Special Agents on foreign assignments; and levels b, c, and d, above; and

g. District Employee Plans and Exempt Organizations—Reviewers, Grade GS-11; Group Managers.

3. This Order supersedes Delegation Order No. 42.

Issued: May 24, 1979.

Jerome Kurtz,

Commissioner.

[FR Doc. 79-37845 Filed 12-10-79; 8:45 am]

BILLING CODE 4830-01-M

INTERSTATE COMMERCE COMMISSION

Environmental Impact Statement for Motor Carrier Regulatory Reform

AGENCY: Interstate Commerce Commission, Energy and Environment Branch.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement for Motor Carrier Regulatory Reform Initiatives.

SUMMARY: The Commission's Energy and Environment Branch intends to prepare a programmatic environmental impact statement (EIS) dealing with the environmental consequences of recent proposals by the Commission's Motor Carrier Task Force to ease or eliminate entry controls and to promote greater rate flexibility in the regulated motor

carrier industry. It is alleged that implementation of these proposals will result in heightened competition among motor carriers and lower transportation costs to the consumer.

A proposed scope for the draft EIS is set forth as supplemental information. No formal public scoping meeting is contemplated. Written comments on the proposed scope of study are invited.

COMMENTS AND DATES: Written comments should be submitted to: Energy and Environment Branch, Rm. 5377, Interstate Commerce Commission, 12th and Constitution Ave., NW., Washington, D.C. 20423, on or before January 10, 1980.

FOR FURTHER INFORMATION CONTACT: Steve Botts or Bob Maestro at (202) 275-7916.

SUPPLEMENTAL INFORMATION: At present motor carriers may associate with rate bureaus which establish uniform rates for transportation services. Member carriers are allowed to dissent from established rates. Tariff filings are subject to protest by shippers and other carriers and may be suspended upon a showing that they are unreasonable. The Task Force's motor carrier reform proposals call for the abolition of rate bureaus. Under the proposed reforms, motor carriers would establish individual tariffs. After a carrier has established a base rate (which is subject to protest and suspension), it would be permitted to file rates with a zone of reaonableness around the base rate, which could not be suspended unless they were clearly unreasonable, discriminatory, or likely to produce an embargo on traffic. Reform proposals also contemplate a "no notice" zone around the base rate, within which the carrier could negotiate rates without publishing tariffs or providing notice of its actions.

The motor carrier reform proposals under consideration would also substantially alter the manner in which operating authority is granted to carriers. Motor carriers now apply for authority to transport specified commodities between named points or areas. Such applications may be protested by other carrriers on grounds that the public convenience and necessity or the public interest and the National Transportation Policy do not require the proposed service. Under the Task Force's reform proposals transportation of specified commodity groups between all points in the United States would be permitted upon a showing by the applicant that it is fit, financially and otherwise, to provide service as sought. Protests based on grounds other than applicant's alleged unfitness would not be entertained. However, an applicant would not be permitted to serve an area larger than that to which it was willing to provide reasonably continuous and adequate service.

PROPOSED SCOPE FOR ENVIRONMENTAL IMPACT STATEMENT ON MOTOR CARRIER REGULATORY REFORM.

A. *Introduction*—The environmental consequences of regulatory reform will be determined largely by economic considerations.

1. Summary of past regulatory reform experiences: (a) The Australian experience; (b) The Canadian Experience; (c) The air freight forwarder experience; (d) Other experiments in deregulation.

2. Summary of economic forecasts concerning probable effects of motor carrier regulatory reform in this country.

3. Economic assumptions, derived from previous experiences and forecasts, upon which the study will be developed.

B. *Environmental Impacts*—The environmental impacts associated with assumed conditions caused by motor carrier regulatory reform will be examined. Major areas of concern include, but are not limited to, the following:

1. *Energy impacts.* Assuming that regultory reform heightens competition for available traffic, would the added competition create operational imbalances (e.g. more empty miles traveled) and result in less energy efficient transportation? Would added competition produce lower rates and a smaller profit margin, thereby increasing the incentive to operate in a fuel efficient manner?

2. *Safety impats.* If carriers are permitted to establish virtually any compensatory rates they choose, is it possible that added competition may drive rates down to the point where carriers might overlook regular vehicle maintenance thereby creating potential safety hazards? Is there already sufficient incentive to defer maintenance?

3. *Socio-economic impacts.* (a) If under reform proposals, carriers tend to concentrate in major urban traffic centers, would service to rural areas and rural development be adversely affected? Would the job market in rural areas be affected? (b) What employment and business ramifications might be caused by increased rate flexibility? (c) How would carrier operations be affected if operating certificates (against which carriers may now borrow) are rendered worthless by regulatory reform?

4. *Air and noise impacts.* If deregulation produces concentrations of carriers in major traffic centers, would the expected rise in noise and air pollution levels be significant?

5. Impacts on historic and archeologically significant properties.

6. Impacts on wildlife and water resources.

7. Impacts on other modes of transportation, including the unregulated sector of the industry. If deregulation results in lower motor carrier rates, would so much traffic be diverted from railroads as to significantly affect their profitability or viability?

C. *Alternative courses of action.*

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-37856 Filed 12-10-79; 8:45 am]

BILLING CODE 7035-01-M

Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a petition for intervention, either in support of or in opposition to the granting of an application, must be filed with the Commission on or before January 10, 1980. Protests (such as were allowed to filings prior to March 1, 1979) *will be rejected.* A peition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

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Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l) setting forth the specific grounds upon which it is made, including a detailed statement of petitioner's interest, the particular facts, matters, and things relied upon, including the extent, if any, to which petitioner (a) has solicited the traffic or business of those supporting the

application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace the extent to which petitioner's interest will be represented by other parties, the extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record, and the extent to which participation by the petitioner would broaden the issues or delay the proceeding.

Petitions not in reasonable compliance with the requirements of the rules may be rejected. An original and one copy of the petition to intervene 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.

Section 247(f) provides, in part, that an applicant which does not intend to timely prosecute its application and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Section 247(f) provides, in part, that an applicant which does not intend to timely 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 an 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 administrative 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 exception 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 present and future 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 regulation. 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 the petitioner, 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 terms, conditions or limitations 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 petitions for intervention, filed on or before January 10, 1980, (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 the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring on a single operating right.

Applicants must comply with all specific conditions set forth in the following decision-notices on or before January 10, 1980, or the application shall stand denied.

Note.—All applications are for authority to operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, except as otherwise noted.

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Decided: November 19, 1979.

By the Commission, Review Board No. 2, Members Boyle, Eaton and Liberman.

MC 531 (Sub-410F), filed June 11, 1979. Applicant: YOUNGER BROTHERS, INC., 4904 Griggs Road, P.O. Box 14048, Houston, TX 77021. Representative: Wray E. Hughes (same address as applicant). Transporting *chemicals*, in bulk, in tank vehicles from Winder, GA, to points in AL, AR, LA, MS, NC, SC, OK, TX, and TN. (Hearing site: Atlanta, GA.)

MC 730 (Sub-446F), filed June 7, 1979. Applicant: PACIFIC INTERMOUNTAIN EXPRESS CO., a corporation, 25 North Via Monte, Walnut Creek, CA 94598. Representative: R. N. Cooledge, P.O. Box 8004, Walnut Creek, CA 94596. Transporting *petroleum and petroleum products*, in bulk, in tank vehicles, (1) from El Paso, TX, to points in NM and AZ, and (2) from points in NM, to points in AZ. (Hearing site: Albuquerque or Santa Fe, NM.)

MC 730 (Sub-447F), filed June 7, 1979. Applicant: PACIFIC INTERMOUNTAIN EXPRESS CO., a corporation, 25 North Via Monte, Walnut Creek, CA 94598. Representative: R. N. Cooledge, P.O. Box 8004, Walnut Creek, CA 94596. Transporting *liquid weed killing compound*, in bulk, in tank vehicles, from Portland, OR, to points in KS, MO, IA, and IL. (Hearing site: Portland, OR, or San Francisco, CA.)

MC 5470 (Sub-194F), filed June 7, 1979. Applicant: TAJON, INC., R.D. 5, Mercer, PA 16137. Representative: Brian L. Troiano, 918 16th St., NW, Washington, DC 20006. Transporting *coke*, in dump vehicles, from Conshohocken, PA, to Clarksburg, WV. (Hearing site: Washington, DC, or New York, NY.)

MC 16831 (Sub-31F), filed June 8, 1979. Applicant: MID SEVEN TRANSPORTATION COMPANY, a corporation, 2323 Delaware Ave., Des Moines, IA 50317. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. Transporting *steel*, from points in IL, IN, and OH, to Adel, IA. (Hearing site: Des Moines, IA, or Chicago, IL.)

MC 5320 (Sub-13F), filed February 21, 1979, and previously noticed in FR issue of June 8, 1979. Applicant: T.I.M.E.–DC, INC., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). To operate as a *common 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, those requiring special equipment, ammunition, and ammunition parts), between the facilities of King Plastics, Inc., at Orange CA, on the one hand, and, on the other, Denison, TX, Waseca, MN, and Mt. Sterling, IL, restricted to the transportation of traffic originating at or destined to the named facilities. (Hearing site: Los Angeles or Orange, CA.)

Note.—This republication clarifies the territorial description.

MC 5320 (Sub-31F), filed June 8, 1979. Applicant: T.I.M.E.–DC, INC., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). 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, ammunition, parts of ammunition, household goods as defined by the Commission, commodities in and bulk, those requiring special equipment), serving the facilities of T G & Y Stores Company, at or near Shelbyville, KY, as an off-route point in connection with the carrier's otherwise authorized regular-route operations. (Hearing site: Louisville, KY, or Washington, DC.)

MC 5320 (Sub-32F), filed June 8, 1979. Applicant: T.I.M.E.–DC, INC., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). 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, ammunition, parts of ammunition, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Genesco, Inc., at or near (a) Fulton, MS (b) Fayetteville and Chapel Hill, TN, and (c) Huntsville, AL, as off-route points in connection with the carrier's otherwise authorized regular-route operations. (Hearing site: Nashville, TN, or Washington, DC.)

MC 5320 (Sub-33F), filed June 8, 1979. Applicant: T.I.M.E.–DC, INC., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). 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, ammunition, parts of ammunition, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of C. H. Clowers Supply Co. Inc., at or near Pine Bluff, AR, as an off-route point in connection with the carrier's otherwise authorized regular-route operations. (Hearing site: Little Rock, AR, or Washington, DC.)

MC 35320 (Sub-334F), filed June 11, 1979. Applicant: T.I.M.E.–DC, INC., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). 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, ammunition, parts of ammunition, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Springs Mills, Inc., at or near (a) Kershaw, Lancaster, Mullins, Chester, Ft. Lawn, Ft. Mill, and Grace, SC, and (b) Biscoe and Laurel Hill, NC, as off-route points in connection with the carrier's otherwise authorized regular-route operations. (Hearing site: Atlanta, GA, or Washington, DC.)

MC 52460 (Sub-246F), filed June 6, 1979. Applicant: ELLEX TRANSPORTATION, INC., 1420 W. 35th St., P.O. Box 9637, Tulsa, OK 74107. Representative: Wilburn L. Williamson, Suite 615-East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. Transporting (1) *plumbing fixtures and fittings,* and (2) *materials and supplies* used in the manufacture of the commodities named in (1) above (except commodities in bulk), between Brownwood, TX, and Spartanburg, SC, on the one hand, and, on the other, points in AL, AR, CO, GA, FL, KS, LA, MS, MO, NM, NC, OK, SC, TN, and TX. (Hearing site: Milwaukee, WI.)

MC 61231 (Sub-154F), filed June 11, 1979. Applicant: EASTER ENTERPRISES, INC., d.b.a., ACE LINES, INC., P.O. Box 1351, Des Moines, IA 50305. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. Transporting *railroad ties,* (1) from points in IA, to points in IL, KS, MN, MO, NE, SD, and WI and (2) from Quincy, IL, to points in IA. (Hearing site: Des Moines, IA, or St. Paul, MN.)

MC 68860 39 (Sub-39F), filed June 11, 1979. Applicant: RUSSELL TRANSFER, INCORPORATED, 5259 Aviation Drive, N.W., Roanoke, VA 24012. Representative: Liniel G. Gregory, Jr. (same address as applicant). Transporting *glass containers,* from the facilities of Owens-Illinois, at Huntington, WV, to points in NC and VA. (Hearing site: Washington, DC, or Charleston, WV.)

MC 82841 (Sub-261F), filed May 21, 1979. Applicant: HUNT TRANSPORTATION, INC., 10770 "I" Street, Omaha, NE 68127. Representative: Donald L. Stern, 610 Xerox Building, 7171 Mercy Road, Omaha, NE 68106. Transporting (1) *such commodities* as are dealt in or used by manufacturers and dealers of (a) agricultural and industrial, equipment and (b) lawn and leisure products, (except commodities in bulk), and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) above, (except commodities in bulk), (a) between the facilities of Deere & Company, in Black Hawk and Dubuque Counties, IA, on the one hand, and, on the other, points in CO, NE, SD and WY, (b) between the facilities of Deere & Company, in (i) Polk, Scott, and Wapello Counties, IA, (ii) Rock Island County, IL, and (iii) Dodge County, WI, on the one hand, and, on the other, points in CO, KS, MO, NE, SD, and WY, and (c) between points in CO, KS, MO, NE, SD, and WY, restricted in (a) and (b) above to the transportation of traffic originating at or destined to the named facilities and in (c) above to the transportation of traffic originating at or destined to the facilities of Deere & Company dealers.

Note.—Dual operations may be involved. (Hearing site: Chicago, IL, or St. Paul, MN.)

MC 82841 (Sub-262F), filed June 5, 1979. Applicant: HUNT TRANSPORTATION, INC., 10770 "I" Street, Omaha, NE 68127. Representative: Donald L. Stern, 610 Xerox Building, 7171 Mercy Road, Omaha, NE 68106. Transporting (1) *brass tubing, bronze tubing, and copper tubing;* and (2) *materials* used in the manufacture of the commodities named in (1) above, from Pulaski, TN, to points in AR, AZ, CO, IA, IL, KS, LA, MS, MO, NE, NM, OK, and TX.

Note.—Dual operations may be involved. (Hearing site: Washington, DC, or New York, NY.)

MC 82841 (Sub-264F), filed June 11, 1979. Applicant: HUNT TRANSPORTATION, INC., 10770 "I" Street, Omaha, NE 68127. Representative: Donald L. Stern, 610 Xerox Building, 7171 Mercy Road, Omaha, NE 68106. Transporting *zinc, zinc dross, and zinc residue,* between the facilities of St. Joe Zinc Company, at Josephtown, PA, on the one hand, and, on the other, those points in the United States in and west of WI, IN, IL, MO, AR, and LA (except AK and HI). (Hearing site: Pittsburgh, PA.)

Note.—Dual operations may be involved.

MC 94990 (Sub-2F), filed June 11, 1979. Applicant: NASSAU WORLD WIDE MOVERS, INC., 57 Central Ave., Farmingdale, NY 11735. Representative: Robert J. Gallagher, 1000 Connecticut Ave., NW, Suite 1200, Washington, DC 20036. Transporting *household goods,* as defined by the Commission, between points in Bergen, Hudson, Passaic, Sussex, Morris, Union, Essex, Warren, Hunterdon, Somerset, Middlesex,

Mercer, Monmouth, and Ocean Counties, NJ, Richmond, Kings, Queens, New York, Bronx, Nassau, Suffolk, Rockland, Westchester, Putnam, and Orange Counties, NY, and Fairfield County, CT, on the one hand, and, on the other, points in CA, AZ, MN, KS, OK, TX, MN, IA, MO, AR, LA, WI, IL, MS, AL, TN, KY, IN, MI, OH, FL, GA, NC, VA, WV, PA, NY, NJ, MD, DE, CT, RI, MA, NH, VT, ME, and DC. (Hearing site: New York, NY.)

MC 95540 (Sub-1106F), filed April 27, 1979, and previously noticed in FR issue of October 4, 1979. Applicant: WATKINS MOTOR LINES, INC., 1144 West Griffin road, P.O. Box 1636, Lakeland, FL 33802. Representative: Benjy W. Fincher (same address as applicant). Transporting *chemicals, cleaning, scouring and washing compounds, liquid plastic, defoaming compounds, ink, plastic sheeting, laminating machinery,* and *parts* for laminating machinery, from points in CA, to points in IN, IL, TX, NY, NJ, MA, MS, and VA. (Hearing site: Los Angeles, CA, or Washington, DC)

Note.—This republication shows CA as an origin point.

MC 110420 (Sub-824F), filed June 11, 1979. Applicant: QUALITY CARRIERS, INC., P.O. Box 186, Pleasant Prairie, WI 53158. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425 13th St., N.W., Washington, DC 20004. Transporting *spent aluminum sulfate and spent phosphoric acid,* in bulk, in tank vehicles, from Grand Rapids and Muskegon, MI, to Milwaukee, WI. (Hearing site: Chicago, IL, or Washington, DC.)

MC 110420 (Sub-825F), filed June 11, 1979. Applicant: QUALITY CARRIERS, INC. P.O. Box 186, Pleasant Prairie, WI 53158. Representative: John R. Sims Jr., 915 Pennsylvania Building, 425 13th St., NW, Washington, DC 20004. Transporting *liquid chemicals,* in bulk, in tank vehicles, from the facilities of ICI Americas, Inc., at Memphis, TN, to those points in the United States in and east of MN, IA, MO, AR, and LA. (Hearing Site: Washington, DC.)

MC 114211 (Sub-415F), filed June 11, 1979. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Adelor J. Warren (same address as applicant). Transporting *such commodities* as are dealt in by (a) lumber distributors and stores, and (b) home improvement and home furnishing stores, (except commodities in bulk), from the facilities of Temple Eastex, Inc., in Angelina and San Augustine Counties, TX, to points in the United States (except AK and HI). (Hearing site: Houston, TX, or Shreveport, LA.)

MC 115331 (Sub-506F), filed June 5, 1979. Applicant: TRUCK TRANSPORT INCORPORATED, 29 Clayton Hills Lane, St. Louis, MO 63131. Representative: J. R. Ferris, 230 St. Clair Avenue, East St. Louis, IL 62201. Transporting *dry plastics,* in bulk, in tank and hopper-type vehicles, from Henry, IL, to points in IN, OH, MI, WI, MN, IA, MO, KS, AR, KY, PA, NE, TN, OK, LA, MS, and TX. (Hearing Site: Washington, DC.)

MC 115651 (Sub-60F), filed June 11, 1979. Applicant: KANEY TRANSPORTATION, INC., 7222 Cunningham Road, P.O. Box 39, Rockford, IL 61105. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh St., NW, Washington, DC 20001. Transporting *fertilizer and fertilizer materials,* in bulk, from Lemont, Erie, Belvidere, Marseilles, Seneca, and Cordova, IL, and Clinton, IA, to points in IA, IN, and WI. (Hearing Site: Chicago, IL.)

MC 116300 (Sub-48F), filed June 11, 1979. Applicant: NANCE AND COLLUMS, INC., Post Office Drawer J, Fernwood, MS 39635. Representative: Harold D. Miller Jr., 17th Floor, Deposit Guaranty Plaza, Post Office Box 22567, Jackson, MS 39205 Transporting *dry fertilizer,* from Cherokee, AL, to points in AR, LA, and MS. (Hearing site: Atlanta, GA.)

MC 118420 (Sub-4F), filed June 11, 1979. Applicant: BULLDOG TRUCKING OF GEORGIA, INC., P.O. Box 357, Carnesville, GA 30521. Representative: Paul P. Watkins, Sr., P.O. Box 56387, Atlanta, GA 30343. Transporting *synthetic staple fibre* and *synthetic yarn,* between the facilities of Courtauld's North America, Inc., at or near LeMoyne and Mobile, AL, on the one hand, and, on the other, points in GA, NC, and SC. (Hearing site: Atlanta. GA. or Mobile, AL.)

MC 119641 (Sub-169F), filed May 21, 1979. Applicant: RINGLE EXPRESS, INC., 450 E. Ninth St., Fowler, IN 47944. Representative: Alki E. Scopelitis, 1301 Merchants Plaza, Indianapolis, IN 46204. Transporting (1) *such commodities* as are dealt in or used by manufacturers and dealers of (a) agricultural and industrial equipment and (b) lawn and leisure products (except commodities in bulk); and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) above (except commodities in bulk), (a) between the facilities of Deere & Company, in (i) Black Hawk, Dubuque, Polk, Scott, and Wapello Counties, IA, (ii) Rock Island County, IL, and (iii) Dodge Count, WI, on the one hand, and, on the other, points in AL, AR, CT, DE, FL, GA, IN, KY, LA, ME, MD, MA, MS, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, and the Lower Peninsula of MI, restricted to the transportation of traffic originating at or destined to named facilities and (b) between points in AL, AR, CT, DE, FL, GA, IN, KY, LA, ME, MD, MA, MS, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, and the Lower peninsula of MI, restricted to the transportation of traffic originating at or destined to the facilities of Deere & Company dealers. (Hearing site: Chicago, IL, or St. Paul, MN.)

MC 119741 (Sub-195F), filed June 7, 1979. Applicant: GREEN FIELD TRANSPORT COMPANY, INC., 1515 Third Ave., N.W. P.O. box 1235, Fort Dodge, IA 50501. Representative: D. L. Robson (same address as applicant). Transporting *Meats, Meat products and 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), between the facilities of Lauridsen Foods, Inc., at Britt, IA, and Armour & Company, at Mason City, IA, on the one hand, and, on the other, points in AR, CO, CT, DE, IL, IN, KS, MD, MA, MI, MO, NE, NJ, NY, OH, OK, PA, RI, TX, VA, WV, and DC, restricted to the transportation of traffic originating at or destined to the named points. (Hearing site: Phoenix, AZ.

MC 121060 (Sub-114F), filed June 11, 1979. Applicant: ARROW TRUCK LINES, INC., P.O. BOX 1416, Birmingham, AL 35201. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401. Transporting *plastic pipe and fittings,* from Henderson, KY, to points in IL, SC, and NC. (Hearing site: Louisville, KY, or Evansville, IN.)

MC 124170 (Sub-134F), filed June 7, 1979. Applicant: FROSTWAYS, INC., 3000 Chrysler Service Drive, Detroit, MI 48207. Representative: William J. Boyd, 2021 Midwest Road, Suite 205, Oak Brook, IL 60521 Transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses,* as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766, (except hides and commodities in bulk), from New Haven, CT, Wilmington, DE, and Philadelphia, PA, to points in IL, IN, OH, and MI. (Hearing site: New York, NY, or Washington, DC.)

MC 125951 (Sub-46F), filed June 8, 1979. Applicant: SILVEY REFRIGERATED CARRIERS, INC., 7000 West Center Road, Suite 325, Omaha, NE 68106. Representative: Robert M. Cimino (same address as applicant). Transporting *foodstuffs*, from the facilities of Globe Products Company, Inc., at or near Clifton, NJ, to points in SD, NE, KS, MN, IA, MO, WI, IL, IN, KY, TN, OH, MI, and AR, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Newark, NJ.)

Note.—Dual operations may be involved.

MC 127651 (Sub-53F), filed May 31, 1979. Applicant: EVERETT G. ROEHL, INC., East 29th St., Box 7, Marshfield, WI 54449. Representative: Richard A. Westley, 4506 Regent St., Suite 100, Madison, WI 53705. Transporting *iron and steel articles*, from Chicago, IL, to points in MN and WI. (Hearing site: Chicago, IL, or Minneapolis, MN.)

MC 133590 (Sub-23F), filed June 7, 1979. Applicant: WESTERN CARRIERS, INC., P.O. Box 925, Worcester, MA 01613. Representative: David M. Marshall, 101 State St.—Suite 304, Springfield, MA 01103. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes transporting (1) *automotive accessories;* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of automotive accessories (except commodities in bulk), between points in MA, on the one hand, and, on the other, points in the United States (except AK, HI, CT, RI, NH, and points in Albany, Schenectady, Rensellaer, and Columbia Counties, NY), under continuing contract(s) with Mark Fore-Vatco Industries, of Boston, MA. (Hearing site: Boston, MA.)

MC 135410 (Sub-75F), filed June 11, 1979. Applicant: COURTNEY J. MUNSON, d.b.a. MUNSON TRUCKING, P.O. Box 266, Monmouth, IL 61462. Representative: Jack H. Blanshan, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. Transporting *paper and paper products* (except commodities in bulk), from Glens Falls, NY, to points in IL, IN, IA, MI, MO, OH, and WI. (Hearing site: Washington, DC.)

MC 136511 (Sub-63F), filed June 1, 1979. Applicant: VIRGINIA APPALACHIAN LUMBER CORPORATION, 9640 Timberlake Road, Lynchburg, VA 23502. Representative: David C. Venable, 805 McLachlen Bank Building, 666 Eleventh St. NW., Washington, DC 20001. Transporting (1) *extruded and injection molded rubber and plastic products;* and (2) *materials, supplies, and equipment* used in the manufacture, sale, and distribution of the commodities named in (1) above, from the facilities of Entek Corporation or America, at or near Irving and Saginaw, TX, to points in the United States (except AK, HI, ME, MT, NH, RI, VT, and WY). (Hearing site: Dallas, TX.)

MC 142811 (Sub-6F), filed June 11, 1979. Applicant: S.R.I. TRUCKING CO., a corporation, 1000 N. Cindy Lane, Carpinteria, CA 93013. Representative: R. Y. Schureman, 1545 Wilshire Blvd., Los Angeles, CA 90017. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *frozen foods*, from points in FL to points in OH, MI, IL, IN, KY, and TN, under continuing contract(s) with (1) Citrus Central, Inc., of Orlando FL, and (2) Lykes Pasco Packing Company, of Dade City, FL. (Hearing site: Orlando, FL, or Los Angeles, CA.)

MC 144061 (Sub-3F), filed June 8, 1979. Applicant: SICOMAC CARRIERS, INC., 347 Sicomac St., Wyckoff, NJ 07481. Representative: Arthur J. Piken, One Lefrak City Plaza, Flushing, NY 11368. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *petroleum wax*, in bulk, in tank vehicles, from points in AR, IL, IN, KY, LA, NJ, OK, PA, TX, and WV, to points in AL, AR, GA, IL, IN, IA, KS, KY, LA, MD, MI, MO, NJ, NY, OH, PA, SC, TN, TX, WV, and WI, under continuing contract(s) with Moore & Munger Marketing, Inc., of Fairfield, CT. (Hearing site: New York, NY, or Newark, NJ.)

MC 144061 (Sub-4F), filed June 8, 1979. Applicant: SICOMAC CARRIERS, INC., 347 Sicomac Avenue, Wyckoff, NJ 07481. Representative: Arthur J. Piken, One Lefrak City Plaza, Flushing, NY 11368. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *printing ink*, in bulk, in tank vehicles, from East Rutherford, NJ, to points in CT, DE, MD, MA, NJ, NY, NC, OH, PA, VA, and WV, under continuing contract(s) with Sun Chemical Corp., of Ft. Lee, NJ. (Hearing site: New York, NY, or Newark, NJ.)

MC 145760 (Sub-6F), filed June 4, 1979. Applicant: JOHNSON TRANSPORTATION CO., a corporation, 1614 Highway 13 North, Columbia, MS 39429. Representative: Fred W. Johnson, Jr., 1500 Deposit Guaranty Plaza, P.O. Box 22628, Jackson, MS 39205. Transporting pipe, *valves, and hydrants*, from the facilities of Can-Tex Industries, at or near (a) Cannelton, IN, (b) Sparta, TN, and (c) Mineral Wells, TX, to points in AL, AR, CO, DE, FL, GA, IL, IN, KS, KY, LA, MI, MS, MO, NJ, NM, NC, OH, OK, SC, TN, TX, VA, and WV. (Hearing site: Fort Worth, TX, or Jackson, MS.)

MC 145981 (Sub-7F), filed May 31, 1979. Applicant: ACE TRUCKING CO., INC., 1 Hackensack Ave., South Kearny, NJ 07032. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Transporting (1) *conveyor systems, and (2) materials, equipment, and supplies* used in the manufacture and sale of conveyor systems (except commodities in bulk), between Carlstadt, NJ on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: New York, NY, or Washington, DC.)

MC 146541 (Sub-2F), filed June 4, 1979. Applicant: DAVIS BROTHERS, INC., P.O. Box 499, Savannah, TN 38372. Representative: Roland M. Lowell, 618 United American Bank Building, Nashville, TN 37219. Transporting *limestone, lightweight aggregate, sand, gravel, lime, and base materials*, between Savannah, TN, on the one hand, and, on the other, points in AL, AR, and MS. (Hearing site: Memphis, TN.)

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Decided: November 16, 1979.

By the Commission, Review Board Number 3, Members Parker, Fortier & Hill.

MC 2095 (Sub-21F), filed June 11, 1979. Applicant: KEIM TRANSPORTATION, INC., 420 North Sixth, RFD 2, Box 10, Sabetha, KS 66534. Representative: Clyde N. Christey, KS Credit Union Bldg., 1010 Tyler, Suite 11OL, Topeka, KS 66612. Transporting *gypsum* and *gypsum products, in bulk*, from the facilities of Georgia-Pacific Corp Gypsum Div., at or near Blue Rapids, KS, to the facilities of Ashgrove Cement Co, at or near Louisville, NE. (Hearing site: Kansas City, Mo.)

MC 3854 (Sub-52F), filed June 13, 1979. Applicant: BURTON LINES, INC., P.O. Box 11306, East Durham Station, Durham, NC 27703. Representative: Edward G. Villalon, 1032 Pennsylvania Bldg., Pennsylvania Ave. & 13th St. NW., Washington, DC 20004. Transporting (1) *boards, building boards, wallboards,* and *insulating materials*, and (2) *supplies* used in the installation of the commodities named in (1) above, (except commodities in bulk), from the facilities of Armstrong Cork Company, at or near Macon, GA, to points in CT, DE, KY, ME, MD, MA, NH, NJ, NY, NC, PA, RI, SC, TN, VT, VA, WV, and DC. (Hearing site: Philadelphia, PA.)

MC 13134 (Sub-69F), filed June 14, 1979. Applicant: GRANT TRUCKING,

INC., P.O. Box 256, Oak Hill, OH 45656. Representative: James M. Burtch, 100 E. Broad Street, Suite 1800, Columbus, OH 43215. Transporting *aluminum and aluminum articles*, from the facilities of Kaiser Aluminum & Chemical Corporation, at or near Ravenswood, WV, to points in DE, IL, IN, KY, MD, MI, MO, NJ, OH, PA, VA, WV, WI and DC. (Hearing site: Columbus, OH.)

MC 14314 (Sub-30F), filed June 13, 1979. Applicant: DUFF TRUCK LINE, INC., Broadway & Vine St., Lima, OH 45802. Representative: A. David Millner, P.O. Box 1409, 167 Fairfield Rd., Fairfield, NJ 07006. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over alternate routes for operating convenience only transporting *general commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Fort Wayne, IN, and Detroit, MI, from Fort Wayne over U.S. Hwy 27 to junction U.S. Hwy 12 near Coldwater, MI, then over U.S. Hwy 12 to Detroit, MI, and return over the same route, (2) between Fort Wayne, IN, and Hillsdale, MI, from Fort Wayne over IN Hwy 37 to the IN-OH State line, then over OH Hwy 2 to Bryan, OH, then over OH Hwy 15 to OH-MI State line, then over MI Hwy 99 to junction MI Hwy 34 near Osseo, MI, then over MI Hwy 34 to Hillsdale, and return over the same route, (3) between Fort Wayne, IN, and Toledo, OH, over U.S. Hwy 24, (4) between Fort Wayne, IN, and Van Wert, OH, over U.S. Hwy 30, (5) between Fort Wayne, IN, and St. Marys, OH, from Fort Wayne over U.S. Hwy 33 to junction U.S. Hwy 127, then over U.S. Hwy 127 to St. Marys, OH, (6) between Fort Wayne, IN, and Dayton, OH, from Fort Wayne over U.S. Hwy 27 near Richmond, IN, then over U.S. Hwy 35 to Dayton, and return over the same route, (7) between Huntington, IN, and Van Wert, OH, from Huntington, IN, over U.S Hwy 224 to junction U.S. Hwy 127, then over U.S. Hwy 127 to Van Wert, and return over the same route, (8) between Marion, IN, and St. Marys, OH, from Marion over IN Hwy 18 to junction IN Hwy 67 near Bryant, IN, then over IN Hwy 67 to the IN–OH State line, then over OH Hwy 29 to St. Marys, and return over the same route, (9) between Marion, IN, and Dayton, OH, from Marion over IN Hwy 9 to junction U.S. Hwy 35, then over U.S. Hwy 35 to Dayton, and return over the same route, (10) between Indianapolis, IN, and Lima, OH, from Indianapolis over IN Hwy 67 to the IN–OH State line, then over OH Hwy 29 to junction U.S. Hwy 33 near St. Marys, OH, then over U.S. Hwy 33 to junction Interstate Hwy 75 near Wapakoneta, OH, then over Interstate Hwy 75 to Lima, and return over the same route, (11) between Indianapolis, IN, and junction U.S. Hwy 40 and Interstate Hwy 75, over U.S. Hwy 40, (12) between Indianapolis, IN, and Louisville, KY, over U.S. Hwy 31, (13) between Indianapolis, IN, and Jasper, IN, from Indianapolis over IN Hwy 37 to junction U.S. Hwy 50 (Near Bedford, IN), then over U.S. Hwy 50 to Loogotee, IN, then over U.S. Hwy 231 to Jasper, and return over the same route, (14) between Indianapolis, IN, and Vincennes, IN, over IN Hwy 67, (15) between Terra Haute, IN, and Vincennes, IN, over U.S. Hwy 41, (16) between Indianapolis, IN, and St. Louis, MO, over U.S. Hwy 40, and (17) between Indianapolis, IN, and Piqua, OH, over U.S. Hwy 36, serving no intermediate points in (1) through (17) above. (Hearing site: Columbus, OH).

Note.—The person or persons who appear to be engaged in common control of applicant and another regulated carrier must either file an application under 49 U.S.C. 11343(a) or submit an affidavit indicating why such approval is unnecessary. Affidavits are due 30 days from the date of publication.

MC 26825 (Sub-38F), filed June 11, 1979. Applicant: ANDREWS VAN LINES, INC., P.O. Box 1609, Norfolk, NE 68701. Representative: J. Max Harding, P.O. Box 82028, Lincoln, NE 68501. Transporting *aluminum products*, from Waynesboro, GA, Linton, IN, Muscatine, IA, Williamsburg, KY, Calwell, TX, and McKenney and Milford, VA, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Atlanta, GA.)

MC 44605 (Sub-52F), filed June 13, 1979. Applicant: MILNE TRUCK LINES, INC., 2500 West California Ave., Salt Lake City, UT 84104. Representative: Harry J. Jordan, 1000 Sixteenth St., NW, Washington, DC 20036. 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 Sacramento, CA, and Seattle, WA, over Interstate Hwy 5, serving all intermediate points, (2) between Vacaville, CA, and junction Interstate Hwys 5 and 505, over Interstate Hwy 505, serving no intermediate points, (3) between Reno, NV, and Red Bluff, CA, from Reno over U.S. Hwy 395 to junction CA Hwy 36, then over CA Hwy 36 to Red Bluff, and return over the same route, serving no intermediate points, (4) between Ogden, UT, and junction Interstate Hwys 5 and 205, from Ogden over Interstate Hwy 80N to Portland, OR, then over Interstate Hwy 205 to junction Interstate Hwy 5, and return over the same route, serving all intermediate points, (5) between Winnemucca, NV and Spokane, WA, from Winnemucca over U.S. Hwy 95 to junction U.S. Hwy 195, then over U.S. Hwy 195 to Spokane, and return over the same route, serving all intermediate points, (6) between Spokane, WA, and Ellensburg, WA, over Interstate Hwy 90, serving all intermediate points, (7) between junction Interstate Hwy 80N and U.S. Hwy 395 near Stanfield, OR, and Seattle, WA, from junction Interstate Hwy 80N and U.S. Hwy 395 near Stanfield, OR over U.S. Hwy 395 to junction U.S. Hwy 730, then over U.S. Hwy 730 to junction WA Hwy 14, then over WA Hwy 14 to junction U.S. Hwy 12, then over U.S. Hwy 12 to junction WA Hwy 22, then over WA Hwy 22 to junction U.S. Hwy 97, then over U.S. Hwy 97 to junction Interstate Hwy 82, then over Interstate Hwy 82 to junction Interstate Hwy 90, then over Interstate Hwy 90 to Seattle, and return over the same route, serving all intermediate points, (8) between junction U.S. Hwys 12 and 395 near Pasco, WA, and junction U.S. Hwy 395 and Interstate Hwy 90 near Ritzville, WA, over U.S. Hwy 395, serving all intermediate points, (9) between junction Interstate Hwy 80N and U.S. Hwy 30, and Bliss, ID, over U.S. Hwy 30, serving all intermediate points, and (10) between junction U.S. Hwy 95 and ID Hwy 78, and Boise, ID, from junction U.S. Hwy 95 and ID Hwy 78 over ID Hwy 78 to junction ID Hwy 55, then over ID Hwy 55 to junction Interstate Hwy 80N, then over Interstate Hwy 80N to Boise, and return over the same route, serving all intermediate points. Condition: The person or persons who appear to be engaged in common control of applicant and another regulated carrier must either file an application under 49 U.S.C. 11343(a) or submit an affidavit indicating why such approval is unnecessary. Affidavits are due 30 days from the date of publication. (Hearing sites: Phoenix, AZ, Portland, OR, Salt Lake City, UT, and San Francisco, CA.)

Note.—Applicant intends to join this authority with his presently existing authority.

MC 49304 (Sub-34F), filed June 13, 1979. Applicant: BOWMAN TRUCKING CO., INC., P.O. Box 6, Stephens City, VA 22655. Representative: Daniel B. Johnson, 4304 East-West Highway, Washington, DC 20014. Transporting *Lime, Limestone, and limestone products*, from points in Frederick and

Shenandoah Counties, VA, to points in IN, KY, and NC. (Hearing site: Washington, DC.)

MC 83835 (Sub-160F), filed June 11, 1979. Applicant: WALES TRANSPORTATION, INC., P.O. Box 226186, Dallas, TX 75266. Representative: James W. Hightower, First Continental Bank Bldg., Suite 301, 5801 Marvin D. Love Freeway, Dallas, TX 75237. Transporting *refractory material, ferro carbo briquets, silico manganese, ferro-manganese,* and *alloy material,* between Bond and Daingerfield, TX, on the one hand, and on the other, points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Irvin Enterprises. (Hearing site: Dallas, TX.)

MC 83835 (Sub-161F), filed June 11, 1979. Applicant: WALES TRANSPORTATION, INC., P.O Box 226186, Dallas, TX 75266. Representative: J. Michael Alexander, First Continental Bank Bldg., Suite 301, 5801 Marvin D. Love Freeway, Dallas, TX 75237. Transporting *construction materials, equipment, and supplies,* between points in the United States (except HI but including AK) restricted to the transportation of traffic originating at or destined to the facilities of (a) Fish Engineering and Construction Co., (b) Litwin Engineers and Constructions, Inc., (c) Foster-Wheeler Corporation, and (d) McKee and Co. (Hearing site: Houston or Dallas, TX.)

MC 83835 (Sub-163F), filed June 13, 1979. Applicant: WALES TRANSPORTATION, INC., P.O. Box 226186, Dallas, TX 75266. Representative: James W. Hightower, First Continental Bank Bldg., Suite 301, 5801 Marvin D. Love Freeway, Dallas, TX 75237. Transporting (1) *fabricated iron and steel articles, alloy iron castings,* and *coal tipple parts;* and (2) *equipment, material, and supplies* used in the fabrication and manufacture of the commodities named in (1) above between the facilities of McNally Pittsburg Mfg. Corp., at or near Pittsburg, KS, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Dallas TX.)

MC 94265 (Sub-300F), filed May 23, 1979. Applicant: BONNEY MOTOR EXPRESS, INC., P.O. Box 305, Route 460 West, Windsor, VA 23487. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328 Transporting *foodstuffs,* (except in bulk, in tank vehicles, from the facilities of Universal Foods Corp., at or near (a) Campbellsport, Dodgeville, Milwaukee, and Beloit, WI, (b) Franklin Park, IL, and (c) Peru, IN, to points in CT, DE, OH, MA, MD, NJ, NY, PA, RI, VA, WV, and DC. (Hearing site: Chicago, IL, or Washington, DC.)

MC 94265 (Sub-306F), filed June 14, 1979. Applicant: BONNEY MOTOR EXPRESS, INC., P.O. Box 305, Route 460 West, Windsor, VA 23487. Representative: John J. Capo, P.O. Box 720434, Atlanta, GA 30328. Transporting *foodstuffs and food ingredients,* (except in bulk, in tank vehicles), from the facilities of Archer Daniels Midland Company, at or near Decatur, IL, to points in AL, GA, FL, MS, NC, SC, VA, and WV, restricted to the transportation of traffic destined to the indicated destinations. (Hearing Site: Chicago, IL, or Washington, DC.)

MC 105045 (Sub-110F), filed June 12, 1979. Applicant: R. L. JEFFRIES TRUCKING CO., INC., P.O. Box 3277, Evansville, IN 47701. Representative: Paul F. Sullivan, 711 Washington, Bldg., Washington, DC 20005. Transporting (1) *Sewage treatment plants, aerators, lift stations,* and (2) *parts and accessories* used in the installation of the commodities in (1) above, from the facilities of Clow Corporation, at Richwood, KY, to points in the United States (except AK and HI). (Hearing site: Chicago, IL, or Washington, DC.)

MC 106074 (Sub-117F), filed June 11, 1979. Applicant: B and P MOTOR LINES, INC., Shiloh Road and U.S. Highway 221 South, Forest City, NC 28043. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. Transporting *canned goods,* from the facilities of Woldert Canning, Inc., at or near Lindale, TX, to points in AL, GA, KY, NC, SC, TN, VA, and WV. (Hearing site: Dallas, TX, or Washington, DC.)

Note.—Dual operations may be involved.

MC 106644 (Sub-281F), filed June 14, 1979. Applicant: SUPERIOR TRUCKING COMPANY, INC., P.O. Box 916, Atlanta, GA 30301. Representative: Louis C. Parker III, P.O. Box 916, Atlanta, GA 30301. Transporting *mast electrodes,* and *iron and steel articles,* between the facilities of Leckenby Company of Arkansas, at or near Fort Smith, AR, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Little Rock, AR, or Washington, DC.)

MC 106074 (Sub-118F), filed June 13, 1979. Applicant: B & P MOTOR LINES, INC., Shiloh Road and U.S. Highway 221 South, Forest City, NC 28043. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. Transporting (1) *foodstuffs* (except in bulk), from the facilities of Sunmark, Inc., at St. Louis MO, to points in TN; and (2) *confectionery,* from the facilities of Breaker Confections, Division of Sunmark, IN, at Itasca, IL, to St. Louis, MO, and points in AL, FL, GA, SC, and TN. (Hearing site: St. Louis MO, or Washington, DC.)

Note.—Dual operations may be involved.

MC 107515 (Sub-1247F), filed June 11, 1979. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, 3390 Peachtree Rd., NE, 5th Floor—Lenox Towers South, Atlanta, GA 30326. Transporting *such commodities* as are dealt in or used by retail gift shops, curio shops, and catalog distribution centers, from points in AZ, CA, CO, ID, MT, NM, NV, OR, UT, WA, and WY, to the facilities of Swiss Colony Stores, Inc., at or near Monroe and Madison, WI. (Hearing site: Madison, WI.)

Note.—Dual operations may be involved.

MC 107515 (Sub-1249F), filed June 11, 1979. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, 3390 Peachtree Road, N.E., 5th Floor-Lenox Towers South, Atlanta, Georgia 30309. Transporting *foodstuffs* (except commodities in bulk), from the facilities of M&M/Mars, Snack-Master Division, at or near Albany, GA to points in AL, AZ, AR, CA, CO, FL, IL, IN, IA, KS, LA, ME, MO, NE, NV, NH, NJ, NM, NY, OK, TX and UT. (Hearing site: Atlanta, GA.)

Note.—Dual operations be involved.

MC 107605 (Sub-23F), filed May 22, 1979, and previous notice in the FR November 23, 1979. Applicant: ADVANCE-UNITED EXPRESSWAYS, INC., 2601 Broadway Rd. N.E., Minneapolis, MN 55413. 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), between Mora, MN, and Fort Worth, TX, from Mora over MN Hwy 65 to its junction with Interstate Hwy 35; then over Interstate Hwy 35 to Fort Worth, and return over the same route, serving the intermediate and off-route points of Cambridge and Isanti, MN, Kansas City, MO, Kansas City, KS, and Dallas, TX. (Hearing site: St. Paul, MN.)

Note.—This republication is to add Dallas, TX, and show that this is a regular route instead of irregular route.

MC 112304 (Sub-192F), filed June 11, 1979. Applicant: ACE DORAN HAULING & RIGGING CO., a corporation, 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: John D. Herbert (same address as applicant). Transporting (1) *iron and steel articles,* between the facilities of Allegheny Ludlum Steel Corp., at Bagdad, Brackenridge, Coatesville, and West Leechburg, PA, and New Castle, IN, on the one hand, and, on the other, points in AL, AR, GA, LA, MS, MO, NC, SC, and TN; and (2) *nickel iron chromium alloys,* between the facilities of Allegheny Ludlum Steel Corporation, at Brackenbridge and West Leechburg, PA, on the one hand, and, on the other, points in AL, AR, GA, LA, MS, MO, NC, SC, and TN. (Hearing site: Washington, DC, or Pittsburgh, PA.)

MC 115654 (Sub-148F), filed May 14, 1979. Applicant: TENNESSEE CARTAGE CO., INC., P.O. Box 23193, Nashville, TN 37202. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 Thirteenth St., NW., Washington, DC 20004. Transporting *such commodities* as are dealt in by chain grocery and good business houses (except commodities in bulk, in tank vehicles), in vehicles equipped with mechanical refrigeration, between points in AL, AR, GA, IL, IN, KY, MI, MO, MS, OH, TN, VA, and WV, restricted to the transportation of traffic originating at or destined to the facilities of Kraft, Inc. (Hearing site: Washington, DC, or Chicago, IL.)

MC 117765 (Sub-265F), filed June 13, 1979. Applicant: HAHN TRUCK LINE, INC., 1100 S. MacArthur, P.O. Box 75218, Oklahoma City, OK 73147. Representative: R. E. Hagan (same address as applicant). Transporting *yarn,* in containers, from facilities of Hollytex Carpet Mills, at or near Milledgeville, GA, to facilities of Hollytex Carpet Mills, at or near Anadarko, OK. (Hearing site: Oklahoma City, OK.)

MC 117765 (Sub-266F), filed June 13, 1979. Applicant: HAHN TRUCK LINE, INC., 1100 S. MacArthur, P.O. Box 75218, Oklahoma City, OK 73147. Representative: R. E. Hagan (same address as applicant). Transporting *foodstuffs* (except frozen), in containers, from the facilities of Vlasic Foods, Inc., at or near Greenville, MS, to points in KS, MO, and OK. (Hearing site: Oklahoma City, OK.)

MC 123405 (Sub-70F), filed June 14, 1979. Applicant: FOOD TRANSPORT, INC. R.D. #1, Thomasville, PA 17364. Representative: Christian V. Graf, 407 North Front St., Harrisburg, PA 17101. Transporting *foodstuffs* (except frozen foods and commodities in bulk), in vehicles equipped with mechanical refrigeration, from the facilities of Dauphin Distribution Services Co., in Cumberland County, PA, to points in AR, FL, GA, LA, SC, OK, and TX, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: Washington, DC, or Harrisburg, PA.)

MC 123744 (Sub-56F), filed June 11, 1979. Applicant: BUTLER TRUCKING COMPANY, a Corporation, P.O. Box 88, Woodland, PA 16881. Representative: Christian V. Graf, 407 North Front Street, Harrisburg, PA 17101. Transporting (1) *refractories,* from the facilities of North American Refractories Co. at or near: (a) Curwensville, PA, to points in AR and OK, (b) Mt. Union, PA, to points in NJ, PA, DE, MD, DC, VA, WV, OH, AR, OK, and NY (except port of entry on the international boundary between the US and Canada), and DC, (c) Womelsdorf, PA, to points in ME, NH, VT, PA, OH, AR, OK, and NJ (except points in Atlantic, Burlington, Cape May, Monmouth, Ocean and Sussex Counties), points in Washington, Frederick, Carroll Baltimore, Harford, Montgomery, Howard, Prince Georges, Anne Arundel, Charles and Calvert, and Baltimore City, MD; points in Frederick, Clark, Fauquier, Louden, Prince William, Fairfax, Arlington and Stafford Counties, VA, and Alexandria, VA; and points in Jefferson and Berkeley Counties, WV, and DC (d) Vanport, PA, to points east of ND, SD, NE, KS and NM (except FL, GA, SC and TX), (e) White Cloud, MI, to points in and east of MN, IA, MO, OK, and TX (except NC, SC, GA, FL, MS, AL and TN), and (f) Farber, MO, to points in and east of MN, IA, MO, OK, and TX (except OH, PA, NY, NJ, MD, WV, and KY); (2) *Materials and supplies* used in the manufacture and installation of refractories (except refractory scrap), from points in and east of MN, IA, MO, OK and TX, to the facilities of North American Refractories Co. at or near (a) Curwensville, Mt. Union Womelsdorf and Vanport, PA, (b) White Cloud, MI and (c) Farber, MO, restricted in (1) and (2) above to transportation originating at the named facilities and destined to the indicated destinations. (Hearing site: Washington, DC or Harrisburg PA.)

MC 123744 (Sub-58F), filed June 11, 1979. Applicant: BUTLER TRUCKING COMPANY, a Corporation, P.O. Box 88, Woodland, PA 16881. Representative: Christian V. Graf, 407 North Front Street, Harrisburg, PA 17101. Transporting (a) *refractories,* and *materials and supplies* used in the manufacture of refractories, from the facilities of Harbison Walker Refractories, Division of Dresser Industries, Inc., at or near (1) Fulton and Vandalia, MO, to points in IN, IL, MI, OH, PA, WV, NY, NJ, DE, MD and VA, (2) Templeton, PA, and Portsmouth and Windham, OH, to points in PA, NY, NJ, MD, DE, and VA, and (3) Leslie and Jennings, MD, to points in PA, NY, OH, MI, IN, IL, MO, and WI; and (b) *materials* used in the manufacture of refractories, from points in MS, AL, AR, GA, SC, NC, VA, MD, PA, DE, NJ, NY, OH, MI, IN, IL, TN, and KY to the facilities of Harbison Walker Refractories, Division of Dresser Industries, Inc., at or near Clearfield, PA, restricted in (a) and (b) above to transportation originating at the named origin and destined to the indicated destinations. (Hearing site: Washington, DC or Harrisburg, PA.)

Note.— Dual operations may be involved.

MC 125254 (Sub-61F), filed filed June 11, 1979. Applicant: MORGAN TRUCKING CO., a Corporation, P.O. Box 714, Muscatine, IA 52761. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. Transporting *frozen foodstuffs,* between the facilities of Monument Distribution Warehouse, Inc., at or near Indianapolis, IN, on the one hand, and, on the other, points in IL, IA, KS, MN, MO, NE, ND, OH, SD, and WI, restricted to the transportation of traffic originating at or destined to the named facilities. (Hearing site: Indianapolis, IN.)

MC 125335 (Sub-69F), filed June 13, 1979. Applicant: GOODWAY TRANSPORT, INC., P.O. Box 2283, York, PA 17405. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NE 68501. Transporting *meats, meat products, and meat by-products, articles distributed by meat-packinghouses,* and *commodities used by meat-packing houses,* as described in sections A, C, and D 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), between the facilities of (1) Lauridsen Foods, Inc., at or near Britt, IA, and (2) Armour & Company, at or near Mason City, IA, on the one hand, and, on the other, points in KY, TN, MS, AL, GA, FL, NC, and SC. (Hearing Site: Phoenix, AZ, or Harrisburg, PA.)

Note.—Dual operations may be involved.

MC 133095 (Sub-268F), filed June 11, 1979. Applicant: TEXAS CONTINENTAL EXPRESS, INC., P.O. Box 434, Euless, TX 76039. Representative: Rocky Moore (same address as applicant). Transporting

meats, meat products and meat byproducts, and *articles distributed by meat-packing houses,* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766, (except commodities in bulk), from the facilities used by Armour and Company, at or near Hereford and Lubbock, TX, to Houston, TX, restricted to the transportation of traffic having a subsequent movement by water. (Hearing Site: Ft. Worth, TX.)

MC 134105 (Sub-51F), filed June 11, 1979. Applicant: CELERYVALE TRANSPORT, INC., 1318 East 23rd Street, Chattanooga, TN 37404. Representative: Daniel O. Hands, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. Transporting *canned and preserved foodstuffs (except in bulk),* from the facilities of Heinz USA, a division of H. J. HEINZ Co., at or near Greenville, SC to, points in AL, MS, TN, those in FL on and west of FL Hwy 79, and New Orleans, LA, restricted to the transportation of traffic originating at the named origin and destined to the named destinations. (Hearing Site: Washington, DC.)

MC 134105 (Sub-53F), filed June 14, 1979. Applicant: CELERYVALE TRANSPORT, INC., 1318 East 23rd Street, Chattanooga, TN 37404. Representative: Daniel O. Hands, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. Transporting *clay,* (except in bulk), from Waverly Mineral Products Company, at or near Meigs, GA, and in Thomas County, GA, to those points in the United States in and east of NM, CO, NE, SD, and ND, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing Site: Washington, DC.)

MC 136605 (Sub-122F), filed June 12, 1979. Applicant: DAVIS BROS. DIST., INC., P.O. Box 8058, Missoula, MT 59807. Representative: Thomas J. Burke, Jr., 1600 Lincoln Center, 1660 Lincoln St., Denver, CO 80264. Transporting *cement and cement products,* in bags, from the facilities of BMD-Sakrete, at or near Denver, CO, to points in WY and NE. (Hearing Site: Denver, CO.)

MC 138824 (Sub-27F), filed June 11, 1979. Applicant: REDWAY CARRIERS, INC., 5910 49th St., Kenosha, WI 53140. Representative: Paul J. Maton, 10 S. La Salle St., Rm. 1620, Chicago, IL 60603. To operate as a *contract carrier,* by motor vehicle in interstate or foreign commerce, over irregular routes, transporting *glass containers and closures,* from the facilities of Ball Corporation, at or near Mundelein, IL, and in Lake and Cook Counties, IL, on the one hand, and, on the other, points in IA, MN, and WI, under continuing contract(s) with Ball Corporation, of Muncie, IN. (Hearing site: Chicago, IL.)

MC 138824 (Sub-28F), filed June 14, 1979. Applicant: REDWAY CARRIERS, INC., 5910 49th Street, Kenosha, WI 53140. Representative: Paul J. Maton, 10 S. LaSalle St., Suite 1620, Chicago, IL 60603. To operate as a *contract carrier,* by motor vehicle in interstate or foreign commerce, over irregular routes, transporting (1) *glass containers,* and (2) *materials and supplies* used in the manufacture of glass containers (except commodities in bulk); between the facilities of Thatcher Glass Manufacturing Co., Division of Dart Industries, Inc., at Lawrenceburg, Indiana and Streator, Illinois, on the one hand, and, on the other, points in MS, MO, KY, IA, IN, IL, WI, MI, OH, and MN, under continuing contract(s) with Thatcher Glass Manufacturing Co., of Elmira, NY. (Hearing site: Chicago, IL.)

MC 139495 (Sub-460F), filed June 11, 1979. Applicant: NATIONAL CARRIERS, INC., 1501 East 8th St., P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. Transporting (1) *bananas,* and (2) *agricultural commodities* which are otherwise exempt from economic regulation under 49 U.S.C. 10526(a)(6)(1978) when moving in mixed loads with bananas, from Port Hueneme, Ca, to points in AZ, CO, ID, IL, IN, IA, KS, MN, MO, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, WI, and WY. (Hearing site: Washington, DC.)

MC 139495 (Sub-461F), filed June 12, 1979. Applicant: NATIONAL CARRIERS, INC., 1501 East 8th St., P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. Transporting *such commodities* as are dealt in or used by drug, grocery, and department stores, from the facilities of Colgate Palmolive Company, at or near Kansas City, KS, to points in AR, CO, IA, LA, NE, NM, OK, and TX. (Hearing site: Washington, DC.)

MC 139495 (Sub-462F), filed June 13, 1979. Applicant: NATIONAL CARRIERS, INC., 1501 East 8th Street, P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. Transporting *flour and grain products* (except commodities in bulk), between points in AL, AR, FL, GA, IL, IN, KS, KY, LA, MS, MO, NC, OK, SC, TN, and TX. (Hearing site: Washington, DC.)

MC 141804 (Sub-237F), filed June 11, 1979. Applicant: WESTERN EXPRESS, Division of Interstate Rental, Inc., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman, P.O. Box 3488, Ontario, CA 91761. Transporting *alcoholic beverages* (except commodities in bulk, in tank vehicles), from points in CA, to those points in the United States in and east of MN, IA, MO, AR, and LA (except WI, IL, IN, MI, OH, KY, TN and MS). (Hearing site: Los Angeles or San Francisco, CA.)

MC 142545 (Sub-2F), filed June 13, 1979. Applicant: DICK TAZER TRUCKING, INC., 1635 N.W. Mall, Issaquah, WA 98005. Representative: Henry C. Winters, 525 Evergreen Bldg., Renton, WA 98055. To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting *shortening,* from Vernon, CA, to points in OR and WA, under continuing contract(s) with Continental Commodities, Inc., of Vernon, CA. (Hearing site: Seattle, WA.)

MC 142715 (Sub-34F), filed April 5, 1979, previously noticed in the Federal Register of August 30, 1979. Appliant: LENERTZ, INC., P.O. Box 141, So. St. Paul, MN 55075. Representative: K. O. Petrick (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce over irregular routes, transporting (1) *foodstuffs* (except commodities in bulk), (a) from the facilities of Geo. A. Hormel & Co., at Beloit, WI, to points in AL, AR, CO, CT, DE, GA, FL, IN, IL, KY, LA, MD, ME, MA, MI, MN, MS, NM, NY, NC, OH, OK, PA, RI, SC, TN, TX, VT, VA, WV, and DC; (b) from the facilities of Geo. A. Hormel & Co., at Minneapolis-St. Paul, and Owatonna, MN, to points in CT, DE, GA, ME, MD, MA, NH, NY, OH, PA, RI, TN, VT, VA, WV, and DC, restricted to the transportation of traffic orginating at the named origin and destined to the indicated destinations (except in foreign commerce); and (2) *meats, meat products, meat byproducts, foodstuffs, and materials, equipment, and supplies* (except commodities in bulk), from points in AL, AR, CO, CT, DE, FL, IN, IL, KY, IA, MD, ME, MA, MI, MN, MS, NH, NJ, NM, NY, NC, OH, OK, PA, RI, SC, TN, TX, VT, VA, WV, and DC, to the facilities of Geo. A. Hormel & Co., at Beloit, WI, restricted to the transportation of traffic originating at the named origin and destined to the named destinations (except in foreign commerce). (Hearing site: St. Paul, MN.)

Note.—This republication modifies the territorial descriptions and includes NJ and NH in Part (1)(a), and includes NJ in (1)(b), and (2) includes GA and LA, and deletes IA.

MC 145025 (Sub-5F), filed June 14, 1979. Applicant: CONSIGNOR'S, INC., P.O. Box 42, Centerville, OH 45459.

Representative: David A. Turano, 100 East Broad St., Columbus, OH 42315. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce over irregular routes, transporting (1) *parts and accessories*, for truck, trailer, mobile home, and recreational vehicles, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk, and those commodities which because of size or weight require the use of special equipment), between the facilities of Dayton Walther Corporation, at (a) Cincinnati, Dayton, Moraine, Fayette, and Portsmouth, OH, (b) Carrollton and Franklin, KY, (c) Muncie and Richmond, IN, (d) Amnericus, GA, (e) Union City, TN, and (f) Commerce, TX, on the one hand, and, on the other, points in GA, IN, IL, KY, LA, MD, MI, NY, OH, PA, TN, and TX, under continuing contract(s) with Dayton Walther Corporation, of Dayton, OH. (Hearing site: Columbus, OH.)

MC 145525 (Sub-4F), filed May 21, 1979. Applicant: ERIEVIEW CARTAGE, INC., 100 Erieview Plaza, P.O. Box 6977, Cleveland, OH 44144. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St. NW., Washington, DC 20001. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce over irregular routes, transporting (1) *aluminum articles, plastic articles, building materials*, and (2) *parts and accessories* for the commodities in (1) above, and (3) *materials, equipment, and supplies* used in the manufacture and installation of the commodities in (1) above, (except commodities in bulk), between the facilities of Alcan Aluminum Corporation, at or near Woodbridge, NJ, on the one hand, and, on the other, points in the United States (except AK and HI), under continuing contract(s) with Alcan Aluminum, of Cleveland, OH. (Hearing site: Cleveland, OH.)

MC 145525 (Sub-5F), filed May 21, 1979. Applicant: ERIEVIEW CARTAGE, INC., 100 Erieview Plaza, P.O. Box 6977, Cleveland, OH 44144. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St. NW., Washington, DC 20001. To operate as as *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *aluminum articles, plastic articles, building materials*, (2) *parts and accessories* for the commodities in (1) above, and (3) *materials, equipment, and supplies* used in the manufacture and installation of the commodities in (1) above, (except commodities in bulk), between the facilities of Alcan Aluminum Corporation, at or near (a) Pineville, NC, and (b) Buena Park, CA, on the one hand, and, on the other, points in the United States (except AK and HI), under continuing contract(s) with Alcan Aluminum Corporation, of Cleveland, OH. (Hearing site: Cleveland, OH.)

MC 145525 Sub-6F), filed May 21, 1979. Applicant: ERIEVIEW CARTAGE, INC., 100 Erieview Plaza, P.O. Box 6977, Cleveland, OH 44144. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St. NW., Washington, DC 20001. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *metals and metal articles*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), between the facilities of Alcan Aluminum Corporation, at or near (a) Buffalo, NY, (b) Philadelphia, PA, (c) Edison, NJ, (d) Marlborough, MA (e) Windsor, CT, and (f) Baltimore, MD, on the one hand, and, on the other, points in the United States (except AK and HI), under continuing contract(s) with Alcan Aluminum Corporation, of Cleveland, OH. (Hearing site: Cleveland, OH.)

MC 145685 (Sub-1F), filed June 13, 1979. Applicant: CHARLES OTTO d.b.a. OTTO TRANSFER, 417 Elm Street, Delano, MN 55328. Representative: John B. Van de North, Jr., 2200 First National Bank Building, St. Paul, MN 55101. Transporting *poles, posts, sawn timbers, pilings and lumber*, from Minneapolis, MN, to points in OH, PA, WV, IN, MI, IL, ND, SD, MO, KS, NE, TN, KY, IA, and WI. (Hearing Site: St. Paul or Minneapolis, MN.)

MC 146145 (Sub-1F), filed February 26, 1979, previously noticed in **Federal Register** issue of June 21, 1979, as MC 145145 Sub-1F. Applicant: TOWER TRANSPORT, INC, 528 South Cumberland Ave., Park Ridge, IL 60068. Representative: Edward G. Bazelon, 39 South LaSalle Street, Chicago, IL 60603. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *frozen foodstuffs* (a) from the facilities of Continental Freezers of Illinois, at Chicago, IL, to points in CO, IL, IN, IA, KS, KY, MI, MN, MO, NE, ND, OH, SD, and WI, and (b) from points in CO, IL, IN, IA, KS, KY, MI, MO, NE, ND, OH, SD, and WI to the facilities of Continental Freezers of Illinois, at Chicago, IL. (Hearing site: Chicago, IL.)

Note.—This republication corrects the docket number.

MC 146174 (Sub-1F), filed May 8, 1979, previously published in the **Federal Register** issue of October 4, 1979. Applicant: PD EXPRESS, INC., 817 West Fifth Ave., Columbus, OH 43212. Representative: David H. Rowe (same address as applicant). Transporting *beer* (except in bulk), (1) from Evansville, IN, to Chicago, IL, and (2) from Newport, KY, to Chicago, IL and points in OH. (Hearing site: Columbus, OH, or Washington, DC.)

Note.—This republication indicates the correct destinations in the second territorial description.

MC 146695 (Sub-2F), filed June 11, 1979. Applicant: YANKEE S. & L., INC., d.b.a. YANKEE MOTOR FREIGHT, 1136 East 500 South, Marion, IN 46952. Representative: Thomas F. Quinn, 11 North Pennsylvania St., 1301 First Federal Bldg., Indianapolis, IN 46204. Transporting (1) *containers*, and *container components*, and (2) *materials, equipment, and supplies* used in the manufacture, sale, and distribution of the commodities named in (1) above, between Gas City, IN, on the one hand, and, on the other, points in IL, MI, OH, KY, WI, AND MO. (Hearing Site: Indianapolis, IN, or Chicago, IL.)

MC 146775 (Sub-1F), filed June 11, 1979. Applicant: J. L. N. DISTRIBUTING, INC., 7305 North Loop Rd., El Paso, TX 79915. Representative: Richard Hubbert, P.O. Box 10236, Lubbock TX 79408. Transporting (1) *building materials*, from El Paso, TX, to points in NM and AZ, and (2) *lumber, lumber products, and waste paper*, in the reverse direction. (Hearing site: El Paso or Lubbock, TX.)

MC 147385 (Sub-1F), filed June 11, 1979. Applicant: D & B TRUCKING, INC., 14463 Foothill Blvd., Los Angeles, CA 91342. Representative: R. Y. Schureman, 1545 Wilshire Blvd., Los Angeles, CA 90017. Transporting *furniture, and materials and supplies used in the manufacture and distribution of furniture*, between Los Angeles, CA, and Poplar Bluff, MO, on the one hand, and, on the other, points in AZ, CA, CO, KS, MO, NM, NV, OK, OR, TX, UT, and WA, restricted to the transportation of traffic originating at or destined to the facilities of Rowe Furniture Corp. (Hearing site: Los Angeles, CA.)

MC 147584F, filed June 14, 1979. Applicant: TIMBER BY-PRODUCTS, INC., 1113 S. Hill St., P.O. Box 869, Albany, OR 97321. Representative:

Russell M. Allen, 1200 Jackson Tower, Portland, OR 97205. Transporting *woodchips, sawdust,* and *hog fuel,* from Polk and Yamhill Counties, OR, to Longview and Camas, WA. (Hearing site: Portland, OR.)

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Decided: November 14, 1979.

By the Commission review Board No. 3. Members Parker, Fortier and Hill. Member Hill not participating.

MC 1977 (Sub-34F), filed March 30, 1979, and previously noticed in the FR issue of October 2, 1979. Applicant: NORTHWEST TRANSPORT SERVICE, INC., 5231 Monroe St., Denver, CO 80216. Representative: Leslie R. Kehl, 1600 Lincoln Center, 1660 Lincoln St., Denver, CO 80264. 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 commodities which, because of size or weight, require special equipment), (1) from Denver, CO, north over I–25 to Junction I–90, then westerly over I–90 to Spokane, WA, and return over the same route, serving no intermediate points, (2) from Salt Lake City, UT, north over I–15 to Junction I–90, then westerly over I–90 to Spokane, WA, and return over the same route, serving no intermediate points, and (3) between Salt Lake City, UT, north over I–15 to Junction I–80 N, then over I–80 N to Junction U.S. 395, thence north U.S. 395 to Junction I–90 to Spokane, WA, and return over the same route, serving the intermediate point of Pasco, WA. (Hearing site: Denver, CO.)

MC 11207 (Sub-472F), filed March 21, 1979, and previously noticed in the FR issue of August 21, 1979. Applicant: DEATON, INC., 317 Avenue W, P.O. Box 938, Birmingham, AL 35201. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Avenue, Washington, DC 20014. Transporting *metal articles,* between the facilities of O'Neal Steel, Inc., at or near (a) Birmingham and Mobile, AL, (b) Little Rock, AR, (c) Jacksonville and Tampa, FL, (d) Atlanta, GA, (e) Lafayette, Monroe, and Shreveport, LA, (f) Jackson, MN, and (g) Chattanooga and Knoxville, TN, on the one hand, and, on the other, points in AL, AR, FL, GA, KY, LA, MD, MS, MO, NC, OK, SC, TN, TX, VA, and WV. (Hearing site: Birminghham, AL, or Washington, DC.)

Note.—This republication is to show MS as a destination point.

MC 21866 (Sub-121F), filed May 18, 1979. Applicant: WEST MOTOR FREIGHT, INC., 740 S. Reading Ave., Boyertown, PA 19512. Representative: Alan Kahn, 1920 Two Penn Center Plaza, Philadelphia, PA 19102. Transporting *food and food products,* and *materials and supplies* used in the manufacture and distribution of food and food products (except commodities in bulk, in tank vehicles) between the facilities of Red Cheek, Inc., at Fleetwood and Richmond Township (Berks County), PA and Hendersonville, NC, 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: Washington, DC, or Philadelphia, PA.)

MC 26396 (Sub-241F), filed May 1, 1979. Applicant: POPELKA TRUCKING CO., d.b.a. THE WAGGONERS, P.O. Box 990, Livingston, MT 59047. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. Transporting *agricultural chemicals,* from Luling, LA, to ports of entry on the international boundary line between the United States and Canada located at points in WA, MT, NE, and MN. (Hearing site: Billings, MT.)

MC 32166 (Sub-14F), filed May 2, , 1979. Applicant: BRONAUGH MOTOR EXPRESS, INC., 1025 Nandino Blvd., Lexington, KY 40511. Representative: Francis W. McInerny, 1000 16th St., NW, Washington, DC 20036. 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), from Lexington, KY, over U.S. Hwy 60 to its junction with Blue Grass Parkway to its junction with Interstate Hwy 65, then over Interstate Hwy 65 to Nashville, TN, and return over the same route, serving all intermediate points east and north of the Anderson-Washington, KY, county line, (2) from the intersection of U.S. Hwy 150 with the Boyle-Washington county line over U.S. Hwy 150 to its junction with Blue Grass Parkway, then over Blue Grass Parkway to its junction with Interstate Hwy 65, then over Interstate Hwy 65 to Nashville, TN, and return over the same route, serving no intermediate points and serving the intersection of U.S. Hwy 150 with the Boyle-Washington, KY, county line for joinder only; (3) from the intersection of KY Hwy 80 with the Laurel-Rockcastle, KY county line over KY Hwy 80 to its junction with Cumberland Parkway, then over Cumberland Parkway to its junction with Interstate Hwy 65, serving no intermediate points and serving the intersection of KY Hwy 80 with the Laurel-Rockcastle, KY county line for joinder only, and (4) From Louisville, KY, over Interstate Hwy 71 to Cincinnati, OH, and return over the same route, serving no intermediate points. (Hearing site: Lexington, KY, and Nashville, TN.)

MC 42487 (Sub-912F), filed April 29, 1979. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Drive, Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. 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 Glens Falls, NY, and ports of entry on the international boundary line between the United States and Canada at or near Champlain, NY, over U.S. Hwy 9, serving the intermediate points of Plattsburgh and Champlain, NY, and serving junction U.S. Hwy 9 and NY Hwy 149, and junction U.S. Hwy 9 and NY Hwy 314 for purposes of joinder only, (2) between Pittsfield, MA, and ports of entry on the international boundary line between the United States and Canada at or near Highgate Springs, VT over U.S. Hwy 7, serving all intermediate points and the off-route point of Pownal, VT, (3) between junction U.S. Hwy 9 and NY Hwy 149 and Rutland, VT; from junction U.S. Hwy 9 and NY Hwy 149 over NY Hwy 149 to junction U.S. Hwy 4, then over U.S. Hwy 4 to Rutland, and return over the same route, serving no intermediate points, (4) between junction U.S. Hwy 9 and NY Hwy 314, and junction U.S. Hwy 2 and U.S. Hwy 7; from junction U.S. Hwy 9 and NY Hwy 314 over NY Hwy 314 to VT Hwy 314, (via ferry), then over VT Hwy 314 to U.S. Hwy 2 then over U.S. Hwy 2 to junction U.S. Hwy 7, serving no intermediate points, (5) between Rutland, VT, and Lebanon, NH, over U.S. Hwy 4, serving the intermediate points of Woodstock and White River Junction, VT, (6) between Champlain, NY, and Swanton, VT; from Champlain over U.S. Hwy 2 to junction VT Hwy 78, then over VT Hwy 78 to Swanton, and return over the same route, serving the intermediate point of Rouses Point, NY, and (7) between Champlain, NY, and Malone, NY, over U.S. Hwy 11, serving no intermediate points serving all intermediate and off

route points in Chittenden and Rutland Counties, VT, in routes (2) through (5) as described above. (Hearing site: Burlington, VT.)

Note.—Applicant indicates its intention to tack this authority with existing authority.

MC 45716 (Sub-12F), filed March 23, 1979. Applicant: WELSH BROS. MOTOR SERVICE, INC., 920–150th St., Hammond, IN 46320. Representative: Carl L. Steiner, 39 S. LaSalle St., Chicago, IL 60603. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *adhesives, gypsum and gypsum products, and building materials*, (except commodities in bulk), and (2) *materials and supplies used in the manufacture or distribution of the commodities named in (1)*, (except commodities in bulk), between the facilities of the United States Gypsum Company, at East Chicago, IN, on the one hand, and, on the other, points in IL, IN, IA, KY, MO, and WI, restricted to the transportation of traffic orignating at or destined to the facilities of United States Gypsum Company, at East Chicago, IN. (Hearing site: Chicago, IL.)

MC 61396 (Sub-371F), filed May 10, 1979. Applicant: HERMAN BROS., INC., 2565 St. Marys Ave., P.O. Box 189, Omaha, NE 68101. Representative: Duane L. Stromer (same address as applicant). Transporting *cement*, from Joppa, IL, to points in IA and NE. Condition: The person or persons engaged in common control of applicant and another regulated carrier must file an application under 49 U.S.C. 11343 (formerly section 5(2) of the Interstate Commerce Act) for approval of the common control, or file an affidavit indicating why such approval is unnecessary. (Hearing site: Omaha, NE, or St. Louis, MO.)

Note.—Dual operations may be involved.

MC 111956 (Sub-49F), filed April 12, 1979. Applicant: SUWAK TRUCKING COMPANY, a corporation 1105 Fayette St., Pittsburgh, PA 15301. Representative: Henry M. Wick, Jr., 2310 Grant Bldg., Pittsburgh, PA 15219. Transporting *general commodities*, (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), in containers or in trailers, between points in DE, MD, NY, NJ, and VA, on the one hand, and, on the other, points in OH, the lower peninsula of MI, and Allegheny, Bedford, Blair, Cambria, Fayette, Greene, Indiana, Somerset, Washington and Westmoreland Counties, PA, restricted to the transportation of traffic having an immediately prior or subsequent movement by water in foreign commerce. (Hearing site: Washington, DC, or Pittsburgh, PA)

Note.—The carrier must satisfy the Commission that its common control possibilities are either approved by the Commission or do not require Commission approval.

MC 114416 (Sub-9F), filed February 28, 1979. Applicant: WESTERN TRANSPORT CRANE & RIGGING, a corporation, Route 11, Grant Creek Road, Missoula, MT 59807. Representative: Henry C. Winters, 525 Evergreen Building, Renton, WA 98055. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *contractors, sawmill, and mining materials, equipment, and supplies*, between points in AZ, CA, CO, ID, KS, MT, NE, NV, NM, ND, OR, SD, TX, VT, WA, and WY, restricted to the transportation of traffic originating at or destined to the facilities of Washington Corporations, Washington Construction Co., Modern Machinery, and Rental Equipment Co. Condition: The person or persons who appear to be in common control must file either an application for approval of such common control under 49 U.S.C. 11343 and 11344 (formerly Section 5(2) of the Interstate Commerce Act) or an affidavit indicating why approval is unnecessary. (Hearing site: Missoula, MT, or Spokane, WA.)

MC 116457 (Sub-46F), filed April 10, 1979. Applicant: GENERAL TRANSPORTATION INCORPORATED, 1804 S. 27th Ave., Phoenix, AZ 85005. Representative: D. Parker Crosby (same address as applicant). Transporting (1) *insulation materials, polystrene products, eurethane products, insulated building panels, paint, wood fibre products and* (2) *tools, equipment and supplies* used in the installation of the commodities in (1) above (except in bulk), from points in AZ, and UT, to points in CA, CO, OR, WA, ID, NV, UT, NM, AZ, WY, MT, TX, MO, AR, KS, OK, NE, MN, IA, ND, and SD. (Hearing site: Phoenix, AZ.)

MC 116947 (Sub-72F), filed May 25, 1979. Applicant: SCOTT TRANSFER CO., INC., 920 Ashby St., S.W., Atlanta, GA 30310. Representative: Wm. Addams, P.O. Box 720434, Atlanta, GA 30328. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1)(a) *adhesives, caulks, specialty chemicals, in containers*, (b) *empty plastic containers*, and (2) *materials and supplies* (except commodities in bulk) used in the manufacture of the commodities named in (1) above, between the facilities of Franklin Chemical Industries at or near Columbus, OH, and points in the United States (except AK and HI), under continuing contract(s) with Franklin Chemical Industries, Inc., of Columbus, OH. (Hearing site: Atlanta, GA.)

MC 119176 (Sub-22F), filed March 29, 1979. Applicant: THE SQUAW TRANSIT COMPANY, P.O. Box 9368, Tulsa, OK 74107. Representative: Clayte Binion, 1108 Continental Life Bldg., Fort Worth, TX 76102. Transporting (1)(a) *machinery, equipment, materials, and supplies*, used in or in connection with the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products, and (b) *machinery, equipment, materials, and supplies* used in, or in connection with, the construction, operation, repair, servicing, maintenance, and dismantling of pipe lines, including the stringing and picking-up thereof (except in connection with main pipe lines) and (2) *earth drilling machinery and equipment, and machinery, equipment, materials, supplies, and pipe* incidental to, used in, or in connection with (a) the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, (b) the completion of holes or wells drilled, (c) the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites and (d) the injection or removal of commodities into or from holes or wells, between points in CA, AS, and NV, on the one hand, and, on the other, points in KS, IL, LA, MO, NM, OH, OK, PA, TX, MS, AR, AL, GA, FL, IN, MI, and WV. (Hearing site: Houston, TX, or Tulsa, OK.)

MC 119777 (Sub-379F), filed May 23, 1979. Applicant: LIGON SPECIALIZED HAULER, INC., Highway 85-East, Madisonville, KY 42431. Representative: Carl U. Hurst, P.O. Drawer "L", Madisonville, KY 42431. Transporting (1) *gypsum wallboard*, from the facilities of Weyerhaeuser Company, Inc. at Briar, AR, to points in the United States (except AK and HI), (2) *posts, poles and piling*, from the facilities of Weyerhaeuser Company, Inc. at DeQueen, AR, to points in the United States (except AK and HI), (3) *crossties*, from the facilities of Weyerhaeuser Company, Inc. at Wright City, OK, to points in the United States (except AK and HI), (4) *particleboard and board or*

sheets, from the facilities of Weyerhaeuser Company, Inc. at Craig, OK, to points in the United States (except AK and HI), (5) *lumber and plywood* (a) from the facilities of Weyerhaeuser Company, Inc. at DeQueen, Dierks, Murfreesboro, and Mountain Pine, AR, to points in Logan County, KY, and (b) between the facilities of Weyerhaeuser Company, Inc. at DeQueen, Dierks, Murfreesboro, and Mountain Pine, AR and Wright City, OK and those points in the United States in and west of MT, WY, UT, AZ, and NM (except AK and HI), (6) *materials, equipment and supplies* (except commodities in bulk) used in the production and distribution of commodities named in (1), (2), (3), (4) and (5) above, from points in the United States (except AK and HI), to the facilities of Weyhaeuser Company, Inc. at DeQueen, Dierks, Murfreesboro, Briar and Mountain Pine, AR and Wright City, and Craig, OK, restricted in (1), (2), (3), (4) and (6) above to the transportation of traffic originating at or destined to the facilities of Weyerhaeuser Company, Inc. (Hearing site: Little Rock, AR, or Dallas, TX.)

MC 121046 (Sub-8F), filed May 29, 1979. Applicant: B. A. MILLER & SONS TRUCKING, INC., State Route 109, Liberty Center, OH 43532. Representative: A. Charles Tell, 100 East Broad St., Columbus, OH 43215. Transporting (1) *plastic articles* (except commodities in bulk), from the facilities of S. F. Plastics, Inc., at or near Liberty Center, OH, to points in MI, and (2) *materials and supplies* (except commodities in bulk), used in manufacture and sale of plastic articles, in the reverse direction. (Hearing site: Columbus, OH.)

Note.—Dual operations may be involved.

MC 126346 (Sub-24F), filed March 26, 1979. Applicant: HAUPT CONTRACT CARRIERS, INC., P.O. Box 1023, Wausau, WI 54401. Representative: Daniel C. Sullivan, 10 South LaSalle Street, Suite 1600, Chicago, IL 60603. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are manufactured or distributed by manufacturers of (1) power transmission and fluid handling equipment; (2) heat transfer, refrigeration, and air conditioning units; (3) avionics, actuating, generating, control and power systems; (4) pumps; (5) castings and weldments; (6) parts and components for (1), (2), (3), (4) and (5); and (7) *equipment, materials* and *supplies* for (1), (2), (3), (4), (5) and (6) (except commodities in bulk), between points in the United States (except AK and HI), under continuing contract(s) with Sundstrand Corporation, Sundstrand Heat Transfer, Inc., Sundstrand Tubular Products, Inc., The Falk Corporation, Sundstrand Data Control, Inc., and Global Navigation, Inc. (Hearing site: Chicago, IL or Milwaukee, WI.)

MC 129166 (Sub-2F), filed May 22, 1979. Applicant: RED WING TRANSPORTATION CORPORATION, 3154 North Service Drive, Red Wing, MN 55066. Representative: Harry P. Strong, 201 Security Bldg., 2395 University Ave., St. Paul, MN 55114. To operate as a *contract carrier,* by motor vehicle, in interstate for foreign commerce, over irregular routes, transporting *chromed hides,* from points in AL, AR, CO, GA, ID, IL, IN, IA, KS, KY, LA, MI, MS, MO, MT, NE, NM, NC, ND, OH, OK (except points in that part of Oklahoma on and east of U.S. Hwy 81), SC, SD, TN, TX, (except points in the Dallas-Ft. Worth commercial zone), and WI, to Red Wing, MN, under continuing contract(s) with S. B. Foot Tanning Co. of Red Wing, MN. (Hearing site: Minneapolis-St. Paul, MN.)

MC 129326 (Sub-33F), filed May 24, 1979. Applicant: CHEMICAL TANK LINES, INC., Highway 60 West, P.O. Box 432, Mulberry, FL 33860. Representative: Mark D. Russell, Suite 406–9, Walker Bldg., 734 15th St. NW., Washington, DC 20005. Transporting (1) *animal feed, feed ingredients, supplements and additives,* and (b) *materials, equipment and supplies* used in the manufacture, and distribution of animal feeds, from points in GA, to points in FL, (2) *styrene monomer,* in bulk, in tank vehicles, from Baton Rouge, Carville and Donaldson, LA, to Bartow, FL, and (3) *feed,* from points in AL, GA, and MS, to points in FL. (Hearing site: Atlanta, GA, or Tampa, FL.)

MC 134477 (Sub-342F), filed May 2, 1979. Applicant: SCHANNO TRANSPORTATION, INC., 5 West Mendota Road, West St. Paul, MN 55118. Representative: Robert P. Sack, P.O. Box 6010. West St. Paul, MN 55118. Transporting (1) *toilet preparations* and *soap products,* and (2) *commodities* used in the sale of the commodities named in (1) above, from Chaska, MN, to points in the United States (except AK and HI). (Hearing site: St. Paul, MN.)

MC 136886 (Sub-4F), filed May 24, 1979. Applicant: MASTERSON TRANSFER CO., INC., 3000 Pennsylvania Ave. West, Warren, PA 16365. Representative: Ronald W. Malin, Bankers Trust Bldg., Jamestown, NY 14701. Transporting *waste water treatment equipment* and *fabricated steel,* from Warren, PA, to those points in the United States east of MN, IA, MO, AR and LA (except points in Chautauqua, Erie and Cattarugus Counties, NY). (Hearing site: Buffalo, NY.)

MC 141577 (Sub-2F), filed May 3, 1979. Applicant: RED STAR EXPRESS LINES OF ONTARIO, LIMITED, 1608 The Queensway, Toronto, ON M8Z 1V4. Representative: Leonard A. Jaskiewicz, 1730 M Street, N.W., Washington, DC 20036. 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 Detroit, MI, and the ports of entry on the international boundary line between the United States and Canada at Port Huron, MI, over Interstate Hwy 94, serving no intermediate points, as an alternate route for operating convenience only in connection with applicants otherwise authorized regular route operations. (Hearing site: Rochester or Auburn, NY.)

MC 143077 (Sub-3F), filed March 27, 1979. Applicant: GERARD S. REDER, d.b.a. BERKSHIRE ARMORED CAR SERVICE, P.O. Box 62, 343 Pecks Road, Pittsfield, MA 01201. Representative: James M. Burns, 1383 Main St., Suite 413, Springfield, MA 01103. To operate as *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, (1) *such commercial papers, documents, and written instruments* (except currency and negotiable securities) as are used in the business of banks and banking institutions, and (2) *coins, currency and instruments and documents* used in the business of banks and banking institutions in armored motor vehicles escorted by armed guards, between points in CT, MA, ME, and RI, all services are to be performed under continuing contract(s) with banks or banking institutions. (Hearing site: Springfield, MA, or Washington, DC.)

MC 143276 (Sub-15F), filed May 10, 1979. Applicant: WEAVER TRANSPORTATION COMPANY, 5452 Oakdale Road, Smyrna, GA 30080. Representative: James L. Brazee, Jr., 3355 Lenox Road #795, Atlanta, GA 30326.Transporting *mortar and cement mixes, dry concrete mix, cement, fly ash* (in bags), *fly ash cement and lime, sand, rock and stone, and acrylic paints,* (except in bulk), from the facilities of Williams Brothers Concrete, Inc., at or near Atlanta, GA, to points in AL, FL, MS, NC, SC, TN, and VA. (Hearing site: Atlanta, GA.)

MC 143696 (Sub-11F), filed May 21, 1979. Applicant: AMERICAN

INDUSTRIAL TRANSPORTATION, INC., P.O. Box 1416, Henderson, TX 75652. Representative: Hugh T. Matthews, 2340 Fidelity Union Tower, Dallas, TX 75201. To operate as a *contact carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *springs, wheels, tubing, and* (2) *iron and steel articles*, between points in the United States (except AK and HI), under continuing contract(s) with Standard Commodities Import and Export Corp. of Canoga Park, CA. (Hearing site: Dallas, TX.)

MC 145636 (Sub-2F), filed May 10, 1979. Applicant: BOB BRINK, INC., 165 Stueben St., Winona, MN 55987. Representative: Samuel Rubenstein, 301 North Fifth St., Minneapolis, MN 55403. Transporting (1) *processed grain products*, and (2) *commodities* which are otherwise exempt from economic regulation under Section 10526(6) (formerly Section 203(b)(6) of the Interstate Commerce Act when moving in mixed loads with commodities named in (1) above, from (a) Bunker Hill, KS, (b) Minneapolis, (c) St. Charles and Stockton, MN, to points in CA, CO, OR and WA. (Hearing site: Minneapolis or St. Paul, MN.)

MC 145187 (Sub-1F), filed March 26, 1979. Applicant: HERBERT TRUCKING, INC., R.R. #1, Macon, IL 62544. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *fork lift trucks, yard tractors, trackmobiles, aerial platform lifts, and material handling equipment*, between points in AR, IL, IN, IA, KY, KS, MN, MI, MO, OH, PA, TN, and WI, under continuing contract(s) with Wiese Planning & Engineering, Inc. of Decatur, IL. (Hearing site: St. Louis, MO, or Chicago, IL.)

MC 145656 (Sub-2F), filed May 22,, 1979. Applicant: TIME CONTRACT CARRIERS, INC., 17734 Sierrra Highway, Canyon Country, CA 91351. Applicant's representative: Milton W. Flack, 4311 Wilshire Blvd., Suite 300, Los Angeles, CA 90010. Transporting (1) *foods, food products and commodities dealt in by retail gift shops*, and (2) *plants and bulbs* when moving at the same time and in the same vehicle with the commodities in (1) above, from the facilities of Harry and David at or near Medford, OR, to points in the United States (except AK, OR and HI), and (3) *materials, equipment and supplies* used in or incidental to the packing of items in (1) and (2) above, between the facilities of Harry and David at or near Medford, OR, and Dinuba, Kingsburg and Santa Ana, CA, Clearwater, FL, Newark, NY, Edinburg, TX and Chelan Falls, WA. (Hearing site: Los Angeles, CA.)

MC 145986 (Sub-1F), filed May 25, 1979. Applicant: EVERETT P. GLAZE, 38 West Hinman Ave., Columbus, OH 43207. Representative: Richard H. Brandon, P.O. Box 97, 220 West Bridge St., Dublin, OH 43017. Transporting (1) *glassware and glass articles*, from points in Pickaway County, OH, to Columbus, OH, and (2) *materials and supplies* (except commodities in bulk) used in the manufacture and distribution of the commodities named in (1) above, in the reverse direction. (Hearing site: Columbus, OH.)

MC 146006 (Sub-2F), filed March 15, 1979. Applicant: RODCO LEASING, INC., 380 Union St., West Springfield, MA 01089. Representative: James M. Burns, 1383 Main St.—Suite 413, Springfield, MA 01103. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *stationery, office and school supplies*, between Springfield, MA, Meridian, MS, Chicago, IL, and Los Angeles, CA, under continuing contracts with National Blank Book Company of Springfield, MA. (Hearing site: Springfield, MA, or Washington, DC.)

MC 146946 (Sub-1F), filed April 14, 1979. Applicant: LINTEN HEAVY HAULERS, 3211 Gilman Road, El Monte, CA 91732. Representative: M. E. Otten (same address as applicant). Transporting (1)(a) *new and used factory machinery* and (1)(b) *industrial machinery* and (2) *components* for the commodities in (1)(a) and (1)(b), (3) *scrap metal*, (4) *tanks*, (5) *water purifying equipmnent*, (6) *construction equipment*, and (7) *over-sized or over-weight specialized machinery* from points in the United States to points in the United States (except AK and HI). (Hearing site: Los Angeles, CA or Washington, DC.)

MC 147156F, filed April 20, 1979. Applicant: MANUFACTURER'S MOBILE HOME TRANSPORT, INC., P.O. Box 1519, Athens, TX 75751. Representative: Thomas F. Sedberry, 801 Vaughn Bldg., Austin, TX 78701. Transporting (1) *trailers and mobile homes* designed to be drawn by passenger automobiles, and (2) *buildings* and modular structures in sections mounted on wheeled undercarriages, from points in Henderson and Ellis, Counties, TX, to points in AR, LA, OK and NM. (Hearing site: Dallas or Houston, TX.)

MC 147447F, filed May 29, 1979. Applicant: R. P. CASAGRANDA, d.b.a. R.P. CASAGRANDA, 494 Main St., Oxford, MA 01540. Representative: Frederick T. O'Sullivan, P.O. Box 2184, Peabody, MA 01960. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *orange juice and orange juice containers* (except commodities in bulk, in tank vehicles), between Dudley, MA, on the one hand, and, on the other, points in ME, NH, VT, CT, RI, and NJ, under a continuing contract(s) with Deary Bros., of Dudley, MA. (Hearing site: Boston, MA.)

MC 147427F, filed May 29, 1979. Applicant: DOOR TRANSPORTATION, INC., 50450 East Russell Schmidt Blvd., Mt. Clemens, MI 48043. Representative: William B. Elmer, 21635 East Nine Mile Rd., St. Clair Shores, MI 48080. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *doors*, and (2) *equipment, materials, and supplies* used in the manufacture, distribution, and installation of the commodities in (1) above, between Mt. Clemens, MI, on the one hand, and, on the other, points in CT, DE, IA, IL, IN, KS, KY, MA, MD, ME, MN, MO, NC, ND, NE, NH, NJ, NY, OH, PA, RI, SD, TN, VA, VT, WI, WV, and DC, under a continuing contract(s) with Michigan Birch Door Manufacturers, Inc., of Mt. Clemens, MI. (Hearing site: Detroit, MI.)

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Decided: November 9, 1979.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

MC 908 (Sub-5F), filed May 22, 1979. Applicant: CONSOLIDATED CARTAGE CO., INC., 4528 South McDowell Avenue, Chicago, IL 60609. Representative: Eugene L. Cohn, One North LaSalle Street, Chicago, IL 60602. Transporting (1) *bulb subassemblies, tube subassemblies, face plates, implosion plates, fiberboard boxes*, and glassware, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk, in tank vehicles), between the facilities of Corning Glass Works, at Bluffton, IN, on the one hand, and, on the other, points in IL. (Hearing site: Chicago, IL.)

MC 2229 (Sub-212F), filed May 29, 1979. Applicant: RED BALL MOTOR FREIGHT, INC., 3177 Irving Blvd., Dallas, TX 75247. Representative: Jackie Hill (same address as applicant). 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 Mobile, AL, and Atlanta, GA, from Mobile over U.S. Hwy 31 to Montgomery, then over Interstate Hwy 85 to Atlanta, and return over the same route, serving no intermediate points, (2) between Mobile and Montgomery, AL, over Interstate Hwy 65, serving no intermediate points but serving Montgomery, AL, for the purpose of joinder only, and (3) between Atlanta, GA, and Chattanooga, TN, over Interstate Hwy 75, serving no intermediate points, and (4) between Atlanta, GA, and Greenville, SC, over Interstate Hwy 85, serving no intermediate points. (Hearing site: Atlanta, GA, or Greenville, SC.)

Note.—Applicant intends to tack with existing certificates, to interline at published interchange points and to interline at Greenville, SC, and Chattanooga, TN, with ET & WNC Transportation Company.

MC 2359 (Sub-24F), filed May 29, 1979. Applicant: DAMEO TRUCKING, INC., 568 Central Ave., Bridgewater, NJ 08807. Representative: Morton E. Kiel, Suite 1832, 2 World Trade Center, New York, NY 10048. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, transporting *talc*, in bulk, from West Windsor, VT, to Royston, GA, under continuing contract with Johnson & Johnson, of Piscataway, NJ. (Hearing site: New York, NY.)

MC 6319 (Sub-9F), filed May 29, 1979. Applicant: CALIFORNIA CARTAGE COMPANY, INC., 20021 Susana Rd., Compton, CA 90221. Representative: R. Y. Schureman, 1545 Wilshire Blvd., Los Angeles, CA 90017. Transporting *borax, boric acid, and borate rock*, in marine containers, from the facilities of U.S. Borax & Chemical Corp., at or near Boron, CA, to Los Angeles, Long Beach, Oakland, Port Hueneme, Richmond, San Diego, San Francisco, and Stockton, CA. (Hearing site: Los Angeles, CA.)

MC 18088 (Sub-61F), filed May 29, 1979. Applicant: FLOYD & BEASLEY TRANSFER COMPANY, INC., Post Office Drawer 8, Sycamore, AL 35149. Representative: Charles Ephraim, Suite 600, 1250 Connecticut Ave., NW, Washington, DC 20036. Transporting *such commodities* as are dealt in or used by manufacturers, converters, and distributors of (1) *paper and paper products*, (2) *cellous or synthetic materials and products*, and (3) *consumer service and specialty products* (except commodities in bulk), between the facilities of Kimberly-Clark Corporation, of Corinth, MS., on the one hand, and, on the other, points in the United States, (except AK and HI), restricted to the transportation of traffic originating at or destined to facilities of Kimberly-Clark Corporation, at or near Corinth, MS. (Hearing site: Washington, DC.)

MC 18738 (Sub-59F), filed May 30, 1979. Applicant: SIMS MOTOR TRANSPORT LINES, INC., 610 West 138th Street, Riverdale, IL 60627. Representative: Eugene L. Cohn, One North LaSalle Street, Chicago, IL 60602. Transporting *iron and steel articles*, between Portage, IN, and Joliet and Chicago, IL, on the one hand, and, on the other, points in Kenosha, Milwaukee, Ozaukee, Racine, Washington, and Waukesha Counties, WI. (Hearing site: Chicago, IL.)

MC 23618 (Sub-52F), filed April 30, 1979. Applicant: McALISTER TRUCKING COMPANY d.b.a. MATCO, P.O. Box 2377, Abilene, TX 79604. Representative: Lexas J. Atchison (same as applicant). Transporting (1) *metal articles*, from points in Callahan and Taylor Counties, TX, to points in the United States (except TX, AK, and HI), and (2) *materials, equipment, and supplies* used in the manufacture of the commodities in (1) above, in the reverse direction. (Hearing site: Dallas, TX.)

MC 25798 (Sub-379F), filed May 29, 1979. Applicant: CLAY HYDER TRUCKING LINES, INC., P.O. Box 1186, Auburndale, FL 33823. Representative: Tony G. Russell (same address as applicant). Transporting *paper, paper products, and wood pulp board*, from West Point, VA, to points in IL, IN, IA, and OH. (Hearing site: Tampa, FL.)

MC 25798 (Sub-380F), filed May 29, 1979. Applicant: CLAY HYDER TRUCKING LINES, INC., P.O. Box 1186, Auburndale, FL 33823. Representative: Tony G. Russell (same address as applicant). Transporting *chewing gum and confectionery products*, from the facilities of Topps Chewing Gum, Inc., at Duryea and Scranton, PA, to points in AL, CA, CO, FL, GA, IL, IN, IA, KS, KY, MI, MN, MO, NC, OH, TX, and WI. (Hearing site: Tampa, FL.)

MC 25798 (Sub-381F), filed May 29, 1979. Applicant: CLAY HYDER TRUCKING LINES, INC., P.O. Box 1186, Auburndale, FL 33823. Representative: Tony G. Russell (same address as applicant). Transporting (1) *paper and paper products, plastic and plastic products, chemicals, and building products*, and (2) *materials, equipment, and supplies* used in the manufacture of the commodities in (1) above, between points in the United States (except AK and HI), restricted to the transportation of traffic origniating at or destined to the facilities of Union Camp Corp. (Hearing site: Tampa, FL.)

MC 48948 (Sub-13F), filed May 29, 1979. Applicant: THE HOCKING CARTAGE COMPANY, R.R. #2, P.O. Box 373, Logan, OH 43138. Representative: Robert W. Gardier, Jr., 100 East Broad Street, Columbus, OH 43215. Transporting (1) *pipe, pipe fittings, and chimney assemblies*, and (2) *materials and supplies* used in the manufacture of the commodities in (1) above, between Logan, OH, on the one hand, and, on the other, points in MI, PA, IN, KY, and WV. (Hearing site: Columbus, OH.)

MC 57239 (Sub-45F), filed May 29, 1979. Applicant: RENNER'S EXPRESS, INC., 1350 S. West St., Indianapolis, IN 46225. Representative: Alki E. Scopelitis, 1301 Merchants Plaza, Indianapolis, IN 46204. 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 Indianapolis, and Evansville, IN: from Indianapolis, over IN Hwy 67 to junction IN Hwy 57, then over IN Hwy 57 to junction U.S. Hwy 41, then over U.S Hwy 41 to Evansville, and return over the same route, and (2) between Evansville, IN, and Louisville, KY; from Evansville, over U.S. Hwy 41 to junction Interstate Hwy 64, then over Interstate Hwy 64 to Louisville, and return over the same route, serving no intermediate points in routes (1) and (2) above. (Hearing site: Indianapolis, IN, or Chicago, IL.)

MC 57778 (Sub-30F), filed May 29, 1979. Applicant: MICHIGAN REFRIGERATED TRUCKING SERVICE, INC., 6134 West Jefferson Ave., Detroit, MI 48209. Representative: William B. Elmer, 21635 East Nine Mile Rd., St. Clair Shores, MI 48080. Transporting (1) *foodstuffs*, from the facilities of Globe Products Co., Inc., at or near Clifton, NJ, to points in AR, IN, IL, LA, MI, MN, OH, OK, PA, TN, TX, and WI, and (2) *frozen fruit*, from Brownsville and Laredo, TX, and points in Grand Traverse County, MI, to the facilities of Globe Products Co., Inc., at or near Clifton, NJ (Hearing site: Lansing, MI.)

MC 57778 (Sub-31F), filed May 29, 1979. Applicant: MICHIGAN REFRIGERATED TRUCKING SERVICE, INC., 6134 West Jefferson Avenue, Detroit, MI 48209. Representative: William B. Elmer, 21635 East Nine Mile

Road, St. Clair Shores, MI 48080. Transporting *such merchandise as is dealt in by chain grocery and food business houses* (except commodities in bulk), in vehicles equipped with mechanical refrigeration, between points in IA, IL, IN, KY, MI, MO, MS, NY, OH, PA, TN, and WI, restricted to the transportation of traffic originating at or destined to the facilities of Kraft, Inc. (Hearing site: Lansing, MI.)

MC 61129 (Sub-8F), filed May 29, 1979.Applicant: B & H FREIGHT LINES, INC., P.O. Box 354, Harrisonville, MO 64701. Representative: Tom B. Kretsinger, 20 East Franklin, Liberty, MO 64068. To operate as a *common carrier*, by motor vehicle, in interstate or foreign comerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosvies, household goods as defined by the Commision, motor vehicles, liquid commodities, in bulk, in tank vehicles, and those which because of six size or weight require the use of special equipment), between Kansas City, MO, and Warsaw, MO, (1) from Kansas City over U.S. Hwy 50 to junction MO Hwy 13, then over MO Hwy 13 to Clinton, then over MO Hwy 52 to junction U.S. Hwy 65, then over U.S. Hwy 65 to Warsaw, and return over the same route, and (2) from Kansas City, over U.S. Hway 71 to Harrisonville, MO, then over U.S. Hwy 7 to Warsaw and return over the same route, serving in routes (1) and (2) above, Clinton, Calhoun, Windsor, Lincoln, and Warsaw, MO, as intermediate points, and points in Henry, Johnson, and Pettis Counties, MO, as off-route points. (Hearing site: Kansas City, MO.)

MC 78228 (Sub-123F), filed May 31, 1979. Applicant: J MILLER EXPRESS, INC., 962 Greentree Road, Pittsburgh, PA 15220. Representative: Henry M. Wick, Jr., 2310 Grant Building, Pittsburgh, PA 15219. Transporting (1) *prefabricated metal building products, and materials and supplies used in the manufacture of prefabricated metal building products*, (a) between Ambridge, PA, and Connersville, IN, on the one hand, and, on the other, points in AZ, CA, CO, ID, MT, ND, NM, NV, OR, SD, UT, WA, and WY, and (b) between Stockton, CA, and St. Louis, MO, on the one hand, and, on the other, points in the United States (except AK and HI), and (2) (a) *ventilators, ventilator parts, air louvers, prefabricated building metal work, and (b) materials and supplies used in the manufacture of the commodities* in (2) (a) above, between Batavia, OH, on the one hand, and, on the other, points in AZ, CA, CO, ID, MT, ND, NM, NV, OR, SD, UT, WA, and WY. (Hearing site: Pittsburgh, PA, or Washington, DC.)

MC 78228 (Sub-124F), filed May 31, 1979. Applicant: J MILLER EXPRESS, INC., 962 Greentree Road, Pittsburgh, PA 15220. Representative: Henry M. Wick, Jr., 2310 Grant Building, Pittsburgh, PA 15219. Transporting *petroleum fuel oil flue dust, in bulk, in dump vehicles*, from Oswego, NY, Portsmouth, VA, Strasburg and Yorktown, VA, to Bellaire, OH, Freeport and West Elizabeth, PA. (Hearing site: Washington, DC, or Pittsburgh, PA.)

MC 82509 (Sub-7F), filed May 25, 1979. Applicant: RICHARD C. NOERR, JR., d.b.a. METAL TRANSPORT, Rd 3, Lewistown, PA 17044. Representative: John E. Fullerton, 407 N. Front St., Harrisburg, PA 17101. Transporting *iron and steel products, aluminum products, and plastic products* from the facilities of Joseph T. Ryerson & Son, Inc., at Chicago, IL, to the facilities of Joseph T. Ryerson & Son, Inc., at Jersey City, NJ, and Philadelphia, PA. (Hearing site: Washington, DC.)

Note.—Dual operations may be involved.

MC 85718 (Sub-14F), filed May 29, 1979. Applicant: SEWARD MOTOR FREIGHT, INC., 1041 Elm Street, P.O. Box 126, Seward, NE 68434. Representative: Jack L. Schultz, P.O. Box 82028, Lincoln, NE 68501. Transporting *animal feed* (except in bulk, in tank vehicles), from the facilities of (a) Allen Products Corp., at Crete, NE, and (b) Gooch Feed Mill Corp., at Lincoln, NE, to Billings, MT, and points in CO, ID, OR, UT, and WA, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: Chicago, IL.)

MC 85718 (Sub-15F), filed May 29, 1979. Applicant: SEWARD MOTOR FREIGHT, INC., 1041 Elm Street, P.O. Box 126, Seward, NE 68434. Representative: MIchael J. Ogborn, P.O. Box 82028, Lincoln, NE 68501. Transporting (1) *automotive parts and accessories, automotive hand, electric, and pneumatic tools, and shock absorbers*, between the facilities of Walker Manufacturing Company, at (a) Seward, NE, and (b) Batavia, IL, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, from Chicago, IL, to the facilities of Walker Manufacturing Company, at Seward, NE. (Hearing site: Lincoln, NE.)

MC 106398 (Sub-913F), filed May 29, 1979. Applicant: NATIONAL TRAILER CONVOY, INC., 525 South Main, Tulsa, OK 74103. Representative: Fred Rahal, Jr. (same as applicant). Transporting *iron and steel pipe*, from the facilities of Special Steels Co. of N.Y. Inc., at Houston, TX, to points in the United States (except AK and HI), restricted to the transportation of traffic originating at the facilities of Special Steels Co. of N.Y. Inc., at Houston, TX. (Hearing site: Dallas, TX.)

MC 107478 (Sub-48F), filed May 29, 1979. Applicant: OLD DOMINION FREIGHT LINE, INC., 1791 Westchester Drive, P.O. Box 2006, High Point, NC 27261. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Avenue, Washington, DC 20014. Transporting *iron and steel articles* from Buffalo, NY, Cleveland, Canton, Elyria, Warren, Massillon, and Youngstown, OH, Sharon, PA, and Ferndale, MI, to points in AL, DE, GA, KY, MD, NC, SC, and VA. (Hearing site: Cleveland, OH, or Washington, DC.)

MC 108119 (Sub-160F), filed June 1, 1979. Applicant: E. L. MURPHY TRUCKING COMPANY, P.O. Box 43010, St. Paul, MN 55164. Representative: Andrew R. Clark, 1000 First National Bank Building, Minneapolis, MN 55402. Transporting *air pollution control equipment and parts for air pollution control equipment*, between Paramount and Eureka, CA, Grove City, OH, and Tempe, AZ, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: San Francisco or Los Angeles, CA.)

MC 108119 (Sub-162F), filed June 1, 1979. Applicant: E. L. MURPHY TRUCKING COMPANY, P.O. Box 43010, St. Paul, MN 55164. Representative: Andrew R. Clark, 1000 First National Bank Building, Minneapolis, MN 55402. Transporting (1) *pollution control equipment*, and (2) *parts and accessories* for pollution control equipment, from points in Solano County, CA, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: San Francisco or Los Angeles, CA.)

MC 109449 (Sub-37F), filed May 22, 1979. Applicant: KUJAK TRANSPORT, INC., Junction Avenue, Winona, MN 55987. Representative: Gary Huntbatch (same address as applicant). Transporting *meats, meat products and meat byproducts, articles distributed by meat-packing houses*, and *such commodities as are used by meat-packers in the conduct of their business when destined to and for use by meat packers*, as described in sections A, C, and D 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), between the facilities of Lauridsen Foods, at Britt, IA, and the facilities of

Armour and Co., at Mason City, IA, on the one hand, and, on the other, points in IL, IN, MN, ND, OH, SD, and WI, restricted to the transportation of traffic originating at or destined to the named facilities. (Hearing site: St. Paul, MN, or Washington, DC.)

MC 109818 (Sub-51F), filed May 29, 1979. Applicant: WENGER TRUCK LINE, INC., P.O. Box 3427, Davenport, IA 52804. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. Transporting *iron and steel articles*, from the facilities of Northwestern Steel & Wire Co., at or near Rock Falls and Sterling, IL, to points in IN, IA, MN, NE, CO, KS, and MO. (Hearing site: Chicago, IL.)

MC 109818 (Sub-52F), filed May 31, 1979. Applicant: WENGER TRUCK LINE, INC., P.O. Box 3427, Davenport, IA 52808. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. Transporting *meats, meat products, meat byproducts, and articles distributed by meat-packing houses*, and such commodities as are used by meat packers in the conduct of their business when destined to and for use by meat packers, as described in section A, C, and D 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), between the facilities of Lauridsen Foods, Inc., at or near Britt, IA, on the one hand, and, on the other, points in IL, IN, KS, MN, MO, NE, and WI, restricted to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: Kansas City, MO.)

MC 110988 (Sub-390F), filed May 29, 1979. Applicant: SCHNEIDER TANK LINES, INC., 4321 W. College Avenue, Appleton, WI 54911. Representative: Neil A. DuJardin, P.O. Box 2298, Green Bay, WI 54306. Transporting *acids and chemicals*, in bulk, from Memphis, TN, to points in IL,IN, IA, MI, MN, MT, NY, ND, OH, PA, and WI. (Hearing site: Chicago, IL.)

Note.—Dual operations may be involved.

MC 113678 (Sub-815F), filed May 22, 1979. Applicant: CURTIS, INC., 4810 Pontiac Street, Commerce City, CO 80022. Representative: Roger M. Shaner (same as applicant). Transporting *foodstuffs*, (except in bulk), from Dallas, TX, to Alburquerque, NM, and Denver, CO. (Hearing site: Denver, CO.)

MC 113678 (Sub-816F), filed May 22, 1979. Applicant: CURTIS, INC., 4810 Pontiac Street, Commerce City, CO 80022. Representative: Roger M. Shaner (same address as applicant). Transporting *frozen human plasma*, from Denver, CO, to Louisville, KY, Chicago, IL, and Abilene and San Antonio, TX. (Hearing site: Denver, CO.)

MC 113678 (Sub-817F), filed May 10, 1979. Applicant: CURTIS, INC., 4810 Pontiac Street, Commerce City, CO 80022. Representative: Roger M. Shaner (same address as applicant). Transporting *plastic containers, and materials and supplies* used in the manufacture and distribution of plastic containers (except commodities in bulk, in tank vehicles), (1) between Denver, CO, on the one hand, and, on the other, those points in the United States in and west of MN, IA, MO, AR, and LA (except AK and HI), and (2) from Denver, CO, to New Castle, DE, Indianapolis, IN, and Columbus, OH. (Hearing site: Denver, CO..)

MC 113678 (Sub-818F), filed May 29., 1979. Applicant: CURTIS, INC., 4810 Pontiac Street, Commerce City, CO 80022. Representative: Roger M. Shaner (same as applicant). Transporting *charcoal, charcoal briquettes, hickory chips, charcoal lighter fluid, and compressed sawdust firplace logs*, from the facilities of Husky Industries, Inc., at or near White City, OR, to points in AZ, CA, ID, CO, MT, NV, UT, WA, AND WY. (Hearing site: Atlanta, GA.)

MC 114569 (Sub-318F), filed May 22, 1979. Applicant: SHAFFER TRUCKING, INC., P.O. Box 418, New Kingstown, PA 17072. Representative: N. L. Cummins (same as applicant). Transporting *such merchandise* as is dealt in or used by chain restaurants, between points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of International House of Pancakes. (Hearing site: Chicago, IL, or Washington, DC.)

Note.—Dual operations may be involved.

MC 114569 (Sub-319F), filed May 30, 1979. Applicant: SHAFFER TRUCKING, INC., P.O. Box 418, New Kingstown, PA 17072. Representative: N. L. Cummins (same address as applicant). Transporting: (1) *metal building materials, parts for metal buildings, sealing compounds, and accessories for metal buildings*, from Philadelphia, PA, to points in AZ, CA, CO, GA, FL, ID, MT, NC, NE, NM, ND, NV, OR, SC, SD, UT, WA, and WY. (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 114939 (Sub-53F), filed June 1, 1979. Applicant: BULK CARRIERS LIMITED, P.O. Box 10, Cooksville Post Office, Mississauga, Ontario, Canada L5A 2W7. Representative: John W. Ester, 100 West Long Lake Road, Suite 102, Bloomfield Hills, MI 48013. Transporting *normal pentane*, in bulk, in tank vehicles, from Shreveport, LA, to ports of entry on the international boundary line between the United States and Canada. (Hearing site: New Orleans, LA, or Washington, DC.)

MC 115669 (Sub-189F), filed May 25, 1979. Applicant: DAHLSTEN TRUCK LINE, INC., 101 W. Edgar St., P.O. Box 95, Clay Center, NE 68933. Representative: Wilbur G. Hoyt (same address as applicant). Transporting *iron and steel articles*, (a) from Chicago, IL, and Gary and Hammond, Ind, to points in KS, and (b) from Portage, IN, to points in KS and MO, restricted to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: Kansas City, MO, or Chicago, IL.)

MC 116519 (Sub-62F), filed May 29, 1979. Applicant: FREDERICK TRANSPORT LIMITED, R. R. No. 6, Chatham, Ontario, Canada N7M 5J6. Representative: Jeremy Kahn, Suite 733, Investment Building, 1511 K Street NW., Washington, DC 20005. To operate as a *common carrier*, by motor vehicle, in foreign commerce only, over irregular routes, transporting *alloys, animal litter, calcium carbonate, clay, fertilizer and fertilizer ingredients, foundry supplies, nepheline syenite ores, sand, and stone*, in containers, between ports of entry on the International Boundary line between the United States and Canada, in MI and NY, on the one hand, and, on the other, points in the United States, (exept AK, AZ, CA, CO, HI, ID, MT, NV, NM, OR, UT, WA, and WY). (Hearing site: Buffalo, NY.)

MC 118959 (Sub-225F), filed May 29, 1979. Applicant: JERRY LIPPS, INC., 130 South Frederick Street, Cape Girardeau, MO 63701. Representative: Donald B. Levine, 39 South LaSalle Street, Chicago, IL 60603. Transporting (1) *paper and paper products*, and (2) *materials, equipment, and supplies used in the manufacture and distribution of paper and paper products*, between the facilities of Sorg Paper Company, at or near Middletown, OH, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Chicago, IL.)

MC 119399 (Sub-97F), filed April 30, 1979. Applicant: CONTRACT FREIGHTERS, INC., P.O. Box 1375, 2900 David Boulevard, Joplin, MO 64801. Representatives: David L. Sitton (same address as applicant), Transporting (1) *petroleum, petroleum products, vehicle body sealer, and sound deadener compound* (except commodities in bulk, in tank vehicles), *and filters*, from points in Warren County, MS, to points in AR, IL, IN, IA, KS, KY, MI, MN, MO, NE, ND,

OH, OK, SD, TX, and WI, and (2)(a) *petroleum, petroleum products, vehicle body sealer, sound deadener compounds, and filters,* (except commodities in bulk, in tank vehicles), and (b) *materials, equipment, and supplies used in the manufacture, sale, and distribution of the commodities named in (1) above* (except commodities in bulk, in tank vehicles) from points in IL, KY, OH, and OK to points in Warren County, MS. (Hearing site: Pittsburgh, PA, or Washington, DC.)

MC 123048 (Sub-443F), filed May 30, 1979. Applicant: DIAMOND TRANSPORTATION SYSTEM, INC., 5021—21st Street, Racine, WI 53406. Representative: John L. Bruemmer, 121 West Doty Street, Madison, WI 53703. Transporting: *materials, equipment and supplies* used in the manufacture and distribution of agricultural equipment and parts for agricultural equipment, (except commodities in bulk), from points in the United States (except AK and HI), to facilities of Gehl Company, at West Bend, WI, and Madison, SD. (Hearing site: Chicago, IL, or Washington, DC.)

MC 123048 (Sub-444F), filed May 29, 1979. Applicant: DIAMOND TRANSPORTATION SYSTEM, INC., 5021—21st Street, Racine, WI 53406. Representative: John L. Bruemmer, 121 West Doty Street, Madison, WI 53703. Transporting (1) *trailers* (except those designed to be drawn by passenger automobiles), *agricultural machinery, and agricultural implements,* (2) *parts, accessories, and attachments* for the commodities in (1) above, and (3) *materials, equipment,* and *supplies* used in the manufacture, sale, and distribution of the commodities in (1) and (2) above, (except commodities in bulk), between Marysville, KS, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Kansas City, MO, or Chicago, IL.)

MC 123048 (Sub-445F), filed May 29, 1979. Applicant: DIAMOND TRANSPORTATION SYSTEM, INC., 5021—21st Street, Racine, WI 53406. Representative: John L. Bruemmer, 121 West Doty Street, Madison, WI 53703. Transporting *such commodities* as are dealt in or used by manufacturers of iron and steel articles between the facilities of Feralloy Corportation, at or near Birmingham, IL, on the one hand, and, on the other, points in AR, FL, GA, KY, IL, IN, IA, LA, MI, MO, MS, NC, OH, SC, TN, TX, and WI. (Hearing site: Birmingham, AL, or Washington, DC.)

MC 123048 (Sub-446F), filed May 31, 1979. Applicant: DIAMOND TRANSPORTATION SYSTEM, INC., 5021—21st Street, Racine, WI 53406. Representative: John L. Bruemmer, 121 West Doty Street, Madison, WI 53703. Transporting *materials, equipment, and supplies* used in the manufacture of agricultural equipment and parts, (except AK and HI), to the facilities of Kasten Manufacturing Corporation, at Allenton, WI. (Hearing site: Chicago, IL or Washington, DC.)

MC 134439 (Sub-4F), filed May 25, 1979. Applicant: JAMES G. FERNEYHOUGH, d.b.a. J. G. F. TRUCKING COMPANY, P.O. Box 2173, Lynchburg, VA 24501. Representative: Calvin F. Major, 200 West Grace St., Suite 415, Richmond, VA 23220. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, transporting (1) *corrugated paper sheets, corrugated paper containers, and parts of corrugated paper containers,* from Lynchburg, VA, to points in DE, NJ, and KY, and (2) *materials, equipment and supplies* (except commodities in bulk, in tank vehicles) used in the manufacture and sale of the commodities in (1) above, in the reverse direction, under continuing contract(s) with Weyerhaeuser Company of Plymouth Meeting, PA. (Hearing site: Richmond, VA.)

MC 135639 (Sub-13F), filed May 29, 1979. Applicant: QUEENSWAY, INC., 105 North Keyser Avenue, Old Forge, PA 18518. Representative: John W. Frame, Box 626, 2207 Old Gettysburg Road, Camp Hill, PA 17011. Transporting *such commodities as are dealt in or used by food distribution facilities,* between points in NY on and west of Interstate 81, on the one hand, and, on the other, Scranton, Wilkes-Barre, and Philadelphia, PA, and points in NJ on and north of NJ Hwy 33. (Hearing site: Harrisburg, PA.)

MC 136898 (Sub-4F), filed May 31, 1979. Applicant: BAKER TRANSPORT, INC., P.O. Box 870, Hartselle, AL 35640. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *aluminum and aluminum products,* from points in Hot Spring, Garland, and Clark Counties, AR, to points in the United States in and east of ND, SD, NE, KS, OK, and TX, and (2) *materials and supplies* used in the manufacture or distribution of aluminum and aluminum products (except commodities in bulk, in tank vehicles), in the reverse direction, under continuing contract(s) with the Reynolds Metal Company, of Malvern, AR. (Hearing site: Birmingham, AL, or Memphis, TN.)

Note.—Dual operations may be involved.

MC 136919 (Sub-4F), filed May 29, 1979. Applicant: B. A. MILLER & SONS TRUCKING, INC., State Route 109, Liberty Center, OH 43532. Representative: A. Charles Tell, 100 East Co Broad Street, Columbus, OH 43215. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *food products, foodstuffs, and materials and supplies* used in the production of food products (except commodities in bulk in tank vehicles), between Napoleon, OH, on the one hand, and, on the other, points in MD, VA, and DC, under continuing contract(s) with Campbell Soup Company, of Camden, NJ. (Hearing site: Washington, DC.)

Note.—Dual operations may be involved.

MC 138469 (Sub-150F), filed May 29, 1979. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, OK 73107. Representative: Jack H. Blanshan, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. Transporting (1) *rubber and plastic articles, automotive parts and accessories, paper and paper products, kitchen and tablewares, glass products, athletic equipment, candles, floor coverings and accessories, television and cathode ray tubes, gloves, pottery, and food products,* (except commodities in bulk), from points in IN and OH, to points in the United States in and west of ND, SD, NE, KS, OK, and TN (except AK and HI), restricted to the transportation of traffic originating at the facilities of Lancaster Colony Corporation and destined to the indicated destinations, and (2) *rubber and plastic articles and plastic housewares,* from the facilities of Lancaster Colony Corporation, at Ft. Worth, TX, to Coshocton, OH, and points in the United States in and west of ND, SD, NE, KS, OK, and NM, (except AK and HI), restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Washington, DC.)

MC 139638 (Sub-8F), filed May 30, 1979. Applicant: N. L. MONTGOMERY, INC., P.O. Box 626, Rocky Mount, VA 24151. Representative: Winston T. Jones (same address as applicant). Transporting *lumber and lumber mill products* between points in VA, on the one hand, and, on the other, points, in NC. (Hearing Site: Roanoke, VA, or Greensboro, NC.)

MC 140389 (Sub-64F), filed May 29, 1979. Applicant: OSBORN TRANSPORTATION, INC., P.O. Box 1830, Gadsden, AL 35902. Representative: Clayton R. Byrd, P.O.

Box 12566, Atlanta, GA 30315. Transporting *such commodities* as are dealt in or by chain grocery and food business houses (except commodities in bulk, in tank vehicles), in vehicles equipped with mechanical refrigeration, between point in AL, AR, AZ, FL, GA, IA, KY, MS, MT, NC, SC, and TN, restricted to the transportation of traffic originating at or destined to the facilities of Kraft, Inc. (Hearing Site: Washington, DC., or Chicago, IL.)

Note.—The person or persons who appear to be engaged in common control must either file an application under 49 U.S.C. 11343(a) or submit an affidavit indicating why such approval is unnecessary.

MC 140768 (Sub-41F), filed May 30, 1979. Applicant: AMERICAN TRANS-FREIGHT, INC., P.O. Box 796, Manville, NJ 08835. Representative: Eugene M. Malkin, Suite 1832, 2 World Trade Center, New York, NY 10048. Transporting: (1)(a) *lawn movers and grass catchers,* and (b) *accessories* for the commodities in (1)(a) above, from Genoa, IL to points in the United States (except AK and HI) and (2) *equipment, materials, and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), in the reverse direction. (Hearing Site: New York, NY.)

Note.—Dual operations may be involved.

MC 140829 (Sub-259F), filed May 29, 1979. Applicant: CARGO, INC., P.O. Box 206, US Highway 20, Sioux City, IA 51102. Representative: David King (same address as applicant). Transporting *outdoor recreational equipment,* and *heating and air conditioning apparatus* (1) from the facilities used by The Coleman Company, Inc., at or near Wichita, KS, to points in AR, CO, CT, DE, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, MO, NE, NH, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SD, TN, TX, VT, VA, WY, WI, and DC, and (2) from the facilities of The Coleman Company, Inc., at or near New Braunfels, TX, to points in AR, CO, CT, DE, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MO, NE, NH, NJ, NM, NY NC, ND, OH, OK, PA, RI, SD, TN, VT, VA, WV, WI, and DC, restricted in (1) and (2) above, to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing Site: Washington, DC.)

Note.—Dual operations may be involved.

MC 140829 (Sub-260F), filed May 31, 1979. Applicant: CARGO, INC., P.O. Box 206, US Highway 20, Sioux City, IA 51102. Representative: David King (same address as applicant). Transporting: *printed matter,* from the facilities used by Commerce Clearing House, Inc., at or near Chicago, IL to points in AR, CO, CT, IA, KS, LA, ME, MA, MO, NE, NH, NJ, NM, NY, ND, OK, PA, RI, SD, TX, and VT, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing Site: Washington, DC.)

Note.—Dual operations may be involved in this proceedings.

MC 140829 (Sub-261F), filed May 31, 1979. Applicant: CARGO, INC., P.O. Box 206, U.S. Highway 20, Sioux City, IA 51102. Representative: David King (same address as applicant). Transporting *vinyl siding,* from the facilities used by Robintech Incorporated, at or near Weatherford, TX, to points in CO, CT, KY, MD, MA, MN, MO, NH, NJ, NY, OH, PA, RI, and TN, restricted to the transportation of traffic originating at the name origin and destined to the indicated destinations. (Hearing site: Washington, DC.)

Note.—Dual operations may be involved in this proceeding.

MC 141628 (Sub-2F), filed May 29, 1979. Applicant: OVEROAD CONTAINER SERVICE, 3980 Quebec St., P.O. Box 7240, Denver, CO 80207. Representative: Rick Barker (same address as applicant). Transporting *container chassis,* between points in CA, OR, and WA, on the one hand, and, on the other, points in the United States (including AK but excluding HI). (Hearing site: Los Angeles, CA, or E Seattle, WA.)

Note.—The persons who appear to be involved in common control must either file an application under 49 U.S.C. 11343(a) or submit an affidavit indicating why such approval is unnecessary.

MC 142308 (Sub-1F), filed May 29, 1979. Applicant: BOB FORMAN ASSOCIATES, INC., 1401 Cedar Springs, Dallas, TX 75202. Representative: Jack L. Coke, Jr., 4555 First National Bank Building, Dallas, TX 75202. Transporting: *new furniture* between points in TX, on the one hand, and, on the other, points in OK and MN. (Hearing site: Dallas, TX, or Oklahoma City, OK.)

MC 142559 (Sub-97F), filed May 29, 1979. Applicant: BROOKS TRANSPORTATION, INC., 3830 Kelley Ave., Cleveland, OH 44114. Representative: John P. McMahon, 100 East Broad St., Columbus, OH 43215. Transporting (1) *paper, paper products, and plastic articles,* and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), between points in the United States (except AK and HI), restricted to shipments originating at or destined to the facilities of Container Corporation of America. (Hearing site: Columbus, OH.)

Note.—Dual operations and common control may be involved..

MC 143059 (Sub-83F), filed May 29, 1979. Applicant: MERCER TRANSPORTATION CO., a corporation, 12th and Main Streets, P.O. Box 35610, Louisville, KY 40232. Representative: James L. Stone (same address as applicant). Transporting *roofing materials,* from the facilities of Masonite Corporation, at or near Meridian, MS, and Little Rock, AR, to points in AL, AR, FL, GA, IL, IN, KS, KY, LA, NC, OK, SC, TN, and TX, restricted to the transportation of traffic originating at the named facilities. (Hearing site: Louisville, KY, or Washington, DC.)

MC 143168 (Sub-4F), filed May 29, 1979. Applicant: TREASURE STATE TRANSPORT, INC., 1502 16th Avenue Southwest, Great Falls, MT 59404. Representative: Ray F. Koby, 314 Montana Building, Great Falls, MT 59401. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *lumber and forest products,* from Judith Gap, MT, to points in CO, IL, IA, KS, MN, MO, ND, NE, SD, UT, WI, and WY, under continuing contract(s) with Spring Creek Forest Products, Inc., of Kalispell, MT. (Hearing site: Great Falls, MT.)

MC 143499 (Sub-10F), filed April 23, 1979. Applicant: DOUBLE NICKEL TRANSPORT LTD., 50 South Main Street, Pearl River, NY 10965. Representative: John L. Alfano, 550 Mamaroneck Avenue, Harrision, NY 10528. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *chemicals* (except in bulk, in tank vehicles), and (2) *Materials and supplies* used in the manufacture of the commodities in (1) above, (except in bulk), between points in the United States (except AK, HI, ID, MT, NM, UT, and WY), under continuing contract(s) with Ciba-Geigy Corporation, of Ardsley, NY. (Hearing site: White Plains, NY.).)

Note.—(1) The person or persons who appear to be engaged in common control must either file an application under 49 U.S.C. 11343 or submit an affidavit indicating why such approval is unnecessary, and (2) Dual operations may be involved.

MC 144829 (Sub-3F), filed May 29, 1979. Applicant: MUCHMORE TRUCKING, LTD., 1661 S.E. "N" Street, Grants Pass, OR 97526. Representative: Jerry R. Woods, Suite 1440–200 Market Bldg., Portland, OR 97201. Transporting *foodstuffs,* in vehicles equipped with

mechanical refrigeration, (1) between points in OR and WA, on the one hand, and, on the other, points in CA, and (2) between points in OR and WA. (Hearing site: Portland,OR.)

MC 145588 (Sub-12F), filed May 30, 1979. Applicant: GULF MID-WESTERN, INC., 12151 West 44th Avenue, Denver, CO 80033. Representative: William W. Selman, 18700 John F. Kennedy Blvd., Houston, TX 77205. Transporting *chemicals* between points in Brazoria, Harris, Jefferson, LaVaca, Orange, and Wharton Counties, TX, on the one hand, and, on the other, points CA, FL, GA, MA, MI, NJ, NY, and OH.(Hearing site: Denver, CO, and Omaha, NE.)

MC 145588 (Sub-14F), filed May 29, 1979. Applicant: GULF MID-WESTERN, INC., 12151 West 44th Avenue, Denver, CO 80033. Representative: William W. Selman, 18700 John F. Kennedy Blvd., Houston, TX 77205. Transporting *plastics* (except in bulk, and plastice pipe and fittings), (a) from ponts in Brazoria, Galveston, Harris, Jefferson, LaVaca, and Orange Counties, TX, to points in CA, GA, IL, IN, IA, LA, MI, MN, NJ, NY, NC, OH, PA, TN, WV, and WA, and (b) between points inCA, GA, IL, IN, IA, LA, MI, MN, NJ, NY, NC, OH, PA, TN, WV, and WA. (Hearing site: Denver, CO, or Omaha, NE.)

MC 145588 (Sub-15F), filed May 30, 1979. Applicant: GULF MID-WESTERN, INC., 12151 West 44th Avenue, Denver, CO 80033. Representative: William W. Selman, 18700 John F. Kennedy Blvd., Houston, TX 77205. Transporting *woven synthetic material, and chemicals* between Houston, TX, on the one hand, and, on the other, points in AZ, CA, FL, LA, NJ, PA, SC, TN, and WA. (Hearing site: Denver, CO, or Omaha, NE.)

MC 145928 (Sub-2F), filed May 31, 1979. Applicant: PANTEGO DISTRIBUTING CO., INC., P.O. Box 176, Pantego, NC 27860. Representative: Peter A. Greene, 900–17th Street NW., Washington, DC 20006. Transporting *manufactured forest products*, from points in NC, to points in CT, FL, ME, MA, NH, NJ, NY, RI, VT, SC, GA, AL, MS, KY, TN, WV, OH, MI, IL, IN, and WI, restricted to the transportation of traffic originating at the facilities of Weyerhaeuser Co., Inc. (Hearing site: Washington, DC.)

MC 146068 (Sub-8F), filed May 29, 1979. Applicant: CONSOLIDATED CARRIERS CORPORATION, Box 25842, Charlotte, NC 28205. Representative: Robert B. Walker, 915 Pennsylvania Bldg., 425–13th Street NW., Washington, DC 20004. 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 AL, GA, NC, SC, TN, and VA, on the one hand, and, on the other, points in AZ, CA, NV, OR, UT, and WA, restricted to the transportation of traffic moving on freight forwarder bills of lading. (Hearing site: Charlotte, NC.)

Note.—Dual operations may be involved.

MC 146138 (Sub-2F), filed May 31, 1979. Applicant: TONYAN BROS., INC., 512 W. Bay Rd., McHenry, IL 60050. Representative: James R. Madler, 120 W. Madison St., Chicago, IL 60602. Transporting *sand*, in bulk, (1) from points in LaSalle County, IL, and Berrien County, MI, to points in IL and IN, and (2) between points in LaSalle County, IL, on the one hand, and, on the other, points in OH, IN, MI, and WI. (Hearing site: Chicago, IL.)

MC 146148 (Sub-3F), filed May 29, 1979. Applicant: B-RIGHT TRUCKING CO., a corporation, 492 Old State Route 7, Pottery Addition, Steubenville, OH 43952. Representative: A. Charles Tell, 100 East Broad Street, Columbus, OH 43215. Transporting (1) *iron and steel articles*, (a) from the facilities of Wheeling-Pittsburgh Steel Corporation, at Allenport and Monessen, PA, to points in IL, IN, MI, OH, NY, and WV, and (b) from the facilities of Wheeling-Pittsburgh Steel Corporation, at Beechbottom, Benwood, Follansbee, and Wheeling, WV, to points in IL, IN, MI, OH, and PA; and (2) *materials and supplies* used in the manufacture of the commodities in (1) above, (a) from the destinations named in (1) (a) above, to the origin facilities named in (1) (a) above, and (b) from the destinations named in (1) (b) above to the origin facilities named in (1) (b) above. (Hearing site: Washington, DC.)

Note.—The person or persons who appear to be engaged in common control must either file an application under 49 U.S.C. 11343 (a) or submit an affidavit indicating why such approval is unnecessary.

MC 146569 (Sub-2F), filed May 31, 1979. Applicant: WELTON MOTOR FREIGHT, INC., 1301 Hermitage Road, Richmond, VA 23220. Representative: Clavin F. Major, 200 West Grace Street, Suite 415, Richmond, VA 23220. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *lime, limestone products, and rock*, from points in VA to points in NC on and east of Interstate Hwy 95, under continuing contract(s) with Albemarle Chemical Company, of Hertford, NC, and (2) *prilled nitrogen*, in bulk from Tunis, NC to points in VA, MD, DE, and WV, under continuing contract(s) with Southern States Cooperative, Inc., of Richmond, VA. (Hearing site: Richmond, VA.)

MC 146699 (Sub-3F), filed May 31, 1979. Applicant: KENNETH E. JONES AND JAMES H. PARRISH, d.b.a. DESOTO TRAIL, 282 East Main Street, Franklin, NC 28734. Representative: Bruce E. Mitchell, 3390 Peachtree Road, N.E., Atlanta, GA 30326. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *mica*, (except in bulk), from the facilities of Franklin Mineral Products, in Franklin, NC, to points in the United States, (including AK but excluding HI) under continuing contract(s) with Franklin Mineral Products, of Franklin, NC. (Hearing site: Charlotte, NC, or Atlanta, GA.)

MC 147259 (Sub-1F), filed May 31, 1979. Applicant: CHURCHILL TRANSPORTATION, INC., 500 Wyoming, Dearborn, MI 48126. Representative: Gerald E. Churchill (same address as applicant). Transporting (1) *automotive parts, and (2) materials, equipment, and supplies* used in the manufacture of motor vehicles, between points in MI, OH, IN, IL, and KY on the one hand, and, on the other hand, points in FL, GA, and TX. (Hearing site: Detroit, MI, or Chicago, IL.)

MC 147339 (Sub-1F), filed May 29, 1979. Applicant: MID-NORTHERN TRANSFER CO., Box 141, Grand Ridge, IL 61325. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. Transporting *sand*, in bulk, from points in LaSalle County, IL, to the facilities of Thatcher Glass Manufacturing Co., Div. of Dart Industries, Inc., at Lawrenceburg, IN. (Hearing site: Chicago, IL, or St. Louis, MO.)

MC 147448F, filed May 25, 1979. Applicant: LUCIEN MENARD TRUCKING CO. LTD., 1 Main St., Belle Valee, Ontario, Canada POJ 1A0. Representative: Robert D. Gunderman, 710 Statler Bldg., Buffalo, NY 14202. To operate as a *common carrier*, by motor vehicle, in foreign commerce, over irregular routes, transporting *lumber and composition board*, between ports of entry on the international boundary line between the United States and Canada in ME, NH, VT, NY, MI, and MN, on the one hand, and, on the other, points in IN, ME, MA, MI, MN, NY, OH, PA, VT, and WI. (Hearing site: Buffalo, NY.)

MC 148059F, filed May 30, 1979. Applicant: TRI-AREA TRUCKING CO., 320 West Edgerton Street, Bryan, OH 43506. Representative: Robert W. Gardier, Jr., 100 East Broad Street,

Columbus, OH 43215. Transporting *raw foundry sand and resin coated foundry sand,* from Muskegon, MI, Bridgman MI, and Chicago, IL, to the facilities of the General Motors Corporation Central Foundry Division, at or near Defiance, OH. (Hearing site: Columbus, OH, or Detroit, MI.)

Note.—Dual operations may be involved.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-37855 Filed 12-11-79; 8:45 am]

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[Volume No. 42]

Petitions, Applications, Finance Matters (Including Temporary Authorities), Alternate Route Deviations, Intrastate Applications, Gateways, and Pack and Crate.

Petitions for Modification, Interpretation or Reinstatement of Motor Carrier Operating Rights Authority

The following petitions seek modification or interpretation of existing motor carrier operating rights authority, or reinstatement of terminated motor carrier operating rights authority.

All pleadings and documents must clearly specify the suffix numbers (e.g., M1 F, M2 F) where the docket is so identified in this notice.

The following petitions, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR 1100.247). These rules provide, among other things, that a *petition to intervene either with or without leave* must be filed with the Commission within 30 days after the date of publication in the **Federal Register** with a copy being furnished the applicant. Protests to these applications will be *rejected.*

A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that if: (1) Holds operating authority permitting performance of any of the service which the applicant seeks authority to perform; (2) Has the necessary equipment and facilities for performing that service; and (3) Has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l). In deciding whether to grant leave to intervene, the Commission considers, among other things, whether petitioner has (a) solicited the traffic or business of those persons supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. Another factor considered is the effects of any decision on petitioner's interests.

Samples of petitions and the text and explanation of the intervention rules can be found at 43 FR 50908, as modified at 43 FR 60277.

Petitions not in reasonable compliance with these rules may be rejected. Note that Rule 247(e), where not inconsistent with the intervention rules, still applies. Especially refer to Rule 247(e) for requirements as to supplying a copy of conflicting authority, serving the petition on applicant's representative, and oral hearing requests.

MC 2229 (Sub-119 (MIF)) (Notice of Filing of Petition to Modify Certificate), filed May 14, 1979. Petitioner: RED BALL MOTOR FREIGHT, INC., 3177 Irving Boulevard, Dallas, TX 75247. Representative: Jackie Hill (same address as Petitioner.) Petitioner holds a motor common carrier certificate in MC 2229 (Sub-119), issued July 20, 1964, authorizing tranportation over:

(A) Regular Routes:

General Commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, livestock, and commodities requiring the use of special equipment), serving all off-route points within five miles of either side of Louisiana Highway 1 between Port Allen and Donaldsonville, La., and Louisiana Highway 18 between Donaldsonville and Ama, La., restricted against tacking or joining with any other authority held by carrier herein for the purpose of providing through service between Memphis, Tenn., and New Orleans, La.

General Commodities, including Classes A and B explosives, but excepting household goods as defined by the Commission, commodities of unusual value, and commodities requiring special equipment, serving the plantsite of the United Gas Pipe Line Company located at a point approximately five miles southwest of Effie, La., as an off-route point in connnection with carrier's regular-route operations authorized herein between Alexandria and Bunkie, La.

General Commodities, except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, serving the site of the Alexandria, La., Air Force Base, and Alexandria, La., Municipal Airport, near Alexandria, as off-route points in connection with regular-route operations authorized herein to and from Alexandria, La. serving Belle Chasse, La., as an off-route point in connection with regular-route operations authorized herein to and from New Orleans, La.

Between Minden, La., and McNeil, Ark., serving the intermediate points of Emerson, Kerlin, and Magnolia, Ark., and the off-route point of Lisbon, La.: From Minden over U.S. Highway 79 to McNeil, and return over the same route.

General Commodities, between Baton Rouge, La., and Junction Louisiana Highway 433 and U.S. Highway 90 serving all intermediate points; and off-route points within ten miles of the following-described route: From Baton Rouge over U.S. Highway 190 to junction U.S. Highway 11, then over U.S. Highway 11 to Slidell, La., then over Louisiana Highway 433 to junction U.S. Highway 90, and return over the same route.

Between Slidell, La., and Junction U.S. Highway 190 and U.S. Highway 90, serving all intermediate points; and off-route points within ten miles of the following-described route: From Slidell over U.S. Highway 11 to junction U.S. Highway 190, then over U.S. Highway 190 to junction U.S. Highway 90, and return over the same route.

Between New Orleans, La., and Mobile, Ala., serving all intermediate points: From New Orleans over U.S. Highway 90 to Mobile, and return over the same route.

Between Alexandria, La., and Ferriday, La., serving all intermediate points except Pollock, La., and the off-route point of Camp Livingston, La., restricted to the transportation of General Commodities, except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, and commodities in bulk: From Alexandria over U.S. Highway 165 to Pollock, La., then over Louisiana Highway 8 to Trout, La., then over U.S. Highway 84 to Ferriday, and return over the same route.

Between North Little Rock, Ark., and West Monroe, La., serving intermediate points of Crossett, Ark., Bastrop and Monroe, La., and those between North Little Rock and Crossett, Ark., and off-route points within three miles of West Monroe, La.: From North Little Rock over U.S. Highway 65 via Pine Bluff, Ark., to junction Arkansas Highway 81, then over Arkansas Highway 81 to Monticello, Ark. (also from Pine Bluff over Arkansas Highway 15 to Warren, Ark., then over Arkansas Highway 4 to

Monticello), then continuing over Arkansas Highway 81 to Hamburg, Ark., then over unnumbered highway, to junction U.S. Highway 82, then over U.S. Highway 82 to Crossett, Ark., then over Arkansas Highway 133 to the Arkansas-Louisiana State line, then over Louisiana Highway 142 to junction Louisiana Highway 139 then over Louisiana Highway 139 to Bastrop, La., then over U.S. Highway 165 to Monroe, La., then over U.S. Highway 80 to West Monroe, and return over the same routes.

Between Alexandria, La., and Monroe, La., serving no intermediate points: From Alexandria over U.S. Highway 165 to Monroe, and return over the same route.

Between Mobile, Ala., and Crichton, Ala., serving all intermediate points, and the off-route nurseries of Blackwell, Overlook, Kiyono, Mobala, and Flowerwood. From Mobile over unnumbered highway to Crichton, and return over the same route .

Between Mobile, Ala., and Navco, Ala., serving all intermediate points, and the off-route nurseries of Blackwell, Overlook, Kiyono, Mobala, and Flowerwood: From Mobile over unnumbered highway to Navco, and return over the same route.

Between Mobile, Ala., and Chickasaw, Ala., serving all intermediate points, and the off-route nurseries of Blackwell, Overlook, Kiyono, Mobala, and Flowerwood: From Mobile over Alabama Highway 13 to Chickasaw, and return over the same route.

Between Mobile, Ala., and Spring Hill, Ala., serving all intermediate points: From Mobile over Old Shell Road to Spring Hill, and return over the same route.

Between Mobile, Ala., and Semmes, Ala., serving all intermediate points: From Mobile over Alabama Highway 42 to Semmes, and return over the same route.

Between Natchitoches, La., and Boyce, La., serving all intermediate points: From Natchitoches over Louisiana Highway 1 to Boyce, and return over the same route.

Between Ville Platte, La., and Bunkie, La., serving all intermediate points: From Ville Platte over Louisiana Highway 29 to Bunkie, and return over the same route.

Between Lecompte, La., and a Point on Louisiana Highway 112, Five miles from Lecompte, La., serving all intermediate points: From Lecompte over Louisiana Highway 112 to a point on said highway five miles from Lecompte, and return over the same route.

Between Leesville, La., and Camp Polk, La., serving all intermediate points: From Leesville over unnumbered highway to Camp Polk, and return over the same route.

Between Leesville, La., and Camp Polk, La., serving all intermediate points: From Leesville over U.S. Highway 171 to junction unnumbered highway, then over unnumbered highway to Camp Polk, and return over the same route.

General Commodities, except those of unusal value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading:

Between New Orleans, La., and Monroe, La., serving all intermediate points, and the off-route points of Angola, Extension, Harrisonburg, and Fort Necessity, La., those on Louisiana Highway 17 between Winnsboro and Delhi, La., points on those portions of Louisiana Highways 4 and 128 between Winnsboro and St. Joseph, La., points on Louisiana Highway 137 between Archibald and Rayville, La., and off-route points within five miles of the following-described route: From New Orleans over U.S. Highway 61 to Natchez, Miss., then over U.S. Highway 65 via Ferriday, La., to junction Louisiana Highway 15, then over Louisiana Highway 15 to Monroe, and return over the same route.

Between Ferriday, La., and Tallulah, La., serving all intermediate points, and the off-route points of Newlight, La., points on Louisiana Highway 4 between Newlight and Newellton, La., (including Newellton), and all other off-route points within five miles of the following-described route: From Ferriday over U.S. Highway 65 to junction Louisiana Highway 128 west of St. Joseph, La., then over Louisiana Highway 128 to St. Joseph then over Louisiana Highway 605 via Osceola, Lake Bruin, Newellton, and Balmoral, La., to junction U.S. Highway 65 at or near Somerset, La., then over U.S. Highway 65 to Tallulah, and return over the same route.

Between Woodville, Miss., and Scotlandville, La., serving all intermediate points; and off-route points within five miles of the following described route: From Woodville over Mississippi Highway 24 to Centreville, Miss., then over Mississippi Highway 33 to the Mississippi-Louisiana State line, then over Louisiana Highway 19 to Scotlandville, and return over the same route.

Between Jackson, Miss., and Shreveport, La., serving all intermediate points: From Jackson over U.S. Highway 80 via Vicksburg, Miss., and Monroe, La., to Shreveport, and return over the same route.

Between Shreveport, La., and Monroe, La., serving all intermediate points: From Shreveport over U.S. Highway 71 to junction Louisiana Highway 4, then over Louisiana Highway 4 via Ringgold, Castor, and Lucky, La, to junction Louisiana Highway 155 (also from Lucky over Louisiana Highway 9 to junction Louisiana Highway 155), then over Louisiana Highway 155 to junction Louisiana Highway 4, then over Louisiana Highway 4 via Friendship and Jonesboro, La., to Chatham, then over Louisiana Highway 34 to junction Louisiana Highway 144, then over Louisiana Highway 144 to junction U.S. Highway 80, then over U.S. Highway 80 to Monroe (also from Louisiana Highway 144 and Louisiana Highway 34, over Louisiana Highway 34 to Monroe), and return over the same route. From Shreveport over U.S. Highway 71 to Clarence, La., then over U.S. Highway 84 to Winnfield, La., then over U.S. Highway 167 to Jonesboro, La., then to Monroe, as specified immediately above, and return over the same route.

Between Lucky, La., and Arcadia, La., serving all intermediate points: From Lucky over Louisiana Highway 9 to Arcadia, and return over the same route.

Between Jonesboro, La., and Ruston, La., serving all intermediate points: From Jonesboro over U.S. Highway 167 to Ruston, and return over the same route.

Between Shreveport, La., and Cloutierville, La., serving all intermediate points: From Shreveport over Louisiana Highway 1 via Gayles, Hanna, and Natchitoches, La., to Cloutierville, and return over the same route.

Between Shreveport, La., and Leesville, La., serving all intermediate points, except points between Shreveport and Gloster, La.: From Shreveport over U.S. Highway 171 via Mansfield, Converse, and Many, La., to Leesville, and return over the same route. From Shreveport to Mansfield, as specified immediately above, then over Louisiana Highway 175 to Pleasant Hill, La., then over unnumbered highway to Converse, La., then over U.S. Highway 171 to Leesville, and return over the same route.

Between Natchitoches, La., and Many, La., serving all intermediate points: From Natchitoches over Louisiana Highway 6 to Many, and return over the same route.

General Commodities, except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special

equipment, and those injurious of contaminating to other lading, (Concluded):

Between Hanna, La., and Many, La., serving all intermediate points: From Hanna over Louisiana Highway 1 to junction Louisiana Highway 174, then over Louisiana Highway 174 to Ajax, La., then over Louisiana Highway 487 to Marthaville, La., then over Louisiana Highway 120 to Belmont, La., then over Louisiana Highway 175 to Many and return over the same route.

Between Ajax, La., and Belmont, La., serving all intermediate points: From Ajax over Louisiana Highway 174 to Pleasant Hill, La., then over Louisiana Highway 175 to Belmont, and return over the same route.

Between Marthaville, La., and Cloutierville, La., serving all intermediate points: From Marthaville over Louisiana Highway 120 to Robeline, La., then over unnumbered highway via Cypress, La., to junction Louisiana Highway 1, then over Louisiana Highway 1 to Cloutierville, and return over the same route.

Between Natchez, La., and Cypress, La., serving all intermediate points: From Natchez over Louisiana Highway 1 to junction unnumbered highway, then over unnumbered highway to Cypress, and return over the same route.

Between Gayles, La., and Mansfield, La., serving all intermediate points: From Gayles over Louisiana Highway 175 to Mansfield and return over the same route.

Between Junction Louisiana Highway 175 and unnumbered highway, and Benson, La., serving all intermediate points: From junction Louisiana Highway 175 and unnumbered highway over unnumbered highway to Benson, and return over the same route.

Between Monroe, La., and the Louisiana-Arkansas State Line, serving all intermediate points, and off-route points of Swartz, Sterlington, Fowler, and Fairbanks, La.: From Monroe over U.S. Highway 165 to Bastrop, La., (also from Monroe over U.S. Highway 80 to junction Louisiana Highway 139, then over Louisiana Highway 139 to Bastrop), then over U.S. Highway 165 to the Louisiana-Arkansas State line, and return over the same routes: also return from the Louisiana-Arkansas State line over U.S. Highway 165 to Bonita, La., then over Louisiana Highway 140 to Bastrop, La., then to Monroe as specified above.

Between Oak Grove, La., and Tallulah, La., serving all intermediate points: From Oak Grove over Louisiana Highway 2 to junction U.S. Highway 65, then over U.S. Highway 65 to Tallulah, and return over the same route.

Between Oak Grove, La., and Delhi, La., serving all intermediate points: From Oak Grove over Louisiana Highway 17 to Delhi, and return over same route.

General Commodities, except those of unusual value, Classes A and B explosives other than dynamite, households goods as defined by the Commission, commodities in bulk, and those requiring special equipment:

Between Pine Bluff, Ark., and Pine Bluff Municipal Airport, Ark., serving no intermediate points: From Pine Bluff over U.S. Highway 65 to junction unnumbered highway, then over unnumbered highway to Pine Bluff Municipal Airport, and return over the same route.

General Commodities, except household goods as defined by the Commission and commodities injurious or contaminating to other lading:

Between Alexandria, La, and Winnfield, La., serving all intermediate points: From Alexandria over U.S. Highway 167 to Winnfield, and return over the same route.

Between Junction U.S. Highway 80 and Louisiana Highway 7, West of Minden, La., and Springhill, LS., serving all intermediate points: From junction U.S. Highway 80 and Louisiana Highway 7, west of Minden, La., over Louisiana Highway 7 to Springhill, and return over the same route.

General Commodities, except those of unusual value and household goods as defined by the Commission:

Between Hamburg, Ark., and Memphis, Tenn., serving the intermediate points of Montrose and Lake Village, Ark.: From Hamburg over U.S. Highway 82 to Leland, Miss., then over U.S. Highway 61 to Memphis, and return over the same route.

Between Junction U.S. Highways 65 and 82 Southeast of Lake Village, Ark., and Bastrop, La., as an alternate route for operating convenience only, serving no intermediate points: From Junction U.S. Highways 65 and 82 over U.S. Highway 65 to Eudora, Ark., then over Arkansas Highway 159 to the Arkansas-Louisiana State line, then over Louisiana Highway 17 to Oak Grove, La., then over Louisiana Highway 2 to Bastrop, and return over the same route.

Between Oak Grove, La., and Delhi, La., as an alternate route for operating convenience only, serving no intermediate points: From Oak Grove over Louisiana Highway 17 to Delhi, and return over the same route.

Restriction: No shipments shall be transported over the three routes next above which is moving between Memphis, Tenn., on the one hand, and, on the other (1) Little Rock, Ark., Shreveport, Monroe, and West Monroe, La., (2) points on carrier's herein authorized routes in Alabama; (3) points in Mississippi on U.S. Highway 90 and that part of U.S. Highway 80 between Jackson, Miss., and the Mississippi-Louisiana State line, including Jackson; (4) points in Louisiana on U.S. Highway 190 and 90 east of Baton Rouge, La.; and (5) New Orleans, La., and points in the New Orleans, La., Commercial Zone.

ALTERNATE ROUTES FOR OPERATING CONVENIENCE ONLY:

General Commodities, except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, and commodities injurious to other lading:

Between Natchez, Miss., and Vicksburg, Miss., serving no intermediate points: From Natchez over U.S. Highway 61 to Vicksburg, and return over the same route.

General Commodities, except those of unusual value, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading:

Between Mobile, Ala., and Natchez, Miss., serving no intermediate points: From Mobile over Alabama Highway 42 to the Alabama-Mississippi State line, then over U.S. Highway 98 to junction unnumbered highway then over unnumbered highway to junction U.S. Highway 49, then over U.S. Highway 49 to Collins, Miss., then over U.S. Highway 84 to Natchez, and return over the same route.

General Commodities, except those of unusual value, Classes A and B explosives, households goods as defined by the Commission, commodities in bulk, and those requiring special equipment:

Between Winnfield, La., and Trout, La., serving no intermediate points: From Winnfield over U.S. Highway 84 to Trout, and return over the same route.

General Commodities, except those of unusual value, Classes A and B explosives, households goods as defined by the Commission, commodities in bulk, livestock, commodities requiring the use of special equipment, and those injurious or contaminating to other lading:

Between Litle Rock, Ark., and Springhill, La., serving no intermediate points, and serving Magnolia, Ark., for joinder purposes only: From Little Rock over U.S. Highway 167 to junction U.S. Highway 79 at or near Fordyce, Ark., then over U.S. Highway 79 to junction Arkansas Highway 132 at Magnolia, Ark., then over Arkansas Highway 132 to the Arkansas-Louisiana State line,

and then over Louisiana Highway 7 to Springhill, and return over the same route.

Between Memphis, Tenn., and Springhill, La., serving no intermediate points, and serving Pine Bluff and Magnolia, Ark., for joinder purposes only: From Memphis over U.S. Highway 79 to junction Arkansas Highway 132 at Magnolia, Ark., then over Arkansas Highway 132 to the Arkansas-Louisiana State line, and then over Louisiana Highway 7 to Springhill, and return over the same route.

Restriction: Service at joinder points limited and restricted as follows; (a) No freight shall be transported over the alternate route between Memphis, Tenn., and Pine Bluff, Ark., that originates at Memphis, and is destined to Pine Bluff, or that originates at Pine Bluff and is destined to Memphis, but with no restrictions as to joinder of operations, alternate route with present routes at Memphis and Pine Bluff, (b) No shipment shall be transported over the alternate route between Memphis, Tenn., and Springhill, La., that is moving between Memphis, on the one hand, and, on the other, (1) Little Rock, Ark., Shreveport, Monroe, and West Monore, La.; (2) points on carrier's herein authorized routes in Alabama; (3) points in Mississippi on U.S. Highway 90 and that part of U.S. Highway 80 between Jackson, Miss., and the Mississippi-Louisiana State line, including Jackson; (4) points in Louisiana on U.S. Highways 190 and 90 east of Baton Rouge, La.; and (5) New Orleans, La., and points in the New Orleans, La, Commercial Zone.

General Commodities, except Classes A and B explosives, households goods as defined by the Commission, commodities of unusual value, and commodities requiring special equipment:

Between Leland, Miss., and Vicksburg, Miss., serving no intermediate points, but serving Leland and Vicksburg for the purpose of joinder only: From Leland over U.S. Highway 61 to Vicksburg, and return over the same route.

Restriction: The service authorized under the commodity described next above is restricted against the use of such alternate route on all traffic moving between Memphis, Tenn., on the one hand, and, on the other, Baton Rouge, La.

(B) Regular Routes:

General Commodities, except households goods defined by the Commission:

Between Shreveport, La., and New Orleans, La., serving all intermediate points: From Shreveport over U.S. Highway 71 to junction U.S. Highway 190, then over U.S. Highway 190 to Baton Rouge, La., then over U.S. Highway 61 to New Orleans, and return over the same route.

Between Shreveport, La., and Clarence, La., serving all intermediate points: from Shreveport over Louisiana Highway 1 to Natchitoches, La., then over Louisiana Highway 6 to Clarence, and return over the same route.

Between Alexandria, La., and Colfax, La., serving all intermediate points: From Alexandria over Louisiana Highway 1 to Boyce, La., then over Louisiana Highway 8 to Colfax, and return over the same route.

Between Meeker, La., and Crowley, La., serving all intermediate points: From Meeker over U.S. Highway 167 to Turkey Creek, La., then over Louisiana Highway 13 to Crowley, and return over the same route.

Between Turkey Creek, La., and Krotz Springs, La., serving all intermediate points: From Turkey Creek over U.S. Highway 167 via Bayou Chicot, La., to Opelousas, La., then over U.S. Highway 190 to Krotz Springs,and return over the same route.

Between Lebeau, La., and Junction Louisiana Highway 10 and U.S. Highway 167 North of Opelousas, La., serving all intermediate points: From Lebeau over Louisiana Highway 10 via Beggs, La., to junction U.S. Highway 167, and return over the same route.

Between Alexandria, La., and Bunkie, La., serving all intermediate points: from Alexandria over Louisiana Highway 1 to Marksville, La., then over Louisiana Highway 115 to Bunkie, and return over the same route.

Between Echo, La., and Mansura, La., serving all intermediate points: From Echo over Louisiana Highway 1 to junction Louisiana Highway 114, then over Louisiana Highway 114 to Mansura, and return over the same route.

Between Marksville, La., and Long Bridge, La., serving all intermediate points: From Marksville over unnumbered highway to Long Bridge, and return over the same route.

Between Bunkie, La., and Junction Louisiana Highway 1 and U.S. Highway 190 near Erwinville, La., serving all intermediate points: From Bunkie over Louisiana Highway 29 to junction Louisiana Highway 1, then over Louisiana Highway 1 to junction U.S. Highway 190 near Erwinville, La., and return over the same route.

Between Port Allen, La, and New Orleans, La., serving all intermediate points: From Port Allen, La., over Louisiana Highway 1 to Donaldsonville, La., then over Louisiana Highway 18 to New Orleans, and return over the same route.

(C) Regular Routes:

Wrapping Paper, Paper Bags, and Machinery Parts, Serving Elizabeth, La., as an off-route point in connection with carrier's regular route operations authorized herein for pick-up only, restricted to the transportation of shipments originating at Elizabeth, La.

General Commodities, except those of unusual value, Classes A and B explosives, households goods as defined by the Commission, commodities in bulk, and those requiring special equipment:

Between Sterlington, La., and Junction Louisiana Highway 553 and U.S. Highway 165, serving all intermediate points: From Sterlington over Louisiana Highway 553 to junction U.S. Highway 165, and return over the same route.

General Commodities, except those of unusual value, Classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment:

Between Sarepta, La., and Bossier City, La., as an alternate route for operating convenience only in connection with carrier's regular route operations authorized herein, serving no intermediate points: From Sarepta over Louisiana Highway 2 to Plain Dealing, La., then over Louisiana Highway 3 to Bossier City, and return over the same route.

(D) Irregular Routes:

General Commodities, except household goods as defined by the Commission: From points on the regular routes specified under Part (B) above, to Elizabeth, La., with no transportation for compensation on return except as otherwise authorized. From points on the regular routes specified under Part (B) above, except New Orleans and Baton Rouge, La., to Hammond and Covington, La., with no transportation for compensation on return except as otherwise authorized. From points on the regular routes specified under Part (B) above, except Shreveport and Alexandria, La., to Haynesville, Homer, Jonesboro, Ruston (restricted to truckloads) and Winnfield, La., with no transportation for compensation on return except as otherwise authorized. From points on the regular routes specified under Part (B) above, except New Orleans, Baton Rouge, and Lake Charles, La., to Franklin, Houma, Jeanerette, Lafayette, Morgan City, New Iberia, Paterson, St. Martinville, Thibodaux, and Welsh, La., with no transportation for compensation on return except as otherwise authorized; From points on U.S. Highway 190

between Kinder and Eunice, La., to the irregular route destination points specified above, with no transportation for compensation on return except as otherwise authorized.

Any duplication of authority granted herein or to the extent that such authority duplicates any heretofore granted to or now held by carrier shall not be construed as conferring more than one operating right. By instant petition, Petitioner seeks to have amend as follows:

(E) Irregular routes:

General Commodities, except household goods as defined by the Commission: From and to points on the regular routes specified under Part (B) above, to and from Elizabeth, La; From and to points on the regular routes specified under Part (B) above, except New Orleans and Baton Rouge, La., to and from Hammond and Covington, La; From and to points on the regular routes specified under Part (B) above, except Shreveport and Alexandria, La., to and from Haynesville, Homer, Jonesboro, Ruston (restricted to truckloads), and Winnfield, La; From and to points on the regular routes specified under Part (B) above, except New Orleans, Baton Rouge, and Lake Charles, La., to and from Franklin, Houma, Jeanerette, Lafayette, Morgan City, New Iberia, Paterson, St. Martinville, Thibodaux, and Welsh, La; From and to points on U.S. Highway 190 between Kinder and Eunice, La., to and from the irregular routes destination and origin points specified above. Petitioner states the purpose of this amendment is to allow both an inbound and outbound service to Franklin, Houma, Jeanerette, Morgan City, New Iberia, Paterson, St. Martinville, Thibodaux, and Welsh, La. where petitioner has only inbound authority presently. Common control may be involved. (Hearing site: Baton Rouge, New Orleans or Lake Charles, La.)

MC 13300 (Sub-91) (M1F) (Notice of filing of petition to modify certificate), filed May 3, 1979. Applicant: CAROLINA COACH COMPANY, d.b.a. CAROLINA TRAILWAYS, 1201 S. Blount St., Raleigh, NC 27611. Representative: Lawrence E. Lindeman, 425 13th St., N.W., Suite 1032, Washington, DC 20004. Petitioner holds motor *common carrier* certificates in MC-13300 (Sub 91), issued July 27, 1978, authorizing transportation, over regular routes, of *passengers and their baggage, and express and newspapers* in the same vehicle with passengers, (1) between the junction of U.S. Hway 13 and U.S. Hwy 9 and Harbeson, DE, over U.S. Hwy 9, serving all intermediate points, and (2) between Lewes, DE, and Atlantic City, NJ, from Lewes, across the Delaware Bay (via the Lewes, DE-Cape May, NJ Ferry) to Cape May Point, NJ, then over U.S. Hwy 9 to its junction with NJ Hwy 109, then over NJ Hwy 109 to its junction with the Garden State Parkway, then over the Garden State Parkway to its junction with the Atlantic City Expressway, then over the Atlantic City Expressway to Atlantic City, NJ and return over the same route, serving no intermediate points. By the instant petition, petitioner seeks to modify the authority by eliminating the restriction against serving all intermediate points and to add the following route descriptions: (1) between junction Garden State Parkway and New Jersey Hwy 47 and Wildwood, NJ, over New Jersey Hwy 47, serving all intermediate points, and (2) between junction Garden State Parkway and New Jersey Hwy 585 and Garden State Parkway and New Jersey Hwy 52, from junction Garden State Parkway and New Jersey Hwy 585 over New Jersey Hwy 585 to junction New Jersey Hwy 52, then over New Jersey Hwy 52 to junction New Jersey State Hwy 52 and Garden State Parkway, and return over the same route, serving all intermediate points.

MC 58940 (M1F) (Notice of filing of petition to modify certificate), filed May 8, 1979. Applicant: L. E. CLAPP, INC., 20 Woodard Road, Greenfield, MA 01301. Representative: James M. Burns, Johnson's Bookstore Bldg., 1383 Main St., Suite 413, Springfield, MA 01103. Petitioner holds motor *common carrier* certificate in MC-58940 issued February 25, 1959, authorizing transportation, over irregular routes, of (1) *machinery, tools, and looms*, from Greenfield, MA, to points in CT and PA, (2) *rakes and shovels*, from Greenfield, MA, to points in NH, VT, RI, CT, NY, and NJ, (3) *iron castings*, from Greenfield, MA, to points in VT, (4) *shooks and wooden containers*, from Wilmington, VT, to points in ME, NH, MA, RI, CT, NY, and PA, (5) *agricultural commodities*, from Greenfield, MA and points in MA within 10 miles of Greenfield, to points in NH, VT, and NY, (6) *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 Greenfield, MA, on the one hand, and, on the other, points in Franklin County, MA (7)(a) *such commodities* as are dealt in by department stores and mail order houses, and (b) *materials, equipment and supplies* used in the conduct of such business, between Greenfield, MA, on the one hand, and, on the other, points in Windham County, VT and Cheshire County, NH, (8) *household goods* as defined by the Commission, between Greenfield, MA, and points in MA within 10 miles of Greenfield, on the one hand, and, on the other, points in RI, CT, NY, NH, and VT, (9) *household goods*, between Greenfield, MA, and points within 10 miles of Greenfield, on the one hand, and, on the other, points in ME, PA, and NJ. By the instant petition, petitioner seeks to modify the territorial description in (8) and (9) above by substituting "within 10 miles" with "within 25 miles".

Broker, Water Carrier and Freight Forwarder Operating Rights Applications

The following applications are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date of notice of filing of the application is published in the **Federal Register.** Failure to seasonably file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest under these rules should comply with Section 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 (including a copy of the specific portions of its authority which protestent believes to be in conflict with that sought in the application, and describing in detail the method—whether by joinder, interline, or other means—by which protestent would use such an authority to provide all or part of the service proposed), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues of allegations phrased generally, protests not in reasonable compliance with the requirements of the rules may be rejected.

Permanent Authority Decisions—Decision–Notice

Decided: November 14, 1979.

The following broker, freight forwarder or water carrier applications are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date notice of the application is published in the **Federal Register.**

Failure to file a protest within 30 days will be considered as a waiver of opposition to the application. A protest under these rules shall 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 specify with particularity the facts, matters, and things relied upon. The protest shall not include issues or allegations phrased generally. A protestant shall include a copy of the specific portion of its authority which it 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 this 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. 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, the request shall meet the requirements of section 247(e)(4) of the special rules and shall include the certification required in that section.

Section 247(f) provides, in part, that an applicant which does not intend timely to prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

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 applicant has demonstrated that its proposed service is either (a) required by the public convenience and necessity, or (b) 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 regulatons. 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 the absence of legally sufficient protests, filed within 30 days of publication of this decision-notice (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 that 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 1, Members Boyle, Eaton, and Liberman.

MC 130576F, filed May 21, 1979. Applicant: LINCOLN TOURS, INC., 10 West Elm Ave., Hanover, PA 17331. Representative: Norman T. Petow, 43 North Duke St., York, PA 17401. To engage in operations, in interstate or foreign commerce, as a *broker*, at Hanover, PA, in arranging for the transportation, by motor vehicle, of *passengers and their baggage*, in special and charter operations, beginning and ending at points in York County, PA, and extending to points in the United States, (including AK and HI). Note: Applicant is cautioned that arrangements for charter parties or groups should be made in conformity with the requirements set forth in *Tauck Tours, Inc., Extention—New York, NY*, 54 M.C.C. 291 (1952). (Hearing site: Harrisburg, PA, or Washington, DC.)

MC 130588F, filed May 29, 1979. Applicant: B & J TRAFFIC, INC., 116-16 Queens Blvd., Forest Hills, NY 11375. Representative: George Carl Pezold, 120 Main St., P.O. Box Z, Huntington, NY 11743. To engage in operations, in interstate or foreign commerce, as a *broker*, in Queens County, NY, in arranging for the transportation, by motor vehicle, of *general commodities*, between points in the New York, NY, commercial zone, on the one hand, and, on the other, points in the United States (including AK and HI). (Hearing site: New York, NY.)

Permanent Authority Decisions—Decision-Notice; Substitution Applications: Single-Line, Service for Existing Joint-Line Service

Decided: November 14, 1979.

The following applications, filed on or after April 1, 1979, are governed by the special procedures set forth in Part 1062.2 of Title 49 of the Code of Federal Regulations (49 CFR 1062.2).

The rules provide, in part, that carriers may file petitions with this Commission for the purpose of seeking intervention in these proceedings. Such petitions may seek intervention either with or without leave as discussed below. However, all such petitions must be filed in the form of verified statements, and contain all of the information offered by the submitting party in opposition. Petitions must be filed with the Commission on or before January 10, 1979.

Petitions for intervention without leave (i.e. automatic intervention), may be filed only by carriers which are, or have been, participating in the joint-line service sought to be replaced by applicant's single-line proposal, and then only if such participation has occurred within the one-year period immediately preceding the application's filing. Only carriers which fall within this filing category can base their opposition upon the issue of the public need for the proposed service.

Petitions for intervention with leave may be filed by any carrier. The nature of the opposition, however, must be limited to issues other than the public need for the proposed service. The appropriate basis for opposition, i.e. applicant's fitness, may include challenges concerning the veracity of the applicant's supporting information, and the bona fides of the joint-line service sought to be replaced (including the issue of its substantiality). Petitions containing only unsupported and undocumented allegations will be rejected.

Petitions not in reasonable compliance with the requirements of the rules may be rejected. An original and one copy of the petition to intervene 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.

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 exception of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity. 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 petitioner, 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 terms, conditions or limitations 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 petitions for intervention, filed on or before January 10, 1979 (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 the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring only 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 1, Members Boyle, Eaton, and Liberman.

MC 1074 (Sub-19F), filed June 6, 1979. Applicant: ALLEGHENY FREIGHT LINES, INC., P.O. Box 2080, Winchester, Va 22601. Representative: Francis W. McInerny, 1000 16th St. NW., Washington, DC 20036. 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 Washington, PA, and Cincinnati, OH: from Washington over Interstate Hwy 70 to junction Interstate Hwy 71, then over Interstate Hwy 71 to Cincinnati, and return over the same route, serving the intermediate point of Columbia, OH; and (2) between Athens and Columbus, OH, over U.S. Hwy 33, serving no intermediate points. *The sole purpose of this application is to substitute single-line for joint-line operations in which applicant has participated in traffic moving to and from Columbus, OH.*

MC 63417 (Sub-203F), filed April 19, 1979. Applicant: BLUE RIDGE TRANSFER COMPANY, INC., P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain (same address as applicant). 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), from points in DE, MD, NJ, NY, PA, and WV, to points in NC, SC, and VA. (Hearing site: Roanoke, VA, or Washington, DC.)

Note.—The sole purpose of this application is to substitute single-line for joint-line operations.

MC 88380 (Sub-36F), filed June 1, 1979. Applicant: REB TRANSPORTATION, INC., 2400 Cold Springs Road, P.O. Box 4309, Fort Worth, TX 76106. Representative: Dennis Fuchshuber (same address as applicant). Transporting *machinery, materials, supplies, and equipment* incidental to, or used in, the construction, development, operation, and maintenance of facilities for the discovery, development, and production of natural gas and petroleum, between points in TX and LA. (Hearing site: Fort Worth, Dallas, or Houston, TX.)

Note.—The sole purpose of this application is to substitute single-line for joint-line operations.

MC 134755 (Sub-191F), filed June 6, 1979. Applicant: CHARTER EXPRESS, INC., P.O. Box 3772, Springfield, MO 65804. Representative: Larry D. Knox, 606 Hubbell Bldg., Des Moines, IA 50309. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *iron and steel articles*, (a) from Toledo, OH, to Bolivar and Springfield, MO, (b) from Pittsburgh, PA, and Chicago, IL, to Springfield, MO, and (c) from Beaumont, TX, to Kansas City, MO; and (2) *tires*, from Fayetteville, NC, to Kansas City, MO. *The sole purpose of this application is to substitute single-line for joint-line operations.* (Hearing site: Kansas City, MO.)

Note.—Dual operations may be involved.

Permanent Authority Decisions—Decision-Notice; Substitution Applications: Single-Line, Service for Existing Joint-Line Service

Decided: November 20, 1979.

The following applications, filed on or after April 1, 1979, are governed by the special procedures set forth in Part 1062.2 of Title 49 of the Code of Federal Regulations (49 CFR 1062.2).

The rules provide, in part, that carriers may file petitions with this Commission for the purpose of seeking intervention in these proceedings. Such petitions may seek intervention either with or without leave as discussed below. However, all such petitions must be filed in the form of verified statements, and contain all of the information offered by the submitting party in opposition. Petitions must be filed with the Commission on or before January 10, 1979.

Petitions for intervention without leave (i.e. automatic intervention), may be filed only by carriers which are, or have been, participating in the joint-line service sought to be replaced by applicant's single-line proposal, and then only if such participation has occurred within the one-year period immediately preceding the application's filing. Only carriers which fall within this filing category can base their opposition upon the issue of the public need for the proposed service.

Petitions for intervention with leave may be filed by any carrier. The nature of the opposition, however, must be limited to issues other than the public need for the proposed service. The appropriate basis for opposition, i.e., applicant's fitness, may include challenges concerning the veracity of the applicant's supporting information, and the bona-fides of the joint-line service sought to be replaced (including the issue of its substantiality). Petitions containing only unsupported and undocumented allegations will be rejected.

Petitions not in reasonable compliance with the requirements of the

rules may be rejected. An original and one copy of the petition to intervene 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.

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 exception of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity. 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 petitioner, 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 terms, conditions or limitations 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 petitions for intervention, filed on or before January 10, 1979 (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 the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring only a single operating right.

Applicants must comply withn 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 3, Members Parker, Hill, and Fortier.

MC 95540 (Sub-1114F), filed May 29, 1979. Applicant: WATKINS MOTOR LINES, INC., 1144 West Griffin Road, P.O. Box 1636, Lakeland, FL 33802. Representative: Benjy W. Fincher (same address as applicant). To operate as a *comon 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 Atlanta, GA, and Cuba, AL, from Atlanta over U.S. Hwy 78 to Birmingham, AL, then over U.S. Hwy 11 to Cuba, and return over the same route, (2) between Atlanta, GA, and Tuskegee, AL, over U.S. Hwy 29, (3) between Tuskegee and Montgomery, AL, over U.S. Hwy 80, (4) between Montgomery and Gran Bay, AL, from Montgomery over U.S. Hwy 31 to junction U.S. Hwy 90, then over U.S. Hwy 90 to Grand Bay, and return over the same route, (5) between Columbus, GA, and Tuskegee, AL, over U.S. Hwy 80, (6) between Montgomery and Cuba, AL, over U.S. Hwy 80, (7) between Bainbridge, GA, and Ardmore, AL, from Bainbridge over U.S. Hwy 84 to Dothan, AL, then over U.S. Hwy 231 to Montgomery, AL, then over U.S. Hwy 31 to junction AL Hwy 251, then over AL Hwy 251 to junction AL Hwy 53, then over AL Hwy 53 to Ardmore, and return over the same route, (8) between Dothan and Isney, AL, over U.S. Hwy 84, (9) between Montgomery and Stafford, AL, over U.S. Hwy 82, (10) between Birmingham, AL, and junction U.S. Hwy 27 and GA Hwy 2, from Birmingham over U.S. Hwy 11 to junction U.S. Hwy 27, then over U.S. Hwy 27 to junction GA Hwy 2 and return over the same route, (11) between junction U.S. Hwy 27 and GA Hwy 2 and Rossville, GA, over U.S. Hwy 27, (12) between Birmingham and Bexar, AL, over U.S. Hwy 78, (13) between Atlanta, GA, and Hamilton, AL, over U.S. Hwy 278, (14) between Rossville, GA, and Cherokee, AL, from Rossville over U.S. Hwy 27 to junction Interstate Hwy 24, then over Interstate Hwy 24 to junction U.S. Hwy 72, then over U.S. Hwy 72 to Cherokee, and return over the same route, (15) between Anniston, AL, and junction U.S. Hwy 72 and Alternate U.S. Hwy 72, from Anniston over U.S. Hwy 431 to Huntsville, AL, then over Alternate U.S. Hwy 72 to junction U.S. Hwy 72, and return over the same route, (16) between Columbus, GA and Birmingham, AL, over U.S. Hwy 280, (17) between Columbus, GA and Mobile, AL, from Columbus, over U.S. Hwy 431 to Dothan, AL, then over U.S. Hwy 231 to junction U.S. Hwy 90, then over U.S. Hwy 90 to Mobile and return over the same route, (18) between Bainbridge, GA and Pensacola, FL, from Bainbridge over U.S. Hwy 27 to Tallahassee, FL, then over U.S. Hwy 319 to Carrabelle, FL, then over U.S. Hwy 98 to Pensacola, and return over the same route, (19) between Pensacola, FL, and Flomaton, AL, over U.S. Hwy 29 and (20) between junction U.S. Hwy 27 and GA Hwy 2 and Atlanta, GA, from junction U.S. Hwy 27 and GA Hwy 2 over GA Hwy 2 to junction U.S. Hwy 41, then over U.S. Hwy 41 to Atlanta and return over the same route, serving all intermediate points, and serving points in AL, those in FL on and west of U.S. Hwy 319, and those in GA on, north, and west of U.S. Hwy 411 as off-route points, restricted in (1), (2), (5), (7), (10), (11), (13), (14), (16), (17), (18), and (20), to the transportation of traffic moving from, to or through a point in AL.

Note.—Applicant indicates intention to tack with existing authority in MC-95540 Subs 733 and 999. The purpose of this application is to substitute single-line for joint-line operations.

Permanent Authority Decisions—Decision-Notice

Decided: November 20, 1979.

The following broker, freight forwarder or water carrier applications are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date notice of the application is published in the Federal Register. Failure to file a protest within 30 days will be considered as a waiver of opposition to the application. A protest under these rules shall 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 specify with particularity the facts, matters, and things relied upon. The protest shall not include issues or allegations phrased

generally. A protestant shall include a copy of the specific portion of its authority which it 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 this 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. 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, the request shall meet the requirements of section 247(e)(4) of the special rules and shall include the certification required in that section.

Section 247(f) provides, in part, that an applicant which does not intend timely to prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings: With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdicitional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service is either (a) required by the public convenience and necessity, or, (b) 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 Conservation Act of 1975.

In the absence of legally sufficient protests, filed within 30 days of publication of this decision-notice (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 3, Members Parker, Hill, and Fortier.

Brokers

MC 130435 (Sub-1F), filed October 18, 1979. Applicant: DESTINATIONS UNLIMITED, INC., 8120 Penn Avenue South, Bloomington, MN 55431. Representative: James M. Christenson, 4444 IDS Center, Minneapolis, MN 55402. To engage in operations, in interstate or foreign commerce, as a *broker*, at Bloomington, MN, in arranging for the transportation, by motor vehicle, of *passengers and their baggage* in special or charter operations, beginning and ending at points in MN, and extending to points in FL. (Hearing site: Minneapolis, MN.)

MC 130599F, filed August 21, 1979. Applicant: CHARLES R. ROBINSON, d.b.a ROBINSON TRAVEL SERVICE, 7604 Edgewater Drive, Columbia, SC 29204. Representative: Charles R. Robinson (same address as applicant). To engage in operations, in interstate or foreign commerce, as a *broker*, at Columbia, SC, in arranging for the transportation, by motor vehicle, of *passengers and their baggage*, in special and charter operations, beginning and ending at points in SC, and extending to points in the United States (including AK, but excluding HI). (Hearing site: Columbus, SC.)

Note.—Applicant is cautioned that arrangements for charter parties or groups should be made in conformity with the requirements set forth in *Tauck Tours, Inc. Extension—New York, NY*, 54 M.C.C. 291(1964).

MC 130615F, filed October 17, 1979. Applicant: ELK TOURS INC., 20 Revolutionary Rd., Peekskill, NY 10566. Representative: John L. Alfano, 550 Mamaroneck Ave., Harrison, NY 10528. To engage in operations, in interstate or foreign commerce, as a *broker*, at Peekskill, NY, in arranging for the transportation, by motor vehicle, of *passengers and their baggage*, in special and charter operations, between points in Rockland and Westchester Counties, NY, on the one hand, and, on the other, points in CT, ME, MA, NH, NJ, NY, PA, RI, and VT.

Note.—Applicant is cautioned that arrangements for charter parties or groups should be made in conformity with the requirements set forth in *Tauck Tours, Inc. Extension—New York, NY*, 54 M.C.C. 291(1952).

MC 130644F, filed November 5, 1979. Applicant: MARIAN M. GEISLER, d.b.a., M & M TRAVEL AGENCY, 1137 Logan Road, Bethel Park, PA 15102. Representative: Mark F. Geary, 826 Frick Bldg., Pittsburgh, PA 15219. To engage in operations, in interstate or foreign commerce, as a *broker*, at Bethel Park, PA, in arranging for the transportation, by motor vehicle, of *passengers and their baggage*, in special and charter operations, beginning and ending at points in Allegheny County, PA, and extending to points in the United States (including AK and HI). (Hearing site: Pittsburgh, PA.)

Note.—Applicant is cautioned that arrangements for charter parties or groups should be made in conformity with the requirements set forth in *Tauck Tours, Inc. Extension—New York, NY*, 54 M.C.C. 291(1952).

Finance Applications

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control through ownership of stock, or rail carriers or motor carriers pursuant to Sections 11343 (formerly Section 5(2)) or 11349 (formerly Section 210a(b)) of the Interstate Commerce Act.

An original and one copy of protests against the granting of the requested authority must be filed with the Commission within 30 days after the date of this **Federal Register** notice. Such protest shall comply with Special Rules 240(c) or 240(d) of the Commission's *General Rules of Practice* (49 CFR 1100.240) and shall include a concise statement of protestant's interest in the proceeding. A copy of the protest shall be served concurrently upon applicant's representative, or applicant, if no representative is named.

Each applicant states that approval of its application will not significantly affect the quality of the human environment nor involve a major regulatory action under the Energy Policy and Conservation Act of 1975.

MC–F–14036F, filed May 10, 1979. Authority sought for the purchase by Pilot Freight Carriers, Inc., 4103 Cherry

Street NW., Winston-Salem, NC 27102 of the operating rights of Edward W. Bachman d/b/a Motor Express, 242 Greenfield Drive, Bridgeport, CT 06601, and for acquisition by R. Y. Sharpe, 4103 Cherry Street NW., Winston-Salem, NC 27102 of control of such rights through the transaction. Applicant's attorney: William F. King, Suite 400, Overlook Building, 6121 Lincolnia Road, Alexandria, VA 22312. Operating rights sought to be purchased are contained in a Certificate of Registration and authorize the transportation as a motor common carrier of: (1) *Property*, over a regular-route between New Haven, CT and Greenwich, CT serving: New Haven, West Haven, Orange, Milford, Devon, Stratford, Bridgeport, Fairfield, Rowayton, Southport, Westport, Saugatuck, East Norwalk, Norwalk, South Norwalk, Darien, New Canaan, Springdale, Glenbrook, Stamford, Old Greenwich, Mianus, Riverside, Cos Cob and Greenwich, CT; and (2) *General Commodities* (other than household goods and office furniture and equipment and other than commodities which necessitate the use of dump trucks, tank trucks or special equipment), between any points within CT over such routes and highways within CT as may be necessary in the performance of a common carrier service. Pilot Freight Carriers, Inc. is authorized to operate as a *common carrier* in the States of AL, CT, DE, FL, GA, MA, MD, NC, NJ, NY, OH, PA, RI, SC, TN, VA, and DC. Application has been filed for temporary authority under 49 U.S.C. § 11349. (Hearing sites: Charlotte, NC and New Haven, CT.

Note.—MC 61264 (Sub—) is a directly related matter.

MC 14045F, filed June 3, 1979. Transferee: AJAX TRANSFER COMPANY, 550 E. 5th St. So., So. St. Paul, MN 55075. Transferor: CRX CORPORATION, 5016 7th Place, Winona, MN 55987. Representatives: Paul Nelson, 550 E. 5th St. So., So. St. Paul, MN 55075 and Donald L. Stern, 610 Xerox Bldg., 7171 Mercy Road, Omaha, NE 68106. Authority sought for purchase by Ajax Transfer Company of the operating rights of CRX Corporation. Operating rights sought to be transferred are set out in Docket No. MC–135003 (Sub-No. 1) authorizing transportation of frozen foods and poultry commodities from Faribault and St. Charles, MN, to points in CT, IL, IN, KY, ME, MD, MA, MI, MO, NH, NJ, NY, OH, PA, RI, VT, VA, WV, and DC. Transferee is authorized to operate as a common carrier in the continental United States. No duplicate authority is sought. No application for temporary authority under Section 210a(b) has been filed. (Hearing site: St. Paul, MN.)

MC–F–14093F, filed July 16, 1979. Authority sought for control by Schiavone Charters, Inc., 243 Universal Drive, North Haven, CT 06473, of Valley Transportation, Inc., 516 Oxford Road, Oxford, CT, and subsequent merger of Valley Transportation, Inc. into Schiavone Charters, Inc., and for acquisition by Schiavone Transportation Corp., Michael Schiavone & Sons, Inc. and Joel Schiavone, Michael Schiavone and Esther Schiavone, through the acquisition by Shciavone Charters, Inc. of control of Valley Transportation, Inc. Applicant's attorneys: Palmer S. McGee, Jr., One Constitution Plaza, Hartford, CT 06103 and L. C. Major, Jr., Suite 400, Overlook Building, 6121 Lincolnia Road, Alexandria, VA 22312. Operating rights sought to be controlled and merged: authority to operate as a *common carrier* in the transportation of passengers and their baggage and express and newspapers in the same vehicle with passengers over regular routes between Waterbury, and Bridgeport, CT and between Port Chester, NY and Stamford, CT; passengers and their baggage in charter operations: (1) from Trumbull, CT and points within 30 miles of Trumbull to points in NY, NJ, MA, RI and PA and (2) from points in CT (except points in New London County) to points in 11 states and DC; and special operations (1) between numerous specified points in CT and named racetracks in NY, (2) from points in CT (except points in New London County) to points in 4 states and DC, (3) from numerous specific points in CT to portions of NY and MA, (4) beginning and ending at specified points in CT and extending to points in 7 specified states, (5) beginning and ending at specified points in CT and extending to Yankee and Shea Stadiums in New York City, all as more fully described in Certificates of Public Convenience and Necessity issued in MC–109865 Subs 5 and 13 and certificate to be issued in MC–10986 Sub 14F and brokers license issued in MC–12723 authorizing brokerage operations at Bridgeport, CT in arranging transportation for passengers in special and charter operations in roundtrip, all expense tours beginning and ending at points in Fairfield, New Haven and Hartford Counties, CT and extending to points in the U.S. (including AK and excepting HI). Schiavone Charters, Inc. holds no authority from the I.C.C. but is affiliated with Connecticut Limousine Service, Inc. which conducts bus and limousine operations between nineteen points in CT, on the one hand, and, on the other, the John F. Kennedy International Airport and La Guardia Airport in New York City and Newark Memorial Airport, Newark, NJ. Application has been filed for temporary authority under Section 210a(b).

MCF 14137F, filed August 23, 1979. Applicant: T.I.M.E.–DC, INC., 2598 74th Street, Lubbock, TX 79408. Representatives: Kenneth G. Thomas, c/o T.I.M.E.–DC, INC., 2598 74th Street, Lubbock, TX 79408. Fred H. Mackensen, c/o Murchison & Davis, 9454 Wilshire Blvd., Suite 400, Beverly Hills, CA 90212. Authority sought to operate as a *common carrier* of general commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, those requiring special equipment, motor vehicles and livestock) between the Los Angeles area, as defined below, and San Diego and Goleta, CA serving all intermediate points and off-route points within ten miles of the designated Hwys.: From San Clemente to San Diego over Interstate Hwy. 5, and return over the same route. From Temecula to San Diego over Interstate Hwy. 15, and return over the same route. From Los Angeles to Goleta over U.S. Hwy. 101, and return over the same route. The *Los Angeles Area* includes all points within the following: beginning at the intersection of the Ventura-Los Angeles County boundary and the Pacific Ocean, then northeast along the said County line to its intersection with CA Hwy. 118, then east along CA Hwy. 118 to Sepulveda Boulevard, then north along Sepulveda Boulevard to Chatsworth Drive, then northeast along Chatsworth Drive to the San Fernando city line, then west, north and then east along the said city line to McClay Avenue, then northeast along McClay Avenue and its prolongation to the Angeles National Forest boundary, then southeast and east along the southern boundaries of the Angeles and San Bernardino National Forest to Mill Creek Road (near Redlands), then southwest on Mill Creek Road to the intersection of a County road 3.8 miles north of Yucaipa, then south along said county road (in part known as Bryant Street) to Yucaipa, serving all points in Yucaipa, then west along Yucaipa-Redlands Boulevard to U.S. Hwy. 70, then west along U.S. Hwy. 70 to the Redlands city line, then around the south side of Redlands to Brookside Avenue, then west along Brookside Avenue to Barton road (Barton Avenue), then west along Barton Road (Barton Avenue) and its prolongation to Palm Avenue, then west along Palm Avenue to LA Cadena Drive, then south along

LA Cadena Drive to Iowa Avenue, then south along Iowa Avenue to U.S. Hwy. 60, then southwest along U.S. Hwy. 395 to Nuevo Road, then east along Nuevo Road to Nuevo, then northeast along Lakeview Avenue to Lakeview, then east along Pico and Mead Roads and Central Avenue to the San Jacinto city limits, then east, south, and then west along the said city limits to San Jacinto Avenue, then south along San Jacinto Avenue to California Hwy. 74, then west on CA Hwy. 74 to the city limits of Hemet, then south, west, and then north along the city limits to the railroad right of way of the Atchison, Topeka & Santa Fe Railway Company, then southwest along said railroad right of way to Winchester Road, then south along Winchester Road to Washington Street and south along Washington Street to Benton Road, then west along Benton Road to the County Road which extends from such intersection southwest to U.S. Hwy. 395 at a point 2.1 miles north of Temecula, then south along the said County Road to U.S. Hwy. 395, then southeast along U.S. Hwy. 395 to the San Diego County boundary line, then west along the said County line to the Pacific Ocean, and then along the Pacific Coast to the point of beginning. (Hearing site: Los Angeles, CA).

Note.—The purpose of this Application is to convert a Certificate of Registration to a Certificate of Public Convenience and Necessity. This Application is directly related to Section's 5(2) Finance Proceeding docketed MC-F and published in a previous section of the Federal Register Issue.

MC-F-14140F, filed: August 22, 1979. Authority sought by Central Transport, Inc., 34200 Mound Road, Sterling Heights, MI 48077, to purchase all of the operating rights and properties of Leelanau Motor Freight, Inc., 3868 Rennie School Road, Traverse City, MI 49684, and for acquisition of control of the rights and properties of Transferor by CenTra, Inc. and in turn by T. J. Moroun and M. J. Moroun, all of the same address, through the transaction. Applicant's attorneys, Walter N. Bieneman, 100 West Long Lake Road—Suite 102, Bloomfield Hills, MI 48013, for Transferee and Karl L. Gotting, 1200 Bank of Lansing Building, Lansing, MI 48932, for Transferor. Operating rights sought to be transferred as follows: 1. General commodities (with the usual exceptions) over regular routes from Traverse City, MI north over M-22 to Northport and thence south over M-22 to Sugar Loaf Mountain, serving all intermediate points including Suttons Bay, Omena, Northport, Leland, and Lake Leelanau. 2. General commodities (with the usual exceptions) over regular routes from Traverse City, MI north over M-37 to Old Mission, MI; and from Traverse City, MI south over M-37 to Grawn, MI, serving all intermediate points. Central Transport, Inc. is authorized to operate as a common carrier in IL, IN, KY, MI, NY, OH, PA, WV and WI. Hearing site: Lansing or Detroit, MI. Application has been filed for temporary lease authority. A directly related application has also been filed by Central Transport, Inc. for conversion to certificates of those portions of the authority of Leelanau Motor Freight, Inc. now held under registration in MC-57622 Subs 1 and 2.

MC-F-14148F, filed: August 30, 1979. Authority sought for purchase by DEL TRANSPORT, INC., 4 Crow Point Road, Lincoln, RI 02865 of the operating rights of Merrimack Motor Trans. Co., Inc., 31 Arthur Street, Bellingham, MA 02109, and for acquisition by Filomena Del Farno, 100 Yorkshire Street, Providence, RI 02908 of control of such rights through the purchase. Applicants' attorney: Frank J. Weiner, 15 Court Square, Boston, MA 02108. Operating rights sought to be purchased: *General commodities,* as a common carrier, between points in MA, as more fully described in Certificate of Registration No. MC-85545 (Sub No. 1). Vendee is authorized to operate as a common carrier in Massachusetts and Rhode Island pursuant to MC-26639 and Subs. Application has been filed for temporary authority under 49 U.S.C. 11349. A directly related application seeking conversion of the certificate of registration to a certificate of public convenience and necessity is being simultaneously filed.

Note.—MC-26639 (Sub No. —F) is directly related matter.

MC-F-14185F, filed: October 8, 1979. Applicant: FLOYD & BEASLEY TRANSFER COMPANY, INC., Post Office Drawer 8, Sycamore, Alabama 35149. Representative: Charles Ephraim, Ephraim and Flint, Suite 600, 1250 Connecticut Avenue, N.W., Washington, DC 20036. Authority is sought by Floyd & Beasley Transfer Company, Inc. to purchase all of the operating authority of Barnett Transportation, Inc., and for Jule D. Beasley and Gertrude B. Floyd to acquire control of said operating rights through the purchase. Operating rights sought to be transferred: *Packing-house products, groceries,* and *fresh fruit* and *vegetables,* from Gadsden, Ala., to points within 35 miles of Gadsden, Ala.; *Cotton yarn,* from Sylacauga and Talladega, Ala., to Port Ewen, N.Y., Reynolds, White Haven, Reading, and Hazleton, Pa., and Pompton Lakes, Yardville, and Mount Holly, N.J.; *Fruit juices,* from points in Florida and Texas to Birmingham, Ala.; *Methyl vinly pyridine,* in bulk, in tank vehicles, from Pasadena, Tex., to Decatur, Ala.; *Methyl vinyl pyridine,* in bulk, in tank vehicles, between Pace, Fla., and Pasadena, Tex.; *Nylon salt solution,* in bulk, in tank vehicles equipped with mechanical temperature-control devices, from Gonzalez, Fla., to Decatur, Ala.; *Synthetic fiber yarn,* and *containers* used for the transportation thereof, between Gonzalez and Pensacola, Fla., on the one hand, and, on the other, Atlanta, Ga., with services at Atlanta, restricted as an interchange point; *Tire cord yarn,* and *containers* used in the transportation thereof, between Gonzalez and Pensacola, Fla., on the one hand, and, on the other, Barnesville, Ga.; *Synthetic fiber, synthetic fiber yarns,* and *tire cord yarn,* from Decatur, Ala., to points in Louisiana and Mississippi; *Synthetic fiber* and *synthetic fiber yarn* (a) from the plant sites and warehouses of Monsanto Company at Decatur and Huntsville, Ala., to points in North Carolina and Virginia; and (b) from the plant sites and warehouses of Monsanto Company at Gonzalez and Pensacola, Fla., to points in Georgia, North Carolina, South Carolina, and Virginia; *Textiles, textile products, equipment, materials,* and *supplies* used in the manufacture and distribution of textiles (except commodities in bulk and those which require the use of special equipment), between the plant site of Monsanto Company in Marshall County, Ala., on the one hand, and, on the other, points in Louisiana, Mississippi, North Carolina, and Virginia; (1) *Textiles* and *textile products,* and (2) *equipment, materials,* and *supplies,* used in the manufacture and distribution of textiles (except commodities in bulk and commodities requiring the use of special equipment in both (1) and (2) above), from the facilities of Monsanto Textiles Company, a division of The Monsanto Company, at Gonzalez and Pensacola, Fla., to points in Georgia, North Carolina, South Carolina, and Virginia. A directly related gateway elimination application was simultaneously filed. (Hearing site: Birmingham, AL or Washington, DC.)

MC-F-14200F, filed: Nov. 9, 1979. Transferee: IOWA PACKERS XPRESS, INC., 920 32nd Ave. West, Box 231, Spencer, IA 51301. Transferor: JONES TRANSFER, INC., 430 West 7th Street, Spencer, IA 51301. Representative: Bill E. Husby, P.O. Box 231, Spencer, IA 51301. Authority sought for purchase by Transferee of a portion of the operating rights of transferor, as set forth in MC-

11862 issued April 7, 1971 as follows: Irregular routes: *Malt beverages,* from Peoria, Ill., Minneapolis, Minn., and Omaha, Nebr., to Spencer, Iowa; and from Minneapolis, and St. Paul, Minn., and Omaha, Nebr., to Algona, Iowa; and from Milwaukee, Wisc., and Omaha, Nebr., to Arnolds Park, Iowa; and from Milwaukee, Wisc., to Britt and Spencer, Iowa; and from La Crosse, Wisc., to Spencer and Storm Lake, Iowa; and *Empty malt beverage containers,* from Spencer, Iowa, to Peoria, Ill., Minneapolis, Minn., and Omaha, Nebr. From Algona, Iowa, to Minneapolis and St. Paul, Minn., and Omaha, Nebr. From Arnolds Park, Iowa, to Milwaukee, Wisc., and Omaha Nebr. From Britt and Spencer, Iowa, to Milwaukee, Wisc. From Spencer and Storm Lake, Iowa, to La Crosse, Wisc.

MCF (14206F), filed October 26, 1979. Authority sought by *DUGAS EXPRESS COMPANY,* 101 Knox Street, Lewiston, ME 04240, for the purchase of the operating rights of WARREN'S EXPRESS, INC., 371 Payne Road, Scarborough, ME 04074, and control of such rights through the purchase by Fernand Doyon, Richard Doyon and Normand Doyon, 101 Knox Street, Lewiston, ME 04240. Applicant's representative: Normand Doyon, 101 Knox Street, Lewiston, ME 04240. Operating rights sought to be transferred are contained in Certificate of Public Convenience and Necessity No. MC–59505, authorizing the transportation, over *Regular Routes,* by motor vehicle, as a *Common Carrier, General Commodities,* except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, between Portland, ME and specified points in NH, as follows, serving the intermediate and off-route points set out below: from Portland over ME Hwy 25 to Standish, ME, then over ME Hwy 113 to Fryeburg, ME (also from Portland over U.S. Hwy 302 to Fryeburg), then over U.S. Hwy 302 via Bartlett, NH to junction U.S. Hwy 3, then over U.S. Hwy 3 to Colebrook, NH, and return over the same route. From Portland over ME Hwy 25 to the ME-NH State line, then over NH Hwy 25 to Center Ossipee, NH, then over NH Hwy 16 to junction U.S. Hwy 302, and return over the same route. From Portland to Center Ossipee, NH, as specified above, then over NH Hwy 16 to junction NH Hwy 28, then over NH Hwy 28 to Wolfeboro, NH, and return over the same route. Service is authorized from and to all intermediate points, and off-route points of S. Portland, ME, and Center Tuftonboro, Tuftonboro, Water Village, S. Wolfeboro, Mountainview, Granite, Whittier, Tamworth, S. Tamworth, Silver Lake, Madison, Eaton Center, Wonolancet, N. Sandwich, Ossipee, Jackson, Kearsage, and Passaconaway, NH., and over *Irregular Routes,* by motor vehicle, as a *common carrier, General Commodities,* except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, between Portland, ME, on the one hand, and, on the other, points in the territory bounded by a line beginning at Portland, ME and extending in a northerly direction through Crescent Lake, ME, to Bethel, ME, then in a northwesterly direction through Milan, NH to N. Stratford, NH, thence in a southerly direction through Passumpsic, VT to Groton, VT, then in a southerly direction through Orfordville, NH to New London, NH, then in a southeasterly direction through Boscawen, NH to Portsmouth, NH, and then in a northeasterly direction along U.S. Hwy 1 to Portland, ME, including the points named and points on that portion of U.S. Hwy 1 specified.

Transfer Proceedings

The following publications include motor carrier, water carrier, broker, and freight forwarder transfer applications filed under Section 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act.

Each application (except as otherwise specifically noted) contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application.

Protests against approval of the application, which may include request for oral hearing, must be filed with the Commission on or before January 10, 1980. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest must be served upon applicants' representative(s), or applicants (if no such representative is named), and the protestant must certify that such service has been made.

Unless otherwise specified, the signed original and six copies of the protest shall be filed with the Commission. All protests must specify with particularity the factual basis, and the section of the Act, or the applicable rule governing the proposed transfer which protestant believes would preclude approval of the application. If the protest contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted through the use of affidavits.

The operating rights set forth below are in synopses form, but are deemed sufficient to place interested persons on notice of the proposed transfer.

MC–FC–78176, filed May 22, 1979. Transferee: WOLF OIL CO., INC., Hwy 24 W., Box 574, Moberly, MO 65270. Transferor: CLIVER OIL COMPANY, INC., Hwy 24 W, P.O. Box 633, Moberly, MO 65270. Representative: Jonathan M. Graves, P.O. Box 574, Moberly, MO 65270. Authority sought for the purchase by transferee of the operating rights of transferor set forth in Permit MC–106150, issued October 19, 1960, as follows: *petroleum products,* in bulk, in tank vehicles, from Kansas City, KS, to Richmond, Carrollton, Brunswick, Moberly, Macon, Centralia, Mexico, Montgomery City, Shelbina, Monroe City, Fulton, Herman, Kirksville, and Brookfield, MO, and rejected shipments on return. Transferee presently holds no authority from this Commission. Application has been filed for temporary authority under 49 U.S.C. 11349.

MC–FC–78209, filed June 26, 1979. Transferee: EASTERN TANK LINES, INC., 5536 Brentlinger Dr., Dayton, OH 45414. Transferor: SKYLINE TRANSPORT, INC., 1910 Russell St., Baltimore, MD 21230. Representative: H. Neil Garson, 3251 Old Lee Highway, Suite 400, Fairfax, VA 22030. Authority sought for the purchase by transferee of the operating rights of transferor as set forth in Certificate MC–128642 (Sub 8), issued August 12, 1977, as follows: *corn products,* in bulk except corn oil in bulk, from Dayton, OH, to points in AL, CT, DE, FL, GA, IL, IN, KY, ME, MD, MA, MI, MS, NH, NJ, NY, NC, PA, RI, SC, TN, VT, VA, WV, WI, and DC, restricted to the transportation of traffic originating at the facilities of Cargill, Incorporated and CAR–MI Incorporated, at Dayton, OH. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under 49 U.S.C. 11349.

MC–FC–78211, filed June 25, 1979. Authority sought for transfer to Chicagoland Quad Cities Express, Inc., 907 West 19th Street, Chicago, IL 60608, of a portion of the operating rights issued in Docket No. MC 53752 to Western Transportation Inc., 1300 West 35th Street, Chicago, IL 60608. Transferee's attorney: Earl H. Scudder, Jr., P.O. Box 82028, Lincoln, NE 68501. Transferor's attorney: Carl L. Steiner, 39 South LaSalle Street, Chicago, IL 60603. Operating rights sought to be purchased:

General commodities, with exceptions, as a common carrier over regular routes between Chicago, IL and Moline, IL, as more fully described in certificate No. MC 53752. Transferee presently holds no authority from this Commission. Application has been filed for temporary authority under 49 U.S.C. 11349.

MC–FC–78235, filed July 23, 1979. Transferee: Ronald W. Nathan, d.b.a. Chandler's Auto Express, 162 Chandler St., Duxbury, MA 02332. Transferor: Emilio C. Bruno, (Margaret Bruno, Administratrix), d.b.a. E. C. Bruno Transportation, 60 Annese Road, Chelsea, MA 02150. Representative: John E. Heraty, 60 State St., Boston, MA 02109. Authority sought for purchase by transferee of authority held by transferor in Certificate No. MC–19432, issued March 19, 1942, authorizing groceries and light machinery, over a regular route between Boston, MA, and Providence, RI. Transferee holds no authority from the Commission. An application seeking temporary lease authority has not been filed.

MC–FC–78236, filed July 17, 1979. Transferee: Guignard Service Company, P.O. Box 26276, Charlotte, NC 28213. Transferor: Northeastern Trucking company, 2700 Starita Road, Charlotte, NC 28213. Representative: Edward G. Villalon, 1032 Pennsylvania Bldg., Penn. Ave. & 13th St., NW, Washington, DC 20004. Authority sought for purchase by transferee of operating rights held by transferor in Certificates No. MC–64112 Subs 11 and 24, authorizing the transportation of petroleum and petroleum products, from Charleston, SC, to points in FL (except Duval County); and such commodities as are dealt in by gasoline service stations, and gasoline service station equipment and supplies, from the facilities of Exxon Company, U.S.A., at or near Charleston, SC, to points in FL (except those in Duval and Escambia Counties), with restrictions. Transferee holds authority from the Commission in No. MC 143858. An application for temporary lease has not been filed.

MC–FC–78246, filed July 25, 1979. Transferee: Z & S Construction Co., Inc., P.O. Box 310, Kimball, NE 69145. Transferor: J & M Trucking, Inc., 881 East Magnolia, Casper, WY 82601. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman St., Denver, CO 80203. Ron Brown, Petroleum Bldg., Casper, WY 82601. Authority sought for purchase by transferee of a portion of the operating rights of transferor in Certificates No. MC–128674 as follows: Generally, oil field equipment and supplies, between points in CO on and east of U.S. Hwy 87, on the one hand, and, on the other, points in NE. Transferee holds no authority from the Commission. An application seeking temporary lease has been filed.

MC–FC–78253, filed July 31, 1979. Transferee: Domtar, Inc., 395 de Maisonneuve Blvd., West, Montreal, Quebec, Canada H3A 2L6. Transferor: Charles Harris & Sons Transport Limited, P.O. Box 4, Burlington, Ontario, Canada L7R 3X8. Representative: Robert D. Gunderman, 710 Statler Bldg., Buffalo, NY 14202. Authority sought for purchase by transferee of operating rights held by transferor in Certificate No. MC–123503, issued March 18, 1976, authorizing lumber, between ports of entry on the United States-Canada Boundary line at the St. Lawrence, Niagara, and Detroit Rivers, on the one hand, and, on the other, points in MI, OH, PA, and NY (except points in Kings, Queens, Nassau, and Suffolk Counties, NY); and between ports of entry on the United States-Canada Boundary line, located in MI and NY, on the one hand, and, on the other, points in CT, DE, IL, IN, KY, MD, MA, NH, NJ, RI, VT, VA, WV, WI, points in Kings, Queens, Nassau, and Suffolk Counties, NY, and the District of Columbia. Transferee holds no authority from this Commission. An application seeking temporary lease has been filed.

MC–FC–78256, filed July 31, 1979. Transferee: HOYA EXPRESS, INC., P.O. Box 543, West Middlesex, PA 16159. Transferor: GEORGE W. KUGLER, INC., 2800 E. Waterloo Rd., Akron, OH 44312. Representatives: Henry M. Wick, Jr., 2310 Grant Bldg., Pittsburgh, PA 15219, Attorney for Transferee; John P. McMahon, 100 E. Broad St., Columbus, OH 43215, Attorney for Transferor. Authority sought for the purchase by transferee of a portion of the operating rights of transferor, as set forth in Certificates MC–125533 (Sub-23F) and all of the operating rights set forth in Certificate MC 125533 (Sub-29F), as follows: (1) *Such commodities* as are made or dealt in by manufacturers of rubber and steel products, and *equipment materials and supplies* used by such manufacturers, (except motor vehicles and commodities in bulk), from points in a described part of OH, to points in CT, MA, and in described parts of NY and NJ; (2) *tire fabric*, from Fall River and New Bedford, MA, to points in a described part of OH; (3) *chemicals*, (except in bulk), from Naugatuck, CT, to points in a described part of OH; (4) *scrap tires and tubes*, from Boston, Cambridge, New Bedford, Pittsfield, Fall River and Springfield, MA, Hartford, CT, Newark, NJ, and Albany, NY, and points on Long Island, NY, to points in a described part of OH. *Silica gel and silica gel catalysts* (except commodities in bulk), from Paulsboro, NJ, to points in OH and those in a described part of PA; and *Petroleum and petroleum products* (except in bulk) and *materials and supplies* normally dealt in by retail gasoline service stations in mixed loads with petroleum and petroleum products (except in bulk), from Paulsboro, NJ, to points in OH and PA. Transferee presently holds no authority from this Commission. Application for temporary authority under 49 U.S.C. 11349 has not been filed.

MC–FC–78260, filed August 6, 1979. Transferee: L & J MOTOR LINES, INC., Route 5, P.O. Box 433, High Point, NC 27263. Transferor: MURROW'S TRANSFER, INC., P.O. Box 4095, High Point, NC 27263. Representative: Wilmer B. Hill, 805 McLachlen Bank Bldg., 666 Eleven Street, NW., Washington, D.C. 20001. Authority sought for purchase by transferee of a portion of the operating rights of transferor, as set forth in Certificates MC 99644 Sub-2, issued November 8, 1974, MC 99644 Sub-3, issued April 8, 1970, and MC 111936 Sub-4, issued July 15, 1960, as follows: (1) *new furniture*, from points in GA, NC, SC, and VA to points in NJ, NY, and PA, and (2) *rejected shipments of new* furniture, from points in NJ, NY, and PA to points in GA, NC, SC, and VA. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

Note.—By order served March 21, 1979, in MC-F-12708 and MC 111936 (Sub-15), the Commission approved the purchase by Morrow's Transfer, Inc., of certain authority from D & D Trucking Co. (Louis J. Fisher, Receiver), enabling the transferee here to perform the service described above.

MC–FC–78266, filed August 20, 1979. Transferee: LINCOLN TRANSFER COMPANY, INC., 305 S. Main St., Lincoln, IL 62656. Transferor: LINCOLN TRANSFER CO., INC. AKA LINCOLN TRANSFER LIQUIDATING CO., INC., 305 S. Main St., Lincoln, IL 62656. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. Authority sought for the purchase by transferee of the operating rights of transferor, issued under the name of Lincoln Transfer Co., Inc. in Certificate of Registration MC–98025 (Sub-1) on August 19, 1968, as follows: Commodities general within a fifty mile radius of 1018 Pulaski St., Lincoln, IL and to transport such property to or from any point outside of such authorized area of operation for a shipper or shippers within such area. Transferee presently holds no authority

from this Commission. Application has not been filed for temporary authority under 49 U.S.C. 11349.

MC–FC–78267, filed August 15, 1979. Transferee: ALL METHODS MOVING SYSTEM, INC., 1212 W. Fairmount, Tempe, AZ 85282. Transferor: SPRINGER VAN LINES, INC., 7300 Lomas Blvd. NE, Albuquerque, NM 87110. Representatives: Phil B. Hammond, Suite 1705, 3003 N. Central, Phoenix, AZ 85012; Roy A. Jacobson, Jr., 1016 Bank of New Mexico Bldg., Albuquerque, NM 87101. Authority sought for the purchase by transferee of the operating rights of Springer Van Lines, Inc. (AKA Benton/Springer Van Lines, Inc.), as set forth in Certificate MC 143040 (Sub-1), issued March 21, 1978, as follows: *Used household goods,* between points in Arizona, restricted to the transportation of shipments having a prior or subsequent movement in interstate or foreign commerce, and restricted to the performance of pickup and delivery service in connection with the packing, crating or containerization or unpacking, uncrating or decontainerization of such traffic. Transferee presently holds no authority form this Commission. Application has been filed for temporary authority under 49 U.S.C. 11349.

MC–FC–78269, filed August 16, 1979. Transferee: LESLIE J. BURTON d.b.a. B & L TRUCKING, P.O. Box 163, Orleans, IN 47452. Transferor: LESLIE JOE BURTON AND EDDIE LAWYER, A PARTNERSHIP, d.b.a. B & L TRUCKING, R.R. 1 Orleans, IN 47452. Representative: Robert W. Loser, 1101 Chamber of Commerce Bldg., Indianapolis, IN 46204. Authority sought for the purchase by tansferee of the operating rights of transferor as set forth in Certificate MC 129902 issued November 4, 1974 as follows: *Commercial* feed, from the plant site of Ralston Purina Chow Co., in Louisville, KY, to points in a described part of IN; *Commercial feed and commercial feed ingredients,* from Vandalia, IL to points in Daviese, Dubois, Gibson, Knox, Marton, Pike, Posey, and Vanderburgh Counties, IN. Transferee presently holds no authority from this Commisssion. Application has not been filed for temporary authority under 49 U.S.C. 11349.

MC–FC–78270, filed August 14, 1979. Transferee: ROBERT H. BOLDUC, 15 Madline Terrace, P.O. Box 91, Tyngsboro, MA 01879. Transferor: JOSEPH L. EDELSTEIN, INC., P.O. Box 965, Peabody, MA 01960. Representative: Shirley A. Phelan, 33 Nahant St., Lynn, MA 01902. Authority sought for purchase by transferee of operating rights held by transferor in Certificate of Registration MC 57211 (Sub-1), issued December 20, 1974, authorizing transportation of general commodities between points in Massachusetts. Transferee holds no authority from this Commission. An application for temporary lease authority has not been filed.

MC–FC–78277, filed August 13, 1979. Transferee: CMR TRANSPORTATION, INC., P.O Box 267, Bound Brook, NJ 08805. Transferor: MONMOUTH LEASING CORP., 6 Woodlot Rd., East Brunswick, NJ 08816. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904. Authority sought for the purchase by transferee of the operating rights of transferor as set forth in Certificate MC 136004 issued January 7, 1974, as follows: *General commodities* (except Classes A and B explosives, other small ammunition, household goods as defined by the Commision, commodities in bulk, commodities requiring special equipment), from Philadelphia, PA, to points in that part of NJ north of a line extending from Trenton to Ashbury Park, not including points on the said line. Transferee presently holds authority from this Commission under MC 62254 and MC 62254 (Sub-3). Application has not been filed for temporary authority under 49 U.S.C. 11349.

MC–FC–78279, filed August 20, 1979. Transferee: A & L TRUCKING, INC., Frontage Road, West Haven, CT 06516. Transferror: ALBERT SCHUCKIE d.b.a. SCHUCKIE's EXPRESS, Frontage Road, West Haven, CT 06516. Representative: David M. Marshall, Esq., Marshall and Marshall, 101 State Street—Suite 304, Springfield, MA 01103. Authority sought for purchase by A & L Trucking, Inc. of the operation rights of Albert Schuckie d.b.a. Schuckie's Express in MC 144235, issued March 6, 1979: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and commodities requiring special equipment) which at the time moving on bills of lading of freight forwarders as defined in Section 402(a)(5) of the Interstate Commerce Act, between points in Connecticut. Vendee presently holds no authority from the Commission. Application has been filed for Temporary Authority under 49 U.S.C. 11349.

MC–FC–78280 filed August 23, 1979. Transferee: AFFILIATED TRANSPORT SERVICES, INC., 201 East Township Line Road, Upper Darby, PA 19082. Transferor: C & F TRUCKING, INC., 19 Mac Arthur Avenues, Garfield, NJ 07026. Representatives: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904, Franklin Rand Weiss, 40–20 Junction Blvd., Corona, NY 11368. Authority sought for purchase by transferee of operating rights held by transferor in Certificate MC 59463 Sub-1, issued June 8, 1979, authorizing general commodities, with the usual exceptions, between New York, NY, on the one hand, and, on the other, points in NJ within 40 miles of NY. Transferee holds no authority from the Commission. An application for temporary lease authority has been filed.

MC–FC–78281 filed August 23, 1979. Transferee: FRANCOIS TRUCKING, INC., RR #4, Box 58, Centralia, IL 62801. Transferor: WAYNE F. BARGER and MAXINE KLEINE, a Partnership, d.b.a. BARGER TRUCKING CO., P.O. Box 96, Hoffman, IL 62250. Representative: Delmar Koebel, 109 W. St. Louis, Lebanon, IL 62254. Authority sought for purchase by transferee of operating rights held by transferor in Certificate MC 66724, issued August 14, 1975, authorizing general commodities with the usual exceptions over regular routes, (1) between Shattuc, IL, and St. Louis, MO, serving points within 12 miles of Shattuc, and points in the St. Louis, MO-East St. Louis, IL, Commercial Zone; and (2) between Carlyle, IL, and Centralia, IL, serving Hoffman, IL, as an intermediate point and Central City and Wama, IL, as off-route points. Transferee holds no authority from this Commission. An application seeking temporary lease authority has not been filed.

MC–FC–78284, filed August 17, 1979. Transferee: DAWSON'S CHARTER SERVICE, INC., Box 144, Sandy Spring, MD 20860. Transferor: GREYHOUND LINES, INC., Greyhound Tower, Phoenix, AZ 85077. Representative: L. C. Major, Jr., Suite 400 Overlook Bldg., 6121 Lincolnia Road, Alexandria, VA 22312. Authority sought for the purchase by Transferee of that portion of operating rights of Transferor in Docket MC 1501 Sub-211 (renumbered MC 1515 Sub-8, but not yet reissued) which authorize the transportation of passengers and their baggage and express and newspapers in the same vehicle with passengers, as follows: (1) between Washington, DC and Leonardtown, MD, serving all intermediate points: from Washington over city streets to the DC–MD State Line, then over MD Hwy 5 to Leonardtown, and return over the same route; (2) between Leonardtown, MD and Patuxent River Naval Air Station, MD, serving all intermediate points: from Leonardtown over MD Hwy 5 to

junction MD Hwy 246, then over MD Hwy 246 to Patuxent River Naval Air Station, and return over the same route; and (3) Alternate route for operating convenience only, between junction MD Hwys 5 and 235, near Mechanicsville, MD and Lexington Park, MD, serving no intermediate points: from junction MD Hwys 5 and 235 over MD Hwy 235 to Lexington Park, and return over the same route. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under 49 U.S.C. 11349.

MC–FR–78287 filed August 30, 1979. Transferee: J. POSA, INC., 1 N. First St., Fulton, NY 13069. Transferor: POSA, INC., 122 Kingsland Ave., Brooklyn, NY 11222. Representative: Arthur J. Piken, 95–25 Queens Blvd., Rego Park, NY 11374. Authority sought for the purchase by transferee of the operating rights of transferor as set forth in Certificate MC 123424 (Sub-5) issued May 18, 1977, as follows: (1) *Malt beverages*, between Fulton (South Volney), NY, on the one hand, and, on the other, points in CT, NJ and NY; (2) *materials, equipment and supplies* used in the production packaging and sale of malt beverages (except new metal cans and can ends and except commodities in bulk), from points in CT, NJ, and NY, to Fulton (South Volney), NY, restricted against the transportation of glass containers from Wharton Township, NJ, to Fulton (South Volney), NY. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under 49 U.S.C. 11349.

MC–FC–78291 filed September 10, 1979. Transferee: SONIC DELIVERY, INC., West Virginia Route 31 at Airport Road, Williamstown, WV 26187. Transferor: A. C. ENTERPRISES, INC., same address as Transferee. Representative: E. H. van Deusen, P. O. Box 97, 220 West Bridge St., Dublin, OH 43017. Authority sought for purchase by transferee of transferor's operating rights in Certificates MC 129340 and Sub-1. The authority involves operations in the transportation of general commodities, with exceptions, restricted to shipments having a prior or subsequent movement by air, generally between named counties in WV, OH, on the one hand, and, on the other, named airports (Kanawha County Airport near Charleston, WV, the Huntington Ashland Airport, Near Huntington, WV, the Wood County Airport, near Parkersburg, WV, the Cleveland-Hopkins Airport, near Cleveland, OH, the Greater Cincinnati Airport, near Cincinnati, OH, and the Greater Pittsburgh Airport, near Pittsburgh, PA). Transferee holds authority in MC 147629. An application seeking temporary lease has not been filed.

MC–FC–78293 filed September 11, 1979. Transferee: ROBERT JAY SPENCER an individual d.b.a. SPENCER BROS. TRUCKING, 212 South Lincoln Street, Lake Crystal, Minnesota 56055. Transferor; L. J. KREUTZER an individual d.b.a. KREUTZER MOTOR EXPRESS, P.O. Box 1056, Mankato, Minnesota 56001. Transferee's and Transferor's Representative: James T. Flescher 1745 University Avenue, St. Paul, Minnesota 55104. Authority sought for purchase by transferee of the operating rights of transferor as set forth in permits MC–111301 Subs 16 and 17 both issues July 3, 1978 as follows: MC 111301 Sub-16. *Plastic pipe*, From Mankato, Minn., to points in IL, IN, IA, KS, MI, MO, NE, ND, OK, SD, and WI. MC 111301 Sub-17* *Plastic pipe*, From Mankato, Minn., to points in MT and WY. Restriction: The operations authorized in both Subs are limited to a transportation service to be performed under a continuing contract(s) with Western Plastics Corporation, of Mankato, Minn. Transferee holds no authority from the Commission. An application seeking temporary lease has not been filed.

MC–FC–78296 filed September 4, 1979. Transferee: AIR TRANSPORT, INC., 220 West Second St., Boston, MA 02127. Transferor: W & D EXPRESS, INC. (same address as transferor). Representative: Frederick T. O'Sullivan, P.O. Box 2184, Peabody, MA 01960. Authority sought for purchase by transferee of operating rights held by transferor in Permit MC 144745F, issued November 29, 1978, and those granted in MC 144745 (Sub-1F), as follows: Frozen bakery products and frozen onion rings, and exempt commodities, from Boston, Gloucester, Lawrence, Wilmington, and Worcester, MA, to points in AR, AZ, CA, CO, FL, GA, IL, IN, KS, KY, MI, MN, MO, NC, NE, OH, SC, TX, WV, WI, AL, IA, LA, MS, TN, VA, and DC, under contract with Boston Bonnie, Inc., and Boston Bonnie Bakers, Inc. Transferee holds authority from the Commission under MC 141008. An application seeking temporary lease has not been filed.

MC–FC–78299, filed August 28, 1979. Transferee: TONY TERAMANA, JR., 3226 Sunset Boulevard, Steubenville, OH 43952. Transferor: TONY TERAMANA, SR., P.O. Box 850, Steubenville, OH 43952. Applicant's Representative: Andrew Jay Burkholder, 275 East State Street, Columbus, OH 43215. Authority sought for purchase by transferee of the operating rights of Transferor, as set forth in Certificate MC 48302, as issued February 8, 1941, as follows: *Such bulk commodities as are transported in dump trucks*, over irregular routes, between points and places in Belmont County, OH and Brooke, Hancock, Marshall and Ohio Counties, WV, on the one hand, and, on the other, points and places in Allegheny, Fayetee, Greene, Washington and Westmoreland Counties, Pa., Mahoning, Columbiana, Stark, Carroll, Jefferson, Belmont, Harrison, Tuscarawas, Monroe, Guernsey, and Washington Counties, Ohio. *Machinery, and mill and mine supplies*, over irregular routes, between points and places in Belmont County, Ohio, and Brooke, Hancock, Marshall, and Ohio Counties, W. Va., on the one hand, and, on the other, Cincinnati, Columbus, Cleveland, and Martins Ferry, Ohio, Pittsburgh, Pa., and Wheeling, W. Va., with no transportation for compensation on return except as otherwise authorized. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under 49 U.S.C. 11349.

MC–FC–78301 filed September 4, 1979. Transferee: MT. STERLING GRAIN CO., LTD., BOX 127, Pulaski, IA 52584. Transferor: MELVIN C. SAUCIER, d.b.a. SAUCIER TRUCKING, R.R. #2, Canton, MO 63248. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. Authority sought for purchase by transferee of the transferor's operating rights in Permit MC 28180, acquired in MC–FC–77792, authorizing generally feed, animal and poultry tonics and medicines, fertilizer, such general merchandise as is dealt in by feed and seed houses, grain, and similar commodities, from and to named points in IL, MN, WI, and IA. Transferee holds no authority from the Commission. An application seeking temporary lease has not been filed.

MC–FC–78303 filed September 7, 1979. Transferee: J. POSA, INC., 1 N. First St., Fulton, NY 13069. Transferor: CAP MOTOR LINES, INC. (JOHN V. SALIERNO, TRUSTEE IN BANKRUPTCY), 65–12 69th Place, Middle Village, NY 11379. Representatives: John P. Tynan, P.O. Box 771, Jupiter, FL 33458; Arthur J. Piken, One Lefrak City Plaza Suite 1515, Flushing, NY 11368. Authority sought for the purchase by transferee of the operating rights of transferor as set forth in Certificate MC 39161 and MC 39161 (Sub-2), as follows: *Such general merchandise* as is usually dealt in by wholesale and retail chain variety stores, between New York, NY, on the

one hand, and, on the other, Perth Amboy, NJ and points in Essex, Hudson and Unio Counties, NJ. *Electrical Goods, equipment and supplies,* between New York, NY, and Hoboken, NJ, on the one hand, and, on the other, points in NJ and NY within 50 miles of Hoboken, NJ and those in NJ and NY within 50 miles of New York, NY, restricted against the transportation of traffic to or for the use of manufacturers of paper. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under 49 U.S.C. 11349.

MC–FC–78317 filed September 17, 1979. Transferee: LINEHAUL EXPRESS CORP., P.O. Box 5078, Manchester, NH 03108. Transferor: SAV–ON TRANSPORTATION, INC., P.O. Box 5216, Manchester, NH 03108. Representative: Gregg M. Lewis, P.O. Box 5078, Manchester, NH 03108. Authority sought for purchase by transferee of transferor's common carrier operating rights contained in Nos. MC–141921 Subs 8, 14, 15, 16, 17, 19, 20, 22, 25, 26, 27, 33, 34, 36, 44, 45, 48, 51, 54, 56, and 57. The rights proposed for transfer authorize numerous named commodities, including meats, foodstuffs, frozen bakery products, confectionery, plastic film and plastic sheeting, and malt beverages from and to points in numerous states. An application seeking temporary lease has not been filed. Applicant holds no authority from this Commission.

MC–FC–78323 filed September 17, 1979. Transferee: H and M TRUCKING COMPANY, P.O. Box 176, Riegelwood, NC 28456. Transferor: SPECIALTY TRANSPORT, INC., P.O. Box 127, Mountaintop, PA 18707. Representative: Joseph F. Hoary, 121 S. Main St., Taylor, PA 18517. Authority sought for purchase by transferee of operating rights held by transferor in Permit MC–134765 Sub-15, issued November 13, 1975, authorizing paper and paper articles and materials, supplies, and equipment used in connection therewith (except in bulk), between Riegelwood, NC, and Cape Fear Warehouse, Leland, NC, on the one hand, and, on the other, points in MD, DE, PA, NY, NJ, CT, RI, MA, VT, NH, ME, and DC, under contract with Federal Paper Board Co., Inc., Riegelwood Operations, of New York, NY; and between Riegelwood, NC, and Cape Fear Warehouse, Leland, NC, on the one hand, and, on the other, points in OH, KY, TN, MO, IL, IN, MI, MN, IA, and WI, under contract with Federal Paper Board Co., Inc., of New York, NY. Transferee holds no authority from this Commission. An application seeking temporary lease has not been filed.

Operating Rights Application(s) Directly Related to Finance Proceedings

The following operating rights application(s) are filed in connection with pending finance applications under Section 11343 (formerly Section 5(2)) of the Interstate Commerce Act, or seek tacking and/or gateway elimination in connection with transfer applications under Section 10926 (formerly Section 212(b)) of the Interstate Commerce Act.

On applications filed before March 1, 1979, an original and one copy of *protests* to the granting of authorities must be filed with the Commission on or before January 10, 1979. Such protests shall conform with Special Rule 247(e) of the Commission's *General Rules of Practice* (49 CFR 1100.247) and include a concise statement of protestant's interest in the proceeding and copies of its conflicting authorities.

Applications filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's *General Rules of Practice* also but are subject to petitions to intervene either with or without leave. An original and one copy of the petition must be filed with the Commission within 30 days after date of publication. A petition for intervention must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points. Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l) setting forth the specific grounds upon which it is made, including a detailed statement of petitioner's interest, the particular facts, matters, and things relied upon, the extent to which petitioner's interest will be represented by other parties, the extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record, and the extent to which participation by the petitioner would broaden the issues or delay the proceeding.

Verified statements in opposition should not be tendered at this time. A copy of the protest or petition to intervene shall be served concurrently upon applicant's representative or applicant if no representative is named.

Each applicant states that approval of its application will not significantly affect the quality of the human environment nor involve a major regulatory action under the Energy Policy and Conservation Act of 1975.

MC 18088 (Sub-64F) filed October 8, 1979. Applicant: FLOYD & BEASLEY TRANSFER COMPANY, INC., Post Office Drawer 8, Sycamore, Alabama 35149. Representative: Charles Ephraim, Suite 600, 1250 Connecticut Avenue, NW., Washington, D.C. 20036. Authority sought to operate as a *common* carrier, by motor vehicle, over irregular routes, transporting: (1) *Tire cord yarn* and *containers* used in the transportation thereof, between Gonzalez and Pensacola, FL, on the one hand, and, on the other, points in SC [Eliminating the gateway of Barnesville, GA]; (2) *Synthetic fiber, synthetic fiber yarns* and *tire cord yarn,* (a) from points in AL, GA, SC and TN to points in MS [Eliminating the gateway of Decatur, AL and (as to AL and TN) a shipper's facilities at or near Gonzalez and Pensacola, FL], (b) from points in NC and VA to points in LA and MS [Eliminating the gateways of Decatur, AL and a shipper's facilities in Marshall County, AL]; (3) *Synthetic fiber* and *synthetic fiber yarn,* (a) from points in AL, GA, SC and TN to points in NC and VA [Eliminating the gateways of facilities of a shipper at Decatur and Huntsville, AL and (as to AL and TN) at or near Gonzalez and Pensacola, FL], (b) between points in NC and VA, on the one hand, and, on the other, points in LA and MS [Eliminating the gateways of Decatur, AL and shipper's facilities at Decatur, Huntsville, and Marshall County, AL, and at or near Gonzalez and Pensacola, FL]; (4) *Textiles, textile products, equipment, materials,* and *supplies* used in the manufacture and distribution of textiles (except commodities in bulk and those which require the use of special equipment), (a) between points in AL, GA, SC and TN, on the one hand, and, on the other, points in LA, MS, NC and VA [Eliminating the gateways of the facilities of a shipper in Marshall County, AL and (as to traffic to and from AL and TN) at or near Gonzalez and Pensacola, FL], (b) from points in LA and MS to points in NC and VA [Eliminating the gateways of a shipper's facilities in Marshall County, AL, and at or near Gonzalez and Pensacola, FL]; (5) *textiles* and *textile products,* and *equipment, materials,* and *supplies* used in the operation of textile mills and warehouses, (except commodities the transportation of which because of size or weight require the use of special equipment), between the facilities of Monsanto Company at or near Gonzalez

and Pensacola, FL, on the one hand, and, on the other, points in LA, MS, NC and VA [Eliminating the gateways of a shipper's facilities in Marshall County, AL]. (Hearing Site: Birmingham, AL or Washington, DC.)

Note.—This matter is directly related to a finance proceeding docketed MC–F–14185F, by Floyd & Beasley Transfer Company, Inc. seeking to purchase all of the operating rights of Barnett Transportation, Inc. The purpose of filing this application is to eliminate the gateways specified above.

MC 19311 (Sub-64F), filed August 24, 1979. Applicant: CENTRAL TRANSPORT, INC., 34200 Mound Road, Sterling Heights, MI 48077. Representative: Walter N. Bieneman, 100 West Long Lake Road—Suite 102, Bloomfield Hills, MI 48033. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, in the transportation of: General commodities, (except those of unusual value.) Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment, as follows: (1) Between Lake Leelanau, MI and Traverse City, MI, serving all intermediate points; from Lake Leelanau west over county road 204 to junction M–22, then north over M–22 to Northport, then south over M–22 to Traverse City, and return over the same route. (2) Between Suttons Bay, MI and Sugar Loaf, MI, serving all intermediate points; from Suttons Bay west over county road 204 to junction M–22, then south over M–22 to junction Sugar Loaf Mountain Road, then over Sugar Loaf Mountain Road to its terminus, and return over the same route. (3) Between Traverse City, MI and Old Mission, MI, serving all intermediate points; from Traverse City, MI, north over M–37 to Old Mission, and return over the same route.

Note.—The purpose of filing this application is to convert a Certificate of Registration to a Certificate of Public Convenience and Necessity. This matter is directly related to a finance proceeding, docketed MC–F–14140, published in a previous section of this **Federal Register** issue.

MC 26639 (Sub-2F), filed August 28, 1979. Applicant: DEL TRANSPORT, INC., 4 Crow Point Road, Lincoln, RI 02865. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in MA. (Hearing site: Boston, MA).

Note.—The purpose of this application is to convert a certificate of registration into a certificate of public convenience and necessity. This matter is directly related to a finance proceeding under 49 U.S.C. 11343 in Docket MC–F–14148 published in a previous section of this **Federal Register**.

MC 35320 (Sub-311F), filed April 24, 1979. Applicant: T.I.M.E.–DC, INC., P.O. Box 2550, Lubbock, TX 79408. Representative: Leroy Hallman, 4555 First National Bank Building, Dallas, TX 75202. Authority sought to operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular and 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), (A) over irregular routes-between Big Spring, Sweetwater, Odessa, and El Paso, TX, and those points in TX on and east of a line beginning at the Red River and extending along U.S. Hwy 277 through Wichita Falls, TX, to Abilene, TX, then along U.S. Hwy 83 to Ballinger, TX, then along U.S. Hwy 67 to San Angelo, TX, then along U.S. Hwy 87 to San Antonio, TX, then long U.S. Hwy 181 to Floresville, TX, to Corpus Christi, TX, on the one hand, and, on the other, Houston, TX, and (B) over regular routes—(1) Between Oklahoma City, OK, and Houston, TX: From Oklahoma City, OK, over Interstate Hwy 35 to Denton, TX, then over Interstate Hwy 35E to Dallas, TX, then over Interstate Hwy 45 to Houston, TX, and return over the same route, serving the intermedidate point of Dallas, TX, (2) Between Little Rock, AR, and Houston, TX: From Little Rock, AR over Interstate Hwy 30 to junction U.S. Hwy 59, then over U.S. Hwy 59 to Huston, TX, and return over the same route, serving no intermediate ponts, and (3) Between El Paso, TX, and Houston, TX: From El Paso, TX over U.S. Hwy 80 to junction U.S. Hwy 290, then over U.S. Hwy 290 to junction U.S. Hwy 87, then over U.S. Hwy 87 to San Santonio, TX, then over U.S. Hwy 90 to Houston, TX, and return over the same route, serving the intermediate point of San Antonio, TX. (Hearing Site: Houston, TX.)

Note.—This application is directly related to MC–F–1391F—T.I.M.E.–DC, INC. (Purchase) Texas Interstate Motor Express, Inc. The purpose of this application is to convert to two-way authority the one-way authority which applicant seeks to purchase from Texas Interstate Motor Express, Inc. in MC–F–13914F and, in connection therewith, to obtain shorter regular routes into Houston, TX from specified points on T.I.M.E.–DC's present authority. The carrier must satisfy the Commission that its common control possibilities are either approved by the Commission or do not require Commission approval.

MC 35320 (Sub-361F), filed August 23, 1979. Applicant: T.I.M.E.–DC, INC., 2598 74th Street, Lubbock, TX 79408. Representatives: Kenneth G. Thomas, c/o T.I.M.E.–DC, INC., 2598 74th Street, Lubbock, TX 79408; Fred H. Mackensen c/o MURCHINSON & DAVIS, 9454 Wilshire Blvd., Suite 400, Beverly Hills, CA 90212. Authority sought to operate as a *common carrier*, 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, those requiring special equipment, motor vehicles and livestock) between the Los Angeles area, as defined below, and San Diego and Goleta, CA serving all intermediate points and off-route points within ten miles of the designated Hwys: From San Clemente to San Diego over Interstate Hwy 5, and return over the same route. From Temecula to San Diego over Interstate Hwy. 15, and return over the same route. From Los Angeles to Goleta over U.S. Hwy. 101, and return over the same route. The *Los Angeles Area* includes all points within the following: beginning at the intersection of the Ventura-Los Angeles County boundary and the Pacific Ocean, then northeast along the said County line to its intersection with CA Hwy. 118, then east along CA Hwy. 118 to Sepulveda Boulevard, then north along Sepulveda Boulevard to Chatsworth Drive, then northeast along Chatsworth Drive to the San Fernando city line, then west, north and then east along the said city line to McClay Avenue, then northeast along McClay Avenue and its prolongation to the Angeles National Forest boundary, then southeast and east along the southern boundaries of the Angeles and San Bernardino National Forest to Mill Creek Road (near Redlands), then southwest on Mill Creek Road to the intersection of a County road 3.8 miles north of Yucaipa, then south along said County road (in part known as Bryant Street) to Yucaipa, serving all points in Yucaipa, then west along Yucaipa-Redlands Boulevard to U.S. Hwy. 70, then west along U.S. Hwy. 70 to the Redlands city line, then around the south side of Redlands to Brookside Avenue, then west along Brookside Avenue to Barton Road (Barton Avenue), then west along Barton Road (Barton Avenue) and its prolongation to Palm Avenue, then west

along Palm Avenue to La Cadena Drive, then south along La Cadena Drive to Iowa Avenue, then south along Iowa Avenue to U.S. Hwy. 60, then southwest along U.S. Hwy. 395 to Nuevo Road, then east along Nuevo Road to Nuevo, then northeast along Lakeview Avenue to Lakeview, then east along Pico and Mead Roads and Central Avenue to the San Jacinto city limits, then east, south, and then west along the said city limits to San Jacinto Avenue, then south along San Jacinto Avenue to California Hwy. 74, then west on CA Hwy. 74 to the city limits of Hemet, then south, west, and then north along the city limits to the railroad right of way of the Atchinson, Topeka & Santa Fe Railway Company, then southwest along said railroad right of way to Winchester Road, then west along Benton Road to the County road which extends from such intersection southwest to U.S. Hwy. 395 at a point 2.1 miles north of Temecula, then south along the said County Road to U.S. Hwy. 395, then southwest along U.S. Hwy. 395 to the San Diego County boundary line, then west along the said County line to the Pacific Ocean, and then along the Pacific Coast to the point of beginning. (Hearing site: Los Angeles, CA.)

Note.—The purpose of this Application is to convert a Certificate of Registration to a Certificate of Public Convenience and Necessity. This Application is directly related to Sections 5(2) Finance Proceeding docketed MC–F–14137, published in a previous section of the Federal Register Issue.

MC 61264 (Sub-33F), filed May 10, 1979. Applicant: PILOT FREIGHT CARRIERS, INC., P.O. Box 615, Winston-Salem, NC 27102. Applicant's Representative: William F. King, Suite 400, Overlook Building, 6121 Lincolnia Road, Alexandria, VA 22312. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) Between Danbury, CT, and junction U.S. Hwys 44 and 202, at or near Canton, CT, from Danbury over U.S. Hwy 7/202 to New Milford, CT, then over U.S. Hwy 202 to junction U.S. Hwy 44, and return over the same route; (2) between Waterbury, CT, and New Boston, MA, from Waterbury over CT Hwy 8 to the CT-MA State Line, then over MA Hwy 8 to New Boston, and return over the same route; (3) between Winsted, CT, and Willimantic, CT, from Winsted over U.S. Hwy 44 to junction U.S. Hwy 202, then over U.S. Hwy 44/202 to Hartford, CT, then over U.S. Hwy 6 (also over Interstate Hwy 84) to Bolton Center, CT, then over U.S. Hwy 6 to junction Interstate Hwy 84, then over U.S. Hwy 6 (also over Interstate Hwy 84) to Willimantic, and return over the same route; (4) between Hartford, CT, and Longmeadow, MA, from Hartford over U.S. Hwy 5 to Longmeadow, and return over the same route; (5) between Hartford, CT, and Sturbridge, MA, from Hartford over Interstate Hwy 86 to Sturbridge, and return over the same route; (6) between Hartford, CT, and Norwich, CT, from Hartford over CT Hwy 2 to Norwich, and return over the same route; (7) between Danbury, CT, and Southbury, CT, from Danbury over U.S. Hwy 6 to Southbury, and return over the same route; (8) between Southbury, CT, and Reynolds Bridge, CT, from Southbury over U.S. Hwy 6 to Reynolds Bridge, and return over the same route; (9) between Reynolds Bridge, CT and Hartford, CT, from Reynolds Bridge over U.S. Hwy 6 to Hartford, and return over the same route; (10) between Willimantic, CT, and Danielson, CT, from Willimantic over U.S. Hwy 6 to Danielson, and return over the same route; (11) between New Haven, CT, and Sandy Hook, CT, from New Haven over CT Hwy 34 to Sandy Hook, and return over the same route; (12) between New Haven, CT, and Meriden, CT, from New Haven over U.S. Hwy 5 to Meriden, and return over the same route; (13) between Marion, CT, and Willimantic, CT, from Marion over CT Hwy 66 to junction U.S. Hwy 6, then over U.S. Hwy 6 to Willimantic, and return over the same route; (14) between Southbury, CT, and Hartford, CT, from Southbury over Interstate Hwy 84 to Hartford, and return over the same route; (15) between New Haven, CT, and Meriden, CT, from New Haven over Interstate Hwy 91 to Meriden, and return over the same route; (16) between Hartford, CT, and Springfield, MA, from Hartford over Interstate Hwy 91 to Springfield, and return over the same route; (17) between East Lyme, CT, and Danielson, CT, from East Lyme over CT Hwy 52 (CT Turnpike) to Danielson, and return over the same route; (18) between Hopkinton, RI, and Phillipsburg, NJ, from Hopkinton over Interstate Hwy 95 to junction Interstate Hwy 95/NJ Turnpike, then over Interstate Hwy 95 (also over Interstate Hwy 95/NJ Turnpike) to Newark, NJ, then over Interstate Hwy 78 to Phillipsburg, and return over the same route; (19) between junction Interstate Hwys 95 and 80, at or near Ridgefield Park, NJ, and junction Interstate Hwy 80 and NJ Hwy 94, at or near Columbia, NJ, from junction Interstate Hwy 95 over Interstate Hwy 80 to junction NJ Hwy 94, and return over the same route; (20) between junction U.S. Hwy 1 and Interstate Hwy 287, at or near Port Chester, NY, and Norwalk, CT, from junction Interstate Hwy 287 over U.S. Hwy 1 to Norwalk, and return over the same route; (21) between Norwalk, CT, and Danbury, CT, from Norwalk over U.S. Hwy 7 to Danbury, and return over the same route; (22) between Norwalk, CT, and Bridgeport, CT, from Norwalk over U.S. Hwy 1 to Bridgeport, and return over the same route; (23) between Bridge port, CT, and Waterbury, CT, from Bridgeport over CT Hwy 8 to Waterbury, an return over the same route; (24) between Bridgeport, CT, and New Haven, CT, from Bridgeport over U.S. Hwy 1 to New Haven, and return over the same route; (25) between Milford, CT, and Meriden, CT, from Milford over CT Hwy 15 to Meriden, and return over the same route; (26) between New Haven, CT, and Old Saybrook, CT, from New Haven over U.S. Hwy 1 to Old Saybrook, and return over the same route; (27) between Old Saybrook, CT, and Hartford, CT, from Old Saybrook over U.S. Hwy 1 to junction CT Hwy 9, then over CT Hwy 9 to junction Interstate Hwy 91, then over Interstate Hwy 91 to Hartford, and return over the same route; (28) between Meriden, CT and Hartford, CT, from Meriden over U.S. Hwy 5 to Hartford, and return over the same route; (29) between Meriden, CT, and junction Interstate Hwy 91 and CT Hwy 9, from Meriden over Interstate Hwy 91 to junction CT Hwy 9, and return over the same route; (30) between Old Saybrook, CT, and Westerly, RI, from Old Saybrook over U.S. Hwy 1 to Westerly, and return over the same route; (31) between Southbury, CT, and Port Jervis, NY, from Southbury over Interstate Hwy 84 to Port Jervis, and return over the same route. Serving all points in CT as intermediate or off-route points in connection with carrier's operations over the routes described above; and serving all terminal and intermediate points on the above routes in MA, NJ, NY and RI for joinder only. (Hearing sites: Charlotte, NC and New Haven, CT.)

Note.—This application is directly related to MC–F–14036F published in a previous section of this **FEDERAL REGISTER**. The purpose of this application is to convert the Certificate of Registration of Transferor to a Certificate of Public Convenience and Necessity. The application also requests conversion of Transferor's irregular-route authority between all points in CT to regular-routes consistent with the existing authority of Transferee.

Motor Carrier Alternate Route Deviations

The following letter-notices to operate over deviation routes for operating convenience only have been filed with the Commission under the Deviation Rules—Motor Carrier of Property (49 CFR 1042.4(c)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Commission in the manner and form provided in such rules at any time, but will not operate to stay commencement of the proposed operations unless filed on or before January 10, 1979.

Each applicant states that there will be no significant effect on either the quality of the human environment or energy policy and conservation.

Motor Carriers of Property

MC 80430 (Deviation No. 24), GATEWAY TRANSPORTATION CO., INC., 455 Park Plaza Drive, La Crosse, WI 54601, filed November 16, 1979. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Nashville, TN, over Interstate Hwy 24 to junction alternate US Hwy 41, then over alternate US Hwy 41, to junction US Hwy 41, then over US Hwy 41 to junction Interstate Hwy 64, then over Interstate Hwy 64 to St. Louis, MO, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Nashville, TN, over US Hwy 31W to Louisville, KY, then over US Hwy 31E to Seymour, IN, then over US Hwy 50 to St. Louis, MO.

Irregular-Route Motor Common Carriers of Property—Elimination of Gateway Letter Notices

The following letter-notices of proposals to eliminate gateways for the purpose of reducing highway congestion, alleviating air and noise pollution, minimizing safety hazards, and conserving fuel have been filed with the Interstate Commerce Commission under the Commission's *Gateway Elimination Rules* (49 CFR 1065), and notice thereof to all interested persons is hereby given as provided in such rules.

An original and two copies of protests against the proposed elimination of any gateway herein described may be filed with the Interstate Commerce Commission on or before December 21, 1979. A copy must also be served upon applicant or its representative. Protests against the elimination of a gateway will *not* operate to stay commencement of the proposed operation.

Successively filed letter-notices of the same carrier under these rules will be numbered consecutively for convenience in identification. Protests, if any, must refer to such letter-notices by number.

The following applicants seek to operate as a *common carrier*, by motor vehicles, over irregular routes.

MC 107012 (Sub-E739), filed November 22, 1976. Applicant: NORTH AMERICAN VAN LINES, INC., P.O. Box 988, Fort Wayne, IN 46801. Representatives: David D. Bishop and Gary M. Crist (same as above). *New Furniture, Cartoned—Benton*, from Benton, AR to points in Cochise, Gila, Graham and Greenlee Counties, AZ. (Gateway Eliminated: Mexia, TX.)

MC 107012 (Sub-E740), filed November 22, 1976. Applicant: NORTH AMERICAN VAN LINES, INC., P.O. Box 988, Fort Wayne, IN 46801. Representatives: David D. Bishop and Gary M. Crist (same as above). *New Furniture, Cartoned-Waldron* (1) From Waldron, AR, to points in AZ, NV & UT (*Mexia, TX Albuquerque, NM). (2) From Waldron, AR, to points in Butte, Lassen, Modoc, Nevada, Plumas, Shasta, Sierra, Siskiyou, Yuba, Inyo, Fresno, Kings, Tulare, Kern, Los Angeles, Orange, San Luis Obispo, Santa Barbara and Ventura, Imperial, Riverside, San Diego, Alameda, Alpine, Amador, Calaveras, Colusa, Contra Costa, Eldorado, Madera, Marin, Mariposa, Merced, Mono, Monterey, Napa, Placer, San Benito, Sacramento, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, Sutter, Tuolumne and Yolo Counties, CA (*Mexia, TX); San Bernardino County, CA (*Albuquerque, NM); Ada, Adams, Boise, Camas, Canyon, Custer, Elmore, Gem, Gooding, Lemhi, Owyhee, Payette, Twin Falls, Valley, Washington, Bannock, Bear Lake, Bingham, Blaine, Bonneville, Butte, Caribou, Cassia, Clark, Franklin, Fremont, Jefferson, Jerome, Lincoln, Madison, Minidoka, Oneida and Power Counties, ID (*Albuquerque, NM). (Gateways eliminated: asterisked.)

MC 107012 (Sub-E741), filed November 22, 1976. Applicant: NORTH AMERICAN VAN LINES, INC., P.O. Box 988, Fort Wayne, IN 46801. Representatives: David D. Bishop and Gary M. Crist (same as above). *New furniture*, cartoned, from Albuquerque and Clovis, NM, and Houston and Mexia, TX, to points in AK. (Gateways eliminated: Sedgewick County, KS.)

MC 107012 (Sub-E7742), filed November 22, 1976. Applicant: NORTH AMERICAN VAN LINES, INC., P.O. Box 988, Fort Wayne, IN 46801. Representatives: David D. Bishop and Gary M. Crist (same as above). *Aluminum Windows, Aluminum Doors, and Aluminum Extrusions, all Uncartoned.* 1. From Kentland, IN to points in AL, FL, GA, NC, SC and TN (*Indianapolis, IN). 2. From Kentland, IN to points in MT and WY (*Chicago, IL.). (Gateways eliminated: asterisked.)

MC 107012 (Sub-E743), filed November 22, 1976. Applicant: NORTH AMERICAN VAN LINES, INC., P.O. Box 988, Fort Wayne, IN 46801. Representatives: David D. Bishop and Gary M. Crist (same as above). *New Commercial & Institutional Equipment, Uncrated.* (1) From points in WA to points in AR, CT, DE, DC, IL, IN, ME, MD, MA, MI, MO, NH, NJ, NY, OH, OK, PA, RI, VT and WV. (2) From points in Clark, Cowlitz, Klickitat, Lewis, Pacific, Pierce, Skamania, Thurston, Wahkiakum, Yakima, Clallam, Grays Harbor, Jefferson, Kitsap, Mason, San Juan, Chelan, Doulgas, Grant, Island, King, Kittitas, Skagit, Snohomish and Whatcom Counties, WA to points in Adams, Arapahoe, Boulder, Cedar Creek, Chaffee, Denver, Douglas, Eagle, Elbert, El Paso, Fremont, Gilpin, Grand, Jackson, Jefferson, Lake, Larimer, Park, Pitkin, Summit, Teller, Baca, Bent, Cheyenne, Costilla, Crowley, Custer, Huerfano, Kiowa, Las Animas, Lincoln, Otero, Prowers, Pueblo, Kit Carson, Logan, Morgan, Phillips, Sedgwick, Washington, Weld and Yuma Counties, CO; Chaves, Curry, DeBaca, Eddy, Lea, Lincoln, Quay, Roosevelt, Colfax, Harding, Mora, Taos and Union Counties, NM; Andrews, Archer, Baylor, Blanco, Borden, Bosque, Brown, Burnet, Callahan, Clay, Coke, Coleman, Comanche, Concho, Cooke, Coryell, Crane, Crockett, Crosby, Dawson, Denton, Dickens, Eastland, Ector, Edwards, Erath, Fisher, Gaines, Garza, Gillespie, Glasscock, Hamilton, Haskell, Hill, Hood, Howard, Irion, Jack, Johnson, Jones, Kendall, Kent, Kerr, Kimble, King, Knox, Lampasas, Llamo, Lubbock, Lynn, McCulloch, McLennan, Martin, Mason, Menard, Midland, Mills, Mitchell, Mortague, Nolan, Palo Pinto, Parker, Reagan, Runnels, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Sutton, Tarrant, Taylor, Terry, Throckmorton, Tom Green, Upton, Val Verde, Wise, Yoakum, Young, Armstrong, Bailey, Briscoe, Carson, Castro, Childress, Cochran, Collingsworth, Cottle, Dallam, Deaf Smith, Donley, Floyd, Foard, Gray, Hale, Hall, Hansford, Hardeman, Hartley, Hemphill, Hockley, Hutchinson, Lamb, Lipscomb, Moore, Motley,

Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Wheeler, Wichita, Wilbarger, Aransas, Atascosa, Bandera, Bee, Bexar, Brooks, Cameron, Dimmit, Duval, Erio, Goliad, Hidalgo, Jim Hogg, Jim Wells, Kaines, Kenedy, Kinney, Kleberg, LaSalle, Live Oak, McMullen, Maverick, Medina, Nueces, Real, Refugio, San Patricio, Starr, Uvalde, Webb, Willacy, Wilson, Zapata, Zavala, Austin, Bastrop, Bell, Brazoria, Brazos, Burleson, Caldewell, Calhoun, Chambers, Colorado, Comal, DeWitt, Falls, Fayette, Fort Bend, Galveston, Gonzales, Grimes, Guadalupe, Hardin, Harris, Hays, Houston, Jackson, Jasper, Jefferson, Lavaca, Lee, Leon, Liberty, Limestone, Madison, Matagorda, Milam, Montgomery, Newton; Orange, Polk, Robertson, San Jacinto, Travis, Trinity, Tyler, Victoria, Walker, Waller, Washington, Wharton, Williamson, Anderson, Angelina, Bowie, Camp, Cass, Cherokee, Collin, Dallas, Delta, Ellis, Fannin, Franklin, Freestone, Grayson, Gregg, Harrison, Henderson, Hopkins, Hunt, Kaufman, Lamar, Marion, Morris, Nacogdoches, Navarro, Panola, Rains, Red River, Rockwall, Rusk, Sabine, San Augustine, Shelby, Smith, Titus, Upshur, Van Zandt and Wood Counties, TX points in WI. (3) From points in Ferry, Lincoln, Okanogan, Pend Oreille, Spokane and Stevens Counties, WA in points in Adams, Arapahoe, Boulder, Cedar Creek, Chaffee, Denver, Douglas, Eagle, Elbert, El Paso, Fremont, Gilpin, Grand, Jackson, Jefferson, Lake, Larimer, Park, Pitkin, Summit, Teller, Baca, Bent, Cheyenne, Costilla, Crowley, Custer, Huerfano, Kiowa, Las Animas, Lincoln, Otero, Prowers, Pueblo, Kit Carson, Logan, Morgan, Phillips, Sedgwick, Washington, Weld and Yuma Counties, CO; Bernalillo, Guadalupe, Los Alamos, Sandoval, San Miguel, Santa Fe, Torrance, Valencia, Chaves, Curry, DeBaca, Eddy, Lea, Lincoln, Quay, Roosevelt, Colfax, Harding, Mora, Taos and Union Counties, NM; points in TX; Columbia, Dane, Dodge, Green, Jefferson, Kenosha, Milwaukee, Ozaukee, Racine, Rock, Walworth, Washington, Waukesha, Door, Florence, Forest, Kewaunee, Langlade, Lincoln, Marinette, Menominee, Oconto, Oneida, Buffolo, Crawford, Grant, Iowa, Jackson, Juneau, LaCrosse, Lafayette, Monroe, Richland, Saulk, Trempealeau, Vernon, Adams, Brown, Calumet, Clark, Fond Du Lac, Green Lake, Manitowoc, Marathon, Marquette, Outagamie, Portage, Shawano, Sheboygan, Waupaca, Waushara, Winnebago and Wood Counties, WI. (4) From points in Adams, Asotim, Benton, Columbia, Franklin, Garfield, Walla Walla and Whitman Counties, WA to points in Baca, Bent, Cheyenne, Costilla, Crowley, Custer, Huerfano, Kiowa, Las Animas, Lincoln, Otero, Prowers, Pueblo, Kit Carson, Logan, Morgan, Phillips, Sedgwick, Washington, Weld and Yuma Counties, CO; Chaves, Curry, DeBaca, Eddy, Lea, Lincoln, Quay, Roosevelt, Calfax, Harding, Mora, Taos and Union Counties, NM; Andrews, Archer, Baylor, Blanco, Borden, Bosque, Brown, Burnet, Callahan, Clay, Coke, Coleman, Comanche, Concho, Cooke, Coryell, Crane, Crockett, Crosby, Dawson, Denton, Dickens, Eastland, Ector, Edwards, Erath, Fisher, Gaines, Garza, Gillespie, Glasscock, Hamilton, Haskell, Hill, Hood, Howard, Irion, Jack, Johnson, Jones, Kendall, Kent, Kerr, Kimble, King, Knox, Lampasas, Llamo, Lubbock, Lynn, McCulloch, McLennan, Martin, Mason, Menard, Midland, Mills, Mitchell, Montague, Nolan, Palo Pinto, Parker, Reagan, Runnels, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Sutton, Tarrant, Taylor, Terry, Throckmorton, Tom Green, Upton, Val Verde, Wise, Yoakum, Young, Armstrong, Bailey, Briscoe, Carson, Castro, Childress, Cochran, Collingsworth, Cottle, Dallam, Deaf Smith, Donley, Floyd, Foard, Gray, Hale, Hall, Hansford, Hardeman, Hartley, Hemphill, Hockley, Hutchinson, Lamb, Lipscomb, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Wheeler, Wichita, Wilbarger, Aransas, Atascosa, Bandera, Bee, Bexar, Brooks, Cameron, Dimmit, Duval, Frio, Goliad, Hidalgo, Jim Hogg, Jim Wells, Kaines, Kenedy, Kinney, Kleberg, LaSalle, Live Oak, McMullen, Maverick, Medina, Nueces, Real, Refugio, San Patricio, Starr, Uvalde, Webb, Willacy, Wilson, Zapata, Zavala, Austin, Bastrop, Bell, Brazoria, Brazos, Burleson, Caldwell, Calhoun, Chambers, Colorado, Comal, DeWitt, Falls, Fayette, Fort Bend, Galveston, Gonzales, Grimes, Guadalupe, Hardin, Harris, Hays, Houston, Jackson, Jasper, Jefferson, Lavaca, Lee, Leon, Liberty, Limestone, Madison, Matagorda, Milam, Montgomery, Newton, Orange, Polk, Robertson, San Jacinto, Travis, Trinity, Tyler, Victoria, Walker, Waller, Washington, Wharton, Williamson, Anderson, Angelina, Bowie, Camp, Cass, Cherokee, Collin, Dallas, Delta, Ellis, Fannin, Franklin, Freestone, Grayson, Gregg, Harrison, Henderson, Hopkins, Hunt, Kaufman, Lamar, Marion, Morris, Nacogdoches, Navarro, Panola, Rains, Red River, Rockwall, Rusk, Sabine, San Augustine, Shelby, Smith, Titus, Upshur, Van Zandt and Wood Counties, TX; Columbia, Dane, Dodge, Green, Jefferson, Kenosha, Milwaukee, Ozaukee, Racine, Rock, Walworth, Washington, Waukesha, Door, Florence, Forest, Kewaunee, Langlade, Lincoln, Marinette, Menominee, Oconto, Oneida, Buffalo, Crawford, Grant, Iowa, Jackson, Juneau, LaCrosse, Lafayette, Monroe, Richland, Saulk, Trempealeau, Vernon, Adams, Brown, Calumet, Clark, Fond, Du Lac, Green Lake, Manitowoc, Marathon, Marquette, Outagamie, Portage, Shawano, Sheboygan, Waupaca, Waushara, Winnebago and Wood Counties, WI. (Gateway eliminated-points in NE.)

MC 107012 (Sub-E744), filed November 22, 1976. Applicant: NORTH AMERICAN VAN LINES, INC., P.O. Box 988, Fort Wayne, IN 46801. Representatives: David D. Bishop and Gary M. Crist (same as above). *New Carpet, Uncartoned.* (1) From El Segundo, CA to points in AL, KY & TN (*Dallas, TX and Vinita or Oklahoma City, OK). (2) From El Segundo, CA to points in NC and VA (*Dallas, TX and Vinita or Oklahoma City, OK and points in MO). (3) From El Segundo, CA to points in Allamakee, Black Hawk, Bremer, Buchanan, Butler, Cerro Gordo, Chickasaw, Clayton, Delaware, Fayette, Floyd, Franklin, Hancock, Howard, Mitchell, Winnebago, Winneshiek, Worth, Wright, Benton, Cedar, Clinton, Davis, Des Moines, Dubuque, Henry, Iowa, Jackson, Jefferson, Johnson, Jones, Keokuk, Lee, Linn, Louisa, Muscatine, Scott, Van Buren, Wapello, Washington, Adair, Adams, Audubon, Cass, Fremont, Guthrie, Harrison, Mills, Montgomery, Page, Pottawattamie, Ringgold, Shelby, Taylor and Union Counties, IA (*Dallas, TX and Vinita or Oklahoma City, OK and points in MO); Allen, Anderson, Bourbon, Butler, Chautauqua, Cherokee, Coffey, Cowley, Crawford, Elk, Greenwood, Labette, Linn, Lyon, Montgomery, Neosho, Wilson and Woodson Counties, KS (*Dallas, TX and Vinita or Oklahoma City, OK); Bolivar, Carrol, Coahoma, Grenada, Holmes, Humphreys, Issaquena, Leflore, Montgomery, Quitman, Sharkey, Sunflower, Tallahatchie, Warren, Washington, Yazoo, Alcorn, Benton, Calhoun, Chickasaw, Choctaw, Clay, Desoto, Itawamba, Lafayette, Lee, Lowndes, Marshall, Monroe, Oktibbeha, Panola, Pontotoc, Prentiss, Tate, Tippah, Tishomingo, Tunila, Union, Webster and Yalobusha Counties, MS (*Dallas, TX and Vinita or Oklahoma City, OK). (Gateway eliminated: asterisked)

MC 107012 (Sub-E745), filed November 22, 1976. Applicant: NORTH AMERICAN VAN LINES, INC., P.O. Box

988, Fort Wayne, IN 46801. Representatives: David D. Bishop and Gary M. Crist (same as above). *New Institutional Fixtures, and New Commercial Fixtures when moving in mixed loads and on the same bill of lading with new institutional fixtures, all uncartoned.* (1) From points in ID, to points in AZ, CO, KS & NM (*Salt Lake City, UT A). (2) From points in ID, to points in AR, OK & TX (*Salt Lake City, UT and points in CO B). (3) From points in Ada, Adams, Boise, Camas, Canyon, Custer, Elmore, Gem, Gooding, Lemhi, Owyhee, Payette, Twin Falls, Valley and Washington Counties, ID to points in IA (*Salt Lake City, UT and Laramie, WY); Aitkin, Carlton, Cook, Lake, Saint Louis, Tasca, Anoka, Blue Earth, Carver, Chisago, Dakota, Dodge, Faribault, Fillmore, Freeborn, Good Hue, Hennepin, Houston, Isanti, Kanabec, LeSueur, McLeod, Mille Lacs, Mower, Nicollet, Olmstead, Pine, Ramsey, Rice, Scott, Sherburne, Sibley, Steele, Wabasha, Wasela, Washington, Winona, Wright, Becker, Benton, Big Stone, Cass, Chippewa, Clay, Crow Wing, Douglas, Grant, Hubbard, Kandiyohi, Lac Qui Parle, Meeker, Morrison, Otter Tail, Pope, Renville, Stearns, Stevens, Swift, Todd, Traverse, Wadena, Wilkin, Yellow Medicine, Brown, Cottonwood, Jackson, Lincoln, Lyon, Martin, Murray, Nobles, Pipestone, Redwood, Rock and Watonwan Counties, MN (*Salt Lake City, UT and Laramie, WY); Bennett, Butte, Custer, Fall River, Haakon, Jackson, Lawrence, Meade, Pennington, Shannon, Washabaugh, Ziebach, Brule, Buffalo, Hand, Hughes, Hyde, Jones, Lyman, Mellette, Stanley, Sully, Todd, Tripp, Beadle, Brookings, Brown, Clark, Codington, Day, Deuel, Grant, Hamlin, Kingsbury, Marshall, Roberts, Spink, Aurora, Bon Homme, Charles Mix, Clay, Davison, Douglas, Gregory, Hanson, Hutchinson, Jerauld, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, Turner, Union and Yankton Counties, SD (*Salt Lake City, UT and Laramie, WY). (4) From points in Benewah, Bonner, Boundry, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties, ID to points in Benton, Cedar, Clinton, Davis, Des Moines, Dubuque, Henry, Iowa, Jackson, Jefferson, Johnson, Jones, Keokuk, Lee, Linn, Louisa, Muscatine, Scott, Van Buren, Wapello, Washington, Adair, Adams, Audubon, Cass, Fremont, Guthrie, Harrison, Mills, Montgomery, Page, Pottawattamie, Ringgold, Shelby, Taylor and Union Counties, IA (*Salt Lake City, UT and Laramie, WY). (5) From points in Bannock, Bear Lake, Bingham, Blaine, Bonneville, Butte, Caribou, Cassia, Clark, Franklin, Fremont, Jefferson, Jerome, Lincoln, Madison, Minidoka, Oneida and Power Counties, ID to points in IA (*Salt Lake City, UT and Laramie, WY); Anoka, Blue Earth, Carver, Chisago, Dakota, Dodge, Faribault, Fillmore, Freeborn, Good Hue, Hennepin, Houston, Isanti, Kanabec, LeSueur, McLeod, Mille Lacs, Mower, Nicollet, Olmstead, Pine, Ramsey, Rice, Scott, Sherburne, Sibley, Steele, Wabasha, Wasela, Washington, Winona, Wright, Becker, Benton, Big Stone, Cass, Chippewa, Clay, Crow Wing, Douglas, Grant, Hubbard, Kandiyohi, Lac Qui Parle, Meeker, Morrison, Otter Tail, Pope, Renville, Stearns, Stevens, Swift, Todd, Traverse, Wadena, Wilkin, Yellow Medicine, Brown, Cottonwood, Jackson, Lincoln, Lyon, Martin, Murray, Nobles, Pipestone, Redwood, Rock and Watonwan Counties, MN (*Salt Lake City, UT and Laramie, WY); Clark, Lincoln, Esmeralda, Eureka, Lander and Nye Counties, NV (*Salt Lake City, UT); Aurora, Bon Homme, Charles Mix, Clay, Davison, Douglas, Gregory, Hanson, Hutchinson, Jerauld, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, Turner, Union and Yankton Counties, SD (*Salt Lake City, UT and Laramie, WY). (Gateway eliminated: asterisked.)

MC 107012 (Sub-E746), filed November 22, 1976. Applicant: NORTH AMERICAN VAN LINES, INC., P.O. Box 988, Fort Wayne, IN 46801. Representatives: David D. Bishop and Gary M. Crist (same as above). *New institutional fixtures, and new commercial fixtures when moving in mixed loads and on the same bill of lading with new institutional fixtures, all uncartoned:* (1) From points in Beaverhead, Broadwater, Deerlodge, Gallatin, Granite, Jefferson, Madison, Park, Ravalli, Silver Bow, Stillwater and Sweet Grass Counties, MT, to points in AZ (*Salt Lake City, UT); points in AR (*Salt Lake City, UT and Sedgewick County, KS); Inyo Fresno, Kings, Tulare, Glenn, Humboldt, Lake, Mendicino, Tehama, Trinity, Kern, Los Angeles, Orange, San Luis Obispo, Santa Barbara, Ventura, San Berardino, Imperial, Riverside, San Diego, Alameda, Alpine, Amador, Calaveras, Colusa, Contra Costa, Eldorado, Madera, Marin, Mariposa, Merced, Mono, Monterey, Napa, Placer, San Benito, Sacramento, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, Sutter, Tuolumne and Yolo Counties CA (*Salt Lake City, UT); Garfield, Mesa, Moffat, Rio Blanco, Routt, Adams, Arapahoe, Boulder, Cedar Creek, Chaffee, Denver, Douglas, Eagle, Elbert, El Paso, Fremont, Gilpin, Grand, Jackson, Jefferson, Lake, Larimer, Park, Pitkin, Summit, Teller, Alamosa, Archuleta, Conejos, Delta, Dolores, Gunnison, Hinsdale, La Plata, Mineral, Montezuma, Montrose, Quray, Rio Grande, Saguache, San Juan, San Miguel, Baca, Bent, Cheyenne, Costilla, Crowley, Custer, Huerfano, Kiowa, Las Animas, Lincoln, Otero, Prowers and Pueblo Counties, CO (*Salt Lake City, UT); Clark, Comanche, Edwards, Finney, Ford, Grant, Gray, Hamilton, Haskell, Hodgeman, Kearny, Kiowa, Meade, Morton, Pawnee, Seward, Stanton, Stevens, Cheyenne, Decatur, Ellis, Graham, Greeley, Gove, Lane, Logan, Ness, Norton, Phillips, Rawlins, Rooks, Rush, Scott, Sheridan, Sherman, Thomas, Tego, Wallace, Wichita, Allen Anderson, Bourbon, Butler, Chautauqua, Cherokee, Coffey, Cowley, Crawford, Elk, Greenwood, Labette, Linn, Lyon, Montgomery, Neosho, Wilson, Woodson, Barber, Barton, Chase, Clay, Cloud, Dickinson, Ellsworth, Geary, Harper, Harvey, Jewell, Kingman, Lincoln, Marion, McPherson, Mitchell, Morris, Osborne, Ottawa, Pratt, Reno, Republic, Rice, Riley, Russell, Saline, Sedgwick, Smith, Stafford, Sumneer and Washington Counties, KS (*Salt Lake City, UT); Clark, Lincoln, Esmeralda, Eureka, Lander and Nye Counties, NV (*Salt Lake City, UT); points in NM (*Salt Lake City, UT); points in OK (*Salt Lake City, UT and points in CO); points in TX (*Salt Lake City, UT and points in CO). (2) From points in Daniels, Dawson, Garfield, McCone, Phillips, Richland, Roosevelt, Sheridan and Valley Counties, MT to points in AZ (*Salt Lake City, UT); Inyo, Fresno, Kings, Tulare, Glenn, Humboldt, Lake, Mendicino, Tehama, Trinity, Kern, Los Angeles, Orange, San Luis Obispo, Santa Barbara, Ventura, San Bernardino, Imperial, Riverside, San Diego, Alameda, Alpine, Amador, Calaveras, Colusa, Contra Costa, Eldorado, Madera, Marin, Mariposa, Merced, Mono, Monterey, Napa, Placer, San Benito, Sacramento, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, Sutter, Tuolumne and Yolo Counties, CA (*Salt Lake City, UT); Alamosa, Archuleta, Conejos, Delta, Dolores, Gunnison, Hinsdale, La Plata, Mineral, Montezuma, Montrose, Quray, Rio Grande, Saguache, San Juan, San Miguel Counties, CO (*Salt Lake City, UT); points in NV (*Salt Lake City, UT); McKinley, Rio Arriba, San Juan, Catron, Dona Ana, Grant, Hidalgo, Luna, Otero, Sierra and Socorro Counties, NM (*Salt Lake City, UT); (3) From points in

Blaine, Cascade, Chouteau, Fergus, Golden Valley, Hill, Judith Basin, Lewis and Clark, Liberty, Meagher, Petroleum, Pondera, Teaton, Toole and Wheatland Counties, MT, to points in AZ (*Salt Lake City, UT); Inyo, Fresno, Kings and Tulare Counties, CA (*Salt Lake City, UT); Garfield, Mesa, Moffat, Rio Blanco, Routt, Alamosa, Archuleta, Conejos, Delta, Dolores, Gunnison, Hinsdale, La Plata, Mineral, Mostezuma, Montrose, Quray, Rio Grande, Saguache, San Juan and San Miguel Counties, CO (*Salt Lake City, UT); Clark, Lincoln, Esmeralda, Eureka, Lander, Nye, Churchill, Douglas, Humboldt, Lyon, Mineral, Ormsby, Pershing, Storey and Washoe Counties, NV (*Salt Lake City, UT); Bernalillo, Guadalupe, Los Almos, Sandoval, San Miguel, Santa Fe, Torrance, Valencia, McKinley, Rio Arriba, San Juan, Chaves, Curry, DeBaca, Eddy, Lea, Lincoln, Quay, Roosevelt, Catron, Dona Ana, Grant, Hidalgo, Luna, Otero, Sierra and Socorro Counties, NM (*Salt Lake City, UT); Alfalfa, Beckham, Blaine, Caddo, Comanche, Cotton, Custer, Dewey, Ellis, Greer, Harmon, Harper, Jackson, Kiowa, Major, Roger Mills, Tillman, Washita, Woods, Woodward, Atoka, Bryan, Choctaw, Coal, Haskell, Latimer, LeFlore, McCurtain, Pittsburg and Pushmataha Counties, OK (*Salt Lake City, UT and points in CO); Andrews, Archer, Baylor, Blanco, Borden, Bosque, Brown, Burnet, Callahan, Clay, Coke, Coleman, Comanche, Concho, Cooke, Coryell, Crane, Crockett, Crosby, Dawson, Denton, Dickens Eastland, Ector, Edwards, Erath, Fisher, Gaines, Garza, Gillespie, Glasscock, Hamilton, Haskell, Hill, Hood, Howard, Irion, Jack, Johnson, Jones, Kendall, Kent, Kerr, Kimble, King, Knox, Lampasas, Llamo, Lubbock, Lynn, McCulloch, McLennan, Martin, Mason, Menard, Midland, Mills, Mitchell, Montague, Nolan, Palo Pinto, Parker, Reagan, Runnels, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Sutton, Tarrant, Taylor, Terry, Throckmorton, Tom Green, Upton, Val Verde, Wise, Yoakum, Young, Aransas, Atascosa, Bandera, Bee, Bexar, Brooks, Cameron, Dimmit, Duval, Frio, Goliad, Hidalgo, Jim Hogg, Jim Wells, Kaines, Kenedy, Kinney, Kleberg, LaSalle, Live Oak, McMullen, Maverick, Medina, Nueces, Rear, Refugio, San Patricio, Starr, Uvalde, Webb, Willacy, Wilson, Zapata, Zavala, Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Loving, Pecos, Presidio, Reeves, Terrell, Ward, Winkler, Austin, Bastrop, Bell, Brazoria, Brazos, Burleson, Caldwell, Calhoun, Chambers, Colorado, Comal, DeWitt, Falls, Fayette, Fort Bend, Galveston, Gonzales, Grimes, Guadalupe, Hardin, Harris, Hays, Houston, Jackson, Jasper, Jefferson, Lavaca, Lee, Leon, Liberty, Limestone, Madison, Matagorda, Milam, Montgomery, Newton, Orange, Polk, Robertson, San Jacinto, Travis, Trinity, Tyler, Victoria, Walker, Waller, Washington, Wharton, Williamson, Anderson, Angelina, Bowie, Camp, Cass, Cherokee, Collin, Dallas, Delta, Ellis, Fannin, Franklin, Freestone, Grayson, Gregg, Harrison, Henderson, Hopkins, Hunt, Kaufman, Lamar, Marion, Morris, Nacogdoches, Navarro, Panola, Rains, Red River, Rockwall, Rusk, Sabine, San Augustine, Shelby, Smith, Titus, Upshur, Van Zandt and wood Counties, TX (*Salt Lake City, UT and points in CO); (4) From points in Flathead, Glacier, Lake, Lincoln, Mineral, Missoula, Powell and Sanders Counties, MT, to points in AZ (*Salt Lake City, UT); points in AR (*Salt Lake City, UT and Sedgewick County, KS); Inyo, Fresno, Kings, Tulare, Kern, Los Angeles, Orange, San Luis Obispo, Santa Barbara, Ventura, San Bernardino, Imperial, Riverside and San Diego, CA (*Salt Lake City, UT); points in CO (*Salt Lake City, UT); Benton, Cedar, Clinton, Davis, Des Moines, Dubuque, Henry, Iowa, Jackson, Jefferson, Johnson, Jones, Keokuk, Lee, Linn, Louisa, Muscatine, Scott, Van Buren, Wapello and Washington Counties, IA (*Salt Lake City, UT Laramie, WY); points in KS (*Salt Lake City, UT); Clark, Lincoln, Esmeralda, Eureka, Lander and Nye Counties, NV (*Salt Lake City, UT;) points in NM (*Salt Lake City, UT); points in OK (*Salt Lake City, UT and points in CO); points in TX (*Salt Lake City, UT and points in CO); Albany, Carbon, Converse, Goshen, Laramie, Niobrara and Platte Counties, WY (*Salt Lake City, UT); (5) From points in Bighorn, Carbon, Carter, Custer, Fallon, Musselshell, Powder River, Prairie, Rosebud, Treasure, Wibaux and Yellowstone Counties, MT, to points in Apache, Coconino, Mohave, Navajo, Yavapai, Maricipa, Pima, Pinal, Santa Cruz and Yuma Counties, AZ (*Salt Lake City, UT); points in CA (*Salt Lake City, UT); points in NV (*Salt Lake City, UT); (Gateway eliminated asterisked)

MC 107012 (Sub-E747), filed November 22, 1976. Applicant: NORTH AMERICAN VAN LINES, INC., P.O. Box 988, Fort Wayne, IN 46801. Representatives: David D. Bishop and Gary M. Crist (same as above). *New institutional fixtures, and new commercial fixtures when moving in mixed loads and on the same bill of lading with new institutional fixtures, all uncartoned:* (1) From points in NV to points in WY (*Salt Lake City, UT). (2) From points in NV to points in IA, MN & SD (*Salt Lake City, UT and Laramie, WY). (3) From points in Clark and Lincoln Counties, NV, to points in Garfield, Mesa, Moffat, Rio Blanco, Routt, Kit Carson, Logan, Morgan, Phillips, Sedgwick, Washington, Weld and Yuma Counties, CO (*Salt Lake City, UT); points in ID (*Salt Lake City, UT); Atchison, Brown, Doniphan, Douglas, Franklin, Jackson, Jefferson, Johnson, Leavenworth, Marshall, Miami, Nemaha, Osage, Pottawatomie, Shawnee, Wabaunsee, Wyandotte, Cheyenne, Decatur, Ellis, Graham, Greeley, Gove, Lane, Logan, Ness, Norton, Phillips, Rawlins, Rooks, Rush, Scott, Sheridan, Sherman, Thomas, Trego, Wallace, Wichita, Allen, Anderson, Bourbon, Butler, Chautauqua, Cherokee, Coffey, Cowley, Crawford, Elk, Greenwood, Labette, Linn, Lyon, Montgomery, Neosho, Wilson, Woodson, Barber, Barton, Chase, Clay, Cloud, Dickinson, Ellsworth, Geary, Harper, Harvey, Jewell, Kingman, Lincoln, Marion, McPherson, Mitchell, Morris, Osborne, Ottawa, Pratt, Reno, Republic, Rice, Riley, Russell, Saline, Sedgwick, Smith, Stafford, Sumneer and Washington Counties, KS (*Salt Lake City, UT); points in MT (*Salt Lake City, UT); points in ND (*Salt Lake City, UT and Laramie, WY). (4) From points in Esmeralda, Eureka, Lander and Nye Counties, NV, to points in AR (*Salt Lake City, UT and points in CO); points in CO (*Salt Lake City, UT); Bannock, Bear Lake, Bingham, Blaine, Bonneville, Butte, Caribou, Cassia, Clark, Franklin, Fremont, Jefferson, Jerome, Lincoln, Madison, Minidoka, Oneida and Power Counties, ID (*Salt Lake City, UT); points in KS (*Salt Lake City, UT); points in LA (*Salt Lake City, UT and points in CO or Salt Lake City, UT and points in CO and points in TX 23A); points in MT (*Salt Lake City, UT); McKinley, Rio, Arriba, San Juan, Colfax, Harding, Mora, Taos and Union Counties, NM (*Salt Lake City, UT); points in ND (*Salt Lake City, UT and Laramie, WY); points in OK (*Salt Lake City, UT and points in CO); Austin, Bastrop, Bell, Brazoria, Brazos, Burleson, Caldwell, Calhoun, Chambers, Colorado, Comal, DeWitt, Falls, Fayette, Fort Bend, Galveston, Gonzales, Grimes, Guadalupe, Hardin, Harris, Hays, Houston, Jackson, Jasper, Jefferson, Lavaca, Lee, Leon, Liberty, Limestone, Madison, Matagorda, Milam, Montgomery, Newton, Orange, Polk, Robertson, San Jacinto, Travis, Trinity, Tyler, Victoria, Walker, Waller, Washington, Wharton, Williamson,

Anderson, Angelina, Bowie, Camp, Cass, Cherokee, Collin, Dallas, Delta, Ellis, Fannin, Franklin, Freestone, Grayson, Gregg, Harrison, Henderson, Hopkins, Hunt, Kaufman, Lamar, Marion, Morris, Nacogdoches, Navarro, Panola, Rains, Red River, Rockwall, Rusk, Sabine, San Augustine, Shelby, Smith, Titus, Upshur, Van Zandt and Wood Counties, TX (*Salt Lake City, UT and points in CO). (5) From points in Elko and Whitepine Counties, NV, to points in AR (*Salt Lake City, UT and points in CO); Cochise, Gila, Graham, Greenlee, Apache, Coconino, Mohave, Navajo, Yavapai, Maricopa, Pima, Pinal and Santa Cruz, AZ (*Salt Lake City, UT); points in CO (*Salt Lake City, UT); points in KS (*106A + 44A); points in LA (*Salt Lake City, UT and points in CO or Salt Lake City, UT and points in CO and points in TX); Daniels, Dawson, Garfield, McCone, Phillips, Richland, Roosevelt, Sheridan, Valley, Bighorn, Carbon, Carter, Custer, Fallon, Musselshell, Powder River, Prairie, Rosebud, Treasure, Wibaux and Yellowstone Counties, MT (*Salt Lake City, UT); points in NM (*Salt Lake City, UT); Adams, Billings, Bowman, Burleigh, Dunn, Emmons, Golden Valley, Grant, Hettinger, Mercer, Morton, Oliver, Sioux, Slope, Stark, Barnes, Cass, Dickey, Kidder, LaMoure, Logan, McIntosh, Ransom, Richland, Sargent, Stutsman, Eddy, Foster, Grand Forks, Griggs, Nelson, Steele, Traill, Benson, Cavalier, Pembina, Pierce, Ramsey, Rolette, Sheridan, Towner, Walsh, Wells, Bottineau, Burke, McHenry, McLean, Mountrail, Renville and Ward Counties, ND (*Salt Lake City, UT and Laramie, WY); points in OK (*Salt Lake City, UT and points in CO); points in TX (*Salt Lake City, UT and points in CO). (6) From points in Churchill, Douglas, Humboldt, Lyon, Mineral, Ormsby, Pershing, Storey and Washoe Counties, NV, to points in AR (*Salt Lake City, UT and points in CO); Apache, Coconino, Mohave, Navajo and Yavapai Counties, AZ (*Salt Lake City, UT); points in CO (*Salt Lake City, UT); points in KS (*Salt Lake City, UT); points in LA (*Salt Lake City, UT and points in CO or Salt Lake City, UT and points in CO and points in TX); Daniels, Dawson, Garfield, McCone, Phillips, Richland, Roosevelt, Sheridan, Valley, Blaine, Cascade, Chouteau, Fergus, Golden Valley, Hill, Judith Basin, Lewis and Clark, Liberty, Meagher, Petroleum, Pondera, Teton, Toole, Wheatland, Bighorn, Carbon, Carter, Custer, Fallon, Musselshell, Powder River, Prairie, Rosebud, Treasure, Wibaux and Yellowstone Counties, MT (*Salt Lake City, UT); points in NM (*Salt Lake City, UT); Adams, Billings, Bowman, Burleigh, Dunn, Emmons, Golden Valley, Grant, Hettinger, Mercer, Morton, Oliver, Sioux, Slope, Stark, Barnes, Cass, Dickey, Kidder, LaMoure, Logan, McIntosh, Ransom, Richland, Sargent, Stutsman, Eddy, Foster, Grand Forks, Griggs, Nelson, Steele, Traill, Benson, Cavalier, Pembina, Pierce, Ramsey, Rolette, Sheridan, Towner, Walsh, Wells, Bottineau, Burke, McHenry, McLean, Mountrail, Renville and Ward Counties, ND (*Salt Lake City, UT and Laramie, WY); points in OK (*Salt Lake City, UT and points in CO); points in TX (*Salt Lake City, UT and points in CO). (Gateway eliminated: asterisked.)

MC 107012 (Sub-E748), filed November 22, 1976. Applicant: NORTH AMERICAN VAN LINES, INC., P.O. Box 988, Fort Wayne, IN 46801. Representatives: David D. Bishop and Gary M. Crist (same as above). *New institutional fixtures, and new commercial fixtures when moving in mixed loads and on the same bill of lading with new institutional fixtures, all uncartoned:* (1) From points in NM, to points in ID & WA. (2) From points in Bernalillo, Guadalupe, Los Alamos, Sandoval, San Miguel, Santa Fe, Torrance, Valencia, Chaves, Curry, DeBaca, Eddy, Lea, Lincoln, Quay and Roosevelt Counties, NM, to points in Butte, Lassen, Modoc, Nevada, Plumas, Shasta, Sierra, Siskiyou, Yuba, Glenn, Homboldt, Lake, Mendicino, Tehama and Trinity Counties, CA; Beaverhead, Broadwater, Deerlodge, Gallatin, Granite, Jefferson, Madison, Park, Ravalli, Silver Bow, Stillwater, Sweet Grass, Blaine, Cascade, Chouteau, Fergus, Golden Valley, Hill, Judith Basin, Lewis and Clark, Liberty, Meagher, Petroleum, Pondera, Teton, Toole, Wheatland, Flathead, Glacier, Lake, Lincoln, Mineral, Missoula, Powell and Sanders Counties, MT; Elko, Whitepine, Churchill, Douglas, Humboldt, Lyon, Mineral, Ormsby, Pershing, Storey and Washoe Counties, NV; points in OR; Lincoln, Sublette, Sweetwater and Uinta Counties, WY. (3) From points in McKinley, Rio Arriba and San Juan Counties, NM, to points in Butte, Lassen, Modoc, Nevada, Plumas, Shasta, Sierra, Siskiyou, Yuba, Inyo, Fresno, Kings, Tulare, Glenn, Humboldt, Lake, Mendicino, Tehama, Trinity, Alameda, Alpine, Amador, Calaveras, Colusa, Contra Costa, Eldorado, Madera, Marin, Mariposa, Merced, Mono, Monterey, Napa, Placer, San Benito, Sacramento, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, Sutter, Tuolumne and Yolo Counties, CA; Beaverhead, Broadwater, Deerlodge, Gallatin, Granite, Jefferson, Madison, Park, Ravalli, Silver Bow, Stillwater, Sweet Grass, Daniels, Dawson, Garfield, McCone, Phillips, Richland, Roosevelt, Sheridan, Valley, Blaine, Cascade, Chouteau, Fergus, Golden Valley, Hill, Judith Basin, Lewis and Clark, Liberty, Meagher, Petroleum, Pondera, Teton, Toole, Wheatland, Flathead, Glacier, Lake, Lincoln, Mineral, Missoula, Powell and Sanders Counties, MT; Esmeralda, Eureka, Lander, Nye, Elko, Whitepine, Churchill, Douglas, Humboldt, Lyon, Mineral, Ormsby, Pershing, Storey and Washoe Counties, NV; points in OR; Park, Teton, Yellowstone National Park, Lincoln, Sublette, Sweetwater, Uinta, Fremont, Hot Springs and Natrona Counties, WY. (4) From points in Catron, Dona Ana, Grant, Hidalgo, Luna, Otero, Sierra and Socorro Counties, NM, to points in Beaverhead, Broadwater, Deerlodge, Galltin, Granite, Jefferson, Madison, Park, Ravalli, Silver Bow, Stillwater, Sweet Grass, Daniels, Dawson, Garfield, McCone, Phillips, Richland, Roosevelt, Sheridan, Valley, Blaine, Cascade, Chouteau, Fergus, Golden Valley, Hill, Judith Basin, Lewis and Clark, Liberty, Meagher, Petroleum, Pondera, Teton, Toole, Wheatland, Flathead, Glacier, Lake, Lincoln, Mineral, Missoula, Powell and Sanders Counties, MT; Elko, Whitepine, Churchill, Douglas, Humboldt, Lyon, Mineral, Ormsby, Pershing, Storey and Washoe Counties, NV; Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington, Yamhill, Crook, DeSchutes, Gilliam, Hood River, Jefferson, Sherman, Wasco, Wheeler, Harney, Klamath, Lake, Malheur, Baker, Grant, Morrow, Umatilla, Union and Wallowa Counties, OR; Park, Teton, Yellowstone National Park, Lincoln, Sublette, Sweetwater, Uinta, Fremont, Hot Springs and Natrona Counties, WY. (5) From points in Colfax, Harding, Mora, Taos and Union Counties, NM, to points in Butte, Lassen, Modoc, Nevada, Plumas, Shasta, Sierra, Siskiyou, Yuba, Inyo, Fresno, Kings, Tulare, Glenn, Humboldt, Lake, Mendicino, Tehama, Trinity, Alameda, Alpine, Amador, Calaveras, Colusa, Contra Costa, Eldorado, Madera, Marin, Mariposa, Merced, Mono, Monterey, Napa, Placer, San Benito, Sacramento, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, Sutter, Tuolumne and Yolo Counties, CA; Beaverhead, Broadwater, Deerlodge, Gallatin, Granite, Jefferson, Madison, Park, Ravalli, Silver Bow, Stillwater, Sweet Grass, Flathead, Glacier, Lake, Lincoln, Mineral, Missoula, Powell and Sanders Counties,

MT; Esmeralda, Eureka, Lander, Nye, Elko, Whitepine, Churchill, Douglas, Humboldt, Lyon, Mineral, Ormsby, Pershing, Storey and Washoe Counties, NV; points in OR. (Gateway eliminated: Salt Lake City, UT)

MC 107012 (Sub-E749), filed November 22, 1976. Applicant: NORTH AMERICAN VAN LINES, INC., P.O. Box 988, Fort Wayne, IN 46801. Representatives: David D. Bishop and Gary M. Crist (same as above). *New Institutional Fixtures, and New Commercial Fixtures when moving in mixed loads and on the same bill of lading with new institutional fixtures, all uncartoned,* (1) From points in OR, to points in AR, OK & TX. (2) From points in OR to points in CO. (3) From Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington, Yamhill, Crook, DeSchutes, Gilliam, Hood River, Jefferson, Sherman, Wasco, Wheeler, Harney, Klamath, Lake and Malheur Counties, OR to points in Cochise, Gila, Graham, Greenlee, Apache, Coconino, Mohave, Navajo, Yavapai, Maricopa, Pima, Pinal and Santa Cruz Counties, AZ; points in NM. (4) From points in Coos, Curry, Douglas, Jackson and Josephine Counties, OR to points in Bernalillo, Guadalupe, Los Alamos, Sandoval, San Miguel, Santa Fe, Torrance, Valencia, McKinley, Rio Arriba, San Juan, Chaves, Curry, DeBaca, Eddy, Lea, Lincoln, Quay, Roosevelt, Colfax, Harding, Mora, Taos and Union Counties, NM. (5) From points in Baker, Grant, Morrow, Umatilla, Union and Wallowa Counties, OR to points in AZ; points in NM. (Gateway eliminated: Salt Lake City, UT and points in CO in (1) above; Salt Lake City, UT in (2)(3)(4)(5) above.

MC 107012 (Sub-E750), filed November 22, 1976. Applicant: NORTH AMERICAN VAN LINES, INC., P.O. Box 988, Fort Wayne, IN 46801. Representatives: David D. Bishop and Gary M. Crist (same as above). *New Institutional Fixtures, and New Commercial Fixtures when moving in mixed loads and on the same bill of lading with new institutional fixtures, all uncartoned,* (1) From points in UT, to points in AR, (*Points in CO or points in TX). (2) From points in UT to points in IA, MN & SD (*Laramie, WY). (3) From points in UT, to points in KS & OK (*Points in CO). (4) From points in UT, to points in LA (*Points in TX). (5) From points in Beaver, Iron, Washington, Carbon, Daggett, Duchesme, Emery, Grand, San Juan, Uimtah, Garfield, Juab, Kane, Millard, Piute, Sanpete, Sevier and Wayne Counties, UT to points in ND (*Laramie, WY). (6) From points in Box Elder, Cache, Davis, Morgan, Rich, Salt Lake, Summit, Tooele, Utah, Wasatch and Weber Counties, UT to points in Adams, Billings, Bowman, Burleigh, Dunn, Emmons, Golden Valley, Grant, Hettinger, Mercer, Morton, Oliver, Sioux, Slope, Stark, Barnes, Cass, Dickey, Kidder, LaMoure, Logan, McIntosh, Ransom, Richland, Sargent, Stutsman, Eddy, Foster, Grand Forks, Griggs, Nelson, Steele, Traill, Benson, Cavalier, Pembina, Pierce, Ramsey, Rolette, Sheridan, Towner, Walsh, Wells, Bottineau, Burke, McHenry McLean, Mountrail, Renville and Ward Counties, ND (*Laramie, WY). (Gateway eliminated-asterisked.)

MC 107012 (Sub-E751), filed November 22, 1976. Applicant: NORTH AMERICAN VAN LINES, INC., P.O. Box 988, Fort Wayne, IN 46801. Representatives: David D. Bishop and Gary M. Crist (same as above). *New Institutional Fixtures, and New Commercial Fixtures when moving in mixed loads and on the same bill of lading with new institutional fixtures all uncartoned,* (1) From points in WA to points in AR, OK & TX (*Salt Lake City, UT and points in CO). (2) From points in WA to points in CO & NM. (3) From points in Clark, Cowlitz, Klickitat, Lewis, Pacific, Pierce, Skamania, Thurston, Wahkiakum, and Yakima Counties, WA, to points in Cochise, Gila, Graham, Greenlee, Apache, Coconino, Mohave, Navajo, Yavapai, Maricopa, Pima, Pinal and Santa Cruz Counties, AZ; San Bernardino County, CA; Clark and Lincoln Counties, NV. (4) From points in Ferry, Lincoln, Okanogan, Pend Oreille, Spokane and Stevens Counties, WA, to points in AZ; San Bernardino, Imperial, Riverside and San Diego Counties, CA; Clark and Lincoln Counties, NV. (5) From points in Clallam, Grays Harbor, Jefferson, Kitsap, Mason and San Juan Counties, WA, to points in AZ; San Bernardino County, CA; Clark and Lincoln Counties, NV. (6) From points in Adams, Asotim, Benton, Columbia, Franklin, Garfield, Walla Walla and Whitman Counties, WA, to points in AZ; Clark and Lincoln Counties, NV. (7) From points in Chelan, Douglas, Grant, Island, King, Kittitas, Skagit, Snohomish and Whatcom Counties, WA, to points in AZ; Kern, Los Angeles, Orange, San Luis Obispo, Santa Barbara, Ventura, San Bernardino, Imperial, Riverside and San Diego Counties, CA; Clark and Lincoln Counties, NV. (Gateway eliminated: Salt Lake City, UT, unless asterisked.)

MC 107012 (Sub-E752), filed November 22, 1976. Applicant: NORTH AMERICAN VAN LINES, INC., P.O. Box 988, Fort Wayne, IN 46801. Representatives: David D. Bishop and Gary M. Crist (same as above). *New Institutional Fixtures, and New Commercial Fixtures when moving in mixed loads and on the same bill of lading with new institutional fixtures all uncartoned,* (1) From points in WY to points in CA and NV. (2) From points in Albany, Carbon, Converse, Goshen, Laramine, Niobrara and Platte Counties, WY, to points in Yuma County, AZ; points in ID; Flathead, Glacier, Lake, Lincoln, Mineral, Missoula, Powell and Sanders Counties, MT; points in OR; points in WA. (3) From points in Park, Teton and Yellowstone National Park Counties, WY to points in AZ; Ada, Adams, Boise, Camas, Canyon, Custer, Elmore, Gem, Gooding, Lemhi, Owyhee, Payette, Twin Falls, Valley and Washington Counties, ID; Crook, DeSchutes, Gilliam, Hood River, Jefferson, Sherman, Wasco, Wheeler, Harney, Klamath, Lake, Malheur, Coos, Curry, Douglas, Jackson and Josephine Counties, OR. (4) From points in Lincoln, Sublette, Sweetwater and Uinta Counties, WY to points in AZ; Benton, Cedar, Clinton, Davis, Des Moines, Dubuque, Henry, Iowa, Jackson, Jefferson, Johnson, Jones Keokuk, Lee, Linn, Louisa, Muscatine, Scott, Van Buren, Wapello and Washington Counties, IA; points in OR; points in WA. (5) From points in Fremont, Hot Springs and Natrona Counties, WY to points in AZ; Ada, Adams, Boise, Camas, Canyon, Custer, Elmore, Gem, Gooding, Lemhi, Owyhee, Payette, Twin Falls, Valley and Washington Counties, ID; points in OR; Clark, Cowlitz, Klickitat, Lewis, Pacific, Pierce, Skamania, Thurston, Wahkiakum, Yakima, Clallam, Grays Harbor, Jefferson, Kitsap, Mason, San Juan, Adams, Asotim, Benton, Columbia, Franklin, Garfield, Walla Walla, Whitman, Chelan, Douglas, Grant, Island, King, Kittitas, Skagit, Snohomish and Whatcom Counties, WA. (6) From points in Big Horn, Campbell, Crook, Johnson, Sheridan, Washakie and Weston Counties, WY to points in AZ; Crook, DeSchutes, Gilliam, Hood River, Jefferson, Sherman, Wasco, Wheeler, Harney, Klamath, Lake, Malheur, Coos, Curry, Douglas, Jackson and Josephine Counties, OR. (Gateway eliminated: Salt Lake City, UT.)

MC 107012 (Sub-E753), filed November 22, 1976. Applicant: NORTH AMERICAN VAN LINES, INC., P.O. Box 988, Fort Wayne, IN 46801. Representatives: David D. Bishop and Gary M. Crist (same as above). *New Institutional Fixtures, and New Commercial Fixtures when moving in mixed loads and on the same bill of*

lading with new institutional fixtures, all uncartoned, from Benson, AZ, to points in Coos, Curry, Douglas, Jackson and Josephine Counties, OR. (Gateway eliminated: points in UT.)

MC 109478 (Sub-E57) (correction), filed May 15, 1974, published in the **Federal Register** September 26, 1975. Applicant: WORSTER MOTOR LINES, INC., P.O. Box 110, North East, PA 16428. Representative: Joseph F. Mackrell, 23 West Tenth St., Erie, PA 16501. . . . (4) Grape juice, tomato juice, honey, jams, jellies, and preserves, and frozen fruits, frozen fruits juices, and frozen tomato juice, from points in NY to points in IL. (Gateway eliminated. Le Roy, NY and North East, PA) Purpose of correction—reflect correct NY territory. The remainder stands as previously published.

MC 115840 (Sub-E113), filed September 12, 1977. Applicant: COLONIAL FAST FREIGHT, INC., 1215 Bankhead Highway, West, P.O. Box 10327, Birmingham, AL 35202. Representative: E. Stephen Heisley, 666 Eleventh St. NW., Washington, DC 20001. *Iron and steel pipe, fittings, gaskets, and accessories as encompassed by iron and steel mill products used in the agricultural water treatment, food processing, wholesale grocery, and institutional supply industries* (except commodities in bulk), (1) between points in TN, on the one hand, and, on the other, points in CA, OR and FL, (2) between points in GA, on the one hand, and, on the other, points in CA, OR, WA, ID, NV, AZ, MT, UT, WY, COM, MX, ND, SD, NE, KS, OK, TX, LA and AR, (3) between points in FL, on the one hand, and, on the other, points in CA, OR, WA, ID, NV, AZ, MT, UT, WY, CO, NM, ND, SD, NE, KS, OK, MO, MN, IA, WI, IL, MI and IN (4) between points in MS, on the one hand, and, on the other, points in CA, OR, WA, MI, IN, OH, WV, VA, NC, SC, MD, DE, NJ, PA, NY, VT, NH, ME, MA, CT and RI. (Gateways eliminated: Birmingham and Holt, AL.)

MC 117574 (Sub-E90), filed July 1, 1975. Applicant: DAILY EXPRESS, INC., P.O. Box 39, Carlisle, PA 17013. Representative: E. S. Moore, Jr. (same as above). *Agricultural implements and agricultural machinery, tractors, cranes, industrial and processing machinery, which are also cultural, industrial or construction machinery, and equipment, or farm and logging equipment, or machinery* (except tractors with vehicle beds, bed frames, and fifth wheels, and such commodities which because of size or weight require the use of special equipment), (a) from points in Hampton and Jasper Counties, SC, to points in CT, ME, MA, MT, NH, OR, NY, RI, WA, and points in CA north of a line beginning at the Pacific Ocean extending along US Hwy 101 to junction I Hwy 80, then along I Hwy 80 to the CA–NV State line, points in ID north and west of a line beginning at the ID–NV state line extending along US Hwy 93 to junction US Hwy 30, then along US Hwy 30 to junction I Hwy 15, then along I Hwy 15 to junction US Hwy 20, then along US Hwy 20 to the ID–WY State line points in NV north of a line beginning at the CA–NV State line extending along I Hwy 80 to junction US Hwy 40, then along US Hwy 40 to junction US Hwy 93 to the NV–ID State line, points in NJ on and north of a line beginning at the PA–NJ state line extending along NJ Hwy 70 to junction NJ Hwy 37, then along NJ Hwy 37 to the Atlantic Ocean at Imis River, points in ND north and west of a line beginning at the SD–ND State line extending along ND Hwy 6 to junction I Hwy 94, then along I Hwy 94 to junction US Hwy 81, then along US Hwy 81 to junction I Hwy 29, then along I Hwy 29 to the US–CD International Boundary line; points in OH east of a line beginning at Ashtabula extending along OH Hwy 11 to junction I Hwy 76, then along I Hwy 76 to the OH–PA State line, points in PA north of I Hwy 76, points in SD west and north of a line beginning at the SY–SD State line extending along US Hwy 14 to junction US Hwy 212, then along U.S. Hwy 212 to junction SD Hwy 65, then along SD Hwy 65 to junction US Hwy 12, then along US Hwy 12 to junction SD Hwy 63, then along SD Hwy 63 to the SD–ND State line, and points in WY north of a line beginning at the WY–ID State line extending along US Hwy 16 to junction I Hwy 90 then along I Hwy 90 to the WY–SD State line, (b) from points in Beaufort and Colleten Counties, SC, to points in ME, OR, WA, WI, points in CA north of a line beginning at San Francisco, extending along I Hwy 80 to junction CA Hwy 99, then along CA Hwy 99 to the CA–NV State line, points in ID north and west of a line beginning at the OR–ID State line extending along US Hwy 30 to junction US Hwy 191, then along US Hwy 191 to the ID–MT State line, points in MN north of a line beginning at the ND–MN State line extending along US Hwy 2 to junction US Hwy 61, then along US Hwy 61 to the US–CD International Boundary line, points in MT north and west of a line beginning at the MT–ID State line extending along I Hwy 90 to junction I Hwy 94, then along I Hwy 94 to the MT–ND State line, points in NC north and west of a line beginning at the CA–NV State line extending along I Hwy 80 to junction US Hwy 40, then along US Hwy 40 to junction US Hwy 93, then along US Hwy 93 to the NV–ID State line, points in NJ north of a line beginning at the PA–NJ State line extending along US Hwy 22 to junction I Hwy 287, then along I Hwy 287 to junction NJ Hwy 35, then along NJ Hwy 35 to Asbury Park, points in ND north of a line beginning at the ND–MT State line extending along I Hwy 94 to junction ND Hwy 3, then along ND Hwy 3 to junction ND Hwy 200, then along ND Hwy 200 to junction I Hwy 29, then along I Hwy 29 to the ND–MN State line, points in OH east of a line beginning at Ashtabula extending along OH Hwy 11 to junction OH Hwy 193, then along OH Hwy 193 to junction US Hwy 422, then along US Hwy 422 to the OH–PA State line; and points in PA north and east of a line beginning at the OH–PA State line extending along US Hwy 422 to junction US Hwy 22, then along US Hwy 22 to the PA–NJ State line, (c) from points in Calhoun and Orangeburg Counties, SC, to points in OR, WA, and points in CA on and north of a line beginning at the CA–NV state line along US Hwy 50 to junction I Hwy 80, then along I Hwy 80 to San Francisco, points in ID on and west of a line beginning at the ID–WY state line extending along US Hwy 20 to junction US Hwy 93, then along US Hwy 93 to the ID–NV state line points in MT on and north of a line beginning at the ND–MT state line extending along US Hwy 12 to junction US Hwy 312, then along US Hwy 312 to junction US Hwy 212, then along US Hwy 212 to junction US Hwy 310 then along US Hwy 310 to junction MT Hwy 308, then along MT Hwy 308 to junction with MT Hwy 397, then along MT Hwy 397 to the MT–WY state line, points in NV on and west of a line beginning at the ID–NV state line extending along US Hwy 93 to junction US Hwy 40, then along US Hwy 40 to junction US Hwy 95, then along US Hwy 95 to junction US Hwy 50, then along US Hwy 50 to the NV–CA state line, points in ND on, north and west of a line beginning at the US–CD International Boundary line extending along ND Hwy 1 to junction ND Hwy 200, then along ND Hwy 200 to junction with US Hwy 85, then along US Hwy 85 to junction US Hwy 12, then along US Hwy 12 to the ND–MT state line, points in WY on and north of a line beginning at the MT–WY state line extending along WY Hwy 120 to junction US Hwy 20, then along US Hwy 20 to the WY–ID state line, and Ashtabula, OH, (d) from points in Berkeley and Dorchester Counties, SC, to points in ID, MT, ND, OR, WA, points in CA on, north and west of a line beginning at San Francisco extending along I Hwy 80 to junction US Hwy 50,

then along US Hwy 50 to the CA–NV state line, points in MN on, north and west of US Hwy 75, points in NV on, north and west of US Hwy 50, points in OH on and east of a line beginning at Ashtabula extending along OH Hwy 46 to junction US Hwy 422, then along US Hwy 422 to the OH–PA state line points in SD on, north and west of a line beginning at the WY–SD state line extending along US Hwy 212 to junction US Hwy 281, then along US Hwy 281 to junction US Hwy 12 then along US Hwy 12 to the SD–MN state line, points in UT on, north and west of a line beginning at the NV–UT state line extending along I Hwy 80 to junction US Hwy 89, then along US Hwy 89 to the UT–WY state line, points in WY on, north and west of a line beginning at the UT–WY state line extending along US Hwy 30 to junction I Hwy 80, then along I Hwy 80 to junction US Hwy 287, then along US Hwy 287 to junction WY Hwy 220, then along WY Hwy 220 to junction I Hwy 25, then along I Hwy 25 to junction I Hwy 90, then along I Hwy 90 to the WY–SD state line, (e) from points in Charleston County, SC, to points in ID, MT, ND, OR, WA, points in CA on, north and west of a line beginning at San Francisco extending along I Hwy 80 to junction US Hwy 50, then along US Hwy 50 to the CA–NV state line, points in MN on, north and west of US Hwy 75, points in NV on, north and west of US Hwy 50, points in OH on and east of a line beginning at Ashtabula extending along OH Hwy 46 to junction US Hwy 422, then along US Hwy 422 to the OH–PA state line, points in SD on, north and west of a line beginning at the WY–SD state line extending along US Hwy 212 to junction US Hwy 12, then along US Hwy 12 to the SD–MN state line, points in UT on, north and west of a line beginning at the NV–UT state line extending along I Hwy 80 to junction US Hwy 89, then along US Hwy 89 to the UT–WY state line, points in WY on, north and west of a line beginning at the UT–WY State line extending along US Hwy 30 to junction I Hwy 80, then along I Hwy 80 to junction US Hwy 287, then along US Hwy 287 to junction WY Hwy 220, then along WY Hwy 220 to junction I Hwy 25, then along I Hwy 25 to junction I Hwy 90 then along I Hwy 90 to the WY–SD state line, (f) from points in Claredon, Lee and Sumter Counties, SC, to points in ID, MT, ND, OR, WA, points in CA on and west of a line beginning at the CA–NV state line extending along US Hwy 6 to junction CA Hwy 168, then along CA Hwy 168 to junction CA Hwy 145, then along CA Hwy 145 to junction CA Hwy 99, then along CA Hwy 99 to junction CA Hwy 152, then along CA Hwy 152 to Santa Cruz, points in CO on, north and west of a line beginning at the CO–WY state line extending along CO Hwy 125 to junction CO Hwy 14, then along CO Hwy 14 to junction US Hwy 40, then along US Hwy 40 to the CO–UT state line, points in MI on and west of a line beginning at Sault Ste. Marie extending along I Hwy 75 to junction MI Hwy 28, then along MI Hwy 28 to junction US Hwy 41, then along US Hwy 41 to Lake Superior, points in MN on and west of a line beginning at International Falls extending along US Hwy 71 to junction I Hwy 90, then along I Hwy 90 to the MN–SD state line points in NV on and north of US Hwy 6, points in OH on and east of a line beginning at Lake Erie extending along OH Hwy 534 to junction US Hwy 422, then along US Hwy 422 to junction US Hwy 224, then along US Hwy 224 to the OH–PA state line, points in SD on and north of a line beginning at the MN–SD state line extending along I Hwy 90 to junction SD Hwy 79, then along SD Hwy 79 to junction US Hwy 18, then along US Hwy 18 to the SD–WY state line, points in UT on and west of a line beginning at the CO–UT state line extending UT Hwy 33 to junction US Hwy 6, then along US Hwy 6 to the UT–NV state line, points in WY on and west of a line beginning at the SD–WY state line extending along US Hwy 18 to junction I Hwy 25, then along I Hwy 25 to junction WY Hwy 34, then along WY Hwy 34 to junction US Hwy 287, then along US Hwy 287 to junction WY Hwy 230, then along WY Hwy 230 to the CO–WY state line, (g) from Cherokee, Union and Spartanburg Counties, SC, to points in CT, ME, MA, NH, NY, OR, RI, VT, VA, WA, points in CA north of a line beginning at San Mates extending along US Hwy 101 to junction I Hwy 80, then along I Hwy 80 to the CA–NV state line, points in ID north and west of a line beginning at the NV–ID state line extending along US Hwy 93 to junction US Hwy 30, then along US Hwy 30 to junction I Hwy 15, then along I Hwy 15 to junction US Hwy 20, then along US Hwy 20 to the ID–MT state line, points in MT west of a line beginning at the WY–MT state line extending along I Hwy 90 to junction US Hwy 87, then along US Hwy 87 to junction US Hwy 191, then along US Hwy 191 to junction MT Hwy 242, then along MT Hwy 242 to the US–CD International Boundary line, points in NV north of a line beginning at the CA–NV state line extending along I Hwy 80 to junction US Hwy 40, then along US Hwy 40 to the NV–ID state line, points in NJ north of a line beginning at the PA–NJ state line extending along the New Jersey Turnpike to junction NJ Hwy 33, then along NJ Hwy 33 to the Atlantic Ocean, points in OH east of a line beginning at Ceshtabula extending along OH Hwy 11 to junction I Hwy 76, then along I Hwy 76 to the OH–PA state line, points in PA north of I Hwy 76, and points in WY north of a line beginning at the ID–WY state line extending along US Hwy 14 to junction I Hwy 90 then along I Hwy 90 to the WY–MT state line, (h) from points in Fairfield and Richland Counties, SC, to points in ID, MT, OR, WA and points in CA on, north and west of a line beginning at San Mateo extending along CA Hwy 92 to junction I Hwy 580, then along I Hwy 580 to junction CA Hwy 99, then along CA Hwy 99 to junction US Hwy 50, then along US Hwy 50 to the CA–NV state line, points in ND on and west of a line beginning at the SD–ND state line extending along ND Hwy 8 to junction I Hwy 94, then along I Hwy 94 to junction US Hwy 83, then along US Hwy 83 to the US–CD International Boundary line, points in NV on, north and west of US Hwy 50, points in SD on, north and west of a line beginning at the WY–SD state line extending along I Hwy 90 to junction SD Hwy 79, then along SD Hwy 79 to junction US Hwy 212, then along US Hwy 212 to junction SD Hwy 73, then along SD Hwy 73 to the SD–ND state line, points in UT on, north and west of a line beginning at NV–UT state line extending along US Hwy 50 to junction US Hwy 89, then along US Hwy 89 to the UT–WY state line, points in WY on, north and west of a line beginning at the UT–WY state line extending along US Hwy 189 to junction US Hwy 187, then along US Hwy 187 to junction WY Hwy 28, then along WY Hwy 28 to junction WY Hwy 789, then along WY Hwy 789 to junction US Hwy 20, then along US Hwy 20 to junction US Hwy 16, then along US Hwy 16 to junction I Hwy 90, then along I Hwy 90 to the WY–SD state line, and Ashtabula, OH, and (i) from points in Harry County, SC, to points in CA, ID, MN, MT, NV, ND, OR, UT, SD, WA, WY, points in AZ on and west of a line beginning at the US–MX International Boundary line extending along US Hwy 89 to junction US Hwy 160, then along US Hwy 160 to the AZ–CO state line, points in CO on and north of a line beginning at the AZ–CO state line extending along US Hwy 160 to junction US Hwy 285, then along US Hwy 285 to junction US Hwy 6, then along US Hwy 6 to the CO–NE state line, points in IA on and north of US Hwy 20, points in MI on and north of I Hwy 96, points in NE on and north of a line beginning at the CO–NE state line extending along US Hwy 6 to junction US Hwy 183, then along US Hwy 183 to

junction US Hwy 20, then along US Hwy 20 to the NE–IA state line and points in WI on and north of US Hwy 151. (Gateways eliminated: Shadygrove or Waynesboro or Carlisle, PA, and New Holland or Belleville, PA).

MC 117574 (Sub-E95), filed July 1, 1975. Applicant: DAILY EXPRESS, INC., P.O. Box 39, Carlisle, PA 17013. Representative: E. S. Moore, Jr. (same as above). *Agricultural implements and agricultural machinery, tractors with or without attachments, cranes, industrial and processing machinery, which are also agricultural, industrial or construction machinery, and equipment, or farm and logging equipment, or machinery,* (except tractors with vehicle beds, bed frames and fifth wheels, and such commodities which because of size or weight require the use of special equipment), (1) from points in Ware County, GA, to points in that portion of CA on and north of a line beginning at Eureka, and extending along U.S. Hwy. 101 to junction U.S. Hwy. 199, then along U.S. Hwy. 199 to the CA–OR State line; points in that portion of ID on and north of U.S. Hwy. 12; points in that portion of MT on and north of a line beginning at the MT–ID State line and extending along U.S. Hwy. 12 to junction I Hwy. 15, then along I Hwy. 15 to junction with U.S. Hwy. 87, thence along U.S. Hwy. 87 to junction with U.S. Hwy. 2, thence along U.S. Hwy. 2 to termination at Glasgow; points in that portion of OH on and east of a line beginning at Cleveland, on Lake Erie and extending along OH Hwy. 14 to junction with OH Hwy. 45, thence along OH Hwy. 45 to junction with U.S. Hwy. 30, thence along U.S. Hwy. 30 to the OH–PA State line; points in that portion of OR on and west of a line beginning at the WA–OR State line and extending along U.S. Hwy. 199 to junction with I Hwy. 5, thence along I Hwy. 5 to junction with OR Hwy. 126, thence along OR Hwy. 126, to junction with U.S. Hwy. 97, thence along U.S. Hwy. 97 to the OR–WA State line; points in that portion of WA on, west and north of a line beginning at the WA–OR State line and extending along WA Hwy. 14 to junction U.S. Hwy. 12, then along U.S. Hwy. 12 to the WA–ID State line; (2) from points in Long and McIntosh Counties, GA, to points in WA; points in that portion of CA on and west of a line beginning at the CA–OR State line and extending along U.S. Hwy. 395 to junction CA Hwy. 36, thence along CA Hwy. 36 to junction with CA Hwy. 32, then along CA Hwy. 32 to junction with CA Hwy. 99, then along CA Hwy. 99 to junction with CA Hwy. 20, thence along CA Hwy. 20 to the Pacific Ocean; points in the Benevah, Boundary, Clearwater, Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties, ID; points in that portion of MT on and north of a line beginning at the ND–MT State line and extending along MT Hwy. 200 to junction with U.S. Hwy. 87, thence along U.S. Hwy. 87 to junction with U.S. Hwy. 12, thence along U.S. Hwy. 12 to junction with U.S. Hwy. 287, thence along U.S. Hwy. 287 to junction with U.S. Hwy. 10, thence along U.S. Hwy. 10 to junction with MT Hwy. 38, thence along MT Hwy. 38 to the MT–ID State line; points in that portion of ND on and west of a line beginning at the US–CD International Boundary line and extending along U.S. Hwy. 85 to junction ND Hwy. 200, thence along ND Hwy. 200 to the ND–MT State line; points in that portion of OR on and west of U.S. Hwy. 395; (3) from Appling, Bacon, and Pierce Counties, GA, to points in that portion of MT north of a line beginning at the ID–MT State line and extending along I Hwy. 90 to junction with U.S. Hwy. 12, thence along U.S. Hwy. 12 to its junction with I Hwy. 15, thence along I Hwy. 15, to junction with U.S. Hwy. 87, thence along U.S. Hwy. 87 to its termination at Havre; points in that portion of OH east of a line beginning at Ashtabula and extending along OH Hwy. 11 to junction with I Hwy. 76, thence along I Hwy. 76 to the OH–PA State line; points in that portion of OR west of a line beginning at Coquille on the Pacific Ocean and extending along U.S. Hwy. 101, to junction OR Hwy. 18, thence along OR Hwy. 18 to junction with I Hwy. 5, thence along I Hwy. 5 to OR–WA State line; points in that portion of ID north of I Hwy. 90; points in that portion of WA north of a line beginning at WA Hwy. 14 and extending along WA Hwy. 14 to junction U.S. Hwy. 97, thence along U.S. Hwy. 97 to junction with I Hwy. 82, thence along I Hwy. 82 to junction with I Hwy. 90 thence along I Hwy. 90 to the WA–ID State line; (4) from points in Brantley and Wayne Counties, GA, to points in WA; points in Del Notre County, CA; points in that portion of Humboldt and Trinity Counties, CA, on and north of CA Hwy. 36; points in Siskiyou County, CA, on and west of a line beginning at the CA–OR State line and extending along U.S. Hwy. 97 to junction I Hwy. 5, thence along I Hwy. 5 to the Siskiyou-Shasta County line; points in that portion of ID on and north of a line beginning at the MT–ID State line extending along U.S. Hwy. 12 to the ID–WA State line, thence along the ID–WA State line to junction with the OR–WA State line, thence along the OR–WA State line to junction with U.S. Hwy. 97; points in that portion of MT on and west of a line beginning at the US–CD International Boundary line and extending along MT Road 247 to junction with U.S. Hwy. 2, thence along U.S. Hwy. 2 to junction with U.S. Hwy. 191, thence along U.S. Hwy. 191 to junction U.S. Hwy. 12, thence along U.S. Hwy. 12 to the MT–ID State line; and points in OR on and west of U.S. Hwy. 97; (5) from points in Atkinson, Clinch, Echols and Lanier Counties, GA, to points in that portion of MT north of a line beginning at the ID–MT State line and extending along I Hwy. 90 to junction MT Hwy. 200, thence along MT Hwy. 200 to junction with U.S. Hwy. 87, thence along U.S. Hwy. 87 to its termination at Havre; points in that portion of OH east of a line beginning at Ashtabula, and extending along OH Hwy. 11 to junction OH Hwy. 7, thence along OH Hwy. 7, to junction with U.S. Hwy. 30, thence along U.S. Hwy. 30 to the OH–PA State line; points in that portion of OR west of a line beginning at Coquille, on the Pacific Ocean and extending along U.S. Hwy. 101 to junction with OR Hwy. 18, thence along OR Hwy. 18 to the OR–WA State line; points in that portion of ID north of I Hwy. 90; points in that portion of WA west of a line beginning at the OR–WA State line and extending along WA Hwy. 14 to junction WA Hwy. 142, thence along WA Hwy. 142 to junction U.S. Hwy. 97, thence along U.S. Hwy. 97 to junction with I Hwy. 90, thence along I Hwy. 90 to the WA–ID State line; (6) from points in Chatham and Effingham Counties, GA, to points in OR; WA; points in that portion of CA north of a line beginning at Santa Rosa, on the Pacific Ocean and extending along U.S. Hwy. 101 to junction with I Hwy. 80, thence along I Hwy. 80 to the CA–NV State line; points in that portion of ID north and west of a line beginning at the ID–NV State line and extending along U.S. Hwy. 93 to junction U.S. Hwy. 93 alternate, thence along U.S. Hwy. 93 alternate to junction with U.S. Hwy. 20, thence along U.S. Hwy. 20 to the ID–MT State line; points in that portion of MT north of a line beginning at the ID–MT State line and extending along U.S. Hwy. 191 to junction I Hwy. 90, thence along I Hwy. 90 to junction with I Hwy. 94, thence along I Hwy. 94 to the MT–ND State line; points in that portion of NV north of a line beginning at the CA–NV State line and extending along I Hwy. 80 to junction with U.S. Hwy. 40, thence along U.S. Hwy. 40 in an easterly direction to junction U.S. Hwy. 93, thence along U.S. Hwy. 93, to the NV–ID State line; points in that portion of ND north of a line beginning at the MT–ND State line and extending along I Hwy. 94

to junction with ND Hwy. 1, thence along ND Hwy. 1 to its termination at Maida; (7) from the Lincoln and Wildes Counties, GA, to points in WA; points in that portion of ID on and north of I Hwy. 90; points in that portion of MT on and north of a line beginning at the US–CD International Boundary line and extending along the Boundary line to junction I Hwy. 15, thence along I Hwy. 15 to junction with U.S. Hwy. 2, thence along U.S. Hwy. 2 to junction with U.S. Hwy. 93, thence along U.S. Hwy. 93 to junction with MT Hwy. 28, thence along MT Hwy. 28 to junction with MT Hwy. 200, thence along MT Hwy. 200 to junction MT Road 461, thence along MT Road 461 to junction I Hwy. 90, thence along I Hwy. 90 to the MT–ID State line, and Astoria, OR; (8) from points in Columbia, Glasock, McDuffie and Warren Counties, GA, to points in WA; points in Del Norte County, CA, points in that portion of of Humboldt and Trinity Counties, CA, on and north of CA Hwy. 36; points in that portion of Siskiyou County, CA, on and west of I Hwy. 5; points in Benewah, Bonner, Boundary, Clearwater, Kootenia, Letah, Lewis, Nez Perce and Shoshone Counties, ID; points in that portion of MT on and west of a line beginning at the US–CD International Boundary line and extending along MT Road 233, thence along MT Road 233 to junction with U.S. Hwy. 87, thence along U.S. Hwy. 87 to junction with MT Hwy. 200, thence along MT Hwy. 200 to junction with MT Road 209, thence along MT Road 209 to junction with unidentified State road, thence along unidentified State road to its junction with U.S. Hwy. 93, thence along U.S. Hwy. 93 to its junction with I Hwy. 90, thence along I Hwy. 90 to junction with unidentified State road, thence in a southerly direction along unidentified State road to junction with U.S. Hwy. 12, thence along U.S. Hwy. 12 to the ID–MT State line; and points in that portion of OR on and west of I Hwy. 5; (9) from points in Coloquitt, Tift, Turner and Worth Counties, GA, to points in that portion of OH east of a line beginning at Ashtabula, and extending along OH Hwy. 11 to junction U.S. Hwy. 30, thence along U.S. Hwy. 30 to the OH–PA State line; points in that portion of of WA west of a line beginning at Aberdeen, and extending along U.S. Hwy. 12 to junction with WA Hwy. 8, thence along WA Hwy. 8 to junction with I Hwy. 5, thence along I Hwy. 5 to junction with U.S. Hwy. 2, thence along U.S. Hwy. 2, to junction with U.S. Hwy. 97, thence along U.S. Hwy. 97 to its termination at the US–CD International Boundary line; (10) from points in Brooks, Coak and Lowdes Counties, GA, to points in that portion of OH east of a line beginning at Cleveland, and extending along OH Hwy. 14 to junction with U.S. Hwy. 30, thence along U.S. Hwy. 30 to the OH–PA State line; points in that portion of WA north and west of a line beginning at Aberdeen, and extending along U.S. Hwy. 12 to junction I Hwy. 5, thence along I Hwy. 5 to junction with I Hwy. 90, thence along I Hwy. 90 to junction U.S. Hwy. 97, thence along U.S. Hwy. 97 to its termination at the US–CD International Boundary line; (11) from points in Montgomery, Treutlen and Wheeler Counties, GA, to points in that portion of ID on and north of U.S. Hwy. 12; points in that portion of MT on and west of a line beginning at the US–CD International Boudary line and extending along I Hwy. 15 to junction with U.S. Hwy. 91, thence along U.S. Hwy. 91 to junction wih MT Road 434, thence along MT Road 434 to junction with MT Hwy. 200 thence along MT Hwy. 200 to junction with MT Road 209, thence along MT Road 209 to junction with unidentified State road, thence along unidentified State road to junction withU.S. Hwy. 93, thence along U.S. Hwy. 93 to junction with I Hwy. 90, thence along I Hwy. 90 to junction with unidentified state road, thence along unidentified road to junction with U.S. Hwy. 12, thence along U.S. Hwy. 12 to the MT–ID State line; points in that portion of OR and west of a line beginning at the OR–WA State line and extending along I Hwy. 5 to junction with OR Hwy. 99W, thence along OR Hwy. 99W to junction with U.S. Hwy. 20, thence along U.S. Hwy. 20 to its termination at the Pacific Ocean; (12) from points in Crisp, Dooly, and Wilcox Counties, GA, to points in that portion of OH east of a line beginning at Ashtabula, and extending along OH Hwy. 11 to junction U.S. Hwy. 422, thence along U.S. Hwy 422 to the OH–PA State line, Astoria, OR; points in that portion of WA north and west of a line beginning at the OR–WA line and extending along I Hwy. 5 to its junction with U.S. Hwy. 12, thence along U.S. Hwy. 12 to its junction with I Hwy. 82, thence along I Hwy. 82 to junction I Hwy. 90, thence along I Hwy. 90 to its junction with WA Hwy. 21, thence along WA Hwy. 21 to termination at the US–CD International Boundary line; (13) from Ben Hill, Berrien and Irwin Counties, GA, to points in that portion of ID on and north of a line beginning at the WA–ID State line and extending along U.S. Hwy. 95 to junction I Hwy. 90, thence along I Hwy. 90 to the ID–MT State line; points in that portion of MT on and north of a line beginning at the ID–MT State line and extending along I Hwy. 90 to junction MT Hwy. 200, thence along MT Hwy. 200 to junction with U.S. Hwy. 87, thence along U.S. Hwy. 87 to its termination at Havre; points in that portion of OH on and east of a line beginning at Ashtabula, on Lake Erie and extending along OH Hwy. 11 to junction U.S. Hwy. 422, thence along U.S. Hwy. 422 to the OH–PA State line; points in that portion of OR on, north and west of a line beginning at Newport, on the Pacific Ocean and extending along U.S. Hwy. 20 to junction I Hwy. 5, thence along I Hwy. 5 to the OR–WA State line; points in that portion of WA on, north and west of a line beginning at the WA–OR State line and extending along WA Hwy. 14 to junction U.S. Hwy. 12, thence along U.S. Hwy. 12 to the WA–ID State line; (14) from points in Grady and Thomas Counties, GA, to points in that portion of OH on and east of a line beginning at Ashtabula, and extending along OH Hwy. 11 to junction U.S. Hwy. 30, thence along U.S. Hwy. 30 to the OH–PA State line; points in that portion of WA on, north and west of a line beginning at Aberdeen and extending along U.S. Hwy. 12 to its junction with WA Hwy. 8, thence along WA Hwy. 8 to junction with U.S. Hwy. 101, thence along U.S. Hwy. 101 to its termination at Port Angeles; (15) from points in Habersham, Rabun and Stephens Counties, GA, to points in that portion of ID, on and north of a line beginning at the US–CD International Boundary line and extending along U.S. Hwy. 95 to junction with U.S. Hwy. 2, thence along U.S. Hwy. 2 to the ID–WA State line; points in that portion of WA on and west of a line beginning at the ID–WA State line and extending along U.S. Hwy. 2 to junction with WA Hwy. 31, thence along WA Hwy. 31 to junction with U.S. Hwy. 395, thence along U.S. Hwy. 395 to junction with WA Hwy. 231, thence along WA Hwy. 231 to junction with U.S. Hwy. 395, thence along U.S. Hwy. 395 to the WA–OR State line, thence along the OR–WA State line to the Pacific Ocean; and Astoria, OR; (16) from points in Banks, Franklin and Madison Counties, GA, to points in that portion of WA, on and west of a line beginning at Aberdeen; and extending along I Hwy. 5, to Bellingham, WA; (17) from Morgan, Newton and Walton Counties, GA, to Port Angeles, and Bellingham, WA, and the port of entry on the US–CD International Boundary line at Osoyoos; (18) from points in Hall, Lumpkin, Towns, Union and White Counties, GA, to points in that portion of WA on and west of a line beginning at Aberdeen, and extending along I Hwy. 5, to Bellingham, WA. (Gateway

eliminated; Shady Grove, Waynesboro, and Belleville, PA.)

MC-117574 (Sub-No. E96), filed July 1, 1975. Applicant: DAILY EXPRESS, INC., P.O. box 39, Carlisle, PA 17013. Representative: E. S. Moore, Jr. (same as above). *Agricultural implements machinery, tractors with or without attachments, cranes, industrial and processing machinery, which are also agricultural, industrial or construction machinery, and equipment or farm and logging equipment, or machinery,* (except tractors with vehicle beds, bed frames and fifth wheels, and such commodities which because of size or weight require the use of special equipment) (1) from points in Charleston County, GA to points in WA; points in Del Morte County, CA, points in that portion of Humboldt and Trinity Counties on and north of CA Hwy. 36, points in that portion of Siskiyou County, CA, on and west of a line beginning at the CA–OR State line and extending along U.S. Hwy. 97 to junction with I Hwy. 5 thence along I Hwy. 5 to the Siskiyou-Shasta County line; points in that portion of ID on and north of a line beginning at the MT–ID State line and extending along U.S. Hwy 12 to the ID–WA State line, thence along the ID–WA State line to junction with the OR–WA State line, thence along the OR–WA State line to junction with U.S. Hwy. 97; points in that portion of MT on and west of a line beginning at the US–CD International Boundary line and extending along MT Road 247, to junction with U.S. Hwy. 2, thence along U.S. Hwy. 2 to junction with U.S. Hwy. 291, thence along U.S. Hwy. 191 to junction with U.S. Hwy. 12 thence along U.S. Hwy. 12 to the MT–ID State line, points in that portion of OR on and west of U.S. Hwy. 97, (2) from Coffee, Jeff Davis, and Telfair Counties, GA, to points in that portion of CA west of a line beginning at Eureka, and extending along U.S. Hwy. 101 to junction with U.S. Hwy. 199, thence along U.S. Hwy. 199 to the CA–OR State line; points in that portion of ID north of a line beginning at the WA–ID State line and extending along I Hwy. 90 to the ID–MT State line; points in that portion of MT north of a line beginning at the ID–MT State line and extending along I Hwy. 90 to junction U.S. Hwy. 12, thence along U.S. Hwy. 12 to junction with I Hwy. 15, thence along I Hwy. 15 to junction with U.S. Hwy. 87, thence along U.S. Hwy. 87 to its termination at Havre; points in that portion of OR west of I Hwy. 5; points in that portion of OH beginning at Ashtabula, and extending along OH Hwy. 11 to junction with U.S. Hwy. 30, thence along U.S. Hwy. 30 to the OH–PA State line; points in that portion of WA west of a line beginning at the WA–OR State line and extending along WA Hwy. 14 in an easterly direction to junction with U.S. Hwy. 97, thence along U.S. Hwy. 97 to junction I Hwy. 82, thence along I Hwy. 82 to junction I Hwy. 90, thence along I Hwy. 90 to the WA–ID State line; (3) from points in Brian and Liberty Counties, GA, to points in MT; ND; OR; WA; points in that portion of CA on and northwest of a line beginning at Santa Rosa, and extending along U.S. Hwy. 101 to junction I Hwy. 80, thence along I Hwy. 80 to the CA–NV State line; points in that portion of ID on and northwest of a line beginning at the NV–ID State line and extending along U.S. Hwy. 93 to junction I Hwy. 15, thence along I Hwy. 15 to junction U.S. Hwy. 26, thence along U.S. Hwy. 26 to the ID–WY State line; points in that portion of MN on and northwest of a line beginning at the SD–MN State line and extending along U.S. Hwy. 12 to junction U.S. Hwy. 71, thence along U.S. Hwy. 71 to International Falls; points in that portion of NV on and west of a line beginning at the CA–NV State line and extending along U.S. Hwy. 40, thence along U.S. Hwy. 40 to junction U.S. Hwy. 93, thence along U.S. Hwy. 93 to the NV–ID State line; points in that portion of OH on and east of a line beginning at Cleveland and extending along OH Hwy. 21 to junction I Hwy. 80, thence along I Hwy. 80 to the OH–PA State line; points in that portion of SD on and northwest of a line beginning at the WY–SD State line and extending along U.S. Hwy. 212 to junction U.S. Hwy. 281 thence along U.S. Hwy. 281 to junction U.S. Hwy. 12, thence along U.S. Hwy. 12 to the SD–MN State line; points in that portion of WY on and west of a line beginning at the ID–WY State line and extending along U.S. Hwy. 26, thence along U.S. Hwy. 26 to junction I Hwy. 25, thence along I Hwy. 25 to junction I Hwy. 90, thence along I Hwy. 90 to the WY–SD State line, (4) from Evans, Tattnall and Tooms Counties, GA, to points in that portion of CA on and west of a line beginning at Eureka and extending along U.S. Hwy. 101 to junction U.S. Hwy. 199, thence along U.S. Hwy. 199 to the CA–OR State line; points in that portion of ID on and north of U.S. Hwy. 12; points in that portion of MT north of a line beginning at ID–MT State line and extending along U.S. Hwy. 12 to junction U.S. Hwy. 191, thence along U.S. Hwy. 191 to junction with MT Hwy. 200, thence along MT Hwy. 200 to the MT–ND State line; points in that portion of ND west of U.S. Hwy. 85; points in that portion of OH east of a line beginning at Ashtabula and extending along OH Hwy. 11 to junction U.S. Hwy. 422, thence along U.S. Hwy. 422 to the OH–PA State line; points in that portion of OR on and west of a line beginning at the OR–CA State line and extending along U.S. Hwy. 199 to junction I Hwy. 5, thence along I Hwy. 5 to junction OR Hwy. 62, thence along OR Hwy. 62 to junction U.S. Hwy. 97 thence along U.S. Hwy. 97 to junction with U.S. Hwy. 26, thence along U.S. Hwy. 26 to junction with U.S. Hwy. 395, thence along U.S. Hwy. 395 to junction OR Hwy. 11, thence along OR Hwy. 11 to the OR–WA State line; points in that portion of WA on and north of U.S. Hwy. 12; (5) from points in Camden and Glynn Counties, GA, to points in WA; points in that portion of CA on and west of a line beginning at Eureka and extending along CA Hwy. 299, to junction with I Hwy. 5, thence along I Hwy. 5 to junction with U.S. Hwy. 97, thence along U.S. Hwy. 97 to the CA–OR State line; points in that portion of ID on and west of U.S. Hwy. 12; points in that portion of MT on and west of a line beginning at the ID–MT State line and extending along U.S. Hwy. 12 thence along U.S. Hwy. 12 to junction U.S. Hwy. 191, thence along U.S. Hwy. 191 to junction U.S. Hwy. 2, thence along U.S. Hwy. 2 to junction with U.S. Hwy. 247, thence along U.S. Hwy. 247 to the US–CD International Boundary line; points in that portion of OH on and east of a line beginning at Ashtabula and extending along OH Hwy. 46 to junction U.S. Hwy. 422, thence along U.S. Hwy. 422 to the OH–PA State line; points in that portion of OR on and west of a line beginning at the CA–OR State line and extending along U.S. Hwy. 97 to junction U.S. Hwy. 26, thence along U.S. Hwy. 26 to the OR–ID State line, (6) from points in Bullock and Screven Counties, GA, to points in MT; ND; OR; WA; points in that portion of CA on and northwest of a line beginning at Santa Rosa and extending along U.S. Hwy. 101 to junction I Hwy. 80, thence along I Hwy. 80 to the CA–NV State line; points in that portion of ID on and northwest of a line beginning at the NV–ID State line and extending along U.S. Hwy. 93, thence along U.S. Hwy. 93 to junction I Hwy. 15, thence along I Hwy. 15, to junction U.S. Hwy. 26, thence along U.S. Hwy. 26 to the ID–WY State line; points in that portion MN on and northwest of a line beginning at the SD–MN State line and extending along U.S. Hwy. 12, to junction U.S. Hwy. 71, thence along U.S. Hwy. 71 to the International Falls; points in that portion of NV on and west of a line beginning at the CA–NV State line and extending along U.S. Hwy. 40, to junction with U.S. Hwy. 93, thence along

U.S. Hwy. 93 to the NV–ID State line; points in that portion of OH and east of a line beginning at Cleveland and extending along OH Hwy. 21 to junction I Hwy. 80, thence along I Hwy. 80 to the OH–PA State line; points in that portion of SD on and northwest of a line beginning at the WY–SD State line and extending along U.S. Hwy. 212, to junction with U.S. Hwy. 281, thence along U.S. Hwy. 281 to junction with U.S. Hwy. 12, thence along U.S. Hwy. 12 to the SD–MN State line; points in that portion of WY on and west of a line beginning at the ID–WY State line and extending along U.S. Hwy. 26, thence along U.S. Hwy. 26 to junction I Hwy. 25, thence along I Hwy. 25 to junction I Hwy. 90, thence along I Hwy. 90 to the WY–SD State line; (7) from Elbert and Hart Counties, GA, to points in WA; points in that portion of ID on and west of U.S. Hwy. 12; points in that portion of MT on and west of a line beginning at the US–CD International Boundary line and extending along I Hwy. 15 to junction U.S. Hwy. 91, thence along U.S. Hwy. 91 to junction MT Road 434, thence along MT Road 434 to junction MT Hwy. 200, thence along MT Hwy. 200 to junction MT Road 209, thence along MT Road 209 to junction unidentified State road, thence along unidentified State road, to junction U.S. Hwy. 93, thence along U.S. Hwy. 93 to junction I Hwy. 90, thence along I Hwy. 90 to junction unidentified State road, thence along unidentified State road to junction U.S. Hwy. 12, thence along U.S. Hwy. 12 to the MT–ID State line; points in that poriton of OR on and west of a line beginning at the OR–WA State line and extending along I Hwy. 5 to junction U.S. Hwy. 20, thence along U.S. Hwy. 20 to its termination at the Pacific Ocean; (8) from points in Candler and Emanuel Counties, GA, to points in that portion of CA on and west of a line beginning at Eureka and extending along U.S. Hwy. 101 to junction with U.S. Hwy. 199, thence along U.S. Hwy. 199 to the CA–OR State line; points in that portion of ID north of U.S. Hwy. 12; points in that portion of MT north of a line beginning at the ID–MT State line and extending along U.S. Hwy. 12 to junction I Hwy. 15, thence along I Hwy. 15 to junction U.S. Hwy. 87, thence along U.S. Hwy. 87 to junction with U.S. Hwy. 191, thence along U.S. Hwy. 191 to junction U.S. Hwy. 2, thence along U.S. Hwy. 2 to its termination at Glasgow; points in that portion of OH on and east of a line beginning at Ashtabula and extending along OH Hwy. 11 to junction with U.S. Hwy. 422, thence along U.S. Hwy. 422 to the OH–PA State line; points in that portion of OR west of a line beginning at CA–OR State line and extending along U.S. Hwy. 199 to junction I Hwy. 5, thence along I Hwy. 5 to junction OR Hwy. 126, thence along OR Hwy. 126 to junction with U.S. Hwy. 97, thence along U.S. Hwy. 97 to the OR–WA State line; points in that portion of WA on and west and north of a line beginning at the OR–WA State line and extending along WA Hwy. 14 to junction U.S. Hwy. 12, thence along U.S. Hwy. 12 to WA–ID State line; (9) from points in Jefferson and Washington Counties, GA, to points in WA; points in that portion of CA on and northwest of a line beginning at Eureka and extending along CA Hwy. 299, to junction I Hwy. 5, thence along I Hwy. 5 to junction U.S. Hwy. 97, thence along U.S. Hwy. 97 to the CA–OR State line; points in that portion of ID on and northwest of a line beginning at the OR–ID State line and extending along U.S. Hwy. 95, to junction U.S. Hwy. 12, thence along U.S. Hwy. 12 to the ID–MT State line; points in that portion of MT on and northwest of a line beginning at the ID–MT State line and extending along MT Hwy. 200 to junction U.S. Hwy. 87, thence along U.S. Hwy. 87 to Havre; points in that portion of OH on and east of a line beginning at Cleveland, and extending along OH Hwy. 21 to junction I Hwy. 80, thence along I Hwy. 80 to the OH–PA State line; points in that portion of OR on and northwest of a line beginning at the CA–OR State line and extending along U.S. Hwy. 97 to junction U.S. Hwy. 26 thence along U.S. Hwy. 26, to the OR–ID State line, (10) from points in Johnson, Laurens and Wilkinson Counties, GA, to points in WA; points in that portion of CA on and northwest of a line beginning at Eureka and extending along CA Hwy. 299 to junction I Hwy. 5, thence along I Hwy. 5 to junction U.S. Hwy. 97, thence along U.S. Hwy. 97 to the CA–OR State line; points in that portion of ID on and northwest of U.S. Hwy. 12; points in that portion of MT on and northwest of a line beginning at the IA–MT State line and extending along U.S. Hwy. 12 to junction I Hwy. 15, thence along I Hwy. 15 to junction U.S. Hwy. 87, thence along U.S. Hwy. 87 to Harve; points in that portion of OH on and east of a line beginning at Cleveland and extending along OH Hwy. 21 to junction I Hwy. 80, thence along I Hwy. 80 to the OH–PA State line; points in that portion of OR on and northwest of a line beginning at the CA–OR State line and extending along U.S. Hwy. 97, thence along U.S. Hwy. 97 to junction U.S. Hwy. 26, thence along U.S. Hwy. 26 to the OR–ID State line; (11) from points in Beckley, Dodge and Pulaski Counties, GA, to points in that portion of ID on and northwest of a line beginning at the US–CD International Boundary line along U.S. Hwy. 95 to junction U.S. Hwy. 2, thence along U.S. Hwy. 2 to the ID–WA State line; points in that portion of WA on and northwest of a line beginning at the ID–WA State line and extending along U.S. Hwy. 2 to junction WA Hwy. 31, thence along WA Hwy. 31 to junction unidentified State road, thence along unidentified State road to junction U.S. Hwy. 395, thence along U.S. Hwy. 395 to junction WA Hwy. 231, thence along WA Hwy. 231 to junction U.S. Hwy. 2, thence along U.S. Hwy. 2 to junction U.S. Hwy. 97, thence along U.S. Hwy. 97 to junction U.S. Hwy. 12, thence along U.S. Hwy. 12 to junction I Hwy. 5, thence along I Hwy. 5 to junction WA Hwy. 6, thence along WA Hwy. 6 to Raymond and the Pacific Ocean; (12) from points in Decatur and Seminole Counties, GA, to points in that portion of OH east of a line beginning at Ashtabula, and extending along OH Hwy. 11 to junction U.S. Hwy. 30 in an easterly direction to OH–PA State line; (13) from points in Greene, Hancock and Tailo-Ferro, Counties, GA, to points in that portion of ID on and west of U.S. Hwy. 2, points in that portion of MT on and north of a line beginning at the US–CD International Boundary line extending along U.S. Hwy. 89 to junction with U.S. Hwy. 2, thence along U.S. Hwy. 2 to the MT–ID State line; Astoria, OR; points in that portion of WA north of a line beginning at the ID–WA State line and extending along U.S. Hwy. 2 to junction U.S. Hwy. 395, thence along U.S. Hwy. 395 to the OR–WA State line, thence along the WA–OR State line to the Pacific Ocean, (14) from points in Baldwin and Putnam Counties, GA, to points in that portion of WA on and west of a line beginning at the US–CD International Boundary line and extending along U.S. Hwy. 97 to junction I Hwy. 90, thence along I Hwy. 90 to junction WA Hwy. 18, thence along WA Hwy. 18, to junction I Hwy. 5, thence along I Hwy. 5 to junction U.S. Hwy. 12, thence along U.S. Hwy. 12 to the Pacific Ocean; (15) from points in Oconee and Aglethorpe Counties, GA, to points in that portion of ID on and north and west of a line beginning at the WA–ID State line and extending along U.S. Hwy. 95, thence along U.S. Hwy. 95 to Eastport; Ashtabula, OH; points in that portion of OR on and north and west of a line beginning at Astonia and extending along U.S. Hwy. 30 to the OR–WA State line; points in that portion of WA on and north and west of a line beginning at the OR–WA State line and extending along U.S. Hwy. 12, to junction I Hwy. 90, thence along I Hwy. 90 to the WA–ID State line, (16) from points in Jasper and

Jones Counties, GA, to Aberdeen, Bellingham, Bremerton and Port Angeles, WA, (17) from points in Burke, Jenkins and Richmond Counties, GA, to points in WA; points in that portion of CA west of a line beginning at Santa Rosa on the Pacific Ocean and extending along U.S. Hwy. 101 to junction CA Hwy. 20, thence along CA Hwy. 20 to junction I Hwy. 2, thence along I Hwy. 2 to junction CA Hwy. 299, thence along CA Hwy. 299 to junction U.S. Hwy. 395, thence along U.S. Hwy. 395 to the CA–OR State line; points in that portion of ID north of a line beginning at the OR–ID State line and extending along I Hwy. 80 to junction ID Hwy. 68, thence along ID Hwy. 68 to junction U.S. Hwy. 93, thence along U.S. Hwy. 93 to the ID–MT State line; points in that portion of MT north of a line beginning at ID–MT State line and extending along MT Hwy. 43 to junction I Hwy. 90, thence along I Hwy. 90 to junction I Hwy. 94, thence along I Hwy. 94 to junction MT Hwy. 16, thence along MT Hwy. 16 to junction MT Hwy. 200, thence along MT Hwy. 200 to the MT–ND State line; points in that portion of ND west of a line beginning at MT–ND State line and extending along ND State line to junction ND Hwy. 200, to junction U.S. Hwy. 85, thence along U.S. Hwy. 85 to the US–CD International Boundary line, points in that portion of OR north and west of a line beginning at the CA State line and extending along U.S. Hwy. 395 to U.S. Hwy. 20, thence along U.S. Hwy. 20 to the OR–ID State line. (Gateways eliminated: Shady Grove, Waynesboro and Belleville, PA.)

MC 124211 (Sub-E113), filed August 26, 1977. Applicant: HILT TRUCK LINE, INC., P.O. Box 988 D.T.S., Omaha, NE 68101. Representative: Thomas L. Hilt (Same as above). *Processed meats meat products meat byproducts, and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except frozen foods, hides and commodities in bulk), (a) between Plainview, TX and points in TX on, west and north of a line beginning at the OK–TX State line extending along US Hwy 287 to junction US Hwy 87, then along US Hwy 87 to junction US Hwy 380, then along US Hwy 380 to the TX–NM State line (except points in Dallam, Hartley, Moore, and Sherman Counties), on the one hand, and, on the other, points in MO on and north of a line beginning at the MO—NE State line extending along US Hwy 136 to junction US Hwy 65, then along US Hwy 65 to junction MO Hwy 6, then along MO Hwy 6 to the MO—IL State line and points in NE on and east of US Hwy 81 (except points in Thayer County, NE) (Lincoln, NE, commercial zone*), and (b) from Plainview, TX, and points in TX on, west and north of a line beginning at the OK—TX State line extending along US Hwy 287 to junction US Hwy 87, then along US Hwy 87 to junction US Hwy 380, then along US Hwy 380 to the TX–NM State line (except points in Dallam, Hartley, Moore and Sherman Counties), to points in IL on and north of US Hwy 36, points in IN and north of US Hwy 36, points in IA, MI, MN, ND on and east of US Hwy 281, and points in WI. (Linclon, NE, commercial zone and points in Saunders County NE*) (Gateways eliminated: asterisked.)

MC 124211 (Sub-E117), filed August 29, 1977. Applicant: HILT TRUCK LINE, INC., P.O. Box 988, D.T.S., Omaha, NE 68101. Representative: Thomas L. Hilt (Same as above). *Processed meats, meat products, meat byproducts, and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except frozen foods, hides and commodities in bulk), (a) between points in TX on, south and west of a line beginning at the NM-TX State line extending along US Hwy 380 to junction US Hwy 84, then along US Hwy 84 to Snyder, then along TX Hwy 208 to San Angelo, then along US Hwy 277 to Del Rio then along unnumbered highway to the US-MX International Boundary line (except points in El Paso County), on the one hand, and, on the other, points in MO on and north of a line beginning at the MO-NE State line extending along US Hwy 136 to junction US Hwy 65, then along US Hwy 65 to junction MO Hwy 6, then along MO Hwy 6 to the IL-MO State line, and points in NE on and east of US Hwy 281 (except points in Webster County) (Lincoln, NE, commercial zone*), and (b) from points in TX described in (a) above, to points in IL on and north of US Hwy 136, IN on and north of US Hwy 24, IA, MI, MN, ND on and east of US Hwy 83, OH on and north of US Hwy 36, SD on and east of US Hwy 281, and WI (Lincoln, NE, commercial zone, and points in Saunders County, NE*). (Gateways eliminated: asterisked.)

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-37854 Filed 12-10-79; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

National Institute of Education

Teaching and Learning Research Grant Competition; Reminder About Closing Dates for Receipt of Proposals

This notice is to remind persons who are planning to submit proposals under the unsolicited proposal process on or before the announced deadline of January 3, 1980 (44 FR 39619, July 6, 1979 and 44 FR 63581, November 5, 1979) that there is also a deadline of January 21, 1980 (44 FR 57996, October 9, 1979) for submitting proposals under the Teaching and Learning Research Grant Competition.

According to NIE regulations, any unsolicited proposal which in substance closely resembles a pending competitive solicitation may not be funded as an unsolicited proposal.

In accordance with published guidelines, the Institute will determine whether in substance any unsolicited proposal submitted for the January 3 deadline resembles closely the content of the current Teaching and Learning announcement, and will return any such proposal or transfer it to the Teaching and Learning Competition after consultation with the proposer.

Interested persons can receive a copy of the Unsolicited Proposal Guidelines from Dr. Warren Kaufman, telephone (202) 254–7920 and a copy of the Teaching and Learning Research Grants Announcement from Dr. Lawrence G. Goebel, telephone (202) 254–5672 at the National Institute of Education, Washington, D.C. 20208.

Dated: December 7, 1979.

John W. Christensen,

Associate Director, Administration, Management and Budget.

[FR Doc. 79-38153 Filed 12-10-79; 11:49 am]

BILLING CODE 4110-39-M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 239
Tuesday, December 11, 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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[M–258, Amdt. 6; Dec. 6, 1979]

CIVIL AERONAUTICS BOARD.

Notice of Deletion of Item from the December 6, 1979, Board Meeting.

TIME AND DATE: 9:30 a.m., December 6, 1979.

PLACE: Room 1027 (Open)—1825 Connecticut Avenue NW., Room 1011 (Closed) Washington, D.C. 20428.

SUBJECT: 3. Dockets 36091 and 36196; Applications of American and Braniff for Texas-Eastern Canada exemptions (Memo 9332, BIA, OGC).

STATUS: 1–15 (Open), 16 (closed).

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673–5068.

SUPPLEMENTARY INFORMATION: The Legal Division of the Bureau of International Aviation has requested the deletion of Item 3 in order to allow additional time for coordination with the Office of the General Counsel. Accordingly, the following Members have voted that agency business requires the deletion of Item 3 from the December 6, 1979 agenda and that no earlier announcement of this deletion was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S–2407–79 Filed 12–7–79; 3:42 pm]

BILLING CODE 6320–01–M

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[M–260, Dec. 6, 1979]

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 9:30 a.m., December 13, 1979.

PLACE: Room 1027 (Open), Room 1011 (Closed), 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

1. Ratification of Items adopted by notation.

2. Dockets 27048, 32661, 32750, 32855, and 33699; applications of various foreign air carriers for 402 permits. (Memo No. 9340, BIA, OGC, BALJ)

3. Docket 36162, Brock Air Services Ltd. application for an initial foreign air carrier permit to operate charters between Canada and the United States using small aircraft. (BIA, OGC, BALJ)

4. Dockets 32608, 32609, and 33363; application of Transglobal Airlines, Inc., formerly known as Global American Airlines, Inc., Former Large Irregular Air Service Investigation; Order on Discretionary Review. (OGC)

5. Docket 35516, Trans-Mediterranean Airways, S.A.L. (TMA)—application to renew and amend its foreign air carrier permit to operate New York-Lebanon all-cargo operations via Basel, Amsterdam, Copenhagen, Stockholm, Frankfurt, Paris and London. (Memo No. 9333, BIA, OGC, BALJ)

6. Dockets 36091 and 36196, applications of American and Braniff for Texas-Eastern Canada exemptions. (Memo No. 9332, BIA, OGC)

7. Dockets 33363, 33232, and 33233; *(Application of AIAL, Inc.* and *Former Large Irregular Air Service Investigation.* (Memo No. 9334, OGC)

8. Dockets 34292, 34293, and 33363; *Former Large Irregular Air Service Investigation* (Homeric International Airlines, Inc.)—Order on discretionary review. (Memo No. 9338, OGC)

9. Docket 34226, Eastern Airline' motion to dismiss its merger application. (Memo No. 8593–A, OGC)

10. Docket 36815, Southwest Alaska Service Investigation, Order acting on petition. (Memo No. 9192–A, OGC)

11. Docket 36672, application of Sky West Aviation pursuant to Subpart Q, to add Flagstaff, Arizona, as an intermediate point on its certificate. (Memo No. 9341, BDA)

12. Docket 36945 and NR–111, Delta's notice of intent to suspend nonstop or single-plane service in seven markets. (BDA)

13. Dockets 35805, 36016, 36008, 36022, 36040, 36041, 36028, 36047, 36030, 36006, 36056, 36048, 36060, 36050, 36061, 36025, and 36053; Order granting authority to operate nonstop service from Newark, N.J., as a terminal point to other domestic or overseas terminal points as requested in the new applications of Air New England, Braniff Airways, Continental Airlines, Eastern Airlines, Evergreen International Airlines, Frontier Airlines, National Airlines, Ozark Airlines, Piedmont Aviation, Republic Airlines, Texas International Airlines, Trans Carib Air, Trans World Airlines, USAir, Western Airlines, and World Airways filed in the *Newark Show-Cause Proceeding* (Memo No. 8885–A, BDA)

14. Dockets 36638, 36467, 36647, 36846, 36483, and 36482; Boise-San Francisco/San Jose/Oakland/Portland/Reno/Salt Lake City Show-Cause Proceeding; new applications of Hughes Airwest, Pacific Southwest, Republic, USAir, and Western. (Memo No. 9117–A, BDA)

15. Dockets 36174, 36397, 36384, 36321, 36395, 36389, 36392, 36386, and 36460; Pittsburgh/Houston-El Paso/Albuquerque/San Diego Show Cause Proceeding; new applications of American, Continental, Eastern, Hughes Airwest, Pan American, Republic, Southwest, Texas International and USAir. (BDA)

16. Docket 36799, Braniff Airways' ninety day notice of suspension of all service at Birmingham, Alabama. (Memo No. 9342, BDA, OCCR)

17. Docket 36806, Texas International's notice under section 401(j)(1) to terminate its certificate obligations at Brownwood, Longview/Kilgore/Gladewater, Temple, Tyler, Victoria, and Waco, Texas. (BDA, OCCR)

18. Docket 35634, Agreements CAB 27928–R1 through R3: Agreements among members of IATA establishing an exception to the IATA cargo agency accreditation standards. (Memo No. 9339, BDA)

19. Agreement CAB 27548 and 27370; Agreement between American Airlines, Inc. (American) and Pan American World Airways, Inc., concerning the placement of an automated reservations system in travel agents' offices; Agreement between American and Western Air Lines, Inc., concerning the placement of an automated reservations system in travel agents' offices. (Memo No. 9337, BDA, OGC)

20. Docket 36798—expansion of commuter replacement agreement between USAir and Suburban Airlines. (BDA, OGC, BCP)

21. Docket 37109, Limitation of Excess Baggage Allowance Proposed by Eastern Airlines, Inc., in Certain Caribbean Markets—report of an informal conference of interested persons. (Memo No. 9286–B, BDA)

22. Dockets 36508 and 37041, Application of Air Illinois for interim compensation for losses in providing essential air service at El Dorado/Camden, Arkansas, and Natchez, Mississippi. (BDA, OGC, OCCR, OC, BCP)

23. Dockets 35268 and 35274, *World Airways Enforcement Proceeding.* Petition by World for review of an initial decision holding that the form of certain newspaper advertisements constituted an "unfair practice" under section 411, and ordering World to cease and desist. (OGC)

24. Dockets 34802 and 37165, Emergency Motion of Wien Air Alaska, Inc. for issuance of final order to fix temporary service mail rates; *Great Northern Airlines Service Mail Rate Investigation.* (Memo No. 9243, BDA)

25. Board position on cargo rate flexibility as proposed in H.R. 5882. (Memo No. 9336, OGC)

STATUS: Open (Items 1–24), Closed (Item 25).

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673–5068.

SUPPLEMENTARY INFORMATION: The Board is to consider various options for providing rate flexibility for foreign cargo. This matter involves questions of foreign rate policy which could be the subject of international negotiations. Public disclosures, particularly to foreign governments, of opinions, evaluations, and strategies prior to such negotiations could seriously compromise the position of the United States to achieve agreements which would be in the best interest 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 the proposed agency action within the meaning of the exemption provided under 5 U.S.C. 552b(c)(9)(B) and 14 CFR Section 310b.5(9)(B) and that the meeting on this item should be closed:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
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. David Kirstein, Mr. James L. Deegan, Mr. Daniel M. Kasper, and Mr. Stephen H. Lachter.
Managing Director.—Mr. Cressworth Lander.
Executive Assistant to the Managing Director.—Mr. John R. Hancock.
Office of the General Director.—Mr. Michael E. Levine.
Office of the General Counsel.—Ms. Mary Schuman, Mr. Gary J. Edles, and Mr. Peter B. Schwarzkopf.
Bureau of International Aviation.—Mr. Sanford Rederer, Mr. Douglas V. Leister, Mr. Vance Fort, Mr. John H. Kiser, Mr. Richard M. Loughlin, and Mr. Ivars V. Mellups.
Bureau of Domestic Aviation.—Ms. Barbara A. Clark, Mr. Paul L. Gretch, and Mr. Mark S. Kahan.
Office of Economic Analysis.—Mr. Robert H. Frank and Ms. Julie Moll.
Bureau of Consumer Protection.—Mr. Reuben B. Robertson, Ms. Patricia Kennedy, and Mr. Glenn W. Wienhoff.
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 the public observation.

Mary McInnis Schuman,
General Counsel.

[S–2406–79 Filed 12–7–79; 3:42 pm]
BILLING CODE 6320–01–M

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FEDERAL ELECTION COMMISSION.

DATE AND TIME: Thursday, December 13, 1979 at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: Portions of this meeting will be open to the public and portions will be closed to the public.

MATTERS TO BE CONSIDERED IN OPEN SESSION:

Setting of dates for future meetings.
Correction and approval of minutes.
Certifications.
Advisory Opinions: Draft AO 1979–65, L. James Gibbs, Chairman, Virginia Democrats for Leadership and Commitment (a draft Kennedy Committee). Draft AO 1979–67, James T. Lynn, General Counsel, Republican National Committee and Ronald D. Eastman, Democratic National Committee.
Audit advisory panel.
1980 election and related matters.
House and Senate bookkeeping manual.
Convention reporting form.
Index and xeroxing pricing policy.
Management report for fiscal year 1979.
Budget execution report for November 1979.
Appropriations and budget.
Pending legislation.
Classification actions.
Routine administrative matters.

MATTERS TO BE CONSIDERED IN EXECUTIVE SESSION: (Closed to the public):

Compliance.
Personnel.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Public Information Officer, Telephone: 202–523–4065.

Marjorie W. Emmons,
Secretary to the Commission.

[S–2403–79 Filed 12–7–79; 1:34 p.m.]
BILLING CODE 6715–01–M

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December 5, 1979.

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: December 12, 1979, 10 a.m.

PLACE: 825 North Capitol Street, NE., Washington, D.C. 20426, Room 9306.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERFORM FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357–8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda, however, all public documents may be examined in the Office of Public Information.

Power Agenda—349th Meeting, December 12, 1979, Regular Meeting (10 a.m.)

CAP–1. Docket No. E–9578, Texas Power & Light Co.
CAP–2. Docket Nos. E–8187, E–8700, ER76–203 and ER76–238, Boston Edison Co., Docket No. ER78–516, Boston Edison Co.
CAP–3. Docket No. ER79–535, Kansas City Power & Light Co.
CAP–4. Docket No. ER79–526, El Paso Electric Co.

Miscellaneous Agenda—349th Meeting, December 12, 1979, Regular Meeting

CAM–1. Docket No. RA79–10, Milltown Skelgas, Inc.
CAM–2. Docket No. GP79–116, U.S.G.S./ Louisiana, Section 102(d) NGPA Determination, Forest Oil Corp., JD79–13023.
CAM–3. Docket No. GP79–102, State of Wyoming, Section 103 NGPA Determination, Sante Fe Energy Co., ODC Tribal Gulf Ute Nos. 3–8, JD79–11745.
CAM–4. Docket No. GP79–103, U.S.G.S. (New Mexico) Section 108 NGPA Determinations, Trans Delta Oil & Gas Co., Inc., Jicarilla B–4 Well, JD79–11675 and Peggy Federal 1, JD79–11868.
CAM–5. Docket No. GP80, State of Oklahoma, NGPA Determination, Grahams Michaels Corp., JD80–4765.

Gas Agenda—349th Meeting, December 12, 1979, Regular Meeting

CAG–1. Docket Nos. RP–73–3 (PGA76–1) and RP74–52 (PGA76–1), Transcontinental Gas Pipe Line Corp. & Transwestern Pipe-Line Co.
CAG–2. Docket No. TC79–147, Algonquin Gas Transmission Co.
CAG–3. Petro-Lewis Funds, Inc.
CAG–4. Docket No. CI79–116, Amoco Production Co.
CAG–5. Docket No. CI79–640, Texas Gas Exploration Corp.
CAG–6. Docket No. CI79–153, Gulf Oil Corp.
CAG–7. Docket No. CI79–620, Exxon Corp.
CAG–8. Docket No. CI80–6, Sun Oil Co., Docket No. CI79–419, Case-Pomeroy Oil Corp., Docket No. CP79–418, Felmont Oil Corp., Docket No. CI79–357, Marathon Oil Co., Docket Nos. CI79–366, CI79–367, CI79–368, CI79–369, CI79–370, CI79–371, CI79–389, and CI79–390, Multistate Oil Properties, N.V. Docket Nos. CS79–531, et al., Logan T. Monsees & Vivian V.

Monsees. Docket No. CS79–534, R. Lewis Chandler Trust. Docket No. CI79–651, Conoco, Inc., Docket No. CS79–536, Goodrich Oil Co., Docket No. CS79–538, Henry B. Martin. Docket No. CS79–540, Merland Resources, Inc. Docket No. CI79–699, The Louisiana and Land Offshore exploration Co. Docket No. CI79–670, Louisiana Land Offshore Exploration Co., Inc. Docket No. CI79–666, Quintana Oil and Gas Corp.

CAG–9. Docket No. CI78–916, Amerada-Hess Corp.

CAG–10. Docket No. CI79–524, Sun Oil Co.

CAG–11. Docket No. CP79–228, Transcontinental Gas Pipe Line Corp.

CAG–12. Docket Nos. CP79–214 and CP79–275, Transcontinental Gas Pipe Line Corp. Docket No. CP79–221, National Fuel Gas Supply Corp. Docket No. CP79–260, Tennessee Gas Pipeline Co., a Division of Tenneco, Inc. Docket No. CP79–278, Texas Eastern Transmission Corp.

CAG–13. Docket No. CP79–365, Columbia Gulf Transmission Co.

CAG–14. Docket No. CP79–460, Columbia Gas Transmission Corp.

CAG–15. Docket No. CP80–32, Columbia Gas Transmission Corp.

CAG–16. Docket No. CP79–361, The Inland Gas Co., Inc.

CAG–17. Docket No. CP79–429, United Gas Pipe Line Co.

CAG–18. Docket No. CP78–33, Transcontinental Gas Pipe Line Corp.

CAG–19. Docket No. CP78–87, Tennessee Gas Pipeline Co., a Division of Tenneco Inc.

CAG–20. Docket No. CP78–544, Columbia Gulf Transmission Co. and Transcontinental Gas Pipe Line Corp.

CAG–21. Docket No. CP79–372, United Gas Pipe Line Co., Michigan Wisconsin Pipe Line Co. & Transcontinental Gas Pipe Line Corp.

CAG–22. Docket No. CP79–201, Northern Natural Gas Co.

CAG–23. Docket No. CP79–230, Transcontinental Gas Pipe Line Corp.

Power Agenda—349th Meeting, December 12, 1979, Regular Meeting

I. Licensed Project Matters

P–1. Project No. 2909, Town of Vidalia, Louisiana.

P–2. Docket No. EL78–24, *Municipal Electric Utilities Association of New York State* v. *Power Authority of the State of New York.*

II. Electric rate matters

ER–1. Docket No. ER80–8, Florida Power & Light Co.

ER–2. Docket No. EL79–20, Buckeye Power, Inc.

ER–3. Docket Nos. EL78–15 and ER78–339, Public Service Co. of New Hampshire.

Miscellaneous Agenda—349th Meeting, December 12, 1979, Regular Meeting

M–1. Docket No. RM79–6, Procedures Governing the Collection and Reporting of Information Associated With the Cost of Providing Electric Service.

M–2. Reserved.

M–3. Reserved.

M–4. Docket No. RM80–, Revision of Monthly Statements of Electric Utility Companies Form No. 5 and Natural Gas Pipe Line Companies Form No. 11.

M–5. Docket No. RM79–21, Regulations Implementing Alternative Fuel Price Ceilings on Incremental Pricing Under the Natural Gas Policy Act of 1978.

M–6. Docket No. RM79–14, Regulations Implementing the Incremental Pricing Provisions of the Natural Gas Policy Act of 1978.

M–7. Docket No. RM80–14, Final Regulations Under Sections 105 and 106 (B) of the Natural Gas Policy Act of 1978.

M–8. Docket No. RM80–, Part 274 Regulations, Subpart B, of the Natural Gas Policy Act of 1978.

M–9. Docket No. RM79–66, Amendment to Interim Regulation Permitting Withdrawal of and Application for NGPA Determination.

M–10. New Mexico Energy and Minerals Department, Oil Conservation Division—Alternative Filing Requirements.

M–11. Docket No. RM80–, Delegation of Authority to the General Counsel.

Gas Agenda—349th Meeting, December 12, 1979, Regular Meeting

I. Pipeline Rate Matters

RP–1. Docket No. RP78–88, Transwestern Pipe Line Co.

II. Producer Matters

CI–1. Docket Nos. RI74–188 and RI75–21, Independent Oil and Gas Association of West Virginia

III. Pipeline Certificate Matters

CP–1. Docket No. TC80–26, Southern Natural Gas Co.

CP–2. Docket No. RP72–6 (Environmental Phase), El Paso Natural Gas Co.

CP–3. Docket No. CP76–238, United Gas Pipeline Co.

CP–4. Docket Nos. CP77–71, Natural Gas Pipeline Co. of America. Docket No. CP77–118, Columbia Gas Transmission Corp. and Columbia Gulf Transmission Co. Docket No. CP77–125, Texas Gas Transmission Corp.

CP–5. Docket No. CP–, Delhi Gas Pipeline Corp.

CP–6. Docket Nos. CP75–140 et al., Pacific Alaska LNG Co., et al. Docket Nos. CP74–160, et al., Pacific Indonesia LNG Co., et al. Docket No. CI78–453, Pacific Lighting Gas Development Co., Docket No. CI78–452, Pacific Simpco Partnership.

Kenneth F. Plumb,

Secretary.

[S–2404–79 Filed 12–7–79; 3:08 pm]

BILLING CODE 6450–01–M

5

FEDERAL MARITIME COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: December 3, 1979, 44 FR 69412.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: December 11, 1979, 10 a.m.

CHANGE IN THE MEETING: Time of the meeting changed from 10 a.m. to 9 a.m. on December 11, 1979.

[S–2401–79 Filed 12–7–79; 11:35 am]

BILLING CODE 6730–01–M

6

FEDERAL RESERVE SYSTEM (Board of Governors).

TIME AND DATE: 10 a.m., Friday, December 14, 1979.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed statement to be presented to the Senate Committee on Banking, Housing, and Urban Affairs regarding S. 1998, state usury ceilings on certain loans.

2. 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) 452–3684 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) 452–3204.

Griffith L. Garwood,

Deputy Secretary of the Board.

Dated: December 7, 1979.

[S–2400–79 Filed 12–7–79; 11:16 am]

BILLING CODE 6210–01–M

7

FEDERAL RESERVE SYSTEM (Board of Governors).

TIME AND DATE: Approximately 10:30 a.m., Friday, December 14, 1979 (following a recess at the conclusion of the open meeting).

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed building expansion (including contracts) for the Omaha Branch of the Federal Reserve Bank of Kansas City.

2. Proposed purchases, under competitive bidding, of computers and other equipment within the Federal Reserve System.

3. Negotiation involving the proposed site preparation of the computer installations for the Federal Reserve Bank of New York.

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; (202) 452-3204.

Dated: December 6, 1979.

Griffith L. Garwood,

Deputy Secretary of the Board.

[S-6210-79 Filed 12-6-79; 4:27 p.m.]

BILLING CODE 6210-01-M

8

[USITC SE-79-46]

INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 10:00 a.m., Tuesday, November 18, 1979.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATES: Part of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions Open to the Public:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints (if necessary).
5. Sodium acetate from Canada (Inv. AA1921-211)—vote.
6. Any items left over from previous agenda.

Portions Closed to the Public

5. Sodium acetate from Canada (Inv. AA1921-211—Briefing.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

[S-2405-79 Filed 12-7-79; 2:11 pm]

BILLING CODE 7020-02-M

9

NATIONAL CREDIT UNION ADMINISTRATION.

TIME AND DATE: 2 p.m., December 13, 1979.

PLACE: 1776 G Street NW., Washington, D.C., 6th Floor Conference Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Review of Central Liquidity Facility Lending Rates.
2. Central Liquidity Facility Repayment Agreements.
3. Conforming changes to Central Liquidity Facility Regular Member Agreements.
4. Semi-Annual Agenda of Regulations.
5. Applications for charters, amendments to charters, bylaw amendments, mergers, conversions and insurance as may be pending at that time.
6. Any items carried over from previously announced open meeting.

RECESS: 3 p.m.

TIME AND DATE: 3:15 p.m., December 13, 1979.

PLACE: 1776 G Street NW., Washington, D.C., 6th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel Actions. Closed pursuant to exemptions (2) and (6).
2. Requests from federally insured credit unions for special assistance under Section 208 of the Federal Credit Union Act in order to prevent their closing. Closed pursuant to exemptions (8) and (9)(A)(ii).
3. Administrative Actions under Section 120 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (10).
4. New Charter applications and request to serve in conformance with Section 205(d) of the Federal Credit Union Act. Closed pursuant to exemptions (6).
5. Merger with a loan portfolio guarantee and other 208 assistance. Closed pursuant to exemptions (8) and (9)(A)(ii).
6. State credit union insurance applications. Closed pursuant to exemptions (9)(A)(ii).
7. Waiver of Investment Valuation Requirements. Closed pursuant to exemption (9)(A)(ii).
8. Waiver of Reserve Transfer Requirements. Closed pursuant to exemption (9)(A)(ii).

CONTACT PERSON FOR MORE INFORMATION: Rosemary Brady, Secretary of the Board, telephone (202) 357-1100.

[S-2398-79 Filed 12-6-79; 4:24 pm]

BILLING CODE 7535-01-M

10

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [44 FR 69075 11/30/79].

STATUS: Closed meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Friday, November 30, 1979.

CHANGES IN THE MEETING: Additional item.

The following additional item was considered at the closed meeting held on Tuesday, December 4, 1979, at 9 a.m.:

Personnel matter.

Chairman Williams and Commissioners Loomis, Pollack, and Karmel determined that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Paul Lowenstein at (202) 272-2092.

December 6, 1979.

[S-2402-79 Filed 12-7-79; 11:49 am]

BILLING CODE 8010-01-M

federal register

Tuesday
December 11, 1979

Part II

Department of the Treasury

Bureau of Alcohol, Tobacco and Firearms

Implementing the Distilled Spirits Tax Revision Act of 1979 (Pub. L. 96-39)

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 5, 13, 19, 170, 173, 186, 194, 195, 196, 197, 200, 201, 211, 212, 213, 231, 240, 250, 251 and 252

[Notice No. 329]

Implementing the Distilled Spirits Tax Revision Act of 1979 (Public Law 96-39)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF).

ACTION: Proposed rulemaking cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this **Federal Register**, the Bureau of Alcohol, Tobacco and Firearms is issuing temporary regulations regarding the implementation of the Distilled Spirits Tax Revision Act of 1979, Subtitle A of Title VIII of the Trade Agreements Act of 1979 (Pub. L. 96-39). The temporary regulations also serve as a notice of proposed rulemaking for final regulations.

DATES: The effective date of the temporary regulations is January 1, 1980. Written comments must be delivered or mailed by September 11, 1980.

ADDRESS: Send comments to Director, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044, (Attn: Chief, Regulations and Procedures Division).

Disclosure of Comments: Any person may inspect the written comments or suggestions during normal business hours at the ATF Reading Room, Office of Public Affairs, Room 4408, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Edward J. Sheehan, E. J. Ference, John V. Jarowski, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, Telephone: 202-566-7626.

SUPPLEMENTARY INFORMATION:

Public Participation: Interested persons may submit written comments and suggestions regarding the temporary regulations. All communications received within the comment period will be considered before final regulations are issued. Any person who desires an opportunity to comment orally at a public hearing on the temporary regulations should submit a written request to the Director within the comment period. However, the Director reserves the right to determine whether a public hearing should be held.

The temporary regulations in this Part of this issue of the **Federal Register** revised, rescind, and add new regulations in 27 CFR Parts 5, 13, 19, 170, 173, 186, 194, 195, 196, 197, 200, 201, 211, 212, 213, 231, 240, 250, 251 and 252. For the text of the temporary regulations, see [T.D. ATF-62] published in this Part of this issue of the **Federal Register**.

Signed: November 14, 1979.

J. R. Dickerson,

Director.

Approved: November 30, 1979.

Richard J. Davis,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 79-37531 Filed 12-3-79; 4:07 pm]

BILLING CODE 4810-31-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 5, 13, 19, 170, 173, 186, 194, 195, 196, 197, 200, 201, 211, 212, 213, 231, 240, 250, 251 and 252

[T.D. ATF-62]

Implementing the Distilled Spirits Tax Revision Act of 1979 (Public Law 96-39)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF).

ACTION: Temporary Rule (Treasury decision).

SUMMARY: This temporary rule implements the Distilled Spirits Tax Revision Act of 1979, Subtitle A of Title VIII of the Trade Agreements Act of 1979 (Public Law 96-39). In addition, detailed rules for transition to the new distilled spirits excise tax system are provided. The Bureau of Alcohol, Tobacco and Firearms will issue final regulatons only after careful consideration of the comments received on these temporary regulations.

EFFECTIVE DATE: Effective date of temporary regulations: January 1, 1980.

FOR FURTHER INFORMATION CONTACT: Edward J. Sheehan, E. J. Ference, John V. Jarowski, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, Telephone 202/566-7626.

SUPPLEMENTAL INFORMATION: This document contains temporary regulations implementing the Distilled Spirits Tax Revision Act of 1979 (Public Law 96-39). The temporary regulations provided by this document will remain in effect until superseded by final regulations on this subject. A notice of proposed rulemaking with respect to final regulations appears elsewhere in this issue of the Federal Register.

Legislative Background

As a result of the Tokyo Round of multilateral trade negotiations, the United States agreed to eliminate the wine gallon method for imposing the distilled spirits tax. Accordingly, the Administration proposed and the Congress passed a legislative package for eliminating the wine gallon method of taxing distilled spirits, which is cited as the Distilled Spirits Tax Revision Act of 1979, Subtitle A of Title VIII of the Trade Agreements Act of 1979 (Public Law 96-39).

Public Law 96-39 amended or repealed other provisions of 26 U.S.C. Chapter 51 in the interest of tax parity for all distilled spirits products, both domestic and imported. The new law also modernizes and simplifies the distilled spirits tax system by providing for the all-in-bond method of tax administration.

The following paragraphs provide a discussion of the major points of (1) existing law and (2) the changes effected by Pub. L. 96-39.

Existing Law (Prior to January 1, 1980)

1. *Wine gallon and proof gallon methods of taxing distilled spirits.*

Under present law, an excise tax is imposed on all distilled spirits produced in or imported into the United States. Depending on the proof of spirits, the tax is determined at $10.50 on each proof or wine gallon (or proportionate part thereof).

One of two methods is used to compute the tax. Under the first of these methods, the proof-gallon method, the distilled spirits tax is based both upon the volume of spirits and the alcohol content when the tax is determined. The proof gallon method applies to spirits at or above 100° proof at the time of tax determination.

The second method is the wine-gallon method, which is based solely upon the volume of liquid, measured in U.S. gallons (wine gallons), and applies to spirits that are below 100° proof at the time the tax is determined.

Generally, domestic producers withdraw bulk spirits from bond for bottling when they are above 100° proof, and subsequently reduce the spirits to the proof at which they are bottled (for example, 80° or 86° proof) by the addition of water and other ingredients. Because these domestic spirits are usually at or above 100° proof when the tax is determined, the tax is computed on the basis of proof gallons. Some foreign produced spirits are imported in bulk at or above 100° proof; these spirits are also taxed on a proof gallon basis when removed from bond. However, most foreign produced spirits are bottled in the country of origin and imported below 100° proof. Such spirits are taxed at $10.50 on each wine gallon when removed from bond, resulting in a higher effective rate of tax on bottled imported spirits than on spirits taxed on a proof gallon basis.

2. *Rectification.*

In addition to the $10.50 per gallon distilled spirits tax, a commodity tax is imposed on rectified distilled spirits or wines at a rate of $.30 per proof gallon (or proportionate part thereof).

Rectified distilled spirits or wines are those which have been blended, purified, refined, processed or otherwise changed from their original state. This tax is subject to numerous complicated statutory exceptions. It applies only to spirits rectified in the United States and does not apply to imported products (either bottled or in bulk) which have been rectified abroad but have not been further rectified in the United States. Similar rectification taxes are imposed on cordials, liqueurs and similar compounds of distilled spirits which contain more than 2.5 percent, by volume, of wine which has an alcohol content of more than 14 percent ($1.92 per wine gallon) and on some mixed or blended rums or fruit brandies which have been aged in wood for less than two years ($.30 per proof gallon). In addition, rectifiers must pay a special occupational tax before engaging in the business.

3. *Government supervision of distilled spirits operations.*

Under existing law, the Director has strict control of distilled spirits, including those for beverage and industrial purposes, from the beginning of the production process to the point where the spirits are removed from bond. This control has been maintained through a rigid system of separate premises, permits, inspections, investigations and on-site supervision. However, in recent years the Bureau has recognized the need for modernizing this system of control.

The production and processing of distilled spirits involves a number of seprate operations. Under present law only some operations are conducted on the bonded premises portion of the distilled spirits plant, which is the part of the plant where distilled spirits may be held before tax determination. Operations on bonded premises include fermentation, distillation, storage and aging distilled spirits in bulk, denaturation, and bottling in bond. Subsequent operations including processing, rectifying, bottling, and storage of bottled spirits are conducted on nonbonded premises. Existing law also limits the permissible activities that may be performed within the bonded premises of a plant to the extent of requiring separate bonded facilities, for production, denaturation, bottling in bond, export storage, and warehousing.

In addition to segregation of facilities, present law requires the physical presence of an ATF officer before certain operations on bonded premises may be performed. Currently, distilled spirits may be produced only in a closed distilling system, with the spirits required to be kept under Government lock or seal until the production gauge is made and the spirits have been entered for deposit, denatured, tax-determined, or removed for a legitimate tax-exempt

or tax-free purpose, such as use for exportation, testing or experimental purposes. Rooms and buildings in which undenatured distilled spirits are stored may not be unlocked or remain open except when an ATF officer is on the plant premises. Gauges for spirits produced, transferred, tax-determined, or removed tax-free, must be either made or supervised by an ATF officer.

4. *Tax payment provisions.*

With the physical separation required under existing law between bonded premises and the premises where tax-determined or taxpaid spirits are rectified or bottled, tax determination for domestically bottled spirits occurs in almost all cases when they are removed from bond for bottling or rectification at the same plant. Although the tax is determined when spirits are removed from bond, payment may be deferred. As a result of this deferral procedure, existing law has established a system of crediting the proprietor with the amount of tax on spirits lost during rectifying and bottling operations.

Under existing regulations, distilled spirits products for beverage use, which have been bottled and cased, may be stored by a proprietor on nonbonded premises of a distilled spirits plant (designated as "control premises") as part of the proprietor's controlled stock. A rather complex procedure to account for the distilled spirits tax liability on controlled stock assures payment of the tax at the appropriate time. The effect of this procedure is to require the tax to be paid upon shipment from the control premises, or, if the spirits are kept in controlled stock inventory, payment of the tax can be delayed on the average for not more than six months.

Present law also includes a complicated system of requirements to insure that the distilled spirits tax liability of the plant proprietor (or importer) is adequately secured from the time these taxes are imposed until they are finally paid. This security is provided through a series of liens and surety bonds, at some points with overlapping coverage.

For example, the taxes are a first lien on the spirits from the time they are created. The taxes on distilled spirits produced are also a first lien on the distillery premises (including land, buildings and equipment).

Collection of the tax is further secured by a series of surety bonds to cover different operations or combinations of operations within a distilled spirits plant. For example, separate bonds are available for distilling, warehousing, and rectification operations. In addition, other bonds may be used for combined operations at a distilled spirits plant (such as at a plant with an adjacent bonded wine cellar) and to cover operations at more than one distilled spirits plant located in a single geographical area. Finally, a withdrawal bond is required in order to defer payment of the tax between the time the tax is determined and the actual payment of the tax. Each of these bonds is subject to differing maximum and minimum amounts.

Both the distilled spirits tax and the rectification tax are collected on the basis of returns under regulations prescribed by the Secretary of the Treasury. These regulations provide semi-monthly return periods which run from the 1st day through the 15th day of the month and from the 16th day through the last day of the month. Where tax becomes payable during one return period, the liability must be reported and the tax paid by the end of the following return period. For example, if the distilled spirits tax becomes payable on January 10 (during the January 1–15 return period) the liability must be reported and the tax paid by January 31, the last day of the succeeding return period which runs from January 16 through January 31.

Changes Due to Public Law 96–39 (Effective January 1, 1980)

1. *In general.*

The provisions of Public Law 96–39 significantly change the existing methods for the taxation of distilled spirits and the control of distilled spirits production. These revisions will result in a more uniform system of taxation by eliminating the tax differential between spirits of less than 100° proof and spirits which are 100° proof or higher at the time of tax determination. In addition, the bonded premises of a distilled spirits plant have been redefined to encompass all operations of a plant, from original production of the spirits through bottling, and the mechanism for Government supervision and control of distilled spirits operations is substantially simplified. Finally, the timing of distilled spirits excise tax payments has been amended, in order to address disparity under present law between the time the tax is required to be paid by the domestic bottler and the time the tax amount is collected by the bottler from distributors upon payment for the goods.

2. *Repeal of wine gallon method of taxing distilled spirits.*

The wine-gallon method for determining the excise tax on distilled spirtis is repealed. Consequently, the basis for determination of the distilled spirits tax will be the proof-gallon method. Under this method, the tax will be computed on the basis of alcohol content (including that which is derived from wine, alcoholic flavorings, etc.), of distilled spirits or distilled spirits products when withdrawn from bond. The uniform determination of tax on this basis eliminates the differential under present law between distilled spirits which are 100° proof or higher and distilled spirits which are below 100° proof at the time of tax determination.

3. *Repeal of rectification taxes.*

The new law repeals rectification taxes on rectified distilled spirits and wines, as well as the rectification taxes on cordials and liqueurs which contain wine, and on certain blended rums and fruit brandies. The repeal of these rectification taxes and related administrative rules will eliminate the disparity in tax treatment which exists between domestically rectified distilled spirits products and similar products of foreign origin. The present rectifier's occupational tax is also repealed.

4. *All-in-bond system.*

Adoption of the all-in-bond system results in the taxation of both domestic and imported products on the basis of the alcohol content of the finished product, including that part of the alcohol content derived from wine or other alcoholic ingredients added to a distilled spirits product. The bonded premises of a distilled spirits plant will be expanded to include all distilled spirits operations. This new system will simplify the operations of a distilled spirits plant by eliminating the distinction between bonded and non-bonded operations and premises. Also eliminated are claim procedures which presently must be followed for relief from tax on operational losses.

The provisions relating to distilled spirits bottled in bond, the 20-year statutory force-out rule for spirits in storage, and the lien provisions applicable to the bonded premises of a distilled spirits plant producing distilled spirits are also eliminated.

The repeal of the existing bottling in bond provisions eliminates the distinct status of "bottled in bond" products for tax purposes since all spirits will now literally be bottled in bond. However, "bottled-in-bond" whiskey has achieved recognition as a specific type of whiskey. "Bottled-in-bond" as a distinctive product designation will continue under the labeling regulations of the Federal Alcohol Administration Act with specific standards so that "bottled-in-bond" as a domestic labeling term will continue to have the same meaning as before.

The requirement for a distinctive strip stamp for "bottled-in-bond" spirits was eliminated from law. The existing strip

stamp for these spirits for domestic consumption is green, while a red stamp is used on other domestic products. Although for tax purposes it will no longer be necessary to have a distinctive strip stamp for these goods, the green stamp has gained considerable consumer recognition as a distinctive mark of the "bottled-in-bond" spirits. In view of this fact, and consistent with the retention of "bottled-in-bond" as a domestic labeling designation, the use of a green strip stamp as a distinctive feature will be continued.

5. *Establishment and operation of distilled spirits plants.*

Under the all-in-bond system, the business and operations of a distiller, warehouseman, or processor (a new term, which includes but is not limited to, a rectifier, a bottler and a denaturer) of distilled spirits may be conducted only on the bonded premises of a distilled spirits plant by a person qualified to carry on these operations. The purpose of this provision is to clarify that persons may not engage in these operations except at a qualified distilled spirits plant or as otherwise provided by law. (This latter phrase recognizes that activities, such as those of apothecaries, customs bonded warehouses, manufacturers of nonbeverage products, and users of specially denatured alcohol may continue to be carried on outside a distilled spirits plant.) The law also precludes the establishment of a distilled spirits plant for the processing and storage in bulk of taxpaid distilled spirits.

The establishment of a distilled spirits plant will be restricted to persons who intend to conduct operations as either a distiller, or a warehouseman, or both. Any person so qualified may also, upon application and after approval, process distilled spirits. No operation other than those set forth in the application may be conducted at a plant unless further registration has been submitted and approved. In addition, the Secretary of the Treasury has the authority to prescribe, for each type of operation, minimum capacity and level of activity requirements for distilled spirits plants. This provision is designed to prevent the establishment of token distilled spirits plants which would jeopardize revenue collections and cause excessive administrative and supervisory costs.

Each person not qualified by a basic permit under the Federal Alcohol Administration Act is required to obtain an operating permit under the internal revenue code. The operating permit must be obtained prior to beginning operations. However, the term processor is not covered under the Federal Alcohol Administration Act and regulations. This new term encompasses (but is not limited to) all of the activities performed by rectifiers and bottlers. If the rectifier or bottler proposes to denature or to manufacture articles on bonded premises, he will have to qualify as a processor.

The all-in-bond system also substantially simplifies the qualification and use of distilled spirits plant premises by eliminating the requirement that separate facilities for the various distilled spirits operations be maintained within a plant. Since the tax under the all-in-bond system will be determined when spirits are removed from the plant, there is no longer any need for the delineation and physical separation requirements. Under the all-in-bond system, these operations will be accounted for within recordkeeping accounts (i.e., production, storage, or processing). Commercial records will replace prescribed Government forms in many instances. Tanks, rooms or buildings may be used for multiple purposes, with the accountability of the spirits being maintained by appropriate records. However, operations on the bonded premises of a distilled spirits plant will be restricted to those with respect to distilled spirits, denatured distilled spirits or articles.

While wines may no longer be either rectified or bottled at a distilled spirits plant, they may be received on the premises for use in the manufacture of a distilled spirits product. The transfer of wine in bond between a bonded wine cellar and a distilled spirits plant or between distilled spirits plants is now authorized. Wine received at a distilled spirits plant may be used in the manufacture of a distilled spirits product but may not be removed for consumption or sale as wine. The liability for wine tax will continue until the wine is used in a distilled spirits product or until the proprietor is relieved from liability for the tax. To the extent that they do not involve the addition of distilled spirits (other than wine spirits as authorized under 26 U.S.C. 5373(a)), operations involving the rectification or bottling of wines formerly permitted on the premises of a distilled spirits plant will be required to be conducted at a bonded wine cellar or taxpaid wine bottling house, as appropriate.

Under existing law, no proprietor of a bonded wine cellar or taxpaid wine bottling house engaged in producing, receiving, storing or using any standard wine, may produce, receive, store or use any wine other than standard wine, except to the extent authorized by law. With the establishment of the all-in-bond system for distilled spirits plants, and the termination of the use of the bottling premises of a distilled spirits plant for the rectification or bottling of wines, a taxpaid wine bottling house may bottle other than standard wines, and a bonded wine cellar may rectify and bottle other wine products.

In addition, Pub. L. 96–39 does not authorize the in bond transfer of bottled distilled spirits. Only bulk distilled spirits may be transferred in bond. Consistent with this restriction, the return of distilled spirits to the bonded premises of a distilled spirits plant with abatement, credit or refund of tax will be authorized only for destruction, denaturation, redistillation, reconditioning, or rebottling.

6. *Simplification of bonding requirements.*

Another significant change made with the adoption of the all-in-bond system involves the treatment of surety bonds to secure unpaid liabilities for the distilled spirits tax. While the present requirements for surety bonds are continued, the bond system is simplified to reflect the expansion of bonded premises under the all-in-bond system.

The bonding requirements have been completely revised, and the provisions relating to liens on distillery property and the furnishing of indemnity bonds as methods of securing tax payment were repealed. A bond is required in order to engage in distilled spirits operations and a withdrawal bond is required for removal of spirits from bonded premises before the tax has been paid. A proprietor is allowed to provide one bond to cover all operations and a separate withdrawal bond for removal of spirits from bonded premises before the tax has been paid. In addition, the operations bond may cover the operations at a bonded wine cellar adjacent to the distilled spirits plant and operated by the same person, and also operations at two or more distilled spirits plants (and adjacent bonded wine cellars), where these plants are located in the same geographical area, and are operated by the same person.

Withdrawal bonds may cover withdrawals from one or more bonded premises where the operations on these multiple premises could be covered under the same operations bond. A new category of bond, called a unit bond, covers both operations and withdrawals of one or more distilled spirits plants which could be covered by the same operations bond.

7. *Controls and supervision.*

The new law repealed the requirement that bonded warehouses must be kept under Government lock

and that certain activities on the bonded premises could be conducted only when an ATF officer is on the premises. The Secretary now has discretionary authority to assign ATF officers and require Government locks at plants where necessary, or to eliminate the supervision where it is unnecessary.

In addition, the requirement for a closed distilling system is eliminated. Discretionary authority is retained to prescribe controls over the distilling system as necessary to adequately protect the revenue. The controls may be exercised over the entire distilling system, regardless of whether the spirits are in a potable or readily recoverable state.

8. *Extension of time for payment of tax on distilled spirits bottled in the United States.*

An additional semimonthly period is provided for the payment of the distilled spirits tax on spirits withdrawn from bonded premises. The additional deferral will be phased in over three years at 5 additional days for 1980, 10 additional days for 1981, and an entire semimonthly period for 1982 and subsequent years. For example, for distilled spirits tax that becomes payable during the January 1–15 tax return period, the first semimonthly return period in 1980, the taxpayer will have until February 5 to pay the tax. After this provision is fully phased-in during 1982, the taxpayer will have until February 15 to pay the tax for the January 1–15 period.

9. *Transitional rules.*

Transitional rules are provided to facilitate an orderly changeover to the all-in-bond system on January 1, 1980, so that taxable distilled spirits products will neither escape tax nor be subjected to double taxation.

The change, under the all-in-bond system, of nonbonded premises to bonded premises means that, if any tax which is due and payable on January 1, 1980, on controlled stock is to be credited or refunded, the spirits in controlled stock must be converted from tax-determined to nontax-determined spirits.

Under the transitional rules, the tax on all distilled spirits in controlled stock will become immediately due. The proprietor may elect, to the extent applicable, to extinguish this liability either by paying the tax or by converting any part of the controlled stock to bonded stock. Converting the spirits to bonded stock will allow the proprietor credit for the taxes previously paid or determined on the spirits or wine contained in the controlled stock. The election to convert controlled stock is intended to permit proprietors to pay the taxes already determined under the old system if it is more advantageous to them. Bulk wine in distilled spirits plants may also be converted to bonded stock with credit or refund of taxes paid.

Distilled spirits may be returned to bond for certain purposes with a credit or refund of tax. Under the transitional rules, distilled spirits to which alcoholic ingredients other than distilled spirits have been added and which have been withdrawn from a distilled spirits plant before January 1, 1980, may be returned only to the plant from which withdrawn, so that the amount of tax paid on the products can be determined from records at that plant.

All proprietors are required to have filed and have approval of new bonds effective January 1, 1980, if they are to continue operating after that date. Proprietors must also file new applications for registration and (except where all operations are conducted pursuant to basic permits) new applications for operating permits before January 1, 1980. However, operations may be continued under the former registration and operating permit pending final action on the new applications. In addition, no plants which were qualified as of May 1, 1979, will be denied new qualification by reason of the new conditions placed on qualification.

Advance Notice of Proposed Rulemaking

ATF published an advance notice of proposed rulemaking in the **Federal Register** on July 18, 1979 [44 FR 41833]. The advance notice highlighted major areas of the distilled spirits plant and wine regulations affected by the Distilled Spirits Tax Revision Act of 1979 and solicited comments from consumers and industry to assist the Bureau in drafting these temporary regulations. The advance notice invited general suggestions and recommendations relating to the then proposed law with specific emphasis on the following areas: (1) Qualification; (2) Records and Reports; (3) Bonds; (4) Transition; and (5) Elimination of Standard Wine Premises.

Discussion of Comments

1. *General.*

Twenty written comments were received in response to the advance notice of proposed rulemaking. Fifteen of these comments were from members of the distilled spirits industry or their trade associations. The remaining comments were from wine interests (2), importers/wholesalers (2), and a consumer group.

In general, commenters favored the all-in-bond system in concept and submitted proposals and suggestions for its implementation. In some areas, however, commenters believed either that the law had failed to provide for certain operations or that the implementing regulations might pose too great an administrative burden on the industry. In contrast, the one consumer comment opposed any liberalization of the regulations governing the industry.

With regard to specific issues, commenters who addressed a point generally agreed in principle as to the best course of action. The following paragraphs summarize the comments on the major issues that were addressed.

2. *Qualifying documents.*

As to qualification of distilled spirits plants, all commenters who responded favored reduction and simplification of the qualifying documents. Plats and plans, corporate documents and reporting of changes in the application data were areas where simplification was suggested.

The temporary regulations simplify the requirements as to plans, listing of equipment, and reporting of changes in construction and equipment. Required corporate information has not been significantly reduced at this time.

3. *Records and reports.*

Commenters favored reduction and/or elimination of required Government forms for internal plant transactions. Required periodic reports were viewed as subject to reduction in number and simplification. One commenter pointed to the time and study which would be required for some industry members to replace all Government transaction forms with their own commercial records, and suggested that supplies of obsoleted Government forms continue to be made available to proprietors who want to use them through the end of 1980.

The temporary regulations have eliminated some forms, modified others and left some essentially unchanged. Further reductions are anticipated in the final rule. Alternate records and forms provisions under the temporary regulations allow proprietors to substitute commercial records for required forms on notice to the regional regulatory administrator so long as the substitute records contain all information which would have been included on the form and certain conditions are met. Proprietors who desire to use obsolete forms, appropriately modified to conform to the new system, may do so where a new form has not been prescribed by regulations.

4. *Bonds.*

Commenters addressing bonding

requirements unanimously opposed any increase in the maximum penal sums. Experience factors were cited as support for the contention that current amounts are adequate. The temporary regulations leave the bond amounts generally the same as before. However, the Bureau will study further the sufficiency of bond penal sums in light of the new tax system.

5. *Conversion of controlled stock.*

With respect to treatment of the tax liability on controlled stock on hand at the close of business December 31, 1979, commenters suggested converting all remaining controlled stock to bond, taking credit at $10.50 for each proof gallon in the controlled stock inventory. Without considering any other adjustments, this would offset the outstanding tax liability reported on the final Form 4077. While simple, the method suggested by the commenters would result in excessive credit or refund of taxes to those proprietors who hold in controlled stock inventory products containing wine and alcoholic flavorings, which would be credited at the distilled spirits rate. Proprietors who had no products containing wines or alcoholic flavorings in their inventory, on similarly converting all controlled stock, would exactly satisfy their outstanding tax liability. Subpart X of 27 CFR Part 19 provides regulations to allow conversion of controlled stock and bulk wine as simply as possible, consistent with the legal requirement that credit or refund may be given only for those taxes actually paid or determined.

The question in the advance notice relative to "standard conversion rates" was not understood by most commenters. Commenters were concerned that a standard rate would be inequitable by failing to allow for differences between plants and variations in the formulation of products.

As provided in the regulations, standard conversion rates are to be established on a plant-by-plant basis and will apply only where alcoholic ingredients are consistently used in the same proportion in preparing batches of a product. Standard rates are an alternative method for computing the taxes actually paid or determined on products in the controlled stock inventory. If standard rates would give a false computation of taxes actually paid or determined, i.e., where ingredients are used in varying proportions from one batch to another, average rates may be used.

6. *Separation of stock.*

Commenters who addressed the separation of taxpaid goods, which are allowed to remain on bonded premises through December 31, 1980, favored achieving separation by means of tagging, separate pallets, and other methods short of designating specific rooms or buildings on bonded premises where such goods may be stored. The law calls for physical separation of taxpaid goods remaining on bonded premises. Subpart X of 27 CFR Part 19 provides that this separation can be maintained by separate tanks, rooms, buildings, by partitions or by other means acceptable to the regional regulatory administrator.

7. *Nonstandard wines and alternate operations.*

In connection with the elimination of standard wine premises from the regulations, commenters suggested that particular requirements for maintaining segregation of standard from nonstandard wines not be spelled out in the regulations. The regulations allow proprietors flexibility in determining how separation will be maintained.

With respect to alternation of premises between distilled spirits plants and bonded wine cellars, commenters suggested that separation of alternated areas be maintained by the boundaries of bottling lines, tanks and so on, which are being alternated. The temporary regulations provide for this method.

8. *Other issues.*

Many commenters addressed issues which were not included in the advance notice, but which nonetheless are appropriate to the implementation of the all-in-bond system. Some provided detailed recommendations for change directed at specific sections of regulations. These suggestions have been considered in drafting the temporary regulations to the extent possible, given the short time available for study. The following paragraphs discuss some of the major concerns brought out in the comments.

A few commenters suggested that imported cased goods should be permitted entry into ATF bond in the same manner as bulk imported spirits. Others urged that we allow cased goods specifically designated for export to be transferred in bond or returned to bond at other plants to allow for movement of the goods closer to the point of shipment. The law does not provide for transfer in bond of bottled distilled spirits and allows returns to bond only for certain enumerated purposes. Thus, these suggestions would require enabling legislation.

Movement of wines and taxpaid spirits across bonded premises was another point raised by commenters. Concern was expressed that required separation of taxpaid stocks during 1980 and the prohibition against taxpaid spirits on bonded premises thereafter could result in additional plant space requirements or cause delays in shipping. While taxpaid spirits and wines may not be stored or allowed to remain on bonded premises, except as provided in regulations for 1980, conveyance of such spirits and wines across bonded premises is provided for in 27 CFR 19.97.

The provisions for taxpayment of unexplained shortages of bottled distilled spirits were addressed by most commenters in light of the present procedures for treatment of casualty losses on plant premises. Such losses are reported to ATF officers and the proprietor may file a claim for the tax if the loss exceeds 10 proof gallons. Under the temporary regulations, reports may be required at the discretion of the regional regulatory administrator, but are not required as a general rule. However, records of all losses are required, including explanations for bottled distilled spirits lost. Unexplained shortages of bottled distilled spirits are to be taxpaid on discovery.

Several commenters recommended simplification of the requirements for samples withdrawn for research, development and testing. The temporary regulations simplify these requirements.

Regarding proof and fill tolerances, several commenters recommended broadening the determination of compliance to include more than just a single run or batch. Some suggested raising the permissible drop in proof to 0.5 degrees in the case of cordials. The temporary regulations make no change in the current standard for proof. With respect to fill, an overall objective of 100 percent fill for all bottled products is prescribed in lieu of the former standard, "substantially as much overfill as underfill for each lot of spirits bottled."

The temporary regulations incorporate many of the commenters' suggestions. Others may be implemented in the final regulations after further study. The Bureau will consider all comments on the temporary regulations before final regulations are issued.

Major Changes to the Regulations

1. *General.*

The following paragraphs enumerate some of the principal differences between existing regulations and the provisions of this temporary rule. Matters which were treated in discussion of the comments are not repeated here. In the interest of making this preamble more useful as an

overview, no attempt is made to discuss every change from existing regulations.

2. *Recodification of Parts 186 and 201.*

Although the regulations in this document represent temporary rules, Part 186, Gauging Manual, and Part 201, Distilled Spirits Plants, are being recodified in furtherance of a program instituted in 1975 with redesignation of ATF regulations from Title 26 of the Code of Federal Regulations (CFR) to Title 27 CFR.

3. *Strip stamps and alternative devices.*

ATF Notice No. 312 proposed amendment of regulations in several parts of Title 27 CFR concerning the use of strip stamps and devices other than strip stamps on containers of spirits. After careful consideration of all comments on the notice, regulations are included in the temporary rules to provide for the use of alternative devices by domestic distilled spirits plants. In addition, the stamp regulations are amended to delete the serial numbering of strip stamps and eliminate blue and white strip stamps. Red strip stamps will be used in lieu of blue and white stamps.

4. *Denaturation of spirits.*

Title 27 CFR 201.120 currently provides that spirits may be denatured by a proprietor authorized to produce spirits. Section 201.120 further provides that a subsidiary corporation may denature spirits based on the production qualification of a parent corporation and vece versa. Section 201.120 has been revoked. The temporary regulations provide for denaturation of spirits by any proprietor of a distilled spirits plant qualified to process.

5. *Manufacture of articles.*

The temporary regulations provide for the manufacture of articles by qualified proprietors. Under existing regulations, articles such as proprietary solvents and special industrial solvents may not be manufactured on distilled spirits plant premises. This prohibition necessitated the establishment of specially denatured alcohol users premises adjacent to distilled spirits plants to permit proprietors to manufacture industrial solvents. The temporary regulations eliminate the necessity for this dual qualification.

6. *Statement of security.*

The temporary regulations require proprietors to submit a statement of plant security to the regional regulatory administrator for approval. The statement will generally outline security measures employed at the distilled spirits plant and will include a description of locks to be utilized by proprietors in lieu of Government locks. Regional regulatory administrators will notify proprietors when the initial statement of security is due.

7. *ATF supervision.*

Existing regulations provide for the direct or general supervision of numerous distilled spirits plant operations by ATF officers. Direct supervision requires the presence of an ATF officer on the plant premises or the premises of an adjacent bonded wine cellar. The temporary regulations provide that the regional regulatory administrator may require supervision of plant operations when considered necessary for protection of the revenue.Three types of supervision are defined in the temporary regulations. "General supervision" which does not require the presence of an ATF officer on the plant premises. "Direct supervision" is provided when an ATF officer is on the plant premises. "Immediate supervision" requires that an operation be conducted in the immediate presence of an ATF officer. This system will provide regional regulatory administrators flexibility in providing ATF supervision on a plant-by-plant basis.

8. *Mingling, blending and mixing of spirits.*

Existing regulations prescribe detailed eligibility requirements for the mingling, blending, and mixing of spirits. Rigid age spreads and additional eligibility requirements currently restrict operational flexibility by limiting the manipulation of spirits on bonded premises. The temporary regulations prescribe the extent to which spirits may be mingled or blended during storage operations. Additionally, operational flexibility is broadened by increasing the extent of manipulation of spirits permitted for processing operations on bonded premises.

9. *Elimination of operational applications.*

Numerous sections currently in Part 201 require the submission of letterhead applications to ATF officers assigned to the distilled spirits plant or to the regional regulatory administrator. The majority of these applications cover transactions or operations which have minimal impact on the security of the revenue. Therefore, the temporary regulations replace many letterhead applications with notices and/or requirements for recording the transaction or operation in required daily records. Letterhead applications are kept to a minimum to allow operational flexibility for distilled spirits plant operations.

10. *Bottling record.*

Existing regulations prescribe preparation of ATF Form 2637 to document bottling operations on bottling premises with a separate Form 2637 required for each tank of spirits bottled. ATF Form 1515 is prescribed for the bottling of spirits on bonded premises. Form 1515 may be prepared to cover the contents of multiple tanks of spirits. The temporary regulations do not prescribe a standard form to cover the bottling of spirits. The bottling record which is prescribed permits accounting for the bottling of spirits on the basis of lots of spirits, which may encompass multiple tanks. To ensure proper accounting for spirits, the temporary regulations require a gauge for each tank of spirits to be bottled, with resultant losses or gains recorded for each tank.

11. *Bottling-in-bond.*

A labeling standard for bottled in bond spirits is provided in 27 CFR 5.42 as amended in this temporary rule. The standard is essentially the same as was previously included in Part 201, except that no standard for spirits to be exported is provided because Part 5 does not apply to exports. Green strip stamps will be used on spirits labeled as bottled in bond, but overprinting is optional.

12. *Form 27–B Supplemental.*

Proprietors are currently required to file each formula and process utilized in rectification of spirits with the Director for approval on Form 27–B Supplemental. The formula enables a proper determination with respect to tax classification and labeling of the finished product. With the elimination of rectification tax, the primary significance of formulation will concern labeling of the finished product. Therefore, the requirement for Form 27–B Supplemental is moved to Part 5 to ensure proper labeling. In addition the form has been redesignated as ATF Form 5110.38. Proprietors holding current approved formulas on Form 27–B Supplemental need not resubmit them merely to reflect the change in the form number or change in the regulatory provisions.

13. *Physical inventories.*

Existing regulations prescribe bulk physical inventories of spirits in production facilities and in storage facilities each month. Inventories of controlled stock are conducted on a semiannual or an annual basis. The temporary regulations provide for quarterly inventories of bulk spirits in production, storage and processing. Semiannual inventories are prescribed for bottled spirits in processing, with the current provision for such inventories on an annual basis when approved by the regional regulatory administrator.

14. *Record accounts.*

The records maintained pursuant to the temporary regulations will be

arranged into operational accounts to coincide with the tri-operational concept of bonded premises. Operational accounts will be maintained for production, storage and processing. Daily records for each account will note receipts, movement between accounts and dispositions of spirits, denatured spirits, articles and wines.

15. *Modified forms and substitute records.*

The temporary regulations provide for the modification of prescribed forms and utilization of substitute records in lieu of prescribed forms on notice to the regional regulatory administrator. Certain forms are excluded to ensure uniformity, e.g., claims, tax returns and operational reports.

Generally, however, the temporary rules permit proprietors to utilize commercial records in lieu of prescribed forms if the commercial records contain all mandatory data.

16. *Forms.*

Numerous forms are eliminated or revised due to changes in the temporary regulations. These changes are detailed in ATF Industry Circular 79–12.

17. *Reporting Puerto Rican and Virgin Islands spirits tax-determined.*

Proprietors who remove products containing Puerto Rican or Virgin Islands spirits on determination of tax are required to report monthly (on ATF Form 5110.28, Monthly Report of Processing Operations) the total taxes determined attributable to such spirits. Under the existing system, these spirits are tax-determined on Form 179, and ATF personnel at the regional level prepare comparable reports based on copies of Forms 179 received. Due to the elimination of Form 179, a substitute procedure is necessary to obtain data for settlement of tax accounts between the United States and the treasuries of Puerto Rico and the Virgin Islands.

18. *Tax determination/tax payment.*

The system of withdrawal on determination and payment of tax under the temporary regulations differs greatly from existing regulations. Under the temporary regulations, a record of tax determination (e.g., invoice or shipping document) is required to document the basis for computing tax. If taxes on spirits are to be prepaid, Form 5110.32 shall be executed before the spirits are withdrawn from bond. If tax is to be deferred, the proprietor shall summarize all records of tax determination on a daily summary record. Tax for the return period will be paid by filing Form 5110.35 with remittance.

19. *Exportation with benefit of drawback.*

The change in the method of tax determination required addition of new §§ 252.195a and 252.195b to cover export drawback claims for spirits tax-determined before January 1, 1980 and after January 1, 1980, respectively.

20. *Manufacturing bonded warehouses.*

The provisions in 26 U.S.C. Chapter 51 relating to manufacturing bonded warehouses have been repealed. Manufacturing bonded warehouses are also provided for under 19 U.S.C. and Title 19 of the Code of Federal Regulations. Because such facilities are operated under Customs supervision, the parallel provisions under 26 U.S.C. were superfluous.

21. *Changes relating to Puerto Rican and Virgin Islands spirits (Parts 170 and 250).*

Subparts F and G of 27 CFR Part 170 are revoked. Similar provisions have been incorporated in Parts 19 and 250, as applicable. Repeal of the wine gallon method of tax determination eliminates the need for a gauge of the spirits prior to their use in the manufacture of distilled spirits products or articles. The tax will now be computed on the alcoholic content of the finished product when it is ready for shipment to the United States. The extension of the tax deferral period and the requirement for a new bond effective January 1, 1980, both of which were previously discussed, apply to Puerto Rican manufacturers who defer taxes.

22. *Rectification taxes and formulas (Puerto Rico and Virgin Islands).*

All references to rectification tax are eliminated from Part 250. Segregation of spirits to be rectified from spirits to be bottled without rectification is no longer required. The formula requirements for Puerto Rican and Virgin Islands liquors and articles are revised to conform with requirements for similar products made in the United States.

23. *Changes specific to bonded wine cellars and taxpaid wine bottling houses.*

A number of sections in 27 CFR Parts 231 and 240 have been amended to provide for alternation of premises with distilled spirits plant premises, and to allow, by approved formula, for production of other than standard wine on bonded wine cellar premises. Another major revision in 27 CFR Part 240 provides for the transfer of wine in bond between a bonded wine cellar and a distilled spirits plant.

24. *Conforming changes.*

Minor conforming and editorial changes have been made to other regulations in Title 27 (aside from recodified Parts 13 and 19 and changes in wine regulations). The principal reasons for these changes are as follows: (1) the all-in-bond system; (2) repeal of rectification taxes; (3) the recodifications; (4) changes in references; and (5) obsolescence of certain regulations.

Proposed Revisions

1. *General.*

The Bureau has identified several additional operational matters which may merit further liberalization or clarification. Due to time constraints associated with the drafting of this document, a decision has been made to propose further regulatory revision in these areas and obtain public and industry input prior to implementation of the revisions in final regulations. The following paragraphs provide a summary of the proposed revisions.

2. *Elimination of forms.*

The Bureau proposes to eliminate some distilled spirits plant operational forms in the final rule. Commercial records would be prescribed in lieu of the forms. Public comments are invited to assist the Bureau in determining which forms may be eliminated.

3. *Monthly reports.*

The monthly operational reports submitted by proprietors are used to compile industry-wide statistics. Other governmental agencies and industry groups, as well as the Bureau, make use of these statistics. The Bureau proposes to reduce the required filings of operational reports to a quarterly basis.

4. *Alternative devices.*

The temporary regulations authorize domestic bottlers to use alternative devices in lieu of strip stamps on bottled distilled spirits. The Bureau proposes to extend this option to foreign, Puerto Rican and Virgin Islands bottlers.

5. *Proof tolerance for cordials.*

Some commenters on the Advance Notice of Proposed Rulemaking for these temporary regulations proposed raising the permissible drop in proof during bottling to 0.5 degrees in the case of cordials. The Bureau will consider implementing this proposal for products which contain solids in excess of 600 mg per 100 ml. Other products would remain subject to the current limit of 0.3 degrees of proof.

6. *Elimination of labeling designation for gin and vodka as bottled-in-bond.*

The temporary regulations incorporate in 27 CFR 5.42 the same standards for bottled-in-bond spirits which were previously in 27 CFR Part 201. The intent was to preserve the existing meaning of the term "bottled-in-bond" despite the repeal of tax provisions under 26 U.S.C. 5233. Since it appears that the labeling designation for bottled in bond gin or vodka is not used today, the Bureau proposes to delete this label designation.

Statement of Administrative Action

1. *On-premises supervision.*

With repeal of the present statutory obligation to assign ATF officers to distilled spirits plants, the Bureau anticipates the gradual removal of ATF officers from such plants to be accomplished on a plant-by-plant basis. This will provide the Government with an opportunity to evaluate the degree of control needed at each plant, and will provide proprietors the opportunity to adjust to their new responsibilities. However, the removal of ATF officers assigned at distilled spirits plants will necessitate an expanded inspection-audit program to ensure the protection of the revenue. Unless otherwise notified, proprietors may assume that the level of supervision in effect on December 31, 1979, will be continued on and after January 1, 1980.

2. *Manufacturers of nonbeverage products.*

Some manufacturers of alcoholic flavorings may wish to establish distilled spirits plants in order to receive spirits in bond and transfer finished flavorings in bond to distilled spirits plants. In considering such applications, where the exclusive purpose is to manufacture flavorings as intermediate distilled spirits products, the Bureau may waive the minimum storage capacity requirements for warehousing set forth in 27 CFR 19.134.

Drafting Information

The authors of this document are numberous headquarters and field personnel of the Bureau of Alcohol, Tobacco and Firearms, assigned or detailed to the Research and Regulations Branch (Regulatory Enforcement). Other personnel of the Bureau and the Treasury Department participated in the preparation of this document, both in matters of substance and style.

Waiver of Procedural Requirements of Treasury Directive

Expeditious adoption of the provisions contained in this document is necessary in order to provide immediate guidelines for use by the distilled spirits and wine industries in implementing the Distilled Spirits Tax Revision Act of 1979. For this reason, Richard J. Davis, Assistant Secretary (Enforcement and Operations) of the Treasury, has determined that the provisions of paragraph 10 of the Treasury Department directive implementing Executive Order 12044 must be waived.

Effective Date

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section. Accordingly, this Treasury decision becomes effective on January 1, 1980.

Authority and Issuance

These regulations are issued under the authority contained in 26 U.S.C. 7805 (68A Stat. 917, as amended) and in 27 U.S.C. 205 (49 Stat. 981, as amended).

Accordingly, Title 27 Code of Federal Regulations is amended as follows:

Section A. Part 5 is amended as follows:

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

Paragraph 1. The table of contents is amended to reflect the addition of Subpart Ca—Formulas, immediately following Subpart C—Standards of Identity for Distilled Spirits, and the table of contents is also amended to delete § 5.49, Bottles per shipping case. As amended, the table of contents reads as follows:

* * * * *

Subpart Ca—Formulas

Sec.
5.25 Application.
5.26 Formula requirements.
5.27 Formulas for processing operations.
5.28 Adoption of predecessor's formulas.

* * * * *

Subpart E—Standards of Fill for Bottled Distilled Spirits

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5.49 [Deleted]

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§ 5.2 [Amended]

Paragraph 2. Section 5.2 is amended to delete the phrase "27 CFR Part 201—Distilled Spirits Plants." and to insert immediately after "27 CFR Part 7—Labeling and Advertising of Malt Beverages." the phrase "27 CFR Part 19—Distilled Spirits Plants."

Paragraph 3. Section 5.11 is amended, in alphabetical order, by revising the definition of "Distilled spirits" and by adding the definitions "Area Supervisor" and "Season". As amended, § 5.11 reads as follows:

§ 5.11 Meaning of terms.

* * * * *

Area supervisor. The supervisory officer of the Bureau of Alcohol, Tobacco and Firearms area office.

* * * * *

Distilled spirits. Ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whisky, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for nonindustrial use.

* * * * *

Season. The period from January 1 through June 30 is the spring season and the period from July 1 through December 31 is the fall season.

* * * * *

Paragraph 4. Section 5.22 is amended by changing the last sentence in paragraph (b)(1)(iii) to read as follows:

§ 5.22 The standards of identity.

* * * * *

(b) * * *

(1) * * *

(iii) * * * "Straight whisky" includes mixtures of straight whiskies of the same type produced by the same proprietor at the same distillery all of which are not less than four years old.

* * * * *

Paragraph 5. Subpart Ca—Formulas, is added immediately following the regulations in Subpart C—Standards of Identity for Distilled Spirits. As added, Subpart Ca reads as follows:

Subpart Ca—Formulas

§ 5.25 Application.

The requirements of this subpart shall apply to:

(a) Proprietors of distilled spirits plants qualified as processors under 27 CFR Part 19;

(b) Persons in Puerto Rico who manufacture distilled spirits products for shipment to the United States. Formulas need only be filed for those products which will be shipped to the United States; and

(c) Persons who ship into the United States, Virgin Islands distilled spirits products.

§ 5.26 Formula requirements.

(a) *General.* An approved formula is required to blend, mix, purify, refine, compound, or treat spirits in a manner which results in a change of character, composition, class or type of the spirits. Form 5110.38 (27–B Supplemental) shall be filed with the Director in accordance with the instructions on the form and shall designate all ingredients and, if required, the process used. Any approved formula on Form 27–B Supplemental or Form 5110.38 shall remain in effect until revoked, superseded, or voluntarily surrendered.

Any existing qualifying statements as to the rate of tax or the limited use of drawback flavors appearing on a Form 27–B Supplemental are obsolete.

(b) *Change in formula.* Any change in an approved formula shall require the filing of a new Form 5110.38. After a change in a formula is approved, the original formula shall be surrendered to the Director.

§ 5.27 Formulas for processing operations.

Formulas are required for processing operations which change the character, composition, class or type of spirits as follows:

(a) The compounding of spirits through the mixing of any coloring, flavoring, wine, or other material with distilled spirits;

(b) Any filtering or stabilizing process which results in a product which does not possess the taste, aroma, and characteristics generally attributed to that class or type of distilled spirits; and, in the case of straight whisky, results in the removal of more than 15 percent of the fixed acids, volatile acids, esters, soluble solids, or higher alcohols, or more than 25 percent of the soluble color;

(c) The mingling of spirits (including merchandise returned to bond) produced by different distillers, or at different distilleries, or which differ in class or type of materials from which produced;

(d) The mingling of spirits stored in charred cooperage with spirits stored in plain or reused cooperage, or the mixing of spirits that have been treated with wood chips with spirits not so processed, or the mixing of spirits that have been subjected to any treatment which changes their character with spirits not so treated, unless it is determined that the composition of the spirits is the same, notwithstanding the storage in different kinds of cooperage or the treatment of a portion of the spirits;

(e) The use (except as authorized for production or storage operations as provided by 27 CFR Part 19) of any physical or chemical process or any apparatus which accelerates the maturing of the spirits;

(f) The steeping or soaking of fruits, berries, aromatic herbs, roots, seeds, etc., in spirits or wines;

(g) The artificial carbonating of spirits;

(h) The blending in Puerto Rico of spirits with any liquors manufactured outside of Puerto Rico;

(i) The production of gin by—(1) Redistillation over juniper berries and other natural aromatics, or the extracted oils of such, of spirits distilled at or above 190 degrees of proof, free from impurities, including spirits of such a nature recovered by redistillation of imperfect gin spirits; and

(2) Mixing gin produced by redistillation with other spirits;

(j) The treatment of gin by—(1) The addition or abstraction of any substance or material other than pure water after redistillation in a manner that would change its class and type designation; and

(2) The addition of any substance or material other than juniper berries or other natural aromatics, or the extracted oils of such, or pure water to the spirits, before or during redistillation, in a manner that would change its class and type designation;

(k) The production of vodka by—(1) The treatment of neutral spirits with not less than one ounce of activated carbon per 100 wine gallons of spirits;

(2) Redistillation of pure spirits so as to be without distinctive character, aroma, taste, or color;

(3) Mixing with other spirits or with any other substance or material except pure water, after production; and

(4) Adding any substance or material which imparts to the product any distinctive character, aroma, taste, or color before or during production.

§ 5.28 Adoption of predecessor's formulas.

The adoption by a successor of approved Forms 5110.38 (27–B Supplemental) shall be in the form of an application filed with the Director. The application shall list the formulas for adoption by—

(a) formula number,

(b) name of product, and

(c) date of approval.

The application shall clearly show that the predecessor has authorized the use of his previously approved formulas by the successor.

Paragraph 6. Section 5.31 is amended by revising paragraph (b) to read as follows:

§ 5.31 General.

* * * * *

(b) *Alteration of labels.* It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label on distilled spirits held for sale in interstate or foreign commerce or after shipment therein, except—

(1) As authorized by Federal law;

(2) That the area supervisor may, on written application, permit additional labeling or relabeling of bottled distilled spirits with labels covered by certificates of label approval which comply with the requirements of this part and with State law;

(3) That there may be added to the bottle, after removal from customs custody, or prior to or after removal from bonded premises, without application for permission to relabel, a label identifying the wholesale or retail distributor thereof or identifying the purchaser or consumer, and containing no references whatever to the characteristics of the product.

Paragraph 7. Section 5.36 is amended by revising paragraph (a)(2) to read as follows:

§ 5.36 Name and address.

(a) *"Bottled by".*

* * * * *

(2) Where distilled spirits are bottled by or for the distiller thereof, there may be stated, in lieu of the phrase "bottled by", "packed by", or "filled by", followed by the bottler's name (or trade name) and address, the phrase "distilled by", followed by the name, or the trade name under which the particular spirits were distilled, or (except in the case of distilled spirits labeled as bottled in bond) any trade name shown on the distiller's permit (covering the premises where the particular spirits were distilled), and the address (or addresses) of the distiller.

* * * * *

Paragraph 8. Section 5.40 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 5.40 Statements of age and percentage.

(a) *Statements of age and percentage for whisky.* In the case of domestic or foreign whisky, whether or not mixed or blended, all of which is 4 years old or more, statements of age and percentage are optional. * * *

Paragraph 9. Section 5.42(b) (1), (3) and (4) are amended to read as follows:

§ 5.42 Prohibited practices.

* * * * *

(b) *Miscellaneous.* (1) Labels shall not be of such design as to resemble or simulate a stamp of the U.S. Government or any State or foreign government. Labels, other than stamps authorized or required by this or any other government, shall not state or indicate that the distilled spirits are distilled, blended, made, bottled, or sold under, or in accordance with, any municipal, State, Federal, or foreign authorization, law, or regulations, unless such statement is required or specifically authorized by Federal, State, municipal, or foreign law or regulations. The statements authorized by this part to appear on labels for domestic distilled spirits are "Distilled (produced, barreled, warehoused, blended, or bottled, or any combination thereof, as

the case may be) under United States (U.S.) Government supervision", or in the case of distilled spirits labeled as bottled in bond, "Bottled in bond under United States (U.S.) Government supervision". If the municipal, State, or Federal Government permit number is stated on a label, it shall not be accompanied by any additional statement relating thereto.

* * * * *

(3) The words "bond", "bonded", "bottled in bond", "aged in bond", or phrases containing these or synonymous terms, shall not be used on any label or as part of the brand name of domestic distilled spirits unless the distilled spirits are—

(i) Composed of the same kind of spirits produced from the same class of materials;

(ii) Produced in the same distilling season by the same distiller at the same distillery;

(iii) Stored for at least four years in wooden containers wherein the spirits have been in contact with the wood surface except for gin and vodka which must be stored for at least four years in wooden containers coated or lined with paraffin or other substance which will preclude contact of the spirits with the wood surface;

(iv) Unaltered from their original condition or character by the addition or subtraction of any substance other than by filtration, chill proofing, or other physical treatments (which do not involve the addition of any substance which will remain incorporated in the finished product or result in a change in class or type);

(v) Reduced in proof by the addition of pure water only to 100 degrees of proof; and

(vi) Bottled at 100 degrees of proof.

In addition to the requirements of § 5.36(a) (1) or (2), the label shall bear the real name of the distillery or the trade name under which the distillery produced and warehoused the spirits, and the plant (or registered distillery) number in which produced; and the plant number in which bottled. The label may also bear the name or trade name of the bottler.

(4) The words "bond", "bonded", "bottled in bond", "aged in bond", or phrases containing these or synonymous terms, shall not be used on any label or as part of the brand name of imported distilled spirits unless the distilled spirits meet in all respects the requirements applicable to distilled spirits bottled for domestic consumption, so labeled, and unless the laws and regulations of the country in which such distilled spirits are produced authorize the bottling of distilled spirits in bond and require or specifically authorize such distilled spirits to be so labeled. All spirits labeled as "bonded", "bottled in bond", or "aged in bond" pursuant to the provisions of this subparagraph shall bear in direct conjunction with such statement and in script, type, or printing substantially as conspicuous as that used on such statement, the name of the country under whose laws and regulations such distilled spirits were so bottled.

* * * * *

Paragraph 10. Section 5.46 is amended by revising paragraph (b) to read as follows:

§ 5.46 Standard liquor bottles.

* * * * *

(b) *Headspace.* A liquor bottle of a capacity of 200 milliliters or more shall be held to be so filled as to mislead the purchaser if it has a headspace in excess of 8 percent of the total capacity of the bottle after closure.

Paragraph 11. Section 5.47a deletes paragraph (e) and redesignates paragraph (f) as (e). As amended, paragraph (e) of § 5.47a reads as follows:

§ 5.47a Metric standards of fill.

* * * * *

(e) *Distilled spirits bottled before January 1, 1980.* Distilled spirits bottled domestically before January 1, 1980, may be marketed after December 31, 1979, if such distilled spirits were bottled in accordance with § 5.47. (See § 5.53 for similar provisions relating to distilled spirits imported in original containers.)

§ 5.49 [Deleted]

Paragraph 12. Section 5.49 is deleted because a requirement to pack a set number of bottles in a shipping case has been found to be unnecessary.

PART 186 [REVISED AND REDESIGNATED]

Section B. Part 186 is revised and renumbered as Part 13 as follows:

Preamble 1. The regulations in this part supersede 27 CFR Part 186 in its entirety.

2. These regulations do not affect any act done or any liability or right accruing, or accrued, or any suit or proceeding had or commenced before the effective date of these regulations.

3. The regulations in this part are effective on January 1, 1980.

PART 13—GAUGING MANUAL

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Authority: Sec. 7805, 68A Stat. 917, as amended; 26 U.S.C. 7805, unless otherwise noted.

Subpart A—Scope of Regulations

§ 13.1 Gauging of distilled spirits.

This part, the "Gauging Manual", relates to the gauging of distilled spirits. By "gauging" is meant the determination of the proof and the quantity of distilled spirits. Tables 1–7, together with their instructions, are provided as a part hereof and should be used, wherever applicable, in making the necessary computations from gauge data. Table 1 provides a method of correcting hydrometer indications at temperatures between 0 and 100 degrees Fahrenheit to true proof. If distilled spirits contain dissolved solids, temperature-correction

of the hydrometer reading by the use of this table would result in apparent proof rather than true proof. Tables 2 and 3 show the gallonage of spirituous liquor according to weight and proof, Table 4 shows the gallons per pound at each one-tenth proof from 1 to 200 proof, Table 5 shows the weight per wine gallon and proof gallon at each proof, Table 6 shows the volumes of alcohol and water, and the specific gravity (air and vacuum) of spirituous liquor at each proof, and Table 7 provides a means of ascertaining the volume (at 60 degrees Fahrenheit) of spirits at various temperatures ranging from 18 degrees through 100 degrees Fahrenheit. The procedures prescribed in, or authorized under the provisions of, this part shall, except as may be otherwise authorized in this chapter, be followed in making any determination of quantity or proof of distilled spirits required by or under the authority of regulations in this chapter.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C 5204))

Subpart B—Definitions

§ 13.11 Meaning of terms.

When used in this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meanings ascribed in this section. Words in the plural form shall include the singular, and vice versa, and words importing the masculine gender shall include the feminine. The terms "includes" and "including" do not exclude things not enumerated which are in the same general class.

ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

Bulk conveyance. Any tank car, tank truck, tank ship, tank barge, or other similar container approved by the Director, authorized for the conveyance of spirits (including denatured spirits) in bulk.

CFR. The Code of Federal Regulations.

Container. Any receptacle, vessel, or form of package, bottle, tank, or pipeline used, or capable of use, for holding, storing, transferring or conveying distilled spirits.

Denatured spirits or denatured alcohol. Spirits to which denaturants have been added pursuant to formulas prescribed in Part 212 of this chapter.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC.

Gallon or wine gallon. The liquid measure equivalent to the volume of 231 cubic inches.

I.R.C. The Internal Revenue Code of 1954, as amended.

Package. Any cask, barrel, drum, or similar container approved under the provisions of this chapter.

Proof. The ethyl alcohol content of a liquid at 60 degrees Fahrenheit, stated as twice the percent of ethyl alcohol by volume.

Proof gallon. A United States gallon of proof spirits, or the alcoholic equivalent thereof.

Proof spirits. That liquid which contains one-half its volume of ethyl alcohol of a specific gravity of seven thousand nine hundred and thirty-nine ten-thousandths (0.7939) in vacuum at 60 degrees Fahrenheit referred to water at 60 degrees Fahrenheit as unity.

Regional regulatory administrator. The principal ATF regional official responsible for administering regulations in this part.

Spirits, spirituous liquor, or distilled spirits. That substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof, from whatever source or by whatever process produced, but not denatured spirits unless specifically stated.

This chapter. Title 27, Code of Federal Regulations, Chapter I (27 CFR Chapter I).

U.S.C. The United States Code.

Subpart C—Gauging Instruments

§ 13.21 General requirements.

ATF officers shall use only hydrometers and thermometers furnished by the Government. However, where this part requires the use of a specific gravity hydrometer, ATF officers shall use precision grade specific gravity hydrometers conforming to the provisions of § 13.24, furnished by the proprietor. However, the Director may authorize ATF officers to use other instruments approved by the Director as being equally satisfactory for determination of specific gravity and for gauging. From time to time ATF officers shall verify the accuracy of hydrometers and thermometers used by proprietors. The proof of distilled spirits shall be determined by the use of gauging instruments as prescribed in this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

§ 13.22 Hydrometers and thermometers.

The hydrometers furnished to ATF officers are graduated to read the proof of aqueous alcoholic solutions at 60 degrees Fahrenheit; thus, they read, 0 for water, 100 for proof spirits, and 200 for absolute alcohol. Because of temperature-density relationships and the selection of 60 degrees Fahrenheit for reporting proof, the hydrometer readings will be less than the true percent of proof at temperatures below 60 degrees Fahrenheit and greater than the true percent of proof at temperatures above 60 degrees Fahrenheit. Hence, corrections are necessary for hydrometer readings at temperatures other than 60 degrees Fahrenheit. Precision hydrometers shall be used for gauging spirits. Hydrometers and thermometers shall be used and the true percent of proof shall be determined in accordance with § 13.31. Hydrometers are designated by letter according to range of proof and are provided in ranges and subdivisions of stems as follows:

Precision	Range	Subdivision
F	0 to 20	0.2°
G	20 to 40	.2°
H	40 to 60	.2°
I	60 to 80	.2°
K	75 to 95	.2°
L	90 to 110	.2°
M	105 to 125	.2°
N	125 to 145	.2°
P	145 to 165	.2°
Q	165 to 185	.2°
R	185 to 206	.2°

Thermometers are designated by type according to range of degrees Fahrenheit and are provided in ranges and subdivisions of degrees as follows:

Type	Range	Subdivision
Pencil type	10° to 100°	1°
V-back	10° to 100°	1°
Glass shell (earlier model)	40° to 100°	½°
Glass shell (later model)	40° to 100°	¼°

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

§ 13.23 Use of precision hydrometers and thermometers.

Care should be exercised to obtain accurate hydrometer and thermometer readings. In order to accomplish this result, the following precautions should be observed. Bulk spirits should be thoroughly agitated so that the test samples will be representative of the entire quantity. The hydrometers should be kept clean and free of any oily substance. Immediately before readings are taken, the glass cylinder containing the thermometer should be rinsed several times with the spirits which are to be gauged so as to bring both the cylinder and the thermometer to the temperature of the spirits (if time

permits, it is desirable to bring both the spirits and the instruments to room temperature). If the outer surface of the cylinder becomes wet, it should be wiped dry to avoid the cooling effect of rapid evaporation. During the readings the cylinder should be protected from drafts or other conditions which might affect its temperature or that of the spirits which it contains. The hands should not be placed on the cylinder in such a manner as to warm the liquid contained therein. The hydrometer should be inserted in the liquid and the hydrometer bulb raised and lowered from top to bottom 5 or 6 times to obtain an even temperature distribution over its surface, and, while the hydrometer bulb remains in the liquid, the stem should be dried and the hydrometer allowed to come to rest without wetting more than a few tenths degrees of the exposed stem. Special care should be taken to ascertain the exact point at which the level of the surface liquid intersects the scale of proof in the stem of the hydrometer. The hydrometer and thermometer should be immediately read, as nearly simultaneously as possible. In reading the hydrometer, a sighting should be made slightly below the plane of the surface of the liquid and the line of sight should then be raised slowly, being kept perpendicular to the hydrometer stem, until the appearance of the surface changes from an ellipse to a straight line. The point where this line intersects the hydrometer scale is the correct reading of the hydrometer. When the correct readings of the hydrometer and the thermometer have been determined, the true percent of proof shall be ascertained from Table 1. Another sample of the spirits should then be taken and be tested in the same manner so as to verify the proof originally ascertained. Hydrometer readings should be made to the nearest 0.05 degree and thermometer readings should be made to the nearest 0.1 degree, and instrument correction factors, if any, should be applied. It is necessary to interpolate in Table 1 for fractional hydrometer and thermometer readings.

Example. A hydrometer reads 192.85° at 72.10° F. The correction factors for the hydrometer and thermometer, respectively are minus 0.03° and plus 0.05°. The corrected reading, then, is 192.82° at 72.15° F.

	Degrees
From Table 1:	
193.0° at 72.0° F	190.2
192.0° at 72.0° F	189.1
Difference	1.1
192.0° at 72.0° F	189.1
192.0° at 73.0° F	188.9
Difference	0.2

The hydrometer difference (1.1°) multiplied by the fractional degree of the hydrometer reading (0.82°)=0.902.

The temperature difference (0.2°) multiplied by the fractional degree of the temperature reading (0.15°)=0.03°.

Proof at 60° F.=189.1+0.902−0.03=189.972°=190.0°.

As shown, the final proof is rounded to the nearest tenth of a degree of proof. In such cases, if the hundredths decimal is less than five, it will be dropped; if it is five or over, a unit will be added.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

§ 13.24 Specific gravity hydrometers.

The specific gravity hydrometers furnished by proprietors to ATF officers shall conform to the specifications of the American Society for Testing Materials or the National Bureau of Standards for such instruments. Such specific gravity hydrometers shall be of a precision grade, standardization temperature 60°/60° F., and provided in the following ranges and subdivisions:

Range:	Subdivision
1.0000 to 1.0500	0.0005
1.0500 to 1.1000	0.0005
1.1000 to 1.1500	0.0005
1.1500 to 1.2000	0.0005
1.2000 to 1.2500	0.0005

No instrument shall be in error by more than 0.0005° specific gravity. A certificate of accuracy prepared by the instrument manufacturer for the instrument shall be furnished to the ATF officer.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

§ 13.25 Use of precision specific gravity hydrometers.

The provisions of § 13.23 respecting the care, handling, and use of precision instruments shall be followed with respect to the care, handling, and use of precision grade specific gravity hydrometers. Specific gravity hydrometers shall be read to the nearest subdivision. Because of temperature density relationships and the selection of the standardization temperature of 60°/60° F., the specific gravity readings will be greater at temperatures below 60 degrees Fahrenheit and less at temperatures above 60 degrees Fahrenheit. Hence, correction of the specific gravity readings will be made for temperatures other than 60 degrees Fahrenheit. Such correction may be ascertained by dividing the specific gravity hydrometer reading by the applicable correction factor in Table 7.

Example: The specific gravity hydrometer reading is 1.1525, the thermometer reading is 68 degrees Fahrenheit, and the true proof of the spirits is 115 degrees. The correct specific gravity reading will be ascertained as follows:

(a) From Table 7, the correction factor for 115° proof at 68° F. is 0.996.

(b) 1.1525 divided by 0.996=1.1571, the corrected specific gravity.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

Subpart D—Gauging Procedures

§ 13.31 Determination of proof.

The proof of spirits shall be determined to the nearest tenth degree which shall be the proof used in determining the proof gallons. The proof of spirits shall be determined by the use of a hydrometer and thermometer in accordance with the provisions of § 13.23 except that (a) if such spirits contain solids in excess of 400 milligrams but not in excess of 600 milligrams per 100 milliliters at gauge proof, there shall be added to the proof so determined the obscuration determined as prescribed in § 13.32, or

(b) If such spirits contain solids in excess of 600 milligrams per 100 milliliters at gauge proof, the proof shall be determined on the basis of true proof determined as follows:

(1) By the use of a hydrometer and a thermometer after the spirits have been distilled in a small laboratory still and restored to the original volume and temperature by the addition of pure water to the distillate; or

(2) By a recognized laboratory method which is equal or superior in accuracy to the distillation method.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1362, as amended (26 U.S.C. 5204, 5211))

§ 13.32 Determination of proof obscuration.

Solids or other substances in solution in beverage spirits have an effect on the specific gravity of the spirits and, depanding on the density or specific gravity of the substances, obscure the true proof of the liquid. Experience has shown that 0.1 gram (100 milligrams) of solids per 100 milliliters will obscure the true proof by 0.4 of 1 degree of proof. The amount of solids in the spirits may be determined

(a) By evaporating the water and alcohol from a carefully measured 25 milliliter sample of the spirits, drying the residue at 100 degrees centigrade for 30 minutes and then weighing the residue precisely. The number of grams of solids thus determined, multiplied by 4, will give the amount of solids in 100 milliliters of the spirits, and that figure, multiplied by 4, will give the obscuration. For example, if a blended whisky contains 0.25 gram of solids per 100 milliliters, the obscuration is 4 times 0.25, which is one degree of proof. This value, added to the temperature

corrected hydrometer reading, will give the true proof; or

(b) By determining the apparent proof and temperature of the sample of spirits and then by distilling a carefully measured sample in a small laboratory still, and collecting a quantity of the distillate, 1 or 2 milliliters less than the original sample. The distillate is adjusted to the original temperature and restored to the original volume by addition of distilled water. The proof of the restored distillate is then determined by use of a precision hydrometer and thermometer in accordance with the provisions of § 13.23 to the nearest 0.1 degree of proof. The difference between the proof so determined and the apparent proof of the undistilled sample is the obscuration; or

(c) By determination of the specific gravity of the undistilled sample, distillation and restoration of the samples as provided in paragraph (b) of this section and determination of the specific gravity of the restored distillate by means of a pycnometer. The specific gravities so obtained will be converted to degrees of proof by interpolation of Table 6 to the nearest 0.1 degree of proof. The difference in proof so obtained is the obscuration.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

Determination of Quantity

§ 13.36 General requirements.

The quantity determination of distilled spirits that are withdrawn from bond in bulk upon tax determination or payment shall be by weight. The quantity of other distilled spirits or denatured spirits may be determined by weight or by volume. When the quantity of distilled spirits or denatured distilled spirits is determined by volume, such determination may be by meter as provided in 27 CFR Part 19, or when approved by the Director, another device. The Director may also authorize the determination of quantity of distilled spirits or denatured distilled spirits by a statistical control method.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

Determination of Quantity By Weight

§ 13.41 Bulk spirits.

When spirits (including denatured spirits) are to be gauged by weight in bulk quantities, the weight shall be determined by means of weighing tanks, mounted on accurate scales. Before each use, the scales shall be balanced at zero load; thereupon the spirits shall be run into the weighing tank and proofed as prescribed in § 13.31. However, if the spirits are to be reduced in proof, the spirits shall be so reduced before final determination of the proof. The scales shall then be brought to a balanced condition and the weight of the spirits determined by reading the beam to the nearest graduation mark. From the weight and the proof thus ascertained, the quantity of the spirits in proof gallons shall be determined by reference to Table 4. However, in the case of spirits which contain solids in excess of 400 milligrams per 100 milliliters, the quantity in proof gallons shall be determined by first ascertaining the wine gallons per pound of the spirits and multiplying the wine gallons per pound by the weight, in pounds, of the spirits being gauged and by the true proof (determined as prescribed in § 13.31) and dividing the result by 100. The wine gallons per pound of spirits containing solids in excess of 400 milligrams per 100 milliliters shall be ascertained by:

(a) Use of a precision hydrometer and thermometer, in accordance with the provisions of § 13.23, to determine the apparent proof of the spirits (if specific gravity at the temperature of the spirits is not more than 1.0) and reference to Table 4 for the wine gallons per pound, or

(b) Use of a specific gravity hydrometer, in accordance with the provisions of § 13.25, to determine the specific gravity of the spirits (if the specific gravity at the temperature of the spirits is more than 1.0) and dividing that specific gravity (corrected to 60 degrees Fahrenheit) into the factor 0.120074 (the wine gallons per pound for water at 60 degrees Fahrenheit). When withdrawing a portion of the contents of a weighing tank, the difference between the quantity (ascertained by proofing and weighing) in the tank immediately before the removal of the spirits and the quantity (ascertained by proofing and weighing) in the tank immediately after the removal of the spirits shall be the quantity considered to be withdrawn.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

§ 13.42 Denatured spirits.

The quantity, in gallons, of any lot or package of specially denatured spirits may be determined by weighing it and then dividing its weight by the weight per gallon of the formula concerned, as given in the appropriate tables in Subpart H of 27 CFR Part 212. In the case of completely denatured spirits, the gallonage of any lot or package may be ascertained by determining its weight and apparent proof (hydrometer indication, corrected to 60 degrees Fahrenheit) and then multiplying the weight of the wine gallons per pound factor shown in Table 4 for the (apparent) proof.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

§ 13.43 Packaged spirits.

When the quantity of spirits (including denatured spirits when gauged by weight) in packages, such as barrels, drums, and similar portable containers, is to be determined by gauge of the individual packages, such quantity shall, except as provided in paragraph (b) of this section, be determined by weighing each package on an accurate weighing beam or platform scale having a beam or dial showing weight in pounds and half pounds, where packages having a capacity in excess of 10 wine gallons are to be gauged, or in pounds and ounces, or pounds and hundredths of a pound, where packages designed to hold 10 wine gallons or less are to be gauged. In either case the tare must be determined and subtracted from the gross weight to obtain the net weight. From the proof and weight ascertained, the quantity of the spirits in proof gallons shall be determined by reference to Table 2, 3, or 4. However, if the spirits contain solids in excess of 400 milligrams per 100 milliliters, the proof gallons shall be determined as prescribed for such spirits in § 13.41. Notwithstanding the provisions of this section or of § 13.44, (a) gross weights and tares of packages being filled need not be taken in any case where the gauge of the spirits is not derived from such weights under the gauging procedure being utilized, and (b) meters, other devices, or other methods may be used for determining the quantity of spirits in individual packages, when such meter is used as provided in 27 CFR Part 19, or, when such other device or method has been approved by the Director.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1362, as amended (26 U.S.C. 5204, 5211))

§ 13.44 Entry or filling gauge for packages.

(a) *General.* The spirits in the tank from which the packages are to be filled shall be thoroughly agitated before taking the proof. The proof determined (as prescribed in § 13.31) after such agitation shall be regarded as the proof of the spirits run into all packages filled from the tank. No package which contains or has on its interior or exterior any substance which will prevent the correct ascertainment of tare shall be used. An average tare (rounded to the nearest half pound) may be ascertained and used for metal packages of the same kind and capacity produced by the same manufacturer which are to be filled with

spirits for industrial use, or with denatured spirits, by weighing not less than 20 percent of any lot of such packages. The quantity of spirits in packages which have been filled from tanks may be determined in wine gallons (if desired) and proof gallons, from the proofs and net weights of the packages, by use of Table 2, 3, or 4, whichever is applicable. However, if the spirits contain solids in excess of 400 milligrams per 100 milliliters, the wine gallon and proof gallon contents shall be determined as prescribed for such spirits in § 13.41.

(b) *Weighing packages of more than 10 wine gallons.* The weight of packages having a capacity in excess of 10 wine gallons shall be determined and recorded in pounds and half pounds.

(c) *Weighing containers of 10 wine gallons or less.* The weight for packages and other containers of a capacity of 10 wine gallons or less shall be determined in pounds and ounces, or pounds and hundredths of a pound, and shall be recorded in pounds and hundredths of a pound. The equivalent pounds and hundredths of pounds and the corresponding wine gallons and proof gallons shall be expressed as shown in the following table for the respective weights in pounds and ounces and proofs shown therein or, as applicable, computed in accordance with rules in this section.

Weight of contents

Size [1]	Pounds	Ozs.	Weight [2]	Contents [3]	Proof gallons
190 Proof Spirits					
1	6	13	6.81	1	1.9
2	13	10	13.63	2	3.8
5	34	00	34.00	5	9.5
10	68	00	68.00	10	19.0
192 Proof Spirits					
1	6	13	6.81	1	1.9
2	13	9	13.56	2	3.8
5	33	13	33.81	5	9.6
10	67	10	67.63	10	19.2
200 Proof Spirits					
1	6	10	6.63	1	2.0
2	13	4	13.25	2	4.0
5	33	1	33.06	5	10.0
10	66	2	66.12	10	20.0

[1] Of container, wine gallons.
[2] In pounds and hundredths of a pound.
[3] In wine gallons.

(d) *Packages of other proofs or sizes.* Where packages of proofs or sizes not shown above are to be filled, the following rule may be used for ascertaining the weight of the spirits to be placed in the package: Divide the number of gallons representing the quantity of spirits to be placed in the container by the fractional part of a gallon equivalent to 1 pound, to obtain the weight of the spirits in pounds and fractions of a pound to two decimal places. Reduce the decimal fraction of a pound to ounces by multiplying by 16, calling any fraction of an ounce a whole ounce. The pounds and ounces thus obtained will determine the point to which the spirits must be weighed to produce the results desired. If the weight must be marked on the package in pounds and decimal fractions of a pound, it will be necessary to convert the ounces to hundredths of a pound. The fraction of a gallon equivalent to 1 pound at any given proof shall be ascertained by reference to Table 4. However, if the spirits contain solids in excess of 400 milligrams per 100 milliliters, the fraction of a gallon equivalent to 1 pound shall be determined as prescribed for such spirits in § 13.41.

Example. It is desired to fill a 1-gallon can with precisely 1 wine gallon of 194 proof spirits:

1.00 divided by 0.14866=6.73 pounds.
0.73 multiplied by 16=11.68 ounces, rounded to 12 ounces.
Weight of spirits—6 pounds, 12 ounces.
Weight, if required, to be marked on can—6.75 pounds.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1362, as amended (26 U.S.C. 5204, 5211))

§ 13.45 Withdrawal gauge for packages.

(a) *Wooden packages.* When wooden packages are to be individually gauged for withdrawal, actual tare of a package shall be determined. The actual tare of the packages shall be determined by weighing it after its contents (including rinse water, if any) have been temporarily removed to a separate container or vessel. Where the contents of packages have been temporarily removed for determination of tare, the proof, if any rinse water is added to the spirits, shall be determined after a thorough mixing of the rinse water and the spirits and before return of the spirits to the rinsed packages, and the gross weight shall be determined after the spirits and any added rinse water have been returned to the packages.

(b) *Metal packages.* When metal packages are to be individually gauged for withdrawal, the tare established at the time of filling shall be used unless it appears that there has been a change in tare or the established tare is incorrect, in which case a new tare will be established. From the proofs and the net weights of the packages, the wine gallon (if desired) and the proof gallon contents shall be determined by the use of Table 2. However, if the spirits contain solids in excess of 400 milligrams per 100 milliliters, the wine gallon and proof gallon contents shall be determined as prescribed for such spirits in § 13.41. If either the weight or the proof is beyond the limitations of Table 2, either Table 3 or Table 4 may be used.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

Determination of Quantity By Volume

§ 13.51 Procedures for measurement of bulk spirits.

Where the quantity of spirits (including denatured spirits) in bulk is to be determined by volume as authorized by this chapter, the measurement shall be made in tanks, by meters as provided in 27 CFR Part 19, or by other devices or methods authorized by the Director, or as otherwise provided in this chapter, or such measurement may be made in tank cars or tank trucks if calibration charts for such conveyances are provided and such charts have been accurately prepared, and certified as accurate, by engineers or other persons qualified to calibrate such conveyances. Volumetric measurements in tanks shall be made only in accurately calibrated tanks equipped with suitable measuring devices, whereby the actual contents can be correctly ascertained. If the temperature of spirits (including denatured spirits) is other than the standard of 60 degrees Fahrenheit, gallonage determined by volumetric measurements shall be corrected to the standard temperature by means of Table 7. In the case of denatured spirits, the temperature-correction factor for the proof of the spirits used in denaturation will give sufficiently accurate results, except that the temperature-correction factor used for specially denatured spirits, Formula No. 18, should be that given in Table 7 for 100 proof spirits. When the quantity of spirits, in wine gallons, has been determined by volumetric measurement, the number of proof gallons shall be obtained by multiplying the wine gallons by the proof of the spirits.

Example.

Gauge glass reading inches	88
Wine gallons per inch	48.96
Temperature °F	72
Proof of spirits	86.8
Temperature correction factor (Table 7)	.995

48.96 W.G. × 88=4306.48 wine gallons.
4306.48 W.G. × 0.995=4286.94 wine gallons.
4286.94 W.G. × 0.868=3721.06392=3721.1 proof gallons.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

§ 13.52 Procedure for measurement of cased spirits.

Where the quantity of spirits in a case is to be determined by volume, such determination shall be made by ascertaining the contents of one bottle in the case and multiplying that figure by the number of bottles in the case. For

cases containing bottles filled according to the metric system of measure, the quantity determined shall be converted to wine gallons, as provided in § 19.742 of this chapter. The wine gallons of spirits thus determined for one case may then be multiplied by the number of cases containing spirits at the same proof when determining the quantity of spirits for more than one case. The proof gallons of spirits in cases shall be determined by multiplying the wine gallons by the proof (divided by 100).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

Subpart E—Prescribed Tables

§ 13.61 Table 1, showing the true percent of proof spirit for any indication of the hydrometer at temperatures between zero and 100 degrees Fahrenheit.

This table shows the true percent of proof of distilled spirits for indications of the hydrometer likely to occur in practice at temperatures between zero and 100 degrees Fahrenheit and shall be used in determining the proof of spirits. The left-hand column contains the reading of the hydrometer and on the same horizontal line, in the body of the table, in the "Temperature" column corresponding to the reading of the thermometer is the corrected reading or "true percent of proof." The table is computed for tenths of a percent.

Example.

Temperature, °F	75
Hydrometer reading	193
True percent of proof	189.5

Where fractional readings are ascertained, the proper interpolations will be made (see § 13.23). If the distilled spirits contain dissolved solids, temperature-correction of the hydrometer reading by the use of this table would result in apparent proof rather than true proof.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

§ 13.62 Table 2, showing wine gallons and proof gallons by weight.

The wine and proof gallon content by weight and proof of packages of distilled spirits usually found in actual practice will be ascertained from this table. The left-hand column contains the weights. The true percent of proof is shown on the heading of each page in a range from 90 degrees to 200 degrees. Under the true percent of proof and on the same horizontal line with the weight will be found the wine gallons (at 60 degrees Fahrenheit) and the proof gallons respectively. Where either the weight or the proof of a quantity of spirits is beyond the limitations of this table, the number of proof gallons may be ascertained by reference to Table 3. This table may also be used to ascertain the wine gallons (at 60 degrees Fahrenheit) and proof gallons of spirituous liquor containing dissolved solids where the weight, apparent proof (hydrometer indication corrected to 60 degrees Fahrenheit), and obscuration factor have been determined.

Example.

334 lbs. of distilled spirits.
Apparent proof—105.0°.
Obscuration—0.8°.
True Proof 105.0° + 0.8° = 105.8° = 106°.
334 lbs. at 105.0° apparent proof = 43.2 wine gallons.
43.2 wine gallons × 1.06 = 45.8 proof gallons.

In addition this table may be used to obtain the wine gallons, at the prevailing temperature, of most liquids within the range of the table, from the weight of the liquid and the uncorrected reading of the hydrometer stem. An application of this would be in determining the capacity of a package.

Example. It is desired to determine, or to check, the rated capacity of a package having a net weight of 395 pounds when completely filled with spirits having an uncorrected hydrometer reading of 113.0°. The full capacity of the package, 51.5 wine gallons, would be found by referring to the table at 395 pounds and 113° proof (hydrometer reading).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1362, as amended (26 U.S.C. 5204, 5211))

§ 13.63 Table 3, for determining the number of proof gallons from the weight and proof of spirituous liquor.

When the weight or proof of a quantity of distilled spirits is not found in Table 2, the proof gallons may be ascertained from Table 3. The wine gallons (at 60 degrees Fahrenheit) may be ascertained by dividing the proof gallons by the proof.

Example. A tank car of spirits of 190 degrees of proof weighed 60,378 pounds net. We find—

	Proof gallons
60,000 pounds equal to	16,778.4
300 pounds equal to	83.9
70 pounds equal to	19.6
8 pounds equal to	2.2
	16,884.1

That is, the total weight of 60,378 pounds of spirits at 190 proof is equal to 16,884.1 proof gallons. The equivalent gallonage for 70 pounds is found from the column 700 pounds by moving the decimal point one place to the left; that for 8 pounds from the column 800 pounds by moving the decimal point two places to the left.

Example. A package of spirits at 86 proof weighed 321½ pounds net. We find—

	Proof gallons
300 pounds equal to	32.7
20 pounds equal to	2.2
1 pound equal to	.1
½ pound equal to	.1
	35.1

That is, 321½ pounds of spirits at 86 proof is equal to 35.1 proof gallons. The equivalent gallonage for 20 pounds is found from the column 200 pounds by moving the decimal point one place to the left; that for 1 pound from the column 100 pounds by moving the decimal point two places to the left; that for the ½ pound from the column 500 pounds by moving the decimal point three places to the left. Fractional gallons beyond the first decimal ascertained through use of this table will be dropped if less than 0.05 or will be added as 0.1 if 0.05 or more.

The wine gallons (at 60 degrees Fahrenheit) may be determined by dividing the proof gallons by the proof. For example: 35.1 divided by 0.86 equals 40.8 wine gallons.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

§ 13.64 Table 4, showing the fractional part of a gallon per pound at each percent and each tenth percent of proof of spirituous liquor.

This table provides a method for use in ascertaining the wine gallon (at 60 degrees Fahrenheit) and/or proof gallon contents of containers of spirits by multiplying the net weight of the spirits by the fractional part of a gallon per pound shown in the table for spirits of the same proof. Fractional gallons beyond the first decimal will be dropped if less than 0.05 or will be added as 0.1 if 0.05 or more.

Example. It is desired to ascertain the wine gallons and proof gallons of a tank of 190 proof spirits weighing 81,000 pounds.

81,000 × 0.14718 = 11,921.58 = 11,921.6 wine gallons.
81,000 × 0.27964 = 22,650.84 = 22,650.8 proof gallons.

This table may also be used for ascertaining the quantity of water required to reduce to a given proof. To do this, divide the proof gallons of spirits to be reduced by the fractional part of a proof gallon per pound of spirits at the proof to which the spirits are to be reduced, and subtract from the quotient the net weight of the spirits before reduction. The remainder will be the pounds of water needed to reduce the spirits to the desired proof.

Example. It is desired to ascertain the quantity of water needed to reduced 1,000 pounds of 200 proof spirits, 302.58 proof gallons, to 190 proof:

302.58 divided by 0.27964 equals 1,082.03 pounds, weight of spirits after reduction.
1,082.03 minus 1,000 equals 82.03 pounds, weight of water required to reduce to desired proof.

The slight variation between this table and Tables 2, 3, and 5 on some calculations is due to the dropping or adding of fractions beyond the first decimal in those tables. This table may also be used to determine the wine gallons (at 60 degrees Fahrenheit) of distilled spirits containing dissolved solids from the total weight of the liquid and its apparent proof (hydrometer indication, corrected to 60 degrees Fahrenheit). The proof gallons may then be found by multiplying the wine gallons by the true proof.

Example.
5,350 pounds of blended whisky containing added solids

Temperature of °F	75.0°
Hydrometer reading	92.0°
Apparent proof	85.5°
Obscuration	0.5°
True proof	86.0°

5,350.0 lbs. × 0.12676 (W.G. per pound factor for apparent proof of 85.5°) = 678.2 wine gallons.

678.2 W.G. × 0.86 = 583.3 proof gallons.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended 1362, as amended (26 U.S.C. 5204, 5211))

§ 13.65 Table 5, showing the weight per wine gallon (at 60 degrees Fahrenheit) and proof gallon at each percent of proof of spirituous liquor.

This table may be used to ascertain the weight of any given number of wine gallons (at 60 degrees Fahrenheit) or proof gallons of spirits by multiplying the pounds per gallon by the given number of gallons of the spirits. The table should be especially useful where it is desired to weigh a precise quantity of spirits.

Example. It is desired to ascertain the weight of 100 wine gallons of 190 proof spirits:

6.79434 × 100 equals 679.43 pounds, net weight of 100 wine gallons of 190 proof spirits.

Example. It is desired to ascertain the weight of 100 proof gallons of 190 proof spirits.

3.57597 × 100 equals 357.60 pounds, net weight of 100 proof gallons of 190 proof spirits.

The slight variation between this table and Tables 2 and 3 on some calulations is due to dropping or adding of fractions beyond the first decimal on those tables. This table also shows the weight per wine gallon (at the prevailing temperature) corresponding to each uncorrected reading of a proof hydrometer.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

§ 13.66 Table 6, showing respective volumes of alcohol and water and the specific gravity in both air and vacuum of spirituous liquor.

This table provides an alternate method for use in ascertaining the quantity of water needed to reduce the strength of distilled spirits by a definite amount. To do this, divide the alcohol in the given strength by the alcohol in the required strength, multiply the quotient by the water in the required strength, and subtract the water in the given strength from the product. The remainder is the number of gallons of water to be added to 100 gallons of spirits of the given strength to produce a spirit of a required strength.

Example. It is desired to reduce spirits of 191 proof to 188 proof. We find that 191 proof spirits contains 95.5 parts alcohol and 5.59 parts water, and 188 proof spirits contains 94.0 parts alcohol and 7.36 parts water.

95.5 (the strength of 100 wine gallons of spirits at 191 proof) divided by 94.0 (the strenght of 100 wine gallons of spirits at 188 proof) equals 1.01.

7.36 (the water in 188 proof) multiplied by 1.01 equals 7.43.

7.43 less 5.59 (the water in 191 proof spirits) equal 1.84 gallons of water to be added to each 100 wine gallons of 191 proof spirits to be reduced.

This rule is applicable for reducing to any proof; but when it is desired to reduce to 100 proof, it is sufficient to point off two decimals in the given proof, multiply by 53.73, and deduct the water in the given strength. Thus, to reduce 112 proof spirits to 100 proof:

1.12 × 53.73–47.75 equals 12.42 gallons of water to be added to each 100 wine gallons of spirits to be reduced.

This table may also be used to obtain the proof gallonage of spirituous liquor according to weight and percent of proof.

Example.
It is desired to determine the number of gallons in 400 pounds of spirits of 141 percent of proof. Multiply the weight of one gallon of water in air by the specific gravity in air of the spirits—8.32823 by 0.88862—the product (7.40063) divided into 400 gives 54.049 wine gallons, which rounded to the nearest hundredth is 54.05 and multiplied by 1.41 gives 76.2 proof gallons. In rounding off where the decimal is less than five, it will be dropped; if it is five or over a unit will be added.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

§ 13.67 Table 7, for correction of volume of spirituous liquors to 60 degrees Fahrenheit

This table is prescribed for use in correcting spirits to volume at 60 degrees Fahrenheit. To do this, multiply the wine gallons of spirits which it is desired to correct to volume at 60 degrees Fahrenheit by the factor shown in the table at the percent of proof and temperature of the spirits. The product will be the corrected gallonage at 60 degrees Fahrenheit. This table is also prescribed for use in ascertaining the true capacity of containers where the wine gallon contents at 60 degrees Fahrenheit have been determined by weight in accordance with Tables 2, 3, 4, or 5. This is accomplished by dividing the wine gallons at 60 degrees Fahrenheit by the factor shown in the table at the percent of proof and temperature of the spirits. The quotient will be the true capacity of the container.

Example. It is desired to ascertain the volume at 60 degrees Fahrenheit of 1,000 wine gallons of 190 proof spirits at 76 degrees Fahrenheit.

1,000 × 0.991 equals 991 wine gallons, the corrected gallonage at 60 degrees Fahrenheit.

Example. It is desired to ascertain the capacity of a container of 190 proof spirits at 76 degrees Fahrenheit, shown by Table 2 to contain 55.1 wine gallons at 60 degrees Fahrenheit:

55.1 divided by 0.991 equals 55.6 wine gallons, the true capacity of the container when filled with spirits of 60 degrees temperature.

It will be noted that the table is prepared in multiples of 5 percent of proof and 2 degrees temperature. Where the spirits to be corrected are of an odd temperature, one-half of the difference, if any, between the factors for the next higher and lower temperature, should be added to the factor for the next higher temperature.

Example. It is desired to correct spirits of 180 proof at 51 degrees temperature:

1.006 (50°) − 1.005 (52°) = 0.001 divided by 2 = 0.0005

0.0005 + 1.005 = 1.0055 correction factor at 51° F.

Example. It is desired to correct spirits of 180 proof at 53 degrees temperature:

1.005 (52°) − 1.003 (54°) = 0.002 divided by 2 = 0.001

0.001 + 1.003 = 1.004 correction factor at 53° F.

Where the percent of proof is other than a multiple of five, the difference, if any, between the factors for the next higher and lower proofs should be divided by five and multiplied by the degrees of proof beyond the next lower proof, and the fractional product so obtained should be added to the factor for the next lower proof (if the temperature is above 60 degrees Fahrenheit, the fractional product so obtained must be subtracted from the factor for next lower proof), or if it is also necessary to correct the factor because of odd temperature, to the temperature corrected factor for the next lower proof.

Example. It is desired to ascertain the correction factor for spirits of 112 proof at 47 degrees temperature:

1.006 (46°) − 1.005 (48°) = 0.001 divided by 2 = 0.0005

0.0005 + 1.005 = 1.0055 corrected factor at 47° F.

1.007 (115 proof) − 1.006 (110 proof) = 0.001

0.001 divided by 5 = 0.0002 (for each percent of proof) × 2 (for 112 proof) = 0.0004

0.0004 + 1.0055 (corrected factor at 47° F.) = 1.0059 correction factor to be used for 112 proof at 47° F.

Example. It is desired to ascertain the correction factor for spirits of 97 proof at 93 degrees temperature:

0.986 (92°) − 0.985 (94°) = 0.001 divided by 2 = 0.0005

0.0005 + 0.985 = 0.9855 corrected factor at 93° F.

0.986 (95 proof) − 0.985 (100 proof) = 0.001

0.001 divided by 5=0.0002 (for each percent of proof)×2 (for 97 proof)=0.0004
0.9855 (corrected factor at 93° F.)−0.0004=0.9851 correction factor to be used for 97 proof at 93° F.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

PART 201 [REVISED AND REDESIGNATED]

Section C. Part 201 is revised and renumbered as Part 19 as follows:

Preamble 1. The regulations in this part supersede 27 CFR Part 201 in its entirety.

2. These regulations do not affect any act done or any liability or right accruing, or accrued, or any suit or proceeding had or commenced before the effective date of these regulations.

3. The regulations in this part are effective on January 1, 1980.

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Authority: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805, unless otherwise noted.

Subpart A—Scope

§ 19.1 General.

The regulations in this part relate to the location, construction, equipment, arrangement, qualification, and operation (including activities incident thereto) of distilled spirits plants.

§ 19.2 Territorial extent.

This part applies to the several States of the United States and the District of Columbia.

§ 19.3 Related regulations.

Regulations relating to this part are listed below:

27 CFR Part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act.
27 CFR Part 2—Nonindustrial Use of Distilled Spirits and Wine.
27 CFR Part 3—Bulk Sales and Bottling of Distilled Spirits.
27 CFR Part 4—Labeling and Advertising of Wine.
27 CFR Part 5—Labeling and Advertising of Distilled Spirits.
27 CFR Part 13—Gauging Manual.
27 CFR Part 170—Miscellaneous Regulations Relating to Liquor.
27 CFR Part 173—Returns of Substances, Articles, or Containers.
27 CFR Part 194—Liquor Dealers.
27 CFR Part 196—Stills.
27 CFR Part 197—Drawback on Distilled Spirits Used in Manufacturing Nonbeverage Products.
27 CFR Part 200—Rules of Practice in Permit Proceedings.
27 CFR Part 211—Distribution and Use of Denatured Alcohol and Rum.
27 CFR Part 212—Formulas for Denatured Alcohol and Rum.
27 CFR Part 213—Distribution and Use of Tax-Free Alcohol.
27 CFR Part 231—Taxpaid Wine Bottling Houses.
27 CFR Part 240—Wine.
27 CFR Part 250—Liquors and Articles from Puerto Rico and the Virgin Islands.
27 CFR Part 251—Importation of Distilled Spirits, Wines, and Beer.
27 CFR Part 252—Exportation of Liquors.
31 CFR Part 225—Acceptance of Bonds, Notes, or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety or Sureties on Penal Bonds.

Subpart B—Definitions

§ 19.11 Meaning of terms.

When used in this part and in forms prescribed under this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meaning ascribed in this section. Words in the plural form include the singular, and vice versa, and words indicating the masculine gender include the feminine. The terms "includes" and "including" do not exclude other things not enumerated which are in the same general class.

Alcoholic flavoring materials. The term "alcoholic flavoring materials" means those nonbeverage products on which drawback has been or will be claimed under 26 U.S.C. 5131–5134 or flavors imported free of tax which are unfit for beverage purposes. The term does not include flavorings or flavoring extracts manufactured on the bonded premises of a distilled spirits plant as an intermediate product.

Application for registration. The application required under 26 U.S.C. 5171(c).

Area supervisor. The supervisory officer of the Bureau of Alcohol, Tobacco and Firearms area office.

Article. A product, containing denatured spirits, which was manufactured under 27 CFR Part 211 or this part.

ATF bond. For purposes of this part, ATF bond means the internal revenue bond as prescribed in 26 U.S.C. Chapter 51.

ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

Basic permit. The document authorizing the person named therein to engage in a designated business or activity under the Federal Alcohol Administration Act.

Bonded premises. The premises of a distilled spirits plant, or part thereof, as described in the application for registration, on which distilled spirits operations defined in 26 U.S.C. 5002 are authorized to be conducted.

Bottler. A proprietor of a distilled spirits plant qualified under this part as a processor who bottles distilled spirits.

Bulk container. Any approved container having a capacity in excess of one wine gallon.

Bulk conveyance. A tank car, tank truck, tank ship, tank barge, or a compartment of any such conveyance, or any other container approved by the Director for the conveyance of comparable quantities of spirits, including denatured spirits, and wines.

Bulk distilled spirits. The term "bulk distilled spirits" means distilled spirits in a container having a capacity in excess of one gallon.

Business day. Any day, other than a Saturday, Sunday, or a legal holiday. (The term legal holiday includes all holidays in the District of Columbia and statewide holidays in the particular State in which the claim, report, or return, as the case may be, is required to be filed, or the act is required to be performed.)

Carrier. Any person, company, corporation, or organization, including a proprietor, owner, consignor, consignee, or bailee, who transports distilled spirits (including denatured spirits) or wine in any manner for himself or others.

CFR. The Code of Federal Regulations.

Completions. The spirits products bottled and cased or otherwise packaged or placed in approved containers for removal from the bonded premises.

Container. A receptacle, vessel, or form of bottle, can, package, tank or pipeline (where specifically included) used or capable of being used to contain, store, transfer, convey, remove, or withdraw spirits (including denatured spirits).

Denaturant or denaturing material. Any material authorized under 27 CFR Part 212 for addition to spirits in the production of denatured spirits.

Denatured spirits. Spirits to which denaturants have been added as provided in 27 CFR Part 212.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, D.C.

Director of the service center. A director of an internal revenue service center.

Distilled spirits operations. Any authorized distilling, warehousing, or processing operations conducted on the bonded premises of a plant qualified under this part.

Distillery. A distilled spirits plant, as described in the application for registration, authorized for the production of spirits.

Distilling material. Any fermented or other alcoholic substance capable of, or intended for use in, the original distillation or other original processing of spirits.

District director. A district director of internal revenue.

Executed under penalties of perjury. Signed with the prescribed declaration under the penalties of perjury as provided on or with respect to the return, claim, form, or other document or, where no form of declaration is prescribed, with the declaration: "I declare under the penalties of perjury that this. * * * (insert type of document, such as, statement, report, claim, certificate), including the documents submitted in support thereof, has been examined by me and, to the best of my knowledge and belief, is true, correct, and complete."

Export or exportation. A severance of goods from the mass of things belonging to the United States with the intention of uniting them to the mass of things belonging to some foreign country and shall include shipments to any possession of the United States. For the purposes of this part, shipments to the Commonwealth of Puerto Rico, to the territories of the Virgin Islands, American Samoa, and Guam, and to the Panama Canal Zone shall also be treated as exportations.

Fermenting material. Any material which is to be subjected to a process of fermentation to produce distilling material.

Fiduciary. A guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

Gallon or wine gallon. The liquid measure equivalent to the volume of 231 cubic inches.

In bond. When used with respect to spirits (including denatured spirits), articles, or wine refers to spirits, articles, or wine possessed under bond to secure the payment of the taxes imposed by 26 U.S.C. Chapter 51, and on which such taxes have not been determined. The term includes such spirits, articles, or wine on the bonded premises of a distilled spirits plant, such spirits or wines in transit between bonded premises (including, in the case of wine, bonded wine cellar premises). Additionally, the term refers to spirits in transit from customs custody to bonded premises, and spirits withdrawn without payment of tax under 26 U.S.C. 5214, and with respect to which relief from liability has not occurred under the provisions of 26 U.S.C. 5005(e)(2).

Intermediate product. Any product manufactured pursuant to an approved formula under 27 CFR Part 5, not intended for sale as such but for use in the manufacture of a distilled spirits product.

I.R.C. The Internal Revenue Code of 1954, as amended.

Kind. As applied to spirits, except as provided in § 19.597, kind shall mean class and type as prescribed in 27 CFR Part 5. As applied to wines, kind shall mean the classes and types of wines as prescribed in 27 CFR Part 4.

Liquor bottle. A bottle made of glass or earthenware, or of other suitable material approved by the Director, designed or intended for use as a container for distilled spirits for sale for beverage purposes.

Liter. A metric unit of capacity equal to 1,000 cubic centimeters of alcoholic beverage, and equivalent to 33.814 fluid ounces. A liter is divided into 1,000 milliliters. Milliliter or milliliters may be abbreviated as "ml".

Lot identification. The lot identification described in § 19.593.

Mash, wort, wash. Any fermented material capable of, or intended for, use as a distilling material.

Nonindustrial use. As applied to spirits, shall have the meaning ascribed in 27 CFR Part 2.

Operating permit. The document issued pursuant to 26 U.S.C. 5171(d), authorizing the person named therein to engage in the business or operation described therein.

Package. A cask or barrel or similar wooden container, or a drum or similar metal container.

Package identification number. The package identification number described in § 19.593.

Person. An individual, trust, estate, partnership, association, company, or corporation.

Plant or distilled spirits plant. An establishment qualified under this part for distilling, warehousing, processing or any combination thereof.

Plant number. The number assigned to a distilled spirits plant by the regional regulatory administrator.

Processor. Except as otherwise provided under 26 U.S.C. 5002(a)(6), any person qualified under this part who manufactures, mixes, or otherwise processes distilled spirits (including denatured spirits), or manufactures any article.

Proof. The ethyl alcohol content of a liquid at 60 degrees Fahrenheit, stated as twice the percent of ethyl alcohol by volume.

Proof of distillation. The composite proof of the spirits at the time the production gauge is made, or, if the spirits had been reduced in proof prior to the production gauge, the proof of the spirits prior to such reduction, unless the spirits are subsequently redistilled at a higher proof than the proof prior to reduction.

Proof gallon. A gallon of liquid at 60 degrees Fahrenheit which contains 50 percent by volume of ethyl alcohol having a specific gravity of 0.7939 at 60 degrees Fahrenheit referred to water at 60 degrees Fahrenheit as unity, or the alcoholic equivalent thereof.

Proprietor. The person qualified under this part to operate the distilled spirits plant.

Reconditioning. The dumping of distilled spirits products in bond after their original bottling or packaging, for purposes other than destruction, denaturation, redistillation, or rebottling. The term may include the filtration, clarification, stabilization, or reformulation of a product.

Recovered article. An article containing specially denatured spirits salvaged without all of its original ingredients, or an article containing completely denatured alcohol salvaged without all of the denaturants for completely denatured alcohol, under 27 CFR Part 211.

Region. A Bureau of Alcohol, Tobacco and Firearms region.

Regional regulatory administrator. The principal regional official responsible for administering regulations in this part.

Secretary. The Secretary of the Treasury or his delegate.

Spirits or distilled spirits. That substance known as ethyl alcohol, ethanol, or spirits of wine in any form (including all dilutions and mixtures thereof, from whatever source or by whatever process produced), but not denatured spirits unless specifically stated.

Spirits residues. Residues, containing distilled spirits, of a manufacturing process related to the production of an article under 27 CFR Part 211.

Tax-determined or determined. When used with respect to the tax on any distilled spirits to be withdrawn from bond on determination of tax, shall mean that the taxable quantity of spirits has been established.

Taxpaid. When used with respect to distilled spirits shall mean that all applicable taxes imposed by law in respect of such spirits have been determined or paid as provided by law.

This chapter. Title 27, Code of Federal Regulations, Chapter I (27 CFR Chapter I).

Transfer in bond. The removal of spirits (including denatured spirits) and wines from one bonded premises to another bonded premises.

Unfinished spirits. Spirits in the production system prior to production gauge.

U.S.C. The United States Code.

Warehouseman. A proprietor of a distilled spirits plant qualified under this part to store bulk distilled spirits.

Wine spirits. The term "wine spirits" means spirits authorized for use in wine production by 26 U.S.C. 5373.

Subpart C—Taxes

Spirits

§ 19.21 Tax.

A tax is imposed by 26 U.S.C. 5001 on all spirits produced in or imported into the United States at the rate prescribed in such section on each proof gallon and a proportionate tax at a like rate on all fractional parts of a proof gallon. Wines containing more than 24 percent of alcohol by volume are taxed as spirits. All products of distillation, by whatever name known, which contain spirits, on which the tax imposed by law has not been paid, and any alcoholic ingredient added to such products, are considered and taxed as spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C. 5001))

§ 19.22 Attachment of tax.

Under the provisions of the 26 U.S.C. 5001(b), the tax attaches to spirits as soon as the substance comes into existence as such, whether it be subsequently separated as pure or impure spirits, or be immediately, or at any subsequent time, transferred into any other substance, either in the process of original production, or by any subsequent process.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C. 5001))

§ 19.23 Lien.

Under 26 U.S.C. 5004, the tax becomes a first lien on the spirits from the time the spirits come into existence as such. The conditions under which the first lien shall be terminated are described in 26 U.S.C. 5004.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1317, as amended (26 U.S.C. 5004))

§ 19.24 Persons liable for tax.

(a) *Distilling.* 26 U.S.C. 5005 provides that the distiller of spirits is liable for the tax and that each proprietor or possessor of, and person in any manner interested in the use of, any still, distilling apparatus, or distillery, shall be jointly and severally liable for the tax on distilled spirits produced. However, a person, not an officer or director of a corporate proprietor, owning or having the right of control of not more than 10 percent of any class of stock of that proprietor, is not liable by reason of the stock ownership or control. Persons transferring spirits in bond so liable for the tax are relieved of liability if (1) the proprietors of transferring and receiving premises are independent of each other and neither has a proprietary interest, directly or indirectly, in the business of the other, and (2) no person so liable for the tax on the spirits transferred retains any interest in the spirits.

(b) *Storage on bonded premises.* 26 U.S.C. 5005(c) provides that each person operating bonded premises shall be liable for the tax on all spirits while the spirits are stored on the premises, and on all spirits which are in transit to the premises from the time of removal from the transferor's bonded premises, pursuant to an approved application. Liability for the tax continues until the spirits are transferred or withdrawn from bonded premises as authorized by law, or until the liability for tax is relieved under the provisions of 26 U.S.C. 5008(a). Claims for relief from liability for spirits lost are provided for in § 19.41. Voluntary destruction of spirits in bond is provided for in Subpart T of this part.

(c) *Withdrawals without payment of tax.* Under 26 U.S.C. 5005(e), any person who withdraws spirits from the bonded premises of a plant without payment of tax, as provided in 26 U.S.C. 5214, shall be liable for the tax on the spirits from the time of withdrawal. The person shall be relieved of any liability at the time the spirits are exported, deposited in a foreign-trade zone, used in production of wine, deposited in a customs bonded warehouse, laden as supplies upon or used in the maintenance or repair of certain vessels or aircraft, or used for certain research, development or testing, as provided by law.

(d) *Withdrawals free of tax.* Persons liable for tax under paragraph (a) of this section, are relieved of the liability on spirits withdrawn from bonded premises free of tax under this part, at the time the spirits are withdrawn.

(e) *Withdrawal from customs custody without payment of tax.* 26 U.S.C. 5232(a) provides that when imported distilled spirits in bulk containers are withdrawn from customs custody and transferred to the bonded premises of a distilled spirits plant without payment of the tax imposed on imported distilled spirits by 26 U.S.C. 5001, the person operating the bonded premises of the distilled spirits plant to which spirits are transferred shall become liable for the tax on the spirits upon their release from customs custody, and the importer shall there upon be relieved of liability for the tax.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1318, as amended (26 U.S.C. 5005); Sec. 3, Pub. L. 90–630, 82 Stat. 1328, as amended (26 U.S.C. 5232); Sec. 3, Pub. L. 91–659, 84 Stat. 1965, as amended (26 U.S.C. 5066))

§ 19.25 Time for tax determination.

The tax on spirits in bond shall be determined when the spirits are withdrawn from bond. The tax on spirits withdrawn from the bonded premises of a distilled spirits plant shall be determined upon completion of the gauge for determination of tax and before withdrawal from bonded premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1320, as amended (26 U.S.C. 5006))

Occupational Taxes

§ 19.26 Liquor dealer's special (occupational) tax.

A proprietor shall be subject to or exempt from a liquor dealer's occupational tax as provided in 27 CFR Part 194.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1340, as amended (26 U.S.C. 5111, 5113))

§ 19.27 Still manufacturer's special tax.

Special occupational tax as a still manufacturer and a commodity tax for each still or condenser manufactured is imposed by 26 U.S.C. 5101 on certain persons who manufacture stills or condensers to be used in distilling. Provisions for occupational and commodity taxes imposed on manufacturers of stills or condensers are contained in 27 CFR Part 196.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1339 (26 U.S.C. 5101))

Assessments

§ 19.31 Production not accounted for.

Where the regional regulatory administrator finds that a distiller has not accounted for all spirits produced by him, assessment shall be made for the tax on the difference between the

quantity reported and the quantity found to have been actually produced.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1320, as amended (26 U.S.C. 5006))

§ 19.32 Assessment of tax on spirits or wines in bond which are lost, destroyed or removed without authorization.

When spirits (including denatured spirits) or wines in bond are lost or destroyed (except spirits or wines on which the tax is not collectible by reason of the provisions of 26 U.S.C. 5008 (a) or (d) or 26 U.S.C. 5370, as applicable) and the proprietor or other person liable for the tax on the spirits or wines fails to file a claim for remission as provided in § 19.41(a) or when the claim is denied, the tax shall be assessed. In any case where spirits or wines in bond are removed from bonded premises other than as authorized by law, the tax shall be assessed. In the case of losses under circumstances described in 26 U.S.C. 5006(b) with respect to packages of spirits deposited in storage in bond or spirits filled on bonded premises into packages after entry and deposit, the tax shall be assessed if the tax is not paid upon the demand of the regional regulatory administrator.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1320, as amended, 1323, as amended, 1381, as amended (26 U.S.C. 5006, 5008, 5370))

Wine

§ 19.36 Tax.

(a) *Imposition of tax.* A tax is imposed by 26 U.S.C. 5041 on wines (including imitation, substandard, or artificial wine, and compounds sold as wine) produced in or imported into the United States. Proprietors of distilled spirits plants may become liable for wine taxes under 26 U.S.C. 5362(b)(3) in connection with wine transferred in bond to a distilled spirits plant.

(b) *Liability for tax.* Except as otherwise provided by law, the liability for tax on wine transferred in bond from a bonded wine cellar to a distilled spirits plant, or transferred in bond between distilled spirits plants, shall continue until the wine is used in a distilled spirits product.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1331, as amended, 1380, as amended, (26 U.S.C. 5041, 5362))

Claims

§ 19.41 Claims on spirits, articles, or wines lost or destroyed in bond.

(a) *Claims for remission.* All claims for remission of tax required by this part, relating to the destruction or loss of spirits (including denatured spirits), articles, or wines in bond, shall be filed with the regional regulatory administrator and shall set forth the following:

(1) Identification (including serial numbers if any) and location of the container or containers from which the spirits (including denatured spirits), articles, or wines were lost, or removed for destruction;

(2) Quantity of spirits (including denatured spirits), articles, or wines lost or destroyed from each container, and the total quantity of spirits or wines covered by the claim;

(3) Total amount of tax for which the claim is filed;

(4) Name, number, and address of the plant from which withdrawn without payment of tax or removed for transfer in bond (if claim involves spirits so withdrawn or removed or if claim involves wines transferred in bond) and date and purpose of such withdrawal or removal, except that in the case of imported spirits lost or destroyed while being transferred from customs custody to ATF bond as provided in § 19.481, the name of the customs warehouse, if any, and port of entry will be given instead of the plant name, number, and address;

(5) Date of the loss or destruction (or, if not known, date of discovery), the cause or nature thereof, and all the facts relative thereto;

(6) Name of the carrier, where a loss in transit is involved;

(7) The name and address of the consignee, in the case of spirits withdrawn without payment of tax which are lost before being used for research, development or testing;

(8) If lost by theft, facts establishing that the loss did not occur as the result of any negligence, connivance, collusion or fraud on the part of the proprietor of the plant, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them;

(9) In the case of a loss by theft, whether the claimant is indemnified or recompensed for the spirits or wines lost and if so, the amount and nature of indemnity or recompense and the actual value of the spirits or wines, less the tax.

(b) *Claims for abatement, credit or refund.* Claims for abatement of an assessment, or for credit or refund of tax which has been paid or determined, for spirits (including denatured spirits), articles, or wines lost or destroyed in bond shall be filed with the regional regulatory administrator. The claims shall set forth the information required under paragraph (a) of this section and, in addition, shall set forth (1) the date of assessment or payment (or of tax determination, if the tax has not been assessed or paid) of the tax for which abatement, credit or refund is claimed, and (2) the name, plant number, and the address of the plant where the tax was determined, paid, or assessed (or name, address and capacity of any other person who paid or was assessed the tax, if the tax was not paid by or assessed against a proprietor).

(c) *Supporting document.* (1) Claims under paragraphs (a) and (b) of this section shall be supported (whenever possible) by affidavits of persons having personal knowledge of the loss or destruction. For claims on spirits (including denatured spirits), articles, or wines lost while being transferred by carrier, the claim shall be supported by a copy of the bill of lading.

(2) For claims pertaining to losses of spirits withdrawn without payment of tax and lost prior to being used for research, development or testing, the claim shall be supported by a copy of the proprietor's approved application or schedule prescribed in Subpart V of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended, 1381 as amended (26 U.S.C. 5008, 5370))

§ 19.42 Claims on spirits returned to bonded premises.

Claims for credit or refund of tax on spirits which have been withdrawn from bonded premises on payment or determination of tax and which are returned under 26 U.S.C. 5215 shall be filed with the regional regulatory administrator and shall set forth the following:

(a) Quantity of spirits so returned;

(b) Amount of tax for which the claim is filed;

(c) Name, address, and plant number of the plant to which the spirits were returned and the date of the return;

(d) The purpose for which returned; and

(e) The serial number of ATF F 5110.17 recording the gauge of spirits returned to bonded premises. If the spirits contain Puerto Rican or Virgin Islands spirits, the claim shall show: (1) The precise quantity (in proof gallons) of the finished product derived from Puerto Rican or Virgin Islands spirits; and (2) The amount of tax and the applicable rate of tax imposed by 26 U.S.C. 7652, determined at the time of withdrawal from bond on the Puerto Rican or Virgin Islands spirits contained in the product. Claims for credit or refund of tax shall be filed by the proprietor of the plant to which the spirits were returned within six months of the date of the return. If the claim is allowed, refund (without interest) will be made or credit (without interest) will be allowed.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended (26 U.S.C. 5008); Sec. 807, Pub. L. 96–39, 93 Stat. 285 (26 U.S.C. 5215))

§ 19.43 Claims relating to spirits lost after tax determination.

Claims for abatement, credit, or refund of tax under this part, relating to losses of spirits occurring on bonded premises after tax determination but prior to physical removal from such premises, shall be prepared and filed as provided in, and contain the information called for under § 19.41(b) and be supported by documents as provided under § 19.41(c).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended (26 U.S.C. 5008))

§ 19.44 Execution of claims and supporting documents.

All claims filed under this part for abatement or refund shall be filed on Form 843. All claims filed under this part for credit or remission of tax shall be filed on Form 2635. Claims for abatement, remission, credit, or refund shall (a) show the name, address, and capacity of the claimant, (b) be signed by the claimant or his duly authorized agent, and (c) be executed under the penalties of perjury as provided in § 19.100. Forms, supporting statements, and any other documents required by this part to be submitted with a claim shall be attached to the claim and shall be deemed to be a part thereof. The regional regulatory administrator may require the submission of additional evidence in support of any claim filed under this part when deemed necessary for proper action on the claim.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended (26 U.S.C. 5008))

§ 19.45 Claims for credit of tax.

Claims for credit of tax, as provided in this part, may be filed after determination of the tax whether or not the tax has been paid. The claimant may not anticipate allowance of a credit or make an adjusting entry in a tax return pending action on the claim.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended (26 U.S.C. 5008))

§ 19.46 Adjustments for credited tax.

When notification of allowance of credit is received from the regional regulatory administrator, including notification of credit for tax on spirits exported with benefit of drawback as provided in 27 CFR Part 252, the claimant shall make an adjusting entry and explanatory statement (specifically identifying the notification of allowance of credit) in the next distilled spirits tax return (or returns) to the extent necessary to exhaust the credit.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended, 1336, as amended (26 U.S.C. 5008, 5062))

Subpart D—Administrative and Miscellaneous Provisions

Authorities of the Director

§ 19.61 Forms prescribed.

The Director is authorized to prescribe all forms required by this part. All of the information called for in each form shall be furnished, as indicated by the headings on the form and the instructions thereon or issued in respect thereto, and as required by this part.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.62 Alternate methods or procedures; and emergency variations from requirements.

(a) *Alternate methods or procedures.* The proprietor, on specific approval by the Director as provided in this paragraph, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this part. The Director may approve an alternate method or procedure, subject to stated conditions, when he finds that—

(1) Good cause has been shown for the use of the alternate method or procedure;

(2) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure, and affords equivalent security to the revenue; and

(3) The alternate method or procedure will not be contrary to any provision of law, and will not result in an increase in cost to the Government or hinder the effective administration of this part.

No alternate method or procedure relating to the giving of any bond or to the assessment, payment, or collection of tax, shall be authorized under this paragraph. Where the proprietor desires to employ an alternate method or procedure, he shall submit a written application to do so to the regional regulatory administrator, for transmittal to the Director. The application shall specifically describe the proposed alternate method or procedure, and shall set forth the reasons therefor. Alternate methods or procedures shall not be employed until the application has been approved by the Director. The proprietor shall, during the period of authorization of an alternate method or procedure, comply with the terms of the approved application. Authorization for any alternate method or procedure may be withdrawn whenever in the judgment of the Director the revenue is jeopardized or the effective administration of this part is hindered by the continuation of such authorization. As used in this paragraph, alternate methods or procedures shall include alternate construction or equipment.

(b) *Emergency variations from requirements.* The Director may approve construction, equipment, and methods of operation other than as specified in this part, where he finds that an emergency exists and the proposed variations from the specified requirements are necessary, and the proposed variations—

(1) Will afford the security and protection to the revenue intended by the prescribed specifications;

(2) Will not hinder the effective administration of this part; and

(3) Will not be contrary to any provisions of law.

Variations from requirements granted under this paragraph are conditioned on compliance with the procedures, conditions, and limitations with respect thereto set forth in the approval of the application. Failure to comply in good faith with such procedures, conditions, and limitations shall automatically terminate the authority for such variations and the proprietor thereupon shall fully comply with the prescribed requirements of regulations from which the variations were authorized. Authority for any variation may be withdrawn whenever in the judgment of the Director the revenue is jeopardized or the effective administration of this part is hindered by the continuation of such variation. Where the proprietor desires to employ such variation, he shall submit a written application to do so to the regional regulatory administrator for transmittal to the Director. The application shall describe the proposed variations and set forth the reasons therefor. Variations shall not be employed until the application has been approved.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended, 1395, as amended (26 U.S.C. 5178, 5552))

§ 19.63 Pilot operations.

The Director may waive any regulatory provisions of 26 U.S.C. Chapter 51, and of the regulations in this part, for temporary pilot or experimental operations for the purpose of facilitating the development and testing of improved methods of governmental supervision (necessary for the protection of the revenue) over plants. For this purpose, the Director may, with the approval of the proprietor thereof, designate any plant for such operations. The provision of law and regulations

waived and the period of time during which such waiver shall continue shall be stated in writing by the Director. The provisions of this section shall not be construed as authority to waive the filing of any bond or the payment of any tax provided for in 26 U.S.C. Chapter 51.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5554))

§ 19.64 Experimental distilled spirits plant.

The Director may authorize the establishment and operation of experimental plants for specific and limited periods of time solely for experimentation in, or development of—

(a) Sources of materials from which spirits may be produced;

(b) Processes by which spirits may be produced or refined; or

(c) Industrial uses of spirits.

The Director may waive any provision of 26 U.S.C. Chapter 51 (other than 26 U.S.C. 5312) and of this part (other than this section and § 19.65) to the extent he deems necessary to effectuate the purposes of 26 U.S.C. 5312(b), except that he may not waive the payment of any tax on spirits removed from such plant.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1375, as amended (26 U.S.C. 5312))

§ 19.65 Application to establish experimental plants.

Any person desiring to establish an experimental plant shall make written application to the Director, through the regional regulatory administrator, and obtain the Director's approval of the proposed establishment. The applicant shall file with such application a bond in such form and penal sum as required by the Director. The application shall state the nature, extent, and purpose of the operations to be conducted and describe the operations and equipment, the location of the plant (including the proximity to other premises or operations subject to the provisions of 26 U.S.C. Chapter 51) and the security measures to be provided. The Director may require the submission of additional information as he deems necessary. The regional regulatory administrator shall not permit operations until he has found that the plant conforms to the specifications set forth in the application, as approved, and the applicant has complied with provisions of 26 U.S.C. Chapter 51, and this part not specifically waived by the Director.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1375, as amended (26 U.S.C. 5312))

§ 19.66 Spirits produced in industrial processes.

Distillers are persons producing spirits in industrial processes (including spirits produced as a byproduct in connection with chemical or other processes). They are required to qualify under the provisions of 26 U.S.C. Chapter 51 and this part. Where nonpotable chemical mixtures containing spirits are produced (a) for transfer to the bonded premises of a distilled spirits plant for completion of distilling, or (b) as a by-product (which would require expensive and complex equipment for the recovery of spirits therefrom) (1) which is destroyed on the premises where produced, or (2) which contains the minimum quantity of spirits practicable with the procedure employed and will not be subjected to further operations to purify or remove the spirits and which the Director finds is as nonpotable as completely denatured alcohol and the recovery of spirits therefrom would be at least as difficult as the recovery of spirits from completely denatured alcohol, the Director may waive any provision of 26 U.S.C. Chapter 51, or this part, with respect to the production of such mixture, including any provision relating to qualification. Where the producer of such nonpotable mixtures desires to secure a waiver of any of such provisions he shall file an application therefor with the Director through the regional regulatory administrator. The application shall be submitted and shall set out the name and address of the producer, the chemical composition and source of the nonpotable mixture, and the approximate percentages of the chemicals and of the spirits in the mixture, the method of operation proposed, and, if applicable, the bonded premises whereat the mixture will be distilled, and such other information as the Director may require. If the Director finds that the waiver of the requirements, or any of them, will not jeopardize the revenue and will not unduly hinder supervision of the operations, he may approve the application under such terms and conditions as he deems advisable, and subject to the furnishing of any bond which he deems necessary.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.67 Other businesses.

The director may authorize the carrying on of other businesses (not specifically prohibited by 26 U.S.C. 5601(a)(6)) on premises of plants as he finds will not jeopardize the revenue, hinder effective administration of this part, or be contrary to law. The authorization will designate the premises (i.e., bonded or general) on which such other business is authorized to be conducted.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5178))

§ 19.68 Recovery and reuse of denatured spirits in manufacturing processes.

The following persons are not, by reasons of the activities listed below, subject to the provisions of this part but they shall comply with the provisions of 27 CFR Part 211 relating to the use and recovery of spirits or denatured spirits:

(a) Manufacturers who use denatured spirits, or articles or substances containing denatured spirits in a process wherein any part or all of the spirits, including denatured spirits, are recovered.

(b) Manufacturers who use denatured spirits in the production of chemicals which do not contain spirits but which are used on the permit premises in the manufacture of other chemicals resulting in spirits as a by-product.

(c) Manufacturers who use chemicals or substances which do not contain spirits or denatured spirits (but which were manufactured with specially denatured spirits) in a process resulting in spirits as a by-product.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1372, as amended (26 U.S.C. 5273))

§ 19.69 Disaster exemptions.

The Director may, whenever he finds that it is necessary or desirable, by reason of disaster, temporarily exempt the proprietor of any plant from any provision of the internal revenue laws and this part relating to spirits, except those requiring the payment of tax on spirits, to the extent he may deem necessary or desirable.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1397, as amended (26 U.S.C. 5562))

§ 19.70 Exemptions to meet the requirements of national defense.

The Director may temporarily exempt proprietors from any provision of the internal revenue laws or this part relating to spirits except those requiring payment of tax thereon whenever in his judgment it is expedient to do so to meet the requirements of the National defense.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1397, as amended (26 U.S.C. 5561))

§ 19.71 Discontinuance of storage facilities.

When the Director finds that any facilities for the storage of spirits on bonded premises are unsafe or unfit for use, or the spirits contained therein are subject to great loss or wastage, he may

require the discontinuance of the use of such facilities and require the spirits contained therein to be transferred to such other storage facilities as he may designate. Such transfer shall be made at such time and under such supervision as the Director may require and the expense of the transfer shall be paid by the owner or the warehouseman of the spirits. Whenever the owner of such spirits or the warehouseman fails to make such transfer within the time prescribed or to pay the just and proper expense of such transfer, as ascertained and determined by the Director, such spirits may be seized and sold in the same manner as goods sold on distraint for taxes, and the proceeds of such sale shall be applied to the payment of the taxes due thereon and the cost and expense of such sale and removal, and the balance shall be paid over to the owner of such spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1369, as amended (26 U.S.C. 5236))

§ 19.72 Experimental or research operations by scientific institutions and colleges of learning.

(a) *General.* The Director may authorize any scientific university, college of learning, or institution of scientific research to produce, receive, blend, treat, test, and store spirits, without payment of tax, for experimental or research use but not for consumption (other than organoleptic tests) or sale, in quantities as may be reasonably necessary for such purposes. The Director may waive any provision of 26 U.S.C. Chapter 51 (other than 26 U.S.C. 5312), or this part (other than this section) to the extent necessary to effectuate the purposes of 26 U.S.C. 5312(a), except he may not waive the payment of any tax on distilled spirits removed from any university, college, or institution.

(b) *Qualification.* Any university, college, or institution desiring to conduct any of the experimental or research operations listed in the preceding paragraphs shall make written application, to the Director, through the regional regulatory administrator, and obtain the Director's approval of the proposed operations. The applicant shall file with the application a bond in a form and penal sum as required by the Director. The application shall state the nature, extent, and purpose of the operations to be conducted and describe the operations and equipment, the location at which operations will be conducted (including identification of the building or buildings, or the portions thereof to be used), and the security measures to be provided. The Director may require any additional information. Operations shall not be commenced until authorized by the Director.

(c) *Records.* Reports concerning the operations need not be submitted unless required by the Director, but records of the quantities of spirits produced, received, and used each day shall be made and retained for inspection by ATF officers.

(d) *Discontinuance of operations.* When operations authorized by the Director are discontinued, all remaining spirits shall be disposed of by destruction. Notice of the proposed destruction shall be given to the regional regulatory administrator at least 5 days in advance of the destruction. When these spirits have been destroyed notice of the discontinuance of operations shall be given to the regional regulatory administrator.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1375, as amended (26 U.S.C. 5312))

Authorities of the Regional Regulatory Administrator

§ 19.73 Other businesses.

Application to conduct at a distilled spirits plant a type of business other than that of a distiller, warehouseman, or processor may be approved by the regional regulatory administrator if the Director has, as provided in § 19.67, authorized the carrying on of a business of the type proposed, unless the regional regulatory administrator finds that there are particular conditions in respect of the applicant's plant that would cause the carrying on of such business to be a danger to the revenue or a hindrance to the effective administration of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5178))

§ 19.75 Assignment of officers and hours of operation.

The regional regulatory administrator may assign such number of ATF officers to plants as necessary to maintain supervision of operations conducted on such premises. When operations at a plant are to be conducted under the direct supervision of an ATF officer, such operations shall not be conducted on Sunday unless specifically authorized by the regional regulatory administrator in each instance on the showing of an emergency. All operations requiring direct supervision shall be conducted during an 8-hour period between 7 a.m. and 5 p.m. unless, pursuant to the proprietor's application the regional regulatory administrator authorizes the performance and supervision of operations during other hours. The regional regulatory administrator, in administering this provision, shall not restrict such operation or function to a greater extent than did the provisions of internal revenue law and regulations on June 30, 1959.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5553); Sec. 806, Pub. L. 96–39 93 Stat. 279 (26 U.S.C. 5202))

§ 19.76 Allowance of remission, abatement, credit, or refund of tax.

The regional regulatory administrator is authorized to allow claims for remission, abatement, credit, and refund of tax, filed under the provisions of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended (26 U.S.C. 5008))

§ 19.77 Installation of meters, tanks, and other apparatus.

The regional regulatory administrator is authorized to require the proprietor to install meters, tanks, pipes, or any other apparatus which the regional regulatory administrator deems advisable for the purpose of protecting the revenue. Any proprietor refusing or neglecting to install such apparatus when so required shall not be permitted to conduct business.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5552))

§ 19.78 Approval of qualifying documents.

The regional regulatory administrator is authorized to approve, except as otherwise provided in this part, all qualifying documents required by this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1394, as amended (26 U.S.C. 5172, 5551); Sec. 805, Pub. L. 96–39, 93 Stat. 275, 276 (26 U.S.C. 5171, 5173))

Authorities of ATF Officers

§ 19.80 Right of entry and examination.

Any ATF officer may at all times, as well by night as by day, enter any distilled spirits plant, or any other premises where distilled spirits operations are carried on, or structure or place used in connection therewith for storage or other purposes; to make examination of the materials, equipment, and facilities thereon; and make such gauges and inventories as he deems necessary. Whenever any ATF officer, having demanded admittance, and having declared his name and office, is not admitted into such premises by the proprietor or other person having charge thereof, he may at all times, use such force as is necessary for him to gain entry to such premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1357, as amended (26 U.S.C. 5203))

§ 19.81 Authority to break up ground or walls.

Any ATF officer, and any person acting in his aid, may break up the ground on any part of a distilled spirits plant, or any other premises where distilled spirits operations are carried on, or any ground adjoining or near to such plant or premises, or any wall or partition thereof, or belonging thereto, or other place, to search for any pipe, cock, private conveyance, or utensil; and, upon finding any such pipe or conveyance leading therefrom or thereto, to break up any ground, house, wall, or other place through or into which such pipe or other conveyance leads, and to break or cut away such pipe or other conveyance and turn any cock, or to examine whether such pipe or other conveyance conveys or conceals any spirits, mash, wort, or beer, or other liquor, from the sight or view of the officer, so as to prevent or hinder him from taking a true account thereof.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1357, as amended (26 U.S.C. 5203))

§ 19.82 Detention of containers.

Any ATF officer may detain any container containing, or supposed to contain, spirits when he has reason to believe that the tax imposed by law on such spirits has not been paid or determined as required by law or this part, or that such container is being removed in violation of law or this part, and every such container may be held by him at a safe place until it shall be determined whether the property so detained is liable by law to be proceeded against for forfeiture; but such summary detention shall not continue in any case longer than 72 hours without process of law or intervention of the regional regulatory administrator, unless the person in possession of the container immediately prior to its detention, in consideration of the container being kept on his premises during detention, executes a waiver of the 72-hours limitation on detention of the container.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1375, (26 U.S.C. 5311))

§ 19.83 Samples for the United States.

Any ATF officer is authorized to take samples of spirits (including denatured spirits), articles, wines, or any other materials which may be added to such products for analysis, or testing, other determinations to ascertain whether there is compliance with the provisions of law and regulations.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended, 1357, as amended (26 U.S.C. 5201, 5203))

§ 19.84 Gauging and measuring equipment.

All gauging and measuring equipment and means required by 27 CFR Part 13 and this part to be furnished by the proprietor for the purpose of ascertaining the quantity, alcoholic content, specific gravity, and producing capacity of any materials denaturants mash, wort, or beer, or the quantity and alcoholic content of spirits (including denatured spirits) or wines, shall be maintained by the proprietor in accurate and readily usable condition. Any ATF officer may disapprove the use of any equipment or means if he finds it would be insufficiently accurate and the proprietor shall promptly provide acurate equipment or means in lieu of the disapproved facilities.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1320, as amended, 1358, as amended (26 U.S.C. 5006, 5204))

Entry and Examination of Premises

§ 19.85 Premises to be kept accessible.

The proprietor shall furnish the regional regulatory administrator as many keys to such of the proprietor's locks as the regional regulatory administrator may require for ATF officers to gain access to the premises and any structures thereon, and such premises shall always be kept accessible to any ATF officer having such keys.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1357, as amended (26 U.S.C. 5203))

§ 19.86 Furnishing facilities and assistance.

On the demand of any ATF officer or agent, the proprietor shall furnish the necessary facilities and assistance to enable the officer or agent to gauge the spirits in any container or to examine any apparatus, equipment, containers, or materials on the distilled spirits plant premises. The proprietor shall also, on demand of an ATF officer or agent, open all doors, and open for examination all containers on the plant premises. The proprietor shall, on request of an ATF officer, furnish the exact locations (including the number of containers at each location) of all packages and similar portable approved containers within a given lot, and the exact location of each case stored on bonded premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1357, as amended (26 U.S.C. 5203))

Gauging of Spirits or Wines

§ 19.91 General.

Gauges shall be made by the proprietor unless the regional regulatory administrator requires that such gauges be made by or made in the presence of an ATF officer. Gauges of spirits (including denatured spirits) or wine shall be made by determining the proof and quantity pursuant to 27 CFR Part 13. However, the gauge for wine that is to be transferred to a bonded wine cellar shall be recorded by kind and percentage of alcohol. When spirits (including denatured spirits) or wines are to be volumetrically measured, the measurement shall be in a tank or bulk conveyance for which a calibration chart is provided, or by a meter or by other methods approved by the Director. Such calibration charts must have been prepared and certified as accurate by persons qualified to calibrate such conveyances.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended; 1396, as amended (26 U.S.C. 5204, 5559); Sec. 806, Pub. L. 96–39, 93 Stat. 279 (26 U.S.C. 5202))

§ 19.92 Quantity determination of spirits in bond.

Where bulk spirits in bond are gauged for determination of tax, or are gauged in packages, the quantity shall be determined by weight and proof pursuant to the provisions of 27 CFR Part 13. In all other instances where spirits are gauged in bond, or are gauged for transfer in bond or for withdrawal from bond free of tax or without payment of tax, unless a determination by weight (or by another method approved by the regional regulatory administrator) is required by this part, the quantity may be determined by volume.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1396, as amended (26 U.S.C. 5559))

Sealing of Conveyances Used for Transporting Spirits

§ 19.96 Sealing of conveyances.

(a) *Construction for sealing.* If a conveyance is required by this part to be sealed, the conveyance shall be constructed in such manner that all openings, including valves (if any) on bulk conveyances, may be closed and secured.

(b) *Approval of certain sealing devices.* (1) All seals, locks, or other devices that are to be used on conveyances in which spirits are: (i) Transferred in bond, (ii) withdrawn free of tax, or (iii) withdrawn without payment of tax, shall be approved by the Director prior to use.

(2) Seals, locks or other devices that are used on conveyances to transport: (i) Taxpaid spirits, or (ii) denatured spirits transferred in bond or withdrawn free of tax, need not be approved.

(c) *Furnishing and affixing seals.* (1) Seals, locks, or other devices for use on conveyances shall be furnished and affixed by the proprietor.

(2) The regional regulatory administrator may, if he deems necessary, require conveyances in which spirits are: (i) Transferred in bond, (ii) withdrawn free of tax, or (iii) withdrawn without payment of tax, to be secured by seals, locks, or other devices approved and furnished by the Bureau and affixed by an ATF officer.

(3) Seals, locks, or other devices shall be affixed: (i) As soon as the conveyances is loaded for shipment, and (ii) in such a manner that access to the contents of the conveyance cannot be gained without showing evidence of tampering.

(d) *Numbers and marks on proprietor's seals.* Seals, locks, or other devices that are furnished by the proprietor for use on conveyances shall be serially numbered.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

Conveyance of Spirits or Wines on Plant Premises

§ 19.97 Taxpaid spirits or wines on bonded premises.

Spirits or wines on which the tax has been paid or determined may be conveyed within a plant across bonded premises, but such spirits or wines shall not be stored or allowed to remain on the bonded premises and shall be kept separate and apart from spirits or wines on which the tax has not been paid or determined. However, bulk spirits in the process of prompt removal from bonded premises on payment or determination of the tax shall be allowed to remain on the bonded premises until the close of the business day following the day on which the tax was paid or determined, and spirits returned to bonded premises in accordance with the provisions of 26 U.S.C. 5215 shall be allowed to remain on the bonded premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1404, as amended, (26 U.S.C. 5201, 5612))

§ 19.98 Conveyance of untaxpaid spirits or wines within a distilled spirits plant.

Untaxpaid spirits or wines may be conveyed between different portions of the bonded premises of the same distilled spirits plant, across any other premises of such plant; or (by uninterrupted transportation) over any public thoroughfare; or (by uninterrupted transportation) over a private roadway if the owner, or lessee, of the roadway agrees, in writing, to allow ATF officers access to the roadway to perform their necessary duties. The conveyance of spirits as authorized in this section is subject to the following conditions:

(a) The spirits or wines are not stored or allowed to remain on any premises of such plant other than bonded premises,

(b) The spirits or wines are kept completely separate and apart from spirits on which the tax has been paid or determined,

(c) A description of the means and route of the conveyance and of the portions of the distilled spirits plant between which spirits or wines will be conveyed, and a copy of any agreement furnished by the owner, or lessee, of a private roadway have been submitted to and approved by the regional regulatory administrator, and

(d) Consent of surety on the operations or unit bond has been furnished by the proprietor, on Form 1533, extending the terms of the bond to cover conveyance of the spirits or wines.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1398, as amended, (26 U.S.C. 5201, 5601))

§ 19.99 Spirits in customs custody.

Spirits in customs custody may be conveyed, when necessary, across distilled spirits plant premises if (a) the spirits are not stored or allowed to remain on the premises of the distilled spirits plant, (b) the spirits are kept separate and apart from other spirits on the premises and are moved expeditiously, (c) a description of the means and route of conveyance of the spirits across the plant premises has been submitted to and approved by the regional regulatory administrator, and (d) consent of surety on the operations or unit bond has been furnished by the proprietor, on Form 1533, extending the terms of the bond to cover the conveyance of the spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, (26 U.S.C. 5201))

Penalties of Perjury

§ 19.100 Execution under penalties of perjury.

When a return, form, or other document called for under this part is required by this part or in the instructions on or with the return, form, or other document to be executed under penalties of perjury, it shall be so executed, as defined in Subpart B of this part, and shall be signed by the proprietor, or other duly authorized person.

(Act of August 16, 1954, Pub. L. 591—Chapter 736, 68A Stat. 749 (26 U.S.C. 6065))

Subpart E—Supervision of Operations

§ 19.111 General.

The regional regulatory administrator may require supervision of a distilled spirits plant by ATF officers to the extent necessary to protect the revenue and to ensure compliance with provisions of 26 U.S.C. Chapter 51.

(Sec. 806, Pub. L. 96–39, 93 Stat. 279, (26 U.S.C. 5202))

§ 19.112 Supervision of operations.

(a) *Types of supervision.* (1) Supervision of distilled spirits plant operations by an ATF officer may include, but is not limited to—

(i) General supervision, when an ATF officer may be on the plant premises; or

(ii) Direct supervision, when an ATF officer is on the plant premises; or

(iii) Immediate supervision, when an operation is required to be conducted in the immediate presence of an ATF officer.

(2) The regional regulatory administrator may require a proprietor to delay any operation so that it may be conducted under the direct or immediate supervision of an ATF officer.

(b) *Gauging.* The regional regulatory administrator may require any gauge made pursuant to this part to be made or supervised by an ATF officer.

(c) *Sealing of conveyances.* The regional regulatory administrator may require conveyances in which spirits are transferred in bond or removed (except on tax determination) to be secured with Government locks, seals, or other devices affixed by ATF officers.

(d) *Locking and sealing.* When a proprietor is required by the provisions of this part to affix locks and/or seals to buildings, rooms, tanks, or other items of equipment, the regional regulatory administrator may require the affixing of Government locks and/or seals in addition to, or in lieu of the proprietor's locks and/or seals.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.113 Schedule of operations.

When the regional regulatory administrator requires supervision of operations at a distilled spirits plant by ATF officers, the proprietor shall furnish the ATF officer or the area supervisor with a written schedule of operations at least one business day in advance of the operations to be conducted. The schedule of operations shall list all operations related to production, storage

or processing which are required to be supervised by ATF officers. The schedule shall also indicate specific hours of plant operation.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201); Sec. 806, Pub. L. 96–39, 73 Stat. 279 (26 U.S.C. 5202))

§ 19.114 Breaking Government locks or seals.

Except as provided in § 19.923, government locks or seals shall not be removed from a distilling system or other equipment without the authorization of an ATF officer or the regional regulatory administrator, except where persons or property is in imminent danger from a disaster or other emergency. When a disaster or other emergency occurs, and it is impractical to first obtain authorization from an ATF officer, Government seals or locks may be removed, by the proprietor, or by police or firefighters. When such action is taken, the proprietor shall see that security measures are taken to prevent illegal removal of spirits and, as soon as practical, shall notify the area supervisor of the action taken and then submit within 5 days a written report, executed under the penalties of perjury, describing the emergency and the action.

(Sec. 806, Pub. L. 96–39, 93 Stat. 279, (26 U.S.C. 5202))

§ 19.115 Submission of forms and reports.

The regional regulatory administrator may require the proprietor to submit copies of prescribed transaction forms, records, and reports to an ATF officer.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1396, as amended (26 U.S.C. 5201, 5555))

Subpart F—Location and Use

§ 19.131 Restrictions as to location.

Distilled spirits plants shall not be located in any dwelling house, or in any shed, yard, or enclosure connected with any dwelling house, or on board any vessel or boat, or on premises where beer or wine is produced, or liquors of any description are retailed, or (except as provided in § 19.133) on premises where any other business is conducted.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5178))

§ 19.132 Continuity of premises.

The continuity of the distilled spirits plant shall be unbroken except for separations by public waterways, thoroughfares, or carrier rights-of-way. However, where there are other separations of the plant premises and all parts of the plant premises are in the same general location, the regional regulatory administrator may approve the registration of the distilled spirits plant if he finds no jeopardy to the revenue.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5178))

§ 19.133 Use of distilled spirits plant premises.

(a) *General.* No business or operation shall be conducted on the premises of a distilled spirits plant other than those authorized to be carried on or conducted by the notice of registration.

(b) *Bonded premises.* Bonded premises shall be used exclusively for the purpose of production, warehousing and processing operations, except that the use of bonded premises for other businesses may be authorized as provided in Subpart D. Spirits in packages, cases, or other portable containers on bonded premises shall be stored in a room or building.

(c) *General premises.* General premises are any portion of the distilled spirits plant described in the notice of registration other than bonded premises. General premises may not be used for any of the operations required to be conducted on bonded premises. Business offices and service facilities may be included as a part of general premises. General premises may be utilized for the conduct of other business as may be authorized under the provisions of Subpart D.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353 as amended (26 U.S.C. 5178))

§ 19.134 Bonded warehouses not on premises qualified for production of spirits.

A bonded warehouse, other than one established on the bonded premises of a distilled spirits plant qualified for production of spirits, or contiguous to a distillery operated by the warehouseman, may be established if the need therefor is clearly shown and the prospective needs of the warehouseman will be for the bonded storage of not less than 250,000 wine gallons of bulk distilled spirits. However, where commercial bonded warehouses are not available in an area and it is impractical to have a warehouse of 250,000 wine gallon capacity, the regional regulatory administrator may approve the establishment of a warehouse without regard to the minimum storage requirements. The application for registration to establish a warehouse shall be accompanied by a separate written application setting forth the necessity for the establishment of the warehouse, the approximate quantity of bulk distilled spirits that will be received, stored, and withdrawn annually, the probable number of depositors of spirits, and the approximate number of persons to be served from the warehouse, together with any other data or documents indicating the prospective volume of business or need for establishment. The regional regulatory administrator may approve the application for registration if the proposed location of the warehouse will not be a jeopardy to the revenue and there is satisfactory evidence of the need for establishing a warehouse. The regional regulatory administrator may also limit the type of operation to be conducted at a bonded warehouse established with less than the minimum storage requirements. The proprietor of a warehouse established for a limited type of operation shall not, in any manner, expand or change his operation to include any other type of operations until pursuant to written application to make such change, he has obtained the approval of the regional regulatory administrator.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5178); Sec. 805a, Pub. L. 96–39, 93 Stat. 275 (26 U.S.C. 5171))

Subpart G—Qualification of Distilled Spirits Plants

§ 19.151 General requirements for registration.

(a) *Operations.* Except as otherwise provided by law, operations as a distiller, warehouseman, or processor may be conducted only on the bonded premises of a distilled spirits plant by a person qualified to carry out such operations under this subpart.

(b) *Establishment.* A distilled spirits plant may be established only by a person who intends to conduct at such plant operations as a distiller, as a warehouseman, or as both.

(c) *Registration.* Each person shall, before commencing operations at a distilled spirits plant, make application for and receive notice of registration of his plant with respect to such operations as provided in this part. Application for registration shall be made on Form 5110.41 to the regional regulatory administrator. Each application shall be executed under penalties of perjury, and all written statements, affidavits, and other documents submitted in support of the application or incorporated by reference shall be deemed to be a part thereof. The regional regulatory administrator may, in any instance where the outstanding notice of registration is inadequate or incorrect in any respect, require by registered or certified mail the filing of an application on Form 5110.41 to amend the notice of

registration, specifying the respects in which amendment is required. Within 60 days after the receipt of such notice, the proprietor shall file such application.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172); Sec. 805(a), Pub. L. 96–39, 93 Stat. 275 (26 U.S.C. 5171))

§ 19.152 Data for application for registration.

Application on Form 5110.41 shall be prepared in accordance with the instructions on the form, and shall include the following information:

(a) Serial number and statement of purpose for which filed.

(b) Name and principal business address of the applicant, and the location of the distilled spirits plant if different from the business address.

(c) Statement of the type of business organization and of the persons interested in the business, supported by the items of information listed in § 19.167.

(d) Statement of the operations to be conducted.

(e) In respect of the plant to which the Form 5110.41 relates, a list of applicant's operating and basic permits, and of the operations, withdrawal, or unit bonds (including those filed with the application) with the name of the surety or sureties for each bond.

(f) List of the offices, the incumbents of which are authorized by the articles of incorporation or the board of directors to act on behalf of the proprietor or to sign the proprietor's name.

(g) Plans (see § 19.171).

(h) Description of the plant (see § 19.168).

(i) List of major equipment (see § 19.166).

(j) Statement of maximum proof gallons that will be produced in the distillery during a period of 15 days, stored on bonded premises, and in transit to the bonded premises. (Not required if the operations or unit bond is in the maximum sum.)

(k) As applicable, the following:

(1) With respect to the operations of a distiller:

(i) Statement of daily producing capacity in proof gallons.

(ii) Statement of production procedure (see § 19.170).

(2) With respect to the operations of a warehouseman:

(i) Description of the system of storage.

(ii) Statement of bulk storage capacity in wine gallons.

(3) With respect to the operations of a processor:

(i) Statement whether bottling operations will be conducted.

(ii) Statement whether denaturing operations will be conducted.

(iii) Statement whether articles will be manufactured.

(iv) Statement whether gin and/or vodka will be produced by other than original and continuous distillation.

(v) Description of the system of storage of spirits bottled and cased or otherwise packaged or placed in approved containers for removal from bonded premises.

(4) If any other business is to be conducted on the distilled spirits plant premises, as provided by Subpart D of this part, a description of the business, a list of the buildings and/or equipment to be used, and a statement as to the relationship, if any, of the business to distilled spirits operations at the plant.

If any of the information required by paragraph (c) or paragraph (g) of this section is on file with the regional regulatory administrator, that information, if accurate and complete, may by incorporation by reference, be made part of the application. The applicant shall, when required by the regional regulatory administrator, furnish as a part of the application for registration, additional information as may be necessary to determine whether the application for registration should be approved.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172); Sec. 805(a), Pub. L. 96–39, 93 Stat. 275 (26 U.S.C. 5171))

§ 19.153 Notice of registration.

The application for registration, when approved, shall constitute the notice of registration of the distilled spirits plant. A distilled spirits plant shall not be registered or reregistered under this subpart until the applicant has complied with all requirements of law and regulations relating to the qualification of the business or operations in which the applicant intends to engage. A plant shall not be operated unless the proprietor has a valid notice of registration covering the businesses and operations to be conducted at such plant. In any instance where a bond is required to be given or a permit is required to be obtained with respect to a business or operation before notice of registration of the plant may be received with respect thereto, the notice of registration shall not be valid with respect to such business or operation in the event that such bond or permit is no longer in effect. An application for reregistration shall be filed and notice of registration again obtained before thereafter engaging in such business or operation at such plant. Reregistration is not required when a new bond or a strengthening bond is filed pursuant to § 19.246 or 19.247.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172); Sec. 805a, Pub. L. 96–39, 93 Stat. 275 (26 U.S.C. 5171))

§ 19.154 Maintenance of registration file.

The proprietor shall maintain the registration file in looseleaf form in complete and current condition, readily available at the plant for inspection by ATF officers.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172))

§ 19.155 Powers of attorney.

The proprietor shall execute and file with the regional regulatory administrator a Form 1534, in accordance with the instructions on the form, for each person authorized to sign or to act on behalf of the proprietor. (Not required for persons whose authority is furnished in the application for registration.)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172))

§ 19.156 Operating permits.

Except as provided in § 19.158, each person required to file an application for registration under § 19.151 shall make application for and obtain an operating permit before commencing any of the following operations:

(a) Distilling for industrial use.

(b) Warehousing of spirits for industrial use.

(c) Denaturing spirits.

(d) Warehousing of spirits (without bottling) for nonindustrial use.

(e) Bottling or packaging of spirits for industrial use.

(f) Manufacturing articles.

(g) Any other distilling, warehousing, or processing operation not required to be covered by a basic permit under the Federal Alcohol Administration Act (49 Stat. 978, 27 U.S.C. 203, 204). Application for such operating permit shall be made on Form 5110.25 to the regional regulatory administrator.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271); Sec. 805(a), Pub. L. 96–39, 93 Stat. 275 (26 U.S.C. 5171))

§ 19.157 Data for application for operating permits.

Each application on Form 5110.25 shall be executed under the penalties of perjury, and all written statements, affidavits, and other documents submitted in support of the application shall be deemed to be a part thereof. Applications on Form 5110.25 shall be prepared in accordance with the instructions on the form, and shall include the following information:

(a) Name and principal business address of the applicant.

(b) Plant address, if different from the business address.

(c) Description of the operation to be conducted for which an operating permit must be obtained.

(d) Statement of type of business organization and of the persons interested in the business, supported by the items of information listed in § 19.167.

(e) Trade names (see § 19.165).

(f) On specific request of the regional regulatory administrator, furnish a statement as to whether the applicant or any of the persons whose names and addresses are required to be furnished under the provisions of § 19.167(a)(4) and (c) has ever—(1) been convicted of a felony or misdemeanor- under Federal or State law, (2) been arrested or charged with any violation of State or Federal law (convictions or arrests or charges for traffic violations need not be reported as to subparagraphs (1) and (2) of this paragraph, if these violations are not felonies), or (3) applied for, held, or been connected with a permit, issued under Federal law to manufacture, distribute, sell, or use spirits or products containing spirits, whether or not for beverage use, or held any financial interest in any business covered by any such permit, and, if so, give the number and classification of the permit, the period of operation, and state in detail whether the permit was ever suspended, revoked, annulled, or otherwise terminated.

Where any of the information required by paragraph (d) of this section is on file with the regional regulatory administrator, the applicant may, by incorporation or by reference, state that the information is made a part of the application for an operating permit. The applicant shall, when required by the regional regulatory administrator, furnish as a part of his application for an operating permit additional information as may be necessary for the regional regulatory administrator to determine whether the applicant is entitled to the permit.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271); Sec. 805(a), Pub. L. 96–39, 93 Stat. 275 (26 U.S.C. 5171))

§ 19.158 Exceptions to operating permit requirements.

The provisions of § 19.156 shall not apply to any agency of a State or political subdivision thereof, or to any officer or employee of any such agency acting for the agency.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271); Sec. 805(a), Pub. L. 96–39, 93 Stat. 275 (26 U.S.C. 5171))

§ 19.159 Issuance of operating permits.

Only one operating permit will be issued for a plant. The operating permit shall designate the operations permitted. All of the provisions of this part relating to the performance of the operations covered by the permit shall be included in the provisions and conditions of the permit. Operating permits shall be kept posted available for inspection at the distilled spirits plant.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271); Sec. 805(a), Pub. L. 96–39, 93 Stat. 275 (26 U.S.C. 5171))

§ 19.160 Duration of permits.

Operating permits are continuing, unless automatically terminated by the terms thereof, suspended or revoked as provided in § 19.163, or voluntarily surrendered. The provisions of § 19.181 shall be a part of the terms and conditions of all operating permits issued under this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271))

§ 19.161 Denial of permit.

If, on examination of an application for an operating permit (or on the basis of inquiry or investigation), the regional regulatory administrator has reason to believe that—

(a) The applicant (including, in the case of a corporation, any officer, director, or prinicipal stockholder, and, in the case of a partnership, a partner) is, by reason of his business experience, financial standing, or trade connections, not likely to maintain operations in compliance with 26 U.S.C. Chapter 51, or regulations issued thereunder; or

(b) The applicant has failed to disclose any material information required, or has made any false statement, as to any material fact, in connection with the application; or

(c) The premises on which the applicant proposes to conduct the operations are not adequate to protect the revenue; the regional regulatory administrator may institute proceedings for the denial of the application in accordance with the procedures set forth in 27 CFR Part 200.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271))

§ 19.162 Correction of permits.

Where an error in an operating permit is discovered, the proprietor shall, on demand of the regional regulatory administrator, immediately return the permit for correcton.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271))

§ 19.163 Suspension or revocation.

Whenever the regional regulatory administrator has reason to believe that any person holding an operating permit—

(a) Has not in good faith complied with the provisions of 26 U.S.C. Chapter 51, or regulations issued thereunder; or

(b) Has violated conditions of the permit; or

(c) Has made any false statement as to any material fact in the application therefor; or

(d) Has failed to disclose any material information required to be furnished; or

(e) Has violated or conspired to violate any law of the United States relating to intoxicating liquor or has been convicted of any offense under Title 26, U.S.C. punishable as a felony or of any conspiracy to commit such offense; or

(f) Has not engaged in any of the operations authorized by the permit for a period of more than 2 years;

the regional regulatory administrator may institute proceedings for the revocation or suspension of the permit in accordance with the procedures set forth in 27 CFR Part 200.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271))

§ 19.164 Rules of practice in permit proceedings.

The regulations in 27 CFR Part 200 are made applicable to the procedure and practice in connection with the disapproval of any application for an operating permit required by this subpart, and in connection with the suspension and revocation of such permit.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271))

§ 19.165 Trade names.

Where a trade name is to be used in connection with the operations of a plant for which an operating permit is required, the proprietor shall list that trade name on Form 5110.25 (showing the operations in which the trade name will be used), and the offices where the name is registered, supported by copies of any certificate or other document filed or issued in respect to the trade name. Where any distilling, warehousing, or processing operation is required to be covered by a basic permit under the Federal Alcohol Administration Act (49 Stat. 978; 27 U.S.C. 203, 204), regulations issued under such Act govern the approval and use of trade names for those operations. Operations shall not be conducted under a trade name until the proprietor is in possession of an operating or basic permit covering the use of such name.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271))

§ 19.166 Major equipment.

The following items of major equipment, if on the plant premises, shall be described in the application for registration:

(a) Tanks (serial number and capacity) used in the production, storage, and processing of distilled spirits, wine, denatured spirits and articles;

(b) Bottling lines (list separately by serial number or other designation); and

(c) Stills (serial number, kind, capacity and intended use). The capacity shall be stated as the estimated maximum proof gallons of spirits capable of being produced every 24 hours, or (for column stills) may be represented by a statement of the diameter of the base and number of plates.

A statement of certification of accurate calibration shall be included in the description of tanks that are to be used for gauging distilled spirits or wine for any purpose.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1352, as amended (26 U.S.C. 5172, 5179))

§ 19.167 Organizational documents.

The supporting information required by paragraph (c) of § 19.152, and paragraph (d) of § 19.157, includes, as applicable, copies of—

(a) *Corporate documents.* (1) Articles of incorporation and any amendments thereto.

(2) Corporate charter or a certificate of corporate existence or incorporation.

(3) Certificate authorizing the corporation to operate in the State where the plant is located (if other than that in which incorporated).

(4) List of directors and officers, showing their names and addresses.

(5) Bylaws.

(6) Certified extracts or digests of minutes of meetings of board of directors, authorizing certain individuals to sign for the corporation.

(7) Statement showing the number of shares of each class of stock or other evidence of ownership, authorized and outstanding, and the voting rights of the respective owners or holders.

(b) *Articles of partnership.* True copy of the articles of partnership or association, if any, or certificate of partnership or association where required to be filed by any State, county, or municipality.

(c) *Statement of interest.* (1) Names and addresses of the 10 persons having the largest ownership or other interest in each of the classes of stock in the corporation, or other legal entity, and the nature and amount of the stockholding or other interest of each, whether the interest appears in the name of the interested party or in the name of another for him. If a corporation is wholly owned or controlled by another corporation, those persons of the parent corporation who meet the above standards are considered to be the persons interested in the business of the subsidiary, and the names thereof need be furnished only upon request of the regional regulatory administrator.

(2) In the case of an individual owner or partnership, the name and address of each person interested in the plant, whether the interest appears in the name of the interested party or in the name of another for that person.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1370, as amended (26 U.S.C. 5172, 5271))

§ 19.168 Description of plant.

The application for registration shall include a description of each tract of land comprising the distilled spirits plant. The description shall be by courses and distances, in feet and inches (or hundredths of feet), with the particularity required in conveyances of real estate. Each building and outside tank shall be described (location, size, construction, arrangement, and means of protection and security), referring to each by its designated number or letter. If a plant consists of a room or floor of a building, a description of the building in which the room or floor is situated and its location shall be given.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C 5172))

§ 19.169 Registry of stills.

The provisions of 27 CFR Part 196 are applicable to stills located on plant premises. The listing of stills in the application for registration, and the approval of the application for registration, shall constitute registration of stills as required by 27 CFR 196.45.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1355, as amended (26 U.S.C 5172, 5179))

§ 19.170 Statement of production procedure.

The statement of production procedure in the application for registration shall set forth a step-by-step description of the procedure employed to produce spirits, commencing with the treating, mashing, or fermenting of the raw materials or substances and continuing through each step of the distilling, redistilling, purifying and refining procedure to the production gauge. The kind and approximate quantity of each material or substance used in producing, purifying, or refining each type of spirits shall be shown.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C 5172))

§ 19.171 Plans.

(a) *General.* Each person filing an application for registration shall submit, in duplicate, a plan showing the boundaries of the distilled spirits plant. If the distilled spirits plant has any buildings of more than one floor and the floors differ in the descriptions required by (d) of this section, an additional plan shall be prepared for each floor.

(b) *Preparation.* Each plan shall be drawn to scale on paper having outside measurements of not less than 8½×11 inches and shall show the cardinal points of the compass. Each plan sheet shall have a distinctive title and be numbered in consecutive order with the first plan sheet #1. Any revised plan sheet shall have the same number as the sheet superseded, but given a new date.

(c) *Certificate of accuracy.* The plans shall bear a certificate of accuracy on each sheet, signed by the proprietor, substantially as follows:

(Name of Proprietor)

(Distilled spirits plant No.)

(Address)

Accuracy certified by:

(Name and capacity—for the proprietor)

Sheet No. ——, Date————

(d) *Plan details.* The plan shall show the boundaries of the bonded premises and any other premises to be included as a part of the distilled spirits plant and shall agree with the boundary descriptions given in the application for registration. The plan shall also show:

(1) Buildings and other enclosed areas, including the means of ingress and egress, on the distilled spirits plant premises used for the production, storage and processing of spirits (including denatured spirits), articles or wines;

(2) All driveways, public thoroughfares, and railroad rights-of-way on or leading to the distilled spirits plant premises;

(3) The relative location of any contiguous premises on which spirits, wine or beer are manufactured, stored or sold, and any pipelines or other connections between a contiguous premises and the distilled spirits plant (public utility pipelines and similar connections excepted);

(4) The entire building and the land on which located if the distilled spirits plant is less than an entire building; and

(5) Tanks and bottling equipment if alternated to bonded wine cellar

premises, taxpaid wine bottling housed premises or customs custody. A separate diagram shall be submitted to show the location of tanks and bottling equipment after alternation to other premises.

(e) *Revised plans.* Proprietors shall submit revised plans as provided in §§ 19.189 and 19.190 to cover changes in location or premises. Submission of revised plan sheets for changes in construction and use of buildings and equipment may be delayed, unless the regional regulatory administrator requires immediate amendment as provided in § 19.193.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172))

Changes After Original Qualification

§ 19.180 Application for amended registration.

Where there is a change with respect to the information shown in the notice of registration, the proprietor shall submit, within 10 days of such change (except as otherwise provided in this subpart and § 19.193), an application on Form 5110.41 for amended registration. Such application shall set forth, on sheets appropriately numbered or otherwise identified, the information necessary to make the notice of registration accurate and current. Where the change affects only pages or parts of pages of the notice of registration, such complete pages shall be submitted as will enable the replacement of the pages affected and maintenance of the file as provided in § 19.154.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172); Sec. 805(a), Pub. L. 96–39, 93 Stat. 275 (26 U.S.C. 5171))

§ 19.181 Automatic termination of permits.

(a) *Permits not transferrable.* Operating permits issued under this part shall not be transferred. In the event of the lease, sale, or other transfer of such a permit, or of the operations authorized thereby, the permit shall thereupon automatically terminate.

(b) *Corporations.* In the case of a corporation holding an operating permit under this part, if actual or legal control of the permittee corporation changes, directly or indirectly, whether by reason of change in stock ownership or control (in the permittee corporation or in any other corporation), by operation of law, or in any other manner, the permittee shall, within 10 days of such change, give written notice thereof, executed under the penalties of perjury, to the regional regulatory administrator; such permit may remain in effect with respect to the operation covered thereby until the expiration of 30 days after such change, whereupon such permit shall automatically terminate. However, if within such 30-day period an application for a new permit covering such operation is made, then the outstanding operating permit may remain in effect with respect to the continuation of the operation covered thereby until final action is taken on such application. When such final action is taken, such outstanding operating permit shall thereupon automatically terminate.

(c) *Basic permits.* The termination of basic permits is governed by the provisions of 27 CFR Part 1.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271))

§ 19.182 Change in name of proprietor.

Where there is to be a change in the individual, firm, or corporate name, the proprietor shall file application to amend the registration and to amend the operating and/or basic permit; a new bond or consent of surety will not be required. Operations may not be conducted under the new name prior to approval of the amended registration and issuance of the amended permit.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1370, as amended (26 U.S.C. 5172, 5271))

§ 19.183 Change of trade name.

If there is to be a change in, or addition of, a trade name, the proprietor shall file application to amend the operating and/or basic permit; a new bond or consent of surety will not be required. Operations may not be conducted under the new trade name prior to issuance of the amended permit.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271))

§ 19.184 Changes in stockholders.

Changes in the list of stockholders furnished under the provisions of § 19.167(c)(1) may, in lieu of submission within 10 days of the change under the provisions of § 19.180 be submitted annually by the proprietor on May 1, except where the sale or transfer of capital stock results in a change in the control or management of the business.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1370, as amended (26 U.S.C. 5172, 5271))

§ 19.185 Changes in officers.

Where there is any change in the list of officers furnished under the provisions of § 19.167(a)(4), the proprietor shall submit, within 10 days of any such change, an application on Form 5110.41 for amended registration, supported by a new list of officers and a statement of the changes reflected in such list. If the operations of a distilled spirits plant are conducted pursuant to an operating permit, but not a basic permit, the regional regulatory administrator may extend to 30 days the time within which applications for amended registration to cover such changes in officers shall be filed. Where the proprietor has shown to the satisfaction of the regional regulatory administrator that certain corporate officers listed on the original application have no responsibilities in connection with the operations covered by the registration, the regional regulatory administrator may waive the requirements for submitting applications for amended registration to cover changes in such corporate officers.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172); Sec. 805(a), Pub. L. 96–39, 93 Stat. 275 (26 U.S.C. 5171))

§ 19.186 Change in proprietorship.

(a) *General.* If there is a change in the proprietorship of a plant qualified under this part, the outgoing proprietor shall comply with the requirements of § 19.211, and the successor shall, before commencing operations, apply for and obtain the required permits, file the required bonds, and file application for and receive notice of registration of the plant in the same manner as a person qualifying as the proprietor of a new plant, except that the successor may, in the manner provided in § 19.187, adopt the plans and approved Forms 5110.38 and 1479–A of the predecessor. Spirits may be transferred from an outgoing proprietor of a plant to a successor in the manner provided in § 19.201.

(b) *Fiduciary.* If the successor to the proprietorship of a plant is an administrator, executor, receiver, trustee, assignee or other fiduciary, he shall comply with the provisions of paragraph (a) of this section except that he may, in lieu of filing a new bond, furnish consent of surety extending the terms of the predecessor's bond, and he may also incorporate by reference in the application for registration on Form 5110.41 any pertinent information contained in the predecessor's notice of registration. The fiduciary shall furnish a certified copy of the order of the court or other pertinent document showing qualification as such fiduciary. The effective dates of the qualifying documents filed by the fiduciary shall be the effective date of the court order, or the date specified therein for him to assume control. If the fiduciary was not appointed by a court, the date of assuming control shall coincide with the effective date of the qualifying documents filed by the fiduciary.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172))

§ 19.187 Adoption of plans and formulas.

(a) *Plans.* The adoption by a successor of the plans of his predecessor shall be in the form of a certificate to be made a part of the application for registration, in which shall be set forth the identity of the plant and of the predecessor. The required certificate shall set forth a description (by sheet number and title) of each plan sheet adopted, and a certification that the adopted plans accurately depict the premises.

(b) *Forms 5110.38.* The adoption by a successor of approved Forms 5110.38 (27–B Supplemental) shall be in the form of an application, filed with the Director. The application shall list the formulas for adoption by (1) formula number, (2) name of product, and (3) date of approval. The application shall clearly show that the predecessor has authorized the use of its previously approved formulas by the successor.

(c) *Forms 1479–A.* The adoption by a successor of approved Forms 1479–A shall be in accordance with 27 CFR 211.62.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172))

§ 19.188 Continuing partnerships.

If under the laws of the particular State, the partnership is not terminated on death or insolvency of a partner, but continues until the winding up of the partnership affairs is completed, and the surviving partner has the exclusive right to the control and possession of the partnership assets for the purpose of liquidation and settlement, such surviving partner may continue to operate the plant under the prior qualification of the partnership, provided a consent of surety is filed, wherein the surety and the surviving partner agree to remain liable on the operations or unit bond. If such surviving partner acquires the business on completion of the settlement of the partnership, he shall qualify in his own name from the date of acquisition, as provided in § 19.186(a). The rule set forth in this section shall also apply where there is more than one surviving partner.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172))

§ 19.189 Change in location.

Where there is a change in the location of the plant, the proprietor shall file applications to amend the registration of the plant and the operating and/or basic permit, new plans, and either a new bond or a consent of surety on Form 1533. Operation of the plant may not be commenced at the new location prior to approval of the amended registration and issuance of the amended permit.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1370, as amended (26 U.S.C. 5172, 5271); Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

§ 19.190 Changes in premises.

Except as provided in §§ 19.202, 19.203 and 19.204, where bonded premises, or any other premises included as a part of the plant are to be extended or curtailed, the proprietor shall file (a) an application for registration, Form 5110.41, to cover such extension or curtailment, and (b) amended plans. Premises and equipment to be included by extension or to be excluded by curtailment shall not, prior to approval by the regional regulatory administrator of the required documents, be used for other than previously approved purposes.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172))

§ 19.191 Change in operations.

If the proprietor proposes to conduct a new business or operation involving spirits, he shall file applications to amend the registration of the plant and the operating and/or basic permit. If the proprietor desires to engage, on the plant premises, in a business, other than operations as a distiller, warehouseman, or processor, he shall submit application to amend the registration of the plant to include the information required under § 19.152(k)(4). The additional operation or business may not be carried on prior to approval of the amended registration and (if required) issuance of the amended permit.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1370, as amended (26 U.S.C. 5172, 5271); Sec. 805(a), Pub. L. 96–39, 93 Stat. 275 (26 U.S.C. 5171))

§ 19.192 Change in production procedure.

If the proprietor desires to produce a new product or make a change in a production procedure which would affect the designation, or substantially affect the character of his product, the proprietor shall file an application to amend the registration of the plant to include the amended or new statement of production procedure. The new or changed procedure may not be used prior to approval of the amended registration.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172))

§ 19.193 Changes in construction and use of buildings and equipment.

Where a material change is to be made (a) in the buildings or equipment of a plant (other than a change covered by §§ 19.190, 19.202, 19.203, or 19.204), (b) in the use of any portion of a plant, or (c) with respect to plant equipment, which affects the accuracy of the notice of registration (including the plans), the proprietor shall, before making such change, submit a letterhead notice, to the regional regulatory administrator through the area supervisor. The letterhead notice shall describe the proposed change specifically and in detail. When the change has been completed, the proprietor shall file an amended notice of registration, Form 5110.41 to reflect the change covered by the letterhead notice. Such change may be reflected in the next required amendment of the plans unless the regional regulatory administrator requires immediate amendment. The proprietor may make emergency repairs without prior notification, but where such emergency repairs are made, the proprietor shall promptly notify the area supervisor and file with him a report.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172))

Operations by Alternating Proprietors

§ 19.201 Procedure for alternating proprietors.

(a) *General.* A plant, or any part thereof which is suitable for qualification as a separate plant, may be operated alternately by proprietors who have filed and received approval of the necessary bonds and applications for registration, and have otherwise qualified under the provisions of this subpart. Where operations by alternating proprietors are limited to parts of the plant, the notice of registration shall describe the areas, rooms or buildings or combination thereof, which will be alternated, and shall be accompanied by special plans designating the parts of the plant which are to be alternated. A special plan shall be submitted for each arrangement, other than that reflected by the basic plan, under which the premises will be operated. Once such qualifying documents have been approved, and initial operations have been conducted thereunder, the plant, or parts thereof, may be alternated by the proprietor filing notices on Form 5110.34 with the regional regulatory administrator. Any transfer of spirits (including denatured spirits), and wines shall be indicated on Form 5110.34 filed by each proprietor. Bottled spirits in containers of 1 gallon or less shall not be transferred and shall

be removed from premises affected by the notices prior to the effective date and hours shown in the notices.

(b) *Production.* Distilling materials and unfinished spirits in any bonded areas, rooms or buildings to be alternated shall be processed to completion by the outgoing proprietor unless transferred to the incoming proprietor. All finished spirits shall be marked and removed by the outgoing proprietor in the name in which produced, before production gauge is made of any spirits by the incoming proprietor.

(c) *Warehousing.* Spirits and wines in any bonded areas, rooms, or buildings to be alternated shall be transferred to the incoming proprietor on Form 5110.27. The outgoing proprietor shall execute a consent of surety on Form 1533 to continue in effect the operations or unit bond whenever operation of the areas, rooms, or buildings is to be resumed by him following suspension of operations by an alternate proprietor.

(d) *Processing.* Spirits (including denatured spirits), wines and articles in any rooms, areas, or buildings to be alternated shall be processed to completion and removed from the affected areas, rooms, or buildings by the outgoing proprietor prior to the effective date and hours given in the notice unless transferred or retained in locked tanks as provided in this paragraph. Spirits (including denatured spirits) and wines may be transferred to the incoming proprietor. In this case, the outgoing proprietor shall execute Form 5110.27 transferring the spirits (including denatured spirits) and wines to the incoming proprietor. Further, the outgoing proprietor shall execute a consent of surety on Form 1533 to continue in effect the operations or unit bond whenever operation of the affected areas, rooms, or buildings is to be resumed by him following suspension of operations by the alternate proprietor. Denatured spirits and articles may be retained in tanks locked by approved locks, the keys to which are in the custody of the outgoing proprietor. In this case, the outgoing proprietor shall execute a consent of surety on Form 1533 to continue liability on the operations or unit bond for the tax on such denatured spirits or articles retained in such tanks, notwithstanding the change in proprietorship.

(e) *Records.* Each proprietor shall maintain separate records and submit separate reports. All transfers of distilling materials, unfinished spirits, spirits (including denatured spirits), and wines shall be reflected in the records of each proprietor.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1370, as amended (26 U.S.C. 5172, 5271))

Alternate Operations

§ 19.202 Alternate use of premises and equipment for customs purposes.

(a) *General.* The premises of a distilled spirits plant may, as provided in this section, be alternately curtailed and extended to permit the facilities of the distilled spirits plant to be used temporarily by customs officers, under applicable customs law and regulations, for the purpose of gauging or processing distilled spirits. The use of the excluded portion of the premises for customs purposes is subject to the approval of the district director of customs. When it is necessary to convey spirits in customs custody across the premises of a distilled spirits plant, the proprietor shall comply with the provisions of § 19.99. When a portion of the distilled spirits plant premises is first to be excluded as provided in this section, the proprietor shall file with the regional regulatory administrator (1) an application for registration, Form 5110.41, to cover alternate curtailment and extension of premises, (2) a special plan delineating the premises as they will exist, both during extension and curtailment, and (3) a special diagram, in duplicate, clearly depicting all buildings, rooms, areas, equipment and spirits lines (identified individually by letter or number) which are to be subject to alternation, in their relative operating sequence. Once such qualifying documents have been approved by the regional regulatory administrator, the designated premises and equipment may be alternately curtailed or extended pursuant to notice on Form 5110.34. Portions of the premises to be excluded by curtailment or included by extension shall not be used for purposes other than as set forth in the current notice. The proprietor shall remove all spirits from the premises or equipment affected by the notice prior to the effective date and hours of the notice. However, on release by customs, spirits being transferred to bonded premises under 26 U.S.C. 5232, may remain on the premises to be reincluded in bonded premises.

(b) *Separation of premises.* The portion of the premises which is to be excluded from the distilled spirits plant premises as provided in this section shall be separated from the remaining portion of the distilled spirits plant premises in a manner satisfactory to the regional regulatory administrator.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1358, as amended (26 U.S.C. 5172, 5178))

§ 19.203 Alternation of distilled spirits plant and bonded wine cellar premises.

(a) *General.* A proprietor of a distilled spirits plant operating a contiguous bonded wine cellar desiring to alternate the use of each premises by extension and curtailment shall file necessary qualifying documents with the regional regulatory administrator.

(b) *Qualifying documents.* The proprietor shall file with the regional regulatory administrator:

(1) Form 5110.41 and Form 698 to cover the proposed alternation of premises;

(2) Plans, in duplicate, showing the distilled spirits plant premises and bonded wine cellar premises after alternation. The plan should include diagrams of equipment on the alternated premises so that the area designated for each premises can be determined; and

(3) Evidence of existing bond, consent of surety, or a new bond to cover the proposed alternation of premises.

(c) *Proprietor's responsibility.* After approval of qualifying documents for the alternation of premises, and after initial operations have been conducted thereunder, the proprietor shall execute Form 5110.34, Notice of Change in Status of Plant, each time the premises are alternated. Prior to the effective hour of the date shown on the Form 5110.34, the proprietor shall remove all spirits (including denatured spirits), articles, and wines from the distilled spirits plant premises alternated to bonded wine cellar premises. Any wine on bonded wine cellar premises shall be removed prior to alternation to distilled spirits plant premises unless wine is being simultaneously transferred in bond to the distilled spirits plant.

(d) *Separation of premises.* Separation of distilled spirits plant premises from bonded wine cellar premises after alternation shall be in a manner which satisfies the regional regulatory administrator that the revenue will not be jeopardized.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1353, as amended (26 U.S.C. 5172, 5178))

§ 19.204 Alternation of distilled spirits plant and taxpaid wine bottling house premises.

(a) *General.* A proprietor of a distilled spirits plant operating a contiguous taxpaid wine bottling house desiring to alternate the use of each premises by extension and curtailment shall file necessary qualifying documents with the regional regulatory administrator.

(b) *Qualifying documents.* The proprietor shall file with the regional regulatory administrator:

(1) Form 5110.41 and Form 2975 to cover the proposed alternation of premises;

(2) Plans, in duplicate, showing the distilled spirits plant premises and taxpaid wine bottling house premises after alternation. The plan should include diagrams of equipment on the alternated premises so that the area designated for each premises can be determined; and

(3) Evidence of existing bond, consent of surety, or a new bond to cover the proposed alternation of premises.

(c) *Proprietor's responsibility.* After approval of qualifying documents for the alternation of premises, and after initial operations have been conducted thereunder, the proprietor shall execute Form 5110.34, Notice of Change in Status of Plant, each time the premises are alternated. Prior to the effective hour of the date shown on the Form 5110.34, the proprietor shall remove all spirits (including denatured spirits), articles, and wines from the distilled spirits plant premises alternated to taxpaid wine bottling house premises. Any wine on taxpaid wine bottling house premises shall be removed prior to alternation to distilled spirits plant premises.

(d) *Separation of premises.* Separation of distilled spirits plant premises from taxpaid wine bottling house premises after alternation shall be in a manner which satisfies the regional regulatory administrator that the revenue will not be jeopardized.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1353, as amended (26 U.S.C. 5172, 5178))

Permanent Discontinuance of Business

§ 19.211 Notice of permanent discontinuance.

When the proprietor permanently discontinues any or all of the operations listed in the notice of registration, he shall, after completion of the operations, file a Form 5110.41 to cover such discontinuance. Form 5110.41 shall be accompanied (a) by all permits issued to the proprietor under this subpart covering the discontinued operations, any by his request that such permits be canceled; (b) by the proprietor's written statement disclosing, as applicable, whether (1) all spirits (including denatured spirits), articles, wines, indicia bottles, strip stamps, and other pertinent items have been lawfully disposed of, (2) any spirits (including denatured spirits), wines, indicia bottles, or strip stamps are in transit to the premises, (3) all approved applications for transfer of spirits (including denatured spirits) to the premises have been secured and returned to the regional regulatory administrator for cancellation; and (c) by pertinent reports covering the discontinued operations (each report shall be marked "Final Report").

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1370, as amended (26 U.S.C. 5172, 5271))

Subpart H—Bonds and Consents of Surety

§ 19.231 General.

Every person intending to establish a distilled spirits plant shall file an operations or unit bond as prescribed in this subpart, covering distilled spirits operations at such plant, with the regional regulatory administrator, at the time of filing the original application for registration of the plant, and at such other times as are required by this part. Such bond shall be conditioned that he shall faithfully comply with all provisions of law and regulations relating to activities covered by such bond, will pay all taxes imposed by 26 U.S.C. Chapter 51, and shall pay all penalties incurred or fines imposed for violation of any such provisions. The regional regulatory administrator may require, in connection with any operations or unit bond, a statement, executed under the penalties of perjury, as to whether the principal or any person owning, controlling, or actively participating in the management of the business of the principal has been convicted of or has compromised any offense set forth in § 19.239(a) or has been convicted of any offense set forth in § 19.239(b). In the event the above statement contains an affirmative answer, the applicant shall submit a statement describing in detail the circumstances surrounding such conviction or compromise. No person shall commence or continue distilled spirits operations at such plant unless he has a valid operations or unit bond (and consent of surety, if necessary), as required in respect of such operations by this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1394, as amended, (26 U.S.C. 5551); Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

§ 19.232 Additional condition of operations bond.

In addition to the requirements of § 19.231, the operations bond shall be conditioned on payment of the tax now or hereafter in force, except as provided by law, including taxes on all unexplained shortages of bottled distilled spirits.

(Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

§ 19.233 Corporate surety.

Surety bonds required by this part may be given only with corporate sureties holding certificates of authority from, and subject to the limitations prescribed by, the Secretary as set forth in the current revision of Treasury Department Circular 570.

(Ch. 390, Pub. L. 80–280, 61 Stat. 648 (6 U.S.C. 6, 7))

§ 19.234 Filing of powers of attorney.

Each bond, and each consent to changes in the terms of a bond, shall be accompanied by a power of attorney authorizing the agent or officer who executed the bond or consent to so act on behalf of the surety. The regional regulatory administrator who is authorized to approve the bond may require additional evidence of the authority of the agent or officer to execute the bond or consent.

(Ch. 390, Pub. L. 80–280, 61 Stat. 648 (6 U.S.C. 6, 7))

§ 19.235 Execution of powers of attorney.

The power of attorney shall be prepared on a form provided by the surety company and executed under the corporate seal of the company. If the power of attorney submitted is other than a manually signed original, it shall be accompanied by certification of its validity.

(Ch. 390, Pub. L. 80–280, 61 Stat. 648 (6 U.S.C. 6, 7))

§ 19.236 Deposit of securities in lieu of corporate surety.

In lieu of corporate surety, the principal may pledge and deposit, as surety for his bond, securities which are transferable and are guaranteed as to both interest and principal by the United States, in accordance with the provisions of 31 CFR Part 225.

(Ch. 390, Pub. L. 80–280, 61 Stat. 650 (6 U.S.C. 15))

§ 19.237 Consents of surety.

Consents of surety to changes in the terms of bonds shall be executed on Form 1533 by the principal and by the surety with the same formality and proof of authority as is required for the execution of bonds.

(Sec. 805(c) Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

§ 19.238 Authority to approve bonds and consents of surety.

Regional regulatory administrators are authorized to approve all bonds and consents of surety required by this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1394, as amended (26 U.S.C. 5551))

§ 19.239 Disapproval of bonds or consents of surety.

The regional regulatory administrator may disapprove any bond or consent of surety submitted in respect to the operations of a distiller, warehouseman, or processor, if the principal or any person owning, controlling, or actively participating in the management of the business of the principal shall have been previously convicted, in a court of competent jurisdiction of—

(a) Any fraudulent noncompliance with any provision of any law of the United States, if such provision related to internal revenue or customs taxation of spirits, wines, or beer, or if such an offense shall have been compromised with the person on payment of penalties or otherwise, or

(b) Any felony under a law of any State or the District of Columbia, or the United States, prohibiting the manufacture, sale, importation, or transportation of spirits, wine, beer, or other intoxicating liquor.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1394, as amended (26 U.S.C. 5551))

§ 19.240 Appeal to Director.

Where a bond or consent of surety is disapproved by the regional regulatory administrator, the person giving the bond may appeal from such disapproval to the Director, who will hear such appeal. The decision of the Director shall be final.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1394, as amended (26 U.S.C. 5551))

§ 19.241 Operations bond—distilled spirits plant and adjacent bonded wine cellar.

(a) *General.* No wine cellar under the provisions of 27 CFR Part 240 shall be treated as being adjacent to a distilled spirits plant unless—

(1) such distilled spirits plant is qualified under Subpart G for the production of distilled spirits; and

(2) such wine cellar and distilled spirits plant are operated by the same person (or in the case of a corporation, by such corporation and its controlled subsidiaries). For the purpose of this section a controlled subsidiary is a corporation where more than 50 percent of the voting shares are owned by the parent corporation.

(b) *Bond in lieu of wine cellar bond.* In the case of an adjacent bonded wine cellar, a bond furnished under this subpart which covers operations at such bonded wine cellar shall be in lieu of any bond which would otherwise be required under 26 U.S.C. 5354 with respect to such wine cellar (other than supplemental bonds required under the second sentence of 26 U.S.C. 5354) and the operations bond listed in § 19.245(a)(1).

(c) *Liability.* Bonds given under this section shall contain the terms and conditions of the bonds in lieu of which they are given. The total amount of such operations bond shall be available for the satisfaction of any liability incurred under the terms or conditions of such bond.

(Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

§ 19.242 Area operations bond.

Any person (or, in the case of a corporation, a corporation and its controlled subsidiaries) operating more than one plant in a region may give an area operations bond covering the operation of any two or more of such plants, and any bonded wine cellars which are adjacent to such plants and which otherwise could be covered by an operations bond. For the purpose of this section, a controlled subsidiary is a corporation where more than 50 percent of the voting shares are owned by the parent corporation. Bonds given under this section shall be in lieu of the bonds which would be required under § 19.245(a) and shall contain the terms and conditions of such bonds. If the area operations bond covers the operations of more than one corporation, each corporation shall be shown as principal, and the bond shall be signed for each corporation. The total amount of the area operations bond shall be available for the satisfaction of any liability incurred under the terms or conditions of such bond.

(Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

§ 19.243 Withdrawal bond.

Any person (or, in the case of a corporation, a corporation and its controlled subsidiaries) operating one or more distilled spirits plants within a region and who intends to withdraw spirits from bond on determination, but before payment, of the tax shall, before making any such withdrawal, furnish a withdrawal bond to secure payment of the tax on all spirits so withdrawn. Such bond shall be in addition to the operations bond, and if the distilled spirits are withdrawn under the withdrawal bond, the operations bond shall no longer cover liability for payment of the tax on the spirits withdrawn. For the purpose of this section, a controlled subsidiary is a corporation where more than 50 percent of the voting shares are owned by the parent corporation.

The bond, if it covers more than one plant, shall show as to each plant covered by the bond the part of the total sum which represents the penal sum (computed in accordance with § 19.245) for each such plant. If the penal sum of the bond covering a plant, or the penal sum allocated to any plant (where the bond covers more than one plant), is in an amount less than the maximum prescribed in § 19.245, withdrawals from such plant shall not exceed the quantity permissible, as reflected by the penal sum in the bond for such plant. Such withdrawal bond shall be conditioned that the total amount of the bond shall be available for satisfaction of any liability incurred under the terms and conditions of such bond.

(Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

§ 19.244 Unit bond.

Any person (or, in the case of a corporation, a corporation and its controlled subsidiaries) who would otherwise be required to give bonds for both operations at one or more distilled spirits plants (and any adjacent bonded wine cellars) and withdrawals from one or more distilled spirits plants within a region may, in lieu of furnishing separate bonds for operations and withdrawals, furnish a unit bond containing the terms and conditions of the bonds in lieu of which it is given. For the purpose of this section, a controlled subsidiary is a corporation where more than 50 percent of the voting shares are owned by the parent corporation. The unit bond shall show as to each plant covered by the bond the part of the total sum which represents the penal sum (computed in accordance with § 19.245) for operations at and withdrawals from each plant. If the penal sum of the bond covering a plant, or the penal sum allocated to any plant (if the bond covers more than one plant), is in an amount less than the maximum prescribed in § 19.245, operations at and/or withdrawals from such plant shall not exceed the quantity permissible as reflected by the penal sum in the bond for such plant. The unit bond shall be conditioned that the total amount of the bond shall be available for satisfaction of any liability incurred uder the terms and conditions of such bond.

(Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

§ 19.245 Bonds and penal sums of bonds.

The bonds, and the penal sums thereof, required by this subpart, are as follows:

Penal Sum

Type of bond	Basis	Minimum	Maximum
(a) Operations bond:			
(1) One plant bond:			
(i) Distiller	The amount of tax on spirits produced during a period of 15 days.	$5,000	$100,000
(ii) Warehouseman	The amount of tax on spirits and wines deposited in, stored on, and in transit to bonded premises.	5,000	200,000
(iii) Distiller and warehouseman	The amount of tax on spirits produced during a period of 15 days, and the amount of tax on spirits and wines deposited in, stored on, and in transit to bonded premises.	10,000	200,000
(iv) Distiller and processor	The amount of tax on spirits produced during a period of 15 days, and the amount of tax on spirits (including denatured spirits), articles, and wines deposited in, stored on, and in transit to bonded premises.	10,000	200,000
(v) Warehouseman and processor	The amount of tax on spirits (including denatured spirits), articles, and wines deposited in, stored on, and in transit to bonded premises.	10,000	250,000
(vi) Distiller, warehouseman, and processor.	The amount of tax on spirits produced during a period of 15 days, and the amount of tax on spirits (including denatured spirits), articles, and wines deposited in, stored on, and in transit to bonded premises.	15,000	250,000
(2) Adjacent bonded wine cellars:			
(i) Distiller and bonded wine cellar	The sum of amount of tax calculated in (a)(1)(i) and with respect to bonded wine cellar operations, the amount of tax on wines and wine spirits possessed and in transit.	6,000	150,000
(ii) Distiller, warehouseman and bonded wine cellar..	The sum of amount of tax calculated in (a)(1)(iii) and with respect to bonded wine cellar operations, the amount of tax on wines and wine spirits possessed and in transit.	11,000	250,000
(iii) Distiller, processor and bonded wine cellar.	The sum of amount of tax calculated in (a)(1)(iv) and with respect to bonded wine cellar operations, the amount of tax on wines and wine spirits possessed and in transit.	11,000	250,000
(iv) Distiller, warehouseman, processor and bonded wine cellar..	The sum of amount of tax calculated in (a)(1)(vi) and with respect to bonded wine cellar operations, the amount of tax on wines and wine spirits possessed and in transit.	16,000	300,000
(b) Area operations bond:	The penal sum shall be calculated in accordance with the following table:		

Total penal sums as determined under (a)	Requirements for penal sum of area operations bond.
Not over $300,000	100 percent.
Over $300,000 but not over $600,000	$300,000 plus 70 percent of excess over $300,000.
Over $600,000 but not over $1,000,000	$510,000 plus 50 percent of excess over $600,000.
Over $1,000,000 but not over $2,000,000	$710,000 plus 35 percent of excess over $1,000,000.
Over $2,000,000	$1,060,000 plus 25 percent of excess over $2,000,000.

(c) Withdrawal bond:			
(1) One plant qualified for distilled spirits operations.	The amount of tax which, at any one time, is chargeable against such bond but has not been paid.	$1,000	$1,000,000
(2) Two or more plants in a region qualified for distilled spirits operations.	Sum of the penal sums for each plant calculated in (c)(1) of this section.	[1]	[2]
(d) Unit bond:			
(1) Both operations at a distilled spirits plant (and any adjacent bonded wine cellar) and withdrawals from the bonded premises of the same distilled spirits plant.	Total penal sums of (a) and (c)(1) of this section.	6,000	1,300,000
(2) Both operations at two or more distilled spirits plants (and any adjacent bonded wine cellar) within the same region and withdrawals from the bonded premises of the same distilled spirits plants.	Total penal sums of (b) and (c)(2) of this section in lieu of which given.	[3]	[4]

[1] Sum of the minimum penal sums required for each plant covered by the bond.
[2] Sum of the maximum penal sums required for each plant covered by the bond (The maximum penal sums for one plant is $1,000,000).
[3] Sum of the minimum penal sums for operations and withdrawal bonds required for each plant covered by the bond.
[4] Sum of the maximum penal sums for area operations bonds and withdrawal bonds required for the plants covered by the unit bond.

(Sec. 805(c), Pub. L. 96-39, 93 Stat. 276 (26 U.S.C. 5173))

§ 19.246 Strengthening bonds.

In all cases when the penal sum of any bond becomes insufficient, the principal shall either give a strengthening bond with the same surety to attain a sufficient penal sum, or give a new bond to cover the entire liability. Strengthening bonds will not be approved where any notation is made thereon which is intended, or which may be construed, as a release of any former bond, or as limiting the amount of any bond to less than its full penal sum. Strengthening bonds shall show the current date of execution and the effective date.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1394, as amended (26 U.S.C. 5551); Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

New or Superseding Bonds

§ 19.247 General.

New bonds shall be required in case of insolvency or removal of any surety, and may, at the discretion of the regional regulatory administrator, be required in any other contingency affecting the validity or impairing the efficiency of such bond. Executors, administrators, assignees, receivers, trustees, or other persons acting in a fiduciary capacity, continuing or liquidating the business of the principal, shall execute and file a new bond or obtain the consent of the surety or sureties on the existing bond or bonds. When, under the provisions of § 19.250, the surety on any bond given under this subpart has filed an application to be relieved of liability under said bond and the principal desires or intends to continue the business or operations to which such bond relates, he shall file a valid superseding bond to be effective on or before the date specified in the surety's notice. New or superseding bonds shall show the current date of execution and the effective date.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended, 1394, as amended (26 U.S.C. 5175, 5176, 5551); Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

§ 19.248 New or superseding bond.

(a) *Operations bond.* When a new or superseding operations bond is not given as required in § 19.247, the principal shall immediately discontinue the business or distilled spirits operations to which such bond relates.

(b) *Withdrawal bond.* When a new or superseding withdrawal bond is not given as required by § 19.247, the principal may not withdraw any distilled spirits from bonded premises (other than distilled spirits withdrawn under 26 U.S.C. 5214 or 7510) except on prior payment of tax.

(c) *Unit bond.* When a new or superseding unit bond is not given as required by § 19.247, the principal shall immediately discontinue the business or distilled spirits operations to which such bond relates and may not withdraw any distilled spirits from bonded premises (other than distilled spirits withdrawn under 26 U.S.C. 5214 or 7510) except on prior payment of tax.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5175, 5176); Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

Termination of Bonds

§ 19.249 Termination of bonds.

Operations, withdrawal, or unit bonds may be terminated as to liability for future withdrawals and/or to future production or deposits (a) pursuant to application of the surety as provided in § 19.250, (b) on approval of a superseding bond, (c) on notification by the principal that he has discontinued withdrawals under the bond if such bond was filed solely as a withdrawal bond, or (d) on notification by the principal that he has discontinued business.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5175, 5176); Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

§ 19.250 Application of surety for relief from bond.

A surety on any operations, withdrawal, or unit bond may at any time in writing notify the principal and the regional regulatory administrator in whose office the bond is on file that he desires, after a date named, to be relieved of liability under said bond. Such date shall not be not less than 10 days after the date the notice is received by the regional regulatory administrator in the case of a withdrawal bond, and not less than 90 days after the date the notice is received in the case of an operations or unit bond. The surety shall also file with the regional regulatory administrator an acknowledgement or other proof of service on the principal. If such notice is not thereafter in writing withdrawn, the rights of the principal as supported by said bond shall be terminated on the date named in the notice, and the surety shall be relieved from liability to the extent set forth in § 19.251.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5175, 5176); Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

§ 19.251 Relief of surety from bond.

(a) *General.* The surety on an operations, withdrawal, or unit bond who has filed application for relief from liability as provided in § 19.250 shall be relieved from liability under such bond as set forth in this section.

(b) *Operations or unit bonds.* Where a new or superseding bond is filed, the surety shall be relieved of future liability with respect to production and deposits wholly subsequent to the effective date of the new or superseding bond. Notwithstanding such relief, the surety shall remain liable for the tax on all distilled spirits or wines produced, or for other liabilities incurred, during the term of the bond. Where a new or superseding bond is not filed the surety shall, in addition to the continuing liabilities above specified, remain liable under the bond for all spirits or wines on hand or in transit to the bonded premises or bonded wine cellar, as the case may be, on the date named in the notice until all such spirits or wines have been lawfully disposed of, or a new bond has been filed by the principal covering the same.

(c) *Withdrawal or unit bonds.* The surety shall be relieved from liability for withdrawals made wholly subsequent to the date specified in the notice, or the effective date of a new bond, if one is given.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5176); Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

§ 19.252 Release of pledged securities.

Securities of the United States pledged and deposited as provided in § 19.236 shall be released only in accordance with the provisions of 31 CFR Part 225. Such securities will not be released by the regional regulatory administrator until liability under the bond for which they were pledged has been terminated. When the regional regulatory administrator is satisfied that they may be released, he shall fix the date or dates on which a part or all of such securities may be released. At any time prior to the release of such securities, the regional regulatory administrator may extend the date of release for such additional length of time as he deems necessary.

(Ch. 390, Pub. L. 80–280, 61 Stat. 650 (6 U.S.C. 15))

Subpart I—Construction, Equipment and Security

§ 19.271 Construction of buildings.

Buildings in which spirits (including denatured spirits), articles, or wines are produced, stored, or processed shall be constructed with substantial material (e.g., masonry, concrete, wood, metal, etc.), and arranged, equipped, and protedted to provide adequate security to the revenue.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5178))

§ 19.272 Equipment.

The proprietor shall provide equipment suitable for the operations conducted on the distilled spirits plant. The equipment shall also meet the needs for revenue protection.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5178))

§ 19.273 Tanks.

(a) *General.* (1) Tanks used as receptacles for spirits (including denatured spirits) or wines shall be located, constructed, and equipped to be suitable for the intended purpose and to allow ready examination the intended purpose and to allow ready examination.

(2) An accurate means of measuring the contents of each tank shall be provided by the proprietor.

(3) When a means of measuring is not a permanent fixture of the tank, the tank shall be equipped with a fixed device to allow the approximate contents to be determined readily.

(4) Tanks used for determining the tax imposed by 26 U.S.C. 5001 shall be mounted on scales and an additional suitable device shall be provided so that the volume of the contents can be quickly and accurately determined.

(5) The proprietor shall install walkways, landings, and stairways which will permit safe access to all parts of a tank.

(6) Tanks in which gauges required by this part are to be made shall not be used until they are accurately calibrated and a statement of certification of acccurate calibration is included in the notice of registration.

(7) If tanks or their fixed gauging devices are moved in location or position subsequent to original calibration, the tanks shall not be used until recalibrated.

(8) All openings in the tanks shall be equipped for locking or have a similar means of revenue protection.

(9) Any tank vents, flame arresters, foam devices, or other safety devices shall be constructed to prevent extraction of spirits or wines.

(b) *Scale tanks.* (1) Beams or dials of scale tanks used for determining the tax imposed by 26 U.S.C. 5001 shall have minimum graduations not greater than the following:

Quantity to be weighed	Minimum graduation
Not exceeding 2,000 pounds	½ pound
Between 2,000 and 6,000 pounds	1 pound
Between 6,000 and 20,000 pounds	2 pounds
Between 20,000 and 50,000 pounds	5 pounds
Over 50,000 pounds	10 pounds

(2) For scales having a capacity greater than 2,000 pounds, the minimum quantity which may be entered onto the weighing tank scale for gauging for tax determination shall be the greater of (i) 1,000 times the minimum graduation of the scale or (ii) 5 percent of the total capacity of the weighing tank scale.

(3) The weighing of lesser quantities for determination of tax may be authorized by the regional regulatory administrator where the beam of the scale is calibrated in ½ pound or 1 pound graduations and it is found by actual test that the scales break accurately at each graduation.

(4) Lots of spirits weighing 1,000 pounds or less shall be weighed on scales having ½ pound graduations.

(c) *Testing of scale tanks.* (1) Proprietors shall ensure the accuracy of scales used for weighing lots of spirits (including denatured spirits) through tests conducted by responsible scale companies or governmental agencies at intervals of not more than 6 months.

(2) When a scale is tested, adjusted or repaired, the proprietor shall prepare or secure a signed statement certifying that the scale has been tested, adjusted, or repaired, as the case may be, and found to be accurate.

(3) Proprietors shall also test, at least once a month, the gallonage represented to be in a scale tank against the gallonage indicated by volumetric determination of the contents of the tank. However, if the scale is not used during a month the volumetric determination need only be verified at the next time actually used.

(4) The volumetric determination shall be made in accordance with Part 13 of this chapter, and if the variation exceeds 0.5 percent of the quantities shown to be in the tank, the proprietor shall take appropriate steps to have the accuracy of the scale verified.

(5) When an ATF officer determines that a tank scale may be inaccurate, the proprietor shall have the accuracy of the scale tested.

(6) A record shall be maintained of test results at the distilled spirits plant.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1320, as amended, 1358, as amended, 1391, as amended (26 U.S.C. 5006, 5204, 5505))

§ 19.274 Pipelines.

(a) *General.* (1) Pipelines for the conveyance of spirits (including denatured spirits), articles, or wines shall be of permanent character and constructed, connected, arranged, and secured so as to afford adequate protection to the revenue and to permit ready examination. However, the regional regulatory administrator may approve pipelines which may not be readily examined if no jeopardy to the revenue is created.

(2) Where a pipeline connection must be flexible, a hose may be used if connected and secured so as to protect the revenue.

(b) *Identification.* The regional regulatory administrator may require permanent pipelines for conveyance of spirits (including denatured spirits) to be color coded to provide identification.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5178))

§ 19.275 Continuous distilling system.

The distilling system shall be continuous, and designed, constructed, and connected in such a manner as to prevent the unauthorized removal of distilled spirits. Security of the distilling system shall be maintained by locks, or by other methods affording comparable protection.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5178))

§ 19.276 Package and case scales.

The proprietor shall provide a scale suitable for the weighing of packages. The proprietor shall, not less than once each month, test the accuracy of the scales. However, if the scales are not used during a month, the scales need only be tested prior to use. A record shall be maintained of test results. Scales used to weigh packages or cases designed to hold 10 wines gallons or less shall indicate weight in ounces or in hundredths of a pound.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

§ 19.277 Measuring devices and proofing instruments.

The proprietor shall provide for his own use accurate hydrometers, thermometers, and other necessary equipment to determine proof or volume.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

§ 19.278 Identification of structures, areas, apparatus, and equipment.

(a) Each room or enclosed area where spirits (including denatured spirits), articles, wine, distilling or fermenting materials, or containers are held, and each building, within the plant, shall be appropriately marked with a distinguishing number or letter.

(b) Each tank or receptacle for spirits (including denatured spirits) or wine shall be marked to show its serial number and capacity.

(c) Each still, fermenter, cooker, and yeast tank shall be numbered and marked to show its use.

(d) All other major equipment used for processing or containing spirits (including denatured spirits) or wine, or distilling or fermenting material, and all

other tanks, shall be identified as to use unless the intended purpose is readily apparent.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5178))

§ 19.279 Government office.

The proprietor shall provide an office at the distilled spirits plant for the exclusive use of ATF officers in performing supervisory and administrative duties and safeguarding Government records and property. The office shall be provided with adequate office furniture, lighting, ventilation, heating, and toilet and lavatory facilities. A secure cabinet, fitted for locking with a Government lock and of adequate size, shall also be provided by the proprietor. The office and facilities provided by the proprietor shall be subject to the approval of the regional regulatory administrator. Where suitable facilities are otherwise available, the regional regulatory administrator may waive the requirements for a separate Government office.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5178))

§ 19.280 Signs.

The proprietor shall place a sign conspicuously on the outside entrance to the distilled spirits plant. The sign shall have legible and durable characters that state:

(a) The real name of the proprietor. However, where registered to operate under a basic operating name (i.e., the name of a division of a corporation or the name of a partnership), the operating name shall be on the sign;

(b) The distilled spirits plant number; and

(c) The operations conducted (distiller, warehouseman, or processor) or designations which have obtained public and commercial significance (i.e., industrial alcohol plant, registered distillery).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1355, as amended (26 U.S.C. 5180))

§ 19.281 Security.

(a) *General.* The proprietor shall provided adequate security measures at the distilled spirits plant to protect the revenue. The proprietor shall upon request of the regional regulatory administrator file a statement of security. After the regional regulatory administrator approves the statement of security prescribed in this section, the proprietor shall affix his locks to buildings, rooms and outside tanks as designated in the statement of security.

(b) *Buildings.* The buildings, rooms, and partitions shall be constructed of substantial materials. Doors, windows, or any other openings to the building shall be locked or fastened during times when distilled spirits plant operations are not being conducted.

(c) *Outdoor tanks.* Outdoor tanks in use for the storage of spirits (including denatured spirits), or wine shall remain locked unless operations are involving the tanks. The outdoor tanks need not be locked if another secure barrier (i.e., tank farm fence) has been provided and the entrance is locked when no outdoor tank operations are occurring.

(d) *Indoor tanks.* Tanks used for the storage of spirits (including denatured spirits), or wines, which are located in a secure room or building, shall be equipped for locking or affixing other similar security devices. Indoor tanks need not be locked if the entrances to rooms or buildings are secured with locks when no tank operations are occurring.

(e) *Approved locks.* Locks, which proprietors affix in place of Government locks on outside tanks or outside doors to rooms or buildings containing bulk distilled spirits in storage, shall meet the following minimum specifications:

(1) Corresponding serial number on the lock and on the key;

(2) Case hardened shackle at least one-fourth inch in diameter, with heel and toe locking;

(3) Body width of at least 2";

(4) Captured key feature (key may not be removed while shackle is unlocked);

(5) Tumbler with at least 5 pins; and

(6) Lock or key contains no bitting data. Master key locking systems may be used at the option of the proprietor. Locks meeting the specifications in this section are approved locks for the purpose of 26 U.S.C. 5682. Proprietors who wish to use locks of unusual design, which do not meet the specifications in this part, shall submit an example or prototype of the lock to the Director with a request that the lock be approved for use.

(f) *Additional security.* Where the regional regulatory administrator finds the construction, arrangement, equipment, or protection inadequate, additional security shall be provided (i.e., fences, flood lights, alarm systems, watchman services) or changes in construction, arrangement, or equipment shall be made to the extent necessary to protect the revenue.

(g) *Statement of security.* Prior to commencing operations, or as provided in § 19.922, the proprietor shall submit a statement of security describing the security measures at the distilled spirits plant to the regional regulatory administrator for approval. The regional regulatory administrator may require that the statement of security be modified prior to approval. The statement of security shall include:

(1) A general description of the physical security at the distilled spirits plant, including methods utilized to secure buildings and outdoor tanks;

(2) If guard personnel are employed, the number of guards and their shifts and responsibilities;

(3) If any electronic or mechanical alarm system is used, how this system works;

(4) The type of locks used (including brands, models, and serial numbers);

(5) A statement certifying that locks used meet the specifications provided in paragraph (e) of this section;

(6) A list of persons by position or title having responsibility for the custody of and access to keys for approved locks used at the distilled spirits plant.

The proprietor shall report to the regional regulatory administrator any change in personnel or procedures as contained in the statement of security on file. The proprietor shall fully comply with the approved statement of security.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended, 1410, as amended (26 U.S.C. 5178, 5682); Sec. 806, Pub. L. 96–39, 93 Stat. 279 (26 U.S.C. 5202))

Subpart J—Production

§ 19.311 Notice by proprietor.

(a) *Commencement of operations.* The proprietor shall, before commencing production operations or resuming production operations after having given notice of suspension, file a notice on Form 5110.34 with the area supervisor, specifying the date on which he desires to commence or resume operations for the production of spirits. The notice shall be filed in accordance with the instructions on the form. The proprietor shall not commence or resume operations prior to the time specified in the notice.

(b) *Suspension of operations.* Any proprietor desiring to suspend production operations for a period of 90 days or more shall file notice on Form 5110.34 with the area supervisor specifying the date on which he will suspend operations. The notice shall be filed in accordance with instructions on the form. In case of an accident which makes it apparent that operations cannot be conducted for 90 days or more, the proprietor shall give immediate notice of suspension on Form 5110.34.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1364, as amended (26 U.S.C. 5221))

§ 19.312 Receipt of materials.

The quantities of fermenting and distilling materials received shall be determined by the proprietor and reported as provided in Subpart W of this part. Distilling materials, as used in this section, means: spirits (including denatured spirits), articles and spirits residues, for redistillation, and extracted oils of juniper berries and other natural aromatics to be used in the course of original and continuous distillation of gin and, nonpotable chemical mixtures containing spirits produced in accordance with § 19.66. Fermented material (except apple cider exempt from tax under 26 U.S.C. 5042(a)(1)) to be used in the production of spirits shall be produced on the bonded premises where used or must be received on the premises from (a) a bonded wine cellar, in the case of wine, or (b) a contiguous brewery where produced, in the case of beer.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1365, as amended (26 U.S.C. 5201, 5222, 5223))

§ 19.313 Use of materials in production of spirits.

The proprietor may produce spirits from any suitable material in accordance with statements of production procedure in his notice of registration. The distillation of nonpotable chemical mixtures received pursuant to application as provided in § 19.66 shall be deemed to be the original and continuous distillation of the spirits in such mixtures and to constitute the production of spirits. Materials from which alcohol will not be produced may be used in production only if the use of the materials is described in approved statements of production procedure.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1353, as amended (26 U.S.C. 5172, 5178))

§ 19.314 Removal of fermenting material.

Material received for use as fermenting material may be removed from or used on bonded premises for other purposes. A record of use or removal shall be kept, as provided in Subpart W.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, (26 U.S.C. 5201); Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.315 Removal or destruction of distilling material.

Except as provided in this section, distilling material shall not be removed from bonded premises before being distilled. On submission of a letter notice to the area supervisor, the proprietor may remove mash, wort wash or other distilling material—(a) to plant premises, other than bonded premises for use in such businesses as may be authorized under § 19.73; (b) to other premises for use in processes not involving the production of (1) spirits (2) alcoholic beverages, or (3) vinegar by the vaporizing process; (c) for destruction. The residue of distilling material not introduced into the production system may be removed from the premises if the liquid is expressed from the material before removal and such liquid is not received at any distilled spirits plant or bonded wine cellar. Residue of beer used as distilling material may be returned to the producing brewery. Distilling material produced and wine and beer received for use as distilling material may be destroyed. A record of removal or destruction shall be kept as provided in Subpart W of this Part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1365, as amended, 1381, as amended (26 U.S.C. 5222, 5370))

§ 19.316 Distillation procedure.

The procedure for distillation shall be such that the spirits pass through a continuous system from the first still where entry into the system would constitute a jeopardy to the revenue until the production procedure is completed. The distiller may, in the course of production, convey the product through as many distilling operations as desired, provided the operations are continuous. Distilling operations are continuous when the spirits are conveyed through the various steps of production as expeditiously as plant operation will permit. The collection of unfinished spirits for the purpose of redistillation is not deemed to be a break in the continuity of the distilling procedure. However, the quantity and proof of any unfinished spirits produced from distilling materials, the quantity of which was ascertained in the manner authorized in § 19.752(c) for such materials, shall be determined and recorded before any mingling with other materials or before any further operations involving the unfinished spirits. Spirits may be held, prior to the production gauge, only for so long as is reasonably necessary to complete the production procedure.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended, 1362, as amended, 1365, as amended (26 U.S.C. 5178, 5211, 5222))

§ 19.317 Treatment during production.

Spirits may, in the course of original and continuous distillation, be purified or refined through, or by use of, any material which will not remain incorporated in the finished product. Juniper berries and other natural aromatics, or the extracted oils of such, may be used in the distillation of gin. Spirits may be percolated through or treated with oak chips which have not been treated with any chemical. Materials used in treatment of spirits, and which do not remain in the spirits, shall be destroyed or so treated as to preclude the extraction of potable spirits therefrom.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.318 Addition of caramel to rum or commercial brandy and addition of oak chips to spirits.

Caramel possessing no material sweetening properties may be added to rum or commercial brandy on bonded premises prior to production gauge. Oak chips which have not been treated with any chemical may be added to packages prior to or after production gauge; however, notation to that effect shall be made on the gauge form prescribed by § 19.319.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.319 Production gauge.

(a) *General.* All spirits shall be gauged (by measuring and proofing) within a reasonable time after production is completed. Except as otherwise specifically provided in this section, quantities may be determined by volume or by weight, by meter, or, when approved by the Director, by another method which accurately determines the quantities. If caramel is added to brandy or rum, the proof of the spirits shall be determined after the addition. Spirits in a tank shall be gauged before and after each removal of spirits therefrom. The gauges shall be recorded by the proprietor in the records required by § 19.756.

(b) *Tax to be determined on production gauge.* Tax may be determined on the basis of the production guage if:

(1) Spirits are weighed into bulk conveyances; or

(2) Spirits are uniformly filled by weight into metal packages.

Production and deposit forms shall be marked "Withdraw on Original Gauge."

(c) *Tax not to be determined on production gauge.* If spirits are drawn from the production system into barrels, drums, or similar portable containers of the same rated capacity and the containers are filled to capacity, and the tax is not to be determined on the basis of the production gauge, the gauge may be made by: (1) Weighing in a tank, converting the weight into proof gallons,

and determining the average content of each container; or

(2) Measuring volumetrically, in a calibrated tank, converting the wine gallons determined into proof gallons, and determining therefrom the average content of each container. However, the regional regulatory administrator may require the use of meters or other measuring devices in lieu of a calibrated tank; or

(3) Converting the rated capacity into proof gallons to determine the average content of each container; or

(4) Determining by a device or method approved under the provisions of paragraph (a) of this section, the total quantity filled into containers, and determining therefrom the average content of each container.

Rated capacity of new cooperage shall be as prescribed by specifications of the manufacturer, or in the case of used cooperage, as determined by the proprietor.

(d) *Records of production gauge.* In computing the production gauge on the basis of average content of packages as provided in paragraph (c) of this section, fractional proof gallons shall be rounded to the nearest one-tenth and the average content so determined shall be used in computing the quantity produced. A separate Form 5110.26 shall be prepared for each lot of packages filled (see § 19.593(b)) and for each removal by pipeline or bulk conveyance for deposit in bond on the same plant premises. Form 5110.26 shall indicate "Deposit in storage" or "Deposit in processing." If spirits are to be transferred in bond, or withdrawn from bond, as authorized by this part, the production gauge shall be made on the form required by this part for the transaction (accompanied by Form 5110.45, if required). Each transaction form and Form 5110.45, if any, shall show:

(1) The real name (or basic operating name as provided in § 19.280) of the producer, and, if the spirits are produced under a trade name, the trade name under which produced.

(2) For each remnant container, the actual proof gallons in the container.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1362, as amended (26 U.S.C. 5204, 5211))

§ 19.320 Identification of spirits.

At the time of production gauge, containers of spirits shall be identified by the proprietor in accordance with Subpart Q of this part. When the proprietor desires to enter spirits into bonded storage for subsequent packaging in wooden packages, he may identify such spirits with the specific designation to which they would be entitled if drawn into wooden packages, followed by the word "Designate", for example, "Bourbon Whisky Designate."

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1360, as amended (26 U.S.C. 5201, 5206))

§ 19.321 Entry.

Pursuant to the production gauge, the proprietor shall make appropriate entry for (a) deposit of the spirits on bonded premises for storage or processing, (b) withdrawal of the spirits on determination of tax, (c) withdrawal of the spirits free of tax, (d) withdrawal of the spirits without payment of tax, or (e) transfer of the spirits for redistillation. Entry for deposit on the bonded premises of the same plant premises shall be made on Form 5110.26. When spirits are entered for deposit on another plant premises or are entered for withdrawal or redistillation, the provisions of Subpart O of this part shall be followed.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5211))

§ 19.322 Receipts for redistillation.

A proprietor authorized to produce distilled spirits may receive and redistill spirits (including denatured spirits), which: (a) have not been removed from bond; (b) have been withdrawn from bond on payment or determination of tax, and are eligible for return to bond as provided in Subpart U of this part; (c) have been withdrawn from bond free of tax or without payment of tax, and are eligible for return to bond as provided in Subpart U; or (d) have been abandoned to the United States and sold to the proprietor without the payment of internal revenue tax. The proprietor may also receive and redistill recovered denatured spirits and recovered articles returned under the provisions of § 19.703, and articles and spirits residues received under the provisions of § 19.704.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1365, as amended, 1370, as amended (26 U.S.C. 5223, 5243); Sec. 807, Pub. L. 96–39, 93 Stat. 285 (26 U.S.C. 5215))

§ 19.323 Redistillation.

Spirits shall not be redistilled at a proof lower than that prescribed for the class and type at which such spirits were originally produced, unless the redistilled spirits are to be used in wine production, to be used in the manufacture of gin or vodka, or to be designated as alcohol. Different kinds of spirits must be redistilled separately, or with distilling material of the same kind or type as that from which the spirits were originally produced. However, such restriction shall not apply when (a) brandy is redistilled into "spirits-fruit" or "neutral spirits-fruit" (not for use in wine production), (b) whisky is redistilled into "spirits-grain" or "neutral spirits-grain", (c) spirits originally distilled from different kinds of material are redistilled into "spirits-mixed" or "neutral spirits-mixed", or (d) the spirits are redistilled into alcohol. All spirits redistilled subsequent to production gauge shall be treated the same as if such spirits had been originally produced by the redistiller and all provisions of this part and 26 U.S.C. Chapter 51 (including liability for tax attaching to spirits at the time of production) applicable to the original production of spirits shall be applicable thereto, except that spirits recovered by redistillation of denatured spirits, articles, or spirits residues may not be withdrawn from bonded premises except for industrial use or after denaturation thereof. Any redistillation of spirits, unless accomplished pursuant to § 19.383 shall be done as a production operation by a person qualified as a distiller. Nothing in this section shall be construed as affecting any provision of this chapter or of 27 CFR Part 5 relating to the labeling of distilled spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1365, as amended (26 U.S.C. 5223))

§ 19.324 Losses in production.

The distiller shall report any unusual loss of distilling material or spirits in the production facilities to the area supervisor as soon as practical after discovery of the loss. The regional regulatory administrator may require the distiller to submit proof as to the cause of such loss and, where deemed necessary, to file a claim for remission of tax, as provided in Subpart C of this part. In every case where it appears that the loss was by theft, the burden shall be on the proprietor to establish to the satisfaction of the regional regulatory administrator that such theft did not occur as a result of connivance, collusion, fraud, or negligence on his part or on the part of any of his employees or agents.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended (26 U.S.C. 5008))

§ 19.325 Distillates containing extraneous substances.

(a) *Use in production.* Distillates containing substantial quantities of fusel oil, aldehydes, or other extraneous substances may be removed from the distilling system prior to the production gauge for addition to fermenting or distilling material at the distillery where produced. Distillates removed from the distilling system under the provisions of

this paragraph shall be added promptly to the fermenting or distilling material.

(b) *Use at bonded wine cellar.* Distillates containing aldehydes may be removed, without payment of tax, to an adjacent bonded wine cellar for use therein for fermentation of wine to be used as distilling material at the distilled spirits plant from which the distillates were removed. The gauge and removal of distillates to an adjacent bonded wine cellar shall be in accordance with the applicable provisions of Subpart O of this part relating to withdrawal of wine spirits for use in wine production and the receipt and use of such distillates at an adjacent bonded wine cellar shall be in accordance with the provisions of 27 CFR Part 240.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1365, as amended, 1382, as amended (26 U.S.C. 5201, 5222, 5273))

Chemical By products

§ 19.326 Spirits content of chemicals produced.

All chemicals produced, including chemical by-products of the spirits production system, shall be substantially free of spirits before being transferred to tanks or removed from the bonded premises of the distilled spirits plant. Except as authorized by the Director, the spirits content of such chemicals shall not exceed 10 percent by volume. Proprietors will test chemicals for spirits content in accordance with methods approved by the Director. Records of the tests will be maintained as prescribed by Subpart W.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.327 Disposition of chemicals.

Chemical by-products of the spirits production system may be removed from the plant premises by pipeline or in such containers as the proprietor may desire. The quantities of such chemicals removed from the plant premises shall be determined by the proprietor and records of removals maintained as prescribed by Subpart W. Packages of such chemicals shall be appropriately marked by the proprietor to show the nature of the contents. Products to be removed shall be subject to such sampling by ATF officers as may be deemed necessary.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1365, as amended (26 U.S.C. 5201, 5222))

§ 19.328 Wash water.

Water used in washing chemicals to remove spirits therefrom may be run into a wash tank or a distilling material tank, or otherwise properly destroyed or disposed of on the premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended, 1356, as amended (26 U.S.C. 5008, 5201))

Inventories

§ 19.329 Inventories.

Each distiller shall take a physical inventory of the spirits and denatured spirits in tanks and other vessels at the close of each calendar quarter. The inventory shall differentiate between spirits and denatured spirits received for redistillation and other spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

Subpart K—Storage

§ 19.341 General.

Proprietors who are qualified as warehousemen as provided in this part, and who have otherwise complied with the requirements of this part for the storage of bulk distilled spirits and wines, may conduct such operations pursuant to the provisions of this part. Proprietors shall not conduct storage operations except as provided in this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.342 Receipt and storage of bulk spirits and wines.

(a) *Deposit.* All spirits entered for deposit in storage after production as provided in Subpart J shall be deposited on the bonded premises designated in the entry for deposit. Spirits withdrawn from customs custody without payment of tax under the provisions of this part shall be received on the bonded premises to which so withdrawn and (unless to be immediately redistilled) shall be deposited on such premises. Spirits transferred in bond as provided in Subpart O shall be deposited on the bonded premises designated on the transfer form.

(b) *Tanks.* If spirits or wines are being deposited in a partially filled tank in storage on bonded premises, simultaneous withdrawals may not be made therefrom unless the flow of spirits or wines into and out of the tank is being measured by meters or other devices approved by the Director which permit a determination of the quantity being deposited and the quantity being removed. Proprietors shall maintain Form 5110.29 in accordance with the instructions on the form, for each tank in which spirits of less than 190 degrees of proof or wines are stored.

(c) *Storage.* Spirits or wines may be stored on bonded premises in tanks or portable bulk containers into which spirits or wines may be filled on bonded premises. Containers used for such storage shall be so stored that they can be readily inspected or inventoried by ATF officers. The provisions of § 19.133 are applicable to storage of bulk spirits or wines in portable containers. However, on application submitted to, and approval by, the regional regulatory administrator, the proprietor may be authorized to store packages in any manner which adequately safeguards the interests of the Government.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1362, as amended, 1366, as amended, 1398, as amended (26 U.S.C. 5201, 5211, 5212, 5232, 5601); sec. 806(a), Pub. L. 96–39, 93 Stat. 279 (26 U.S.C. 5202); sec. 807 (a), Pub. L. 96–39, 93 Stat. 286 (26 U.S.C. 5231))

§ 19.343 Addition of oak chips to spirits and addition of caramel to brandy and rum.

Oak chips which have not been treated with any chemical may be added to packages either prior to or after filling; if added prior to gauge for withdrawal from storage notation shall be made on the deposit form and, if transferred, on the transfer form. Caramel possessing no material sweetening properties may be added to rum or commercial brandy in packages or tanks.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

Filling and Changing Packages

§ 19.344 Filling of packages from tanks.

Spirits or wines may be drawn into packages from storage tanks on bonded premises. The spirits or wines in the tank shall be gauged prior to filling of packages, and when only a portion of the contents of the tank is packaged, the spirits or wines remaining in the tank shall be again gauged and such gauges shall be recorded by the proprietor in the records required by § 19.760. The provisions of § 19.319 regarding the filling of packages, the taking of production gauge of packages, and the preparation of gauge reports shall be applicable to the filling and gauging of packages of spirits under this section.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.345 Change of packages.

Spirits or wines in storage may be transferred from one package to another. Except in the case of spirits of 190 degrees or more of proof, each new package shall contain spirits from only one package. Packages shall be marked and branded as provided in Subpart Q of this part. The proprietor shall note the record covering the deposit of the spirits in bond to show the proof gallons contained in each new package. In the

case of wines, each package shall bear the same marks as the package from which the wine was transferred.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

Mingling of Blending or Spirits

§ 19.346 Mingling or blending of spirits for further storage.

The following mingling or blending operations are permissible in the storage account of a warehouseman:

(a) *Mingling of spirits distilled at 190 degrees or more of proof.* Spirits distilled at 190 degrees or more of proof, whether or not subsequently reduced, may be mingled in storage.

(b) *Mingling of spirits distilled at less than 190 degrees of proof.* Spirits distilled at less than 190 degrees of proof may be mingled for withdrawal or further storage if—

(1) In the case of dometic spirits:

(i) Such spirits are of the same kind; and

(ii) Such spirits were produced by the same proprietor (under his own or any trade name) at the same distillery.

(2) In the case of imported spirits:

(i) Such spirits are of the same kind;

(ii) Such spirits were produced by the same proprietor at the same foreign distillery; and

(iii) Such spirits were treated, blended, or compounded at the same foreign plant by the same person, and the duty was paid at the same rate.

(c) *Permissible blending of beverage rums or brandies.* Fruit brandies distilled from the same kind of fruit at not more than 170 degrees of proof may, for the sole purpose of perfecting such brandies according to commercial standards, be blended with each other, or with any blend of such fruit brandies in storage. Rums may, for the sole purpose of perfecting them according to commercial standards, be blended with each other, or with any blend of rums.

(d) *Packaging of mingled spirits or blended rums and brandies.* Packaging after mingling or blending shall be conducted under the provisions of § 19.344. If so desired, the mingled or blended spirits may be returned to the packages from which they were dumped for mingling or blending, or as many of such packages as are necessary.

(Sec. 201, Pub L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.347 Packages dumped for mingling or blending.

When dumping packages of spirits of less than 190 degrees of proof in storage for mingling or blending, the proprietor shall record such mingling or blending on Form 5110.29 in accordance with the instructions on the form. When packages of spirits of 190 degrees or more of proof are to be mingled, the proprietor shall prepare Form 5110.26 to reflect the dumping of the packages for mingling and, when applicable, the repackaging, of the spirits. Each package of spirits to be mingled or blended under this subpart shall be examined by the proprietor, and if any package bears evidence of loss due to theft or unauthorized voluntary destruction, such package shall not be dumped until the area supervisor has been notified and releases the package. Each disposition of spirits of less than 190 degrees of proof from a tank shall be recorded on Form 5110.29 as it occurs.

(Sec. 201, Pub. L. 85–859, 72 Stat 1356, as amended (26 U.S.C. 5201))

§ 19.348 Determining age of mingled or blended spirits or date of fill for imported spirits.

(a) *Age.* When spirits are mingled or blended in accordance with § 19.346 (b) or (c), the age of the spirits for the entire lot shall be the age of the youngest spirits contained in the lot. Age shall be stated in years, months and days.

(b) *Date of fill for imported spirits.* For purposes of this part, the date of fill for spirits imported in packages shall be the date of release from customs custody.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201); Sec. 807, Pub. L. 96–39 (26 U.S.C. 5207))

§ 19.349 Mingled or blended spirits or wines held in tanks.

When spirits of less than 190 degrees of proof or wines are mingled or blended in a tank, the proprietor shall gauge the spirits or wines in the tank and record the mingling gauge on Form 5110.29.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.350 Transfer, withdrawal, or movement between accounts.

Spirits mingled or blended under the provisions of § 19.346 may be transferred in bond, moved between accounts or withdrawn from bond for any purpose for which the spirits could have been withdrawn before mingling or blending. Transfer forms, except as to spirits mingled under § 19.346(a) shall be noted to show the age of the spirits after mingling, determined as provided in § 19.348.

(Sec. 201, Pub. L. 85–859, 72 Stat 1356, as amended 1362, as amended (26 U.S.C. 5201, 5212))

Inventories

§ 19.353 Inventories.

Each warehouseman shall take a physical inventory of all spirits and wines in storage tanks and other vessels (except packages) at the close of each calendar quarter and at such other times as the regional regulatory administrator may require. The inventory shall separately identify spirits and wines. The results of the inventory shall be recorded in accordance with Subpart W of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

Subpart L—Processing Operations Other Than Denaturation and Manufacture of Articles

§ 19.371 General.

Proprietors, who are qualified as processors as provided in this part, shall conduct operations relating to the manufacture, treatment, mixing or bottling of distilled spirits on bonded premises pursuant to the provisions of this subpart. Proprietors, who conduct operations relating to the denaturation of spirits or the manufacture of articles on bonded premises, pursuant to the provisions of Subpart M of this part, shall be qualified as processors.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

Receipt of Spirits and Wines

§ 19.376 Receipt of spirits and wines for processing.

(a) Proprietors may receive into the processing account—

(1) Bulk spirits (i) from the production or storage account at the same plant, (ii) by transfer in bond from another distilled spirits plant, or (iii) on withdrawal from customs custody under 26 U.S.C. 5232;

(2) Wines (i) from the storage account at the same plant, or (ii) by transfer in bond from a bonded wine cellar or another distilled spirits plant;

(3) Spirits returned to bond under the provisions of 26 U.S.C. 5215; or

(4) Nonbeverage products manufactured under 26 U.S.C. 5131–5134.

(b) Spirits and wines received in bulk containers shall be recorded as dumped on receipt, but may be retained in the containers in which received until used. Spirits and wines received by pipeline or in bulk conveyances shall be deposited in tanks, gauged by the proprietor, and recorded as dumped. Alcoholic flavoring materials may be retained in the containers in which received or may be transferred to another container if the proprietor marks or otherwise indicates thereon,

the full identification of the original container, the date of receipt, and the quantity deposited. Alcoholic flavoring materials and nonalcoholic ingredients shall be considered dumped when mixed with spirits or wines. The proof gallon content of spirits, wines, and alcoholic flavoring materials shall be determined at the time of dumping.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.377 Receipt of Puerto Rican and Virgin Islands spirits.

Proprietors shall maintain a separate accounting in proof gallons of Puerto Rican or Virgin Islands spirits received in the processing account for nonindustrial use, showing spirits from the storage account of the same or another plant or from customs custody. Each month proprietors shall determine the percentage of overall monthly processing gains or losses of nonindustrial spirits. The proof gallons of Puerto Rican or Virgin Islands spirits received in processing during any month shall be adjusted by the percentage of overall gains or losses for the month. Proprietors shall file monthly reports on Form 5110.28 showing separately the adjusted proof gallons of Puerto Rican rum, other Puerto Rican spirits, and Virgin Islands spirits received in processing as provided in § 19.786.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1394, as amended (26 U.S.C. 5555))

§ 19.378 Tank record of alcoholic flavoring materials.

When alcoholic flavoring materials are deposited in a tank for storage prior to dumping, the proprietor shall prepare a tank record showing the consignor, the date and quantity received, and the name of the product. The proprietor shall enter on such record the date and quantity of each removal from the tank and each loss ascertained to have occurred therefrom.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.379 Containers bearing evidence of theft or unusual loss.

The proprietor shall inspect containers of spirits or wines at the time of their receipt for processing. If the proprietor finds evidence of unusual loss or loss due to theft, he shall promptly report the matter to the area supervisor and hold the container pending the area supervisor's advice as to its disposition. If the proprietor finds that any container is missing from the shipment, he shall promptly report such fact to the area supervisor.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended, 1356, as amended (26 U.S.C. 5008, 5201))

Use of Alcoholic Ingredients

§ 19.381 Record of use.

(a) *Dump record.* When spirits, wines, and alcoholic flavoring materials are dumped for use in the manufacture of a distilled spirits product, and spirits are to be removed by pipeline or bulk conveyance, the proprietor shall prepare a dump record.

(b) *Batch record.* Proprietors shall prepare a batch record to report—

(1) The dumping of spirits which are to be used immediately and in their entirety in preparing a batch of a product manufactured under an approved formula;

(2) The use of spirits or wines previously dumped, reported on dump records and retained in tanks or receptacles; and

(3) Any combination of ingredients in paragraphs (b) (1) and (2) of this section used in preparing a batch of a product manufactured under an approved formula. Batch records shall be annotated to separately identify alcoholic flavoring materials.

(c) *Format of dump/batch records.* Proprietor's dump/batch records shall contain, as applicable, the following—

(1) Serial number;

(2) Name and distilled spirits plant number of the processor;

(3) Kind of spirits used, with a notation to indicate treatment with oak chips, addition of caramel, imported spirits, and spirits from Puerto Rico and the Virgin Islands;

(4) Serial number of tank or container to which ingredients are added for use;

(5) Serial or identification number of tank or container from which spirits are removed;

(6) Quantity of each alcoholic ingredient used, identifying any alcoholic flavoring materials;

(7) Serial number of source transaction record (e.g., record covering spirits previously dumped);

(8) Date of each transaction;

(9) Quantity, by ingredient, of nonalcoholic ingredients used;

(10) Formula number;

(11) Quantity of ingredients used in the batch that have been previously dumped, reported on dump records, and retained in processing;

(12) Total quantity of all ingredients used;

(13) Identification of each form or record to which spirits are transferred;

(14) Quantity in each lot transferred;

(15) Date of each transfer;

(16) Total quantity transferred; and

(17) Gain or loss.

(Sec. 807, Pub. L. 96–39, 92 Stat. 284 (26 U.S.C. 5207))

§ 19.382 Manufacture of nonbeverage or intermediate products.

Spirits and wines may be used for the manufacture of flavors or flavoring extracts as intermediate products to be used exclusively in the manufacture of other distilled spirits products on bonded premises. Nonbeverage products (alcoholic flavoring materials) on which drawback under 26 U.S.C. 5131–5134 is to be claimed may not be manufactured on bonded premises. Premises used for the manufacture of nonbeverage products eligible for drawback shall be completely separated from any contiguous bonded premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.383 Production of gin or vodka in processing.

The production of gin or vodka by other than original and continuous distillation is a processing operation. Such production requires an approved formula on Form 5110.38. Formulas on Form 5110.38 shall be filed as required by Part 5 of this chapter.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

Bottling, Packaging, and Removal of Products

§ 19.391 Removals from processing.

Spirits shall not be transferred from processing to the storage account. Processors may remove—

(a) Spirits upon tax determination or withdrawal under the provisions of 26 U.S.C. 5214 or 26 U.S.C. 7510;

(b) Spirits to the production account at the same plant for redistillation;

(c) Bulk spirits by transfer in bond to the production or the processing account at another distilled spirits plant for redistillation or further processing;

(d) Spirits or wines for authorized voluntary destruction; or

(e) Wines by transfer in bond to a bonded wine cellar or to another distilled spirits plant. Spirits may be bottled and cased for removal. Spirits and wines may be removed in any approved bulk container, by pipeline or in bulk conveyances on compliance with the provisions of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended, 1320, as amended, 1323, as amended, 1356, as amended, 1360, as amended, 1362, as amended, 1365, as amended, 1380, as amended (26 U.S.C. 5001, 5006, 5008, 5201, 5206, 5212, 5214, 5223, 5362))

§ 19.392 Bottling tanks.

All spirits shall be bottled from tanks certified as being accurately calibrated

and suitable for the intended purpose. However, the regional regulatory administrator may authorize bottling from original packages or special containers where it is impracticable to use a bottling tank. Bottlers desiring to bottle from packages or special containers shall make application to the regional regulatory administrator under Subpart D. The application shall show the necessity for the operation.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.393 Bottling tank gauge.

When distilled spirits products are to be bottled or packaged, the proprietor shall make an actual gauge of the product, on completion of any filtering, reduction, or other treatment, and prior to commencement of bottling or packaging. Any gauge made under this section shall be made at bottling proof in the tank from which the product is to be bottled or packaged, and the details of the gauge shall be entered on the bottling record prescribed in § 19.394.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.394 Bottling record.

Each proprietor shall maintain a record for each lot of spirits bottled or packaged. This record shall contain the following information:

(a) Tank number(s);

(b) Serial number of the record (beginning with "1" each January 1);

(c) Formula number (if any) of the lot;

(d) Serial number of the dump/batch record;

(e) Kind of product (including age, if claimed);

(f) Details of the tank gauge (including proof, wine gallons, proof gallons, and, if applicable, obscuration);

(g) The date the cases or packages were filled;

(h) The size of the bottles or packages, the number of bottles or containers per case, and the number of cases filled;

(i) The serial numbers of the cases or other containers filled;

(j) The proof of the spirits bottled or packaged (if different from subsection (f));

(k) The total quantity bottled or packaged in wine gallons and proof gallons; and

(l) Gain or loss for each tank.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201); Sec. 807(a), Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.395 Labels to agree with contents of tanks and containers.

Labels affixed to bottles shall agree in every respect with the spirits in the tanks from which the containers were filled, if they do not the proprietor shall relabel such spirits with a proper label. The proprietor's records shall be such that they will enable ATF officers to readily determine, by case serial number, which label was used on any given filled container.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.396 Liquor bottles.

Liquor bottles may be used, but need not be used, in bottling spirits for export. (See Subpart R of this part for provisions respecting liquor bottles.)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

§ 19.397 Filling of bottles.

(a) *Proof and fill tests.* (1) Proprietors shall test and examine bottles of spirits bottled at frequent intervals during bottling operations to determine whether the spirits contained in such bottles agree in proof and quantity (fill) with that stated on the label or bottle.

(2) If the regional regulatory administrator finds that a proprietor's test procedures do not protect the revenue and insure the label accuracy of the bottled product, he may require corrective measures.

(b) *Variations in proof and fill.* If the contents do not agree with the respective data on the label or bottle as to—

(1) Quantity (fill), except for such variations in measuring as may occur in filling conducted in compliance with good commercial practice with the overall objective of maintaining 100 percent fill for all bottled products; and/or

(2) Proof, subject to a normal drop in proof occurring during bottling operations not to exceed three-tenths of a degree of proof—the proprietor shall rebottle, recondition, or relabel the spirits in such manner that the label will correctly describe the contents.

(c) *Proof and fill test records.* (1) Proprietors shall record the results of all proof and fill tests made.

(2) The daily record shall be maintained in a manner and provide information that will enable ATF officers to determine whether the proprietor—

(i) Monitors filling operations by conducting proof and fill tests, and

(ii) Employs procedures to correct variations in proof and fill described in paragraph (b).

(3) Proof and fill test records shall contain, at a minimum, the following information—

(i) Date and time of test,

(ii) Serial number of bottling record,

(iii) Size of bottle,

(iv) Label proof,

(v) Test proof,

(vi) Percentage of variation from 100 percent fill, and

(vii) Corrective action taken (if any).

(4) Where the content, format and arrangement of the daily records does not comply with the provisions of (c)(2) or (c)(3) of this section, the regional regulatory administrator may require a format or arrangement which will clearly and accurately reflect proof and fill test information.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1394, as amended, 1395, as amended (26 U.S.C. 5201, 5301, 5555); Sec. 807(a), Pub. L. 96–39 (26 U.S.C. 5207))

§ 19.398 Completion of bottling.

When the contents of a bottling tank are not completely bottled at the close of the day, the bottler shall make entries on the bottling record covering the total quantity bottled that day from the tank. Entries shall be made not later than the morning of the following business day unless the bottler maintains auxiliary or supplemental records as provided in § 19.751.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.399 Strip stamps or alternative devices.

The proprietor shall affix to each bottle of spirits filled under the provisions of this subpart a red or green strip stamp or approved alternative device. Such stamps shall be procured, overprinted (when required), affixed, and accounted for as provided in Subpart S of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 19.400 Cases.

On completion of bottling, the filled bottles with labels and properly affixed strip stamps or alternative devices shall be placed in cases, and the cases shall be sealed. However, the proprietor may be authorized to retain, on bonded premises, unsealed cases, pending the affixing of brand labels or State stamps, upon approval of written application to the area supervisor. Where the mandatory information required by Part 5 of this chapter appears on the brand label rather than a separate label, the brand label shall be affixed at the time of bottling. Each case of spirits filled shall be marked as prescribed by Subpart Q of this part before removal from such premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1360, as amended (26 U.S.C. 5201, 5206))

§ 19.401 Remnants.

Where on completion of bottling there remain bottles less than the number necessary to fill a case, the bottles, after being stamped or affixed with alternative devices and labeled, may be marked as a remnant case as provided in Subpart Q of this part or kept uncased on the bonded premises until spirits of the same kind are again bottled. Appropriate notation shall be made on the bottling record to cover the bottling and disposition of the remnant. If the remnant is subsequently used to complete the filling of a case, an accounting shall be made on the subsequent bottling record showing the use of the remnant by adding the remnant gallonage to the quantity to be accounted for, together with an appropriate notation explaining the transactions.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1360, as amended (26 U.S.C. 5201, 5206))

§ 19.402 Filling packages.

Spirits may be drawn into packages from a tank (conforming to the requirements of § 19.273). Such packages shall be gauged by the proprietor, and he shall report the details of such gauge on Form 5110.45 and attach a copy of Form 5110.45 to each copy of the bottling tank record covering the product. Such packages shall be marked as prescribed by Subpart Q of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.403 Removals in bulk.

Where spirits in processing are to be removed in bulk conveyances or by pipeline, the proprietor shall record the filling of the conveyance or the transfer by pipeline on the bottling record. The spirits shall be removed from bonded premises in accordance with Subpart O of this part. The consignor shall forward to the consignee a statement of composition or a copy of any formula under which such spirits were processed for determining the proper use of the spirits, or for the labeling of the finished product. Bulk conveyances shall be marked as provided in Subpart Q of this part, and distilled spirits stamps, if required, shall be affixed to the conveyances as provided in Subpart S of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.404 Rebottling.

When the spirits are dumped, bottlers desiring to rebottle distilled spirits shall prepare a bottling record, appropriately modified. If the spirits were originally bottled by another bottler, a statement from the original bottler consenting to the rebottling must be secured by the proprietor. When the spirits are rebottled, the strip stamps or alternative devices on the original bottles shall be destroyed and new strip stamps or alternative devices used. Liquor bottles used for rebottling shall comply with the provisions of Subpart R of this part. Bottlers shall have a certificate of label approval or certificate of exemption from label approval issued under 27 CFR Parts for labels used on rebottled spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201); Sec. 807, Pub. L. 96–39, 93 Stat. 280 (26 U.S.C. 5215))

§ 19.405 Restamping, reaffixing alternative devices and relabeling.

The proprietor may restamp, reaffix alternative devices, or relabel distilled spirits, either before removal from bonded premises or after return thereto. Spirits returned to bonded premises for restamping, reaffixing of alternative devices, or relabeling must be promptly removed from bonded premises after such operation has been completed. When spirits were originally bottled by another bottler, the bottler shall have on file a statement from the original bottler consenting to any relabeling. When spirits are relabeled, bottlers shall have a certificate of label approval or certificate of exemption from label approval issued under 27 CFR Part 5 for labels used on relabeled spirits. Daily bottling records shall be prepared by the proprietor to cover the relabeling, restamping or the reaffixing of alternative devices. For spirits returned to bond under 26 U.S.C. 5215(c), the proprietor shall annotate such information on his daily bottling records.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1358, as amended (26 U.S.C. 5201, 5205); Sec. 807 Pub. L. 96–39, 93 Stat. 280 (26 U.S.C. 5215))

§ 19.406 Bottled-in-bond spirits.

Spirits which are to be labeled and stamped as bottled-in-bond for domestic consumption shall meet the eligibility and labeling requirements in 27 CFR Part 5 and shall be stamped as provided in Subpart S of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.407 Labels for export spirits.

All bottles containing spirits bottled for export shall have securely affixed thereto a label showing the following:

(a) Kind of spirits;

(b) Proof of the spirits;

(c) Net contents, unless the markings on the bottle indicate such contents; and

(d) The name (or, if desired, the trade name) of the bottler.

The bottler may place on the label any additional information that he may desire if it is not inconsistent with the required information. The label information may be stated in the language of the country to which the spirits are to be exported provided the proprietor maintains on file an English translation of the information. The net contents and proof may be stated in the units of measurement of the foreign country provided the proprietor maintains a record of the equivalent units as they would be required to be expressed if bottled for domestic consumption. The Director may waive the requirement of showing any of the information required by this section, other than the kind of spirits, upon a showing that the country to which the spirits are to be exported prohibits the showing of such information.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1374, as amended (26 U.S.C. 5201, 5301))

§ 19.408 Spirits removed for shipment to Puerto Rico.

Spirits removed for shipment to Puerto Rico with benefit of drawback or without payment of tax under the provisions of Part 252 of this chapter are subject to the provisions of Part 5 of this chapter in respect of labeling requirements and standards of fill for bottles.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.409 Spirits not originally intended for export.

Spirits manufactured, produced, bottled in bottles, packed in containers, or which are packaged in casks or other bulk containers in the United States, originally intended for domestic use may be exported with benefit of drawback or without payment of tax if:

(a) The strip stamp or alternative device affixed to each bottle is legibly overprinted with the word "Export" by means of a rubber stamp or other suitable method; and

(b) Each case, package or other bulk container is marked as required by Part 252 of this chapter. The proprietor may relabel the spirits to show any of the information provided for in § 19.407. Where the proprietor desires to file claim for drawback on spirits prepared for export under this section, the provisions of § 252.195b of this chapter shall be followed. Where the proprietor desires to withdraw spirits without payment of tax, he shall file a notice in accordance with § 252.92 of this chapter.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended, 1358, as amended, 1362, as amended (26 U.S.C. 5062, 5205, 5214))

Alcohol

§ 19.410 General.

(a) *Bottled alcohol.* Alcohol of 190 degrees or more of proof may be bottled in containers of 1 gallon or less, or in bottles complying with the provisions of § 19.584; however, the proprietor is required to comply with the provisions of Subpart R of this part where applicable. The proprietor shall prepare dump and batch records and bottling records as provided in this subpart.

(b) *Encased containers.* Containers of alcohol, authorized under § 19.584, which are enclosed in and attached to individual cartons, as provided in § 19.585, shall be filled and recorded as provided in paragraph (a) of this section, but the filled containers are not considered to be bottled alcohol, and are not subject to the provisions of § 19.411 relating to stamps, labels, and marks. The cartons or cases shall be marked in the manner provided in §§ 19.585 and 19.608.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1369, as amended (26 U.S.C. 5201, 5235))

§ 19.411 Stamps, labels, marks and brands.

The proprietor shall affix to each bottle of alcohol filled by him a red strip stamp or alternative device procured and affixed as provided in Subpart S of this part. All bottles of alcohol shall have securely affixed thereto a label showing (a) alcohol and (b) the name, address, and plant number of the bottler. In addition, bottled alcohol to be withdrawn on tax determination shall be labeled in accordance with the provisions of Subpart R of this part or Part 5 of this chapter, as applicable. The proprietor may place on the label any additional information that he may desire if it is not inconsistent with the required information. Each case of bottled alcohol shall bear the marks and brands prescribed therefor by Subpart Q of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1369, as amended (26 U.S.C. 5205, 5235))

Records

§ 19.416 Daily summary record of spirits bottled or packaged.

The proprietor shall maintain a separate daily summary record of spirits bottled or packaged as provided in § 19.769.

(Sec. 807, Pub. L. 96–39, 93 Stat. 283 (26 U.S.C. 5207))

Inventories

§ 19.421 Inventories of wines and bulk spirits (except packages).

Each proprietor shall take a physical inventory of wines and bulk spirits (except packages) in the processing account at the close of each calendar quarter. The results of the inventory shall be recorded in accordance with Subpart W of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.422 Inventories of bottled and packaged spirits.

(a) *Physical inventories.* (1) Physical inventories of bottled and packaged spirits shall be taken for the return periods ending June 30 and December 31 of each year, and for other return periods as may be required by the regional regulatory administrator.

(2) On approval of an application filed with the regional regulatory administrator, required physical inventories may be taken on dates other than June 30 and December 31 if the dates established for taking such inventories:

(i) Coincide with the end of a return period, and

(ii) Are approximately six months apart.

(3) On approval of the application, the designated inventory dates shall take effect with the first inventory scheduled to be taken within six months of the previous June 30 or December 31 inventory.

(4) Physical inventories may be taken within a period of a few days before or after June 30 or December 31 (or other dates approved by the regional regulatory administrator), if:

(i) Such period does not include more than one complete weekend; and

(ii) Necessary adjustments are made to reflect pertinent transactions, so that the recorded inventories will agree with the actual quantities of bottled or packaged spirits on hand in processing at the prescribed times.

(b) *Waiver of physical inventory.* (1) The regional regulatory administrator, on receipt of an application, may relieve a proprietor of the requirement of taking the June 30 or December 31 physical inventory, (or other date approved under paragraph (a) of this section) if he finds that only one such inventory during any 24 consecutive return periods is necessary.

(2) The regional regulatory administrator may reimpose the requirement for the waived inventory if he finds that it is necessary for law enforcement or protection of the revenue.

(c) *Notification of physical inventory.* Whenever a physical inventory of bottled or packaged spirits is to be taken, the proprietor shall, at least 5 business days in advance, notify the area supervisor, of the date and time he will take such inventory.

(d) *Supervision of physical inventories.* Physical inventories required under the provisions of this section shall be taken under such supervision, or verified in such manner, as the regional regulatory administrator may require.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

Subpart M—Denaturing Operations and Manufacture of Articles

§ 19.451 General.

Proprietors who are qualified as processors may conduct denaturing operations or manufacture articles pursuant to the provisions of this part. Proprietors shall not conduct denaturing operations or manufacture articles except as provided in this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5178); Sec. 807(a), Pub. L. 96–39, 93 Stat. 286 (26 U.S.C. 5241))

Denaturation

§ 19.452 Formulas.

Spirits authorized under Part 212 of this chapter to be denatured, may be denatured in accordance with formulas prescribed in that part. Denaturing materials shall be thoroughly mixed with the spirits to be denatured.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1369, as amended (26 U.S.C. 5242))

§ 19.453 Testing of denaturants.

(a) *Testing.* Proprietors shall assure that the materials they receive for use in denaturing conform to the specifications prescribed therefor in Part 212 of this chapter. The regional regulatory administrator may require the testing of denaturants at any time.

(b) *Samples.* Samples of denaturants shall be taken in such manner as to represent a true composite of the total lot being sampled. When samples are tested by persons other than a proprietor, a copy of the analysis or a statement, signed by the chemist performing the test, shall be secured and filed by the proprietor for each test. Samples of denaturants may be taken by ATF officers at any time for testing by Government chemists.

(c) *Conformity.* When a denaturant does not conform to the specifications prescribed under Part 212 of this chapter, the proprietor shall not use the material unless he treats or manipulates

the denaturant to make it conform to such specifications. Such treated or manipulated denaturant shall again be tested.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1369, as amended (26 U.S.C. 5242))

§ 19.454 Gauge for denaturation.

(a) The proprietor shall gauge spirits before and after denaturation and record each gauge in a commercial record as prescribed in paragraph (b) of this section. However, spirits dumped from previously gauged containers or spirits transferred directly to mixing tanks from gauge tanks where they were gauged, need not again be gauged. Measurements of spirits and denaturants shall be made by volume, weight, by meter, or, another device when approved by the Director.

(b) The information to be recorded for each gauge shall include the formula number, the tank in which denaturation takes place, the proof gallons of spirits before denaturation, the quantity of each denaturant used (in gallons, or in pounds and ounces), and the wine gallons of denatured spirits produced.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, (26 U.S.C. 5204); Sec. 807, Pub. L. 96–39, 93 Stat. 286 (26 U.S.C. 5241))

§ 19.455 Dissolving of denaturants.

Denaturants which are difficult to dissolve in alcohol at usual working temperatures, which are highly volatile, or which become solid at such usual temperatures may be liquefied or dissolved in a small quantity of alcohol or water in advance of their use in the production of specially denatured alcohol, pursuant to the prescribed formula, so long as the proof of the denatured spirits manufactured does not fall below the proof prescribed for the applicable formula in Part 212 of this chapter. Any ethyl alcohol used in dissolving denaturants and contained in the resulting solution shall be included as part of the total quantity of alcohol denatured in each batch.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1369, as amended (26 U.S.C. 5242))

§ 19.456 Adding denaturants.

Denaturants and spirits shall be mixed in packages, tanks, or bulk conveyances on bonded premises. The regional regulatory administrator may, on written application, authorize other methods of mixing denaturants and spirits if he deems such denaturation will not hinder effective administration of this part or jeopardize the revenue. If requested by the regional regulatory administrator, the proprietor shall submit a flow diagram of the intended process or method of adding denaturants.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1369, as amended (26 U.S.C. 5242))

§ 19.457 Restoration and redenaturation of recovered denatured spirits and recovered articles.

Recovered denatured spirits and recovered articles received on bonded premises, as provided in Subpart U of this part, for restoration (including redistillation, if necessary) and/or redenaturation may not be withdrawn from bonded premises except for industrial use or after denaturation thereof. If the recovered or restored denatured spirits or recovered articles are to be redenatured and do not require the full amount of denaturants for redenaturation, a notation to that effect will be made on the record required by § 19.454.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1369, as amended (26 U.S.C. 5242))

§ 19.458 Mixing of denatured spirits.

(a) Denatured spirits produced under the same formula may be mixed on bonded premises.

(b) Denatured spirits may be mixed on bonded premises for immediate redistillation at the same plant or at another plant in accordance with the provisions of §§ 19.322 and 19.323. If such denatured spirits are to be redistilled at another plant, the transfer form shall show that the spirits are for redistillation.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1369, as amended (26 U.S.C. 5242); Sec. 807, Pub. L. 96–39, 93 Stat. 286 (26 U.S.C. 5241))

§ 19.459 Conversion of specially denatured alcohol.

(a) *Conversion to Formula No. 1.* Any specially denatured alcohol, except Formulas No. 3–A and No. 30, may be converted into specially denatured alcohol, Formula No. 1, by the addition of methyl alcohol and denatonium benzoate, N.F. (Bitrex) or methyl isobutyl ketone in accordance with the formulations prescribed in § 212.16 of this chapter. For specially denatured alcohol Formulas No. 3–A and No. 30, the methyl alcohol content shall be reduced to the level prescribed for specially denatured alcohol Formula No. 1 by the addition of ethyl alcohol before adding the other ingredient prescribed in § 212.16 of this chapter.

(b) *Conversion to Formula No. 29.* Any specially denatured alcohol may be converted to specially denatured alcohol, Formula No. 29, by the addition of acetaldehyde or ethyl acetate, in accordance with the formulations prescribed in § 212.39(a) of this chapter.

(c) *Conditions governing conversion and use.* The quantities of denaturants required for conversions authorized in paragraphs (a) and (b) of this section shall be determined on the basis of the alcohol in the formulations. Specially denatured alcohol resulting from such conversions shall be manufactured into articles or used in processes by the proprietor who converted it, or by his controlled or wholly owned subsidiaries (as defined in § 19.242), unless the Director authorizes its use by another manufacturer or user (as defined in Part 211 of this chapter). Specially denatured alcohol converted to Formula No. 29 may be used as authorized in § 212.39(b) of this chapter except that it shall not be used in the manufacture of vinegar, drugs, or medicinal chemicals, and the conditions governing use provided in § 212.39(c) of this chapter shall apply.

(d) *Conversion to completely denatured alcohol.* Any specially denatured alcohol not containing methanol or wood alcohol may be converted to any one of the completely denatured alcohol formulas, prescribed in Part 212 of this chapter, by adding the required denaturants.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1369, as amended (26 U.S.C. 5242))

§ 19.460 Receipt and storage of denatured spirits.

(a) *Deposit.* Denatured spirits produced, received in bond as provided in Subpart O or returned to bonded premises as provided in Subpart U of this part, shall be deposited on the bonded premises.

(b) *Tanks.* If denatured spirits are being deposited in a partially filled tank on bonded premises, simultaneous withdrawals may not be made therefrom unless the flow of denatured spirits both into and out of the tank is being measured by meters, or other devices approved by the Director, which permit a determination of the quantity being deposited and the quantity being removed. Proprietors shall maintain a record in accordance with § 19.770 for tanks in which denatured spirits are stored.

(c) *Storage.* Denatured spirits may be stored on bonded premises in any container into which denatured spirits may be filled on bonded premises. Such containers shall be so stored that they can be readily inspected by ATF officers and inventoried. The provisions of § 19.133 are applicable to storage of denatured spirits in portable containers. However, upon application, the regional regulatory administrator may authorize the proprietor to store packages and cases in any manner which safeguards the interests of the Government.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.461 Filling of packages from tanks.

Denatured spirits may be drawn into packages from tanks on bonded premises. The denatured spirits in the tanks shall be gauged prior to filling of packages, and when only a portion of the contents of the tank is packaged, the denatured spirits remaining in the tank shall be again gauged and such gauges shall be recorded by the proprietor. The provisions of § 19.319 shall be applicable to the filling and gauging of packages under this section.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.462 Containers for denatured spirits.

Packaging of denatured spirits and the marking of packages of such denatured spirits shall be in accordance with requirements of Subpart Q of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

Inventories

§ 19.463 Inventories.

Each proprietor shall take a physical inventory of all denatured spirits on bonded premises at the close of each calendar quarter or at such other times as the regional regulatory administrator may require. The results of the inventory shall be recorded as provided in Subpart W of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

Articles

§ 19.471 Manufacture of articles.

Proprietors use of denatured spirits in the manufacture, formulation, labeling, marking, and distribution of articles, shall be as provided in Part 211 of this chapter.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1372, as amended (26 U.S.C. 5273))

Subpart N—Importation

Spirits Imported Into the United States

§ 19.481 Importation of spirits.

The proprietor may withdraw from customs custody, without payment of the tax imposed on imported spirits by 26 U.S.C. 5001, imported spirits in bulk containers and transfer such spirits to his bonded premises in such bulk containers or by pipeline. A proprietor intending to receive imported spirits from customs custody shall obtain an approved application, Form 5100.16, in the manner provided in § 251.172 of this chapter. Imported spirits transferred to bonded premises, as provided in this section, (a) may be redistilled or denatured only if of 185 degrees or more of proof, and (b) may be withdrawn for any purpose authorized by 26 U.S.C. Chapter 51, in the same manner as domestic spirits. Imported spirits shall be kept separate at the bonded premises and shall not be mixed with domestic spirits or with other imported spirits, except as follows: imported spirits (1) may, if of 185 degrees or more of proof, be mingled with domestic spirits or with other such imported spirits if the mingled spirits are to be immediately denatured, (2) may, if eligible under § 19.346 be mingled with other imported spirits similarly eligible which have been duty paid at the same rate, and (3) may, if imported as beverage spirits, be mixed with other spirits in processing in accordance with Subpart L of this part or in storage in accordance with Subpart K of this part. Imported spirits shall not be filled into packages, or subjected to treatment, which would modify the taste, aroma, or other characteristics generally attributed to that class and type of spirits. The provisions of this section with respect to the separation from other spirits and of §§ 19.482 and 19.483 are applicable to imported spirits received on bonded premises under this section, whether or not redistilled. Imported spirits to be redistilled shall be appropriately identified on Form 5110.26

(Sec. 201, Pub. L. 85–859, 72 Stat. 1366, as amended (26 U.S.C. 5232))

§ 19.482 Transfers and withdrawals of imported spirits.

Imported spirits transferred to ATF bond under 26 U.S.C. 5232, may, under the provisions of Subpart O of this part, be transferred in bond or withdrawn from bond for any purpose authorized by 26 U.S.C. Chapter 51, in the same manner as domestic distilled spirits. The rates of duty specified by the customs officer at the time of release from customs custody shall be shown on transaction forms and records, which shall also be marked with the designation "IMPORTED" (see § 251.173 of this chapter).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1366, as amended (26 U.S.C. 5201, 5232))

§ 19.483 Markings for containers of imported spirits.

Each portable bulk container of imported spirits shall, when received on bonded premises under the provisions of § 19.481, or when filled on bonded premises, be marked with:

(a) The name of the importer;

(b) The country of origin;

(c) The kind of spirits;

(d) The package serial number;

(e) The date of release from customs custody, or if filled in ATF bond, the date of fill;

(f) The proof; and

(g) The proof gallons of spirits in the package. Packages of imported spirits received from customs custody or filled from tanks on bonded premises shall be assigned package identification numbers as provided in § 19.593. Such numbers shall be preceded by the symbol "IMP" and any distinguishing prefix of suffix used as provided in § 19594. The proprietor who files Form 5100.16 to receive packages of imported spirits under the provisions of § 19.481 shall be responsible for having the required marks placed on such packages. Package identification numbers assigned under the provisions of this section to packages of spirits received from customs custody shall be recorded on the deposit forms or records by the proprietor who filed the Form 5100.16 to receive the spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.484 Exceptions to specifications for package marking requirements.

The package marks prescribed by § 19.483 shall be placed on each package of imported spirits received from customs custody in the manner required by § 19.595, except that, proprietors are relieved from placing prescribed marks on such packages where the packages will be dumped within 30 days of the date of receipt at such distilled spirits plant. Packages not dumped as provided in this paragraph within the time prescribed must be promptly marked in the manner required by § 19.595. The provisions of this section shall not be construed to waive, or authorize the waiver of, the requirements of this part for the assigning of package identification numbers or for the recording of such package identification numbers on deposit forms or records, and the required recording of lot identification numbers and related information on other transaction forms, records, or reports.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.485 Recording gauge.

At the time of receipt into ATF bond of packages of imported spirits, the proprietor shall use the last official gauge to compute and record on deposit forms or records for each entry the average content of the packages being received, in the manner provided for package summary accounts in § 19.761. If the last official gauge indicates a substantial variation in the contents of the packages, the proprietor shall group

the packages into lots according to their approximate contents, and assign a separate lot identification to each group of packages, based on the date the packages were received on bonded premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

Deposit, Storage, Transfer, and Withdrawal of Puerto Rican and Virgin Islands Spirits

§ 19.486 Transaction forms and records.

Deposit, transfer, and withdrawal forms, and records pertaining to spirits transferred to ATF bond from Puerto Rico or the Virgin Islands shall be marked to show that the spirits are from Puerto Rico or the Virgin Islands. Separate records shall be maintained for Puerto Rican or Virgin Islands spirits in the same manner as for imported spirits, except that the record of deposits and the summary of deposits and withdrawals, Form 5110.37, shall be arranged alphabetically by name of producer in Puerto Rico or the Virgin Islands.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.487 Marks on containers.

(a) *Packages received in bond.* (1) When packages of Puerto Rican spirits are received on the bonded premises of a distilled spirits plant under the provisions of this subpart, the markings prescribed by § 250.40 of this chapter, modified to show the serial number of the Form 4776 prefixed by "Form 4776", rather than the serial number and identification of the Form 487–B, shall be accepted in lieu of the markings prescribed in § 19.483. On receipt of packages so marked the proprietor of the distilled spirits plant shall show on such packages the date of entry for deposit of the spirits, and the words "PUERTO RICAN" or the abbreviation "P.R.".

(2) When packages of Virgin Islands spirits are received on the bonded premises of a distilled spirits plant under the provisions of this subpart, the markings prescribed by § 250.206 of this chapter that are on such packages shall be accepted in lieu of the markings prescribed in § 19.483. On receipt of packages so marked the proprietor of the distilled spirits plant shall show on such packages the date of entry for deposit of the spirits and the words "VIRGIN ISLANDS" or the abbreviation "V.I."

(b) *Portable bulk containers.* Portable bulk containers of Puerto Rican or Virgin Islands spirits filled in ATF bond shall, in addition to the required marks prescribed in § 19.596, be marked to show the serial number of the approved formula under which produced, and with the words "PUERTO RICAN" or "VIRGIN ISLANDS" or the abbreviation thereof. Portable bulk containers containing spirits received in ATF bond under the provisions of this subpart shall, in addition to other required marks, be marked with the words "PUERTO RICAN" or "VIRGIN ISLANDS" or the abbreviation thereof.

(c) *Cases of bottled alcohol.* In addition to other mandatory marks prescribed by § 19.608 for cases of bottled alcohol, the words "PUERTO RICAN" or "VIRGIN ISLANDS", as appropriate, or the abbreviation "P.R." or "V.I." shall precede or follow the word "alcohol" on cases of alcohol from Puerto Rico or the Virgin Islands that are bottled and cased on bonded premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended, 1369, as amended (26 U.S.C. 5206, 5235))

§ 19.488 Additional tax on nonbeverage spirits.

The additional tax imposed by 26 U.S.C. 5001(a)(9), on imported spirits withdrawn from customs custody without payment of tax and thereafter withdrawn from bonded premises for beverage purposes, and the related provisions of § 19.517, are not applicable to Puerto Rican or Virgin Islands spirits brought into the United States and transferred to bonded premises under the provisions of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

Miscellaneous Provisions

§ 19.489 Abatement, remission, credit, or refund.

The provisions of 26 U.S.C. 5008, authorizing abatement, remission, credit and refund for loss or destruction of distilled spirits, shall apply to spirits brought into the United States from Puerto Rico or the Virgin Islands, with respect to the following:

(a) Spirits lost while in ATF bond;

(b) Voluntary destruction of spirits in bond;

(c) Spirits returned to bonded premises; and

(d) Spirits returned to bonded premises after withdrawal upon tax determination.

Claims relating to spirits lost in bond, in addition to the information required by § 19.41 of this chapter, shall show the name of the producer, and the serial number and date of the Form 5110.38 (Form 27–B Supplemental), where required, under which produced.

(Sec. 201, Pub. L. 95–859, 72 Stat. 1323, as amended (26 U.S.C. 5008); Sec. 807, Pub. L. 96–39, 93 Stat. 285 (26 -U.S.C. 5215))

General

§ 19.501 Authority to withdraw

Spirits (including denatured spirits) and wines shall be removed from bonded premises only as provided in this subpart. Spirits entered into bonded storage for subsequent packaging in wooden packages, as provided in § 19.320, which have not been drawn into such packages at the time of withdrawal from bond shall be redesignated to conform to the classes and types set out in Subpart Q of this part and in Part 5 of this chapter.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended 1362, as amended (26 -U.S.C. 5201, 5212, 5214); Sec. 807(a), Pub. L. 96–39, 93 Stat. 285 (26 26 U.S.C. 5213))

§ 19.502 Examination of containers.

Each bulk container of spirits (including denatured spirits) or wine to be removed from bonded premises, or to be dumped on bonded premises, shall be examined by the proprietor. If any bulk container bears evidence of loss due to theft or unauthorized voluntary destruction, or loss in excess of normal storage losses, such container shall not be removed or dumped until the area supervisor has been notified and releases such container.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended, 1381, as amended (26 -U.S.C. 5008, 5370))

§ 19.503 Withdrawal of spirits on original gauge.

When the filling or production gauge is made under the provisions of § 19.319(b), spirits may be withdrawn from bonded premises for any lawful purpose on the filling or production gauge. Spirits not so filled or produced must be gauged when they are withdrawn from bonded premises on determination of tax. When spirits which are to be withdrawn on determination of tax on the original gauge are transferred in bond, all copies of Form 5110.27 shall be marked by the proprietor "Withdraw on Original Gauge".

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

§ 19.504 Determination of tare.

When packages are to be individually gauged for withdrawal from bonded premises, actual tare shall be determined in accordance with Part 13 of this chapter.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26- U.S.C. 5204))

Transfers Between Bonded Premises

§ 19.505 Authorized transfers.

(a) *Spirits.* Pursuant to approval of an application therefor as provided in § 19.506, bulk spirits (including denatured spirits) may be transferred in bond between bonded premises in bulk conveyances, or by pipeline, or in bulk containers into which spirits may be filled on bonded premises.

(b) *Wine.* (1) Wines may be transferred (i) from a bonded wine cellar to the bonded premises of a distilled spirits plant, (ii) from the bonded premises of a distilled spirits plant to a bonded wine cellar, or (iii) between the bonded premises of distilled spirits plants.

(2) Wines transferred to the bonded premises of a distilled spirits plant may be used in the manufacture of a distilled spirits product, and may not be removed from such bonded premises for consumption or sale as wine.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended, 1380, as amended (26 U.S.C. 5212, 5362))

§ 19.506 Application to receive spirits in bond.

When a proprietor desires to have spirits or denatured spirits transferred to him in bond he shall make application for such transfer to the regional regulatory administrator on Form 5100.16. Application to receive such spirits by transfer in bond shall not be approved unless the applicant's operations or unit bond is in the maximum penal sum, or, if in less than the maximum- penal sum, is sufficient to cover the tax on the spirits (including denatured spirits) to be transferred in addition to all other liabilities chargeable against such bond. The applicant shall deliver one of the approved copies of the application to the consignor proprietor.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1318, as amended, 1362, as amended (26 -U.S.C. 5005, 5212))

§ 19.507 Termination of application.

A proprietor may terminate an approved application, Form 5100.16, at any time by (a) retrieving the consignor's copy, and (b) returning this copy, together with his own, to the regional regulatory administrator for cancellation.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1318, as amended (26 -U.S.C. 5005))

§ 19.508 Consignor premises.

(a) *General.* (1) Form 5110.27 shall be prepared by the consignor proprietor of a distilled spirits plant (i) to cover the transfer of spirits or denatured spirits in bond, pursuant to an approved application on Form 5100.6, or (ii) to cover the transfer of wine in bond to the bonded premises of a distilled spirits plant or bonded wine cellar. Except as otherwise provided herein, a Form 5110.27 shall be prepared for each conveyance. Each Form 5110.27 shall show the real name (or the basic operating name as provided in § 19.280) of the producer (or the name of the importer in the case of imported spirits or the name of the packaging proprietor in the case of spirits of 190 degrees or more of proof) and, if the spirits were produced under a trade name, shall also show the trade name under which produced. The proprietor shall also enter on Form 5110.27 the serial numbers of any seals or other devices affixed to a conveyance used for shipment of spirits, or denatured spirits. On completion of lading (or completion of transfer by pipeline), the proprietor shall dispose of the remaining copies of Form 5110.27 as provided in the instructions on the form.

(2) The proprietor may cover on one Form 5110.27 all packages of spirits shipped by truck on the same day from his bonded premises to another distilled spirits plant located in the same region. In such case, the proprietor shall prepare a shipment and delivery order for each shipment, showing the number of packages, their package identification numbers, the name of the producer, and the serial numbers of the seals or other devices (if any) applied to the truck. Such shipping and delivery order shall be properly authenticated, and shall constitute a complete record of the spirits so transferred in each truck each day. A copy of each shipping and delivery order shall be retained by the consignor. On completion of the lading of the last truck for the day, the Form 5110.27 shall be disposed of as provided in the instructions on the form.

(b) *Packages.* When spirits are to be transferred in bond in packages, the consignor proprietor shall weigh each package, except (1) when the transfer is to be made in a sealed conveyance, (2) when the individual packages have been securely sealed by the proprietor, or (3) when this requirement has been waived by the regional regulatory administrator on a finding that, because of the location of the premises and the proposed method of operation, there will be no jeopardy to the revenue. When packages are weighed at the time of shipment, the proprietor shall list the package identification number of each package and its gross shipment weight on Form 5110.45. A copy of Form 5110.45 shall accompany each copy of Form 5110.27.

(c) *Bulk conveyances and pipelines.* When spirits, denatured spirits, or wines are to be transferred in bond in bulk conveyances or by pipelines, the consignor shall gauge the spirits, denatured spirits, or wines and record the quantity so determined on Form 5110.27. Bulk conveyances of spirits shall be sealed by the proprietor.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1367, as amended, 1380, as amended (26 U.S.C. 5212, 5362))

§ 19.509 Reconsignment in transit.

Where, prior to or on arrival at the premises of a consignee, spirits transferred in bond (including denatured spirits) or wines are found to be unsuitable for the purpose for which intended, were shipped in error, or, for any other bona fide reason, are not accepted by such consignee, or are not accepted by a carrier, they may be reconsigned, by the consignor, to himself, or to another consignee on notification to the regional regulatory administrator of the consignor's region of such reconsignment. In such case, application to receive spirits by transfer in bond (on Form 5100.16) shall have been previously approved for the consignee (not required in the case of wines) and the bond of the proprietor to whom the spirits or wines are reconsigned shall cover such spirits while in transit after reconsignment. Notice of cancellation of the Form 5110.27 covering the shipment to the original consignee shall be made by the consignor to each person receiving a copy of Form 5110.27. Where the reconsignment is to another proprietor, a new Form 5110.27 shall be prepared and prominently marked with the word "Reconsignment".

(Sec. 201, Pub. L. 85–859, 72 Stat. 1367, as amended, 1380, as amended (26 U.S.C. 5212, 5362))

§ 19.510 Consignee premises.

(a) *General.* When spirits, denatured spirits, or wines are received by transfer in bond the consignee proprietor shall examine each conveyance to determine whether the seals, if any, are intact upon arrival at his premises. If the seals are not intact, he shall immediately notify the area supervisor before removal of any spirits from the conveyance. The proprietor shall follow the provisions of Subpart P of this part to determine, record and report losses, if any. After execution on the transfer forms of his receipt of the shipment of spirits, denatured spirits, or wines the consignee shall dispose of Form 5110.27 or (in the case of wines from a bonded wine cellar) Form 703, as provided in the instructions on the respective forms.

(b) *Packages.* When spirits are received in packages, the consignee proprietor shall weigh each package, except (1) when the transfer is made in a sealed conveyance and the seals or other devices are intact on arrival, (2) when the individual packages have been sealed by the consignor proprietor and are intact on arrival, or (3) when the requirement for weighing the packages at the consignor premises has been waived under the provisions of § 19.508(b)(3). The proprietor shall record the receiving weight of each package on Form 5110.45 (if any) which accompanied the shipment or on a list showing the identification number and receiving weight of each package. A copy of such list or Form 5110.45 shall be attached to each copy of Form 5110.27 in his possession.

(c) *Bulk conveyances and pipelines.* When spirits, denatured spirits, or wines are received in bulk conveyances or by pipeline, the consignee shall gauge the spirits, denatured spirits, or wines and record the gauge on Form 5110.27 or, in the case of wines received from a bonded wine cellar, on Form 703. However, the regional regulatory administrator may waive the requirement for gauging spirits, denatured spirits, or wines on receipt by pipeline if he finds that, because of the location of the premises, there will be no jeopardy to the revenue.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1380, as amended (26 U.S.C. 5204, 5362); Sec. 807(a), Pub. L. 96–39, 93 Stat. 285 (26 U.S.C. 5213))

Removal of Spirits to Production

§ 19.511 Removal of spirits for redistillation.

A proprietor intending to remove spirits (including denatured spirits) from processing or storage to production on the same bonded premises for redistillation, in accordance with the provisions of §§ 19.322 and 19.323, shall prepare Form 5110.26 to cover such removal. Each lot of spirits (except bottled spirits) shall be gauged by the proprietor. Such gauge shall be recorded on Form 5110.26. The packages or cases shall be examined by the proprietor, and if any package or case bears evidence of loss due to theft or unauthorized destruction, such loss shall be reported to the area supervisor and the package or case shall not be dumped until released by him; Form 5110.26 shall be amended when necessary.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

Withdrawals on Determination and Payment of Tax

§ 19.512 Determination and payment of tax.

(a) *General.* Distilled spirits may be withdrawn from bonded premises on determination of tax in approved containers, or, to the contiguous premises of a manufacturer of nonbeverage products, by pipeline.

(b) *Record of tax determination.* A serially numbered invoice or shipping document, signed or initialed by an agent or employee of the proprietor, shall constitute the record of tax determination. For purposes of this part, the total proof gallons determined from each numbered invoice or shipping document shall constitute a single withdrawal and is the basis for computation of the tax. All tax which is to be prepaid or deferred shall be determined prior to the physical removal of the spirits from bonded premises.

(c) *Payment of tax.* The tax on the spirits shall be paid on Form 5110.32 before removal of the spirits from bonded premises unless the proprietor has furnished a withdrawal or unit bond to secure payment of the tax. Where such bond is in less than the maximum penal sum, the proprietor shall prepay the tax for any withdrawal which would cause the outstanding liability for tax to exceed the limits of coverage under the bond. Where the payment of tax is to be deferred, the proprietor shall keep the daily summary record of tax determinations as required by § 19.518.

(Sec. 807, Pub. L. 96–39, 93 Stat. 285, (26 U.S.C. 5213))

§ 19.513 Bond account.

Where the proprietor has furnished a withdrawal or unit bond to cover the tax on spirits withdrawn on determination of tax, and such bond is in less than the maximum penal sum, he shall maintain an account of his bond and he shall charge the bond with the amount of liability incurred on each withdrawal on determination of tax. He shall credit the bond on payment of the amount of tax required to be remitted with a return and by authorized credits taken on a return. Where a bond in less than the maximum penal sum has been allocated among two or more plants, as provided in §§ 19.243 and 19.244, the proprietor shall maintain an account at each plant of that part of the penal sum allocated to that plant.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.514 Proprietor's statement.

When tax is to be paid pursuant to a return on Form 5110.35, the proprietor shall execute on all copies of the daily summary record of tax determinations, as prescribed in § 19.518, a statement in which he (a) agrees to pay, in accordance with law and this part, the amount of tax shown on such summary record, or to be shown thereon, and (b) certifies, under the penalties of perjury, that he is not in default in any payment of tax chargeable against his withdrawal or unit bond, as applicable, and that the penal sum of such bond (1) is in the maximum penal sum or (2) is sufficient to cover such amount in addition to all other amounts chargeable against such bond. When tax is to be prepaid on return Form 5110.32, the proprietor shall note the serial number of the return and the date and time such return was filed on the individual record of tax determination. The full amount of tax determined shall be included for payment in a tax return on Form 5110.32 or Form 5110.35 filed as provided in §§ 19.522 and 19.523. Nothing in this part shall be construed as precluding an adjustment after tax payment, pursuant to law and regulations, of any overpayment or underpayment of tax.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.515 Gauge for tax determination.

(a) *Packages.* When spirits in packages are to be withdrawn from bonded premises on determination of tax on the basis of an individual package gauge, each package shall be gauged unless the tax is to be determined on the original gauge. When the packages are to be withdrawn, the proprietor shall prepare Form 5110.45 in such a manner as to reflect the identification and gauge of each package. On completion of gauge (if any) and computation of tax, the Form 5110.45 shall be attached to the appropriate record of tax determination, and a copy of each shall be furnished to the consignee.

(b) *Tanks.* Spirits in tanks which are to be withdrawn on determination of tax shall be gauged (by weighing and proofing) as prescribed in § 19.92, and the elements of the gauge shall be recorded on the record of tax determination or on a separate record of the gauge for attachment to the record of tax determination.

(c) *Cases.* Cases of distilled spirits to be withdrawn from bonded premises shall be tax determined on the basis of the contents thereof. The proof gallonage contained in cases shall be determined in accordance with Part 13 of this chapter and the method prescribed in § 19.742. The record of tax determination shall contain all data

necessary to calculate the amount of spirits tax determined.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358 (26 U.S.C. 5204); Sec. 807, Pub. L. 96–39, 93 Stat. 285 (26 U.S.C. 5213))

§ 19.517 Imported spirits.

When spirits which have been imported for non-beverage purposes and transferred to bonded premises pursuant to 26 U.S.C. 5232 are withdrawn for beverage purposes, there shall be paid, in addition to the internal revenue tax imposed by 26 U.S.C. 5001, a tax equal to the duty which would have been paid had the spirits been imported for beverage purposes, less the duty already paid thereon. The additional tax shall be referred to as "additional tax—less duty", and shall be paid at the time and in the manner that the basic tax is paid. The total quantity in proof gallons withdrawn shall be the basis of computing the tax at the rates indicated. The amount of the "additional tax—less duty" shall be stated separately and identified as such on the tax return.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C. 5001))

§ 19.518 Daily summary record of tax determinations.

Every proprietor of a distilled spirits plant who withdraws distilled spirits on determination, but before payment, of tax shall maintain a daily summary record of tax determinations. The summary record shall show, for each day on which tax determinations occur, (a) the serial number of each record of tax determination, (b) the total proof gallons on which tax was determined, and (c) the total tax. The proprietor shall execute on the daily summary record the statement required by § 19.514. The daily summary record of tax determinations shall be maintained in accordance with Subpart W of this part.

(Sec. 807, Pub. L. 96–39, 93 Stat. 285 (26 U.S.C. 5213))

§ 19.519 Methods of tax payment.

The tax on spirits shall be paid pursuant to a return on Form 5110.32 or on Form 5110.35, filed as provided in §§ 19.523 and 19.524. Remittance for the tax in full shall accompany the return and may be in any form which the district director is authorized to accept under the provisions of 26 CFR 301.6311–1 and which is acceptable to him. However, where a check or money order tendered in payment for taxes is not paid on presentment, or where the taxpayer is otherwise in default in payment, any remittance made during the period of such default, and until the regional regulatory administrator finds that the revenue will not be jeopardized by the acceptance of a personal check (if acceptable to the district director), shall be in cash or in the form of a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States, or under the laws of any State, territory, or possession of the United States, or a money order, as provided in 26 CFR 301.6311–1. Checks and money orders shall be made payable to "Internal Revenue Service".

(Act of August 16, 1954, Ch. 736, 68A Stat. 777, as amended (26 U.S.C. 6311); Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

§ 19.520 Employer identification number.

The employer identification number (defined at 26 CFR 301.7701–12) of the taxpayer who has been assigned such a number shall be shown on each return on Form 5110.32 or Form 5110.35 filed pursuant to the provisions of this part. Failure of the taxpayer to include his employer identification number on Form 5110.32 or Form 5110.35 may result in assertion and collection of the penalty specified in 26 CFR 301.6676–1.

(Sec. 1, Pub. L. 87–397, 75 Stat. 828, as amended (26 U.S.C. 6109, 6676))

§ 19.521 Application for employer identification number.

(a) An employer identification number will be assigned pursuant to application on Form SS–4 filed by the taxpayer. Form SS–4 may be obtained from the director of the service center or from the district director.

(b) An application on Form SS–4 for an employer identification number shall be made by every taxpayer who files a return on Form 5110.32 or Form 5110.35, but who prior to the filing of his first return on Form 5110.32 or Form 5110.35 has neither secured an employer identification number nor made application therefor. Such application on Form SS–4 shall be filed on or before the seventh day after the date on which such first return on Form 5110.32 or Form 5110.35 is filed.

(c) Each taxpayer shall make application for and shall be assigned only one employer identification number, regardless of the number of places of business for which the taxpayer is required to file a tax return under the provisions of this part.

(Sec. 1, Pub. L. 87–397, 75 Stat. 828, as amended (26 U.S.C. 6109))

§ 19.522 Taxes to be collected by returns.

(a) *Semimonthly periods.* The tax on spirits to be withdrawn from bond for deferred payment of tax shall be paid pursuant to a return on Form 5110.35. The periods to be covered by returns on Form 5110.35 shall be semimonthly; such periods to run from the 1st day through the 15th day of each month, and from the 16th day through the last day of each month. A return, Form 5110.35, shall be executed and filed to cover each return period notwithstanding that no tax is due for payment for such period. The proprietor of each bonded premises shall include, for payment, on his return on Form 5110.35 the full amount of distilled spirits tax determined in respect of all spirits released for withdrawal from the bonded premises on determination of tax during the period covered by the return (except spirits on which tax has been prepaid).

(b) *Conditions under which deferral is denied.* Notwithstanding the posting of a withdrawal or unit bond by the proprietor, the tax shall be prepaid as provided in paragraph (c) of this section—

(1) Where a proprietor has defaulted in any payment of tax under this section, during the period of such default and until the regional regulatory administrator finds that the revenue will not be jeopardized by deferral; and

(2) Where a proprietor, who, after having been notified of his deficiency by the regional regulatory administrator (i) fails to maintain records required by this part to substantiate the correctness of his tax returns or (ii) otherwise fails to comply with any provisions of this part, is so notified by the regional regulatory administrator.

(c) *Prepaid taxes.* The tax on distilled spirits shall be paid pursuant to a return on Form 5110.32 in all cases where the tax is required to be paid before the spirits are withdrawn from bond. A single return on Form 5110.32 may cover one or more transactions.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended, 1395, as amended (26 U.S.C. 5061, 5555))

§ 19.523 Time for filing returns.

(a) *Payment pursuant to semimonthly return, Form 5110.35.* Where the proprietor of bonded premises has withdrawn spirits from such premises on determination and before payment of tax, he shall file a tax return covering such spirits on Form 5110.35, with remittance, as follows:

(1) If the return period is in calendar year 1980, not later than the last day of the first succeeding return period plus five days;

(2) If the return period is in calendar year 1981, not later than the last day of the first succeeding return period plus ten days;

(3) If the return period is in calendar year 1982 or in any year thereafter, not later than the last day of the second

succeeding return period. Where the due date for filing a return falls on a Saturday, Sunday, or legal holiday, the time for filing is extended to the first succeeding day which is not a Saturday, Sunday, or legal holiday.

(b) *Payment pursuant to prepayment return, Form 5110.32.* If the proprietor of a distilled spirits plant desires to withdraw spirits from bonded premises on determination of tax and does not have on file an approved withdrawal or unit bond of sufficient penal sum to cover the withdrawal, if there is default by him in any payment of tax under this part, or the proprietor is notified by the regional regulatory administrator as provided in § 19.522(b)(2), the proprietor shall not remove the spirits from the bonded premises until the tax thereon has been paid. To pay the tax, the proprietor of the bonded premises shall file a prepayment return, Form 5110.32, with remittance, before removal of the spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

§ 19.524 Manner of filing returns.

(a) *General.* All returns on Form 5110.32 and Form 5110.35 with remittance shall be filed with the district director or an ATF officer designated by the regional regulatory administrator.

(b) *Filing with district director.* Where the remittance is in cash, the return and remittance shall be filed directly with the district director. Where the return and remittance are delivered by U.S. mail to the office of the district director, the date of the official postmark of the U.S. Postal Service stamped on the cover in which the return and remittance were mailed shall be deemed to be the date of filing. However, if the postmark on the cover is illegible, the burden of proving when the postmark was made will be on the proprietor. If the return is sent by registered mail or by certified mail, the date of registry postmark or the sender's receipt, as applicable, shall be treated as the filing date of the return and remittance.

(c) *Filing with an ATF officer.* Where the return and remittance are to be filed with a designated ATF officer, the proprietor shall file the return and remittance no later than 2 p.m. on the date the return is required to be filed.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

§ 19.525 Removal of spirits on tax determination.

No spirits shall be removed from bonded premises, except as otherwise provided by law, unless the tax thereon has been paid or determined. A record of tax determination shall be prepared for each removal of spirits as provided in § 19.512. The proprietor shall apply distilled spirits stamps to the packages or bulk conveyances of spirits to be removed from bonded premises. Distilled spirits stamps shall be affixed, canceled, and protected in the manner provided in Subpart S of this part. When the distilled spirits stamps have been affixed by the proprietor to the containers and the containers have been properly marked, they shall be promptly removed from the bonded premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205); Sec. 807, Pub. L. 96–39, 93 Stat. 285 (26 U.S.C. 5213))

Withdrawal of Spirits Without Payment of Tax

§ 19.531 Authorized withdrawals without payment of tax.

Spirits may be withdrawn from bonded premises, without payment of tax for:

(a) Export, as authorized under 26 U.S.C. 5214(a)(4);

(b) Transfer to customs manufacturing bonded warehouses, as authorized under 19 U.S.C. 1311;

(c) Transfer to foreign-trade zones, as authorized under 19 U.S.C. 81c;

(d) Supplies for certain vessels and aircraft, as authorized under 19 U.S.C. 1309;

(e) Transfer to customs bonded warehouses, as authorized under 26 U.S.C. 5066 or 5214(a)(9);

(f) Use in wine production, as authorized under 26 U.S.C. 5373;

(g) Transfer to any university, college of learning, or institution of scientific research for experimental or research use as authorized under 26 U.S.C. 5312(a); or

(h) Research, development or testing, as authorized under 26 U.S.C. 5214(a)(10). The withdrawal of spirits as provided in paragraphs (a) through (e) of this section shall be in accordance with the regulations in Part 252 of this chapter.

(Sec. 311, Tariff Act of 1930, 46 Stat. 691, as amended (19 U.S.C. 1311); Sec. 201 Pub. L. 85–859, 72 Stat. 1362, as amended, 1375, as amended, 1382, as amended (26 U.S.C. 5214, 5312, 5373); Sec. 3, Pub. L. 91–659, 84 Stat. 1965, as amended (26 U.S.C. 5066))

§ 19.532 Withdrawals of spirits for use in wine production.

Wine spirits withdrawn without payment of tax for use in wine production may be removed, in accordance with Part 240 of this chapter, to a bonded wine cellar.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended, 1382, as amended (26 U.S.C. 5214, 5373))

§ 19.533 Withdrawal of spirits without payment of tax for experimental or research use.

Any scientific university, college of learning, or institution of scientific research (which has qualified under the provisions of § 19.72 to withdraw spirits from a bonded premises), desiring to withdraw a specific lot of spirits for experimental or research use, shall file a letterhead application with the regional regulatory administrator of the region in which the applicant's premises are located.

(Sec. 201, Pub. L. 85–859), 72 Stat. 1975, as amended (26 U.S.C. 5312))

Withdrawal of Spirits Free of Tax

§ 19.536 Authorized withdrawals free of tax.

Pursuant to the regulations in this chapter, spirits may be withdrawn from bonded premises free of tax—

(a) On receipt of a valid permit, issued under Part 213 of this chapter, to procure spirits for nonbeverage purposes and not for resale or use in the manufacture of any product for sale, as provided in 26 U.S.C. 5214(a)(3);

(b) On receipt of a valid permit, issued under Part 213 of this chapter, to procure spirits by and for the use of the United States or any governmental agency, any State, any political subdivision of a State, or the District of Columbia, for nonbeverage purposes as provided in 26 U.S.C. 5214(a)(2);

(c) On receipt of a valid permit, issued under this part, to procure spirits by and for the use of the United States, under the provisions of 26 U.S.C. 7510, for purposes other than as provided in paragraph -(b) of this section and 26 U.S.C. 5214(a)(2);

(d) After being specially denatured—

(1) On receipt of a valid permit to procure such spirits, issued under Part 211 of this chapter;

(2) For export;

(e) After being completely denatured, for any lawful purpose;

(f) When contained in an article.

(Act of August 16, 1954, Ch. 736, 68A Stat. 900 (26 U.S.C. 7510); Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

§ 19.537 Withdrawal of spirits free of tax.

Spirits withdrawn free of tax under § 19.536 (a), (b), and (c) shall be withdrawn in approved containers and shipped to the consignee designated in the permit. Unless the spirits are in cases or are to be withdrawn on the original gauge, the proprietor shall gauge each container. For each shipment, the proprietor shall prepare Form 1473 and distribute the form in accordance with the instructions thereon. Bulk

conveyances used to transport spirits withdrawn free of tax under this section shall be sealed. (See § 19.96.)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

§ 19.538 Permits for withdrawal of spirits by the United States.

Where the United States or a governmental agency thereof intends to procure spirits free of tax for nonbeverage purposes, application for a permit shall be filed on Form 1444 under the provisions of Part 213 of this chapter. Where the United States or a governmental agency thereof intends to procure spirits free of tax for other purposes, application for a permit shall be filed on Form 1444 under the provisions of this part. The application shall be signed by the head of the department, independent bureau, or agency to which such spirits are to be shipped, or by some person duly authorized by such head of a department, independent bureau, or agency, and forwarded to the Director. Evidence of authority to sign for the head of a department, independent bureau, or agency shall be furnished to the Director. If the Director finds the application in order, he will issue a permit to the applicant. At the time the spirits are to be procured, the permit on Form 1444 and a purchase order shall be submitted by the governmental agency to the proprietor. At the time of shipment, the consignor shall return the permit to the governmental agency unless he has been authorized by such governmental agency to retain the permit for the purpose of making future shipments. On receipt of a shipment of spirits, the representative of the governmental agency receiving the same shall execute the certificate of receipt on both copies of Form 1473 received from the plant proprietor, after noting thereon any loss or deficiency in the shipment, and shall forward one copy to the regional regulatory administrator of the region in which the plant proprietor is located and shall retain the other copy for his files. Every appropriate precaution shall be taken by the governmental agency to ensure that the procured spirits will be used only for governmental purposes. When no more spirits will be procured under a permit, the governmental agency shall return it to the Director for cancellation.

(Act of August 16, 1954, Ch. 736, 68A Stat. 900 (26 U.S.C. 7510))

§ 19.539 Disposition of excess spirits.

Any excess spirits in the possession of a governmental agency shall be disposed of to another agency of the United States holding a permit, shall be returned to a plant on approval of the regional regulatory administrator of the region in which the plant is located, or shall be disposed of otherwise as may be authorized by the Director. In no case may such spirits be disposed of to the general public, or otherwise, than as provided in this section.

(Act of August 16, 1954, Ch. 736, 68A Stat. 900 (26 U.S.C. 7510))

§ 19.540 Removal of denatured spirits and articles.

(a) *Specially denatured spirits.* Specially denatured spirits withdrawn free of tax under § 19.536(d) shall be shipped in approved containers to the consignee designated in the permit. If such spirits are for export or for transfer to a foreign-trade zone, they shall be withdrawn under the applicable provisions of Part 252 of this chapter. If such spirits are for shipment to a qualified user or a bonded dealer, the proprietor shall prepare a notice of shipment on Form 1473 and distribute the copies of the form in accordance with the instuctions thereon. Bulk conveyances used to transport specially denatured spirits shall be sealed in accordance with the provisions of § 19.96.

(b) *Completely denatured alcohol.* No permit, application, or notice is required for removal of completely denatured alcohol from bonded premises, except that completely denatured alcohol may be transferred from bonded premises by pipeline only when the consignee has obtained authority to receive completely denatured alcohol by such means pursuant to the provisions of Part 211 of this chapter. The proprietor is required to keep a record of such removals, as prescribed in Subpart W of this part.

(c) *Samples of denatured spirits.* The proprietor may take samples of denatured spirits free of tax which may be necessary for the conduct of business. The proprietor may furnish samples of specially denatured spirits: (1) To dealers in, and users of, specially denatured spirits in advance of sales; and (2) to users and to applicants or prospective applicants for permits to use specially denatured spirits, for experimental purposes or for use in preparing samples of a finished product for submission to the Director. Samples for these purposes, in excess of 1 liter, shall be furnished only after a permit on Form 1512 is issued to the consignee. Form 1473 shall be prepared to cover shipment of samples of a size in excess of 1 liter. Form 1473 shall show the permit number of the Form 1512. The proprietor shall retain the Form 1512 on file as a part of the record transaction.

(d) *Labels for samples of denatured spirits.* Each sample of denatured spirits withdrawn under the provisions of paragraph (c) of this section shall have a label affixed showing the following information: (1) The word "Sample", and the words "Specially Denatured Alcohol", "Specially Denatured Spirits", or "Completely Denatured Alcohol", whichever is applicable; (2) the name, address, and plant number of the proprietor; (3) the formula number; and (4) the name and address of the consignee.

(e) *Articles.* Removal of articles from bonded premises shall be in accordance with the provisions of Part 211 of this chapter.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended (26 U.S.C. 5214))

§ 19.541 Reconsignment in transit.

Where, prior to or on arrival at the consignee's premises, spirits (including specially denatured spirits) withdrawn free of tax under § 19.536 are not accepted by the consignee or by a carrier, they may be reconsigned by the proprietor making the shipment on notification to the proprietor's regional regulatory- administrator of the reconsignment. Such reconsignment may be made to himself or to another proprietor for return to bonded premises under the provisions of § 19.705 or to another person holding an industrial use permit authorizing receipt or use of such spirits or specially denatured spirits. In case of reconsignment to bonded premises, the provisions of § 19.705, relating to consents of surety in respect of return of spirits (including denatured spirits) withdrawn free of tax shall be applicable. Notice of cancellation of Form 1473 covering the shipment to the original consignee shall be given by the proprietor to each person receiving a copy of the form. Where reconsignment is to another person as provided in this section, a new Form 1473 shall be prepared and the word "Reconsignment" placed thereon. The entry on the permit covering the original withdrawal shall be voided.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

Withdrawals Authorized by Puerto Rico

§ 19.546 Withdrawals authorized by Puerto Rico.

Distilled spirits (including denatured spirits) may be withdrawn from the bonded premises of a distilled spirits plant in Puerto Rico pursuant to authorization issued under the laws of the Commonwealth of Puerto Rico; such spirits so withdrawn and products containing such spirits so withdrawn,

may not be brought into the United States free of tax.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1375, as amended (26 U.S.C. 5314))

Subpart P—Losses and Shortages

§ 19.561 Allowable losses.

Tax shall not be collected (or, if paid, such tax shall be refunded) with respect to spirits (including denatured spirits) or wines lost or destroyed while in bond, except that such tax shall be collected in the case of—

(a) Theft, unless the regional regulatory administrator finds that the theft occurred without connivance, collusion, fraud, or negligence on the part of the proprietor, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them. The abatement, remission, credit, or refund of taxes on spirits (including denatured spirits) or wines, lost by theft shall only be allowed to the extent that the claimant is not indemnified against or recompensed for such tax.

(b) Voluntary destruction, unless such destruction is carried out as provided in Subpart T of this part.

(c) Unexplained shortage of bottled distilled spirits.

In every case where it appears that the loss was by theft, the burden shall be on the proprietor of the distilled spirits plant or other person responsible for the distilled spirits tax or wine tax to establish to the satisfaction of the regional regulatory administrator that such loss did not occur as the result of connivance, collusion, fraud, or negligence on the part of the proprietor of the distilled spirits plant, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them. Claims in respect of losses allowable under this section shall be filed in accordance with the applicable provisions of Subpart C of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended, 1381, as amended (26 U.S.C. 5008, 5370))

§ 19.562 Loses of spirits from packages.

(a) *Original quantity.* Where there is evidence satisfactory to the regional regulatory administrator that any loss of spirits (including denatured spirits) from any package deposited on bonded premises is due to theft (except where the regional regulatory administrator has made the finding provided for in § 19.561(a)) or is due to unauthorized voluntary destruction, the regional regulatory administrator may require the immediate taxpayment of the quantity of spirits lost, except where the extent of any loss from causes other than theft or unauthorized voluntary destruction can be established by the proprietor to the satisfaction of the regional regulatory administrator, the regional regulatory administrator may credit the tax on the loss so established against the tax on the original quantity.

(b) *Alternative method.* Where there is evidence satisfactory to the regional regulatory administrator that there has been access, other than as authorized by law, to the contents of packages entered for deposit on bonded premises, and the extent of such access is such as to evidence a lack of due diligence or a failure to employ necessary and effective controls on the part of the proprietor, the regional regulatory administrator may (in lieu of the procedure prescribed in paragraph (a) of this section) assess an amount equal to the tax on 5 proof gallons of spirits on each of the total number of such packages as determined by him.

(c) *Applicability to packages filled after entry.* The provisions of this section apply to spirits (including denatured spirits) which are filled into casks or packages as authorized by law, after entry and deposit on bonded premises, whether by recasking, filling from tanks, mingling, or otherwise. The quantity filled into those casks or packages is considered to be the original quantity for the purpose of this section in the case of loss from those casks or packages.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1320, as amended (26 U.S.C. 5006))

§ 19.563 Losses in bond.

(a) *General.* Where a bulk container of spirits (including denatured spirits) or wines in bond sustains a loss in excess of normal storage or transit losses, or as a result of theft or unauthorized voluntary destruction, the loss shall be determined at the time of discovery. When it appears that any container in bond has sustained a loss resulting from theft or unauthorized voluntary destruction, such loss shall be taxpaid or reported promptly by the proprietor to the area supervisor. Proprietors shall record on deposit and transfer forms for each container sustaining such a loss, the container identification number, the quantity lost, and the apparent cause of the loss. If the proprietor pays the tax as provided in § 19.562, such fact, including the details of the method used to determine the tax to be paid, shall be shown on the record of deposit, and the tax shall be included on the next tax return filed. Unusual losses from obvious cause other than theft or unauthorized voluntary destruction occurring or discovered at the time of withdrawal from bond or transfer in bond shall be noted on the appropriate withdrawal or transfer form in the manner prescribed in this paragraph. When a loss appears to be due to theft or unauthorized voluntary destruction, the container shall be segregated (if applicable) and the area supervisor shall be notified, unless the proprietor acknowledges liability and elects to pay the tax on the quantity lost. Where it is found that the contents of a container have been tampered with, or where a material deficiency is found without evidence of loss by leakage or casualty, or where deterioration in proof not accountable by variation in gauge is disclosed, the container shall be segregated (if applicable) and the area supervisor shall be notified, unless the proprietor acknowledges liability and elects to pay the tax on the quantity lost. In any case in which spirits (including denatured spirits) are lost or destroyed in bond, whether by theft or otherwise, the regional regulatory administrator may require the proprietor or other person liable for the tax to file a claim for relief from the tax in accordance with the applicable provisions of Subpart C of this part. Losses of spirits (including denatured spirits) sustained from the tanks and bulk conveyances in bonded warehouses shall be determined by the proprietor each time a tank or bulk conveyance is emptied and on the basis of the physical inventories required by §§ 19.329, 19.353, 19.421, and 19.463. All losses of spirits, whether by theft, voluntary destruction, or otherwise, shall be recorded on the date of discovery in the records prescribed by § 19.781. If at any time any package recorded as deposited on bonded premises cannot be located or otherwise lawfully accounted for, such fact shall be immediately reported to the area supervisor, and the proprietor shall either pay the tax or file a claim with respect thereto under the provisions of § 19.41.

(b) *Storage account loss limitation.* When the quantity lost from all the storage tanks and bulk conveyances exceeds 1 percent of the total quantity contained in the tanks and bulk conveyances during the calendar quarter, or where any loss from storage tanks or bulk conveyances is due to illegal withdrawal, the loss shall be taxpaid unless a claim for remission is filed in accordance with the provisions of § 19.41 and is allowed by the regional regulatory administrator.

(c) *Bottled distilled spirits.* In any case where bottled distilled spirits are lost or destroyed in bond, whether by theft or otherwise, the regional regulatory administrator may require the

proprietor to file a claim for relief from the tax in accordance with the applicable provisions of Subpart C of this part. All losses of spirits, whether by theft, voluntary destruction, or otherwise, shall be recorded on the date of discovery, in the records prescribed by § 19.416.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended (26 U.S.C. 5008, 5201))

§ 19.564 Shortages of bottled distilled spirits.

Any unexplained shortage of bottled distilled spirits shall be taxpaid on Form 5110.32 or Form 5110.35. Unexplained shortages shall be determined by comparing the bottled spirits recorded to be on hand (book figure) with the results of any quantitative determination of any part of the bottled spirits found to be on hand by actual count (physical inventory). When the record balance of spirits is greater than the actual count, the difference shall be taken as an unexplained shortage. Whether the record balance is larger or smaller than the actual count, any overage or shortage shall be recorded in the records prescribed in § 19.769, and the record balance shall be adjusted accordingly.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended (26 U.S.C. 5008))

§ 19.565 Losses after tax determination.

In the case of spirits lost after determination of tax and before completion of physical removal from bonded premises, the tax thereon may, pursuant to claim filed in accordance with Subpart C, be abated, remitted, or, without interest, refunded or credited to the proprietor of the bonded premises where the loss occurred, provided the tax would not, by reason of the provisions of 26 U.S.C. 5008(a)(1) have been collectible if such loss had occurred on bonded premises before determination of tax.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended (26 U.S.C. 5008))

§ 19.566 Losses of wine in bond.

In the case of wine lost or destroyed in bond other than by theft, whether disclosed by examination of records, inventories, or otherwise, the regional regulatory administrator may require the proprietor to file a claim for remission of tax in accordance with the applicable provisions of Subpart C of this part. In any case where wine is lost by theft and the proprietor has not paid the tax, a claim for remission of tax shall be filed in accordance with the provisions of Subpart C of this part. All losses shall be recorded in the records prescribed by Subpart W of this part on the date of discovery of the loss.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1331, as amended, 1332, as amended, 1380, as amended, 1381, as amended (26 U.S.C. 5041, 5043, 5362, 5370))

Subpart Q—Containers and Marks and Brands

Containers

§ 19.581 General.

Proprietors shall use for any purpose of containing, storing, transferring, conveying, removing, or withdrawing spirits or denatured spirits under this part only containers which are authorized by, or under the provisions of this part for such purpose, and a container so authorized will be deemed to be an approved container for such purpose. Except where stated otherwise, the provisions of Part 211 of this chapter apply to containers used for containing, storing and shipping of articles, and the provisions of Part 240 of this chapter apply to containers used for storage or transfer of wine. In addition to the types of containers specifically authorized by this part for a particular purpose, a container- of another type may be authorized for that purpose by the Director on a finding by him that the use of such container will afford protection to the revenue equal to or greater than that afforded by the containers specifically authorized by this part, and that the use will not cause administrative difficulty. If another container- is so authorized by the Director, he shall prescribe the detail and manner in which such container shall be constructed, protected, marked, and branded, consistent with the provisions of this part and the extent of such use. Similarly, where a container- authorized for a particular purpose is required by this subpart to be made of specified materials, the Director may authorize the use of containers made of other materials which he has found to be suitable for the intended purpose. This subpart does not regulate or prohibit the use on plant premises of any container for purposes other than containing alcholic substances.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended, 1362, as amended, 1374, as amended- (26 U.S.C. 5206, -5212, 5214, 5301); Sec. 805, Pub. L. 96–39, 93 Stat. 279 (26 U.S.C. 5002); Sec. 807, Pub. L. 96–39, 93 Stat. 285 (26 U.S.C. 5213))

§ 19.582 Containers of 1 gallon (3.785 liters) or less.

The provisions of Subpart L of this part govern the containers to be used in bottling alcohol under 26 U.S.C. 5235. The provisions of Subpart R of this part govern the containers to be used in bottling spirits for domestic use. Denatured spirits may be filled on bonded premises into metal or glass containers of a capacity of 1 gallon (3.785 liters) or less. The provisions of Part 211 of this chapter apply to containers to be used for packaging articles. Liquor bottles shall not be used for bottling denatured spirits or articles. Spirits in bottles of a capacity of 1 gallon (3.785 liters) or less, except anhydrous spirits and spirits to be withdrawn from bond free of tax, are deemed to be for nonindustrial use.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended- 1374, as amended, (26 U.S.C. 5206, 5301); Sec. 805, Pub. L. 96–39, 93 Stat. 278 (26 U.S.C. 5002))

§ 19.583 Cases.

Spirits or denatured spirits which have been filled in containers of 1 gallon (3.785 liters) or less, in accordance with the provisions of § 19.582, shall be placed in cases so constructed as to afford reasonable protection against breakage or theft. Pursuant to the provisions of this part, cases of spirits, including denatured spirits may be stored on bonded premises or withdrawn from bond.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.584 Containers holding from 1 gallon to 10 gallons.

(a) *Spirits for industrial use.* Spirits in bond, including denatured spirits, for industrial use, may be filled into glass containers of a capacity greater than 1 gallon but not greater than 10 gallons, and metal containers of a capacity of 1 gallon but not greater than 10 gallons.

(b) *Spirits for nonindustrial use.* Spirits in bond, for nonindustrial use, may be filled into metal containers holding 10 gallons and, if for export, such spirits may be filled into metal containers holding 5 gallons. Spirits may be filled into glass containers of a capacity greater than 1 gallon but not greater than 5 gallons and into metal containers of a capacity greater than 1 gallon but not greater than 10 gallons during bottling operations. Pursuant to the provisions of this part, and of Part 5 of this chapter, containers filled in bond under this section may be stored on bonded premises, transferred in bond (except containers holding 1 gallon or less may not be transferred in bond), or withdrawn from bonded premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206); Sec. 805, Pub. L. 96–39, 93 Stat. 278 (26 U.S.C. 5002))

§ 19.585 Encased containers.

Unlabeled containers of denatured spirits and spirits of 190 degrees of proof or more for industrial use filled in

accordance with the provisions of § 19.584 may be completely encased in wood, fiberboard, or similar material in such a manner that the surface (including opening) of the actual container is not exposed. Required marks, brands, and stamps (if any) shall be applied to an exposed surface of the case, and the case shall be so constructed that the portion containing such marks, brands, and stamps will remain attached to the inner container until all of the contents have been removed therefrom. A statement reading "Do Not Remove Inner Container Until Emptied" or of similar import, shall be placed on the portion of the case bearing the marks, brands, and stamps.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.586 Packages.

Packages of more than 10 gallons capacity may be used on bonded premises for original entry of spirits, and for packaging from tanks, storing, transferring in bond, and withdrawing from bonded premises of spirits and denatured spirits. Metal drums shall be so constructed that all openings therein may be sealed and other packages shall be constructed so as to be capable of secure closure.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.587 Bulk conveyances.

Bulk conveyances which conform to the requirements of § 19.590 may be used on bonded premises for original entry of spirits, and for filling from tanks, storing, transferring in bond, and withdrawing from bond of taxpaid spirits and of denatured spirits. Spirits may be withdrawn free of tax, pursuant to the provisions of this part, in a bulk conveyance only for use of the United States, or if the Director has authorized the proprietor, as provided in § 19.581, to so withdraw such spirits to a specified consignee. Spirits may be withdrawn without payment of tax, pursuant to the provisions of this part, in bulk conveyances for the purposes provided in § 19.531(a), (b), (c), (e), and (f).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.588 Tanks.

Tanks which conform to the requirements of § 19.273 may be used on bonded premises as containers for distilled spirits, denatured spirits, articles, and wines.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.589 Pipelines.

Pursuant to the provisions of this part, pipelines which conform to the requirements of § 19.274 may be used for (a) the conveyance on bonded premises of spirits, denatured spirits, articles, and wines, and (b) the conveyance to and from bonded premises of spirits, denatured spirits, articles, and wines, where the premises from or to which conveyed is in the immediate vicinity.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.590 Construction of bulk conveyances.

(a) *Construction.* All bulk conveyances authorized by this part shall conform to the following:

(1) If the conveyance consists of two or more compartments, each shall be so constructed or arranged that emptying of any compartment will not afford access to the contents of any other compartment.

(2) The conveyance (or in the case of compartmented conveyances, each compartment) shall be so arranged that it can be completely drained.

(3) Each tank car or tank truck shall have permanently and legibly marked thereon its number, capacity in wine gallons, and the name or symbol of its owner.

(4) If the conveyance consists of two or more compartments, each compartment shall be identified and the capacity of each shall be marked thereon.

(5) Permanent facilities shall be provided on tank trucks and tank cars to permit ready examination of manholes or other openings.

(6) A route board, or other suitable device, for carrying required marks, brands, and stamps shall be provided on each bulk conveyance.

(7) Calibrated charts, prepared or certified by competent and recognized authorities or engineers, showing the capacity of each compartment in wine gallons for each inch of depth, shall be carried with each tank truck, tank ship, or barge.

(b) *Proprietor's responsibility.* Before filling any bulk conveyance, the proprietor shall examine it to ascertain that it meets the requirements of this section and is otherwise suitable for receiving the spirits, denatured spirits, or wines, and he shall refrain from, or discontinue, using any such conveyance found by him or by an ATF officer to be unsuitable.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended, 1362, as amended (26 U.S.C. 5206, 5212, 5214); Sec. 807, Pub. L. 96–39, 93 Stat. 285 (26 U.S.C. 5213))

§ 19.591 Restrictions on disposition of bulk spirits.

(a) *For nonindustrial use.* Spirits for nonindustrial use may be sold or disposed of in containers holding more than 1 wine gallon only to the persons and for the purposes set forth in Part 3 of this chapter.

(b) *For industrial use.* Shipment or delivery of spirits (other than alcohol or neutral spirits) withdrawn from bond in containers holding more than 1 wine gallon for industrial use shall, as provided in Part 3 of this chapter, be made directly to the user of the spirits.

(Sec. 201, Pub. L. 85–895, 72 Stat. 1356, as amended (26 U.S.C. 5201))

Marks and Brands

§ 19.592 General.

Proprietors shall mark, brand, identify, label, and stamp all containers of spirits (including denatured spirits) as provided by this part. Containers of wine shall be marked and branded in accordance with Part 240 of this chapter. Containers of articles shall be marked and branded in accordance with Part 211 of this chapter.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1360, as amended (26 U.S.C. 5204, 5206))

§ 19.593 Package identification numbers.

(a) *General.* Packages of spirits filled during production or storage operations after December 31, 1979, shall be marked with a package identification number, consisting of a lot identification and serial number as follows:

(1) A lot identification representing the date the package is filled, and consisting in the order shown, of—

(i) The last two digits of the calendar year;

(ii) An alphabetical designation from "A" through "L", representing January through December, in that order;

(iii) The digits corresponding to the day of the month; and

(iv) When more than one lot is filled into packages during the same day, for successive lots after the first lot, a letter suffix, in alphabetical order, with "A" representing the second lot, "B" representing the third lot, and so forth. The first three lots filled into packages on January 2, 1980, would be identified as "80A02", "80A02A", "80A02B".

(2) A serial number for each package of spirits within a lot consecutively numbered by the proprietor commencing with "1" for each lot and appearing adjacent to the lot identification as "80A02–1" or "80A02A–25".

(b) *Packages constituting a lot.* Packages of spirits filled during any one day shall be given the same lot

identification subject to the following conditions:

(1) They are of the same type and either are of the same rated capacity or are uniformly filled with the same quantities by weight or other method provided in § 19.319;

(2) They are filled with spirits of the same kind and same proof;

(3) They are filled with spirits which are mingled or blended in accordance with § 19.346; and

(4) They are filled with imported spirits, Puerto Rican spirits, or Virgin Islands spirits, as applicable.

Any remnant package shall itself constitute a lot.

(c) *Waiver of requirement for serial numbers.* Notwithstanding the provisions of paragraph (a) of this section, the regional regulatory administrator may, upon application from the proprietor, waive the requirement for assigning serial numbers to packages of spirits at the time of filling or receipt on bonded premises if he finds that the revenue will not be jeopardized, and no administrative difficulties will be caused by such waiver. When such waiver has been granted, the lot identification shall constitute the package identification number. When it becomes necessary, as a result of a transaction (such as the transfer in bond of the packages in an unsealed conveyance, withdrawal of the packages from bond on the basis of an individual package gauge, etc.) occurring after deposit of such unnumbered packages, the proprietor who is conducting the transaction shall consecutively number each package involved in the transaction and such number, in conjunction with the lot identification, shall thereafter constitute the package identification number.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.594 Numbering of packages and cases.

Packages of spirits filled during processing operations, including packages of denatured spirits, and cases containing bottles or other containers of spirits (including denatured spirits) shall, when filled, be consecutively numbered in a separate series by the proprietor commencing with "1" in each series of serial numbers, except that any series of such numbers in use may be continued. When the numbering in any series reaches "1,000,000", the proprietor may recommence the series. However, a new series for packages of spirits filled during processing operations, including packages of denatured spirits, shall be given an alphabetical prefix or suffix. For additional identification, separate series of serial numbers, distinguished from each other by the use of alphabetical prefixes or suffixes, may be established to identify size of bottles, brand names, or other information, on written notice to the regional regulatory administrator. Remnant cases shall be given the serial number of the last full case followed by the letter R. Where there is a change in the individual, firm, corporate name, or trade name, all series in use at that time shall be continued. However, for a change in proprietorship, a new series shall be commenced.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.595 Specifications for marks and brands.

The proprietor shall place the prescribed marks and brands on cases and encased containers of spirits by printing, stenciling, or stamping and shall place the prescribed marks and brands on packages of spirits by burning, cutting, printing, or stenciling; the prescribed marks and brands may also be made by any equally legible and durable method approved by the regional regulatory administrator. The marks required to be placed on packages by this subpart shall be placed on one head, which shall be called the Government head, and the marks for other containers, and for cases, on one side, which shall be called the Government side. However, the proprietor may, on application, to, and approval by, the regional regulatory administrator, locate the required marks on a container at a place other than that prescribed by this section. The letters and figures shall be large enough to be easily read and, when printed, stamped, or stenciled, shall be in permanent ink and in a color distinctly in contrast to that of the background. The prescribed marks on packages, cases, and encased containers of specially denatured spirits may be placed thereon in the manner provided in this section, or may be placed thereon by means of labels if the labels are clearly legible and securely affixed to the package, case, or container.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.596 Marks on packages of spirits filled on bonded premises.

(a) *Packages filled in production or storage.* Except as otherwise provided in this part packages of spirits filled in production or storage shall be marked with—

(1) The name of the producer, or his trade name as provided in paragraph (c) of this section;

(2) The plant number of the producer, such as "DSP–KY–708";

(3) The kind of spirits or, in the case of distillates removed under § 19.325, the kind of distillates such as "Grape distillate", "Peach distillate", etc;

(4) The package identification number;

(5) The date of fill;

(6) "BSA" or "OC" when spirits are treated with caramel or oak chips, as the case may be;

(7) The rated capacity of the package in gallons shown as "RC–G"; and

(8) If packages of spirits of 190 degrees or more of proof are filled by other than the producer, the name (or trade name) and plant number of the packaging proprietor shall be substituted for that of the producer.

(b) *Packages filled in bond during processing.* Except as otherwise provided in this part, packages of spirits filled on bonded premises during processing shall be marked with—

(1) The name of the processor, or his trade name as provided in paragraph (c) of this section;

(2) The plant number of the processor, such as "DSP–KY–708";

(3) The kind of spirits (in the case of an intermediate, the product name shown on Form 5110.38);

(4) The serial number, as applicable;

(5) The date of filling; and

(6) If manufactured under an approved formula, the serial number of the formula.

(c) *Real or trade names.* The producer's real name or any trade name authorized (as provided in § 19.165), at the time of production, may be placed on any package filled at the time of production gauge, or at the time of original packaging of the spirits in wood when, as provided in § 19.320, the spirits were not filled into wooden packages at the time of production gauge. When spirits have been mingled under § 19.346, the proprietor may use any of the names represented in the mingled spirits, but no other name, as the name of the producer to be marked on packages filled with such mingled spirits. However, if the proprietor was the actual producer of the spirits, he may in any case use his real name. The processor's real name or any trade name authorized (as provided in § 19.165) may be placed on any package filled with spirits during processing operations.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.597 Kind of spirits.

(a) *Designation.* The designations as to kind of spirits required by § 19.596 shall be in accordance with the classes and types of spirits set out in Part 5 of this chapter, except that:

(1) Spirits distilled at more than 160 degrees of proof, which lack the taste, aroma, and other characteristics generally attributed to whisky, brandy, rum, or gin, and which are substantially neutral in character, may be designated as "Alcohol". When alcohol is withdrawn on determination of tax, the designation shall consist of the word "Alcohol" preceded or followed by a word or phrase descriptive of the material from which the alcohol was produced.

(2) The designations for vodka, neutral spirits, or gin shall include a word or phrase descriptive of the material from which the spirits so designated were produced.

(3) Spirits distilled at less than 190 degrees of proof which lack the taste, aroma, and other characteristics generally attributed to whisky, brandy, rum, or gin, may be designated "Spirits", preceded or followed by a word or phrase descriptive of the material from which produced. However, spirits distilled on or after July 1, 1972, distilled as provided in this paragraph may not be designated "Spirits grain" or "Grain spirits".

(4) Spirits distilled from fruit at or above 190 degrees of proof, if intended for use in wine production, shall be designated "Neutral Spirits—Fruit", preceded or followed by the name of the fruit from which produced.

(5) Spirits distilled at not more than 160 degrees of proof from a fermented mash of not less than 51 percent rye, corn, wheat, malted barley, or malted rye grain, packaged in reused cooperage, may be designated "Whisky" if further qualified with the words "Distilled from rye mash" (or bourbon, wheat, malt, or rye malt mash, as the case may be). However, such spirits shall, if distilled from a fermented mash of not less than 80 percent corn, be designated "Corn Whisky."

(b) *Change of designation.* A proprietor may, on written application to, and approval of the regional regulatory administrator, change the original designation for spirits at any time, before their withdrawal from bonded premises, to a new designation properly describing the spirits in accordance with the provisions of this section.

(c) *Other designations.* If the proprietor proposes to produce spirits for which a designation has not been prescribed, he shall first make written application to the Director for a designation for such spirits and such spirits shall be branded accordingly.

(d) *Spirits for nonindustrial use.* The provisions of this section shall not be construed as authority for applying designations to spirits withdrawn for nonindustrial use which designations do not comply with provisions of 27 CFR Part 5.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.598 Authorized abbreviations to identify spirits.

The following abbreviations may be used, either alone or in conjunction with descriptive words, to identify the kind of spirits on transaction forms and records:

Kind of spirits:	*Abbreviations*
Alcohol	A
Brandy	BR
Bourbon Whisky	BW
Canadian Whisky	CNW
Completely Denatured Alcohol	CDA
Corn Whisky	CW
Grain Spirits	GS
Irish Whisky	IW
Light Whisky	LW
Malt Whisky	MW
Neutral Spirits	NS
Neutral Spirits Grain	NSG
Rye Whisky	RW
Scotch Whisky	SW
Specially Denatured Alcohol	SDA
Specially Denatured Rum	SDR
Tequila	TEQ
Vodka	V
Whisky	W

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.599 Change of packages.

When spirits are transferred from one package to another as authorized in § 19.345, each new package shall be given the same package identification number, marks, and brands as the original package. The proprietor shall prepare and sign a label to be affixed to the head of each new package in the manner prescribed for affixing distilled spirits stamps. The label shall be in the following form:

The spirits in this
,_____,
(Kind of cooperage)
,_____,
(Barrel or drum)
,_____
,package identification No.,
,_____
,were transferred from a
,_____,
(Kind of cooperage)
,_____,
(Barrel or drum)
on
,_____,
(Date)
,_____,
(Proprietor)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.600 Packages of blended brandy or rum.

When brandy or rum is blended in accordance with the provisions of § 19.346(c), packages containing such spirits shall be marked to show the words "Blended by" followed by the name and the plant number of the blending proprietor in lieu of showing the name and plant number of the producer. However, if the blender was the actual producer of the spirits, he may mark the packages to show "Produced and Blended by" followed by his name and plant number where the spirits were blended. Such packages shall otherwise be marked in accordance with the provisions of this subpart.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.601 Marks on approved containers of specially denatured spirits.

(a) *General.* Each package, case, and encased container of specially denatured spirits filled on bonded premises shall be marked or labeled to show:

(1) Quantity in gallons;

(2) Serial number;

(3) Plant number of the denaturer;

(4) Designation or abbreviation of the specially denatured spirits by kind (alcohol or rum);

(5) Formula number; and

(6) Proof of spirits which were denatured at other than 190 degrees of proof.

(b) *Location of marks.* Marks or labels shall be affixed to the head of the package or side of the container or case.

(c) *Alternate formulations.* When spirits are denatured under a formula authorizing a choice of types and quantities of denaturants, the container or case shall be marked to show actual types and quantities of denaturants used.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.602 Marks on containers of completely denatured alcohol.

Each approved container of completely denatured alcohol (except pipelines and bulk conveyances) shall have marked on the head of the package (or side of the can or casing) the name of the proprietor by whom the containers were filled, the plant number where filled, the contents in wine gallons, the apparent proof, the words "Completely Denatured Alcohol", and the formula number.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.603 Marks on tanks.

When denatured spirits or articles are held in a tank, the formula number of the denatured spirits or article (if applicable) shall be marked or otherwise indicated on the tank.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.604 Caution label.

Each container of completely denatured alcohol containing 5 gallons or less, sold or offered for sale, shall be labeled to show in plain, legible letters (red or white) the words "Completely Denatured Alcohol" and the following statement: Completely denatured alcohol; contains ingredients which render the product wholly unfit for beverage purposes; if taken internally, will cause serious consequences to health. The name and address of the denaturer may be printed on such label, but no other extraneous matter will be permitted thereon without the approval of the Director. The word "pure", qualifying denatured alcohol, will not be permitted to appear on the label or the container.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.605 Additional marks on portable containers.

In addition to the other marks required by this part, portable containers (other than bottles enclosed in cases) of spirits (including denatured spirits, as applicable) to be withdrawn from the bonded premises—

(a) Without payment of tax, for export, transfer to customs manufacturing bonded warehouses, transfer to foreign-trade zones or supplies for certain vessels and aircraft, shall be marked as provided in 27 CFR Part 252; or

(b) Tax-free alcohol shall be marked to show the number of the permit of the tax-free user and the date of withdrawal.

The proprietor may show on the Government head or side other information such as brand or trade name; caution notices and other material required by Federal, State, or local law or regulations; wine or proof gallons; and plant control data. However, marks or attachments shall not conceal, obscure, interfere with or conflict with the markings required by this subpart.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.606 Marks on bulk conveyances.

The provisions of 27 CFR Part 240 apply to marks on bulk conveyances used to transport wine. The provisions of 27 CFR Part 211 apply to marks on bulk conveyances used to transport articles. The proprietor shall securely attach to the route board, or other suitable device, of each bulk conveyance used to transport spirits (including denatured spirits) a label (coated with transparent shellac or otherwise adequately protected) to identify each conveyance or, when applicable, each compartment as follows:

(a) In-bond shipments and shipments of spirits on which the tax has been determined shall bear a label showing the name, plant number, location (city or town and State) of both the consignor and the consignee, and the date of shipment. In the case of in-bond shipments, the words "Shipped in bond by" shall precede the name of the consignor. In addition, such label shall show the quantity in proof gallons (wine gallons for denatured spirits), and the formula number for denatured spirits.

(b) Shipments of spirits (including denatured spirits) for tax-free use shall bear a label showing the name, location (city or town and State) of both the consignor and the consignee, the plant number of the consignor, the permit number the consignee, the date of shipment, the quantity in proof gallons (wine gallons for denatured spirits), and the formula number for denatured spirits.

(c) Shipment of spirits withdrawn without payment of tax, for export, transfer to customs manufacturing bonded warehouses, transfer to foreign-trade zones, or for use in wine production, shall bear a label showing the name and location (city or town and State) of both the consignor and consignee, the plant number of the consignor, the registry number, if any, of the consignee, the quantity in proof gallons, the date of shipment, and the purpose of the withdrawal, as, for example, "For Export", "For Deposit in CMBW Cl. 6", "For Trans. to F.T.Z. No. ———", or "For Use in Wine Production". In addition export shipments shall conform to the requirements of Part 252 of this chapter.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.607 Marks on cases.

(a) *Mandatory marks.* Except for cases marked as provided in §§ 19.601, 19.602, and 19.608, the following information shall be plainly marked on the Government side of each case of spirits filled in processing:

(1) Serial number;
(2) Kind of spirits;
(3) Plant number where bottled;
(4) Date filled;
(5) Proof; and
(6) Proof gallons.

Cases removed for export, transfer to customs bonded warehouses or customs manufacturing bonded warehouses transfer to foreign-trade zones, or for use as supplies on certain vessels and aircraft, shall bear the additional marks required by 27 CFR Part 252.

(b) *Other marks.* In addition to the required marks on cases filled in processing, the proprietor may include on the Government side of cases, marks as follows:

(1) Name or trade name, and location if desired of the bottler, and in conjunction therewith the word "Bottler";

(2) For products actually distilled or processed by the proprietor, his name or trade name, and location, if desired, and in conjunction therewith the words "Distiller" or "Processor" as applicable;

(3) For products actually imported and bottled by the proprietor, the words "Imported and Bottled By", followed by his name or trade name, and location if desired;

(4) For products bottled for a dealer, the words "Bottled For", followed by the name of such dealer;

(5) Other material required by Federal or State law and regulations.

The marks authorized by this paragraph shall not interfere with or detract from the mandatory marks prescribed in paragraph (a) of this section. No other marks may be placed on the Government side except as authorized by the Director as provided in § 19.609.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206); Sec. 3(a), Pub. L. 91–659, 84 Stat. 1965, as amended (26 U.S.C. 5066))

§ 19.608 Cases of bottled alcohol.

(a) *Mandatory marks.* The Government side of each case of alcohol bottled for industrial use in accordance with Subpart L shall be marked as applicable, to show—

(1) Designation as "alcohol";
(2) Serial number;
(3) Plant number;
(4) Proof;
(5) Proof gallons;
(6) Permit number of the tax-free user;
(7) Information required by 27 CFR Part 252, for cases withdrawn for export, transferred to customs bonded warehouses, transferred to foreign trade zones, or supplies for certain vessels and aircraft.

(b) *Other marks.* (1) The Government side of cases may be marked to show the brand or trade name, or information required by Federal, State, or local law and regulations.

(2) Other marks shall not interfere with or distract from mandatory case marks.

(3) Additional marks may be placed on the Government side of cases if authorized by the Director pursuant to § 19.609.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended, 1369, as amended (26 U.S.C. 5206, 5235))

§ 19.609 Additional marks for cases.

Labels or data describing the contents for commercial identification purposes, or indicating payment of State or local taxes, may appear on the Government side of cases. The Director may authorize designs or other marks on the Government side of cases. Labels, marks, or designs shall not conflict with, or obscure, the markings required by this part. Applications for approval of designs or other marks shall be submitted through the regional regulatory administrator and be accompanied by drawings or other representations showing the proposed marks and the colors in which they will appear.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.610 Obliteration of marks, brands, stamps, and labels.

Except as to change of designation as provided in § 19.597(b), the marks, brands, stamps, and labels required on any container or case by this part shall not be destroyed or altered until the container or case is emptied. When the proprietor empties any container, the stamps shall be destroyed, and the marks, brands, and labels shall be effaced or obliterated. However, the marks and brands on packages emptied on distilled spirits plant premises need not be effaced or obliterated until the packages are reused or removed from the plant. The provisions of this section shall not apply to containers stamped with strip stamps or alternative devices, or to the permanent marks on tanks required by § 19.278.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 19.611 Relabeling and restamping off bonded premises.

The proprietor of a distilled spirits plant may relabel, affix brand labels, reaffix alternative devices, or restamp bottled taxpaid spirits on wholesale liquor dealer premises or at a taxpaid storeroom on, contiguous to, adjacent to, or in the immediate vicinity of the plant, if such wholesale liquor dealer premises or taxpaid storeroom is operated in connection with the plant.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.612 Authorized abbreviations to identify required marks.

In addition to the abbreviations and symbols which are authorized in this part for use in marking containers, the following abbreviations may be used to identify certain required marks:

Required Mark	Abbreviation
Completely denatured alcohol	CDA
Distilled spirits stamps	DSS
Gallon or wine gallon	WG
Gross weight	G
Proof	P
Specially denatured Alcohol	SDA
Specially denatured Rum	SDR
Tare	T
Tax determined	TD
Wine spirits addition	WSA

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.613 Identification marks on devices other than strip stamps.

Devices approved by the Director as an alternative to strip stamps when affixed to containers of distilled spirits shall be marked at the distilled spirits plant with a permanent and legible identification as follows:

(a) An abbreviation of the State in which the plant is located; and

(b) The plant number.

For example, the identification on devices other than strip stamps for DSP–VA–280 would be identified on the device as "VA280".

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

Subpart R—Liquor Bottle and Label Requirements

§ 19.631 Scope of subpart.

The provisions of §§ 19.632 through 19.640 of this subpart shall apply only to liquor bottles having a capacity of 200 ml or more except where expressly applied to liquor bottles of less than 200 ml capacity. The provisions of §§ 19.641 through 19.650 of this subpart shall apply to all liquor bottles, regardless of size.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended, 1374, as amended (26 U.S.C. 5206, 5301))

Liquor Bottle Requirements

§ 19.632 Bottles authorized.

Liquor bottles shall conform to the applicable standards of fill provided in Subpart E of 27 CFR Part 5, including those for liquor bottles of less than 200 ml capacity. The use of any bottle size other than as authorized in Subpart E of 27 CFR Part 5 is prohibited for the packaging of distilled spirits for domestic purposes. Bottles bearing the indicia required under 27 CFR Part 173 may be used, but need not be used, in bottling spirits for export.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

§ 19.633 Indicia for bottles.

Except as provided in § 19.634, liquor bottles used for packaging spirits for domestic use shall bear the indicia prescribed in § 173.33 or § 173.34 of this chapter. Additional information may, as provided in Part 173 of this chapter, be permanently marked on such liquor bottles.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

§ 19.634 Distinctive liquor bottles.

A proprietor desiring approval of a domestic liquor bottle of distinctive shape or design, including bottles of less than 200 ml capacity, whether or not such bottles bear the indicia required under 27 CFR Part 173, or, to use such distinctive liquor bottle, shall submit a letter application to the Director for approval. Each application shall be accompanied by ten 5" × 7" photographs and, if the bottle has not previously been declared distinctive, an actual bottle or an authentic model or other representation acceptable to the Director. Each application shall contain the following information as applicable:

(a) Date of application;

(b) Name, address and permit number of applicant;

(c) Description of the bottle;

(d) Size of the bottle;

(e) Kind of spirits to be contained in the bottle;

(f) A request to have the bottle declared distinctive (if the bottle has not previously been so declared by the Director);

(g) Distinctive container number (if the bottle has been previously declared distinctive by the Director);

(h) A request to have the bottle declared distinctive, and names, addresses and distilled spirits plant numbers of the plants where the bottle will be used;

(i) A request for waiver of headspace requirements, as provided in § 5.48 of this chapter; and

(j) Signature and title of applicant.

Properly submitted applications for approval of a distinctive liquor bottle, or for use of a distinctive liquor bottle, will be approved provided such bottles are found by the Director to meet the requirements of 27 CFR Part 5, to be distinctive, not to jeopardize the revenue, to be suitable for their intended purpose, and not to be deceptive to consumers. If the application is approved, the Director will send one photocopy of the approved application and one approved photograph of the distinctive bottle to the applicant and to each regional regulatory administrator.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

§ 19.635 Receipt and storage of liquor bottles.

No proprietor shall accept shipment or delivery of liquor bottles except from the manufacturer thereof, a supplier abroad, or another proprietor. However, the Director may, pursuant to letterhead application, authorize a proprietor to receive and reuse liquor bottles assembled for such proprietor as provided in 27 CFR 194.263. Liquor bottles, including those of less than 200 ml capacity, shall be stored in a safe and secure place, either on the proprietor's qualified premises or at another location.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

§ 19.636 Bottles to be used for display purposes.

Liquor bottles may be furnished to liquor dealers for display purposes, provided that each bottle is marked to show that it is to be used for such purpose. Any paper strip used to seal the bottle shall be of solid color and without design or printing, except that the use of a border or a design, formed entirely of the legend, "not genuine—for display purposes only" is permissible. The Disposition of such bottles, showing names and addresses of consignees, dates of shipment, and size, quantity, and description of bottles, shall be included in the records required under § 19.779.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

§ 19.637 Bottles for testing purposes.

A proprietor may, on notice to the regional regulatory administrator of the region in which the plant is located, ship a reasonable number of liquor bottles for bona fide testing purposes, such as the testing of bottling machinery by the manufacturer thereof. The notice shall show the name and address of the person to whom the bottles are shipped and the number of bottles shipped. Such shipments shall be reflected in the records required under § 19.779.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

§ 19.638 Bottles not constituting approved containers.

The Director may disapprove for use as a liquor bottle any bottle, including a bottle of less than 200 ml capacity, which he determines to be deceptive. Any such bottle, whether or not it bears the indicia required under 27 CFR Part 173, is not an approved container for the purposes of § 19.581 of this part, and shall not be used for packaging distilled spirits for domestic purposes.

(Sec. 201, Pub. L. 859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

§ 19.639 Disposition of stocks of liquor bottles.

When a proprietor discontinues operations, or permanently discontinues the use of a particular size or type of liquor bottle, the stocks of such bottles on hand shall either be disposed of to another person authorized to receive liquor bottles, or destroyed (including disposition for purposes which will render them unusable as bottles). However, on approval of a written application by the regional regulatory administrator of the region in which the proprietor's plant is located, liquor bottles may be otherwise disposed of.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

§ 19.640 Use and resale of liquor bottles.

No proprietor shall use any liquor bottle except for packaging distilled spirits, or dispose of any empty liquor bottle except to another person authorized to receive liquor bottles or as provided in § 19.639. Bottles may be furnished to others for display and testing purposes as provided in §§ 19.636 and 19.637, respectively.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

Bottle Label Requirements

§ 19.641 Certificate of label approval or exemption.

Proprietors are required by 27 CFR Part 5 to obtain approval of labels, or exemption from label approval, for any label to be used on bottles of spirits for domestic use and shall exhibit evidence of label approval, or of exemption from label approval, on request of an ATF officer.

(Sec. 201, Pub. L. 85–859, 72 Stat 1356, as amended (26 U.S.C. 5201))

§ 19.642 Statements required on labels under an exemption from label approval.

All labels to be used on bottles of spirits for domestic use under an exemption from label approval shall contain the applicable information required in §§ 19.643 through 19.650. Where a statement of age or age and percentage is required, it shall have the meaning given, and be stated in the manner provided in 27 CFR Part 5.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.643 Brand name, class and type, alcohol content, and State of distillation.

The brand name, class and type as set out in 27 CFR Part 5, and alcohol content of the distilled spirits, by proof, shall be shown on the label except that on labels for liqueurs, cordials, bitters, cocktails, highballs, or other such specialties, the alcohol content may be stated in percentage by volume. Except in the case of "light whisky", "blended light whisky", "blended whisky", "a" "blend of straight whiskies", or "spirit whisky", the State of distillation shall be shown on the label of any whisky produced in the United States if the whisky is not distilled in the State given in the address on the brand label. The Director may, however, require the State of distillation to be shown on the label or permit such other labeling as may be necessary to preclude any misleading or deceptive impression which might otherwise be created as to the actual State of distillation. In the case of "light whisky", as defined in 27 CFR 5.22(b)(3), the State of distillation shall not appear in any manner on any label if the Director finds such State is associated by consumers with an American type whisky (as provided in 27 CFR 5.22), except as part of a name and address as set forth in 27 CFR 5.36(a).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.644 Net contents.

The net contents of liquor bottles shall be shown on the label, unless the statement of the net contents is permanently marked on the side, front, or back of the bottle.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.645 Name and address of bottler.

There shall be stated on the label of distilled spirits the phrase "Bottled by", "Packed by", or "Filled by" immediately followed by the name (or trade name) of the bottler and the place where such spirits are bottled. If the bottler is the actual bona fide operator of more than one distilled spirits plant engaged in bottling operations, there may, in addition, be stated immediately following the name (or trade name) of such bottler the addresses of such other plants. However—

(a) Where distilled spirits are bottled by or for the distiller thereof, there may be stated, in lieu of the phrase "Bottled by", "Packed by", or "Filled by", followed by the bottler's name (or trade name) and address, the phrase "Distilled by", followed by the name (or trade name) under which the particular spirits were distilled, or any trade name shown on the distiller's permit (covering the premises where the particular spirits were distilled), and the address (or addresses) of the distiller;

(b) Where distilled spirits are bottled by or for the proprietor of a distilled spirits plant, there may be stated, in lieu of the phrase "Bottled by", "Packed by", or "Filled by", followed by the bottler's name (or trade name) and address, the phrase "Blended by", "Made by", "Prepared by", "Manufactured by", or "Produced by" (whichever may be appropriate to the process involved), followed by the name (or trade name) and the address (or addresses) of the distilled spirits plant proprietor; and

(c) On labels of distilled spirits bottled for a retailer or other person who is not the actual distilled spirits plant proprietor of such distilled spirits, there may also be stated the name and address of such retailer or other person, immediately preceded by the words "Bottled for", or "Distributed by", or other similar statement.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.646 Age of whisky containing no neutral spirits.

In the case of whisky containing no neutral spirits, statements of age and percentage shall be stated on the label as provided in 27 CFR Part 5.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.647 Age of whisky containing neutral spirits.

In the case of whisky containing neutral spirits, the age of the whisky or whiskies and the respective percentage by volume of whisky or whiskies and neutral spirits, shall be stated on the label as provided in 27 CFR Part 5.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.648 Age of brandy.

If brandy is aged for a period of less than two years, the age thereof shall be shown on the label.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.649 Presence of neutral spirits and coloring, flavoring, and blending materials.

The presence of neutral spirits or coloring, flavoring, or blending materials shall be stated on labels in the manner provided in 27 CFR Part 5.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.650 Country of origin.

On labels of imported distilled spirits there shall be stated the country of origin in substantially the following form: Product of ....," the blank to be filled in with the name of the country of origin.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

Subpart S—Stamps

Strip Stamps and Alternative Devices

§ 19.661 General.

(a) *Spirits bottled-in-bond.* Each bottle of spirits, qualified for the labeling designation "bottled-in-bond" under 27 CFR Part 5, shall when filled, be stamped by the proprietor with a green strip stamp or affixed with an approved alternative device.

(b) *Alcohol and other distilled spirits.* Each bottle or other container of alcohol bottled under 26 U.S.C. 5235, and other distilled spirits bottled on bonded premises, except spirits which are eligible for the labeling designation "bottled-in-bond" under 27 CFR Part 5, as described in paragraph (a) of this section, shall, when filled, be stamped by the proprietor with a red strip stamp or affixed with an approved alternative device.

(c) *Overprinting.* If bottled spirits are to be exported, the word "EXPORT" shall be legibly and durably overprinted on the strip stamp or alternative device. Subject to approval by the Director, strip stamps or alternative devices may be similarly overprinted with the class and type of product or with an appropriate abbreviation or symbol (for example, "BW" for bourbon whisky).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1369, as amended (26 U.S.C. 5205, 5235))

§ 19.662 Strip stamp format.

All prescribed strip stamps shall be issued in (a) a standard size for bottles or containers of 200 ml capacity or more, and in (b) a small size for bottles or containers of less than 200 ml capacity.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 19.663 Alternative devices.

(a) *Application to use alternative devices in lieu of red or green strip stamps.* Distilled spirits plant proprietors who wish to use devices other than red or green strip stamps on containers of distilled spirits shall file an application with the Director. The application shall contain:

(1) The name, address, and distilled spirits plant number;

(2) A description of the alternative device and method of affixing to containers. Two samples of the proposed alternative device (including designs and lettering) affixed to empty containers shall accompany the application; and

(3) The signature of the proprietor or authorized agent.

(b) *Alternative devices used as an alternative to red or green strip stamps.* (1) Alternative devices shall be approved by the Director prior to use;

(2) Alternative devices, after the containers are filled, shall:

(i) Be marked as required by § 19.613,

(ii) Be securely affixed, and

(iii) Leave a portion of the device remaining on the container after opening.

(3) Any designs or lettering appearing on the alternative device shall also be approved by the Director prior to use.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 19.664 Procurement of strip stamps.

(a) *General.* Strip stamps may be obtained, without charge, by the proprietor, in reasonable anticipation of current needs, from the regional regulatory administrator of the region in which the plant is located, by requisition on Form 428. Stamps may not be procured by one proprietor from another or transferred to another plant operated by the same proprietor, except on authorization by the regional regulatory administrator. Requisitions shall be for full sheets of such stamps. On receipt of the stamps the proprietor shall verify the quantity received and acknowledge receipt, noting any discrepancies, on both copies of Form 428 returned by the regional regulatory administrator, forward one copy of the Form 428 to the regional regulatory administrator and retain one copy on file.

(b) *Alternative method.* When the regional regulatory administrator determines that the interests of the Government will be best served, the stamps may be shipped directly to the proprietor from a location other than the office of the regional regulatory administrator. In that case, the regional regulatory administrator shall notify the proprietor that the strip stamps will be delivered by an alternative method and the minimum quantity, if any, of each size stamp which may be requisitioned on any particular Form 428. Upon approval of Form 428, two copies of the form shall be returned to the proprietor. Upon receipt of the stamps, the proprietor shall (1) indicate the quantity of stamps received and acknowledge receipt, noting any discrepancies, on both copies of Form 428 and (2) return one copy to the regional regulatory administrator, and retain one copy.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 19.665 Affixing stamps or alternative devices.

The proprietor shall affix strip stamps to containers with a suitable adhesive.

The proprietor shall affix alternative devices to containers of distilled spirits as described in the approved application. Upon opening the container, the stamp or alternative device shall be broken and a portion shall remain attached to the container. Strip stamps or alternative devices affixed to containers shall not be concealed or obscured in any manner except that (a) the Director may authorize labels or State stamps to be so affixed as to partially obscure strip stamps or alternative devices, if a need exists, and the manner of affixing the labels or State stamps does not obscure essential information on the strip stamps which is not clearly shown on the bottle or on the labels affixed to the bottle, and (b) a stamp or alternative device may be covered by a cup, cap, seal, carton, wrapping, or other item which can readily be removed without injury to the stamp or which is sufficiently transparent- to be able to read all data on the stamp or alternative device. If a cup, cap, or seal is placed over a stamp or alternative device, a portion of the stamp or alternative device must remain plainly visible. If containers are enclosed in sealed opaque cartons or wrappings, the cartons or wrappings must bear the words, "This package may be opened for examination by ATF Officers". ATF officers have the right to open the cartons and wrappings and examine the containers. Where there is doubt as to the propriety of the use of any cup, cap, or seal, the closure and container should be submitted to the Director for approval.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 19.666 Strip stamp and alternative device accounting.

Proprietors are responsible for the proper control of and accounting for all strip stamps or alternative devices. Strip stamps that have been mutilated shall be destroyed by the proprietor, and unused stamps for which the proprietor has no use, shall be disposed of in accordance with the instructions of the regional regulatory administrator.

Proprietors shall not transfer or dispose of strip stamps charged to their account except as provided in this part. Proprietors shall keep records and submit reports relating to strip stamps and alternative devices in accordance with Subpart W of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205); Sec. 807, Pub. L. 96–39, 93 Stat. 284 (27 U.S.C. 5207))

§ 19.667 Restamping of spirits.

Bottles of distilled spirits filled on bonded premises may be restamped under the provisions of Subpart L of this part. Bottles of distilled spirits to which strip stamps or alternative devices have been affixed may also be restamped under the provisions of § 19.611. Replacement of mutilated or missing strip stamps or alternative devices by persons other than proprietors of plants shall be made in accordance with 27 CFR Part 194.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

Distilled Spirits Stamps

§ 19.668 General.

(a) *Containers to be stamped.* Except for containers required to be stamped under § 19.661 and pipelines for the conveyance of spirits, containers of spirits withdrawn from bonded premises on determination of tax, or without payment of tax for the purposes authorized in § 19.531(a)–(d), shall be stamped with a prescribed distilled spirits stamp evidencing compliance with the provisions of 26 U.S.C. Chapter 51, and this part.

(b) *Information on stamp.* The prescribed distilled spirits stamp is serially numbered. It shall be marked, in the space provided, by the proprietor withdrawing or removing the spirits, to show the name and plant number of such proprietor, the date of affixing the stamp to the container, and the serial number or package identification number, as applicable, of the container. When spirits are withdrawn under the provisions of § 19.531(a)–(d), the proprietor shall insert the word "Export" on the stamp.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 19.669 Procurement of distilled spirits stamps.

(a) *General.* Distilled spirits stamps may be obtained by the proprietor, without charge, in reasonable anticipation of current needs, from the regional regulatory administrator of the region in which the plant is located, by requisition on Form 428. Such stamps may not be procured by one proprietor from another proprietor or transferred between plants operated by the same proprietor, except on authorization by the regional regulatory administrator. On receipt of the stamps from the regional regulatory administrator, the proprietor shall (1) verify the quantity received, (2) acknowledge receipt thereof, noting any discrepancies on both copies of Form 428 returned by the regional regulatory administrator, (3) forward one copy of the receipted Form 428 to the regional regulatory administrator, and (4) retain a copy for his files.

(b) *Alternate method.* When the regional regulatory administrator determines that the interests of the Government will be best served, the distilled spirits stamps may be supplied to the proprietor from a location other than the office of the regional regulatory administrator. In such case, the regional regulatory administrator shall notify the proprietor that the stamps will be supplied from an alternate location and inform him of the minimum or maximum quantity, if any, which may be requisitioned on any particular Form 428. Upon approval of Form 428, two copies of the form will be returned to the proprietor. Upon receipt of the stamps, the proprietor shall (1) verify the quantity received, (2) acknowledge receipt thereof, noting any discrepancies on both copies of Form 428 returned, (3) forward one copy of Form 428 to the regional regulatory administrator, and (4) retain a copy for his files.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 19.670 Affixing of distilled spirits stamps.

Distilled spirits stamps shall be affixed and canceled by the proprietor before packages or conveyances are removed from the bonded premises. The stamps shall be securely affixed to the Government head of the package, or the route board, or other suitable device of the bulk conveyance, or to an appropriate part of any other approved container, and thereupon canceled by drawing or otherwise imprinting a line (not less than one-eighth inch wide) in durable red ink diagonally across the stamp. Such stamps (except in the case of packages to be transferred to contiguous premises) shall be covered with a transparent coating of shellac, lacquer, varnish, or equally suitable material to protect the markings on the stamp. Where the bulk conveyance consists of separate compartments, a separate stamp shall be canceled and affixed to the appropriate route board for each compartment. Distilled spirits stamps shall remain on the containers or conveyances until the spirits therein are emptied. Such stamps shall be destroyed, as provided in § 19.610, when the containers are emptied.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 19.671 Restamping packages, conveyances, or other containers.

Any package, conveyance, or other container of spirits which has been duly stamped with a distilled spirits stamp, but from which the stamp has been lost

or destroyed by accident, shall, except as otherwise provided in this chapter, be restamped with another distilled spirits stamp. Notice of restamping shall be made in writing to the regional regulatory administrator for the region in which the package, conveyance, or other container to be restamped is located. The notice, which shall be executed under the penalties of perjury, shall set forth the following:

(a) The package identification number or serial number, as applicable, of each package, conveyance or other container (and proprietor's name thereon);

(b) The location of the package, conveyance, or other container;

(c) A description of the contents;

(d) The applicant's interest in the property;

(e) The tax status of the spirits (supported by certified copies of the withdrawal forms);

(f) Statement by the applicant (or person having knowledge of the facts) that the package, conveyance, or other container was once duly stamped (and evidence thereof); and

(g) The circumstances connected with the destruction or loss of the stamps.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 19.672 Distilled spirits stamp accounting.

Proprietors are responsible for proper control of and accounting for all distilled spirits stamps received. Stamps that have been mutilated shall be destroyed by the proprietor and unused stamps for which the proprietor has no use shall be disposed of in accordance with the instructions of the regional regulatory administrator. Proprietors shall not transfer or dispose of distilled spirits stamps charged to their account except as provided in this part. Proprietors shall keep records and submit reports relating to such stamps in accordance with the provisions of Subpart W.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

Imitation Stamps

§ 19.673 Imitation of prescribed stamps prohibited.

No person shall affix to any container containing or intended to contain distilled spirits, any stamp, mark, brand, or label, in imitation or simulation of any prescribed ATF stamp required to be affixed to any container of distilled spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

Subpart T—Voluntary Destruction

§ 19.681 General.

The tax liability terminates on spirits (including denatured spirits), articles, or wines when voluntarily destroyed in accordance with this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended, 1381, as amended (26 U.S.C. 5008, 5370))

§ 19.682 Voluntary destruction procedures.

(a) *Notice required.* A proprietor who desires to destroy spirits (including denatured spirits), articles or wines shall file a notice of his intention with the area supervisor at least 7 days prior to the proposed date of destruction. However, the notice may be submitted directly to an ATF officer present at the distilled spirits plant, who may either supervise the destruction or transmit the notice to the area supervisor. The notice shall include, as applicable, the information required for the record of voluntary destruction in § 19.683.

(b) *Destruction.* If, by the date and time specified in the notice, an ATF officer has not supervised the destruction and the area supervisor has not advised the proprietor that the destruction must be supervised, the proprietor may complete the destruction in the manner stated in the notice.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended, 1381, as amended (26 U.S.C. 5008, 5370))

§ 19.683 Record of destruction.

The proprietor shall record details of the voluntary destruction of spirits (including denatured spirits), articles, or wines as follows:

(a) Identification of the spirits (including denatured spirits), articles, or wines to include, as applicable, kind, quantity, elements of gauge, name, and permit number of the producer, and identification and type of container;

(b) The reason for the destruction;

(c) The date, time, place, and manner of the destruction;

(d) A statement of whether or not the spirits had previously been withdrawn and returned to bond; and

(e) The name and title of the proprietor's representative who accomplished or supervised the destruction.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

Subpart U—Return of Spirits to Bonded Premises

§ 19.701 Return of taxpaid spirits to bonded premises.

(a) *Taxpaid spirits returned for destruction, denaturation, redistillation, reconditioning, or rebottling.* Distilled spirits on which tax has been paid or determined may be returned to the bonded premises of a distilled spirits plant only for:

(1) Destruction in accordance with § 19.682;

(2) If eligible for denaturation, denaturation in accordance with Subpart M of this part;

(3) Redistillation in accordance with Subpart J of this part;

(4) Reconditioning; or

(5) Rebottling.

Spirits returned under this paragraph shall be gauged upon receipt on bonded premises and the gauge recorded in the appropriate records maintained under Subpart W of this part.

(b) *Restrictions.* When containers of spirits are emptied, the proprietor shall comply with the applicable provisions of § 19.610. Distilled spirits products to which alcoholic ingredients other than distilled spirits have been added and which were withdrawn from a distilled spirits plant before January 1, 1980, may be returned only to the bonded premises of the distilled spirits plant from which withdrawn, for disposition as authorized by this section.

(c) *Applicability of 26 U.S.C. Chapter 51.* All provisions of 26 U.S.C. Chapter 51 and this part, applicable to spirits in ATF bond, shall be applicable to spirits when returned to bonded premises under this section. The provisions of this subpart do not apply to taxpaid bottled spirits returned to bond solely for relabeling or restamping and under the provisions of Subpart L of this part.

(Sec. 807, Pub. L. 96–39, 93 Stat. 285 (26 U.S.C. 5215))

§ 19.702 Receipt and disposition of returned taxpaid spirits.

(a) *General.* (1) Spirits returned to bonded premises pursuant to § 19.701 shall be immediately dumped.

(2) All returned spirits shall be supported by credit memoranda or other documents evidencing the return.

(b) *Gauge and disposition.* (1) On receipt of taxpaid spirits returned to bonded premises, the proprietor shall gauge the spirits for immediate disposition as provided in § 19.701.

(2) The receipt and report of gauge shall be reported on ATF F 5110.17.

(3) The completed ATF F 5110.17 shall be prepared and filed in accordance with instructions on the form.

(4) ATF F 5110.17 shall have attached to it sufficient evidence to establish:

(i) Class and type of the product;

(ii) Proof;

(iii) Distilled spirits plant number from which the spirits were withdrawn upon tax determination;

(iv) Date of tax determination;

(v) If processed under ATF F 5110.38 (Form 27–B Supplemental), the serial number of the form and if withdrawn from a distilled spirits plant prior to January 1, 1980, data sufficient to establish the distilled spirits (and wine, if returned during a calendar year 1980) taxes paid.

(5) A copy of ATF F 5110.17 shall accompany any claim filed under § 19.42 for spirits returned in accordance with this section.

(Sec. 807, Pub. L. 96–39, 93 Stat. 285 (26 U.S.C. 5215))

§ 19.703 Return of recovered denatured spirits and recovered articles.

Recovered denatured spirits and recovered articles may be returned for restoration or redenaturation to the bonded premises of any plant authorized to denature spirits, in accordance with the provisions of Part 211 of this chapter. When containers are emptied, the proprietor shall comply with the applicable requirements of § 19.610. If restoration requires redistillation, the recovered denatured spirits or recovered articles may be returned for that purpose to bonded premises of a plant authorized to produce spirits. When recovered denatured spirits or recovered articles are received, the proprietor shall gauge the materials and record the gauge on Form 5110.26. Spirits recovered by the redistillation of recovered denatured spirits and recovered articles may not be withdrawn from bonded premises except for industrial use or after denaturation. All spirits redistilled under the provisions of this subpart shall be treated the same as if the spirits had been originally produced by the redistiller. These spirits and articles shall be kept apart from all other spirits (including denatured spirits and recovered articles) and shall be promptly redenatured and removed.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1363, as amended, 1372, as amended (26 U.S.C. 5223, 5273))

§ 19.704 Articles and spirits residues received for redistillation.

Articles manufactured under Part 211 of this chapter, and spirits residues of manufacturing processes related thereto, may be received on the bonded premises of a distilled spirits plant authorized to produce distilled spirits, for the recovery by redistillation of the distilled spirits contained in those materials. The proprietor shall gauge the materials when received and record the gauge on Form 5110.26. Spirits recovered by the redistillation of articles and spirits residues may not be withdrawn from bonded premises except for industrial use or after denaturation. All spirits redistilled under the provisions of this subpart shall be treated the same as if the spirits had been originally produced by the redistiller.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1365, as amended (26 U.S.C. 5223))

§ 19.705 Return of recovered tax-free spirits, and spirits and denatured spirits withdrawn free of tax.

(a) *General.* Specially denatured spirits withdrawn free of tax under the applicable provisions of Part 252 of this chapter for exportation or for deposit in a foreign-trade zone, and spirits (including denatured spirits) withdrawn free of tax under the applicable provisions of Part 211 or 213 of this chapter, may be returned: (1) To bonded premises of any distilled spirits plant authorized to produce distilled spirits, for redistillation; or (2) To any bonded premises of a distilled spirits plant pending subsequent lawful withdrawal free of tax. Recovered tax-free spirits may, as provided in Part 213 of this chapter, be returned for redistillation to bonded premises of any distilled spirits plant authorized to produce distilled spirits or to any bonded premises of a distilled spirits plant for restoration (not including redistillation). The return shall be made under the applicable provisions of this part and Part 211, 213, or 252 of this chapter, as appropriate.

(b) *Bonding requirements.* Before spirits (including denatured spirits) are returned to bonded premises, except spirits (including denatured spirits) returned for redistillation, the proprietor shall file a consent of surety on Form 1533 to extend the terms of the operations or unit bond to cover the return of the spirits. The proprietor may file one consent of surety on the bond to extend the terms thereof to cover all spirits which may be returned.

(c) *Procedure.* If the shipment was reported on a Form 1473, the proprietor shall execute the certificate of receipt on that form and forward the original to the regional regulatory administrator. When recovered tax-free spirits, spirits, or denatured spirits are received, they shall be gauged, and the gauge shall be recorded on Form 5110.26. When containers of spirits are emptied, the proprietor shall comply with the applicable provisions of § 19.610. When containers of spirits removed for export are returned to bond, pending subsequent removal for a purpose other than export, the export marks shall be destroyed.

(d) *Limitation.* Spirits recovered by the redistillation of denatured spirits may not be withdrawn from bonded premises except for industrial use or after denaturation. All spirits redistilled under the provisions of this subpart shall be treated the same as if the spirits had been originally produced by the redistiller.

(Sec. 3, Act of June 13, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); Sec. 201, Pub. L. 85–859, 72 Stat. 1365, as amended (26 U.S.C. 5223))

§ 19.706 Return of spirits withdrawn without payment of tax.

(a) *Spirits withdrawn for export.* Spirits lawfully withdrawn without payment of tax under the provisions of Part 252 of this chapter for exportation, or for transfer to a customs bonded warehouse or a customs manufacturing bonded warehouse, or for deposit in a foreign-trade zone, or for use on vessels and aircraft, and not so exported, transferred, deposited, or used (or laden for use) on a vessel or aircraft, may be returned, under the applicable provisions of this part and Part 252 of this chapter: (1) To the bonded premises of any plant authorized to produce distilled spirits, for redistillation; or (2) To the bonded premises from which withdrawn pending subsequent removal for a lawful purpose.

(b) *Spirits withdrawn for use in wine production.* Wine spirits withdrawn under § 19.532 for use in wine production, and not so used, may be returned to the bonded premises of a distilled spirits plant. The consignee proprietor shall obtain approval, as provided in § 19.506. The wine spirits shall be removed from the winery in accordance with the provisions of Part 240 of this chapter.

(c) *Spirits withdrawn for research, development, or testing.* Spirits withdrawn without payment of tax, under the provisions of Subpart V of this part, for research, development, or testing may be returned to the bonded premises of the distilled spirits plant from which withdrawn. After returning these spirits to bonded premises, they shall be destroyed or returned to vessels in the distilling system containing similar spirits.

(d) *Procedure.* When spirits are received, they shall be gauged by the proprietor; and the gauge shall be recorded on Form 5110.26. When containers of spirits are emptied, the proprietor shall comply with the applicable provisions of § 19.610. When

containers of spirits removed for export are returned to bond pending subsequent removal for a purpose other than export, the export marks and the stamps, if any, shall be destroyed.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended, 1365, as amended, 1382, as amended (26 U.S.C. 5214, 5223, 5373); Sec. 3, Pub. L. 91–659, 84 Stat. 1965, as amended (26 U.S.C. 5066))

§ 19.707 Abandoned spirits.

Spirits abandoned to the United States may be sold, without payment of the tax, to a proprietor of a plant for denaturation or for redistillation and denaturation, if the plant is authorized to denature or redistill and denature spirits. These spirits shall be kept apart from all other spirits (including denatured spirits) until denatured. The receipt, gauging, handling, and recordkeeping provisions of § 19.703 are applicable to these spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5243))

Subpart V—Spirits Withdrawn for Research, Development or Testing

§ 19.721 General.

(a) *Withdrawal of spirits without payment of tax.* Subject to the conditions prescribed in this subpart, spirits may be withdrawn from the bonded premises of a distilled spirits plant by the proprietor without payment of tax for testing or laboratory analysis, in accordance with § 19.724, or for research, development, or testing, in accordance with § 19.725.

(b) *Withdrawal of brandy or wine spirits free of tax.* In addition to being withdrawn under the provisions of paragraph (a) of this section, brandy or wine spirits may be withdrawn from the bonded premises of a distilled spirits plant by the proprietor free of tax for testing or laboratory analysis, in accordance with § 19.724.

(c) *Restrictions.* Distilled spirits shall not be withdrawn under the provisions of this subpart in containers which have been filled and stamped with the strip stamp or affixed with the alternative device as provided in Subpart S.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1318, as amended, 1362, as amended, 1382, as amended (26 U.S.C. 5005, 5214, 5373))

§ 19.722 Taxable withdrawals.

Spirits withdrawn from bonded premises for research, development, or testing are taxable if the spirits are found to have been withdrawn, used, or disposed of in a manner not authorized by this part. If the proprietor is qualified to defer payment of the tax, the tax due shall be included in the proprietor's tax return on Form 5110.35. If a proprietor is not qualifed to defer the payment of tax, the tax on spirits shall be paid by return on Form 5110.32.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended, 1318, as amended, 1362, as amended, 1382, as amended (26 U.S.C. 5001, 5005, 5214, 5373))

§ 19.723 Labels.

On each container of spirits to be withdrawn under the provisions of § 19.724 or § 19.725, the proprietor shall affix a label showing the following information:

(a) The words "Research", "Development", or "Testing", as appropriate;

(b) The kind of spirits (and for imported spirits, the word "Imported");

(c) The size of the container and the proof of the spirits;

(d) If the spirits are to be removed to other than the immediate or contiguous premises of the proprietor, the name and address of the consignee;

(e) The name of the proprietor and the plant number;

(f) The date of the sample taken.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended, 1362, as amended, 1382, as amended (26 U.S.C. 5206, 5214, 5373))

§ 19.724 Withdrawals for testing or laboratory analysis.

(a) *General.* Subject to the conditions prescribed in this subpart, the proprietor may withdraw spirits without payment of tax, or wine spirits or brandy free of tax, from the bonded premises, for testing or laboratory analysis (other than consumer testing or other market analysis) to determine the quality or character of the finished product. A quantity of spirits not exceeding 1 liter may be furnished to a prospective purchaser for quality testing, if a bona fide written or oral purchase agreement exists which is contingent upon quality approval by a prospective purchaser of spirits or denatured spirits.

(b) *Limitations.* Except for spirits furnished to a prospective customer, as provided in paragraph (a) of this section, spirits withdrawn for testing or laboratory analysis shall be removed to the proprietor's laboratory located at the same distilled spirits plant or to a laboratory located at the distilled spirits plant of an affiliated or subsidiary corporation, to the proprietor's central laboratory, or, if approved by the regional regulatory administrator to a recognized commercial laboratory. These spirits shall be withdrawn in containers not exceeding 1 liter, unless the regional regulatory administrator has authorized removal in larger containers. Taxes shall be paid when the spirits are used for any purpose other than the purpose authorized under this section. Taxes shall also be paid when the quantities of spirits withdrawn under this section are in excess of the amount necessary for the conduct of the proprietor's operations.

(c) *Recording samples.* At the time of withdrawal, the proprietor shall record the removal in the record required by § 19.776.

(d) *Disposition.* Remnants or residues of spirits remaining after testing may not be accumulated beyond a reasonable time. Accumulated spirits shall be destroyed or returned to the continuous distilling system containing similar spirits. If the spirits are tested in a laboratory at the plant premises from which removed, the date and manner of disposition shall be recorded in the record maintained under § 19.776.

(e) *Losses.* When spirits are lost prior to their use in testing or laboratory analysis, the proprietor shall either pay the tax or file a claim for remission of tax, as prescribed by § 19.41.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1318, as amended, 1362, as amended, 1382, as amended (26 U.S.C. 5005, 5214, 5373))

§ 19.725 Withdrawals for research, development or testing.

(a) *General.* Subject to the conditions prescribed in this subpart, spirits may be withdrawn from the bonded premises of a distilled spirits plant without payment of tax for research, development, or testing (other than consumer testing or other market analysis) of processes, systems, materials or equipment relating to distilled spirits or distilled spirits plant operations. The amount withdrawn shall be limited to an amount necessary for conduct of the proprietor's operations.

(b) *Consignee's statement.* The proprietor shall secure a written statement, executed by the consignee under the penalties of perjury, agreeing that he will maintain records of the receipt, use, and disposition of all spirits received by him and that those records and operations will be available during regular business hours for inspection by ATF officers. However, a statement will not be required when the spirits are removed to the proprietor's laboratory located at the same plant, or to a laboratory located at the distilled spirits plant of an affiliated or subsidiary corporation.

(c) *Limitation.* The regional regulatory administrator shall proceed to collect the tax on any spirits withdrawn under this section which are found to have been used or disposed of in a manner not authorized by this subpart.

(d) *Losses.* When spirits are lost prior to being used for the authorized purpose, the proprietor shall either pay the tax or file a claim for remission of tax, prescribed by § 19.54.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1318, as amended, 1362, as amended (26 U.S.C. 5005, 5214))

Subpart W—Records and Reports

General

§ 19.741 Records.

(a) *In general.* The records required by this part to be maintained by proprietors shall include:

(1) All records and summaries specifically required by this part;

(2) All supplemental, auxiliary, and source data utilized in the compilation of required forms, records, and summaries, and for preparation of reports, returns, and claims;

(3) Substitute records authorized under the provisions of this part;

(4) Copies of notices, reports, returns, and approved applications and other documents relating to operations and transactions; and

(5) Proprietor's copies of individual transaction forms.

(b) *Accounts.* The records required by this part to be maintained by proprietors shall be arranged into three primary operational accounts:

(1) Production,

(2) Storage, and

(3) Processing. Records shall indicate receipts, movements between accounts, transfers in bond, or withdrawals of spirits, denatured spirits, articles, or wines.

(c) *Exceptions.* The term "records" as used in this subpart does not include copies of qualifying documents required under Subpart G or of bonds required under subpart H of this part.

(d) *Special provisions.* See 27 CFR 70.22 for information with respect to ATF examination of financial records and books of account.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.742 Conversion between metric and U.S. units.

Whenever liters are converted to wine gallons, the quantity in liters shall be multiplied by 0.264172 to determine the equivalent quantity in wine gallons. If the conversion from liters to U.S. units is made before multiplying by the number of cases, the quantity in U.S. units shall be rounded off to the nearest sixth decimal place. If the conversion is made after multiplying by the number of cases, the quantity in U.S. units shall be rounded off to the nearest hundredth.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.743 Maintenance and preservation of records.

Records required by this part shall be prepared and kept by the proprietor at the plant where the operation or transaction occurs and shall be available for inspection by any ATF officer during business hours. Whenever any record, because of its condition, becomes unsuitable for its intended or continued use, the proprietor shall reproduce such record, by a process approved by the regional regulatory administrator under § 19.746 for reproducing records, and such reproduction shall be treated and considered for all purposes as though it were the original record, and all provisions of law applicable to the original shall be applicable to such reproduction. Records required by this part shall be preserved for a period of not less than four years from the date thereof or the date of the last entry required to be made thereon, whichever is later. Notwithstanding any other provision of this section, record data maintained on data processing equipment may be kept at a location other than the plant premises if the original transaction (source) records required by §§ 19.756–19.778 and the reports required by § 19.786 are kept available for inspection at the plant premises. Data which has been accumulated on cards, tapes, discs, or other accepted record media must be retrievable within five business days. The applicable data processing program shall be made available for examination if requested by an ATF officer.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.744 Variations from prescribed forms or records.

(a) *Notice.* Proprietors may, upon the filing of a serially numbered letter notice to the Director, modify certain prescribed forms, or maintain substitute records in lieu thereof, or may, upon the filing of a serially numbered letter notice to the regional regulatory administrator, maintain substitute records in lieu of the records required by this part in order to adapt the use of such forms and records to data processing equipment or special operations, to provide additional information, or for other good cause, if such changes are not inconsistent with the general requirements of clarity and accuracy and do not result in difficulty in processing or filing such forms or difficulty in maintaining and examining such records. Such modified forms or substitute records shall (1) contain the information which would have been on the prescribed form or record, (2) constitute the record or report required by this part, and (3) be subject to the same requirements as the prescribed forms or records. Copies of modified forms or substitute records shall be filed with the applicable notice.

(b) *Exceptions.* No modification shall be permitted on qualification documents, bond forms, claim forms, tax return forms, or forms covering the reports required by § 19.786, unless such modification has been approved by the Director as provided in paragraph (c) of this section.

(c) *Application.* An application to use a modified form in an excepted category shall be submitted to the Director through the regional regulatory administrator. It shall be accompanied by (1) three copies of each proposed form with typical entries thereon and (2) a statement explaining the need for the use of the modified forms. Such modified forms shall not be used until approved by the Director.

(d) *Restrictions.* The use of substitute records or modified forms shall not relieve a proprietor from any requirements of this part. The Director or the regional regulatory administrator, as applicable, may require a proprietor to immediately discontinue the use of any modified form or substitute record when in his opinion the administration of this part will be served thereby.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.745 Symbols for proof of distillation.

Where the proof of distillation is required by this part to be shown, the following symbols may be used to designate the proof of distillation: "D190P" for "Distilled 190 proof or over"; "D160P–190P" for "Distilled between 160 and 190 proof"; and "D160P" for "Distilled not over 160 proof"; or in the case of spirits derived from fruit, "D170–190P" for "Distilled between 170 and 190 proof"; and "D170P" for "Distilled not over 170 proof". However, brandy distilled between 140 and 170 proof, not reduced with water, and intended for use in wine production, shall be marked "D–140–170P."

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.746 Photographic copies of records.

Proprietors who desire to record, copy, or reproduce records, required by this part, by any process which accurately reproduces or forms a durable medium for so reproducing the original of such records, shall apply to

the regional regulatory administrator for permission to do so, describing:

(a) The records to be reproduced,

(b) The reproduction process to be employed,

(c) The manner in which the reproductions are to be preserved, and

(d) The provisions to be made for examining, viewing, and using such reproductions.

The regional regulatory administrator shall not approve any application unless the manner of preservation of the reproductions and the provisions for examining, viewing, and using such reproductions are satisfactory. Whenever records are reproduced under this section, the reproduced records shall be preserved in conveniently accessible files, and provisions shall be made for examining, viewing, and using the reproduced record the same as if it were the original record, and it shall be treated and considered for all purposes as though it were the original record. All provisions of law and regulations applicable to the original shall be applicable to the reproduced record. As used in this section, "original record" shall mean the record required by this part to be maintained or preserved by the proprietor, even though it may be an executed duplicate or other copy of the document.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5555))

Daily Records

§ 19.751 General.

(a) *Entries.* (1) Each entry required by this part to be made in daily records shall be made on the day on which the operation or transaction occurs.

(2) When the proprietor prepares supplemental or auxiliary records concurrent with the individual operation or transaction, and these records contain all the required information with respect to the operation or transaction, entries in daily records may be deferred not later than the close of business the third business day succeeding the day on which the operation or transaction occurs.

(b) *Content.* (1) All entries in the daily records required by this subpart shall show the date of the operation or transaction.

(2) Daily records shall accurately and clearly reflect the details of each operation or transaction and, as applicable, contain all data necessary to enable—

(i) identification and proper marking, branding, and labeling of spirits, denatured spirits, or wines;

(ii) proprietors to prepare summaries, reports, and returns required by this part; and

(iii) ATF officers to—

(A) verify and trace the quantity and movement of materials, spirits, denatured spirits, wines, or alcoholic flavoring materials involved in each transaction or operation;

(B) verify tax determinations and claims; and

(C) ascertain whether there has been compliance with law and regulations.

(c) *Format.* (1) Proprietor's copies of prescribed forms which bear all required details shall be utilized as daily records.

(2) In instances when a form is not prescribed, the proprietor's commercial records (e.g., invoices, bills of lading) which bear all required details shall be utilized as required daily records.

(3) Daily records required by this part shall be so maintained that they clearly and accurately reflect all mandatory information. Where the format or arrangement of the daily records is such that the information is not clearly or accurately reflected, the regional regulatory administrator may require a format or arrangement which will clearly and accurately reflect the information.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284, (26 U.S.C. 5207))

§ 19.752 Details of daily records.

The daily records required by this part shall conform to the following requirements:

(a) Spirits shall be recorded by kind and by quantity in proof gallons, except that removals of bottled products from bonded premises shall be either in wine gallons or liters and proof.

(b) Denatured spirits shall be recorded by formula number and by quantity in wine gallons.

(c) Distilling materials produced on the premises shall be recorded by kind and by quantity in wine gallons. Chemical byproducts containing spirits, articles, spirits residues, and distilling materials received on the premises shall be recorded by kind, by percent of alcohol by volume, and by quantity in wine gallons. When nonliquid distilling materials which are not susceptible to such quantitative determination are received, the quantity of such materials may be determined by weight and shall be so recorded, and the alcohol content need not be recorded. When it can be shown that it is impractical to weigh or otherwise determine the exact quantity of such nonliquid materials, the proprietor may estimate the weight or volume of the material.

(d) Wines received for and used in processing operations shall be recorded by quantity in proof gallons.

(e) Alcoholic flavoring materials shall be recorded by kind (and formula number, if any) and by quantity in proof gallons.

(f) Containers (other than packages bearing package identification numbers) or cases involved in each operation or transaction shall be recorded by type, serial number, and the number of containers (including identifying marks on bulk conveyances), or cases. Package identification numbers, number of packages, and proof gallons per package shall be recorded on storage deposit records reflecting production gauges or filling of packages from tanks; however, only the lot identification numbers, number of packages, and proof gallons per package need be shown for transactions in packages of spirits unless package identification numbers are specifically required by this part.

(g) Materials intended for use in the production of spirits shall be recorded by kind and by quantity, recording liquids in gallons and other materials in pounds, and giving the sugar content for molasses.

(h) The name and address of the consignee or conignor, and if any, the plant number or industrial use permit number of such person, shall be recorded for each receipt or removal of materials, spirits (including denatured spirits), articles, spirits residues, and wine.

(i) The serial number of the tank used for each operation or transaction.

(j) All records shall be specifically noted to indicate spirits designated for bottling-in-bond, or for bottling of industrial alcohol.

(k) When spirits are required to be gauged, all elements of the gauge shall be shown on the required records.

(l) The rate of duty paid on imported spirits shall be shown on the transaction forms or records.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

Production Account

§ 19.756 Daily production records.

(a) *Spirits production.* Each proprietor shall maintain daily records of production operations showing:

(1) The receipt of fermenting material or other nonalcoholic material intended for use in the production of spirits.

(2) The receipt and use of spirits, denatured spirits , articles, and spirits residues received for redistillation.

(3) The receipt and use of extracted oils of juniper berries and other natural

aromatics received for use in gin production.

(4) The fermenting material set in each fermenter or other material used in the production of spirits.

(5) The distilling material produced, received for production, and used in production of spirits, or destroyed or removed from the premises before being distilled (including the residue of beer returned to the producing brewery).

(6) The gauge of spirits in each receiving tank both before and after the production gauge of spirits removed therefrom, the production gauge (in proof gallons) of spirits removed from each tank, the purpose for which removed, and the transaction form and its serial number covering each removal. The details of packages filled pursuant to production gauge shall also be recorded.

(7) The fermenting materials or other nonalcoholic materials removed from the premises.

(8) The quantity and alcoholic content of fusel oil or other chemicals removed from the production system and the disposition thereof with the name of the consignee, if any.

(9) The kind and quantity of distillates removed from the production system.

(10) The kind and quantity of spirits lost or destroyed prior to production gauge.

Records pertaining to production shall be maintained in such a manner that the spirits produced may be traced through the distilling system to the mash or other material from which produced, and the identity of the spirits thus traced may be clearly established.

(b) *Byproduct spirit production.* Each proprietor who manufactures substances other than spirits, in a process which produces spirits as a byproduct, shall maintain daily production records as to each such process showing:

(1) The kinds and quantity of materials received, unless included in records maintained under paragraph (a) of this section.

(2) The spirits produced and disposed of.

(3) The kind and quantity of other substances produced.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284, (26 U.S.C. 5207))

Storage Account

§ 19.760 Daily storage records.

Each warehouseman shall maintain daily transaction records which shall show as applicable:

(a) Spirits or wines received in storage;

(b) Spirits mingled or blended;

(c) Spirits or wines filled into packages from tanks and retained for storage;

(d) Spirits of less than 190 degrees of proof or wines transferred from one tank to another;

(e) Spirits returned to bond;

(f) Spirits or wines voluntarily destroyed;

(g) Spirits or wines lost during storage;

(h) The change of packages;

(i) Addition of oak chips to spirits and the addition of caramel to brandy or rum; and

(j) Disposition of spirits or wines.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284, (26 U.S.C. 5207))

§ 19.761 Storage summary records.

Each warehouseman shall keep current summary records of spirits and wines in storage as follows:

(a) Package accounts shall be maintained on Forms 5110.37, and shall show the number of packages and proof gallons received in and withdrawn from storage as follows:

(1) Separate accounts for—

(i) domestic spirits;

(ii) imported spirits;

(iii) Virgin Islands spirits;

(iv) Puerto Rican spirits; and

(v) wines.

(2) The spirits accounts shall be arranged by—

(i) producer, blender, or warehouseman;

(ii) kind of spirits;

(iii) season or year of filling; (for imported spirits by (A) date of release from customs custody or (B) if filled in ATF bond, the date of fill); and

(iv) except for spirits of 190 degrees or more of proof, (A) state (alphabetically) and (B) plant number (numerically).

(3) The wine accounts shall be composite accounts of each wine by kind in packages.

(b) Tank accounts shall show the proof gallons deposited, in, withdrawn from, and remaining in the tank or tanks covered by such account as follows:

(1) Wines or spirits of less than 190° of proof. Separate accounts shall be maintained on Form 5110.29 for each tank (including tank cars, tank trucks, and similar vessels) containing wines or spirits of less than 190° of proof.

(2) Spirits of more than 190° of proof. A separate account shall be maintained on Form 5110.37 for each kind (class) of spirits of 190° or more of proof, stored in tanks (including tank cars, tank trucks, or similar vessels).

(c) *Summarization.* Package accounts and tank account records shall—

(1) Be summarized at the end of each month to show for each type of container, by each kind, the total proof gallons received in, withdrawn from, and remaining in storage;

(2) Be summarized for lesser periods when required by the regional regulatory administrator; and

(3) Include all losses and gains.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284, (26 U.S.C. 5207))

Processing Account

§ 19.766 Processing.

Each processor shall maintain daily records of transactions and operations with respect to:

(a) Manufacture and bottling of distilled spirits products;

(b) Production of gin or vodka by other than original and continuous distillation;

(c) Finished products in inventory;

(d) Denaturation of spirits; and

(e) Manufacture of articles.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284, (26 U.S.C. 5207))

§ 19.767 Daily records of bottling operations.

Each processor shall maintain daily records of the details of his manufacturing and bottling operations, showing:

(a) The spirits, wines, and alcoholic flavoring materials received from all sources.

(b) The spirits, wines, and alcoholic flavoring materials and nonalcoholic flavoring materials and other ingredients used in the manufacture of a distilled spirits product, as required by § 19.381.

(c) The bottling or packaging of each lot of spirits as required by § 19.394.

(d) The results of bottling proof and fill tests as required by § 19.397.

(e) The rebottling, relabeling, and restamping (including reaffixing alternative devices) of bottled products as required by §§19.404 and 19.405.

(f) The spirits, wines, and alcoholic flavoring materials removed from the premises. The total removals for each day shall be summarized by showing (1) the spirits and wines removed without bottling or packaging, (2) spirits products removed after bottling or packaging, (3) the spirits and wines transferred in bond, and (4) alcoholic flavoring materials removed.

(g) The samples of spirits and wines transferred or withdrawn, and the name and address of the consignee of such samples.

(h) The spirits moved to the production account for redistillation.

(i) The voluntary destruction of spirits, in accordance with Subpart T of this part.

(j) The losses as provided in Subpart P of this part.

The records required by paragraph (a) of this section shall also show the name and plant number of the producer or processor (warehouseman in the case of blended beverage rums or brandies or spirits of 190 degrees or more of proof received from storage) for domestic spirits, the name of the importer and the country of origin for imported spirits, and the name and address of the producer of wines and alcoholic flavoring materials.

(Sec. 807, Pub. L. 96-39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.768 Production of gin or vodka.

Each processor shall maintain daily records in addition to the record required by § 19.381, of the production of gin or vodka, by means other than original and continuous distillation, as follows:

(a) Spirits used in the production of gin or vodka;

(b) Receipt and use of extracted oils of juniper berries and other natural aromatics; and

(c) Gin or vodka produced.

(Sec. 807, Pub. L. 96-39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.769 Records of finished products.

Each processor shall maintain daily records and a summary of spirits bottled or packaged in processing as follows:

(a) A beginning quantity of bottled or packaged spirits on hand (book record);

(b) The quantity of spirits bottled or packaged;

(c) The quantity of bottled or packaged spirits disposed of by:

(1) Withdrawal on tax determination;

(2) Transfer in bond (in bulk containers);

(3) Withdrawal free of tax or without payment of tax;

(4) Dumping to bulk for further processing;

(5) Transfer to the production account for redistillation;

(6) Voluntary destruction;

(7) Accountable breakage;

(8) Sampling;

(9) Inventory shortages, overages, and losses; and

(10) Other dispositions.

(d) An ending quantity of bottled or packaged spirits on hand (book record). Daily summary records shall be totaled monthly and used to compile the report required by § 19.786.

(Sec. 807, Pub. L. 96-39, 93 Stat. 283, as amended (26 U.S.C. 5207))

§ 19.770 Records of denaturation operations.

Each processor qualified to denature spirits shall maintain the following daily records of denaturation:

(a) The kind and quantity of denaturants received, used in denaturation of spirits, or otherwise disposed of;

(b) The spirits used;

(c) The quantity of denatured spirits produced, received, removed, or otherwise disposed of;

(d) The recovered denatured spirits or recovered articles received, restored, and/or redenatured;

(e) Packages of denatured spirits filled with a separate record for each formula number and filed in numerical order according to the serial number of the packages;

(f) Losses; and

(g) Disposition of denatured spirits.

(Sec. 807, Pub. L. 96-39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.771 Records for manufacture of articles.

Each processor qualified to manufacture articles shall maintain daily records arranged by the name and authorized use code of the article to show the following:

(a) Quantity, by formula number of denatured spirits used in the manufacture of the article.

(b) Quantity of each article manufactured; and

(c) Quantity of each article removed, or otherwise disposed of, including the name and address of the person to whom sold or otherwise disposed of.

(Sec. 807, Pub. L. 96-39, 93 Stat. 284 (26 U.S.C. 5207))

Other Records

§ 19.776 Record of spirits withdrawn for research, development, or testing, or laboratory analysis.

The proprietor shall maintain a record of spirits withdrawn without payment of tax or free of tax under the provisions of § 19.724 or § 19.725. The record shall show for each withdrawal—

(a) Date sample taken;

(b) Full identity of the laboratory in which to be tested or consignee;

(c) Whether withdrawn without payment of tax or free of tax;

(d) Kind of spirits;

(e) Identification of container from which withdrawn;

(f) Description of the purpose for which withdrawn;

(g) The size of container(s) in which withdrawn;

(h) The wine gallons and proof withdrawn; and

(i) Date and manner of final disposition after testing (unless withdrawn free of tax).

(Sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended (26 U.S.C. 5214); Sec. 807, Pub. L. 96-39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.777 Daily record of strip stamps and alternative devices.

Each proprietor bottling spirits shall maintain, for each day a transaction in strip stamps or alternative devices occurs, a daily record showing the following for:

(a) *Strip stamps.* A record by kind (green or red) and by size (small or standard) showing, by quantity, the strip stamps—

(1) Received,

(2) Affixed (by bottle size),

(3) Lost,

(4) Multiated,

(5) Unaccounted for,

(6) Destroyed or otherwise disposed of, and

(7) On hand at the beginning and at the end of the day.

(b) *Alternative devices.* The number of alternative devices affixed by size of bottle. The record shall be in sufficient detail to enable proprietors to prepare the semiannual report, Form 5100.8, for strip stamps as required by § 19.786.

(Sec. 807, Pub. L. 96-39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.778 Daily record of distilled spirits stamps.

Each proprietor of bonded premises shall maintain, for each day a transaction in distilled spirits stamps occurs, a daily record of distilled spirits stamps, showing the quantity—

(a) Received;

(b) Used, with annotation to show the applicable transaction form or record and its serial number (if any);

(c) Destroyed or otherwise disposed of; and

(d) On hand at the beginning of the day and at the end of the day.

(Sec. 807, Pub. L. 96-39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.779 Record of liquor bottles.

Proprietors who bottle distilled spirits shall keep records covering the receipt, use, and disposition of liquor bottles in such manner as to enable any ATF officer to verify and trace the receipt and disposition of such bottles.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

§ 19.780 Daily record of wholesale liquor dealer and taxpaid storeroom operations.

Where the proprietor, in connection with his plant, conducts wholesale liquor dealer operations, or operates a taxpaid storeroom, on, contiguous to, adjacent to, or in the immediate vicinity of plant premises, or operates taxpaid storage premises at another location from which distilled spirits are not sold at wholesale, he shall maintain daily records of the receipt and disposition of

all distilled spirits and wines at such premises, and of all restamping or relabeling operations. The provisions of this section shall also apply to products returned to a wholesale liquor dealer or taxpaid storeroom from the market. A separate record shall be kept for each such premises. The records in respect of the receipt and disposition of distilled spirits and wines shall contain all data necessary (supported by records including bills of lading and invoices) to enable ATF officers to identify and trace such receipts and dispositions and to ascertain whether there has been compliance with all laws and regulations relating thereto. In addition to any other information shown therein, such records shall include:

(a) *As to receipts and dispositions*—

(1) The date of the transaction (or date of discovery in the case of casualty or theft);

(2) The name and address of each consignor or consignee, as the case may be;

(3) The brand name;

(4) The kind of spirits;

(5) The actual quantity of distilled spirits involved (proof and proof gallons if in packages; wine gallons or liters and proof if in bottles);

(6) The package identification numbers or serial numbers of packages involved;

(7) The name of the producer; and

(8) The country of origin, if imported spirits.

(b) *As to case dispositions*—In addition to the requirements listed in paragraph (a) of this section, the serial numbers of cases involved; however, the regional regulatory administrator may, upon receipt of an application and a finding that such recording is not necessary to law enforcement or protection of the revenue, relieve a dealer from the requirement of recording such case serial numbers.

(c) *As to restamping or relabeling operations*—

(1) The date of the transaction;

(2) The serial numbers of cases involved;

(3) The total number of bottles;

(4) The name of the bottler; and

(5) The number and kind of strip stamps used and/or the number of alternative devices used.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5555))

Procedures Which Affect All Account Categories

§ 19.781 Inventories.

(a) *General.* Each proprietor shall make a record of inventories of spirits, denatured spirits, and wines required by §§ 19.329, 19.353, 19.421, 19.422, and 19.463. The following information shall be shown:

(1) Date taken;

(2) Identification of container(s);

(3) Kind and quantity of spirits, denatured spirits, and wines;

(4) Losses, gains or shortages; and

(5) Signature, under penalties of perjury, of the proprietor or person taking the inventory.

(b) *Production.* Each proprietor shall record the quarterly inventory of spirits as provided in paragraph (a) of this section.

(c) *Storage.* (1) Each proprietor shall record the quarterly inventory of spirits and wines (except those in packages) as provided in paragraph (a) of this section.

(2) Gains or losses disclosed for each container shall be recorded on the current Form 5110.29 or 5110.37.

(d) *Processing.* Each proprietor shall record inventories as provided in paragraph (a) of this section, and for—

(1) Bulk spirits and wines in process, any gains or losses shall be recorded on the individual dump, batch, or bottling record;

(2) Finished products in bottles and packages, any overages, losses, and shortages shall be recorded in records required by § 19.769; and

(3) Denatured spirits, any gains or losses shall be recorded in the record prescribed by § 19.770.

(e) *Retention.* Inventory records shall be retained by the proprietor and made available for inspection by ATF officers.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.782 Submission of transaction forms, records, and reports.

(a) *Transaction forms.* Completed copies of transaction forms and records which must be submitted under the provisions of this part shall be submitted by the proprietor no later than the close of the business day next succeeding the date of the transaction, as provided by this part and by instructions on the individual forms.

(b) *Timely submission of operational notices.* Where this part requires an advance copy of a notice to be submitted before commencing an operation, such notice shall be submitted at such time to provide the area supervisor sufficient opportunity to determine whether such operation should be conducted under supervision.

(c) *Reports.* Reports required by this part shall be submitted by the proprietor in accordance with this part and the instructions on the form.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.786 Reports.

(a) Reports required by this section shall be prepared as of the end of the applicable reporting period. The original shall be submitted to the regional regulatory administrator and a copy retained by the proprietor.

(b) Proprietors shall submit the following reports of their operations:

Title and function	Form No.	Reporting period
(1) Production report: Summary of production operations.	5110.40	Monthly
(2) Storage report: Summary of storage operations.	5110.11	Monthly
(3) Processing reports: Summary of processing operations.		
(i) Manufacture/bottling	5110.28	Monthly
(ii) Denaturation (including article manufacture).	5110.43	Monthly
(4) Report of stamps and alternative devices: Summary of strip stamp, alternative device, and distilled spirits stamp activities.	5100.8	Quarterly

(c) All reports required by this part shall be prepared and submitted to the regional regulatory administrator not later than the 15th day of the month following the close of the reporting period.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

Subpart X—Transitional Rules for the All-In-Bond Method of Distilled Spirits Plant Operation

§ 19.901 Scope of subpart.

This subpart provides regulations for conversion to the all-in-bond method of producing, storing, and processing of distilled spirits, denatured spirits, articles, and wines at distilled spirits plants. This subpart addresses the continued operation of distilled spirits plants qualified to operate on December 31, 1979, and includes provisions for (a) filing of new bonds; (b) filing of applications for registration and necessary operating permits; (c) conversion of controlled stock and bulk wines; (d) filing of final returns; and (e) the payment of taxes determined but not paid by the close of business on December 31, 1979.

§ 19.902 Filing of final returns.

(a) *General.* Applicable taxes paid or determined on converted controlled stock and bulk wine under § 19.906, may be taken as an offset for taxes that will be paid with final returns filed under this section. Such credits (without interest) determined under § 19.907 shall first be applied by proprietors to the tax payable with any final returns provided for in this subpart. Any excess credit remaining after the filling of final returns may be applied to returns filed on ATF Form 5110.35. For each amount of tax

credit taken on filed returns, proprietors shall show on the return "credit taken as provided in 27 CFR 19.902".

(b) *ATF Form 4077.* A final return on ATF Form 4077 shall be filed by proprietors on January 15, 1980, to pay all outstanding unsatisfied liability on tax determined distilled spirits which have been withdrawn from bond under 26 U.S.C. 5174(a)(2) through December 31, 1979.

(c) *ATF Form 2527.* A final tax return on ATF Form 2527 shall be filed by proprietors on January 15, 1980, to pay all outstanding unsatisfied liability for taxes incurred under 26 U.S.C. 5021, 5022 and/or 5041 on bulk spirits and wines at distilled spirits plants at the close of business on December 31, 1979. In the remarks section on the ATF Form 2527, proprietors shall show the total taxes reported at line 17, columns (d), (e), and (f). The total taxes shall be reduced by (1) the amount of taxes determined as prescribed in § 19.905, and (2) any taxes determined on rectified spirits and wines on hand at the time of the inventory prescribed in § 19.904 which were reported on ATF Form 2637 but which were not bottled. The difference thus determined shall be reported at line 18 of ATF Form 2527 as the "adjusted total tax" to be paid with the final return.

(d) *ATF Form 2522.* A final return on ATF Form 2522 shall be filed by proprietors on January 15, 1980, to pay all outstanding unsatisfied liability on tax determined distilled spirits which have been withdrawn from bond under 26 U.S.C. 5174(a)(1) through December 31, 1979.

(e) *Returns to be filed and marked.* Final returns shall be filed whether or not taxes are due, and each return shall be conspicuously marked "Final Return".

§ 19.903 Liability for payment of tax.

Except as otherwise provided in this subpart, the tax on all distilled spirits which have been withdrawn from bond on determination of tax, and on which tax has not been paid by the close of December 31, 1979, shall become due on January 1, 1980, and shall be payable, in accordance with 26 U.S.C. 5061, on the applicable final return, as provided in § 19.902.

§ 19.904 Physical inventory.

A physical inventory of all distilled spirits which were designated as controlled or taxpaid stock on December 31, 1979, and bulk wine on distilled spirits plant premises, shall be taken to establish the quantities of each to remain on bonded premises after December 31, 1979, and to provide the basis for filing final claim for operational loss. The inventory shall differentiate between products to be converted to bonded stock and taxpaid products that will remain on bonded premises. The physical inventory may be taken within a period of a few days before or after December 31, 1979, if such period does not include more than one complete weekend and if necessary adjustments are made to reflect pertinent transactions, so that the recorded inventory will agree with the actual quantities of converted bonded stock and taxpaid stock on hand as of close of business December 31, 1979. Records of the inventory shall be prepared and shall indicate the tax established on converted products in accordance with § 19.907(b). All inventory records shall be maintained in sufficient detail to enable ATF officers to verify the amount of any tax established for the purpose of a return, claim, or credit, and shall be executed under the penalties of perjury, as provided in § 19.11.

19.905 Rectification and wine taxes.

When taking the inventory prescribed in § 19.904, proprietors shall determine all liability for taxes incurred under 26 U.S.C. 5021, 5022, and/or 5041 on bulk distilled spirits and wines which at the close of business on December 31, 1979, were not determined and reported on ATF Form 2637. Such taxes not yet determined shall be determined for all bulk spirits and wines and reported on a modified ATF Form 2637. Inventory records shall be kept to support taxes reported on the modified ATF Form 2637, and such taxes shall be included with other taxes to be shown on the final return prescribed in § 19.902.

§ 19.906 Election to convert controlled stock and bulk wine.

Proprietors may, subject to the provisions in Section 808 of The Distilled Spirits Tax Revision Act of 1979, elect to convert to bonded stock any controlled stock or bulk wine on distilled spirits plant premises at the beginning of business on January 1, 1980. Proprietors may elect to convert all or any part of such controlled stock or wine by designating in the final inventory under § 19.904 the applicable portion thereof as bonded stock. Controlled stock which is not designated as converted to bonded stock becomes taxpaid stock, subject to the filing of returns and payment of tax as prescribed in 27 CFR 19.903. Any distilled spirits, wine, or rectification tax previously paid or determined on controlled stock or wine which is converted shall be without interest, credited, or refunded. At the time of election, converted products shall become distilled spirits or wines in bond on which tax has not been paid or determined. Proprietors shall establish the amount of tax to be credited or refunded on products to be converted as provided in § 19.907.

§ 19.907 Tax on converted products.

(a) *Credit or refund.* The amount of tax to be credited or refunded on products converted to bonded stock, as provided in § 19.906, shall be established by the proprietor making the election, as follows:

(1) The tax on products containing only distilled spirits shall be established by determining the quantity and proof of such products, and calculating the proof gallons and tax therefrom. The quantity and proof of bottled products shall be based on the case markings or label information.

(2) The tax on bulk wines shall be established by determining the quantity in wine gallons of each tax rate of wines to be converted, and calculating the total tax on all wines therefrom.

(3) The tax on products containing alcoholic ingredients, other than distilled spirits which were withdrawn from bond on payment or determination of tax shall be established on the basis of the formulation under which such products were manufactured. The amount of tax to be credited or refunded shall be the taxes which were actually paid or determined on the distilled spirits and wines contained in a product, plus applicable rectification tax. The taxes on spirits and wines in these products shall be established as follows:

(i) The taxes actually paid or determined may be calculated for the spirits and wines contained in each lot of product bottled, and therefrom the taxes to be credited or refunded may be established for any part of the lot remaining in the controlled stock to be converted.

(ii) The taxes on products, regardless of kind or brand, which were manfactured under a standard formulation, (i.e., always manfactured with the same amount of spirits and wines) may be established by calculating the actual rate of taxes paid or determined on the spirits and wines in a typical product and then applying the rate to all such product remaining in the controlled stock to be converted.

(iii) The taxes on products that are formulated with varying amounts of spirits and wines may be established by first determining the total wines (at each tax rate) and the total spirits used in each product, from July 1, 1979, to September 30, 1979, then calculating

from the totals an average rate of taxes paid or determined on the spirits and wines in the product, and then applying the average rate to the remaining product in the controlled stock to be converted. If the product to be converted was not manfuactured during the period from July 1, 1979 to September 30, 1979, the proprietor may make the same calculations from the last batch of the product produced prior to July 1, 1979.

(b) *Amount of Tax.* The total distilled spirits, wine, and rectification taxes paid or determined, as established in this section, may be credited or refunded as provided in § 19.902 upon conversion of controlled stock and bulk wine to which the tax pertains. Credit for converted stock may be taken on returns without filing a claim for credit on Form 2635.

§ 19.908 Nondrawback alcoholic flavoring ingredients.

Alcoholic flavoring ingredients on which drawback of tax has not and will not be claimed may be considered distilled spirits in controlled stock for the purpose of conversion of controlled stock for tax credit. Proprietors with such nondrawback alcoholic flavoring ingredients on their control premises on December 31, 1979, may convert the ingredients for tax credit in the same manner as provided for distilled spirits in controlled stock in § 19.906.

§ 19.909 Taxpayment from Customs bond.

Bulk distilled spirits which were withdrawn on payment or determination of tax from Customs bond to the control premises of a distilled spirits plant may be considered controlled stock for the purpose of conversion of controlled stock for tax credit. Proprietors who on December 31, 1979, have such bulk spirits, shall remove the spirits prior to January 1, 1980, or convert the spirits to bonded stock as provided in § 19.906.

§ 19.910 Disposition of on-hand bulk spirits.

Entries in the records of processors after December 31, 1979, for all operations involving the bottling and packaging of distilled spirits shall be made as bonded operations in the bonded processing account. Therefore, all bulk distilled spirits in controlled stock and bulk wine on distilled spirits plant premises on December 31, 1979, must be removed from the bonded premises prior to January 1, 1980, or be converted to bonded stock as provided in § 19.906.

§ 19.911 Spirits in export storage.

Distilled spirits held in an export storage facility at the close of business on December 31, 1979, shall be treated as any other distilled spirits in bond, and may, subject to the provisions of this chapter, be withdrawn for any purpose authorized by 26 U.S.C. Chapter 51.

§ 19.912 Final operational loss claim.

On or after January 1, 1980, proprietors may file final claims for operating losses incurred from July 1, 1979, through December 31, 1979. Such claims shall be filed in the manner provided for final computational year claims in Subpart O of 27 CFR Part 201 in effect on December 31, 1979, and shall be supported by the physical inventory prescribed in § 19.904.

§ 19.913 Continuation of business under new bond.

As provided in Section 809(c) of The Distilled Spirits Tax Revision Act of 1979, each proprietor who is qualified to operate a distilled spirits plant on December 31, 1979, shall, prior to continuing operations on the premises of such plant, furnish a bond as provided in 26 U.S.C. 5173 to cover the operations to be continued. No person shall continue operations on a distilled spirits plant after December 31, 1979, unless the person has a valid operations or unit bond.

§ 19.914 Qualification of distilled spirits plants in existence on December 31, 1979.

(a) *New application.* Each proprietor (and alternate proprietor) of a distilled spirits plant who intends to continue operation after December 31, 1979, shall file a new application for registration with the regional regulatory administrator before January 1, 1980. The approved registration in effect on December 31, 1979, shall remain in effect until the new application is acted upon by the regional regulatory administrator.

(b) *Continuing operations.* With respect to any operation which was permitted to be conducted on May 1, 1979, at premises which were registered on such date under Section 5171 of the Internal Revenue Code of 1954, the determination of whether such premises qualify for registration under such section as a distilled spirits plant shall be made without regard to whether or not—

(1) the person engaged in operations at such premises is registered under such section as a distiller or warehouseman, and

(2) such premises meet the capacity requirements for a bonded warehouse.

An example of such an application would be one filed by a distilled spirits plant proprietor qualified as a rectifier and bottler, without bonded premises.

§ 19.915 Establishment of finished products records.

Records of finished products in bond shall be established January 1, 1980, to include—

(a) Stock held in an export storage facility at the close of business December 31, 1979;

(b) Other stock on bonded premises at the close of business on December 31, 1979; and

(c) Controlled stock converted in accordance with § 19.906 on January 1, 1980.

Subsequent entries in finished products records shall be made in accordance with Subpart W of this part.

§ 19.916 Taxpaid stock on bonded premises.

(a) *Retention of stocks.* Distilled spirits and wines on which the tax has been paid, and distilled spirits in controlled stock on which the tax will be paid, may remain on the bonded premises of the distilled spirits plant during calendar year 1980.

(b) *Separation of stocks.* Such taxpaid spirits and wines shall be physically separated from other distilled spirits and wines on bonded premises. Separation shall be accomplished by the use of separate tanks, rooms, or buildings, or by partitioning, or by such other methods equally protective of the revenue which the regional regulatory administrator finds will properly distinguish between bonded and taxpaid distilled spirits or wines. The locations on bonded premises where taxpaid stock will be kept shall be appropriately identified to show the tax status of the stock held there.

(c) *Special conditions.* The taxpaid stock referred to in this section shall consist of all distilled spirits and wine on which tax has been paid or is due on January 1, 1980, and which are stored in buildings or rooms on distilled spirits plant premises that become bonded premises as of January 1, 1980.

§ 19.917 Records of taxpaid stock remaining on bonded premises during 1980.

Records shall be kept to show full accountability for taxpaid distilled spirits and wines that remain on bonded premises, as provided in § 19.916, and they shall be maintained separately from the records required to be kept for taxpaid storeroom and wholesale liquor dealer operations. When taxpaid distilled spirits and wines are removed from the bonded premises of a distilled spirits plant to a taxpaid storeroom or wholesale liquor dealer premises, operated in connection with a distilled spirits plant, during 1980, the receipt of

the products shall be shown in the records required by § 19.780 (records of taxpaid storeroom and wholesale liquor dealer operations).

§ 19.918 Filing of tax return, ATF Form 5110.35.

Every proprietor, who on January 1, 1980, is qualified under a withdrawal or unit bond to defer payment of distilled spirits tax, shall file a tax return on ATF Form 5110.35, as provided in this section, and in § 19.522. Such return shall be filed for each prescribed return period, whether or not liability is incurred during a period, with the first return to be filed by February 5, 1980, for the return period inclusive of January 1 through January 15, 1980.

§ 19.919 Return of products containing taxpaid wine.

With respect to distilled spirits returned to the bonded premises of a distilled spirits plant during calendar year 1980, the proprietor may claim a credit or refund of the tax imposed under 26 U.S.C. 5001(a)(1) (or the tax equal to such tax imposed under 26 U.S.C. 7652) on the spirits so returned as well as any tax imposed under 26 U.S.C. 5041 on the wine contained in the product. With respect to such spirits returned after calendar year 1980, the proprietor may claim a credit or refund of only the tax imposed under 26 U.S.C. 5001(a)(1) (or the tax equal to such tax imposed under 26 U.S.C. 7652) on the spirits so returned.

§ 19.920 Curtailment and extension of distilled spirits plant and bonded wine cellar premises.

A proprietor of a contiguous or adjacent distilled spirits plant and bonded wine cellar which on December 31, 1979, are subject to alternate curtailment and extension of premises for the conduct of operations required to be carried on under the opposite registration may continue such curtailment and extension to conduct the operations for which they were qualified on December 31, 1979, until the required new application for registration of the distilled spirits plant has been acted upon by the regional regulatory administrator.

§ 19.921 Continuation of alternate methods or procedures.

Proprietors following alternate methods or procedures which were approved prior to January 1, 1980, shall determine the propriety of continued operation under the methods or procedures. If any approved alternate method or procedure is inconsistent with any regulatory provisions in this chapter after January 1, 1980, operations under the approval shall be immediately discontinued.

§ 19.922 Supervision.

(a) *General.* Notwithstanding the provisions in Subpart E of this part, the same degree and extent of on-premises ATF supervision exercised at distilled spirits plants under law and regulations in effect prior to January 1, 1980, shall be continued at each plant until the regional regulatory administrator requests, receives, and approves a proprietor's statement of security as provided in § 19.281. Such on-premises supervision by ATF officers shall include, but is not limited to, the gauging or the supervision of the gauge of spirits transferred to or received in a processing account and the affixing of Government locks to tanks of spirits and rooms or buildings containing packages of spirits.

(b) *Curtailment.* The regional regulatory administrator may curtail ATF on-premises supervision at a proprietor's distilled spirits plant, after approval of the proprietor's statement of security.

(c) *Notification.* The proprietor shall be notified, in writing, of any intended curtailment of supervision.

(d) *Statement of security.* Upon request of the regional regulatory administrator, the proprietor shall promptly prepare and submit a statement of security as required by § 19.281.

§ 19.923 Removal of seals from the distilling system and other equipment.

Government cap seals affixed to a distilling system and other equipment prior to January 1, 1980, may be removed by the proprietor. Proprietors shall destroy Government cap seals when they are removed.

§ 19.924 Approval of locks.

Proprietors who, on January 1, 1980, do not have approved locks that may be utilized as required by this part, shall submit to the regional regulatory administrator for approval, a timetable for the acquisition of such locks. The timetable shall be prepared according to guidelines established by the regional regulatory administrator for the replacement of Government locks with the approved locks of distilled spirits plant proprietors at plants where direct supervision is to be suspended.

§ 19.925 Pilot operations.

Proprietors authorized under pilot operations to affix their locks on tanks, rooms, buildings, pipelines, etc., in place of Government locks affixed by ATF officers may continue the use of their locks for such purposes, subject to a determination of the need therefor by the regional regulatory administrator, and pending final approval of the locks as provided in § 19.924.

§ 19.926 New sign.

Proprietors, who were qualified to conduct business on May 1, 1979, who qualify to conduct business after December 31, 1979, and whose required sign does not conform to the requirements in § 19.280, may continue to conduct business during 1980 with the existing sign after which time they must place the new sign.

Section D. Part 170 is amended as follows:

PART 170—MISCELLANEOUS REGULATIONS RELATING TO LIQUOR

Paragraph 1. The table of contents is amended to delete Subparts C, F, G and W and to amend the contents of Subpart U. As amended, the table of contents reads as follows:

* * * * *

Subparts B–D—[Reserved]

* * * * *

Subparts F–N—[Reserved]

* * * * *

Subpart U—Manufacture and Sale of Certain Compounds, Preparations, and Products Containing Alcohol

Sec.

170.611 Scope of subpart.
170.612 Meanings of terms.
170.613 Products to which exemptions relate.
170.614 U.S.P. and N.F. preparations.
170.615 Change of formula; when required.
170.616 Products classed as liquors.
170.617 Apothecaries and manufacturers exempt from qualification.
170.618 Sale of products for beverage use; special tax.

Subparts V–Y—[Reserved]

* * * * *

Paragraph 2. Section 170.2 is revised to change a law citation. As revised, § 170.2 reads as follows:

§ 170.2 Statutory authority.

Section of 5205(d), 26 U.S.C., provides that the Secretary may, under regulations prescribed by him, issue stamps for restamping packages of distilled spirits which have been duly stamped, but from which the stamps have been lost or destroyed by unavoidable accident.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

Paragraph 3. Section 170.3 is revised to reflect revised withdrawal procedures under the all-in-bond system. As revised, § 170.3 reads as follows:

§ 170.3 Applications.

Applications for restamping packages of distilled spirits should be made in writing to the regional regulatory administrator. The applicant should state in detail the number of packages, description of the contents, the place where the packages are located, the kind of stamps lost or destroyed, and the nature of the applicant's interest in the property. The applicant shall submit with his application a certified copy of the document showing lawful withdrawal of the packages of spirits from a distilled spirits plant.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

Paragraph 4. Subpart C is revoked in its entirety. The center headings "Subpart B—[Reserved]" and "Subpart D—[Reserved]" are combined to read as follows:

Subparts B–D—[Reserved]

Paragraph 5. Subparts F and G are revoked in their entirety; however, provisions in these Subparts are being incorporated into 27 CFR Parts 19 and 250 as applicable. As amended, the center heading "Subparts H–N—[Reserved]" reads as follows:

Subparts F–N—[Reserved]

§ 170.30 [Amended]

Paragraph 6. Section 170.301 is amended to delete the term "rectified products," in paragraph (a), and the term "rectified products," in paragraph (c).

Paragraph 7. Section 170.303 is amended to update definitions by deleting references to rectified products and by amending the definition of distilled spirits. As amended, § 170.303 reads as follows:

§ 170.303 Meaning of terms.

* * * * *

Alcoholic liquors or liquors. Distilled spirits, wines, and beer, lost, made unmarketable, or condemned, as provided in this subpart.

* * * * *

Distilled spirits, or spirits. Ethyl alcohol and other distillates, such as whisky, brandy, rum, gin, and vodka, in any form (including all dilutions and mixtures thereof, from whatever source or by whatever process produced), on which the internal revenue tax has been paid or determined and, if imported, on which duties have been paid.

* * * * *

Major disaster. * * *

Region. * * *

* * * * *

Tax. (a) With respect to distilled spirits, "tax" means the internal revenue tax that is paid or determined on the spirits.

* * * * *

(c) With respect to beer, "tax" means the internal revenue tax that is paid or determined on the beer.

United States. * * *

* * * * *

§ 170.304 [Amended]

Paragraph 8. Section 170.304 is amended by deleting the term "rectified products," in paragraphs (a) and (b).

Paragraph 9. Section 170.611 is revised to reflect the repeal of the commodity and occupational taxes relating to rectification. As revised, § 170.611 reads as follows:

§ 170.611 Scope of subpart.

This subpart contains provisions relating to persons who compound, mix, manufacture, or sell compounds, mixtures, preparations, or products containing taxpaid distilled spirits or wines.

(Sec. 805, Pub. L. 96–39, 93 Stat. 278 (26 U.S.C. 5002))

Paragraph 10. Section 170.612 is revised to bring the definitions of certain terms into conformity with 26 U.S.C. Chapter 51, as amended. As revised, § 170.612 reads as follows:

§ 170.612 Meanings of terms.

When used in this subpart, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, term shall have the meaning ascribed in this section. Words in the plural form shall include the singular, and vice versa, and words importing the masculine gender shall include the feminine. The terms "includes" and "including" do not exclude things not enumerated which are in the same general class.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, D.C.

Distilled spirits, or spirits. That substance known as ethyl alcohol, ethanol, or spirits of wine, in any form, including all dilutions and mixtures thereof, from whatever source or by whatever process produced.

Liquors. Distilled spirits and/or wines.

Person. An individual, trust, estate, partnership, association, company, or corporation.

Processor. Except as otherwise provided under 26 U.S.C. 5002(a)(6), any person qualified under Part 19 of this chapter who manufactures, mixes, or otherwise processes distilled spirits (including denatured spirits), or manufactures any article.

Regional regulatory administrator. The principal ATF regional official responsible for administering regulations in this part.

Special tax. The special (occupational) tax imposed by 26 U.S.C. 5111 and 5121 on dealers in liquors.

Taxpaid distilled spirits or wines. Distilled spirits or wines as the case may be, on which the distilled spirits tax imposed by 26 U.S.C. 5001, or the wine taxes imposed by 26 U.S.C. 5041, have been paid or determined.

This chapter. Title 27, Code of Federal Regulations, Chapter I (27 CFR Chapter I).

U.S.C. The United States Code.

Paragraph 11. The center heading immediately preceding § 170.613 is deleted and § 170.613 is amended due to the repeal of rectification taxes. As amended, the introductory clause in paragraph (a) and paragraph (b) of § 170.613 reads as follows:

§ 170.613 Products to which exemptions relate.

(a) *Products meeting requirements.* Apothecaries, pharmacists, and manufacturers are not required to qualify as processors under 26 U.S.C. 5171 before manufacturing or compounding medicines, medicinal preparations, food products, flavors, and flavoring extracts, if the tax has been paid or determined on all of the distilled spirits and/or wines contained therein, as follows:

* * * * *

(b) *Formulas and samples; when required.* On request of the Director, or when in doubt as to the classification of a product, the manufacturer shall submit to the Director the formula for and a sample of the product for examination to verify the manufacturer's claim of exemption from qualification requirements.

(Sec. 805, Pub. L. 96–39, 93 Stat. 275, 278 (26 U.S.C. 5002, 5171))

Paragraph 12. Section 170.614 is revised due to repeal of rectification taxes. As revised, § 170.614 reads as follows:

§ 170.614 U.S.P. and N.F. preparations.

The following United States Pharmacopoeia and National Formulary preparations which are used by physicians and pharmacists principally as vehicles may be made with distilled spirits without qualification by the manufacturer as a processor under 26 U.S.C. 5171 and without incurring liability for special taxes for their sale:

Elixir aromaticum.
Elixir aromaticum rubrum.
Elixir aurantii amari.

Elixir cardamom compositum.
Elixir glycyrrhizae.
Elixir taraxaci compositum.
Elixir terpini hydratis.
Spiritus aetheris.
Spiritus myrciae compositus.
Tinctura aurantii dulcis.
Tinctura limonis.

(Sec. 805, Pub. L. 96-39, 93 Stat. 275, 278 (26 U.S.C. 5002, 5171))

Paragraph 13. Section 170.615 is revised due to repeal of rectification taxes. As revised, § 170.615 reads as follows:

§ 170.615 Change of furmula; when required.

If the regional regulatory administrator finds at any time that any product manufactured under this subpart as an unfit product is being used for beverage purposes, or for mixing with beverage liquors other than by a processor, he shall notify the manufacturer to desist from manufacturing the prouduct until the formula is changed to make the product not susceptible of beverage use and the change is approved by the Director. However the provisions of this section shall not prohibit the use of unfit products in small quantities for flavoring drinks at the time of serving for immediate consumption. Where, pursuant to notice, the manufacturer does not desist, or the formula is not so modified as to make the product unsusceptible of beverage use, the manufactuer shall immediately qualify as a processor.

(Sec. 805, Pub. L. 96-39, 93 Stat. 275, 278 (26 U.S.C. 5002, 5171))

Paragraph 14. Section 170.616 is revised due to repeal of rectification taxes. As revised, § 170.616 reads as follows:

§ 170.616 Products classed as liquors.

United States Pharmacopoeia tincture of ginger is held to be liquor. Bitters, patent medicines, and similar alcoholic preparations which are fit for beverage purposes, although held out as having certain medicinal properties, are also classed as liquors. These preparations are required to be manufactured on the bonded premises of a distilled spirits plant, bottled or packaged, stamped, recorded, and disposed of in accordance with the procedure prescribed in Part 19 of this chapter for other distilled spirits products. Sellers of such preparations shall be subject to the provisions of Part 194 of this chapter with respect to special taxes.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1340, as amended, 1343, as amended (26 U.S.C. 5111, 5121); Sec. 805, Pub. L. 96-39, 93 Stat. 275 (26 U.S.C. 5171))

Paragraph 15. The center heading immediately preceding § 170.617 is deleted and § 170.617 is revised due to repeal of the rectifier's occupational tax. As revised, paragraphs (a) and (b) of § 170.617 reads as follows:

§ 1790.617 Apothecaries and manufacturers exempt from qualification.

(a) *Compounders or manufacturers.* An apothecary, a pharmacist, or a manufacturer is not required to qualify as a processor or, except as provided in § 170.618, to qualify as a dealer in liquors in order to prepare, manufacture, or sell products described in § 170.613 or § 170.614, or products declared by the Director to be unfit for use for beverage purposes.

(b) *Manufacturers recovering taxpaid alcohol.* A manufacturer who recovers taxpaid distilled spirits from dregs or marc of percolation or extraction, or from medicines, medicinal preparations, food products, flavors, or flavoring extracts, which do not meet the manufacturer's standards, is not required to qualify as a processor if such manufacturer uses the recovered distilled spirits exclusively in the manufacture of medicine, medicinal preparations, food products, flavors, or flavoring extracts, which are unfit for use for beverage purposes.

* * * * *

(Sec. 805, Pub. L. 96-39, 93 Stat. 275, 278 (26 U.S.C. 5002, 5171))

Paragraph 16. Section 170.618 is revised due to repeal of the rectifier's occupational tax. As revised, § 170.618 reads as follows:

§ 170.618 Sale of products for beverage use; special tax.

Any person (including the manufacturer) who sells for beverage purposes any of the products described in §§ 170.613 to 170.614, or any other product declared by the Director to be unfit for use for beverage purposes, or any distilled spirits recovered as provided in § 170.617(b), or who sells any such substance under circumstances from which it might reasonably appear that it is the intention of the purchaser to procure the same for sale or use for beverage purposes, is required to pay special tax as a wholesale dealer in liquors or a retail dealer in liquors, as the case may be.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1340, as amended, 1343, as amended (26 U.S.C. 5111, 5121))

Paragraph 17. Subpart W is obsolete and is revoked in its entirety. The center headings "Subpart V—[Reserved]" and "Subparts X-Y—[Reserved]" are combined to read as follows:

Subparts V-Y—[Reserved]

§ 170.683 [Amended]

Paragraph 18. Section 170.683 is amended to delete the phrase "Form 2601" and to insert in lieu thereof the phrase "operations or unit bond". Section E, Part 173 is amended as follows:

PART 173—RETURNS OF SUBSTANCES, ARTICLES, OR CONTAINERS

§ 173.35 [Deleted]

Paragraph 1. The table of contents of 27 CFR Part 173 is amended to delete § 173.35.

Paragraph 2. Section 173.5 is amended to delete a reference to rectified distilled spirits in the definitions. As amended, § 173.5 reads as follows:

§ 173.5 Meaning of terms.

* * * * *

Distilled spirits or spirits. That substance known as ethyl alcohol, ethanol, or spirits of wine, including all dilutions and mixtures thereof, from whatever source or by whatever process produced, and shall include whisky, brandy, rum, gin, and vodka.

* * * * *

§ 173.33 [Amended]

Paragraph 3. Section 173.33 is amended to delete the phrase "Parts 201" and to insert in lieu thereof the phrase "Parts 19".

Paragraph 4. Section 173.34 is amended to delete reference to Part 201 and insert the recodified Part 19. As amended, paragraph (c) of § 173.34 reads as follows:

§ 173.34 Indicia for imported liquor bottles.

* * * * *

(c) *Additional information permanently marked on liquor bottles.* Additional information, such as the name of the foreign manufacturer of the spirits or of the exporter abroad, or the symbol and permit number of the domestic bottler, as applicable, may be permanently marked on liquor bottles provided the information does not conflict with information required to be placed on labels and is so located as not to obscure indicia required by this section or interfere with the labeling or stamping of the bottle, when filled, as provided in Parts 19, 250, and 251 of this chapter.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1336, as amended (19 U.S.C. 1309, 81c, 26 U.S.C. 5062))

§ 173.35 [Deleted]

Paragraph 5. Section 173.35 is obsolete and is deleted in its entirety.

Section F. Part 194 is amended as follows:

PART 194—LIQUOR DEALERS

Paragraph 1. The table of contents is amended to reflect a change in the wording of a subpart and a few sections, and the deletion of a section. As amended, the table of contents reads as follows:

* * * * *

Sec.
194.38 [Deleted]
* * * * *

Subpart P—Strip Stamps or Alternative Devices

194.251 Strip stamps or alternative devices required on all bottles.
194.252 Breaking of strip stamp or alternative device on opening bottle.
194.253 Mutilated or missing strip stamps or alternative devices.
194.254 Affixing strip stamps on containers found to have missing strip stamps or alternative devices.
194.255 Strip stamps or alternative devices found by ATF officers to be mutilated or missing.
194.256 Strip stamp or alternative device replacement not required.
* * * * *

Subpart T—Miscellaneous

* * * * *
194.293 Mixing cocktails in advance of sale.
* * * * *

Paragraph 2. Section 194.11 is amended to change the definitions of "Distilled spirits or spirits" and "Distilled spirits plant" to conform to the all-in-bond concept of operation. As amended, § 194.11 reads as follows:

§ 194.11 Meaning of terms.

* * * * *

Distilled spirits or spirits. That substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof, from whatever source or by whatever process produced.

Distilled spirits plant. An establishment qualified under Part 19 of this chapter for the production, storage or processing of distilled spirits.

* * * * *

§ 194.38 [Deleted]

Paragraph 3. Section 194.38 is deleted because special occupational tax for a rectifier has been repealed.

Paragraph 4. Section 194.224 is revised to delete reference to Part 201 and to insert the recodified Part 19. As revised, § 194.224 reads as follows:

§ 194.224 Records to be kept by proprietors of distilled spirits plants.

Wholesale liquor dealer operations conducted by proprietors of distilled spirits plants shall be recorded and reported in accordance with the applicable provisions of Part 19 of this chapter.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1342, as amended (26 U.S.C. 5114); Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

Paragraph 5. Section 194.251 and the title to Subpart P are revised to include the use of alternative devices. As revised, the title to Subpart P and § 194.251 read as follows:

Subpart P—Strip Stamps or Alternative Devices

§ 194.251 Strip stamps or alternative devices required on all bottles.

Except as provided in §§ 194.264, 194.271, and 194.272, all distilled spirits in the possession of wholesale or retail dealers in liquors shall be in bottles or similar containers of a capacity of 1 gallon (3.785 liters) or less and shall have the prescribed strip stamps or alternative devices evidencing bottling in compliance with internal revenue law. The strip stamp or alternative device shall be affixed in such manner as to be broken when the container is opened.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

Paragraph 6. Section 194.252 is revised to include the use of alternative devices in lieu of strip stamps. As revised, § 194.252 reads as follows:

§ 194.252 Breaking of strip stamp or alternative device on opening bottle.

The strip stamp or alternative device affixed to a container of distilled spirits (whether affixed over the mouth of the container or in some other authorized manner) shall be broken on opening the container. A portion of the strip stamp or alternative device shall remain attached to the container while any part of the contents remain.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

Paragraph 7. Section 194.253 is revised to include the use of alternative devices in lieu of strip stamps. As revised, § 194.253 reads as follows:

§ 194.253 Mutilated or missing strip stamps or alternative devices.

Any unopened bottle or other approved container of distilled spirits—

(a) From which the strip stamp or alternative device is missing,

(b) On which the strip stamp or alternative device is mutilated to the extent that the genuineness of the stamp or device cannot be determined, or

(c) The contents of which are accessible without breaking the stamp or device, shall be restamped under §§ 194.254–194.255, or be returned to a distilled spirits plant for restamping or to have alternative devices replaced. Where the containers of distilled spirits are to be returned to a distilled spirits plant for restamping or to have devices replaced, the dealer shall record the transaction in his record of disposition and include in this record an accurate description of the containers of distilled spirits to be restamped or to have devices replaced, and the name and address of the proprietor who has agreed to accept the liquors for restamping or for reaffixing alternative devices.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

Paragraph 8. Section 194.254 is revised to include provisions for alternative devices to be used in lieu of strip stamps. As revised, § 194.254 reads as follows:

§ 194.254 Affixing strip stamps on containers found to have mutilated or missing strip stamps or alternative devices.

Containers requiring restamping, as described in § 194.253, shall be set aside by the dealer and an application for necessary stamps submitted with Form 428, Requisition for Bottle Strip Stamps, to the regional regulatory administrator. Copies of Form 428 may be obtained from the regional regulatory administrator. The application shall state the cause of mutilation or absence of stamps or alternative devices and contain evidence that the spirits are eligible for stamping under 26 U.S.C. 5205. The evidence may consist of invoices covering purchase of the spirits, in addition to other available documents. The application shall be signed by the dealer or his authorized agent under the penalties of perjury immediately below a declaration, worded as follows:

> I declare under the penalties of perjury that I have examined this application and to the best of my knowledge and belief it is true and correct.

If the regional regulatory administrator is satisfied from the evidence submitted that the mutilation or absence of the strip stamps or alternative devices has been satisfactorily explained, he will approve the requisition for stamps, Form 428, and deliver the stamps to the applicant by mail or by a representative of his office, with instructions for affixing them to the containers. If an overprinted stamp is to be replaced by

the dealer, the word "Restamped," the name of the dealer, and the date of restamping shall be imprinted, or written in ink, in lieu of overprinting the replacement stamp.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

Paragraph 9. Section 194.255 is revised to include provisions for alternative devices to be used in lieu of strip stamps. As revised, § 194.255 reads as follows:

§ 194.255 Strip stamps or alternative devices found by ATF officers to be mutilated or missing.

When an ATF officer discovers an unopened bottle of distilled spirits which requires restamping or replacement of an alternative device due to conditions specified in § 194.253, the bottle will be set aside. If the officer is satisfied that the spirits are eligible for restamping or for having an alternative device replaced, he will secure from the dealer the application for strip stamps and Form 428 required under the provisions of § 194.254 and forward this information to the regional regulatory administrator. When the ATF officer has reason to believe that the distilled spirits have not been lawfully marked with a strip stamp or alternative device, or that the original contents of the bottle have been replaced or increased by the addition of any substance whatsoever, the spirits will be seized for forfeiture.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1404 (26 U.S.C. 5205, 5613))

Paragraph 10. Section 194.256 is revised to include the use of alternative devices in lieu of strip stamps. As revised, § 194.256 reads as follows:

§ 194.256 Strip stamp or alternative device replacement not required.

Where a minor portion of the stamp or alternative device is missing, or where the strip stamp has dropped off a container and may be reaffixed by the dealer, it will not be necessary to restamp the container or to replace the alternative device.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

Paragraph 11. Section 194.264 is amended to change a reference citation. As amended, § 194.264 reads as follows:

§ 194.264 Mixed cocktails.

A retail liquor dealer who mixes cocktails or compounds any alcoholic liquors in advance of sale, as provided in § 194.293, may not use liquor bottles in which distilled spirits have been previously packaged for the storage of the mixture pending sale.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

Paragraph 12. Section 194.271 is revised to conform to the changes made in 27 CFR Part 19, and to include the use of althernative devices in lieu of strip stamps. As revised, § 194.271 reads as follows:

§ 194.271 Requirements and procedure.

On compliance with the provisions of Part 19 of this chapter applicable to persons repackaging distilled spirits, a dealer in liquor engaged in the business of supplying alcohol for industrial use may obtain bulk alcohol on which the tax has been paid or determined and repackage the alcohol for sale for industrial use in containers of a capacity in excess of 1 wine gallon and not more than 5 wine gallons.

(a) *Qualification procedure.* Application for registration, Form 5110.41, and application for an operating permit, Form 5110.25, modified in accordance with instructions of the regional regulatory administrator, shall be executed and filed with the regional regulatory administrator. No alcohol shall be repackaged until the approved application for registration and the operating permit are received.

(b) *Operations.* Repackaging operations shall be conducted in accordance with the bottling and packaging requirements of Part 19 of this chapter, except—

(1) Requisitions for strip stamps on Form 428 shall be submitted directly to the regional regulatory administrator, and

(2) Packaging and labeling operations may be carried on without supervision of an ATF officer unless the regional regulatory administrator requires supervision.

(c) *Records.* The dealer shall keep records, daily, showing the bulk alcohol received, dumped for packaging, packaged, strip stamped, and disposed of, including the name and address of each consignor and consignee. A report, on Form 5100.8, of strip stamp transactions shall be prepared as of the close of business March 31, June 30, September 30, and December 31 of each year. The dealer shall also prepare a monthly report on Form 5110.28 of bulk alcohol received, packaged, and disposed of. Reports on Form 5100.8 and Form 5110.28 shall be submitted to the regional regulatory administrator not later than the 15th day of the month succeeding the period for which rendered. Records, documents, or copies of documents supporting the records, and copies of reports submitted to the regional regulatory administrator shall be filed and retained as prescribed in §§ 194.241 and 194.242.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1343, as amended, 1358, as amended, 1360, as amended (26 U.S.C. 5116, 5205, 5206))

Paragraph 13. Section 194.281 is revised to include the use of alternative devices in lieu of strip stamps. As revised, § 194.281 reads as follows:

§ 194.281 General.

A State, or political subdivision thereof, or a person holding a wholesale liquor dealer's basic permit issued pursuant to Part 1 of this chapter may export bottled taxpaid distilled spirits with benefit of drawback to the extent provided in § 252.171 of this chapter. The overprinting of stamps or alternative devices, restamping of bottles, marking of cases, preparation of notice of shipment on Form 5110.30, the removal and exportation of the distilled spirits, and the filing of claims by the processor of the spirits shall be in accordance with the applicable provisions of Parts 19 and 252 of this chapter.

Paragraph 14. Section 194.292 is revised to delete a distilled spirits plant as a place to bottle taxpaid wines. As revised, § 194.292 reads as follows:

§ 194.292 Wine bottling.

Each person desiring to bottle, package, or repackage taxpaid wines shall, before carrying on such operations, apply and receive permission from the regional regulatory administrator, as required under Part 231 of this chapter. The decanting of wine by caterers or other retail dealers for table or room service, banquets, and similar purposes shall not be considered as "bottling," if the decanters are not furnished for the purpose of carrying wine away from the area where served.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended (26 U.S.C. 5352))

Paragraph 15. Section 194.38 was deleted because of a reference to rectification tax. However, other requirements of § 194.38 have been retained and appear as a new section, § 194.293. As added, § 194.293 reads as follows:

§ 194.293 Mixing cocktails in advance of sale.

A retail liquor dealer shall not mix cocktails, or compound any alcoholic liquors in advance of sale, except for the purpose of filling, for immediate consumption on the premises, orders received at the bar or in the expectation of the immediate receipt of orders. (For further provisions, see § 194.264.)

(Sec. 805, Pub. L. 96-39, 93 Stat. 277 (26 U.S.C. 5002))

Section G. Part 195 is amended as follows:

PART 195—PRODUCTION OF VINEGAR BY THE VAPORIZING PROCESS

Section 195.10 is amended to update the definition of distilled spirits. As amended, § 195.10 reads as follows:

§ 195.10 Meaning of terms.

* * * * *

Distilled spirits. "Distilled spirits" shall mean that substance known as ethyl alcohol, ethanol, spirits, or spirits of wine in any form (including all dilutions and mixtures thereof, from whatever source or by whatever process produced), and includes low wines produced by the vaporizing process in the manufacture of vinegar.

* * * * *

Section H. Part 196 is amended as follows:

PART 196—STILLS

Section 196.5 is amended to update the definitions of distilled spirits or spirits, and distilling. As amended, § 196.5 reads as follows:

§ 196.5 Meaning of terms.

* * * * *

Distilled spirits or spirits. Distilled spirits or spirits shall mean that substance known as ethyl alcohol, ethanol, or spirits of wine in any form (including all dilutions and mixtures thereof, from whatever source or by whatever process produced).

Distilling. "Distilling" shall mean the distillation of spirits as defined by 26 U.S.C. 5002. Such distillation shall include: (a) the original manufacture of distilled spirits from mash, wort, or wash, or any material suitable for the production of spirits; (b) the redistillation of spirits in the course of original manufacture; (c) the redistillation of spirits, or products containing spirits; (d) the distillation, redistillation, or recovery of spirits or of completely or specially denatured spirits, or of articles containing spirits or completely or specially denatured spirits; and (e) the redistillation or recovery of tax-free spirits.

* * * * *

Section I. Part 197 is amended as follows:

PART 197—DRAWBACK ON DISTILLED SPIRITS USED IN MANUFACTURING NONBEVERAGE PRODUCTS

Paragraph 1. Section 197.5 is amended to change the definition of distilled spirits to conform with the new statutory definition. As amended, § 197.5 reads as follows:

§ 197.5 Meaning of terms.

* * * * *

Distilled spirits. Distilled spirits shall mean that substance known as ethyl alcohol, ethanol, spirits, or spirits of wine in any form (including all dilutions and mixtures thereof, from whatever source or by whatever process produced), which are fully taxpaid or tax-determined at the distilled spirits rate.

* * * * *

Paragraph 2. Section 197.112 is amended to eliminate references to Form 179. As amended, § 197.112 reads as follows:

§ 197.112 Distilled spirits received in tank cars or tank trucks.

Each claim covering distilled spirits received in tank cars or tank trucks shall be accompanied by a statement showing in respect of each shipment received: The date or receipt; the name and address of the vendor; the number or other identification mark of the tank car or tank truck; the serial number of the distilled spirits stamp and the date it was affixed to the tank car or tank truck; the name of the producer, blender, or warehouseman, and the kind, quantity, and proof of the spirits. If the tank car or tank truck is received without the stamp affixed, the vendee shall note the fact on the bill of lading and immediately notify the regional regulatory administrator. (The distilled spirits stamp shall be completely destroyed when the distilled spirits have been removed from the tank car or tank truck.)

Paragraph 3. Section 197.113 is revised to delete a reference to Form 179. As revised, § 197.113 reads as follows:

§ 197.113 Distilled spirits received in barrels, drums, or other portable containers.

Each claim covering distilled spirits received in barrels, drums, or other portable containers bearing distilled spirits stamps shall be accompanied by a statement showing: the date of receipt; the name and address of the vendor; the kind and serial number of the stamp affixed to the container and the date the stamp was issued or affixed as stated on the stamp; the serial number, if any, of the container; the name of the producer, blender, or warehouseman as shown on the commercial invoice provided for in § 197.130b; and the kind, quantity, and proof of the spirits. (When the container is emptied, the stamp shall be completely destroyed.)

Paragraph 4. Section 197.115 is revised to limit the requirement for showing eligible and ineligible proof gallon content to rectified products taxpaid before January 1, 1980. As revised, § 197.115 reads as follows:

§ 197.115 Use of distilled spirits.

Each claim covering the use of distilled spirits in the manufacture of nonbeverage products shall be accompanied by a statement showing the name, description, and formula number, if any, of each nonbeverage product in the manufacture of which distilled spirits were used, the alcoholic content by volume of each product, the number of proof gallons and kind of distilled spirits used in the manufacture, and the quantity produced. If a rectified product containing alcoholic ingredients (other than spirits) on which the tax was paid or determined prior to January 1, 1980, was used as an ingredient in the manufacture of a nonbeverage product, the statement shall show, as to such ingredient, the proof gallon content eligible for drawback and the proof gallon content ineligible for drawback.

Paragraph 5. Section 197.130 is revised due to the repeal of rectification provisions and the elimination of the requirement for strip stamp serial numbers from regulations. As revised, paragraphs (c) and (e) of § 197.130 reads as follows:

§ 197.130 Nature of records.

* * * * *

(c) Kind and serial number of container (such as tank car, drum, case of bottles) and the kind and serial number, if any, of the stamp or alternative device affixed to the container.

* * * * *

(e) Number of proof gallons and kind of distilled spirits used in the manufacture of each product, and the date of use. (The record of rectified distilled spirits products which were taxpaid or tax-determined at the premises of a distilled spirits plant prior to January 1, 1980, and contain spirits not fully taxpaid (or tax-determined) at the distilled spirits rate shall also show the percent of spirits fully taxpaid at the distilled spirits rate and the percent of spirits not so taxpaid.)

* * * * *

Paragraph 6. Section 197.130a is revised to delete references to Form 179 and to reflect recodification of the

Gauging Manual as 27 CFR Part 13. As revised, § 197.130a reads as follows:

§ 197.130a Distilled spirits received and used.

(a) *Receipts.* Each manufacturer shall, at the time of receipt, determine, preferably by weight, and record in his permanent records, the exact quantity of distilled spirits received: *Provided,* That if the spirits are received in a tank car or tank truck and the result of the manufacturer's gauge of the spirits is within 0.2 percent of the quantity reported on the invoice covering the tax-determination of the spirits, the quantity reported on the invoice may be recorded in the manufacturer's permanent records as the quantity received. However, the receiving gauge shall be noted on the record of receipt. Losses in transit, other than those attributable to variations in gauge not exceeding the 0.2 percent limitation as provided in this paragraph, shall be determined but shall not be recorded in the manufacturer's permanent records as distilled spirits received.

(b) *Use.* Each manufacturer shall accurately determine, by weight or volume, the quantity of all distilled spirits used and enter the quantity in the permanent records. Where the quantity used is determined by volume, adjustments shall be made if the temperature of the spirits is above or below 60 degrees Fahrenheit. A correction table, Table No. 7, is available in 27 CFR Part 13, Gauging Manual. Losses after receipt, due to leakage, spillage, evaporation, or other causes shall be accurately recorded in the manufacturer's permanent records at the time the losses are determined.

Paragraph 7. Section 197.130b is amended to reflect replacement of Form 179 by commercial records. As amended, paragraph (a) of § 197.130b reads as follows:

§ 197.130b Evidence of tax payment of distilled spirits.

(a) *Domestic spirits.* All shipments of spirits made from a distilled spirits plant shall be supported by the vendor's commercial invoice which must bear a certification as to tax payment by the person who paid the tax, and include the following information:

(1) The name and address of vendor;

(2) The registry number of the distilled spirits plant from which the spirits were withdrawn on determination of tax;

(3) The number of the applicable invoice;

(4) the name of the producer, blender, or warehouseman of the spirits;

(5) The serial number of the container;

(6) The serial number and date of the distilled spirits stamp; and

(7) The kind of spirits, proof, and proof gallons in the container.

* * * * *

Paragraph 8. Section 197.133 is revised due to the elimination of Form 179. As revised, § 197.133 reads as follows:

§ 197.133 Retention of records.

Each manufacturer shall retain for a period of not less than 2 years all records required by this part, all commercial invoices or shipping documents, and all bills of lading received evidencing receipt and tax determination of the spirits. In addition, a copy of each approved formula returned to the manufacturer shall be retained for not less than 2 years from the date he files his last claim for drawback under the formula. The records, forms and formulas shall be readily available during the manufacturer's regular business hours for examination and taking abstracts by ATF officers.

Section J. Part 200 is amended as follows:

PART 200—RULES OF PRACTICE IN PERMIT PROCEEDINGS

Section 200.16 is amended to incorporate the correct statutory citation for operating permits. As amended, paragraph (c) of § 200.16 reads as follows:

§ 200.16 Other terms.

* * * * *

Permit. (a) * * *

* * * * *

(c) *Operating permit.* "Operating permit" shall mean the document issued pursuant to 26 U.S.C. 5171, authorizing the person named therein to engage in the business described therein.

* * * * *

Section K. Part 211 is amended as follows:

PART 211—DISTRIBUTION AND USE OF DENATURED ALCOHOL AND RUM

Paragraph 1. Section 211.3 is revised to show recodification of Part 201 of this chapter as Part 19. As revised, § 211.3 reads as follows:

§ 211.3 Related regulations.

Regulations relating to this part are listed below:

27 CFR Part 19—Distilled Spirits Plants.
27 CFR Part 196—Stills.
27 CFR Part 200—Rules of Practice in Permit Proceedings.
27 CFR Part 212—Formulas for Denatured Alcohol and Rum.
27 CFR Part 250—Liquors and Articles from Puerto Rico and the Virgin Islands.
27 CFR Part 251—Importation of Distilled Spirits, Wines, and Beer.
27 CFR Part 252—Exportation of Liquors.
31 CFR Part 225—Acceptance of Bonds, Notes, or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety or Sureties on Penal Bonds.

Paragraph 2. Section 211.11 is amended to conform with statutory changes and amendments to distilled spirits plant regulations. As amended, § 211.11 reads as follows:

§ 211.11 Meaning of terms.

* * * * *

Alcohol. Those spirits known as ethyl alcohol, ethanol, or spirits of wine in any form, from whatever source or by whatever process produced; the term does not include such spirits as whisky, brandy, rum, gin, or vodka.

* * * * *

Denaturer. The proprietor of a distilled spirits plant who denatures alcohol or rum pursuant to 27 CFR Part 19.

* * * * *

Manufacturer or user. A person who holds an industrial use permit to use specially denatured alcohol or specially denatured rum or to recover completely or specially denatured alcohol, specially denatured rum, or articles, or a distilled spirits plant proprietor qualified as a processor.

* * * * *

Paragraph 3. Section 211.42 is revised to reflect new provisions allowing distilled spirits plant proprietors to use denatured spirits in the manufacture of articles. As revised, § 211.42 reads as follows:

§ 211.42 Application, Form 1479, for permit to use or recover.

Each person, except a distilled spirits plant proprietor qualified under Part 19 of this chapter, desiring to use specially denatured alcohol or specially denatured rum, or both, and each person desiring to recover denatured alcohol, specially denatured rum, or articles shall, before commencing business, apply for and obtain an industrial use permit, Form 1481. Except as provided in § 211.42a, application for an industrial use permit shall be on Form 1479. The application, and necessary supporting documents as required by this subpart for the permit, shall be filed with the regional regulatory administrator. All data, written statements, affidavits, and other documents submitted in support of the application shall be a part of the application. The application shall be accompanied by evidence which will

establish the authority of the officer or other person who executes the application to execute the same and, where applicable, by the application for a withdrawal permit, Form 1485, required by § 211.161.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370 as amended (26 U.S.C. 5271))

Paragraph 4. Section 211.215 is revised to reflect recodification of Part 201 of this chapter as Part 19. As revised, § 211.215 reads as follows:

§ 211.215 Denaturants.

Manufacturers shall comply with the applicable requirements of Part 19 of this chapter governing the procurement, use and recordkeeping of denaturants by denaturers.

Paragraph 5. Section 211.219 is revised to reflect recodification of Part 201 of this chapter as Part 19. As revised, § 211.219 reads as follows:

§ 211.219 Shipment of articles and spirits residues for redistillation.

Articles, containing denatured spirits, manufactured under this part, and spirits residues of manufacturing processes related thereto, may, on receipt of an approved copy of the application filed under the provisions of Part 19 of this chapter by the proprietor of a distilled spirits plant authorized to produce distilled spirits, be shipped to the distilled spirits plant for redistillation. Packages of articles or spirits residues shall be identified as to contents and shall otherwise be marked and serially numbered in the manner provided in § 211.217. Notice of shipment shall be prepared on Form 1473, appropriately modified, in the manner provided in § 211.218.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1365, as amended (26 U.S.C. 5223))

Section L. Part 212 is amended as follows:

PART 212—FORMULAS FOR DENATURED ALCOHOL AND RUM

Paragraph 1. Section 212.1 is revised to show the distilled spirits plant regulations as recodified into Part 19 of this chapter. As revised, § 212.1 reads as follows:

§ 212.1 Formulas for denatured spirits.

The regulations in this part relate to the formulation of completely denatured alcohol, specially denatured alcohol, and specially denatured rum; to the specifications for denaturants; and to the uses of denatured spirits. The procedural and substantive requirements relative to the production of denatured alcohol and specially denatured rum are prescribed in Part 19 of this chapter and those relative to the distribution and use of denatured alcohol and specially denatured rum are prescribed in Part 211 of this chapter.

Paragraph 2. Section 212.4 is revised to show the distilled spirits plants regulations as recodified into 27 CFR Part 19. As revised, § 212.4 reads as follows:

§ 212.4 Related regulations.

Regulations related to this part are listed below:

27 CFR Part 19—Distilled Spirits Plants.
27 CFR Part 211—Distribution and Use of Denatured Alcohol and Rum.

Paragraph 3. Section 212.5 is amended to reflect modified definitions for the terms "alcohol" and "manufacturer or user." As amended, § 212.5 reads as follows:

§ 212.5 Meaning of terms.

* * * * *

Alcohol. Those spirits known as ethyl alcohol, ethanol, or spirits of wine in any form, from whatever source or by whatever process produced; the term does not include such spirits as whisky, brandy, rum, gin, or vodka.

* * * * *

Manufacturer or user. A person who holds an industrial use permit to use specially denatured alcohol or specially denatured rum, or to recover completely or specially denatured alcohol, specially denatured rum, or articles manufactured with denatured spirits, or a distilled spirits plant proprietor qualified as a processor.

* * * * *

Section M. Part 213 is amended as follows:

PART 213—DISTRIBUTION AND USE OF TAX-FREE ALCOHOL

Section 213.3 is revised due to recodification of Parts 186 and 201 as 27 CFR Parts 13 and 19, respectively. As revised, § 213.3 reads as follows:

§ 213.3 Related regulations.

Regulations related to this part are listed below:

27 CFR Part 13—Gauging Manual.
27 CFR Part 19—Distilled Spirits Plants.
27 CFR Part 196—Stills.
27 CFR Part 200—Rules of Practice in Permit Proceedings.
27 CFR Part 250—Liquors and Articles from Puerto Rico and the Virgin Islands.
27 CFR Part 251—Importation of Distilled Spirits, Wines, and Beer.
31 CFR Part 225—Acceptance of Bonds, Notes, or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety or Sureties on Penal Bonds.

Section N. Part 231 is amended as follows:

PART 231—TAXPAID WINE BOTTLING HOUSES

Paragraph 1. The table of contents is amended to add Subpart K to provide for alternation of premises. As added, the Table of Contents reads as follows:

* * * * *

Subpart K—Alternation of Premises

231.140 Alternation.

* * * * *

Paragraph 2. Section 231.1 is revised to delete a reference to distilled spirits plant premises for the bottling of taxpaid wine. As amended, § 231.1 reads as follows:

§ 231.1 Bottling or packaging of taxpaid wine.

The regulations in this part relate to the bottling and packaging of taxpaid United States and foreign wines.

Paragraph 3. Section 231.30 is revised to allow for bottling of other than standard wine on taxpaid wine bottling premises. As amended § 231.30 reads as follows:

§ 231.30 General.

Each person desiring to bottle or package taxpaid wine shall provide premises, make application on Form 2975, and receive approval from the regional regulatory administrator, as required in § 231.50, to operate a taxpaid wine bottling house for that purpose. Notwithstanding the provisions of this section and of § 231.50, any proprietor of a taxpaid wine bottling house who has qualified under an application which was not made on Form 2975 need not make a new application on Form 2975 solely by reason of the Form being prescribed.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended, 1379, as amended (26 U.S.C. 5352, 5356))

Paragraph 4. Section 231.81 is revised to delete a reference to rectification tax. As amended § 231.81 reads as follows:

§ 231.81 Prohibited practices.

While more than one lot of wine of the same kind (class and type), taxable grade, and country of origin, may be deposited in the same storage container or bottling tank to facilitate handling, the blending of taxpaid wine at a taxpaid wine bottling house is prohibited. Water shall not be added to wine nor the wine subjected to any treatment which will alter its basic character. Unauthorized treatment of wine may result in liability for additional wine tax. The proprietor of a

taxpaid wine bottling house may incur civil or criminal liability by reason of unauthorized treatment of wine.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1407 (26 U.S.C. 5661))

Paragraph 5. Subpart K title and Section 231.140 are added to provide for an alternation of taxpaid wine bottling house premises and distilled spirits plant premises. As added, Subpart K and § 231.140 read as follows:

Subpart K—Alternation of Premises

§ 231.140 Alternation.

Each proprietor of a taxpaid wine bottling house operating a contiguous distilled spirits plant desiring to alternate the use of each premises by extension or curtailment shall file the necessary documents with the regional regulatory administrator as required by 27 CFR 19.204.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1349, as amended, 1353, as amended, 1379, as amended (26 U.S.C. 5172, 5178, 5356))

Section O. Part 240 is amended as follows:

PART 240—WINE

Paragraph 1. The table of contents is revised to reflect a change in the wording of subparts and sections, and the deletion of several sections. As amended, the table of contents reads as follows:

* * * * *

Sec.

240.221a Operations bond or unit bond.

* * * * *

240.281 Amended Form 698 and basic permit.

* * * * *

240.311 Alternation of premises.

* * * * *

240.313 Pipeline change approvals.

* * * * *

240.351 [Deleted]

* * * * *

240.352 Production of other than standard wine.

* * * * *

240.355 [Deleted]

* * * * *

Use of Wine Spirits

240.374 General.
240.375 [Deleted]
240.376 [Deleted]
240.377 [Deleted]
240.378 [Deleted]
240.379 [Deleted]
240.380 [Deleted]

* * * * *

240.480 [Deleted]

* * * * *

240.491 Notice to use distillates containing aldehydes.

* * * * *

Sec.

240.575 [Deleted]

* * * * *

Subpart BB—Transfer of Wine in Bond

* * * * *

240.611 [Deleted]

* * * * *

Subpart PP—Receipt and Use of Wine Spirits

240.820 General.
240.821 Supervision requirements.
240.822 Withdrawal.
240.823 Annual withdrawals.

Receipt of Wine Spirits

240.824 Transfer of wine spirits by pipeline for immediate use.
240.825 Transfer of wine spirits by pipeline to wine spirits storage tank.
240.826 Tank car and tank truck requirements.
240.827 Examination of tank car or tank truck.
240.828 Wine spirits in packages.

Wine Spirits Additions

240.830 Wine spirits added to wine.
240.831 Gauge of wine spirits.
240.832 Report of addition of wine spirits.

Other Dispositions of Wine Spirits

240.835 Withdrawal from distilled spirits plant.
240.836 Application to dispose of wine spirits.
240.837 Disposition of spirits.
240.838 Taxpayment.
240.839 Transfer to a distilled spirits plant or wine cellar.

Samples of Wine Spirits

240.840 Limitations.
240.841 Notice.

Subpart QQ—Losses of Wine Spirits in Bond

* * * * *

240.854 Losses in wine cellar.

* * * * *

Subpart RR—[Reserved]

240.870 [Deleted]
240.871 [Deleted]
240.872 [Deleted]
240.873 [Deleted]
240.874 [Deleted]

* * * * *

240.890 Notice required.

* * * * *

240.904 Forms 5120.28 and 5110.26.

* * * * *

240.1041 Withdrawal.
240.1042 Notice on Form 5120.38.

* * * * *

Paragraph 2. Section 240.1 is revised to include all wine. As amended, § 240.1 reads as follows:

§ 240.1 Production and removal of wine.

Regulations in this part relate to the production and removal of wine from bonded wine cellars. The regulations cover the establishment and operation of bonded wine cellars for the production, amelioration, sweetening, addition of wine spirits, blending, and other cellar treatment, storage, taxpayment, transfer to customs manufacturing warehouse and removal for exportation, for experimental or research purposes by scientific institutions, for analysis or testing by or for the proprietor of a bonded wine cellar, for use of the Government of the United States, for analysis, testing, research or experimentation by the governments of the several States, for use as distilling material, or for use in the manufacture of vinegar.

Paragraph 3. Section 240.10 is amended, in alphabetical order, by revising the definitions of "Distilled spirits plant" and "Wine". As amended, § 240.10 reads as follows:

§ 240.10 Meaning of terms.

* * * * *

Distilled spirits plant. "Distilled spirits plant" shall mean an establishment qualified under 27 CFR Part 19 for the production, warehousing, or processing of spirits (including denatured spirits), or articles.

* * * * *

Wine. "Wine", when used without qualification, includes all still wines, champagne and other sparkling wines, artificially carbonated wine and special natural wine or other wine products produced on bonded wine cellar premises.

* * * * *

Paragraph 4. Section 240.124 is revised to delete a reference to bottling taxpaid wine on a distilled spirits plant premises. As amended, § 240.124 reads as follows:

§ 240.124 Bottling of taxpaid wine.

Each person desiring to bottle or rebottle taxpaid wine shall establish taxpaid wine bottling house premises in compliance with the provisions of regulations set forth in 27 CFR Part 231.

Paragraph 5. Section 240.130 is revised to delete reference to standard wine. As amended, § 240.130 reads as follows:

§ 240.130 Activity on bonded wine cellar premises.

Except as authorized in this subpart, bonded wine cellar premises shall be used exclusively for 9(a) the receipt, production, blending, packaging, repackaging and removal of untaxpaid wine, and (b) the receipt, preparation, use, or removal of fruit, concentrated or unconcentrated fruit juice, or other materials authorized by this part or an approved formula under Subpart U of this part, for use in the production and cellar treatment of wine.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended, 1386, as amended (26 U.S.C. 5351, 5361))

Paragraph 6. Section 240.142 is revised to delete a reference to Government locks and the wine spirits storage room sign. As amended, § 240.142 reads as follows:

§ 240.142 Wine spirits storage room.

Where wine spirits are to be received and stored in packages at a bonded wine cellar for use in wine production, a wine spirits storage room shall be provided. The room shall be securely constructed of substantial material so as to prevent unlawful access to the wine spirits. The door shall be equipped with a hasp and staple for locking.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5357))

Paragraph 7. Section 240.143 is revised to liberalize the Government office requirements at a bonded wine cellar using wine spirits. As amended, § 240.143 reads as follows:

§ 240.143 Office facilities.

Where wine spirits are to be used in the production of wine, other than use in small quantities for dosages or preparation of essences, the proprietor shall provide and maintain on the wine cellar premises in a convenient location a secure cabinet of adequate strength and size, suitably equipped for locking with a Government lock, for use in safeguarding Government property. Each cabinet shall contain shelving or compartments of proper size for the filing of Government records. Conveniently located toilet and lavatory facilities shall also be provided and made available for the use of ATF officers. The facilities shall be subject to approval by the regional regulatory administrator.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5357))

Paragraph 8. Section 240.169 is revised to change old Part 201 to the recodified Part 19 and delete pipeline color identification. As amended, § 240.169 reads as follows:

§ 240.169 Wine spirits pipelines.

Pipelines used for the conveyance of wine spirits from the bonded premises of a distilled spirits plant to wine spirits storage tanks, measuring tanks, weighing tanks, and wine spirits addition tanks shall be constructed in accordance with the requirements of regulations prescribed in 27 CFR Part 19. If wine spirits are to be received by tank car or tank truck, a secure pipeline shall be provided from the unloading point to the storage tank, measuring tank, weighing tank or wine spirits addition tank. Where wine spirits are stored in wine spirits storage tanks, a fixed pipeline, unbroken except for necessary short hose connections to pumps or weighing tanks, shall be provided from the wine spirits storage tank to the wine spirits addition tank. All joints in the pipelines shall be brazed, welded, or otherwise permanently joined. Valves, suitably equipped for locking, shall be provided to control the flow of the wine spirits from or into each tank.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5552))

Paragraph 9. Section 240.171 is revised to delete reference to taxpaid wine bottled at a distilled spirits plant. As amended, § 240.171 reads as follows:

§ 240.171 Taxpaid wine pipeline.

The pipeline used to transfer taxpaid wine from the bonded wine cellar to a taxpaid wine bottling house shall be a fixed unbroken line of permanent character, securely constructed and connected, and so arranged as to be exposed to view throughout its entire length. The pipeline shall be permanently connected with the taxpayment tank, or tanks, required by § 240.170. The valves in the pipeline shall be equipped for locking. The pipeline shall be shown on the bonded wine cellar plat.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5552))

Paragraph 10. Section 240.190 is revised to delete a reference to standard wine premises. As amended, § 240.190 reads as follows:

§ 240.190 Application, Form 698.

Each person establishing a bonded wine cellar premises shall file application on Form 698 with the regional regulatory administrator. Except as provided in § 240.199, in the case of amended or supplemental applications, all the information required by this part and by the instructions on the form shall be furnished. Application on Form 698 (including all attachments and inserts) shall contain or be verified by a written declaration that it is made under the penalties of perjury. Applications shall be numbred serially, starting with "1", and continuing in numerical sequence for all applications filed, whether amended or supplemental, and shall indicate the purpose of the application. All data, written statements, and other documents submitted in support of the application, shall be a part of the application.

(Act of August 16, 1954, 68A Stat. 749, as amended (26 U.S.C. 6065); Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356))

Paragraph 11. Section 240.198 is revised to delete the need to return tank gauge sheets. As amended, § 240.198 reads as follows:

§ 240.198 Wine spirits addition tanks.

If tanks are to be used for the addition of wine spirits to wine, the proprietor shall ensure that tanks are accurately calibrated and shall maintain accurate calibration charts at the bonded wine cellar.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356))

Paragraph 12. Section 240.202 is revised to delete a reference to the number of documents filed with Form 698. As amended, § 240.202 reads as follows:

§ 240.202 Individual owners, partnerships, or associations.

Where application, Form 698, is filed by an individual owner, partnership, or association, the name and address of each person interested in the bonded wine cellar, whether active, passive, or silent, shall be given on Form 698. If there are articles of partnership or association, copies shall be submitted with the Form 698.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended (26 U.S.C. 5351))

Paragraph 13. Section 240.203 is revised to delete a reference to the number of documents filed with Form 698. As amended, § 240.203 reads as follows:

§ 240.203 Corporate documents.

Where application, Form 698, is filled by a corporation, there shall be filed with the original or initial application copies of the following documents: (a) articles of incorporation; (b) certificate of incorporation; (c) certificate authorizing the corporation to operate in the State where the bonded wine cellar is located, if other than that in which incorporated; (d) certified extracts of the minutes of meetings of the board of directors authorizing certain officers or other persons to sign for the corporation and specifying what documents may be signed; and (e) a list of the names and addresses (business and residence) of the officers, directors, and stockholders as required by § 240.204. Where these documents have been filed with the regional regulatory administrator in connection with qualification of other premises in the same region, and a statement to that effect is made on Form 698, additional copies of the documents are not required.

Paragraph 14. Section 240.204 is revised to delete a reference to the number of documents filed with Form 698. As amended, § 240.204 reads as follows:

§ 240.204 List of officers, directors, and stockholders.

In the case of corporations and similar legal entities, there shall be submitted with Form 698 at the commencement of business, a list giving the names and addresses (business and residence) of all officers, directors, stockholders, and other persons interested in the corporation, or other legal entity, and the amount and nature of the stock holding or other interests of each, whether the interest appears in the name of the interested party or in the name of another for him. However, if there are more than ten holders of any class of stock, only the names, addresses and holdings of the ten persons having the largest ownership or other interest in each of the classes of stock need be included in the list of stockholders.

Paragraph 15. Section 240.209 is revised to delete the reference to the number of copies of plats required. As amended, § 240.209 reads as follows:

§ 240.209 Plat.

Each person filing an application to establish a bonded wine cellar shall file with the regional regulatory administrator an accurate plat conforming to the requirements of Subpart J of this part.

Paragraph 16. Section 240.221 is revised to delete a reference to rectification tax. As amended, § 240.221 reads as follows:

§ 240.221 Bond, Form 700.

Each proprietor of a bonded wine cellar shall give bond on Form 700 for the payment of taxes imposed by the United States for which the proprietor shall become liable. This includes liability for occupational taxes and penalties and interest. The bond on Form 700 shall apply to wine and wine spirits and the operation of the bonded wine cellar, whether the transaction or operation upon which the liability is based occurred on the bonded wine cellar premises (including transfers between noncontiguous portions) or in transit. The bond shall also be for the faithful compliance, without fraud or evasion, with all requirements of the laws of the United States and regulations respecting wine and wine spirits and the operation of the bonded wine cellar. The penal sum of the bond shall be not less than the tax on all wine and wine spirits possessed at the bonded wine cellar, in transit to the bonded wine cellar, wine spirits authorized to be withdrawn under approved applications, or wine or wine spirits unaccounted for, at any one time. The penal sum of the bond shall also cover the tax on all wine removed for export or for use as supplies on vessels or aircraft, but not exported or otherwise accounted for. The penal sum of the bond shall be not less than $1,000 or more the $50,000, except that where the amount of tax exceeds $250,000, the penal sum of the bond shall be $100,000. However, the obligation on any bond on Form 700, shall apply with respect to taxes not in excess of $100, which have been determined on wine removed from the bonded wine cellar or transferred to a taxpaid wine room on the bonded wine cellar premises and which have not been paid.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5354))

Paragraph 17. Section 240.221a is revised to include the new distilled spirits operations bond or unit bond. As amended § 240.221a reads as follows:

§ 240.221a Operations bond or unit bond.

Notwithstanding the provisions of §§ 240.208 and 240.221, each person intending to commence or continue business as a proprietor of a bonded wine cellar with an adjacent distilled spirits plant qualified under 27 CFR Part 19 for the production of distilled spirits shall, in lieu of the bond on Form 700 and the bonds required under the provisions of 26 U.S.C. 5173 as amended, give an operations bond or unit bond in accordance with the applicable provisions of 27 CFR Part 19.

(Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

Paragraph 18. Section 240.270 is revised to reduce the number of plat sheets required. As amended, § 240.270 reads as follows:

§ 240.270 Plat required.

Each person intending to establish a bonded wine cellar shall, as required by § 240.209, file an accurate plat of the premises with the regional regulatory administrator.

Paragraph 19. Section 240.281 is revised to delete a reference to the number of Forms 698 required. As amended, § 240.281 reads as follows:

§ 240.281 Amended Form 698 and basic permit.

Where there is a change in the individual, firm, or corporate name, the proprietor shall submit to the regional regulatory administrator an amended Form 698 for the new name. The Form 698 shall be approved before operations are commenced under the new name. The proprietor shall also obtain from the regional regulatory administrator an amended basic permit under the Federal Alcohol Administration Act authorizing operations under the new name.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356))

Paragraph 20. Section 240.282 is revised to delete a reference to the number of documents filed with Form 698. As amended, § 240.282 reads as follows:

§ 240.282 Amended articles of incorporation, etc.

Where there is a change in the corporate name, the proprietor shall submit to the regional regulatory administrator copies of the amended articles of incorporation, and the amended certificate of incorporation issued under the laws of the State in which incorporated covering the change in the corporate name. If the operations are conducted in a State other than the State in which incorporated, there shall also be submitted to the regional regulatory administrator copies of the amended certificate issued under the laws of the State in which the operations are conducted authorizing the corporation to operate under its new name in the State. If documents other than those specified are required under the laws of the State to effect a change in the name of the corporation, copies of the documents shall be submitted.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356))

Paragraph 21. Section 240.283 is revised to delete a reference to the number of documents required. As amended, § 240.283 reads as follows:

§ 240.283 Amended articles of partnership or association.

Where there is a change in the name of a partnership or association, the proprietor shall submit to the regional regulatory administrator copies of the amended articles of partnership or association, if any.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356))

Paragraph 22. Section 240.286 is revised to delete a reference to the number of documents required. As amended, § 240.286 reads as follows:

§ 240.286 Fiduciary.

If the bonded wine cellar is to be operated by an administrator, executor, receiver, trustee, assignee, or other fiduciary, the fiduciary shall comply with provisions of Subpart G of this part to the extent that the provisions are

applicable, except that in lieu of filing a new bond and a new plat, the fiduciary may furnish a consent of surety extending the terms of the predecessor's bond, may adopt the plat of the predecessor, and, as provided in § 240.290a, may also adopt the formulas of the predecessor. The fiduciary shall furnish certified copies of the order of the court, or other pertinent documents, showing qualification as a fiduciary. The effective date of the qualifying documents filed by a fiduciary shall be the same as the date of the court order, or the date specified for assuming control. If the fiduciary was not appointed by the court, the date of assuming control shall coincide with the effective date of the qualifying documents filed.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5354, 5356))

Paragraph 23. Section 240.290 is revised to delete a reference to the number of plat certificates. As amended, § 240.290 reads as follows:

§ 240.290 Plat.

The adoption by a successor of the plat of a predecessor shall be in the form of a certificate in which shall be set forth the name of the predecessor, registry number and address of the bonded wine cellar, the date of preparation, and the date of approval of the plat, and a certification as to the accuracy of the plat adopted.

Paragraph 24. Section 240.292 is revised to delete a reference to the number of application copies required. As amended, § 240.292 reads as follows:

§ 240.292 Successor to bonded wine cellar with bonded wine warehouse.

Where a bonded wine warehouse has been established at a bonded wine cellar under the provisions of § 240.201, and it is desired to continue the operation of the bonded wine warehouse subsequent to a change in proprietorship of the bonded wine cellar, the proprietor of the bonded wine warehouse shall file a new letter application accompanied by a statement from the new proprietor (applicant) of the bonded wine cellar requesting the continuation of the warehouse, and a consent of surety.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5353))

Paragraph 25. Section 240.296 is revised to delete a reference to the number of document copies. As amended, § 240.296 reads as follows:

§ 240.296 Change in officers, directors, or stockholders of a corporation.

Where there is a change in officers or directors, or in the stockholders required to be listed under § 240.204, the proprietor shall submit, within 10 days of the change, a written notice to the regional regulatory administrator. However, changes in the list of stockholders may be submitted annually on May 1, except where the sale or transfer of capital stock results in a change in the control or management of a business. The notice shall describe the changes and be prepared as required by § 240.204.

Paragraph 26. Section 240.311 is revised to provide for alternation of bonded wine cellar premises with taxpaid wine bottling house premises or distilled spirits plant premises. As amended, § 240.311 reads as follows:

§ 240.311 Alternation of premises.

Each proprietor desiring to curtail or extend the bonded wine cellar premises shall file an amended Form 698 and plat with the regional regulatory administrator. An additional bonded wine cellar premises created by extension shall not be used for the proposed purposes, and the portion to be excluded by curtailment shall not be used for other than the approved purposes, prior to the approval of the amended Form 698 and plat. Proprietors of a bonded wine cellar desiring to extend or curtail a contiguous distilled spirits plant premises shall also comply with 27 CFR 19.203. Proprietors desiring to extend or curtail a contiguous taxpaid wine bottling house shall also comply with 27 CFR 231.140.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356))

Paragraph 27. Section 240.313 is revised to clarify the language of the section. As amended, § 240.313 reads as follows:

§ 240.313 Pipeline change approvals.

No change shall be made in any wine or wine spirits pipeline not wholly on the bonded wine cellar premises prior to the approval of the changes by the regional regulatory administrator. A letterhead application filed with the regional regulatory administrator shall be serially numbered in sequence with serial numbers required by § 240.312, identify the premises by name and registry number, and describe in detail the changes to be made. A sketch should accompany the application where it will be helpful to an understanding of the changes desired.

§ 240.351 [Deleted]

Paragraph 28. Section 240.351 is deleted as a reference to a standard bonded wine cellar is no longer applicable.

Paragraph 29. Section 240.352 is revised to allow the use of a bonded wine cellar premises for both standard and other than standard wine production. As amended, § 240.352 reads as follows:

§ 240.352 Production of other than standard wine.

Wine which is other than standard as a result of fermentation with sugar and water in excess of limitations prescribed for standard wine shall have a basic character derived from the primary winemaking material. The aggregate weight of the sugar used before and during fermentation shall be less than the weight of the primary wine producing material. Molasses, malts, cereals, and grains shall not be used in the production of wine.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1331, as amended, 1380, as amended (26 U.S.C. 5041, 5361))

§ 240.355 [Deleted]

Paragraph 30. Section 240.355 is deleted as a reference to rectification tax is no longer applicable.

Paragraph 31. Section 240.356 is amended by changing the last sentence to delete a reference to rectification tax. As amended, the last sentence in § 240.356 reads as follows:

§ 240.356 Use of essences, flavors, or coloring.

* * * The use in wine of essences, flavoring, or coloring, other than as authorized in this part, results in the production of an other than standard wine and is subject to the formula requirements of § 240.482.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended, 1386, as amended (26 U.S.C. 5382, 5386, 5387))

Paragraph 32. Section 240.374 is revised to delete the Government supervision requirement for wine spirits additions. As amended, § 240.374 reads as follows:

Use of Wine Spirits

§ 240.374 General.

Grape wine spirits may be added only to natural grape wine in a bonded wine cellar, the proprietor of which produces natural wine by fermentation of juice or must, and which is located in the same State as the bonded wine cellar where the natural grape wine was produced. If the wine has been ameliorated, wine spirits may be added (whether or not wine spirits were previously added)

only if the wine contains not more than 14 percent of alcohol by volume derived from fermentation. The wine spirits shall be received and used as provided in Subpart PP of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1382, as amended, 1383, as amended, 1384, as amended (26 U.S.C. 5366, 5373, 5382, 5383))

§§ 240.375, 240.376, 240.377, 240.378, and 240.379 [Deleted]

Paragraph 33. Sections 240.375, 240.376, 240.377, 240.378 and 240.379 are deleted and the requirements of these sections moved to Subpart PP—Receipt and Use of Wine Spirits.

§ 240.380 [Deleted]

Paragraph 34. Section 240.380 is deleted because Government samples are no longer required for each wine spirits addition.

Paragraph 35. Section 240.381 is revised to reference Subpart PP. As amended, § 240.381 reads as follows:

§ 240.381 Addition of wine spirits to other grape wine.

The provisions of Subpart PP of this part shall be followed where proprietors desire to use wine spirits in the production of heavy bodied blending wine, Spanish type blending sherry and similar products produced under the provisions of Subpart U of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended, 1382, as amended, 1383, as amended (26 U.S.C. 5361, 5373, 5382).)

Paragraph 36. Section 240.382 is revised to delete a reference to standard wine premises. As amended, § 240.382 reads as follows:

§ 240.382 Addition of wine spirits to juice or concentrated juice.

Wine spirits may be added to the juice or concentrated juice of grapes in the same manner as to wine, as provided in Subpart PP of this part. The alcohol content of the juice or concentrated juice shall not exceed 24 percent by volume after the addition of wine spirits. Juice or concentrated juice to which wine spirits have been added is not wine, but shall be accounted for as wine.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended, 1383, as amended (26 U.S.C. 5373, 5382))

Paragraph 37. Section 240.406 is revised to change the wine spirits addition procedure references. As amended, § 240.406 reads as follows:

§ 240.406 Use of pure dry sugar or liquid sugar.

A winemaker producing wine from fruit or berries, other than grapes, or from mixtures (which may include grapes) of two or more fruits or berries, with the addition of pure dry sugar or liquid sugar, but without water added to reduce acid content, may add pure dry sugar or liquid sugar to the juice in the fermenters, or to the wine after fermentation. However, such wine shall have not more than 14 percent alcohol by volume after complete fermentation, or after complete fermentation and sweetening, and a total solids content not in excess of 21 percent by weight. The use of liquid sugar under this section shall be limited so that the resultant volume will not exceed the volume which could result from the maximum authorized use of pure dry sugar only. Where pure dry sugar or liquid sugar is added to the juice in the fermenters, the winemaker shall maintain a separate record showing the kind and quantity of juice (exclusive of pulp) deposited in fermenters and the quantity of pure dry sugar or liquid sugar added. Where wine produced as provided in this section is sweetened after complete fermentation with liquid sugar, a record of sweetening shall be kept in accordance with § 240.914b. Where wine produced as provided in this section is sweetened after complete fermentation with pure dry sugar, the gallons of wine before and after sweetening shall be determined and entered on the record provided for in § 240.908. After completion of fermentation of the wine, wine spirits may be added in accordance with the provisions of Subpart PP of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended, 1385, as amended (26 U.S.C. 5382, 5384))

Paragraph 38. Section 240.411 is revised to reflect the deletion of §§ 240.375 thru 240.380. As amended, § 240.411 reads as follows:

§ 240.411 Addition of wine spirits.

To fruit wine produced from one kind of fruit under the provisions of § 240.401 or § 240.407, wine spirits from the same kind of fruit may be added according to the procedures prescribed in Subpart PP of this part. Wine spirits may not be added to fruit wine made from mixtures of two or more fruits. Where the proprietor desires to add wine spirits made from the same kind of fruit to juice or concentrated juice, the provisions of §§ 240.382 and 240.383 (relative to the addition of wine spirits to grape juice or concentrated grape juice) shall be followed.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended, 1383, as amended (26 U.S.C. 5373, 5382))

Paragraph 39. Section 240.460 is revised to delete a reference to standard wine premises. As amended, § 240.460 reads as follows:

§ 240.460 General.

Agricultural wine may be made on bonded wine cellar premises from suitable agricultural products other than the juice of fruit. Water or pure dry sugar, or both, or liquid sugar or invert sugar syrup may be used within the limitations of this subpart in the production of agricultural wine. Agricultural wine shall not be flavored or colored, except that hops may be used in the production of honey wine; wine spirits shall not be used in the production of the wine; and a wine made from one agricultural product shall not be blended with a wine made from another agricultural product. Agricultural wine made with sugar other than pure dry sugar; or with pure dry sugar or water, liquid sugar, or invert sugar syrup in excess of the limitations of this subpart shall be segregated as required by § 240.131.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1386 as amended (26 U.S.C. 5387))

§ 240.480 [Deleted]

Paragraph 40. Section 240.480 is deleted because a reference to standard wine is no longer needed.

Paragraph 41. Section 240.481 is revised to delete a reference to standard wine premises. As amended, § 240.481 reads as follows:

§ 240.481 Classes of wine other than standard wine.

The following classes of wine are not standard wines:

(a) High fermentation wine, produced as provided in § 240.483;

(b) Heavy bodied blending wine, produced as provided in § 240.484;

(c) Spanish type blending sherry, produced as provided in § 240.485;

(d) Wine products not for beverage use, produced as provided in § 240.485a;

(e) Distilling material, produced as provided in § 240.486;

(f) Vinegar stock, produced as provided in § 240.487;

(g) Wines other than those in classes listed in paragraphs (a), (b), (c), (d), (e), and (f) of this section, not produced within the limitations for standard wine; and

(h) Spoiled wine, of the kind described in § 240.489.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1387 as amended (26 U.S.C. 5388))

Paragraph 42. Section 240.483 is revised to delete a reference to standard wine premises. As amended, § 240.483 reads as follows:

§ 240.483 High fermentation wine.

High fermentation wine is a wine made within the limitations of § 240.365 for grape wine or § 240.405 for fruit wine, except (a) that the alcohol content after complete fermentation or complete fermentation and sweetening is more than 14 percent; and (b) that wine spirits are not added. While high fermentation wine is not a natural wine or a standard wine, it is produced, stored, and handled on bonded wine cellar premises, subject to appropriate marking or labeling.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1387, as amended (26 U.S.C. 5365, 5388))

Paragraph 43. Section 240.484 is revised to delete a reference to standard wine premises. As amended, § 240.484 reads as follows:

§ 240.484 Heavy bodied blending wine.

Wine made from grapes or other fruit without added sugar, and with or without added wine spirits, may be made for blending purposes with a total solids content in excess of 21 percent. Heavy bodied blending wine may be used in blending with other wine made from the same kind of fruit, or for removal upon payment of tax, not for sale or consumption as beverage wine. A separate record shall be kept showing the quantities of heavy bodied blending wine produced, received, used, shipped, and on hand. Upon removal, the shipping containers (and Form 703, if in bond) shall be marked "Heavy Bodied Blending Wine—Not for Sale or Consumption as Beverage Wine."

(Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended, 1387, as amended (26 U.S.C. 5361, 5388))

Paragraph 44. Section 240.488 is revised to delete a reference to standard wine premises. As amended, § 240.488 reads as follows:

§ 240.488 Other wines.

Wine produced with sugar, water, liquid sugar, or invert sugar syrup beyond the limitations prescribed for standard wine, or wine made with sugar other than pure sugar, or wine made with materials not authorized for use in standard wine, may be produced on bonded wine cellar premises, but shall remain segregated from other wines. Upon removal, the wine shall be marked or labeled with a designation which will adequately disclose the nature and composition of the wine.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended,1387, as amended (26 U.S.C. 5365, 5388))

Paragraph 45. Section 240.489 is amended by revising the first sentence of such section and reads as follows:

§ 240.489 Spoiled wine.

Whenever a standard wine becomes spoiled by reason of its condition, the spoiled wine shall be immediately removed from the bonded wine cellar, unless the condition is corrected, the wine is removed in due course for redistillation, or is destroyed under government supervision. * * *

Paragraph 46. Section 240.490 is revised to change old Part 201 to the recodified Part 19. As amended, § 240.490 reads as follows:

§ 240.490 General.

Distillates containing aldehydes, withdrawn under the provisions of 27 CFR Part 19, may be used in fermentation of wine to be used as distilling material at the distilled spirits plant from which distillates were withdrawn. Distillates produced from one kind of fruit shall not be used in the fermentation of wine made from a different fruit.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended (26 U.S.C. 5373))

Paragraph 47. Section 240.491 is revised to change Part 201 to the recodified Part 19 and change an application to a notice. As amended, § 240.491 reads as follows:

§ 240.491 Notice to use distillates containing aldehydes.

Where a distillate containing aldehydes is to be used in fermentation of wine to be used as distilling material the proprietor of the bonded wine cellar, unless he is also the proprietor of the distilled spirits plant from which the distillates are to be withdrawn, shall submit a notice to the regional regulatory administrator stating: (a) the name, address, and registry number of the distilled spirits plant from which the distillate is to be withdrawn, (b) the kind of distillate, (c) the kind of wine in which the distillate will be used, and (d) a statement decribing the method by which the distillate will be added in fermentation of wine to be used as distilling material. Where the proprietor of the bonded wine cellar is also the proprietor of the distilled spirits plant, the notice required under 27 CFR Part 19 shall also be for the receipt and use of the distillates at the bonded wine cellar. Distillates containing aldehydes shall be received and used as provided by Subpart YY of this part. Record of receipt and use of distillates shall be kept in accordance with Subpart UU of this part and reported on Form 5720.17(702).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended 1382, as amended (26 U.S.C. 5367, 5373))

Paragraph 48. Section 240.537 is revised to change the size of samples. As amended, § 240.537 reads as follows:

§ 240.537 Application.

When a proprietor desires to reduce the acid content of wine below 5 parts per thousand, other than as authorized in § 240.1051, an application shall be submitted in letter form to the regional regulatory administrator. The application shall contain the following information:

(a) Name, address, and registry number of the proprietor;

(b) Statement of process or method to be used in effecting the acid reduction;

(c) Gallons of wine to be treated; and

(d) Kind of wine to be treated.

A 125 ml sample of the wine prior to treatment shall be submitted by the proprietor direct to the regional laboratory at the same time the application is filed. The sample shall be labeled and marked in a manner that it may be readily identified. The proprietor shall not proceed to reduce the acid content of the wine until receiving approval from the regional regulatory administrator.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

Paragraph 49. Section 240.538 is revised to change the size of the sample. As amended, § 240.538 reads as follows:

§ 240.538 Sample of treated wine.

After completion of the acid reduction treatment a 125 ml sample of the wine shall be submitted by the proprietor to the regional laboratory. The sample will be labeled and marked in a manner that it may be readily identified and associated with the sample submitted prior to treatment.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1363, as amended (26 U.S.C. 5382))

Paragraph 50. Section 240.562 is revised to include a reference to wine products made with other than natural materials. As amended, paragraph (a)(3) of § 240.562 reads as follows:

§ 240.562 Marks.

(a) Required marks.* * *

(3) The kind (class and type) and the alcohol content of the wine. The kind of wine shall be stated in accordance with 27 CFR Part 4. The formula number shall be marked on bulk containers of special natural wine or wine produced under § 240.488.

* * * * *

Paragraph 51. Section 240.574 is revised to delete a reference to

rectification tax. As amended, § 240.574 reads as follows:

§ 240.574 Reused barrels.

Barrels previously used for the storage of distilled spirits may be used by proprietors as storage and shipping containers for wine, provided the barrels are treated to remove distilled spirits from the heads and staves before the deposit of wine. The spirits extracted from the barrels shall be destroyed in each instance. This authorization to use barrels should not be construed as relieving proprietors from tax liability in the event barrels are not treated to remove the distilled spirits. A person mixing distilled spirits with wine shall incur distilled spirits tax liability on the entire contents of the barrel.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended, 1383, as amended (26 U.S.C. 5001, 5381))

§ 240.575 [Deleted]

Paragraph 52. Section 240.575 is deleted.

Paragraph 53. Section 240.590a is revised to include the new distilled spirits plant operations bond or unit bond. As amended, § 240.590a reads as follows:

§ 240.590a Qualification for extended deferral.

(a) *Deferral covered by operating bond only.* A proprietor who has not given a tax deferral bond on Form 2053, may file returns, Form 2050, with remittances, with benefit of extended deferral under an existing bond Form 700, operations bond or unit bond without further qualification provided the amount of tax unpaid at any one time does not exceed $100.

(b) *Deferral covered by bond on Form 2053.* A proprietor who desires to file returns, Form 2050, with remittances, with benefit of the extended deferral prescribed by § 240.591, and who has on file a tax deferral bond on Form 2053 in a penal sum which is less than that required under § 240.222, shall give a new bond in a sufficient penal sum on Form 2053 or give a strengthening bond to increase the total penal sum of the bonds in force to a sufficient penal sum.

(c) *Consents of surety.* A proprietor who desires to file returns or Form 2050, with benefit of extended deferral under an existing bond on Form 2053, shall file a consent of surety on Form 1533 to extend the terms of the bond. Each consent on Form 1533 shall identify the particular bond to which it applies and contain a statement of purpose as follows:

To continue in effect said bond (including all extensions or limitations of terms and conditions previously consented to and approved), notwithstanding that the time for payment of the tax may be deferred as provided by 27 CFR 240.591(d).

(d) *Commencement of extended deferral.* A proprietor may file returns with benefit of extended deferral only after the applicable bonds and consents of surety required by this section have been filed with and approved by the regional regulatory administrator. However, a proprietor qualified for extended deferral on the date immediately preceding the effective date of this section is qualified for deferral as of the effective date of this section without further qualification under this section. The benefit of extended deferral shall commence with the return for the first return period fully covered by the bonds and consents of surety.

Paragraph 54. Section 240.598 is revised to delete a reference to case marking requirements. As amended, § 240.598 reads as follows:

§ 240.598 Marking of containers.

Each container of wine removed taxpaid, except cases, shall be marked with the word "Taxpaid" in addition to the marks required by § 240.562.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5368))

Paragraph 55. Section 240.599 is revised to delete a reference to taxpaid wine being sent to the bottling premises of a distilled spirits plant. As amended, § 240.599 reads as follows:

§ 240.599 General.

The proprietor may remove tax determined wine by pipeline from a bonded wine cellar to a taxpaid wine bottling house, contiguous to, or in the immediate vicinity of the bonded wine cellar.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1331, as amended (26 U.S.C. 5041))

Paragraph 56. The title of Subpart BB is revised to delete "to other bonded wine cellars" because wine may also be transferred in bond to distilled spirits plants. As revised, the title of Subpart BB reads as follows:

Subpart BB—Transfer of Wine in Bond

Paragraph 57. Section 240.610 is revised to add a reference to distilled spirits plants for wine transferred in bond. As amended, § 240.610 reads as follows:

§ 240.610 General.

Wine may be removed for transfer in bond, from one bonded wine cellar to another bonded wine cellar, or a distilled spirits plant, as provided in this subpart.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended (26 U.S.C 5362))

§ 240.611 [Deleted]

Paragraph 58. Section 240.611 is deleted.

Paragraph 59. Section 240.612 is revised to add a reference to a distilled spirits plant for wine transferred in bond. As amended, § 240.612 reads as follows:

§ 240.612 Transfer of wine by pipeline.

Wine may be transferred in bond between contiguous or adjacent bonded wine cellars or to a contiguous or adjacent distilled spirits plant by a pipeline constructed and approved as provided in § 240.172, provided one or more accurately calibrated tanks for measuring the wine have been installed on at least one of the premises. The quantity of wine transferred by pipeline shall be recorded to the nearest whole gallon, 5 tenths gallons being converted to the next full gallon.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended, 1395, as amended (26 U.S.C 5362, 5552))

Paragraph 60. Section 240.613 is revised to update the information included in the transfer in bond Form 703. As amended, § 240.613 reads as follows:

§ 240.613 Use of Form 703.

When wine is transferred in bond from a bonded wine cellar to other premises, the proprietor shall prepare Form 703, showing the date of transfer; name, address and registry number of the consignee and of the consignor; the number of cases, packages or tanks; serial numbers (except where not required for cases by § 240.561); gallons; percentage of alcohol; and kind of wine shipped. However, when wine (including distilling material and vinegar stock) is transferred in bond by pipeline to adjacent premises, and commercial records are kept to show details of each shipment as would appear on a separate Form 703, a monthly Form 703 may be prepared for shipments to each premises instead of a separate Form 703 for each shipment. The alcohol content of the wine shall be stated on Form 703 as 13 percent, 18 percent, etc., rather than by taxable grade. The kind of wine shall be stated according to class and type, including vintage and varietal designation, if applicable, except in the case of unfinished grape wine, distilling material, or vinegar stock.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended (26 U.S.C 5362))

Paragraph 61 Section 240.615 is revised to add a reference to a distilled spirits plant for wine received in bond. As amended, § 240.615 reads as follows:

§ 240.615 Receipt of wine in bond.

When wine is received in bond from a bonded wine cellar or a distilled spirits plant, the proprietor shall check the shipment against a copy of Form 703 or Form 5110.27, as applicable, and determine by measure or weight the quantity received, except that packages received without apparent loss need not be measured or weighed. A record of wine received in bond shall be maintained as required by Subpart UU of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended (26 U.S.C 5362))

Paragraph 62. Section 240.616 is revised to include a distilled spirits plant proprietor for filing claims on any wine losses in transit. As amended, § 240.616 reads as follows:

§ 240.616 Losses in transit.

The proprietor of the premises to which the wine is shipped in bond shall be liable for the tax on any wine lost in transit. The tax on wine lost in transit shall be assessed or remitted in accordance with the provisions of Subpart NN of this part. Where there is a loss in transit from any shipment, the consignee shall, as required by § 240.785, file a claim for allowance of the loss.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5370))

Paragraph 63. Section 240.618 is revised to liberalize the provisions for reconsignment of wine shipments. As amended, § 240.618 reads as follows:

§ 240.618 Reconsignment by consignor.

When a consignor reconsigns a shipment of wine, the consignor shall notify the regional regulatory administrator of the consignor region by preparing a new Form 703 and attaching a statement of diversion. The substitute consignee is liable for the tax on all losses sustained in shipment, and shall file a consent of surety with the regional regulatory administrator of his region, in accordance with § 240.231, extending the terms of his bond to cover any losses.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended (26 U.S.C. 5362))

Paragraph 64. Section 240.619 is revised to add a reference to the Form 5110.27 for wine transferred in bond from a distilled spirits plant. As amended, § 240.619 reads as follows:

§ 240.619 Reconsignment by consignee.

When a consignee reconsigns a shipment of wine, the consignee shall notify the regional regulatory administrator of his region by acknowledging receipt of the full amount on Form 703 or Form 5110.27, at which point the reconsignment is a shipment in bond subject to the requirements of §§ 240.613 to 240.616. The substitute consignee is liable for tax on all losses sustained in shipment, and shall file a consent of surety with the regional regulatory administrator of his region, in accordance with § 240.231 extending the terms of his bond to cover any losses.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended (26 U.S.C. 5362))

Paragraph 65. Subpart PP is revised to consolidate all provisions relating to the receipt and use of wine spirits within a single subpart. The title of Subpart PP is changed to "Receipt and Use of Wine Spirits." Provisions formerly included at sections 240.375 through 240.379 and in Subpart RR are included in Subpart PP as revised. In addition, the following specific changes have been made: (1) government supervision of the receipt and use of wine spirits is no longer mandatory but may be required by the regional regulatory administrator; (2) references to 27 CFR Part 201 are changed to the recodified Part 19; (3) provisions requiring an application for taking samples of wine spirits are changed to provide for a notice; and (4) Forms 2629, 257, and 275 are designated as ATF Forms 5110.26, 5120.38, and 5120.28, respectively, in order to conform with the ATF subject classification system. As revised, Subpart PP reads as follows:

Subpart PP—Receipt and Use of Wine Spirits

§ 240.820 General.

The wine spirits authorized for use in wine production shall be produced from the distilling material authorized for use in distillery operations under 26 U.S.C. 5373, but shall not be reduced with water from distillation proof, nor be distilled at less than one hundred forty degrees proof. However, commercial brandy aged in wood for a period of not less than two years and barreled at not less than one hundred degrees proof shall be deemed wine spirits for purposes of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended (26 U.S.C. 5373))

§ 240.821 Supervision requirements.

The regional regulatory administrator may require that the receipt and use of wine spirits at a bonded wine cellar be supervised by an ATF officer.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5366))

§ 240.822 Withdrawal.

The proprietor of any bonded wine cellar may withdraw and receive wine spirits without payment of tax from the bonded premises of a distilled spirits plant for use in the production of natural wine, or for addition to concentrated or unconcentrated juice for use in wine production, or for other uses as are authorized in this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended (26 U.S.C. 5373))

§ 240.823 Annual withdrawals.

(a) *Contiguous premises.* If the distilled spirits plant and the wine cellar are located on contiguous premises and wine spirits are to be transferred to the bonded wine cellar from time to time, the Form 5120.38 may cover all wine spirits to be transferred to the wine cellar during the calendar year. However, if the bond of the proprietor is not in the maximum penal sum, the proprietor shall specify on Form 5120.38 the maximum quantity of wine spirits that will be on hand, removed from the distilled spirits plant, and unaccounted for, on any one day.

(b) *Noncontiguous premises.* If the distilled spirits plant and the wine cellar are not located on contiguous premises, and the proprietor's bond is in the maximum penal sum, the proprietor's Form 5120.38 may cover all wine spirits to be transferred from the noncontiguous distilled spirits plant to the wine cellar during the calendar year. A separate Form 5120.38 shall be submitted for each noncontiguous distilled spirits plant from which wine spirits will be transferred during the calendar year.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended (26 U.S.C. 5373))

Receipt of Wine Spirits

§ 240.824 Transfer of wine spirits by pipeline for immediate use.

Wine spirits transferred by pipeline for immediate use shall be gauged either by weight or by volume in the bonded premises of the distilled spirits plant. Where the spirits are gauged in the bonded premises of the distilled spirits plant, the pipeline shall be directly connected, as provided in § 240.169, with wine spirits addition tanks. The valves in the pipeline shall be closed and locked with a lock at all times except when necessary to be opened for the transfer of wine spirits. Where the proprietor has placed wine in a wine

spirits addition tank and has ascertained the quantity of wine spirits to be added, the wine spirits may be transferred.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended (26 U.S.C. 5373))

§ 240.825 Transfer of wine spirits by pipeline to wine spirits storage tank.

Where it is desired to transfer wine spirits by pipeline to bonded wine cellar premises and store the spirits prior to use, there shall be provided a suitable tank for storing the wine spirits. The pipeline from the adjacent bonded premises of the distilled spirits plant shall be connected to the tank as provided in § 240.169. The wine spirits to be transferred, if not gauged in the bonded premises of the distilled spirits plant, shall be gauged by weight or volume on the bonded wine cellar premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended (26 U.S.C. 5373))

§ 240.826 Tank car and tank truck requirements.

Railroad tank cars and tank trucks used to transport wine spirits for use in wine production shall be constructed, marked, filled, labeled, and inspected, in the manner required by regulations in 27 CFR Part 19.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended, 1362, as amended (26 U.S.C. 5206, 5214))

§ 240.827 Examination of tank car or tank truck.

Upon arrival of the tank car or tank truck at the bonded wine cellar, the proprietor shall carefully examine the car or truck to see whether the seals are intact and whether there is any evidence of tampering or loss by leakage or otherwise. Any evidence of loss shall be reported to the area supervisor. The contents of the tank car or tank truck shall be gauged by weight or volume at the time of receipt by the proprietor. If the tank car or tank truck has been accurately calibrated, and the calibration chart is availabe at the wine cellar, the wine spirits may be gauged by volume in the tank car or tank truck. In any case where a volume gauge is made, the actual measurements of the spirits in the gauging tank, tank car, or tank truck, and the temperature of the spirits shall be recorded on Form 5110.26. The label attached to the tank car or tank truck at the distilled spirits plant shall be destroyed by the proprietor immediately after the car or truck is emptied.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended, 1362, as amended, 1381, as amended (26 U.S.C. 5206, 5214, 5366))

§ 240.828 Wine spirits in packages.

The proprietor shall gauge (proof and weigh) each package to be used for the wine spirits addition, except that if a metal gauging tank accurately calibrated or mounted on scales is provided, the contents of the packages may be transferred into the gauging tank and a bulk gauge obtained by weight or by volume. If the packages have been received from contiguous bonded premises of a distilled spirits plant for immediate use, the packages need not be regauged in the bonded wine cellar unless there is some indication that the contents of the packages are not in agreement with the withdrawal gauge. If the quantity of wine spirits needed for the wine spirits addition is not equal to the contents of full packages, a portion of one package may be used and the remnant package returned to the wine spirits storage room. The proprietor shall weigh and proof the remnant package and attach a label showing the date of gauge, serial number of the Form 5120.28, the gross weight, and proof. The remnant shall be used at the first opportunity. The proprietor shall prepare Form 5110.26 for each release of wine spirits and attach a copy to each Form 5120.28.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1382, as amended (26 U.S.C. 5366, 5367, 5368, 5373))

Wine Spirits Additions

§ 240.830 Wine spirits added to wine.

Prior to the addition of wine spirits, the wine shall be placed in tanks (approved for the addition of wine spirits) located, equipped, and calibrated as provided in Subpart F of this part. The proprietor shall accurately measure the wine, determine its alcohol content, determine the proof of the wine spirits to be added, calculate the quantity of wine spirits required, and enter the details on Form 5120.28. The alcohol content of the wine after the addition of wine spirits shall not exceed 24 percent by volume. The proprietor shall certify on Form 5120.28 that the wine has been produced in accordance with the requirements of this subpart and is eligible for the addition of wine spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1382, as amended (26 U.S.C. 5367, 5373))

§ 240.831 Gauge of wine spirits.

(a) If the wine spirits to be used are in a wine spirits storage tank on the bonded wine cellar premises, or received immediately prior to use from a distilled spirits plant not adjacent to the bonded wine cellar, the proprietor shall determine the quantity used, by volume gauge or by weight, and the proof of the spirits. Upon completion of the transfer of wine spirits from the wine spirits storage tank to the wine spirits addition tank, the proprietor shall lock the wine spirits storage tank. The proprietor shall prepare Form 5110.26 according to the instructions on the form.

(b) If the wine spirits made on the adjacent bonded premises of a distilled spirits plant are transferred directly into a wine spirits addition tank, the gauge of the wine spirits made on the distilled spirits plant premises shall be used. The proprietor at the distilled spirits plant premises shall deliver two copies of Form 5110.26 to the proprietor of the bonded wine cellar who shall acknowledge receipt of the wine spirits on both copies of the form and forward one copy to the regional regulatory administrator.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1382, as amended (26 U.S.C. 5367, 5373))

§ 240.832 Report of addition of wine spirits.

After the wine spirits have been added to the wine, the proprietor shall thoroughly agitate the contents of the tank to assure a complete mixture of the wine and wine spirits. The proprietor shall then measure the quantity of wine in the tank, take a representative sample of the wine, and test for alcohol content. The result of the measurement and test and the quantity of wine spirits added as shown by Form 5110.26 shall be recorded on Form 5120.28. The original of Form 5120.28 (with Form 5110.26, if the wine spirits have been regauged) shall be submitted to the regional regulatory administrator and the other copy retained for the proprietor's files. The quantity of wine and wine spirits used, and the quantity of wine resulting from addition of wine spirits, shall be entered in the cellar records.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1382, as amended, 1383, as amended (26 U.S.C. 5367, 5373, 5382))

Other Dispositions of Wine Spirits

§ 240.835 Withdrawal from distilled spirits plant.

Proprietors of bonded wine cellars engaged in the production of sparkling wine, or artificially carbonated wine, or special natural wine, or any other wine products, for which wine spirits are required for dosage, or for the preparation of approved essences or

similar approved flavorings on the wine cellar premises, may make application on Form 5120.38 to withdraw tax-free wine spirits. The wine spirits shall be received by the proprietor and placed under his lock in a secure room or locker on the bonded premises. The wine spirits shall remain in the original packages in the storeroom until withdrawn for use. Record of receipt and use shall be kept in accordance with Subpart UU of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended, 1383, as amended (26 U.S.C. 5373, 5382))

§ 240.836 Application to dispose of wine spirits.

Application for permission to transfer wine spirits to the bonded premises of a distilled spirits plant or bonded wine cellar or to taxpay or destroy wine spirits, shall be filed with the regional regulatory administrator. The application shall set forth the serial numbers of the packages or storage tanks in which the wine spirits are contained, the kind and quantity of wine spirits involved, the name and registry number of the distilled spirits plant, the date of receipt of the wine spirits in the wine cellar, and the reason it is desired to taxpay, destroy, or transfer the wine spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended (26 U.S.C. 5373))

§ 240.837 Disposition of spirits.

If the application is approved, the proprietor shall dispose of the spirits in accordance with the application and any instructions given by the regional regulatory administrator.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended (26 U.S.C. 5373))

§ 240.838 Taxpayment.

When it is desired to taxpay the wine spirits, the application shall describe the containers in which the spirits will be removed upon taxpayment and the name and address of the person or persons to whom the spirits will be shipped and whether the spirits will be used for beverage or nonbeverage purposes.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended (26 U.S.C. 5373))

§ 240.839 Transfer to a distilled spirits plant or wine cellar.

When it is desired to transfer wine spirits to the bonded premises of a distilled spirits plant or to a bonded wine cellar the application shall specify the name, number and location of the premises, and the means or containers by or in which it is proposed to transfer the wine spirits. The application shall also specify whether the proprietor of the designated distilled spirits plant or wine cellar has agreed to receive the wine spirits and file consent of surety on his bond, extending the terms of the bond to cover transfer to his premises and any storage.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended (26 U.S.C. 5373))

Samples of Wine Spirits

§ 240.840 Limitations.

Samples of wine spirits may be withdrawn, free of tax, from any bonded wine cellar for analysis or testing. A sample may be withdrawn from each lot of wine spirits received, or from each wine spirits storage tank, or from a package representative of a lot of wine spirits on hand in the wine spirits storage room. Each sample shall be not more than 750 ml in size, and only one sample may be taken from any lot of wine spirits, unless authority is received from the regional regulatory administrator for larger or additional samples, upon a showing of necessity. All spirits produced at the same production facility of a distilled spirits plant on the same day, if received in the same shipment, will be considered as constituting a lot of spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended (26 U.S.C. 5373))

§ 240.841 Notice.

The proprietor shall file a notice with the regional regulatory administrator whenever samples of wine spirits are desired. The notice shall identify the lot or lots of spirits from which samples are desired, the size of the sample to be withdrawn from each lot, and the disposition to be made of the samples. Remnants or residues of samples remaining after analysis or testing, and which are not retained for laboratory specimens, shall be destroyed or returned to the bonded wine cellar for use in wine production.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended (26 U.S.C. 5373))

Paragraph 66. Section 240.853 is revised to delete reference to two obsolete sections. As amended, § 240.853 reads as follows:

§ 240.853 In transit.

Losses in transit shall be ascertained at the time the wine spirits are received at the wine cellar.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended (26 U.S.C. 5008))

Paragraph 67. Section 240.854 is revised to delete a reference to Government supervision. As revised, § 240.854 reads as follows:

§ 240.854 Losses in wine cellar.

Losses by theft, or from other causes, in the bonded wine cellar, shall be determined and reported at the time the losses are discovered. A physical inventory of wine spirits storage tanks shall be taken at the close of the month during which wine spirits are used in wine production, or upon completion of the use for the month and at any other time required by the regional regulatory administrator. Any losses which have not previously been reported shall be determined by the inventory. Where a loss is discovered requiring filing of a claim as provided in § 240.855, the proprietor shall gauge the contents of the container from which the loss occurred and prepare a report of gauge on Form 5110.26.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended (26 U.S.C. 5008))

Paragraph 68. Subpart RR is deleted in its entirety and §§ 240.870 through 240.874 requirements have been moved to Subpart PP. As amended, the center heading "Subpart RR—Disposition of Unused Wine Spirits" reads as follows:

Subpart RR—[Reserved]

Paragraph 69. Section 240.890 is revised to change former part 198 to the recodified Part 18 and change the application to a notice. As amended, § 240.890 reads as follows:

§ 240.890 Notice required.

A proprietor desiring to produce or prepare for market commercial fruit products, or recover by-products (including volatile fruit-flavor concentrates) and store the products on bonded wine cellar premises shall file a notice with the regional regulatory administrator setting forth the details of the activity. In addition to the notice, if the proprietor desires to establish a volatile fruit flavor concentrate plant, he shall file Form 27–G and otherwise comply with the provisions of 27 CFR Part 18. Activities permitted shall be limited to those in which fruit or fruit juice is the principal material used in production. The operations shall not be conducted prior to the notice being submitted to the regional regulatory administrator. Wine shall not be used in the production of allied products.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended (26 U.S.C. 5361))

Paragraph 70. Section 240.904 is revised to delete a reference to sections which are obsoleted. As amended, § 240.904 reads as follows:

§ 240.904 Forms 5120.28 and 5110.26.

Each proprietor of a bonded wine cellar using wine spirits in the production of wine shall prepare Forms 5120.28 and 5110.26 at the time wine spirits are gauged and added to wine.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

Paragraph 71. Section 240.943 is revised to delete a reference to rectification tax. As amended, § 240.943 reads as follows:

§ 240.943 Assessment of tax.

If an investigation or an examination of records discloses that liability for wine tax, distilled spirits tax, or occupational tax has been incurred by the proprietor of a bonded wine cellar, the regional regulatory administrator will notify the proprietor by letter of the basis and the amount of the proposed assessment in order to afford the proprietor an opportunity to submit a protest, with supporting facts, within 45 days, or to request a conference with regard to the tax liability.

Paragraph 72. Section 240.1041 is revised to delete the requirements for Government supervision. As amended, § 240.1041 reads as follows:

§ 240.1041 Withdrawal.

The proprietor of a bonded wine cellar may, as provided in this part, withdraw, without payment of tax, distillates containing aldehydes for use in the fermentation of wine which is to be used as distilling material. Withdrawals shall be made only from an adjacent distilled spirits plant. A proprietor of a bonded wine cellar who is operating under bond, Form 700, and who intends to receive and use distillates containing aldehydes, shall furnish a consent of surety, Form 1533, which shall contain the following statement of purpose:

To extend the terms and conditions of said bond to cover payment of all taxes imposed by law now or hereinafter in force (plus penalties, if any, and interest) for which the principal may become liable on all distillates containing aldehydes removed from the bonded premises of a distilled spirits plant to his bonded wine cellar.

The facilities may include short detachable hose connections between pipelines and tanks on the bonded wine cellar premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended (26 U.S.C. 5373))

Paragraph 73. Section 240.1042 is revised to change an application requirement to a notice. As amended, § 240.1042 reads as follows:

§ 240.1042 Notice on Form 5120.38.

A proprietor who intends to withdraw distillates containing aldehydes shall submit a notice on Form 5110.46.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended (26 U.S.C. 5373))

Paragraph 74. Section 240.1043 is revised to update the section. As revised, § 240.1043 reads as follows:

§ 240.1043 Receipt and deposit of distillates containing aldehydes.

Distillates containing aldehydes which are received at the bonded wine cellar (if not immediately used) shall be placed under the proprietor's lock in a secure room or tank on the bonded premises. Distillates containing aldehydes shall not be mingled with wine spirits. If distillates contain less than one-tenth of one percent of aldehydes, they shall be subject to additional conditions relating to the receipt, storage, and use as the regional regulatory administrator shall require to assure that the distillates are properly used and accounted for.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended (26 U.S.C. 5373))

Section P. Part 250 is amended as follows:

PART 250—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

Paragraph 1. The table of sections for Part 250 is amended to reflect (1) the addition of §§ 250.36c, 250.66a, 250.201c, and Subparts Ib and Oa, (2) the revision of Subparts D and K, (3) the revocation of §§ 250.83, 250.85, 250.96a, 250.112a, 250.204, and Subpart I, (4) the deletion of §§ 250.99, 250.100, and the undesignated center heading which preceded § 250.98, and (5) the amendment of the titles of §§ 250.66, 250.78, 250.98, 250.108, 250.110, 250.260 and Subpart E. As amended, the table of sections for Part 250 reads as follows:

* * * * *

250.36c Shipments of bulk distilled spirits to the United States without payment of tax.

* * * * *

Subpart D—Formulas for Products From Puerto Rico

Sec.

250.50 Formulas for liquors.
250.51 Formulas for articles and products manufactured with denatured spirits.
250.52 Still wines containing carbon dioxide.
250.53 Changes of formulas.
250.54 Filing and disposition of formulas.
250.55 Previously approved formulas.

Subpart E—Taxpayment of Liquors and Articles in Puerto Rico

Bonds

Sec.

* * * * *

250.66 Bond, ATF Form 5110.50—Distilled Spirits.
250.66a New bond required effective January 1, 1980.

* * * * *

250.78 Application and permit, ATF Form 5110.51.

* * * * *

Packages of Distilled Spirits

* * * * *

250.98 Liqueurs, cordials and similar distilled spirits products containing wine.

Beer

* * * * *

250.108 Application for permit, ATF Form 5110.51 and/or Form 2900.

* * * * *

250.110 Release of articles or liquors.

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Subpart Ib—Shipment of Bulk Distilled Spirits From Puerto Rico, Without Payment of Tax, for Transfer From Customs Custody to Internal Revenue Bond

250.196 General.
250.197 Furnishing formula to consignee.
250.198 Application to receive spirits in bond.
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Subpart J * * *

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250.201c Shipments of bulk distilled spirits to the United States without payment of tax.

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Subpart K—Formulas for Products From the Virgin Islands

250.220 Formulas for liquors.
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Subpart L * * *

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250.260 Certificate.

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Subpart Oa—Shipment of Bulk Distilled Spirits From the Virgin Islands, Without Payment of Tax, for Transfer From Customs Custody to Internal Revenue Bond

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250.302 Gauge and certification.

Sec.
250.303 Customs inspection and release.
250.304 Bulk conveyances to be sealed.
250.305 Transfer by pipeline at dock.
* * * * *

Paragraph 2. Section 250.1 is amended to add reference to provisions which were redesignated from Subparts F and G of Part 170, to Subparts Ib and Oa of this part. As amended, § 250.1 reads as follows:

§ 250.1 Alcoholic products coming into the United States from Puerto Rico and the Virgin Islands.

This part, "Liquors and Articles from Puerto Rico and the Virgin Islands," relates to:

(a) The production, bonded warehousing, and withdrawal of distilled spirits, and denatured spirits, and the manufacture of articles in Puerto Rico and the Virgin Islands to be brought into the United States free of tax;

(b) The collection of internal revenue taxes on taxable alcoholic products coming into the United States from Puerto Rico and the Virgin Islands; and

(c) The transfer, without payment of tax, of Puerto Rican and Virgin Islands spirits in bulk containers or by pipeline from customs custody to the bonded premises of a distilled spirits plant qualified under Part 19 of this chapter.

Paragraph 3. Section 250.11 is amended (1) to add definitions of *Bottler, Bulk container, Bulk distilled spirits,* and *Rectifier,* (2) to amend the definitions of *Distilled spirits or spirits,* and *Wine,* and (3) to correct the statutory authority. As amended, § 250.11 reads as follows:

§ 250.11 Meaning of terms.

* * * * *

Bottler. Any person required to hold a basic permit as a bottler under 27 U.S.C. 203(b)(1).

Bulk container. Any container having a capacity of more than 1 gallon.

Bulk distilled spirits. The term "bulk distilled spirits" means distilled spirits in a container having a capacity in excess of 1 gallon.

* * * * *

Distilled spirits or spirits. That substance known as ethyl alcohol, ethanol, or spirits of wine, in any form (including all dilutions and mixtures thereof, from whatever source or by whatever process produced), but shall not include industrial spirits as defined in this part except when used in reference to such spirits which would be subject to tax if brought into the United States.

* * * * *

Rectifier. Any person required to hold a rectifier's basic permit under 27 U.S.C. 203(b)(1).

* * * * *

Wine. Still wine, vermouth, or other aperitif wine, imitation, substandard, or artificial wine, compounds designated as wine, flavored, rectified, or sweetened wine, champagne or sparkling wine, and artificially carbonated wine, containing not over 24 percent of alcohol by volume. Wines containing more than 24 percent of alcohol by volume are classed and taxed as distilled spirits.

* * * * *

(68A Stat. 917, as amended (26 U.S.C. 7805); 49 Stat. 981, as amended (27 U.S.C. 205))

§ 250.36b [Amended]

Paragraph 4. Section 250.36b is amended to reflect the addition of Subpart Ib to this part by deleting the last sentence.

Paragraph 5. Immediately after § 250.36b, a new § 250.36c is added to reflect the addition of Subpart Ib to this part. As added, § 250.36c reads as follows:

§ 250.36c Shipments of bulk distilled spirits to the United States without payment of tax.

Bulk distilled spirits may be brought into the United States from Puerto Rico without payment of tax for transfer from customs custody to the bonded premises of a distilled spirits plant qualified under Part 19 of this chapter. Such shipments are subject to the provisions of Subpart Ib.

Paragraph 6. Section 250.40 is amended to reflect the addition of Subpart Ib to this part by adding a new paragraph (e). As amended, § 250.40 reads as follows:

§ 250.40 Marking containers of distilled spirits.

* * * * *

(e) In the case of bulk containers shipped to the United States under Subpart Ib, the serial number of the application and permit to ship, ATF Form 5110.31, instead of the serial number of Form 487–B.

§ 250.41 [Amended]

Paragraph 7. Section 250.41 is amended to replace "Part 201" with "Part 19".

Paragraph 8. Subpart D is revised (1) to make formula requirements for Puerto Rican liquors and articles shipped to the United States conform with formula requirements for domestic manufacturers, (2) to add a requirement for a notice relating to still wines containing carbon dioxide, similar to the notice required for domestic winemakers, and (3) to add a qualification that previously approved formulas are valid. As revised, Subpart D reads as follows:

Subpart D—Formulas for Products From Puerto Rico

§ 250.50 Formulas for liquors.

(a) *Distilled spirits products.* Formulas are required by Part 5 of this chapter for distilled spirits products shipped to the United States from Puerto Rico. If any product contains liquors made outside of Puerto Rico, the country of origin for each such liquor shall be stated on the formula. These formulas shall be submitted on ATF Form 5110.38, in accordance with § 250.54.

(b) *Wine.* Persons in Puerto Rico who ship wine to the United States shall comply with the formula requirements of Part 240 of this chapter. If any wine contains liquors made outside of Puerto Rico, the country of origin for each such liquor shall be stated on the formula. All formulas required by this paragraph shall be submitted on ATF Form 698–A Supplemental, in accordance with § 250.54.

§ 250.51 Formulas for articles and products manufactured with denatured spirits.

(a) *Formulas for articles.* Formulas for articles made with distilled spirits must show the quantity and proof of the distilled spirits used, or the percentage of alcohol by volume contained in the finished product. Formulas for articles made with beer or wine must show the kind and quantity thereof (liquid measure), and the percent of alcohol by volume of such beer or wine.

(b) *Formulas for products manufactured with denatured spirits.* Formulas for products manufactured with denatured spirits shall be submitted as provided in Part 211 of this chapter for products manufactured in the United States with denatured spirits.

(c) *ATF Form 1479–A.* Formulas required by this section shall be submitted on ATF Form 1479–A, in accordance with § 250.54.

§ 250.52 Still wines containing carbon dioxide.

(a) *General.* Still wines may contain not more than 0.392 gram of carbon dioxide per 100 milliliters of wine; except that a tolerance to this maximum limitation, not to exceed 0.009 gram of carbon dioxide per 100 milliliters of wine, will be allowed where the amount of carbon dioxide in excess of 0.392 gram per 100 milliliters of wine was due to mechanical variations which could not be completely controlled under good commercial practices. Such tolerance

will not be allowed where it is found that the limitation of 0.392 gram of carbon dioxide per 100 milliliters of wine is continuously or intentionally exceeded, or where the variation results from the use of methods or equipment not in accord with good commercial practices.

(b) *Notice required.* Proprietors intending to add carbon dioxide to, or retain carbon dioxide in, still wines to be shipped to the United States shall submit a notice to the Chief, Puerto Rican Operations. The notice shall show the name and address of the proprietor and shall identify the method or process, the kinds (class and type) of wine, and the type of equipment to be used. A corrected notice shall be filed if there is any change (except for minor changes) in the information contained in the notice.

(c) *Filing and disposition of notice.* The notice required by paragraph (b) of this section shall be submitted in quintuplicate to the Chief, Puerto Rican Operations, who shall retain one copy, forward one copy to the Officer-in-Charge, one copy to the Secretary, and one copy to the revenue agent at the proprietor's premises, and return one copy to the proprietor. The proprietor shall keep the notice available for examination by revenue agents.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1331, as amended (26 U.S.C 5041))

§ 250.53 Changes of formulas.

Any change in the ingredients composing a product covered by an approved formula will necessitate the submission of a new formula.

§ 250.54 Filing and disposition of formulas.

Prior to shipment, formulas required by this subpart shall be submitted in quintuplicate to and approved by the Director. The Director shall retain one copy, forward one copy to the Officer-in-Charge, one copy to the Secretary, and one copy to the revenue agent at the premises of the applicant, and return one copy to the applicant. The applicant shall maintain copies of approved formulas available for examination by revenue agents.

§ 250.55 Previously approved formulas.

Any formula approved on Form 27–B Supplemental prior to January 1, 1980, shall continue to be valid until revoked or voluntarily surrendered. Any person holding such a formula is not required to submit a new formula. If an approved formula on Form 27–B Supplemental indicates that carbon dioxide will be added to, or retained in, still wine, the notice requirement of § 250.52 shall not apply.

Paragraph 9. The title of Subpart E is amended to delete reference to rectification and to add reference to taxpayment of articles in Puerto Rico. As amended, the title of Subpart E reads as follows:

Subpart E—Taxpayment of Liquors and Articles in Puerto Rico

Paragraph 10. Section 250.66 is amended (1) to clarify who is required to file a bond, (2) to change the number of an ATF form, (3) to revoke the bond requirement for rectification tax, and (4) to correct the statutory authority. As amended, § 250.66 reads as follows:

§ 250.66 Bond, ATF Form 5110.50—Distilled spirits.

(a) *General.* If any person intends to ship to the United States, distilled spirits products of Puerto Rican manufacture from bonded storage in Puerto Rico on computation, but before payment, of the tax imposed by 26 U.S.C. 7652(a), equal to the tax imposed in the United States by 26 U.S.C. 5001(a)(1), he shall, before making any such shipment, furnish a bond ATF Form 5110.50, for each premises from which shipment will be made, to secure payment of such tax, at the time and in the manner prescribed in this subpart, on all distilled spirits products shipped. The bond shall be executed in a penal sum not less than the amount of unpaid tax which, at any one time, is chargeable against the bond. The penal sum of such bond shall not exceed $1,000,000, but in no case shall the penal sum be less than $1,000.

(b) *Blanket bond.* Any person who is the proprietor of more than one premises in Puerto Rico from which shipment of spirits to the United States will be made, may, in lieu of furnishing two or more separate bonds on ATF Form 5110.50 as required by paragraph (a) of this section, furnish a blanket bond on ATF Form 5110.50. The penal sum of such blanket bond shall be equal to the sum of the penal sums of all the bonds in lieu of which it is given. Such blanket bond on ATF Form 5110.50 shall show each bonded warehouse and/or bonded processing room and/or rectifying plant to be covered by the bond, and the part of the total penal sum (computed in accordance with paragraph (a) of this section) to be allocated to each of the designated premises. If the penal sum of the bond allocated to a designated premises is in an amount less than the maximum prescribed in paragraph (a) of this section, transactions at such premises shall not exceed the quantity permissible, as reflected by the penal sum allocated in the bond to such premises. Such blanket bond shall contain the terms and conditions of the bonds in lieu of which it is given and shall be conditioned that the total amount of the bond shall be available for satisfaction of any liability incurred under the terms and conditions of such bond.

(Act of August 16, 1954, 68A Stat. 847, as amended, 907, as amended (26 U.S.C 7101, 7102, 7652))

Paragraph 11. Immediately after § 250.66, a new § 250.66a is added to require a new bond for persons who intend to continue deferral of taxes after January 1, 1980. As added, § 250.66a reads as follows:

§ 250.66a New bond required effective January 1, 1980.

Any person holding a valid bond on Form 2896 who desires to continue deferred payment of taxes on distilled spirits released for shipment on and after January 1, 1980, shall file and obtain approval of a new bond, ATF Form 5110.50, with an effective date of January 1, 1980. The new bond shall comply with the penal sum requirements prescribed by § 250.66 and shall be conditioned on compliance with the new tax deferral system prescribed by § 250.112. The proprietor shall prepay taxes, in accordance with § 250.113, if a new bond is not filed with and approved by the Officer-in-Charge.

Paragraph 12. Section 250.68a is amended (1) to delete reference to a revoked paragraph of regulation, (2) to change reference to a redesignated paragraph of regulation, and (3) to change the numbers of ATF forms. As amended, § 250.68a reads as follows:

§ 250.68a Bond account.

Every person who files a bond under this subpart shall keep an account of the charges against and credits to the bond if the penal sum of his bond is less than the maximum prescribed in §§ 250.66(a), 250.67, or 250.68, or if the penal sum allocated to his premises under § 250.66(b) is less than the prescribed maximum. He shall charge the bond with the amount of liability he accepts at the time he executes ATF Form 5110.51 or 2900, and shall credit the bond with the amount of the tax paid at the time he files each return, ATF Form 5110.32, 2927, or 2929, and remittance. The account shall also show the balance available under the bond at any one time.

§ 250.76 [Amended]

Paragraph 13. Section 250.76 is amended to replace "Form 2899" with "ATF Form 5110.51".

Paragraph 14. Section 250.77 is amended to reflect the imposition of distilled spirits tax on alcoholic ingredients added to distilled spirits products, and to delete references to rectification tax. As amended, § 250.77 reads as follows:

Distilled Spirits

§ 250.77 Subject to tax.

Distilled spirits of Puerto Rican manufacture, and any products containing such spirits, including any alcoholic ingredients added to such spirits or products, coming into the United States and withdrawn for consumption or sale are subject to a tax equal to the internal revenue tax imposed in the United States by 26 U.S.C. 5001(a)(1).

(Act of August 16, 1954, Pub. L. 591, 68A Stat. 907, as amended (26 U.S.C. 7652); Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C. 5001))

Paragraph 15. Section 250.78 is amended to clarify who is required to obtain a permit to ship distilled spirits products to the United States and to change the number of an ATF Form. As amended, § 250.78 reads as follows:

§ 250.78 Application and permit, ATF Form 5110.51.

Application for permit to compute the tax on, and to withdraw, distilled spirits shall be made on ATF Form 5110.51, in sextuplicate, by the proprietor. The proprietor shall forward all copies of the form to the Secretary. If the application is properly prepared and is otherwise in order, the Secretary or his delegate shall execute the permit, retain one copy, and forward the original and remaining copies of the form to the revenue agent at the premises where the products are located.

§ 250.79 [Amended]

Paragraph 16. Section 250.79 is amended to change the numbers of ATF forms (1) by replacing "Form 2899" with "ATF Form 5110.51", (2) by replacing "Form 2630" with "ATF Form 5110.45", and (3) by replacing "Forms 2899 and 2630" with "ATF Forms 5110.51 and 5110.45".

Paragraph 17. Sections 250.80 and 250.81 are amended to reflect the new method of tax payment on finished distilled spirits products and to change the numbers of ATF forms. As amended, §§ 250.80 and 250.81 read as follows:

§ 250.80 Deferred payment of tax—release of spirits.

(a) *Action by proprietor.* Where the proprietor has furnished bond on ATF Form 5110.50, and payment of the tax is to be deferred, he shall execute an agreement on ATF Form 5110.51 to pay the amount of tax which has been computed and entered on the form. He shall also certify, under the penalties of perjury, that he is not in default of any payment of tax chargeable against his bond, and that his bond is in the maximum penal sum, or that it is sufficient to cover the amount of tax on the distilled spirits described on the form in addition to all other amounts chargeable against his bond. The proprietor shall deliver all copies of ATF Forms 5110.51 and 5110.45 to the revenue agent.

(b) *Action by revenue agent.* On receipt of the ATF Forms 5110.51 and 5110.45, the revenue agent shall verify the computation of the tax entered on the ATF Form 5110.51, and if the proprietor has on file a good and sufficient bond, ATF Form 5110.50, so indicate on ATF Form 5110.51. The revenue agent shall then execute his report of release on the ATF Form 5110.51 and release the spirits for shipment to the United States. He shall forward the original ATF forms 5110.51 and 5110.45 to the Officer-in-Charge, one copy of each form to the Bureau of Alcoholic Beverage Taxes, and one copy of each to the District Revenue Agent (Commonwealth of Puerto Rico), deliver one copy of each to the proprietor, and retain one copy of each for his file. Where the revenue agent finds that the proprietor does not have good and sufficient bond coverage, or where the revenue agent has received information that the proprietor is in default of payment of any taxes previously charged to his bond, he shall return all copies of ATF Forms 5110.51 and 5110.45 to the proprietor, giving his reasons for such action.

§ 250.81 Prepayment of tax and release of spirits.

(a) *Action by proprietor.* Where the distilled spirits are to be released after payment of the computed tax, the proprietor shall enter the amount of such computed tax on all copies of ATF Form 5110.51 and execute the statement that such tax is being prepaid. He shall then prepare ATF Form 5110.53 in quadruplicate, and send the original and two copies, with all copies of ATF Forms 5110.51 and 5110.45 and his remittance in full for the tax, to the Officer-in-Charge.

(b) *Action by Officer-in-Charge.* On receipt of ATF Forms 5110.51, 5110.53, and 5110.45, with remittance covering prepayment of tax, the Officer-in-Charge shall execute his receipt on all copies of ATF Form 5110.53 and his report of prepaid taxes on all copies of ATF Form 5110.51. He shall then forward one copy of ATF Form 5110.53 to the Secretary and one copy of ATF Form 5110.53 and four copies of ATF Forms 5110.51 and 5110.45 to the revenue agent, and retain the original of each form for his files.

(c) *Action by revenue agent.* On receipt of ATF Form 5110.51 executed by the Officer-in-Charge to show receipt of ATF Form 5110.53 and remittance, and a copy of the ATF Form 5110.53, the revenue agent shall execute his report of release on the ATF Form 5110.51 and release the spirits for shipment to the United States. He shall forward one copy of the ATF Form 5110.51 and one copy of ATF Form 5110.45 to the Bureau of Alcoholic Beverage Taxes and one copy of each to the District Revenue Agent (Commonwealth of Puerto Rico), deliver one copy of each to the proprietor, and retain one copy of each and the copy of ATF Form 5110.53 for his file.

§ 250.82 [Amended]

Paragraph 18. Section 250.82 is amended to reflect the new method of taxpayment on finished distilled spirits products by deleting the words "released from bonded storage under § 250.80 or § 250.81".

Paragraph 19. Section 250.84, relating to the stamping of bottles is amended to include the affixing of distilled spirits stamps on bulk containers. As amended, § 250.84 reads as follows:

§ 250.84 Stamping of bottles and bulk containers.

(a) *Bottles.* Every bottle of distilled spirits of Puerto Rican manufacture to be shipped to the United States must have affixed thereto a red strip stamp of proper size. Red strip stamps will be procured and used as provided in Subpart G of this part.

(b) *Bulk containers.* Where taxpaid distilled spirits intended for shipment to the United States are in containers of more than 1 gallon (3.785 liters), distilled spirits stamps shall be procured and affixed as provided in §§ 250.88 through 250.91.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§§ 250.83 and 250.85 [Revoked]

Paragraph 20. Section 250.83, relating to segregation of rectified and unrectified spirits, and § 250.85, relating to rectification tax, are revoked.

§ 250.87 [Amended]

Paragraph 21. Section 250.87 is amended (1) to delete reference to rectification tax by deleting the phrase, "and that all rectification taxes incurred have been paid or deferred in the same manner as provided in § 250.85 for

rectified spirits bottled and cased, or packaged," and, (2) to replace "Form 2899" with "ATF Form 5110.51".

Paragraph 22. Section 250.89 is amended to delete reference to rectification tax. As amended, § 250.89 reads as follows:

§ 250.89 Issurance of distilled spirits stamps.

On receipt of Form 3039, and the copy of the approved Form 487B, the Officer-in-Charge shall issue the required number of distilled spirits stamps. He shall enter, on each stamp, the name of the proprietor removing the spirits and the serial number of the container for which the stamp is issued. When the stamps have been issued, the issuing officer shall enter the serial numbers thereof on each copy of the Form 3039; return the copy of Form 487B and one copy of the Form 3039, with the stamps, to the applicant; forward one copy of Form 3039 to the Secretary; and retain the original of Form 3039 for his files.

Paragraph 23. Section 250.93 is amended to reflect the new tax computation procedure, whereby Form 2900 will be prepared only when wine is used in a finished product containing no distilled spirits. A sentence relating to "wines containing more than 24 percent of alcohol by volume" is deleted; since the definition of wine makes it clear that such products are not wines, but are rather distilled spirits. As amended, § 250.93 reads as follows:

§ 250.93 Application and permit, Form 2900.

When wine of Puerto Rican manufacture is to be withdrawn for shipment to the United States, or for use in an article made with wine only or with wine and beer only, for shipment to the United States, application for permit to compute the tax on, and to withdraw, the wine shall be made on Form 2900, in sextuplicate, by the proprietor of the bonded premises where the wine is stored. If the withdrawal is to be made in casks, barrels, kegs or similar containers, the proprietor shall enter the name of the winemaker producing the wine, the serial numbers of the packages, the total number of wine gallons contained therein, and the taxable grade of the wine, for example, "not more than 14 percent" if the wine contains not more than 14 percent of alcohol by volume, "14–21 percent" if the wine contains more than 14 percent and not exceeding 21 percent of alcohol by volume, "21–24 percent" if the wine contains more than 21 percent but not exceeding 24 percent of alcohol by volume. If the application covers more than one taxable grade of wine, the quantity in each taxable grade shall be reported separately. If the withdrawal is to consist of bottled wine, the proprietor shall show the number of cases, size of the bottles, the number of bottles per case, the total quantity in wine gallons, and the taxable grade of the wine in the manner stated above. The proprietor shall forward all copies of the form to the Secretary. If the application is properly prepared and is otherwise in order, the Secretary or his delegate shall execute the permit, retain one copy, and return the original and four copies to the proprietor.

§§ 250.95 and 250.96 [Amended]

Paragraph 24. Sections 250.95 and 250.96 are amended to replace "Form 2899" with "ATF Form 5110.51".

§ 250.96a [Revoked]

Paragraph 25. Section 250.96a, dealing exclusively with rectification tax, is revoked.

Paragraph 26. The undesignated center head immediately preceding § 250.98 is deleted. Section 250.98 is totally revised to indicate that all distilled spirits products containing wine are classed and taxed entirely at the distilled spirits rate. As revised, § 250.98 reads as follows:

§ 250.98 Liqueurs, cordials, and similar distilled spirits products containing wine.

The entire alcohol content of liqueurs, cordials, and similar distilled spirits products containing wine is taxable at the distilled spirits rate. The procedures for taxpayment, shipment, stamping containers, and release of such products shall be as prescribed in §§ 250.77 through 250.91.

§§ 250.99 and 250.100 [Revoked]

Paragraph 27. Sections 250.99 and 250.100, dealing with taxpayment and shipment of liqueurs, cordials, and similar products, are revoked. These products will be taxpaid and otherwise treated exactly the same as distilled spirits.

§§ 250.104 and 250.105 [Amended]

Paragraph 28. Sections 250.104 and 250.105 are amended to replace "Form 2899" with "ATF Form 5110.51".

Paragraph 29. Section 250.107 is revised to describe the new basis for taxation of articles. As revised, § 250.107 reads as follows:

Articles

§ 250.107 Taxable status.

Articles of Puerto Rican manufacture which are to be shipped to the United States and which are not exempt fom tax under the provisions of § 250.36 are subject, under section 7652(a) to a tax equal to the tax imposed by the internal revenue laws of the United States. If such articles contain distilled spirits, the tax will be collected at the rate prescribed by 26 U.S.C. 5001(a)(1) on all alcohol contained therein, regardless of the source. Such articles containing only wine and/or beer will be taxed at the rates prescribed by 26 U.S.C. 5041 and/or 5051, respectively. A formula covering the manufacture of each article shall be filed by the manufacturer in accordance with Subpart D of this part.

Paragraph 30. Section 250.108 is revised to conform the procedure, regarding application for permit to taxpay articles, to the new taxation structure. Form 2900 may be used only if the finished article contains no distilled spirits. As revised, paragraphs (a) and (b) of § 250.108 read as follows:

§ 250.108 Application for permit, ATF Form 5110.51 and/or Form 2900.

(a) *Distilled spirits.* Where distilled spirits of Puerto Rican manufacture are to be used in the manufacture of the articles to be shipped to the United States, the manufacturer shall make application on Form 5110.51, in accordance with the applicable provisions of § 250.78.

(b) *Wine and/or beer.* Where wine and/or beer of Puerto Pican manufacture is to be used in the manufacture of the articles to be shipped to the United States, the manufacturer shall make application on Form 2900, in accordance with the applicable provisions of §§ 250.93 and/or 250.102. Wine and beer may be included in the same application.

* * * * *

Paragraph 31. Section 250.109 is amended to conform to the new taxation structure and to the all-in-bond system to be imposed in the United States. The wine and beer tax rates may apply only if the finished article contains no distilled spirits. As amended, § 250.109 reads as follows:

§ 250.109 Taxpayment.

(a) *Distilled spirits.* The tax on distilled spirits contained in articles to be shipped to the United States, equal to the tax imposed in the United States by 26 U.S.C. 5001(a)(1), shall be computed in accordance with § 250.79 and paid in accordance with the applicable provisions of §§ 250.80, 250.81, and 250.111 through 250.113.

(b) *Wine.* The tax on wine used in the manufacture of articles to be shipped to the United States, equal to the tax imposed in the United States by 26 U.S.C. 5041, shall be computed in accordance with § 250.94 and paid in

accordance with the applicable provisions of §§ 250.95, 250.96, and 250.111 through 250.113.

(c) *Beer.* The tax on beer used in the manufacture of articles to be shipped to the United States, equal to the tax imposed in the United States by 26 U.S.C. 5051, shall be computed in accordance with § 250.103 and paid in accordance with the applicable provisions of §§ 250.104, 250.105, and 250.111 through 250.113.

Paragraph 32. Section 250.110 is amended to conform to the new taxation structure and the all-in-bond system being imposed in the continental United States. In the case of articles containing distilled spirits, release for shipment occurs after completion of the finished product, whereas for articles made only with beer and wine, release occurs when the liquors are withdrawn for use in manufacturing. As amended, § 250.110 reads as follows:

§ 250.110 Release of articles or liquors.

After determining that the proprietor has good and sufficient bond coverage, or, in the case of prepayment, on receipt of ATF Form 5110.51 or Form 2900 executed by the Officer-in-Charge to show receipt of ATF Form 5110.53, 2928, or 2930, and remittance, the revenue agent shall execute his report of release on ATF Form 5110.51 or Form 2900 and release the articles containing distilled spirits, or release the wine and/or beer for use in the manufacture of articles. He shall forward one copy of ATF Form 5110.51 or Form 2900, and of ATF Form 5110.45 (if any) to the Bureau of Alcoholic Beverage Taxes and one copy of each to the District Revenue Agent (Commonwealth of Puerto Rico), deliver one copy of each to the applicant, and retain one copy of each for his file. In the case of deferred payment, the original ATF Form 5110.51 or Form 2900 and the original ATF Form 5110.45 (if any) shall be forwarded to the Officer-in-Charge. A permit shall be obtained as provided in §§ 250.114 through 250.116 before the articles manufactured from such liquors may be shipped to the United States.

Paragraph 33. Section 250.112 is revised (1) to change the numbers of certain ATF Forms, (2) to eliminate reference to rectification tax, and (3) to impose the new extended deferral periods for distilled spirits prescribed by Pub. L. 96–39. As revised, § 250.112 reads as follows:

§ 250.112 Taxes to be collected by returns for semimonthly periods.

(a) *Distilled spirits.* The taxes imposed by 26 U.S.C. 7652(a), (equal to the taxes imposed in the United States by 26 U.S.C. 5001(a)(1)), the payment of which has been deferred under the provisions of § 250.80, shall be paid pursuant to a return on ATF Form 5110.52 prepared in quadruplicate. The proprietor shall list on his return the serial numbers of all ATF Forms 5110.51 covered by the return.

(b) *Wine.* The taxes imposed by 26 U.S.C. 7652(a), (equal to the taxes imposed in the United States by 26 U.S.C. 5041), the payment of which has been deferred under the provisions of § 250.95, shall be paid pursuant to a return on Form 2927 prepared in quadruplicate. The proprietor shall list on his return the serial numbers of all Forms 2900 covered by the return.

(c) *Beer.* The taxes imposed by 26 U.S.C. 7652(a), (equal to the taxes imposed in the United States by 26 U.S.C. 5051), the payment of which has been deferred under the provisions of § 250.104, shall be paid pursuant to a return on Form 2929 prepared in quadruplicate. The brewer shall list on his return the serial numbers of all Forms 2900 covered by the return.

(d) *Periods.* The periods to be covered by returns on ATF Forms 5110.52, 2927, and 2929, shall be semimonthly; such periods to run from the 1st day through the 15th day of each month and from the 16th day through the last day of each month.

(e) *Filing.* The original and two copies of returns on ATF Forms 5110.52, 2927, and 2929, with remittance covering the full amount of the tax, shall be filed with the Officer-in-Charge not later than the last day for filing as prescribed by paragraph (f) or (g) of this section. Where the return and remittance are delivered by U.S. mail to the office of the Officer-in-Charge, the date of the official postmark of the United States Postal Service stamped on the cover in which the return and remittance were mailed shall be deemed to be the date of delivery. If the last day for filing a return under this paragraph falls on a Saturday, Sunday, or legal holiday in the District of Columbia or in the Commonwealth of Puerto Rico, the filing of such return and remittance shall be considered timely if accomplished on the next succeeding day which is not a Saturday, Sunday, or such legal holiday.

(f) *Last day for filing ATF Form 5110.52.* The last day for filing ATF Form 5110.52, distilled spirits deferred tax return, is as follows:

(1) For return periods in 1980, the return shall be filed not later than the last day of the first succeeding return period plus five days.

(2) For return periods in 1981, the return shall be filed not later than the last day of the first succeeding return period plus ten days.

(3) For return periods in and after 1982, the return shall be filed not later than the last day of the second succeeding return period.

(g) *Last day for filing ATF Forms 2927 or 2929.* The last day for filing ATF Forms 2927 and 2929, deferred tax returns wine and beer, respectively, shall be the last day of the next succeeding return period.

(h) *Default.* Where a taxpayer has defaulted in any payment of tax under this section, during the period of such default and until the Officer-in-Charge finds that the revenue will not be jeopardized by deferred payment of tax under this section, the tax shall be prepaid by such taxpayer in accordance with the provisions of § 250.113. During such period, distilled spirits, wine, or beer shall not be released from bonded premises before the proprietor of the bonded premises has paid the tax thereon. In the event of default, the Officer-in-Charge shall immediately notify the Secretary and the revenue agent at the premises that tax is to be prepaid until further notice, and when he finds that the revenue will not be jeopardized by resumption of deferred payment of tax under this section, he shall notify the Secretary and the revenue agent that deferred payment may be resumed.

§ 250.112a [Revoked]

Paragraph 34. Since all Puerto Rican taxpayers are being required to file a new bond, which will automatically qualify them for the new extended deferral periods, § 250.112a (relating to qualification for extended deferral) is revoked.

Paragraph 35. Section 250.113 is amended to delete a reference to rectification taxes and to replace "withdrawn from bonded storage" with "released for shipment". As amended, paragraph (c) of § 250.113 reads as follows:

§ 250.113 Returns for prepayment of taxes.

* * * * *

(c) *Distilled spirits.* In all cases where taxes equal to the taxes imposed in the United States by 26 U.S.C. 5001(a)(1) are to be paid before distilled spirits may be released for shipment, the proprietor shall pay such taxes pursuant to a return on Form 2925, as prescribed in § 250.81.

* * * * *

§ 250.135 [Amended]

Paragraph 36. The last sentence of § 250.135, which refers to § 250.185, is deleted; since § 250.185 is being

revoked. Furthermore, the prohibition of this sentence against affixing red strip stamps prior to taxpayment is considered unnecessary.

§ 250.137 [Amended]

Paragraph 37. Section 250.137 is amended to delete reference to serial numbers on strip stamps by deleting the words, "serially numbered,".

§ 250.143 [Amended]

Paragraph 38. Section 250.143 is amended to delete reference to serial numbers on strip stamps by replacing, in the first sentence of paragraph (a), the words, "serial numbers of the", with the words, "quantity of".

Subpart I [Revoked]

Paragraph 39. Subpart I, relating to taxpayment in Puerto Rico of liquors withdrawn after rectification or bottling, is no longer necessary; since the repeal of rectification tax removes the necessity of distinguishing between liquors which have, and liquors which have not, been bottled or rectified. All taxpayment will be handled under the revised procedures of Subpart E. Accordingly, Subpart I is revoked.

Paragraph 40. Immediately after Subpart Ia, the following Subpart Ib is added. Sections 170.155, 170.156, 170.157, 170.159, 170.160, 170.161, 170.162, 170.163, 170.164, 170.165 and 170.166 from Subpart G of Part 170 are redesignated as Subpart Ib of Part 250. The requirements of the redesignated regulations are substantially revised (1) to reflect the changes in formula requirements, (2) to eliminate reference to on premises supervision at domestic distilled spirits plants, (3) to eliminate an obsolete requirement for a consent of surety, (4) to delete instructions which are now found on ATF forms and (5) to change the numbers of ATF forms. As added, Subpart Ib reads as follows:

Subpart Ib—Shipment of Bulk Distilled Spirits from Puerto Rico, Without Payment of Tax, for Transfer From Customs Custody to Internal Revenue Bond

Authority: The provisions of this Subpart Ib issued under Sec. 3, Pub. L. 90–630, 82 Stat. 1328, as amended (26 U.S.C. 5232), unless otherwise noted.

§ 250.196 General.

Under the provisions of this subpart and § 250.86, distilled spirits brought into the United States from Puerto Rico in bulk containers may be withdrawn by the proprietor of a distilled spirits plant from customs custody and transferred in such bulk containers or by pipeline to the bonded premises of his plant, without payment of the internal revenue tax, if any, imposed on such spirits by 26 U.S.C. 7652. Such spirits so withdrawn and transferred to a distilled spirits plant (a) may be redistilled or denatured only if of 185 degrees or more of proof; and (b) may be withdrawn from internal revenue bond for any purpose authorized by 26 U.S.C. chapter 51, in the same manner as domestic distilled spirits. Spirits transferred from customs custody to the bonded premises of a distilled spirits plant under the provisions of this subpart shall be received and stored thereat, and withdrawn or transferred therefrom, subject to applicable provisions of Part 19 of this chapter. The person operating the bonded premises of the distilled spirits plant to which spirits are transferred under the provisions of this subpart shall become liable for the tax on distilled spirits withdrawn from customs custody under 26 U.S.C. 5232, upon release of the spirits from customs custody and the person bringing the spirits into the United States shall thereupon be relieved of liability for the tax.

§ 250.197 Furnishing formula to consignee.

Prior to the first shipment, the person shipping the spirits to the United States shall furnish a reproduced copy of the approved formula covering such spirits to the proprietor of the distilled spirits plant to receive the spirits.

§ 250.198 Application to receive spirits in bond.

(a) *Application.* The proprietor of a distilled spirits plant desiring to withdraw Puerto Rican spirits as authorized in § 250.196 of this subpart shall submit an application to the regional regulatory administrator on ATF Form 5100.16 in accordance with the instructions on the form.

(b) *Approval.* The application may be approved if the applicant's operations or unit bond is in the maximum penal sum, or, if in less than the maximum penal sum, is sufficient to cover the internal revenue tax on the spirits to be withdrawn in addition to all other liabilities chargeable against such bond. However, no application may be approved unless the applicant has provided suitable facilities as provided in Part 19 of this chapter.

(c) *Termination.* An applicant may terminate an approved application, by retrieving and returning all outstanding copies, in accordance with the instructions on ATF Form 5100.16.

§ 250.199 Application and permit to ship, ATF Form 5110.31.

Before spirits of Puerto Rican manufacture may be shipped to the United States without payment of tax for withdrawal from customs custody and transfer to internal revenue bond, an application by the consignor on ATF Form 5110.31 for permit to ship must be approved by the Secretary. All copies of the application (original and five copies) shall be delivered to the revenue agent.

§ 250.199a Action by revenue agent.

(a) *Gauge.* Puerto Rican spirits to be withdrawn for shipment to the United States as provided in this subpart shall be gauged by the revenue agent prior to withdrawal from the consignor premises. The revenue agent shall report the gauge on ATF Form 5110.31. If the spirits are in packages, the revenue agent shall report the details of the gauge of each package on ATF Form 5110.45. The revenue agent shall distribute the forms in accordance with the instructions on ATF Form 5110.31.

(b) *Sealing bulk conveyances.* When a shipment is made in a tank, van, or other bulk conveyance (other than barrels, drums, or similar packages that are not containerized), all openings affording access to the spirits shall be sealed by the Puerto Rican revenue agent in such manner as will prevent unauthorized removal of spirits without detection.

(c) *Disposition of ATF Form 5110.31.* The revenue agent shall retain one copy of ATF Form 5110.31 (and any accompanying ATF Form 5110.45) and shall submit the remaining copies to the Secretary.

§ 250.199b Issuance and disposition of permit.

When the Secretary receives an application on ATF Form 5110.31, he shall ascertain that the consignee has on file a currently valid ATF Form 5100.16 for the spirits covered by the ATF Form 5110.31. If the Secretary finds that the applicant is in compliance with law and regulations, he will execute the permit to ship on all copies of ATF Form 5110.31, retain one copy (and any accompanying ATF Form 5110.45) and return the remaining copies to the consignor who shall distribute them in accordance with the instructions on ATF Form 5110.31.

§ 250.199c Action by carrier.

The carrier of the spirits specified on the ATF Form 5110.31 shall, at the time of unlading at the port of arrival in the United States, segregate and arrange the containers of spirits of convenient customs examination and shall assume any expense incurred in connection therewith.

§ 250.199d Customs inspection and release.

On receipt of a properly executed ATF Form 5110.31 and any accompanying ATF Form 5110.45 from the consignor, the customs officer at the port of arrival in the United States shall inspect shipments in bulk conveyances, and if the seals are intact, he shall release the shipment. If such seals are not intact, the customs officer shall, before release of the shipment, affix customs seals. In addition, barrels, drums, or similar packages not shipped in a sealed van or other sealed conveyance shall be inspected, and if it appears that any such package has sustained a loss, it shall be weighed and reported on ATF Form 5110.45. The serial numbers of any seals affixed by the customs officers shall be reported on ATF Form 5110.31 under remarks with an explanation and description of any evidence of loss. After completing his inspection, the customs officer shall execute his certificate on each copy of ATF Form 5110.31 and show thereon any exceptions found at the time of his release for transfer of the spirits to internal revenue bond. Missing packages should be reported separately from packages which have sustained losses. The customs officer shall then release the spirits to the consignee's representative and distribute all forms in accordance with the instructions on ATF Form 5110.31.

§ 250.199e Transfer by pipeline at dock.

If the distilled spirits plant is equipped with suitable dock facilities, the distilled spirits may, subject to all requirements of the customs laws and regulations, be transferred by pipeline from the vessel or barge through weighing tanks or other suitable measuring tanks into tanks on the bonded premises of the distilled spirits plant, or directly into tanks on such premises provided such tanks are equipped with suitable measuring devices for accurately indicating the actual contents therein. In all such cases of pipeline transfers, the distilled spirits shall be released by a customs officer to the proprietor for deposit in the distilled spirits plant.

§ 250.199f Consignee premises.

(a) *General.* When Puerto Rican spirits are received from customs custody under the provisions of this subpart the consignee proprietor shall examine all containers for evidence of loss in transit or of loss due to theft. Spirits after examination shall be immediately deposited in the warehouse. The consignee shall execute the certificate of receipt on ATF Form 5110.31. Losses of spirits shall be determined and reported on ATF Form 5110.31 and losses of spirits in packages shall also be shown on ATF Form 5110.45, with a notation as to the apparent cause thereof.

(b) *Packages.* Packages shall be received on bonded premises by the proprietor on the basis of the most recent official gauge. If any package in a consignment is reported on more than one gauge report, a consolidated gauge report, in duplicate, (on ATF Form 5110.45) reflecting the most recent data shall be prepared, and such consolidated report shall become the active detailed record of deposit for the packages in the consignment. The original of all superseded gauge reports shall be so identified and filed in an inactive file and any remaining copies may be destroyed.

(c) *Bulk conveyances and pipelines.* When spirits are received in bulk conveyances or by pipeline, the consignee shall gauge the spirits and record the receiving gauge on all copies of ATF Form 5110.31.

(d) *Distribution of forms.* The proprietor shall retain the original of ATF Form 5110.31 (and ATF Form 5110.45, if any) and submit the copy of each to the regional regulatory administrator.

§ 250.201 [Amended]

Paragraph 41. Section 250.201b is amended to reflect the addition of Subpart Oa to this part by deleting the last sentence.

Paragraph 42. Immediately after § 250.201b, a new § 250.201c is added to reflect the addition of Subpart Oa to this part. As added, § 250.201c reads as follows:

§ 250.201c Shipments of bulk distilled spirits to the United States without payment of tax.

Bulk distilled spirits may be brought into the United States from the Virgin Islands without payment of tax for transfer from customs custody to the bonded premises of a distilled spirits plant qualified under Part 19 of this chapter. Such shipments are subject to the provisions of Subpart Oa.

§ 250.204 [Revoked]

Paragraph 43. Section 250.204, relating to gauging spirits prior to rectification or bottling, is revoked.

Paragraph 44. Section 250.205 is amended (1) to add a provision for wine, (2) to clarify requirements for distilled spirits, (3) to eliminate references to formulas for liquors and articles, (4) to add a requirement for information relating to liquors and articles containing liquors produced outside of the Virgin Islands, which was previously required on formulas and (5) to delete reference to gauging spirits prior to rectification or bottling. As amended, § 250.205 reads as follows:

§ 250.205 Certificate.

Every person bringing liquors or articles under this part into the United States from the Virgin Islands, except tourists, shall obtain a certificate in the English language from the manufacturer showing, for each shipment, the following information:

(a) The name and address of the consignee;

(b) The kind and brand name;

(c) The quantity thereof as follows:

(1) If distilled spirits, the proof gallons, or liters and degree of proof.

(2) If wine, the taxable grade and wine gallons.

(3) If beer, the gallons, liquid measure, and the percent of alcohol by volume.

(4) If articles, the kind, quantity, and proof of liquors used therein.

(d) The name and address of the producer;

(e) For liquors or articles containing liquors produced outside of the Virgin Islands, the country of origin for each such liquor.

The person bringing the liquors or articles into the United States shall file the certificate with the district director of customs at the port of entry, as provided in § 250.260.

§ 250.207 [Amended]

Paragraph 45. Section 250.207 is amended to replace "Part 201" with "Part 19".

Paragraph 46. Subpart K is revised (1) to make formula requirements for Virgin Islands liquors and articles shipped to the United States conform with formula requirements for domestic manufacturers, (2) to add a requirement for a notice relating to still wines containing carbon dioxide, similar to the notice required for domestic winemakers, and (3) to add a qualification that previously approved formulas are valid. As revised, Subpart K reads as follows:

Subpart K—Formulas for Products from the Virgin Islands

§ 250.220 Formulas for liquors.

(a) *Distilled spirits products.* Persons in the Virgin Islands who ship distilled spirits beverage products to the United States shall comply with the formula requirements of Part 5 of this chapter. If any product contains liquors made outside of Virgin Islands, the country of origin for each such liquor shall be stated on the formula. All formulas

required by this paragraph shall be submitted on ATF Form 5110.38, in accordance with § 250.224.

(b) *Wine.* Persons in the Virgin Islands who ship wine to the United States shall comply with the formula requirements of Part 240 of this chapter. If any wines contains liquors made outside of the Virgin Islands, the country of origin for each such liquor shall be stated on the formula. All formulas required by this paragraph shall be submitted on ATF Form 698–A Supplemental, in accordance with § 250.224.

§ 250.221 Formulas for articles and products manufactured with denatured spirits.

(a) *Formulas for articles.* Formulas for articles made with distilled spirits must show the quantity and proof of the distilled spirits used, or the percentage of alcohol by volume contained in the finished product. Formulas for articles made with beer or wine must show the kind and quantity thereof (liquid measure), and the percent of alcohol by volume of such beer or wine.

(b) *Formulas for products manufactured with denatured spirits.* Formulas for products manufactured with denatured spirits shall be submitted as provided in Part 211 of this chapter for products manufactured in the United States with denatured spirits.

(c) *ATF Form 1479–A.* Formulas required by this section shall be submitted on ATF Form 1479–A, in accordance with § 250.224.

§ 250.222 Still wines containing carbon dioxide.

(a) *General.* Still wines may contain not more than 0.392 gram of carbon dioxide per 100 milliliters of wine; except that a tolerance to this maximum limitation, not to exceed 0.009 gram of carbon dioxide per 100 milliliters of wine, will be allowed where the amount of carbon dioxide in excess of 0.392 gram per 100 milliliters of wine was due to mechanical variations which could not be completely controlled under good commercial practices. Such tolerance will not be allowed where it is found that the limitation of 0.392 gram of carbon dioxide per 100 milliliters of wine is continuously or intentionally exceeded, or where the variation results from the use of methods or equipment not in accord with good commercial practices.

(b) *Notice required.* Proprietors intending to add carbon dioxide to, or retain carbon dioxide in, still wines to be shipped to the United States shall submit a notice to the Chief, Puerto Rican Operations. The notice shall show the name and address of the proprietor and shall identify the method or process, the kinds (class and type) of wine, and the type of equipment to be used. A corrected notice shall be filed if there is any change (except for minor changes) in the information contained in the notice.

(c) *Filing and disposition of notice.* The notice required by paragraph (b) of this section shall be submitted in triplicate to the Chief, Puerto Rican Operations, who shall retain one copy, forward one copy to the Commissioner of Finance of the Virgin Islands, and return one copy to the proprietor. The proprietor shall keep the notice available for examination by insular agents.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1331, as amended (26 U.S.C 5041))

§ 250.223 Changes of formulas.

Any change in the ingredients composing a product covered by an approved formula will necessitate the submission of a new formula.

§ 250.224 Filing and disposition of formulas.

Prior to shipment formulas required by this subpart shall be submitted in triplicate to and approved by the Director. The Director shall retain one copy, forward one copy to the Commissioner of Finance of the Virgin Islands, and return one copy to the applicant. The applicant shall maintain copies of approved formulas available for examination by insular agents.

§ 250.225 Previously approved formulas.

Any formula approved on Form 27–B Supplemental prior to January 1, 1980, shall continue to be valid until revoked or voluntarily surrendered. Any person holding such a formula is not required to submit a new formula. If an approved formula on Form 27–B Supplemental indicates that carbon dioxide will be added to, or retained in, still wine, the notice requirement of § 250.222 shall not apply.

§§ 250.232, 250.240, and 250.240a [Amended]

Paragraph 47. Sections 250.232, 250.240 and 250.240a are amended to delete references to serial numbers on strip stamps (a) in § 250.232 by deleting "serially numbered," (b) in § 250.240, by replacing "serial numbers of the" with "quantity of", and (c) in § 250.240a, by replacing "serial numbers (if any)" with "quantity".

Paragraph 48. Section 250.252 is revised (1) to liberalize requirements on destruction of strip stamps in the Virgin Islands and (2) to delete reference to serial numbers on strip stamps. As revised, § 250.252 reads as follows:

§ 250.252 Destruction or transfer of red strip stamps in the Virgin Islands.

When for any reason a Virgin Islands bottler or exporter has on hand a quantity of red strip stamps which are not to be affixed to containers for shipment to the United States, and it is impractical to return the stamps to the importer from whom they were received or to transfer them to another bottler or exporter conducting operations for the importer, the Virgin Islands bottler or exporter may destroy the stamps upon notice to the regional regulatory administrator of the region in which the importer's place of business is located. The importer shall file the notice identifying the size and quantity of stamps, the name and address of the Virgin Islands bottler or exporter who has possession of the stamps, and the reasons for destruction in the Virgin Islands. The importer shall prepare the applicable items on Form 1627 covering the stamps to be destroyed and forward it to the Virgin Islands bottler or exporter. Upon destruction of the stamps, the Virgin Islands bottler or exporter shall complete the applicable items on Form 1627 and return it to the importer. The importer may then take credit for the stamps on his strip stamp record and on Form 96.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C 5205))

Paragraph 49. Section 250.260 is amended to delete references to a revoked regulation and to clarify the language. As amended, § 250.260 reads as follows:

§ 250.260 Certificate.

Persons (except tourists) bringing liquors or articles from the Virgin Islands into the United States shall file the certificate provided for in § 250.205 with the district director of customs at the port of entry in the United States.

§ 250.261 [Amended]

Paragraph 50. Section 250.261 is amended to replace reference to formulas with reference to a requirement which will enable a customs officer to determine the rate of tax, by replacing "approved formula" with "certificate required by § 250.205".

Paragraph 51. Section 250.262 is amended to reflect the new method for determining the tax on distilled spirits. As amended, § 250.262 reads as follows:

§ 250.262 Determination of tax on distilled spirits.

If the certificate required by § 250.205 covers distilled spirits, the tax on

distilled spirits (and alcoholic ingredients contained in distilled spirits products), equal to the tax imposed by 26 U.S.C. 5001(a)(1), shall be collected on each proof gallon, and fractional part thereof, contained in the shipment.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C. 5001))

Paragraph 52. Section 250.265 is revised to reflect the new definition of distilled spirits. As revised, § 250.265 reads as follows:

§ 250.265 Determination of tax on articles.

Where articles contain distilled spirits, the tax will be colleted at the rate prescribed by 26 U.S.C. 5001(a)(1) on all alcohol contained therein, regardless of the source. Articles containing only wine and/or beer will be taxed at the rates prescribed by 26 U.S.C. 5041 and/or 5051, respectively. The quantities and kinds of liquors will be shown on the certificate prescribed in § 250.205.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C. 5001, 5007))

Paragraph 53. Immediately after Subpart O, the following new Subpart Oa is added. Sections 170.124, 170.126, 170.127, 170.128 and 170.129 from Subpart F of Part 170 are redesignated as Subpart Oa of Part 250. The requirements of the redesignated regulations are substantially revised (1) to reflect the new definition of "bulk container", (2) to delete reference to rectification tax, (3) to reflect the new regulatory provisions relating to bottling in bond (which replace repealed sections of law on that subject), (4) to change references to "Part 201" to "Part 19", (5) to delete instructions in the regulations that are now found on ATF forms, (6) to delete reference to gauging by an insular gauger, which is no longer prescribed, and (7) to change the numbers of ATF forms. As added, Subpart Oa reads as follows:

Subpart Oa—Shipment of Bulk Distilled Spirits From the Virgin Islands, Without Payment of Tax, for Transfer From Customs Custody to Internal Revenue Bond

Authority: The provisions of this Subpart Oa issued under Sec. 3, Pub. L. 90–630, 82 Stat. 1328, as amended (26 U.S.C. 5232) unless otherwise noted.

§ 250.300 General.

Distilled spirits brought into the United States from the Virgin Islands in bulk containers may, under the provisions of this subpart, be withdrawn by the proprietor of a distilled spirits plant from customs custody and transferred in such bulk containers or by pipeline to the bonded premises of his plant, without payment of the internal revenue tax imposed on such spirits by 26 U.S.C. 7652. Such spirits so withdrawn and transferred to a distilled spirits plant (a) may be redistilled or denatured only if 185 degrees or more of proof, and (b) may be withdrawn from internal revenue bond for any purpose authorized by 26 U.S.C. Chapter 51, in the same manner as domestic distilled spirits. Spirits transferred from customs custody to the bonded premises of a distilled spirits plant under the provisions of this subpart shall be received and stored thereat, and withdrawn or transferred therefrom, subject to the provisions of Part 19 of this chapter. The person operating the bonded premises of the distilled spirits plant to which spirits are transferred under the provisions of this subpart shall become liable for the tax on distilled spirits withdrawn from customs custody under 26 U.S.C. 5232, upon release of the spirits from customs custody, and the person bringing the spirits into the United States shall thereupon be relieved of his liability for such tax.

§ 250.301 Application, ATF Form 5100.16.

(a) *Application.* The proprietor of a distilled spirits plant desiring to withdraw distilled spirits as authorized in § 250.300 shall submit an application to the regional regulatory administrator on ATF Form 5100.16, in accordance with the instructions on the form.

(b) *Approval.* The application may be approved if the applicant's operations or unit bond is in the maximum penal sum, or, if in less than the maximum penal sum, is sufficient to cover the tax on the spirits to be transferred in addition to all other liabilities chargeable against such bond. However, no application may be approved unless the applicant has provided suitable facilities as provided in Part 19 of this chapter.

(c) *Termination.* An applicant may terminate an approved application, by retrieving and returning all outstanding copies, in accordance with the instructions on ATF Form 5100.16.

§ 250.302 Gauge and certification.

(a) *Gauge.* Virgin Islands spirits to be transferred from customs custody to internal revenue bond as provided in this subpart shall be gauged by the consignor, who shall prepare a report of such gauge, in duplicate, and attach both copies to the certificate required by § 250.205 of this chapter.

(b) *Certification.* The certificate prescribed by § 250.205 shall be prepared in duplicate if the Virgin Islands spirits are to be transferred from customs custody to internal revenue bond. Both copies of the certificate, with the applicable gauge report attached, shall be filed with the district director of customs at the port of entry. The original of the certificate and related report of gauge shall be attached to the original of ATF Form 5110.27 by the customs officer responsible for preparation of the ATF Form 5110.27 in accordance with § 250.303 of this subpart. The remaining copy of the certificate and related report of gauge shall be retained by the customs officer.

§ 250.303 Customs inspection and release.

The customs officer will not release distilled spirits without payment of internal revenue tax until he has determined that he has on file an approved ATF Form 5100.16 as prescribed in § 250.301 of this subpart, from the proprietor of the distilled spirits plant to which the spirits are to be transferred. Prior to release from customs custody, the customs officer shall inspect the spirits, and, if it appears that losses in transit were sustained from any container, he shall gauge the spirits in such container. The customs officer shall then prepare ATF Form 5110.27 in triplicate in accordance with the instructions on the form. When shipments are made in tanks, tank barges, cargo containers, or similar bulk containers (other than barrels, drums, or similar portable containers), the results of the inspection or the details of the gauge of each such bulk container shall be reported separately. In the case of barrels, drums, or similar portable containers, the results of the inspection shall be reported on the ATF Form 5110.27 and the details of the gauge, if any, shall be reported on ATF Form 5110.45. In compliance with the requirements of customs regulations, and on completion of ATF Form 5110.27 (and ATF Form 5110.45, if prepared) the customs officer shall release the spirits for transfer.

§ 250.304 Bulk conveyances to be sealed.

When a shipment of distilled spirits from customs custody to the distilled spirits plant is made in a tank, tank barge, cargo container, tank car, tank truck, or similar bulk conveyance, all openings affording access to the spirits shall be sealed by the customs officer with customs seals in such manner as will prevent unauthorized removal of spirits through such openings without detection.

§ 250.305 Transfer by pipeline at dock.

If the distilled spirits plant is equipped with suitable dock facilities, the distilled

spirits may, subject to all requirements of the customs laws and regulations, be transferred by pipeline from the vessel or barge through weighing tanks or other suitable measuring tanks into storage tanks on the bonded premises of the distilled spirits plant, or directly into storage tanks on such premises provided such storage tanks are equipped with suitable measuring devices for correctly indicating the actual contents therein. In all such cases of pipeline transfers, the distilled spirits shall be transferred under customs supervision, and released for deposit in the distilled spirits plant.

§ 250.312 [Amended]

Paragraph 54. Section 250.312 is amended to replace "§ 201.540b" and "Part 201" with "Part 19". Section Q. Part 251 is amended as follows:

PART 251—IMPORTATION OF DISTILLED SPIRITS, WINE AND BEER

Paragraph 1. The table of sections for Part 251 is amended to change the number of "Form 2609" to "ATF Form 5100.16" where it appears in the title of § 251.172. As amended, the table of sections reads as follows:

* * * * *

251.172 Application, ATF Form 5100.16.

* * * * *

Paragraph 2. The definitions in § 251.11 are amended to conform terminology to changes made by Pub. L. 96–39, and to reflect a substantive change in the definition of "distilled spirits" made by that law. Additionally, the statutory authority is amended to delete irrelevant citations. As amended, § 251.11 reads as follows:

§ 251.11 Meaning of terms.

* * * * *

Bonded premises—distilled spirits plant. The premises of a distilled spirits plant, or part thereof, on which distilled spirits operations defined in 26 U.S.C. 5002 are authorized to be conducted.

Bulk container. Any container having a capacity of more than 1 gallon.

Bulk distilled spirits. The term "bulk distilled spirits" means distilled spirits in a container having a capacity in excess of 1 gallon.

* * * * *

Distilled spirits or spirits. That substance known as ethyl alcohol, ethanol, or spirits of wine, in any form (including all mixtures or dilutions thereof, from whatever source or by whatever process produced).

Distilled spirits plant. An establishment qualified under the provisions of Part 19 of this chapter for the production, storage, or processing of spirits, or for authorized combinations of such operations.

* * * * *

(68A Stat. 917, as amended (26 U.S.C. 7805); 49 Stat. 981, as amended (27 U.S.C. 205))

Paragraph 3. Sections 251.40 and 215.43 are amended to reflect elimination of the wine gallon method for imposing distilled spirits tax, and to reflect the imposition of distilled spirits tax on all alcoholic ingredients added to distilled spirits products. As amended, §§ 251.40 and 251.43 read as follows:

§ 251.40 Distilled spirits.

A tax is imposed by 26 U.S.C. 5001, on all distilled spirits in customs bonded warehouses or imported into the United States at the rate prescribed in such section on each proof gallon and a proportionate tax at a like rate on all fractional parts of such proof gallon. All products of distillation, by whatever name known, which contain spirits, and any alcoholic ingredient added to such products, are considered to be spirits and are taxed as such. The tax shall be determined at the time of importation, or, if entered into bond, at the time of withdrawal therefrom.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C. 5201); Sec. 3, Pub. L. 90–630, 82 Stat. 1328, as amended (26 U.S.C. 5232))

§ 251.43 Liqueurs, cordials, and similar compounds.

A tax is imposed by 26 U.S.C. 5001 on all liqueurs, cordials, and similar compounds, containing distilled spirits, in a customs bonded warehouse or imported into the United States at the rate prescribed in such section on each proof gallon, and a proportionate tax at a like rate on all fractional parts of such proof gallon. The tax shall be determined at the time of importation, or, if entered into bond, at the time of withdrawal therefrom. Fortified or unfortified wines, containing not over 24 percent alcohol by volume, to which sweetening or flavoring materials, but no distilled spirits, have been added are not classified as liqueurs, cordials, or similar compounds, but are considered to be flavored wines only and are subject to internal revenue tax at the rates applicable to wines.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended, 1331, as amended (26 U.S.C. 5001, 5041))

§§ 251.48 and 251.58 [Amended]

Paragraph 4. Sections 251.48 and 251.58 are amended to replace "Part 201" with "Part 19".

Paragraph 5. Sections 251.63, 251.66, and 251.66a are amended to eliminate reference to serial numbers on strip stamps. As amended, §§ 251.63, 251.66, and 251.66a read as follows:

§ 251.63 Size of red strip stamps.

Red strip stamps shall be issued in a standard size for bottles or containers of 200 ml capacity or more, and in a small size for bottles or containers of less than 200 ml capacity.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 251.66 Approval of requisition and issuance of stamps.

The regional regulatory administrator will approve Form 428 and issue the stamps if:

(a) The importer is the holder of an importer's permit issued under the Federal Alcohol Administration Act and the regulations in 27 CFR Part 1;

(b) The quantity requisitioned is reasonable and necessary; and

(c) There is no information on which a denial of a requisition should be made under the provisions of § 251.92

When satisfied that Form 428 may be approved, the regional regulatory administrator shall enter the quantity of stamps issued and the date of issue and approve all copies of the form. The stamps shall be delivered to the applicant, and, if the stamps are mailed, or are delivered to anyone other than the applicant, two copies of the Form 428 shall accompany the stamp. Upon receipt of the stamps, the applicant shall acknowledge receipt on both copies of Form 428 and return one copy to the regional regulatory administrator who issued the stamps and, if an agent, one copy to the importer. In each instance when the regional regulatory administrator approves a requisition which has been submitted by an agent of an importer, the regional regulatory administrator shall immediately forward a copy of Form 428 to the importer, and, if the importer's place of business is located in another region, the regional regulatory administrator shall forward a copy to the regional regulatory administrator of the region in which the importer's place of business is located. If a requisition is disapproved for any reason, the regional regulatory administrator shall return a copy of Form 428 marked "disapproved" to the applicant.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 251.66a Alternative method for issuance of stamps.

(a) *Action by regional regulatory administrator.* When the regional regulatory administrator determines that the interest of the Government will be

best served, strip stamps may be shipped directly to the applicant, as shown on Form 428, from a location other than the office of the regional regulatory administrator. In that case, the regional regulatory administrator shall notify the applicant that strip stamps will be delivered by an alternative method and state the minimum quantity, if any, of each size of stamp which may be requisitioned on any particular Form 428. Upon approval of Form 428, two copies of the form shall be returned to the applicant, and, if the Form 428 was prepared by an agent of an importer, a copy of the form shall be forwarded to the importer and, if applicable, to the regional regulatory administrator of the region in which the importer's place of business is located.

(b) *Action by applicant.* Upon receipt of the stamps, the applicant shall (1) indicate the quantity of stamps received and acknowledge receipt of the stamps on both copies of Form 428, and (2) return one copy to the regional regulatory administrator to whom the Form 428 was submitted for approval and, if an agent, one copy to the importer.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

Paragraph 6. Section 251.89a is amended to liberalize requirements for destruction of red strip stamps abroad, and to delete reference to serial numbers on strip stamps. As amended § 251.89a reads as follows:

§ 251.89a Destruction or transfer of red strip stamps abroad.

When for any reason a foreign bottler or exporter has on hand a quantity of red strip stamps which are not to be affixed to containers for export to the United States, and it is impractical to return the stamps to the importer from whom they were received or to transfer them to another bottler or exporter conducting operations for the importer, the foreign bottler or exporter may destroy the stamps upon notice to the regional regulatory administrator of the region in which the importer's place of business is located. The importer shall file the notice identifying the size and quantity of stamps, the name and address of the foreign bottler or exporter who has possession of the stamps, and the reasons for destruction abroad. The importer shall prepare the applicable items on Form 1627 covering the stamps to be destroyed and forward it to the foreign bottler or exporter. Upon destruction of the stamps, the foreign bottler or exporter shall complete the applicable items on Form 1627 and return it to the importer. The importer may then take credit for the stamps on his strip stamp record and on Form 96.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

Paragraph 7. Section 251.171 is amended (1) to change the minimum size of bulk containers from 5 gallons to more than 1 gallon, (2) to replace reference to a repealed section of law on bottling in bond with a reference to new regulatory requirements on the same subject in 27 CFR Part 5, and (3) to replace "Part 201" with "Part 19". As amended, § 251.171 reads as follows:

§ 251.171 General provisions.

Imported distilled spirits in bulk containers may, under the provisions of this subpart, be withdrawn by the proprietor of a distilled spirits plant from customs custody and transferred in such bulk containers or by pipeline to the bonded premises of his plant, without payment of the internal revenue tax imposed on imported spirits by 26 U.S.C. 5001. Imported spirits so withdrawn and transferred to a distilled spirits plant (a) may be redistilled or denatured only if of 185 degrees or more of proof, and (b) may be withdrawn from internal revenue bond for any purpose authorized by 26 U.S.C. Chapter 51, in the same manner as domestic distilled spirits. Imported distilled spirits transferred from customs custody to the bonded premises of a distilled spirits plant under the provisions of this subpart shall be received and stored thereat, and withdrawn or transferred therefrom, subject to the applicable provisions of Part 19 of this chapter. The person operating the bonded premises of the distilled spirits plant to which imported spirits are transferred shall become liable for the tax on distilled spirits withdrawn from customs custody under 26 U.S.C. 5232, upon release of the spirits from customs custody, and the importer shall thereupon be relieved of his liability for such tax.

(Sec. 3, Pub. L. 90–630, 82 Stat. 1328, as amended (26 U.S.C. 5232))

Paragraph 8. Section 251.172 is amended (1) to change the numbers of ATF forms, (2) to eliminate references to supervision by ATF officers assigned to distilled spirits plants, (3) to replace references to "Part 201" with "Part 19", and (4) to delete requirements that have been incorporated as instructions on ATF Form 5100.16 (formerly Form 2609). As amended, § 251.172 reads as follows:

§ 251.172 Application, ATF Form 5100.16.

(a) *Application.* The proprietor of a distilled spirits plant desiring to withdraw distilled spirits, as authorized in § 251.171, shall submit an application to the regional regulatory administrator on ATF Form 5100.16, in accordance with instructions on the form.

(b) *Approval.* The application may be approved if the applicant's operations or unit bond; required by Part 19 of this chapter, is in the maximum penal sum, or, if in less than the maximum penal sum, is sufficient to cover the tax on the spirits to be transferred in addition to all other liabilities chargeable against such bond. However, no application may be approved unless the applicant has provided suitable facilities as provided in Part 19 of this chapter.

(c) *Termination.* An applicant may terminate an approved application, by retrieving and returning all outstanding copies, in accordance with instructions on ATF Form 5100.16.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended 1322, as amended (26 U.S.C. 5001, 5007); Sec. 3, Pub. L. 90–630, 82 Stat. 1328, as amended (26 U.S.C. 5232))

Paragraph 9. Section 251.173 is amended (1) to change the numbers of ATF forms, (2) to eliminate reference to ATF officers assigned to distilled spirits plants, and (3) to delete requirements that have been incorporated as instructions on ATF Form 5110.27 (formerly Form 206). As amended, § 251.173 reads as follows:

§ 251.173 Customs gauge and release.

The customs officer will not release distilled spirits without payment of internal revenue tax until he has determined that he has on file an approved ATF Form 5100.16 from the proprietor of the distilled spirits plant to which the spirits are to be transferred. Prior to release from customs custody, the customs officer shall prepare ATF Form 5110.27, in accordance with the instructions on the form. When shipments are made in tank cars or tank trucks, the details of the gauge of each tank car or tank truck shall be reported separately. In the case of barrels, drums, or similar portable containers, the details of the gauge shall be shown on ATF Form 5110.45, in triplicate. On compliance with the requirements of customs regulations (including determination of duties due), and on completion of ATF Form 5110.27 (and ATF Form 5110.45, if required), the customs officer shall release the spirits for transfer.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended 1322, as amended (26 U.S.C. 5001, 5007); Sec. 3, Pub. L. 90–630, 82 Stat. 1328, as amended (26 U.S.C. 5232))

Paragraph 10. Section 251.175 is amended to delete the requirement for locks on tanks on the bonded premises of a distilled spirits plant and to change

the number of an ATF form. Editorial changes in the statutory citation are also made. As amended, § 251.175 reads as follows:

§ 251.175 Transfer by pipeline at dock.

Where the distilled spirits plant is equipped with suitable dock facilities, the distilled spirits may, subject to all requirements of the customs laws and regulations, be transferred by pipeline from the importing vessel or barge through weighing tanks or other suitable measuring tanks into empty storage tanks on the bonded premises of the distilled spirits plant, or directly into storage tanks on such premises provided such storage tanks are equipped with suitable measuring devices for correctly indicating the actual contents. In all such cases of pipeline transfers, the distilled spirits shall be transferred under customs supervision, gauged immediately by a customs officer, and thereupon released for deposit in the distilled spirits plant. The details of the gauge shall be reported on ATF Form 5110.27 and distribution of the form made in accordance with the instructions thereon.

(Sec. 3, Pub. L. 90-630 82 Stat. 1328, as amended (26 U.S.C. 5232))

§ 251.184 [Amended]

Paragraph 11. Section 251.184 is amended to replace "Form 2629", wherever it appears, with "ATF Form 5110.26".

Paragraph 12. Section 251.202 is amended to delete reference to an obsolete regulation and to change references to "Part 201" to references to "Part 19". As amended, § 251.202 reads as follows:

§ 251.202 Standards of fill.

Distilled spirits imported into the United States in containers of 1 gallon (3.785 liters) or less for sale shall be imported only in liquor bottles, including liquor bottles of less than 200 ml capacity, which conform to the applicable standards of fill provided in § 5.47a of this chapter. Empty liquor bottles, including liquor bottles of less than 200 ml capacity, which conform to the provisions of Part 19, or Subpart E of Part 5 of this chapter, may be imported for packaging distilled spirits in the United States as provided in Part 19 of this chapter. Section R. Part 252 is amended as follows:

PART 252—EXPORTATION OF LIQUORS

Paragraph 1. The table of sections for Part 252 is amended to reflect (1) amendments to titles of some sections, (2) revocation of §§ 252.91a, 252.97, 252.173 (and the undesignated center head immediately preceding it), Subpart J, and §252.263, and (3) addition of new § 252.195b. As amended, the table of sections reads as follows:

* * * * *

252.58 Operations or unit bond—distilled spirits.

* * * * *

252.92 Application or notice, ATF Form 5100.11.

* * * * *

252.96 Approval of application.

* * * * *

252.102 Bottles to be stamped or have alternative devices affixed.

* * * * *

252.116 Notice of return of spirits withdrawn without payment of tax.

* * * * *

252.118 Receipt of spirits.

* * * * *

252.122 Application or notice, ATF Form 5100.11.

* * * * *

252.152 Notice, ATF Form 5100.11.

* * * * *

252.161 Notice of return of specially denatured spirits.

* * * * *

252.163 Receipt of specially denatured spirits.

* * * * *

Filing of Notice and Removal

252.190 Notice, ATF Form 5110.30.

* * * * *

252.195 Disposition of ATF Form 5110.30.

252.195a Claims on spirits tax determined before January 1, 1980.

252.195b Claims on spirits tax determined on and after January 1, 1980.

Subpart J—[Revoked]

* * * * *

§ 252.3 [Amended]

Paragraph 2. Section 252.3 is amended (1) to replace "Part 186" with "Part 13" and (2) to replace "Part 201" with "Part 19".

Paragraph 3. Section 252.11 is amended (1) to amend the definitions of *"Bonded premises—distilled spirits plant"*, *"Bulk container"*, *"Distilled spirits or spirits"*, *"Distilled spirits plant"* and *"Tax"*, (2) to delete definitions of *"Export storage facilities"*, *"Rectifier"* and *"Tax gallon"*, and (3) to correct the statutory authority. As amended, § 252.11 reads as follows:

§ 252.11 Meaning of Terms.

* * * * *

Bonded premises—distilled spirits plant. The premises of a distilled spirits plant, or part thereof, on which distilled spirits operations defined in 26 U.S.C. 5002 are authorized to be conducted.

* * * * *

Bulk container. any container having a capacity of more than 1 gallon.

* * * * *

Distilled spirits or spirits. That substance known as ethyl alcohol, ethanol, or spirits of wine, in any form (including all dilutions and mixtures thereof, from whatever source or by whatever process produced) but not denatured spirits.

Distilled spirits plant. An establishment qualified under the provisions of Part 19 of this chapter for the production, warehousing, or processing of spirits, or for authorized combinations of such operations.

* * * * *

Exportation * * *

Foreign-trade zone or zone. * * *

* * * * *

Proprietor. * * *

Region. * * *

* * * * *

Tax. The distilled spirits tax, the beer tax, or the applicable wine tax, as the case may be, imposed by 26 U.S.C. Chapter 51.

U.S.C. * * *

* * * * *

(68A Stat. 917, as amended (26 U.S.C. 7805); 49 Stat. 981, as amended (27 U.S.C. 205))

§ 252.22 [Amended]

Paragraph 4. Section 252.22 is amended to replace "Form 206, 1582,", wherever this phrase appears, with "ATF Form 5100.11, 5110.30,".

Paragraph 5. Section 252.25 is revised to delete reference to provisions which were repealed from Title 26 of the United States Code. As revised, § 252.25 reads as follows:

§ 252.25 General.

The proprietor of a duly constituted manufacturing bonded warehouse, established in accordance with law and the regulations in 19 CFR Chapter I, may withdraw distilled spirits or wines from any distilled spirits plant or bonded wine cellar, as the case may be, without payment of tax, for use in the manufacture of products for export, or shipment in bond to Puerto Rico or in the case of distilled spirits, for transfer to a customs bonded warehouse, as provided for in 26 U.S.C. 5066. The proprietor of the manufacturing bonded warehouse shall furnish bond in accordance with the provisions of § 252.63 or § 252.64.

(Sec. 311, Tariff Act of 1930, 46 Stat. 691, as amended (19 U.S.C. 1311); Sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended, 1380, as amended (26 U.S.C. 5214, 5362))

Paragraph 6. Section 252.26 is amended (1) to delete references to spirits bottled in bond and to

withdrawals from export storage facilities at distilled spirits plants, and (2) to add a reference to alternative devices affixed in lieu of strip stamps. As amended, § 252.26 reads as follows:

§ 252.26 Entry into customs bonded warehouses.

(a) *Distilled spirits withdrawn without payment of tax.*

(1) Bottled distilled spirits may, subject to this part, be withdrawn from bonded premises for transfer to customs bonded warehouses in which imported distilled spirits are permitted to be stored in bond for entry pending withdrawal as provided in § 252.27. Withdrawals from bonded premises under the provisions of this paragraph shall be treated as withdrawals for exportation under the provisions of 26 U.S.C. 5214(a)(4).

(2) Distilled spirits may, subject to this part, be withdrawn from bonded premises for transfer (for the purpose of storage pending exportation) to any customs bonded warehouse from which distilled spirits may be exported. These withdrawals shall be treated as withdrawals for exportation under the provisions of 26 U.S.C. 5214(a)(9).

(b) *Bottled distilled spirits eligible for export with benefit of drawback.* Bottled distilled spirits stamped, restamped, or affixed with alternative devices, and marked, especially for export with benefit of drawback may, subject to this part, be transferred to customs bonded warehouses in which imported distilled spirits are permitted to be stored, and entered pending withdrawal as provided in § 252.27, as if such spirits were for exportation.

* * * * *

§ 252.27 [Amended]

Paragraph 7. Section 252.27 is amended to replace the first word in the section, "Distilled", with the words "Bottled distilled".

§ 252.36 [Amended]

Paragraph 8. Section 252.36 is amended to replace "Form 206, 1582," with "ATF Form 5100.11, 5110.30,".

Paragraph 9. The statutory authority for § 252.45 is amended to reflect recodification of one section of law. As amended, the statutory authority for § 252.45 reads as follows:

§ 252.45 Retention of records.

* * * * *

(Sec. 201, Pub. L. 85–859, 72 Stat. 1342, as amended, 1381, as amended, 1390, as amended, 1395, as amended (26 U.S.C. 5114, 5367, 5415, 5555); Sec. 807, Pub. L. 96–39, 93 Stat. 283 (26 U.S.C. 5207))

Paragraph 10. Section 252.51 is amended to clarify the language and to replace "Part 201" with "Part 19". As amended, § 252.51 reads as follows:

§ 252.51 General.

Every person required by this part to file a bond or consent of surety shall prepare and execute it on the prescribed form and file it with the regional regulatory administrator of the region in which is located the premises from which the withdrawal or removal of spirits or wines is made without payment of tax, or, in the case of taxpaid or tax-determined spirits or wines on which claim for drawback of tax will be filed, with the regional regulatory administrator for the region in which the claim will be filed, in accordance with the procedures of this part. The procedures in Parts 19, 240, or 245 of this chapter shall govern bonds covering distilled spirits plants, bonded wine cellars and breweries, respectively.

§ 252.56 [Amended]

Paragraph 11. The statutory authority for § 252.56 is amended to delete reference to a repealed section of law by deleting "1393" from the Statutes at Large citation and by deleting "5522" from the United States Code citation.

Paragraph 12. Section 252.58 is amended (1) to replace "bond, Form 2601," with "operations or unit bond,", (2) to change "Part 201" to "Part 19", (3) to delete an obsolete provision, and (4) to correct the statutory authority. As amended, § 252.58 reads as follows:

§ 252.58 Operations or unit bond—distilled spirits.

(a) *Spirits.* Where spirits are withdrawn without payment of tax, as authorized in § 252.91, from the bonded premises of a distilled spirits plant on application of the proprietor thereof, the operations or unit bond, given by the proprietor and approved under the provisions of Part 19 of this chapter, shall cover such withdrawals.

(b) *Wine.* Where, under the provisions of Part 19 of this chapter, an operations or unit bond has been given and approved to cover the operations of a distilled spirits plant and an adjacent bonded wine cellar, such bond shall cover the withdrawal of wine without payment of tax, as authorized in § 252.121, from such bonded wine cellar on application for such withdrawal by the proprietor.

(c) *Specially denatured spirits.* Where specially denatured spirits are withdrawn free of tax, as authorized in § 252.151, from the bonded premises of a distilled spirits plant on application of the proprietor thereof, the proprietor shall file a consent of surety extending the terms of the operations or unit bond, which consent shall be in the following form:

> The obligors agree to extend the terms of said bond to cover all liability that may be incurred on all specially denatured spirits withdrawn by the principal for exportation or transfer to a foreign-trade zone, for which satisfactory evidence of exportation, or of deposit in a foreign-trade zone, as required by law and regulations, is not submitted to the regional regulatory administrator.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1352, as amended, 1362, as amended (26 U.S.C. 5175, 5214); Sec. 3, Pub. L. 91–659, 84 Stat. 1965, as amended (26 U.S.C. 5066); Sec. 805, Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

§ 252.61 [Amended]

Paragraph 13. Section 252.61 is amended to delete reference to a revoked paragraph of regulation by deleting "or (b)," where it appears immediately after "(a) (5),".

§ 252.62 [Amended]

Paragraph 14. Section 252.62 is amended (1) to delete reference to a revoked paragraph of regulation by deleting "or (b)," where is appears immediately after "(a) (5),", and (2) to delete paragraph (d), pertaining to on premises supervision.

Paragraph 15. The statutory authority for § 252.63 is corrected. As amended, § 252.63 reads as follows:

§ 252.63 Bond, Form 2736.

* * * * *

(Sec. 201, Pub. L. 85–859, 72 Stat. 1352, as amended, 1380, as amended (26 U.S.C. 5175, 5362))

Paragraph 16. Section 252.64 is amended (1) to clarify requirements for apportioning bonds and (2) to correct the statutory authority. As amended, paragraph (b) of § 252.64 reads as follows:

§ 252.64 Bond, Form 2737.

* * * * *

(b) *Apportioning bonds.* If the bond, Form 2737 is in less than the maximum penal sum, the principal shall apportion the bond, in accordance with the requirements on the bond form. The principal may reapportion the bond coverage, if changing conditions make this necessary, by filing a consent of surety, Form 1533, for approval by the regional regulatory administrator.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1352, as amended, 1380, as amended (26 U.S.C. 5175, 5362))

§ 252.65 [Amended]

Paragraph 17. Section 252.65 is amended to delete reference to an obsolete form by deleting "1629," from

the listing of form numbers used for filing export drawback claims.

§ 252.67 [Amended]

Paragraph 18. The statutory authority for § 252.67 is amended to delete reference to a repealed section of law by deleting "1393" from the Statutes at Large citation and by deleting "5522" from the United States Code citation.

§ 252.70 [Amended]

Paragraph 19. Section 252.70 is amended to replace "Form 206" with "ATF Form 5100.11". The statutory authority for § 252.70 is amended to delete reference to a repealed section of law by deleting "1393" from the Statutes at Large citation and by deleting "5522" from the United States Code citation.

Paragraph 20. Sections 252.71, 252.72 and 252.73 are amended to correct the statutory authorities. As amended, §§ 252.71, 252.72 and 252.73 read as follows:

§ 252.71 Termination of bonds, Forms 2735, 2737 and 2738.

* * * * *

(Sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended, 1352, as amended, 1353, as amended (26 U.S.C. 5062, 5175, 5176))

§ 252.72 Application of surety for relief from bond.

* * * * *

(68A Stat. 749, as amended (26 U.S.C. 6065); Sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended, 1352, as amended (26 U.S.C. 5062, 5175))

§ 252.73 Relief of surety from bond.

* * * * *

(Sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended, 1352, as amended, 1353, as amended (26 U.S.C. 5062, 5175, 5176))

§ 252.91 [Amended]

Paragraph 21. Section 252.91 is amended to delete reference to export storage facilities at a distilled spirits plant by revoking paragraph (b) and redesignating paragraph (c) as paragraph (b). The statutory authority for § 252.91 is amended to delete reference to a repealed section of law by deleting "1393" from the Statutes at Large citation and by deleting "5522" from the United States Code citation.

§ 252.91a [Revoked]

Paragraph 22. Section 252.91a, relating to export storage facilities at a distilled spirits plant, is revoked.

Paragraph 23. Section 252.92 is revised (1) to change an ATF form number, (2) to delete references to on premises supervision and (3) to correct the statutory authority. As revised, § 252.92 reads as follows:

§ 252.92 Application or notice, ATF Form 5100.11.

(a) *Export, use on vessels and aircraft, and transfer to a foreign-trade zone or a customs bonded warehouse.* Application for or notice of the withdrawal of distilled spirits without payment of tax for exportation from the United States, or for use on vessels and aircraft, or for transfer to a customs bonded warehouse or a foreign-trade zone, shall be made by the exporter on ATF Form 5100.11. If the shipment is for use on aircraft, an extra copy, marked "Consignee's Copy", shall be prepared. If the exporter is not the proprietor of the bonded premises of the distilled spirits plant from which the spirits are to be withdrawn, the exporter shall prepare ATF Form 5100.11 as an application, in accordance with the instructions on the form, and shall forward all copies of the form to the regional regulatory administrator of the region in which the distilled spirits plant is located. If the exporter is the proprietor of the bonded premises of the distilled spirits plant from which the spirits are withdrawn, the exporter shall prepare ATF Form 5100.11 as a notice in accordance with the instructions on the form.

(b) *Manufacturing bonded warehouse.* Application for the withdrawal of distilled spirits without payment of tax for transportation to and deposit in a manufacturing bonded warehouse shall be made by the proprietor of such warehouse on ATF Form 5100.11, in quadruplicate. The proprietor shall forward all copies of the application to the regional regulatory administrator of the region in which the distilled spirits plant is located.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5214); sec. 3, Pub. L. 91–659, 84 Stat. 1965, as amended (26 U.S.C. 5066))

§ 252.93 [Amended]

Paragraph 24. The statutory authority for § 252.93 is amended to delete reference to a repealed section of law by deleting "1393" from the Statutes at Large citation and by deleting "5522" from the U.S. Code citation.

Paragraph 25. Section 252.94 is amended (1) to change "Part 201" to "Part 19", (2) to provide for the use of alternative devices in lieu of strip stamps, and (3) to correct the statutory authority. As amended, § 252.94 reads as follows:

§ 252.94 Containers.

Distilled spirits authorized to be withdrawn without payment of tax from the bonded premises of a distilled spirits plant under the provisions of this subpart may be withdrawn from such establishment in such containers as may be authorized in Part 19 of this chapter. Except as otherwise provided in this part, the gauging, packing, bottling, casing, marking, stamping or affixing of alternative devices, and reporting of distilled spirits prior to withdrawal shall be in accordance with the provisions of Part 19 of this chapter.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1360, as amended, 1374, as amended (26 U.S.C. 5205, 5206, 5301))

Paragraph 26. Section 252.95 is amended (1) to change "Part 201" to "Part 19", (2) to delete language relating to a repealed section of law, (3) to change an ATF form number, and (4) to correct the statutory authority. As amended, § 252.95 reads as follows:

§ 252.95 Change of packages for exportation.

Whenever the exporter desires to transfer distilled spirits from packages filled in internal revenue bond to such other suitable packages as may be desired for exportation, such change of packages shall be made under the procedures of Part 19 of this chapter, prior to the preparation of ATF Form 5100.11 covering the removal of the distilled spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1360, as amended, 1374, as amended (26 U.S.C. 5205, 5206, 5301))

Paragraph 27. Section 252.96 is revised to reflect elimination of on premises supervision. As revised, § 252.96 reads as follows:

§ 252.96 Approval of application.

If ATF Form 5100.11 has been properly executed, and the required bond has been filed in a sufficient amount, the regional regulatory administrator shall approve the application on all copies of the form and send them to the proprietor of the bonded premises from which the spirits will be withdrawn.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

§ 252.97 [Revoked]

Paragraph 28. Section 252.97, relating to the repealed 20 year bonded storage limitation, is revoked.

Paragraph 29. Section 252.98 is amended (1) to change the numbers of ATF forms, (2) to change "Part 201" to "Part 19", (3) to delete reference to on premises supervision, and (4) to correct the statutory authority. As amended, § 252.98 reads as follows:

§ 252.98 Inspection and regauge.

The proprietor shall inspect all containers to be withdrawn pursuant to ATF Form 5100.11 and shall regauge all

packages. However, if distilled spirits are contained in bottles, or in tin, glass, or similar containers, or in sealed metal drums, or if they are to be withdrawn on the filling or original gauge (as authorized in Part 19 of this chapter), a regauge of such spirits need not be made. When a container bears evidence of tampering, or of unusual loss, the proprietor shall provide satisfactory explanation and file a report in accordance with the applicable provisions of Subpart P of Part 19 of this chapter. If the withdrawal is to be made subject to regauge, the proprietor shall make such regauge and shall make a report of regauge on ATF Form 5110.45, in quadruplicate. He shall attach a copy of ATF Form 5110.45 to each copy of ATF Form 5100.11 and shall enter his report of regauge on all copies of ATF Form 5100.11.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

§ 252.99 [Amended]

Paragraph 30. Section 252.99 is amended to deleted reference to on premises supervision by deleting the last sentence from the section.

Paragraph 31. Section 252.100 is amended (1) to delete reference to on premises supervision, (2) to change the numbers of ATF forms, (3) to change "Part 201" to "Part 19", and (4) to correct the statutory authority. As amended, § 252.100 reads as follows:

§ 252.100 Gauge after reduction.

Where spirits in packages have been reduced in proof under the provisions of § 252.99, the proprietor shall again gauge the packages and report the details thereof on another set of ATF Form 5110.45, in quadruplicate. Any unusual loss ascertained after reduction shall be satisfactorily explained by the proprietor and reported in accordance with the applicable provisions of Part 19 of this chapter. Each such report of gauge shall have noted thereon the statement "Gauge After Reduction", and a copy thereof shall be attached to each copy of ATF Form 5100.11 in addition to the copy of the ATF Form 5110.45 covering the withdrawal gauge. After the spirits have been reduced and gauged, the proprietor shall also enter a report of such gauge on all copies of ATF Form 5100.11.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

§ 252.101 [Amended]

Paragraph 32. Section 252.101 is amended by changing "Part 201" to "Part 19".

Paragraph 33. Section 252.102 is revised to add provisions relating to alternative devices and to delete reference to export strip stamps for spirits bottled in bond. As revised, § 252.102 reads as follows:

§ 252.102 Bottles to be stamped or have alternative devices affixed.

Every bottle containing distilled spirits to be withdrawn under the provisions of this subpart shall have a strip stamp or alternative device procured and affixed in accordance with the provisions of Part 19 of this chapter, and the strip stamp or alternative device shall be legibly and permanently overprinted or stamped with the word "EXPORT".

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 252.103 [Amended]

Paragraph 34. Section 252.103 is amended by changing "Part 201" to "Part 19". The statutory authority for § 252.103 is amended to delete reference to a repealed section of law by deleting "1393" from the Statutes at Large citation and by deleting "5522" from the U.S. Code citation.

§ 252.104 [Amended]

Paragraph 35. Section 252.104 is amended to delete reference to on premises supervision by replacing the words "ATF officers in charge of distilled spirits plants from which such spirits are withdrawn," with the words "the regional regulatory administrator".

§ 252.105 [Amended]

Paragraph 36. Section 252.105 is amended to change "Form 206" to "ATF Form 5100.11".

§ 252.107 [Amended]

Paragraph 37. Section 252.107 is amended to change "Form 206" to "ATF Form 5100.11" and to change "Form(s) 2630" to "ATF Form(s) 5110.45".

Paragraph 38. Sections 252.116, 252.117 and 252.118 are revised to substantially liberalize the requirements for returning spirits to a distilled spirits plant after withdrawal for exportation. As revised, the introductory paragraph and paragraph (e) of § 252.116 are revised, the last two sentences of § 252.116 are deleted and §§ 252.117 and 252.118 are revised to read as follows:

§ 252.116 Notice of return of spirits withdrawn without payment of tax.

If a proprietor of a distilled spirits plant desires to return spirits to his plant as provided in § 252.115, he shall file a notice with the regional regulatory administrator for the region in which the plant is located. A copy of the notice shall be prepared for submission to the customs official, as required by § 252.117. The notice shall be executed under the penalties of perjury and shall show:

* * * * *

(e) Serial number of the ATF Form 5100.11 and the date withdrawn.

* * * * *

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended, 1365, as amended (26 U.S.C. 5214, 5223))

§ 252.117 Responsibility for return of spirits.

The principal on the bond under which the spirits were withdrawn without payment of tax shall be responsible for arranging the return of the spirits to the distilled spirits plant receiving them. The principal or his agent shall submit a copy of the notice required by § 252.116 to the appropriate customs official. If the spirits are returned before the ATF Form 5100.11 has been filed with the customs official, the principal shall submit the form with the notice. The customs officer shall, if the spirits are eligible for return under § 252.115, accept the notice as authority for the return of the spirits to the distilled spirits plant identified in the notice. The customs officer shall retain the notice and shall mark each copy of ATF Form 5100.11 "Canceled", note the date thereon, return both copies to the principal, and, if the spirits are in customs custody, release them for return. The principal shall retain one copy of the canceled ATF Form 5100.11 and file one copy with the regional regulatory administrator identified on the form.

(Sec. 201, Pub. L. 85–859, 72 Stat 1362, as amended, 1365, as amended (26 U.S.C. 5214, 5223))

§ 252.118 Receipt of spirits.

The receipt, gauge, and disposition of the distilled spirits at the distilled spirits plant shall be in accordance with the applicable provisions of Subpart U of Part 19 of this chapter.

(Sec. 201, Pub. L. 85–859, 72 Stat 1362, as amended, 1365, as amended (26 U.S.C. 5214, 5223))

§ 252.121 [Amended]

Paragraph 39. The statutory authority for § 252.121 is amended to delete reference to a repealed section of law by deleting "1393" from the Statutes at Large citation and by deleting "5522" from the U.S. Code citation.

§ 252.122 [Amended]

Paragraph 40. Section 252.122 is amended to change "Form 206" and "Forms 206,", wherever these phrases appear, to "ATF Form 5100.11" and to "ATF Forms 5100.11", respectively. The

statutory authority for § 252.122 is amended to delete reference to a repealed section of law by deleting "1393" from the Statutes at Large citation and by deleting "5522" from the U.S. Code citation.

§ 252.123 [Amended]

Paragraph 41. The statutory authority for § 252.123 is amended to delete reference to a repealed section of law by deleting "1393" from the Statutes at Large citation and by deleting "5522" from the U.S. Code citation.

§§ 252.125, 252.131, 252.132 and 252.133 [Amended]

Paragraph 42. Sections 252.125, 252.131, 252.132 and 252.133 are amended to change "Form 206" and "Forms 206", wherever these phrases appear, to "ATF Form 5100.11" and to "ATF Forms 5100.11", respectively.

Paragraph 43. Section 252.151 is amended to change a reference to an ATF form number. As amended, § 252.151 reads as follows:

§252.151 General.

* * * * *

(b) * * *

All such withdrawals shall be made under a consent of surety on the proprietor's operations or unit bond, as prescribed in § 252.58(c).

Paragraph 44. Section 252.152 is amended to change an ATF form number and to delete reference to on premises supervision. As amended, § 252.152 reads as follows:

§ 252.152 Notice, ATF Form 5100.11.

Notice of withdrawal of specially denatured spirits, as authorized in § 252.151 shall be made on ATF Form 5100.11, in quadruplicate, by the proprietor of the distilled spirits plant from which the denatured spirits are to be withdrawn. Upon removal from the bonded premises, a copy of the form shall be submitted to the regional regulatory administrator.

§ 252.154 [Amended]

Paragraph 45. Section 252.154 is amended by changing "Part 201", wherever it appears, to "Part 19".

§ 252.160 [Amended]

Paragraph 46. Section 252.160 is amended to replace the words, "bond, Form 2601," with the words, "operations or unit bond".

Paragraph 47. Sections 252.161, 252.162 and 252.163 are revised to substantially liberalize requirements for returning specially denatured spirits to a distilled spirits plant after withdrawal for exportation. As revised, the introductory paragraph and paragraphs (c) and (g) of § 252.161, and §§ 252.162 and 252.163 read as follows:

§ 252.161 Notice of return of specially denatured spirits.

If a proprietor of a distilled spirits plant desires to return specially denatured spirits to his plant as provided in § 252.160, he shall file a notice with the regional regulatory administrator for the region in which his plant is located. A copy of the notice shall be prepared for submission to the customs official, as required by § 252.162. The notice shall be executed under the penalties of perjury and shall show:

* * * * *

(c) Serial number of the ATF Form 5100.11 and the date withdrawn.

* * * * *

(g) Disposition to be made of specially denatured spirits, i.e. redistillation or return to processing on the bonded premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended, 1365, as amended (26 U.S.C. 5214, 5223))

§ 252.162 Responsibility for return of specially denatured spirits.

The principal on the bond under which the specially denatured spirits were withdrawn free of tax shall be responsible for arranging the return of the spirits to the distilled spirits plant receiving them. The principal or his agent shall submit a copy of the notice required by § 252.161 to the appropriate customs official. If the specially denatured spirits are returned before the ATF Form 5100.11 has been filed with the customs official, the principal shall submit the form with the notice. The customs officer shall, if the specially denatured spirits are eligible for return under § 252.160, accept the notice as authority for the return of the specially denatured spirits to the distilled spirits plant identified in the notice. The customs officer shall retain the notice and shall mark each copy of ATF Form 5100.11 "Canceled", note the date thereon, return both copies to the principal, and, if the spirits are in customs custody, release them for return. The principal shall retain one copy of the canceled ATF Form 5100.11 and file one copy with the regional regulatory administrator identified on the form.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended, 1365, as amended (26 U.S.C. 5214, 5223))

§ 252.163 Receipt of specially denatured spirits.

The receipt, gauge, and disposition of the specially denatured spirits at the distilled spirits plant shall be in accordance with the applicable provisions of Subpart U of Part 19 of this chapter.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended, 1365, as amended (26 U.S.C. 5214, 5223))

Paragraph 48. Section 252.171 is amended to add provisions relating to alternative devices in lieu of strip stamps and to change "Part 201" to "Part 19". As amended the introductory clause of § 252.171 reads as follows:

§ 252.171 General.

Distilled spirits manufactured, produced, bottled in bottles, packed in containers, or packaged in casks or other bulk containers in the United States on which an internal revenue tax has been paid or determined, and which have been marked (if in packages) or stamped, restamped, or affixed with alternative devices, and marked (if in cases), under the provisions of Part 19 of this chapter and of this part, as applicable, especially for export with benefit of drawback may be:

* * * * *

§ 252.173 [Revoked]

Paragraph 49. Section 252.173 and the undesignated center head immediately preceding it, relating to standard export drawback rates, are revoked.

§ 252.190 [Amended]

Paragraph 50. Section 252.190 is amended to replace "Form 1582" with "ATF Form 5110.30".

Paragraph 51. Section 252.192 is amended to change the numbers of ATF forms and to eliminate on premises supervision. As amended, § 252.192 reads as follows:

§ 252.192 Packages of distilled spirits to be gauged.

Distilled spirits in packages or other bulk containers which are to be removed for export with benefit of drawback, shall be gauged by the distilled spirits plant proprietor prior to preparation of notice on ATF Form 5110.30. However, if an inspection discloses no evidence of loss and removal is made within 30 days from the time of packaging the distilled spirits, the filling gauge shall be considered the gauge at the time of removal. A report of gauge shall be made by the proprietor on ATF Form 5110.45, in quadruplicate (appropriately modified), and a copy of the report of gauge shall be attached to each copy of ATF Form 5110.30 and considered a part of the claim.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

§ 252.193 [Amended]

Paragraph 52. Section 252.193 is amended to replace "Part 201", wherever it appears, with "Part 19".

§ 252.195 [Amended]

Paragraph 53. Section 252.195 is amended (1) to replace "Form 1582", wherever it appears, with "ATF Form 5110.30," and (2) to add a reference to a new section of regulations by adding "or § 252.195b" after "§ 252.195a".

Paragraph 54. Section 252.195a is completely revised to cover only claims on spirits tax determined before January 1, 1980. As revised, § 252.195a reads as follows:

§ 252.195a Claims on spirits tax determined before January 1, 1980.

The bottler or packager of the spirits shall compute the drawback rate, unless the regional regulatory administrator established a standard drawback rate before January 1, 1980. The bottler or packager shall complete Parts II and III on both copies of ATF Form 5110.30. If a standard drawback rate was established, the date of approval of the formula and the number shall be shown in any available space in Part II of ATF Form 5110.30. The bottler or packager shall file one copy as the claim for drawback of tax with the regional regulatory administrator of the region in which the claimant's premises are located, and retain one copy on file. Each claim on ATF Form 5110.30 shall be supported, as applicable, by a copy of each related dump and batch record, package gauge report and/or bottling report, covering the dumping and bottling or packaging of the spirits; and in the case of spirits bottled in bond on bonded premises, a copy of each Form 179 covering the taxpayment. Where distilled spirits stamped and marked, or restamped and marked (if in cases), or marked (if in packages), especially for export with benefit of drawback were manufactured (rectified) in the United States before January 1, 1980, with the use of imported spirits (other than such spirits withdrawn from internal revenue bond) or imported wines, the proprietor shall furnish evidence of tax payment for the distilled spirits or wines (such as Customs Forms 7505 or 7501 receipted to indicate payment of taxes) as may be requested by the regional regulatory administrator.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

Paragraph 55. Immediately after § 252.195a, a new § 252.195b is added to cover claims on spirits tax determined on and after January 1, 1980. As added, § 252.195b reads as follows:

§ 252.195b Claims on spirits tax determined on and after January 1, 1980.

(a) *Preparation.* Claims for drawback of tax on spirits tax determined on and after January 1, 1980, and withdrawn for any purpose authorized by § 252.171, shall be prepared in duplicate by the bottler or packager on Parts II and III of ATF Form 5110.30.

(b) *Supporting documents.* Each claim shall be supported by an invoice, bill of lading or other document which identifies the date of tax determination, unless the bill of lading required by § 252.250 identifies this date. Additional supporting documents are required if the claim covers distilled spirits products on which the drawback rate exceeds $10.50 per proof gallon (e.g., a product containing alcoholic flavoring materials on which drawback s claimed under 26 U.S.C. 5131–5134). For each such product, the additional supporting documents shall consist of a copy of each related dump and batch record, package gauge report (ATF Form 5110.45), and/or bottling record. The regional regulatory administrator may also require these or other supporting documents for any distilled spirits product.

(c) *Filing.* One copy of the claim, with supporting documents, if required, shall be filed with the regional regulatory administrator. The bottler or packager shall retain the other copy on file.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

Subpart J [Revoked]

§§ 252.201, 252.202, 252.203 and 252.204 [Revoked]

Paragraph 56. Subpart J, and §§ 252.201, 252.202, 252.203 and 252.204, relating to export drawback under a repealed section of law, are revoked.

§ 252.216 [Amended]

Paragraph 57. Since wine may no longer be bottled at a distilled spirits plant, reference to distilled spirits plant regulations is deleted from § 252.216 by deleting "201", where it appears after the word "Parts".

§ 252.244 [Amended]

Paragraph 58. The statutory authority for § 252.244 is amended to delete reference to a repealed section of law by deleting "1393" from the Statutes at Large citation and by deleting "5522" from the United States Code citation.

§§ 252.250 and 252.261 [Amended]

Paragraph 59. Sections 252.250 and 252.261 are amended to change "Form 206, 1582," to "ATF Form 5100.11, 5110.30,".

§ 252.263 [Amended]

Paragraph 60. Section 252.263 is amended to delete reference to a repealed section of law by deleting ", 1393, as amended" from the Statutes at Large citation and by deleting ", 5522" from the United States Code citation.

§ 252.264 [Amended]

Paragraph 61. Section 252.264 is amended to change "Form 206, 1582,", wherever these phrases appear, to "ATF Form 5100.11, 5110.30", and to change "Form 696" to "ATF Form 5180.1".

§ 252.265 [Amended]

Paragraph 62. Section 252.265 is amended to change "Form 206" to "ATF Form 5100.11" and to change "Form 206, 1582," to "ATF Form 5100.11, 5110.30,". The statutory authority for § 252.265 is amended to delete reference to a repealed section of law by deleting "1393" from the Statutes at Large citation and by deleting "5522" from the United States Code citation.

Paragraph 63. Section 252.267 is amended to eliminate performance of customs officer duties by ATF officers assigned to distilled spirits plants and to change ATF form numbers. As amended, § 252.267 reads as follows:

§ 252.267 Exportation from interior port.

Where a shipment made under this part is to be exported to a contiguous foreign country through a frontier port, and it is desired to avoid the delay of customs inspection at such port, the shipment may be entered for exportation at an interior customs port. The inspection and supervision of lading, and the affixing of customs seals, shall be done by a customs officer in accordance with the provisions of U.S. Customs regulations (19 CFR Ch. I). However, where, under the provisions of § 252.263 an ATF officer has been authorized to perform such duties, the ATF officer may perform the duties of the customs officer. On completion of the lading, the seals shall be affixed and the designated officer shall execute the certificate of lading on both copies of the application, notice, or claim, ATF Form 5100.11, 5110.30, 1582–A, 1582–B or 1689, as the case may be, and forward them, with attachments (if any), to the district director of customs at the interior port of entry. The collector shall forward both copies of the form, with attachments (if any), to the customs officer at the frontier port. When the customs officer at the frontier port is satisfied that the shipment as described on the appropriate form has been exported, he shall execute his certificate on both copies of the form and return them with attachments (if any), to the

district director of customs at the interior port of entry.

§§ 252.269, 252.275 and 252.281 [Amended]

Paragraph 64. Sections 252.269, 252.275 and 252.281 are amended to change "Form 206, 1582,", wherever these words appear, to "ATF Form 5100.11, 5110.30,".

Paragraph 65. Section 252.285 is revised to change ATF form numbers and to correct the statutory authority. As revised, § 252.285 reads as follows:

§ 252.285 Receipt in manufacturing bonded warehouse.

On receipt of the distilled spirits or wines and the related ATF Form 5100.11 (and ATF Form 5110.45, if any), the customs officer in charge of the manufacturing bonded warehouse shall make such inspection as is necessary to establish that the shipment corresponds with its description on ATF Form 5100.11 (and ATF Form 5110.45, if any) and shall make a report of gauge on ATF Form 5180.1, in duplicate. However, where, under the provisions of § 252.263, an ATF officer has been authorized to perform the duties of the customs officer, the ATF officer may perform such duties. If the inspection and gauge disclose any discrepancy, the designated officer shall make note of such discrepancy on each copy of ATF Form 5100.11. Where the officer is satisfied that the shipment corresponds with the description on ATF Form 5100.11 (and ATF Form 5110.45, if any), he shall execute the certificate of deposit on both copies of ATF Form 5100.11 and forward the original of ATF Forms 5100.11 and 5180.1, and a copy of ATF Form 5110.45 (if any), to the regional regulatory administrator. The remaining copies shall be kept on file.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended, 1380, as amended (26 U.S.C. 5214, 5362))

§ 252.286 [Amended]

Paragraph 66. Section 252.286 is amended to change "Form 206 or 1582" to "ATF Form 5100.11 or 5110.30".

§ 252.290 [Amended]

Paragraph 67. Section 252.290 is amended (1) to change to "Form 206, 1582" to "ATF Form 5100.11, 5110.30", (2) to change both instances to "Form 696" to "ATF Form 5180.1", and (3) to change "Form 2630" to "ATF Form 5110.45".

§§ 252.302 and 252.316 [Amended]

Paragraph 68. Sections 252.302 and 252.316 are amended to change "Form 206" to "ATF Form 5100.11".

§ 252.333 [Amended]

Paragraph 69. Section 252.333 is amended to change "Form 1582, Form 1582–A or Form 1629" to "ATF Form 5110.30 or 1582–A". The statutory authority for § 252.333 is amended to delete reference to a repealed section of law by deleting "1327" from the Statutes at Large citation and by deleting "5009" from the United States Code citation.

§ 252.334 [Amended]

Paragraph 70. Section 252.334 is amended to change "Form 2639" to "ATF Form 5620.2" and to change "Part 201" to "Part 19". The statutory authority for § 252.334 is amended to delete reference to a repealed section of law by deleting "1327" from the Statutes at Large citation and by deleting "5009" from the United States Code citation.

§ 252.335 [Amended]

Paragraph 71. The statutory authority for § 252.335 is amended to delete reference to a repealed section of law by deleting "1327" from the Statutes at Large citation and by deleting "5009" from the United States Code citation.

Signed: November 14, 1979.

G. R. Dickerson,

Director.

Approved: November 30, 1979.

Richard J. Davis,

Assistant Secretary (Enforcement and Operations).

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Part III

Department of Health, Education, and Welfare

Food and Drug Administration

Quality Assurance Programs for Diagnostic Radiology Facilities; Final Recommendation

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

21 CFR Part 1000

[Docket No. 76N-0145]

Quality Assurance Programs for Diagnostic Radiology Facilities

AGENCY: Food and Drug Administration.

ACTION: Final recommendation.

SUMMARY: The agency is issuing a recommendation that encourages voluntary establishment of quality assurance programs by all diagnostic radiology facilities. The recommendation suggests some aspects of the programs, but recognizes that the programs will vary with each facility's size, type, and needs. The agency wants to minimize unnecessary public exposure to electronic product radiation.

EFFECTIVE DATE: December 11, 1979.

FOR FURTHER INFORMATION CONTACT: Charles P. Froom, Bureau of Radiological Health (HFX-460), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3426.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 28, 1978 (43 FR 18207), the Food and Drug Administration (FDA) proposed to add new § 1000.55 (21 CFR 1000.55) to Subpart C—Radiation Protection Recommendations, Part 1000 of Chapter I of Title 21 of the Code of Federal Regulations. New § 1000.55 would recommend that health practitioners and others responsible for operating diagnostic radiology facilities establish quality assurance programs. Seven professional organizations, 14 representatives of government agencies (from 9 agencies), 1 processing chemicals manufacturer, 3 medical facilities, and 33 individual dentists, engineers, physicists, radiologists, technologists, and state employees submitted substantive comments. These comments and the agency's response to them follow:

Comments on the Approach Taken

1. Seven comments endorsed the voluntary approach for encouraging the implementation of quality assurance programs; three said the recommendation would eventually have to be made a regulation to be effective. One of these three suggested that, as an intermediate step, the recommendation be tested in Federal hospitals. Several other comments interpreted the publication as a proposed regulation instead of a proposed recommendation (an error that two other comments predicted would occur more generally). These comments indicated that the recommendation would require that all facilities monitor all of the parameters listed, establish all of the levels of responsibility mentioned, keep extensive records to satisfy some agency outside the facility, include in their manual all items suggested, and comply with other requirements. Some apparently also interpreted the recommendation as saying that facilities already consistently producing good quality images with minimum patient exposure would have to add the recommended actions to their existing program. They feared this would add costs to the facility without giving added benefits.

FDA emphasizes that establishing quality assurance programs in accordance with the recommendation is indeed voluntary. In § 1000.55(a) and in the definition of "diagnostic radiology facility" in § 1000.55(b), the agency attempted to make clear its belief that quality assurance programs would be beneficial in all types of diagnostic radiology facilities. In § 1000.55(c), the recommendation suggests 10 elements for this program. Proposed § 1000.55(a) stated, however, that the extent to which each element of a quality assurance program is implemented in a particular facility would be determined by that facility after its analysis of its objectives and resources. Especially for some small facilities, the cost of implementing every suggestion might exceed the need and benefit. However, the agency believes that the savings resulting from implementing an appropriate program would, in most cases, offset the cost of the actions. Each facility is, therefore, encouraged to implement only those recommendations it believes would lead to benefits in improved image quality, reduced radiation exposure, and/or reduced costs sufficient to compensate for the costs of the action.

To highlight the flexibility enjoyed by the facility with this voluntary approach, the following changes were made in the introductory section: (1) The second sentence of § 1000.55(a) was made the second sentence of § 1000.55(c). (2) A third sentence was added to § 1000.55(c) to emphasize further the flexibility given to each facility. Some additional changes were made in the wording of the specific elements of § 1000.55(c) to emphasize that the program is voluntary. These changes are discussed in response to the comments on the specific paragraphs of the recommendations.

Comments on the Data

Several comments addressed the studies cited to support the need for and value of quality assurance programs.

2. One comment supplied information on the changes made in the pneumoconiosis compensation program since it was studied for the Department of Health, Education, and Welfare's National Institute of Occupational Safety and Health (NIOSH) by the late Dr. Dale Trout. Before participating in the current pneumoconiosis program, facilities must submit to NIOSH sample chest radiographs and a radiograph of a test object developed by Trout. These radiographs must be considered of acceptable quality for the proper classification of pneumoconiosis before NIOSH approves a facility for participation. The reader system has also been changed. C readers are no longer used, and the B readers have been expanded from members of the three major medical centers mentioned in the proposed recommendation to all physicians who have passed an examination administered by NIOSH.

As noted in the proposed recommendation, Trout found in his study that 44 percent of the certified facilities examined had 10 percent or more of their radiographs rejected by the B or the C readers, which were then being used. The total rejection rate for all facilities was 3 percent. As a result of NIOSH's efforts, in the second round of examinations only approximately 9 percent of the facilities had a rejection rate of over 10 percent. During the January 1 to September 30, 1976 period, the average rejection rate was only 0.6 percent. For the third round of examinations, NIOSH has stated that all X-ray facilities that have a rejection rate of 5 percent or more will have to be reapproved.

Because the improvement is attributed by NIOSH to their "* * * quality control requirements for equipment and expert reading for radiographic quality by B readers," comparison of the new data with the Trout results gives a "before" and "after" picture for judging the impact of quality assurance. FDA commends NIOSH and the participating facilities for their outstanding efforts in reducing unnecessary patient exposure.

3. Another comment questioned the cost savings that several studies attributed to quality assurance programs, on the ground that facilities that already had successful programs would not be able to achieve additional savings of the magnitude seen in these

studies. Referring to facilities with successful quality assurance programs, this comment argues further that "additional regulations, imposed on an effective quality assurance program would in fact raise cost."

The savings found in all the various studies were determined by comparing conditions before implementation of a quality assurance program with conditions thereafter. The FDA estimate of the cost and exposure reduction impact of nationwide quality assurance programs was likewise based on before and after conditions. Quality assurance actions implemented by facilities, with or without effective quality assurance programs already in place, will indeed involve some cost. The crucial question the facility must ask itself is, whether these actions provide sufficient benefits in terms of money savings, reduced radiation exposure, or improved image quality to compensate for the costs. If the benefits outweigh the costs, then FDA encourages the facility to undertake the quality assurance actions. The facilities involved in the studies referred to by the comment found that the money savings alone more than paid for the costs of the quality assurance program. Thus, the benefits exceeded the costs even without taking into account any benefits from reduced exposure to radiation and from improved image qualtiy.

Facilities that now have little or no quality assurance activity are likely to obtain the largest savings from establishing a quality assurance program. Facilities that have established quality assurance programs are probably doing many of the things suggested by the recommendation. The latter may achieve some additional benefits by incorporating the remaining suggestions into their program, but if additional benefits do not seem likely, then there would be no reason to increase their quality assurance efforts in the ways suggested. At any rate, the agency reemphasizes that implementation of the program is voluntary. Contrary to the comment's suggestion, no rules are being "imposed" and no "regulations" are involved.

4. Another comment criticized the use of the Nationwide Evaluation of X-Ray Trends (NEXT) data. The preamble to the proposed recommendation noted that the results of the NEXT study indicate that a "standard patient" would have received widely different exposures for the same examination in different facilities or even with different machines within the same facility. This range of exposures is as much as a factor of 100 with some of the 12 examinations considered by NEXT and at least a factor of 10 for any of the examinations. FDA suggested in the preamble to the proposal that unnecessary radiation exposure may be caused by exposure variation that could be eliminated by quality assurance. The comment argued, however, that the differences among facilities are "chiefly due to the wide variety of image receptor sensitivities and peak kilovoltages employed."

The original analysis of the NEXT data did not divide the measured exposure data into groups based on the values of the various technical factors. However, the values of certain technique factors, among them peak kilovoltage (kVp), were collected. An analysis of the effect of different techniques has been done (Bunge, et al., 1976, Midyear Symposium of the Health Physics Society), and it has been found that, even with kVp and half-value layer (HVL) limited to a narrow range, there was still a large variation in the output of the machines. For example, with a kVp range of 78 to 82 and HVL range of 2.3 to 2.7 mm of Al, the output in milliroentgens per milliampere-seconds (mR/mAs) at 12 inches varied from less than 5 to 100. Choice of kVp by the practitioner thus does not explain the wide variation in exposures from facility to facility.

FDA has concluded that machine malfunction leading to the actual kVp and mAs values deviating from the machine settings is a major contributor to the large variation in the output values. (In the NEXT system, the kVp and mAs values are recorded from the machine settings, in contrast to the exposure values, which are measured, and the HVL values, which are calculated from exposure measurements.) For example, if a practitioner chooses to set a machine at 80 kVp, this does not mean that this is the kVp actually produced. Machine malfunction would be a problem that could be minimized by an effective quality assurance program.

The other factor mentioned by the comment, "the wide variety of image receptor sensitivities," has been studied in the last 2 years with the use of an image receptor module add-on to the main NEXT system. When a sufficient number of surveys was completed, multiple regression analysis of the P/A chest projection data was carried out using the factors of kVp, HVL, relative speed of the image receptor, grid, type of processing, and mAs. It was found that these factors could account for only 50 percent of the exposure variation (Showalter, et al., *Proceedings of the Society of Photo-Optical Instrumentation Engineers*, 127:136–139). Thus, the exposure variation cannot be explained solely on the basis of the practitioner's choice of technique factor, image receptor, etc. This analysis will be continued with more examinations as sufficient data become available. At present, it supports the conclusion drawn in the preamble of the proposed recommendation, that part of the exposure variation seen by NEXT represents unnecessary patient exposure due to equipment malfunction that might be reduced or eliminated by quality assurance programs.

5. The comment referred to in paragraph 4 argued further that the mR/mAs variation was due to the method used in calculating the HVL from the NEXT measurements, not machine malfunction. The comment said the method resulted in erroneous HVL values, which accounted for the wide variation in mR/mAs found with machines with similar HVL's.

The NEXT method, which is designed to allow a rapid survey to minimize disruption of facility routine, calculates HVL using a linear least-squares fit to three exposure measurements. FDA has evaluated the potential error in HVL's however, and found that for the kVp and HVL range reported, the maximum value would not exceed 12 percent. FDA does not believe that the small potential errors in the NEXT HVL measurements can account for the wide range in output found in machines with similar kVp and HVL values. Thus, the agency still concludes that a significant part of the mR/mAs variation is due to deviation of the actual kVp and mAs values from the machine settings. Again, this is a problem that can be minimized with a quality assurance program. The agency concludes that the comment does not invalidate the use of the NEXT data for this recommendation.

6. The comment discussed in paragraphs 4 and 5 also argued that the practitioner should be free to choose whatever techniques lead to radiographs that meet the practitioner's requirements.

This comment indicates a philosophical difference with FDA. FDA agrees that the practitioner must have the latitude to select equipment and techniques that meet the practitioner's special imaging requirements. There is, however, generally a range of exposures that will produce radiographs with roughly the same quality. FDA believes that practitioners should be encouraged to choose those techniques that give the least radiation exposure. Secondly, even when a set of technique factors is shown to be appropriate for a specific imaging

task, quality assurance programs can ensure that the practitioner's equipment is actually delivering the technique values the practitioner has selected. This helps avoid the possibility that the practitioner or the practitioner's operator may repeatedly have to change the technique factors (usually toward higher exposures) due to the decreasing ability to get a satisfactory image with the old values.

7. Another comment criticized the NIOSH and Pennsylvania Blue Shield studies because, in its view, the "vast majority" of problems revealed by these studies "were due to human error" and, therefore, would be unaffected by an equipment quality assurance program.

In the NIOSH study, Trout simply listed the problems he found, without indicating their relative magnitudes. Some were probably due to human error and some to equipment malfunction, but there was no basis for concluding that either category was responsible for a "vast majority" of the problems. However, the later data from this study indicate that, regardless of the source of the problems, the quality assurance program was effective in solving many of the problems identified.

The Blue Shield study did provide a breakdown of the reasons for judging the submitted radiographs to be unsatisfactory. A little over 30 percent of the submitted radiographs were rejected for reasons that were probably due to human error. However, another approximately 20 percent of the submitted radiographs were rejected for reasons that were probably due to equipment malfunction. Once again, equipment malfunction was proven not to be an insignificant problem.

FDA agrees that "people errors" lead to unsatisfactory radiographs and unnecessary patient exposure. But this does not mean that the equipment problems can be ignored. FDA has launched or is developing several programs in the "people" areas, but the agency is also supporting quality assurance programs to deal with equipment problems. Quality assurance actions may also help solve some of the "people" problems. For example, evaluation measures such as retake analysis can help identify operator performance problems. Identification is, of course, the first step in solving the problem.

8. The comment referred to in paragraph 7 also criticized the NIOSH and Blue Shield studies as not reflecting the general practice of radiology because they are limited only to pneumoconiosis and dental examinations.

FDA did not present the studies as representative of the total field, but only as an indication of problems in certain specialties. A study by a major film company of more than 150 general radiographic facilities was presented as evidence that the problems found with pneumoconiosis and dental examinations might be present in all types of facilities (Reference 3 in the April 28, 1978 proposal). This study found an average retake rate of 9 percent and an average rejection rate of 13 percent in facilities without quality assurance programs. (The difference between the 9 and 13 percent is partly due to blank films and is also probably partly due to radiographs that were not repeated because other views gave adequate information.) When the facilities established quality assurance programs, they were able to reduce their average rejection rate to 7 percent.

9. The same comment criticized the use of the film company study by noting that the retake rate of 9 percent of the radiographs due to unsatisfactory quality was close to twice that found in previous studies. The comment suggested that the lower retake rate was more representative of national experience than the 9 percent rate.

This assertion is not well founded. Comprehensive studies have not been done. However, the film company study, which examined more than 150 facilities, shows that many hospitals have higher rates. In contrast, the studies relied on in the comment in most cases included only 1 or 2 facilities, a slim basis on which to estimate representative conditions for the nation. In addition, the authors of at least two of the studies cited by the comment indicated their retake rates were probably underestimated (perhaps by as much as 100 percent in one case) due to various factors including lack of technologist cooperation.

10. The same comment also criticized the agency's estimate in its environmental impact analysis report (Ref. 11 in the proposal) of the dose savings impact of quality assurance programs in terms of a total national figure (209,000 to 333,000 rems of active bone marrow dose or 195,000 to 330,000 rems of whole body dose). The comment suggested instead that it would be more accurate simply to state it in terms of the percentage of per capita dose saved.

FDA believes this is simply a difference in philosophy. Physicians, such as the one who commented, treat individual patients, and the agency recognizes that per capita dose might have more meaning to them. As an agency with public health responsibilities, however, FDA must look at the impact on the genetic pool and cost of medical care for the entire population. Thus, the total nationwide savings has more meaning to the agency. It should also be noted that other groups concerned with population exposure, such as the Advisory Committee on the Biological Effects of Ionizing Radiations of the National Academy of Sciences and the United Nations Scientific Committee on the Effects of Atomic Radiation also report dose figures in terms of population dose rather than individual dose. Further, although the savings can be calculated on a per capita basis, the actual dose savings to an individual who did not have to undergo a repeated examination is far greater than the per capita savings, which is only an average figure. Thus, in this particular case the use of per capita dose savings is somewhat misleading even if the concern is with the individual rather than the entire population.

11. In another criticism of the supporting references, the same comment questioned the figure, $37,000 per 300,000 radiographs, for the cost savings due to quality assurance at the University of Alabama at Birmingham (Reference 12 in the proposal). The comment noted that the savings reported were $27,000 per 300,000 radiographs.

The $27,000 figure represented the savings using the discount prices for supplies purchased by the University of Alabama. The $37,000 figure was obtained by using the retail prices. Because discounts vary from facility to facility, the agency believes that retail prices should be used for a fair comparison. Using retail prices, the University of Alabama staff reported an average annual savings in supply costs of $67,566 after quality assurance was initiated. From this the FDA staff substracted the reported annual quality assurance labor costs of $27,625, the estimated $1,500 a year for supplies for the quality assurance program, and $1,500 for the prorated cost of the quality assurance equipment to obtain an annual savings of approximately $37,000. Because the annual workload at the University of Alabama is approximately 300,000 radiographs, the savings were expressed as $37,000 per 300,000 radiographs.

12. The comment further criticized the agency's use of the Alabama data because, according to the comment, the authors of the study stated that had their department been better organized at the outset, such large savings as they report would not have been possible.

The comment's concern is apparently based on a narrower definition of

quality assurance than that used by FDA. FDA believes that quality assurance is not limited to taking physical measurements or repairing equipment but is fundamentally a matter of good departmental management. This is one reason why the recommendation is primarily concerned with administration. If implementation of a quality assurance program stimulates or permits an improvement in the general organization of the department (as apparently occurred at the University of Alabama), then the savings from that improvement in organization should be credited to the quality assurance program. This belief is supported by the Alabama authors in their statement that: "The abrupt difference between the 1971–2 and 1972–3 fiscal years is attributed to the implementation of the main aspects of the quality assurance program."

Comments on the Paragraphs of the Recommendation

Many comments focused on one or more of the paragraphs of the proposed recommendation. For each of these paragraphs, the comments are presented, and FDA's reply to them is given.

Applicability

13. The comments addressing § 1000.55(a) chiefly concerned the application of the recommendation to small facilities. Two comments stressed that small facilities should be included. In contrast, one comment said that the major emphasis should be put on the large facilities because their example would stimulate small facilities to join the quality assurance effort. Six comments said that assistance would be needed by small facilities in implementing these programs. Their suggestions as to the nature of the assistance needed ranged from a request to prescribe a program specifically for small facilities to the establishment of regional quality assurance consulting centers. Finally, three comments said it would be impossible for small facilities to implement a quality assurance program as described in the recommendation. This belief seemed to stem in part at least from interpreting the recommendation as having to be implemented verbatim.

FDA recognizes that quality assurance programs for small facilities would be quite different from those for large facilities. For example, a committee such as that described in § 1000.55(c)(9), would obviously be valuable only for larger facilities. All facilities, small or large, are also encouraged to modify FDA's other general suggestions to meet their specific needs where necessary, although the agency believes that the vast majority of its recommendations are applicable to all facilities.

FDA also recognizes that most of the guidance now available on the details of quality control monitoring and maintenance is designed for large facilities. There is a need for guidance directed specifically to small facilities, especially because they do not have their own physicists and quality assurance technologists who could adapt large facility procedures to fit their needs. FDA has begun to collect information on quality assurance programs already available to small facilities. After this information is collected, additional techniques will be developed as needed, and information on both existing and new techniques will be distributed to the facilities. The comments that made suggestions as to appropriate programs for small facilities will be considered in the projects to provide aid to these facilities. FDA believes that these methods of providing assistance to small facilities should be tried before the concept of regional quality assurance consulting centers is considered further because of the expected costs of such centers.

To emphasize that FDA does not expect small facilities to duplicate the programs of large facilities, a sentence has been added at the end of § 1000.55(b)(3), the definition of a quality assurance program, specifically recognizing that any program will vary with the size and type of facility as well as other criteria.

Responsibility

14. A number of comments addressed § 1000.55(c)(1) on the assignment of responsibility for the quality assurance program and of the duties within that program.

Most of the comments addressed the suggested roles for the various segments of the staff, especially the relative roles of the practitioner in charge and of the technologists. Two comments supported the statement that the primary responsibility for the quality assurance program belonged to the medical practitioner in charge of the facility. A third comment implicitly agreed when it criticized the recommendation as not recognizing the importance of the trained radiologist in achieving the goal of reducing unnecessary radiation exposure. In contrast, three other comments argued that the recommendation should give more emphasis to the importance of the staff members involved either with production of images or with maintenance of the equipment. One of these comments specifically criticized § 1000.55(c)(1)(iii) for emphasizing physicists, engineers, and radiologists to the exclusion of staff technologists. A third position was taken by a comment that opposed the entire recommendation because too much emphasis was put on monitoring by technologists rather than on preventive and corrective maintenance by trained personnel. Another comment suggested that the role of the consultants to the facility should be spelled out in more detail. In the proposed § 1000.55(c)(1)(v), it was merely suggested that in some cases it would be of value to assign certain responsibilities to consultants.

In contrast to those comments that argued for increased responsibility for one or another segment of the staff, a response from a professional organization representing a nonradiologist specialty area that makes extensive use of x-ray systems indicated that the practitioners in that area were ready to yield primary if not total responsibility for the quality assurance program to "professionals trained in radiation safety and diagnostic radiology."

Finally, two comments said § 1000.55(c)(1) should be rewritten, though only one included specific suggestions. The latter comment suggested that the responsibilities should be described to fit a program for small facilities, with the roles for specialized personnel as alternatives available to large facilities. This comment voiced concern that small facilities, on viewing the suggestion that responsibilities be assigned to personnel they could not afford, would assume that they could not conduct a quality assurance program.

FDA emphasizes its belief that there are two fundamental areas of quality assurance responsibility in facilities of all sizes, from the individual practitioner's office to the largest medical facility. First, FDA firmly believes that the owner of the equipment, or the practitioner in charge, if different from the owner, must have primary responsibility for the quality assurance program even as that individual has primary responsibility for all other aspects of the facility's activities. This is true whether the owner or practitioner in charge is a radiologist, dentist, cardiologist, or any other specialist. The owner or practitioner in charge may, especially in large facilities, delegate part or all of his or her responsibility to other staff members, but this does not relieve that individual of final responsibility. Furthermore, free and open

communication between the practitioner and his or her staff is essential to the quality assurance program. The owner or practitioner in charge cannot simply set up the program and then forget it if the program is to achieve maximum success.

Second, FDA recognizes that the staff technologists will play a major role in the execution of the program. In a small facility, staff technologists may often be responsible for all the monitoring and maintenance performed by the facility and may also be responsible for recommending when outside help should be called in for more complex monitoring and maintenance. In a larger facility, staff physicists, quality assurance technologists, service engineers, or supervisory technologists may assume much of the quality assurance monitoring and maintenance responsibility, but the staff technologists will always have the important role of bringing possible problems to the attention of the specialized personnel. This alerting of the specialized personnel makes possible the prompt corrective action that is essential to the quality assurance program.

FDA agrees with the comments that noted that § 1000.55(c)(1)(iii) as proposed did not properly recognize the importance of the staff technologists and maintenance personnel. Therefore, this section has been revised to remedy this deficiency. Section § 1000.55(c)(1)(iv) has also been revised to answer the concern of the comment that stated that small facilities would be discouraged by the listing of personnel they could not afford.

Although the suggestions of the comment concerning consultant duties were valuable, FDA has decided not to incorporate them into the recommendation. If more details on consultant duties were included, the duties of other quality assurance personnel should be described in more detail also. In view of the wide variety of diagnostic radiology facilities throughout the country, FDA does not believe that such a detailed description would be appropriate for the recommendation. However, the possibility of providing more detailed suggestions in future technical publications is being considered.

Purchase Specifications

15. One comment noted that one of the greatest problems of a quality assurance program is that manufacturers may simply state that their equipment will not perform within a hospital's specifications.

Section 1000.55(c)(2) recognizes that, in developing purchase specifications, the state-of-the-art should be considered and the need for a specification balanced against the cost of meeting it. If a reasonable set of purchase specifications is developed, then the problem described by the comment should disappear. The facility would deal only with vendors who are willing to meet the specifications and agree to acceptance testing to show that they are meeting the specifications.

16. Another comment on proposed § 1000.55(c)(2) warned that the radiology staff often is not consulted on the purchase of new equipment, or their recommendations are overruled for reasons of finance or convenience.

FDA hopes that the quality assurance program will create channels of communication, such as the suggested quality assurance committee, that will allow the medical and administrative staffs to reach satisfactory compromises on purchase specifications for new equipment.

17. A third comment commended the mention of the alternative of stating the specifications in terms of functional requirements. It also suggested that the availability of experienced service personnel be taken into account in writing purchase specifications.

FDA agrees with this suggestion and has inserted a sentence in § 1000.55(c)(2) to emphasize this point.

18. The same comment also expressed concern about the suggestion that acceptance of the equipment be withheld until the necessary corrections have been made by the vendor. The comment feared that a "self-appointed expert" could break the vendor by being too unreasonable.

The vendor, of course, is entitled to assure himself or herself that the specifications and channels of acceptance are not ambiguous or dependent upon the whim of members of the facility staff. Conversely, if the vendor agrees to meet certain specifications, it is reasonable to require the vendor to meet them. Withholding payment until corrections are made is obviously a powerful weapon, and FDA believes this suggestion should remain in the recommendation. It is, of course, the facility's decision whether to accept this suggestion.

19. Two comments indicated some confusion about the relationship of the purchase specifications and acceptance testing suggested for the quality assurance programs and the requirements of FDA's diagnostic X-ray equipment performance standard (21 CFR 1020.30 through 1020.32). Both comments focused on the report in the preamble to the proposed recommendation from one of the persons commenting on the May 7, 1976 notice of intent to propose the recommendations (41 FR 18863). This individual had tested 50 new rooms of equipment after the vendor had completed installation and adjustment. Not one of the rooms met the purchase specifications. One of the comments on the April 28, 1978 proposal suggested that the vendor be reported for failure to comply with FDA's diagnostic X-ray equipment performance standard, while the other suggested that this was evidence that the performance standard had failed in its mission to remedy problems of improperly performing X-ray equipment.

FDA advises that the purchase specifications suggested as part of a facility's quality assurance program are not synonymous with the requirements of the diagnostic X-ray equipment performance standard. The purchase specifications would be developed by the facility itself based upon its needs. They would most likely address parameters in addition to those minimum requirements covered by the performance standard, which is concerned with radiation safety. Even when the purchase specifications refer to parameters discussed by the performance standard, the facility might decide to put more stringent requirements on the vendor than do the regulations. Thus, the failure of a vendor to meet purchase specifications, as in the case referred to, may have little or no bearing on the question of the value of the performance standard. The incident does underline, however, the importance of not only establishing purchase specifications but of carrying out acceptance testing to see whether they are met.

Monitoring

20. One comment on proposed § 1000.55(c)(3) differed with FDA's approach by arguing that monitoring had been overemphasized greatly. It argued that it is futile to monitor the system if quality radiographs are being produced and that it is also futile to monitor if the system is failing because the failure will be obvious.

FDA disagrees that it is futile to monitor the X-ray system under either of these conditions. If the system is producing satisfactory radiographs, monitoring may still allow detection of problems that exist but have not yet grown to the point where they seriously affect image quality. Thus, if the monitoring is followed by corrective maintenance, problems can be eliminated before they adversely affect patient care. FDA does agree that, if monitoring of a particular parameter

does not reveal any change over a period of time, then it would be appropriate to reevaluate the monitoring program for that parameter.

Similarly, FDA believes that monitoring of parameters after quality control problems appear in the radiograph is of value. The comment suggested that examination of the radiograph in such cases will reveal that a problem exists without the need for monitoring. This is true, but such examination often cannot tell the source of the problem. Monitoring of the parameters and comparing the results with the values from before the problems occurred can be valuable in pinpointing the source of difficulty.

Interestingly, despite its apparent opposition to monitoring tests, the comment stated, "The quality control test can only give information which verifies that a problem does exist or which helps to pinpoint the source of the problem." This statement indicates that the comment recognized these benefits. The comment also correctly noted that testing after a service call can reveal that problems were not resolved because a "manufacturer's service personnel do not always install and maintain X-ray equipment within acceptable standards."

FDA thus has concluded that the importance of monitoring in the quality assurance program should not be deemphasized.

21. The same comment further stated that "testing can only identify a possible problem but will not provide the solution." It also asked, "what good is any test which pinpoints a problem, if there is no one available who is capable of correcting the deficiency?", a question echoed by another comment. The comment also suggested that a major cause of "technologist's apathy" noted in some quality assurance programs was the feeling that quality assurance testing was a waste of time because no one ever did anything when problems were found.

Although FDA does not agree that monitoring should be deemphasized, the agency does agree that maintenance, both preventive and corrective, is important. Preventive maintenance has been shown effective in existing programs (Nelson, et al., *Radiologic Technology*, 49:129–134), and the essential nature of corrective maintenance both to improve equipment performance and to overcome "technologists's apathy" is obvious. Although corrective maintenance has been mentioned in the Evaluation, Records, Manual, and Review elements (§ 1000.55(c) (5), (6), (7), and (10)), further emphasis should be given. Thus, § 1000.55(c)(3) has been retitled "Monitoring and Maintenance", the introduction to this element has been rewritten; and a new subdivision (iv) has been added to provide further comments on maintenance and on the need for trained service personnel.

22. Four comments on the list of possible parameters to be monitored noted that the long list might be discouraging to facilities. The comments suggested various systems for reorganizing the list, such as pointing out the general areas of importance or listing the parameters in their order of importance. Two comments made opposing suggestions: One suggested shortening the list to only key tests; the other suggested general descriptions of the specific quality assurance procedures that should be included.

The agency is concerned that two general problems hamper the reorganization or shortening of the list of parameters. The first is that the field of quality assurance is still rapidly developing, and a consensus on the relative importance of a number of the parameters does not yet exist. In addition, the wide variety of types and sizes of diagnostic radiology facilities and their equipment will probably make it impossible ever to develop a single list of parameters that apply generally to all facilities. Thus, FDA has preferred to develop as comprehensive a list as possible and to encourage the facilities to select the ones to monitor based on what is important to them. FDA has accepted the suggestion of one comment that general areas that probably should be monitored in all programs be listed. This is done in a new § 1000.55(c)(3)(ii). The old § 1000.5(c)(3)(ii) is now § 1000.55(c)(3)(iii). The introduction to § 1000.55(c)(3)(iii) has been rewritten, and the parameter list rearranged to correspond to the areas of new § 1000.55(c)(3)(ii).

23. Two comments referred to the list of parameters to be monitored as reasonable and very important, but other comments made a number of suggestions on adding or deleting parameters.

FDA has added four parameters to the list in response to these suggestions. These are "view box surface conditions", added to § 1000.55(c)(3)(iii)(*d*), "continuity of exposure" and "flatness of cassette" added to § 1000.55(c)(3)(iii)(*f*), and "representative entrance skin exposures" added to § 1000.55(c)(3)(iii) (*b*) and (*f*). In addition, suggestions that mechanical and electrical components undergo visual inspection have been added to new § 1000.55(c)(3)(iv) on maintenance. FDA did not accept suggestions that nominal voltage and latent images in intensifying screens be monitored. The comment did not provide documentation to support the belief that variations in these parameters cause problems, and FDA is unaware of any evidence that they do.

As suggested, FDA has dropped the parameter, "solution compositions" from § 1000.55(c)(3)(iii). It is now generally accepted that pH measurements of the solutions are of little value in quality assurance monitoring and that specific gravity measurements are of value only in determining whether a fresh batch of solution has been correctly mixed (and then only if the proper value is known for comparison). FDA also agrees that other methods of monitoring solution composition require a strong knowledge of chemistry and more effort than is warranted by the results.

The suggestion that focal spot measurement should be dropped until there is a consensus standard for such measurements was not accepted. FDA believes that any of the existing methods are accurate enough for quality assurance purposes as long as the same method is used consistently. FDA also did not agree that "linearity of mA stations" should be dropped. Although this measurement is perhaps covered by the monitoring of the parameters of automatic exposure control devices, it would not be covered with machines lacking these devices.

A suggestion that it was too early to establish quality assurance protocols for computed tomography (CT) systems was not accepted. It is not too early to develop an awareness that quality assurance monitoring is necessary for these devices even though the methods might require more effort. (Most CT manufacturers even provide a test device that can be used to monitor some parameters).

One comment also suggested dropping daily measurement of fixer temperature, while another suggested that with tomographic units, "thickness of cut plane," "flatness of field," and "exposure angle" could be dropped because these parameters would not change very rapidly. It appears that the disagreement is not so much with these parameters as with the frequency of monitoring. It should be noted that the frequency of monitoring of the parameters has been left to the facility to decide. Thus if the tomographic parameters do not change rapidly, semi-annual or annual monitoring of these might be sufficient, while other parameters, such as some of those involved in film processing, might have to be done daily. Similarly, the frequency of fixer temperature

monitoring could be chosen to correspond to facility needs. Facilities are encouraged to consider revision of the monitoring schedules for the different parameters as part of the evaluation and review elements.

24. Comments also suggested that the parameters "response capability" in proposed § 1000.55(c)(3)(ii)(*e*) and "accuracy of SID indictors" in proposed § 1000.55(c)(3)(ii)(*d*) are not clear.

FDA agrees and, in an effort to solve this problem, has changed these parameter names to "minimum response time" and "accuracy of SFD indicators," respectively. (With the reorganization of the parameter list mentioned above, these parameters are now under § 1000.55(c)(3)(iii)(*b*)).

25. With respect to monitoring parameters, several comments pointed out that work remains to be done on the procedures for monitoring many of them.

Fortunately, efforts are under way in both the private and public sectors to fill these gaps, and FDA will continue to encourage progress in these areas.

Standards for Image Quality

26. Three comments addressed § 1000.55(c)(4) on setting standards for image quality. Two comments remarked about the difficulty of setting standards for quality in view of the many different opinions of what constitutes adequate quality and whether that quality should be measured or be determined by "the eye of the beholder." One comment urged that, because of this, the paragraph should either be rewritten or deleted. In contrast, a third comment urged that FDA go further by helping the facilities set standards of quality and by conducting frequent inspections to ensure that the standards are met.

FDA believes that some definition of acceptable standards of image quality is essential if quality control monitoring and maintenance is to be effective. The purpose of the monitoring is to detect parameter variations that may cause or are causing image quality problems. Appropriate standards of image quality would serve as a guide to indicate when these variations have become serious enough to require corrective action.

Ideally, if the values of these parameters are kept within certain defined limits, the image quality will be acceptable. If such limits can be agreed upon, they can serve as the standards for image quality. Such objective standards may be emerging with respect to processor performance. FDA realizes, however, that, for most parameters of the x-ray system, the standards of image quality will remain subjective for some time. This is largely because of a lack of consensus among medical practitioners as to what is "good" quality, and in some cases means for measuring the relationship between parameter variation and quality may be lacking.

FDA believes that it is not now possible or desirable to develop uniform nationwide standards. Instead, the practitioners in each facility are encouraged to determine their own standards of image quality based on their training and experience and to relate these standards to system parameter values. FDA has suggested and will suggest in other publications objective standards of image quality as they become known from research and the experience of medical facilities. In the future these objective standards (or those from other sources) may become the national norm. However, even if this should occur, the implementation of these standards would still be on a voluntary basis.

In conclusion, FDA does not agree that changes in § 1000.55(c)(4) are warranted at present.

Evaluation

27. Three comments on § 1000.55(c)(5) said that the importance of reject analysis in evaluating both the total program and the individual technologist's performance should be further emphasized.

Reject analysis is referred to in § 1000.55(c)(5)(ii) as "ongoing studies of the retake rate and the causes of the repeated radiographs." FDA agrees with the comment that the emphasis should be increased to reflect the fact that reject analysis is probably the most useful evaluation method now available. Several sentences have been added to § 1000.55(c)(5)(ii) to emphasize the value of studies of the reject rate and to suggest study characteristics and frequencies.

Records

28. Many comments were received on the recordkeeping recommendations in proposed § 1000.55(c)(6). Several comments urged that FDA emphasize the importance of maintaining records by conducting inspections of them. Others interpreted the recordkeeping suggestions as regulatory requirements and opposed them as being an added burden. One comment took an intermediate position. It recognized that the proposals on recordkeeping were recommendations, but feared that states might adopt them as regulations. This might make the recordkeeping an end in itself rather than a tool for achieving improved performance.

The importance of recordkeeping cannot be overemphasized. FDA is convinced that accurate and complete records are essential for guaranteeing that necessary monitoring and maintenance have been performed, for making effective use of the equipment warranty provisions and the services of manufacturers' representatives, for aiding in future equipment selection, for planning the replacement schedule for x-ray equipment, and for evaluating the quality assurance program so that it can be modified for maximum effectiveness.

The agency recognizes, however, that the extent of the recordkeeping, just as all other aspects of the quality assurance program, should be determined by the facility itself on the basis of what is necessary for support of its program. Because recordkeeping recommendations, like all others, are voluntary, FDA inspections to enforce them would be unauthorized by law and inappropriate.

FDA shares the concern of the comment that suggested recordkeeping might become an end in itself. Obviously the purpose of keeping quality assurance records is not just to record numbers, but to collect data that can be used. These data should be used in the evaluation (§ 1000.55(c)(5)) and review (§ 1000.55(c)(10)) elements to determine whether either the equipment or the quality assurance program itself requires adjustment to ensure effective performance. Furthermore, some problems occur periodically. Therefore, records of successful past corrective actions will help to solve the problems quickly when they recur. Clear records may also be quite useful to the facility in demonstrating the need to change vendors or improve purchase specifications.

In a further response to the comments on recordkeeping, and to clarify FDA's views, § 1000.55(c)(7) has been rewritten. In response to a question raised by one comment, § 1000.55(c)(7)(vii) has also been changed to make it clear that the facility decides how long records are to be kept.

Manual

29. The several comments on § 1000.55(c)(7) generally agreed upon the importance of a manual. One comment, however, said that for its purposes a series of manuals already in use in its agency would be preferable to that suggested in the recommendation. Two other comments made opposing suggestions. One urged that some details, specifically the suggestion for a loose-leaf format, should be deleted, while the other suggested that more details, even a complete sample manual, should be provided, though not necessarily as part of the recommendation.

Facilities are encouraged to modify the recommendations to meet their own needs. Any facility or agency may use materials of a different type or content to meet the goal of keeping all concerned personnel informed about the quality assurance program and their own quality assurance responsibilities. The introduction to § 1000.55(c)(7) has been rewritten to make this clearer. The "loose-leaf" format suggestion has also been dropped. In response to the request for more detail, other FDA publications, available or planned, will provide details on some of the items suggested for the manual. A sample manual for individual practitioners may result from a project to provide guidance to small facilities, which has recently been initiated by the FDA.

Training

30. Several comments urged that the agency expand proposed § 1000.55(c)(8) both to emphasize the importance of training and to specify further its nature.

FDA does not believe that this recommendation is the place to give detailed descriptions of training requirements because these requirements are likely to change with time. However, the training element has been expanded somewhat to emphasize the need for both initial and continuing education and the value of supervised instruction.

31. Several other comments suggested training programs that FDA might initiate or support.

The agency advises that it will continue its efforts, through the production of training materials and through cooperation with professional organizations and industry, to increase the quality assurance training available.

32. Two comments in reference to § 1000.55(c)(1), asked what is meant by the term "qualified" when referring to personnel who might be assigned quality assurance duties.

Again, FDA does not believe that these recommendations provide the proper forum for a detailed list of qualifications because these might well change with time. However, § 1000.55(c)(1) has been modified by addition of the words "by training or experience" following the word "qualified" wherever it appears.

33. Another comment related to training said the recommendation did not recognize the training in radiation protection received by radiologists.

Section 1000.55(c)(1)(ii) states that the practitioner in charge of the facility has primary responsibility for the quality assurance program. If a radiologist is a staff member at the diagnostic radiology facility, that specialist will almost certainly be in charge of the facility. Thus, the recommendation does give recognition to the training received in that specialty. However, FDA does not believe that it can single out any medical specialty as being especially qualified by its general training for quality assurance duties. Although some radiologists have been very active in the quality assurance area and have pioneered in the development of quality assurance programs, FDA's information on the training of these specialists indicates that quality assurance techniques and procedures are not routinely made a part of their education or certification examinations.

Committee

34. The comments on the suggestion that a quality assurance committee (§ 1000.55(c)(9)) be established at large facilities were mixed. Some comments endorsed the idea and suggested that the membership and duties of the committee be expanded. Other comments, however, expressed fears that such a group might "throttle" or "frustrate" the program.

The recommendation to establish a committee resulted from a comment on the May 7, 1976 notice that described the success of a quality assurance committee in a facility as well as from the agency's knowledge of the value of committees in other areas. FDA still believes that a quality assurance committee can be useful in facilitating open and frequent communication among the various groups in a facility and that such communication is essential for the quality assurance program. FDA does recognize, however, that, depending upon the attitude of its membership, a committee might act to frustrate the quality assurance program. To help forestall this possibility, changes have been made in § 1000.55(c)(9) to clarify the agency's belief that any quality assurance committee should serve communications and policy-making roles rather than an operational role. The proposed recommendation recognized that small facilities would not find a committee useful. Large facilities also do not need to organize such a committee if it is believed to be unneeded or counterproductive. Also, § 1000.55(c)(9) has been reworded slightly to indicate that the facility may not wish to assign all the suggested responsibilities to the committee. Other wording changes are intended to make clear that representatives of all departments with x-ray equipment should be included, if possible, to ensure maximum communication. Also, changes have been made to indicate that the duties of the committee could be given to an already existing committee, as one comment suggested, rather than a newly established committee. All the groups involved with diagnostic radiology should be represented on that committee.

Comments Suggesting Additional Actions

35. One comment urged that an eleventh quality assurance element—on "patient exposure"—be added to the recommendation. The comment suggested that, just as § 1000.55(c)(4) suggests establishing acceptability limits for variations of image quality parameter values, a patient exposure element could contain acceptability criteria for variation in exposure for different examinations.

FDA's quality assurance activities, including the proposed recommendation, are directed at achieving optimal diagnostic x-ray equipment performance. The agency believes that such performance will lead to reduced patient exposure as well as high image quality and reduced medical costs. A separate patient exposure recommendation would significantly expand the proposed recommendations beyond their intended scope, which is limited to equipment performance. Injection of this new consideration would involve the practitioner's choice of technique factors and raise the complex question of striking the proper balance between patient exposure and image quality. For these reasons, FDA believes that the establishment of standards for patient exposure is too important and too complex to be dealt with merely as one of eleven elements in a quality assurance recommendation directed at equipment performance. Instead, FDA published in the **Federal Register** of August 17, 1979 (44 FR 48354) a notice of intent requesting information on a number of aspects of the patient exposure problem. This is a preliminary action to possible future recommendations dealing specifically with patient exposure.

Although FDA is not now prepared to recommend standards for patient exposure, the agency does recognize that exposure measurements may be useful in evaluating equipment performance. Thus, as noted above, the "representative entrance skin exposures" has been added to the list of parameters to be considered for monitoring in § 1000.55(c)(3)(iii).

36. Several comments suggested that FDA publish recommendations or regulations in areas other than quality assurance to reduce radiation exposure. These suggestions included limitations

on the types of equipment that could be used, film-screen standards, new designs of equipment to provide for easy quality assurance testing, specification of techniques to be used, and certification programs to ensure that the owners and operators of x-ray equipment are adequately trained.

FDA appreciates these expressions of concern and will consider them in planning future programs. The agency advises that activities in cooperation with professional groups or other agencies are already being planned or are under way in some of these areas, e.g., film-screen standards and certification programs. However, inclusion of recommendations in these added areas as part of the basic quality assurance recommendation would significantly expand this recommendation beyond its intended scope. The agency believes that it is more appropriate to proceed independently in these other areas.

37. One comment suggested that patient exposure reductions could be achieved if the States were encouraged to make more frequent inspections of radiology facilities.

FDA believes that this suggestion is worthy of consideration, but it falls outside the area of a quality assurance recommendation. FDA notes, however, that the Bureau of Radiological Health has undertaken some activities designed to help solve the problem of limited resources for State inspections. The Bureau's efforts have been designed to enable the States to locate facilities with problems so that their resources may be concentrated on them. Two such efforts, the Dental Exposure Normalization Technique (DENT) and the Breast Exposure Nationwide Trends (BENT) programs, have been under way for some time. Both programs use thermoluminescent dosimeter (TLD) mailers to locate facilities with problems. These facilities are then visited by State personnel, who work with them on a voluntary, nonregulatory basis to help solve the problems. Average exposure reductions of 40 percent in dental facilities and 20 percent in mammography facilities have been achieved. Development of similar programs for other types of examinations as well as a program that could be used with facilities doing a number of types of examinations is currently under way.

38. Two comments suggested that the government establish some means of providing quality assurance services, especially for private offices.

The agency's BENT and DENT programs do provide some such services and, as discussed in paragraph 37, this concept is being expanded to other examinations. The time intervals between the BENT and DENT type of contacts, however, are too long for routine quality assurance actions. The option of setting up regional quality assurance centers, equivalent to the Regional Radiological Physics Centers, or programs through professional organizations or private facilities will be kept open. However, owing to the expense of such centers or programs, action will not be taken until the need is more clearly demonstrated.

39. Some comments suggested that FDA enlist the aid of the Joint Commission on Accreditation of Hospitals (JCAH) to encourage the adoption of quality assurance programs. Others asserted that the FDA efforts were not needed because the JCAH already "mandated" quality assurance programs.

FDA received a comment from the JCAH, which made clear its interest in quality assurance and radiation protection, and which in general endorsed the FDA approach. It does not appear that FDA suggestions for quality asssurance programs for diagnostic radiology facilities either conflict with or duplicate the JCAH efforts to encourage quality assurance in all hospital departments. FDA will continue to coordinate its efforts with those of the JCAH.

40. Three comments mentioned the problem of motivating personnel to initiate and maintain a quality control program.

FDA recognizes that this is perhaps the central problem that must be solved if the quality assurance program is to be successful. The agency believes that the first step in solving this problem is to win the support of the person in charge. Thus, through pilot tests of quality assurance techniques and through its publication program, FDA is attempting to collect and disseminate information on the benefits of quality assurance. FDA believes that this information is essential to convince the practitioner in charge, the facility administrator, and the administrative technologist initially to establish a quality assurance program. FDA is also working to disseminate information (by this recommendation, manuals, etc.) to help the program succeed in the facility once it has been implemented, for such success is the best method of motivation.

41. A conference conducted by the American College of Radiology with FDA support is planned for the fall of 1979. One comment suggested that this conference might be used to write a recommendation to replace the one proposed. The comment suggested further that this could serve as a motivating influence.

In view of the general support for the proposed recommendation, FDA has decided to proceed with publication of this final recommendation. The conference can then be devoted to its original purpose of discussing means to motivate facilities to use the recommendation and other guidance to establish quality assurance programs.

42. One comment suggested that the availability of "sources of information, consultants, and other resources" should be included for the benefit of facilities developing quality assurance programs.

FDA notes that, because such resources would be constantly changing, it would be impractical to include a list in the recommendation. FDA recognizes, however, that it may be difficult for a facility to locate the information, equipment, training, and other items needed for a quality assurance program. To assist in solving this problem, FDA published a Diagnostic Radiology Quality Assurance Catalog in the summer of 1977. The catalog contains information on available quality assurance equipment, services, training materials, and publications. A supplement to the catalog (covering the same types of items) was published in the fall of 1978. More than 12,000 copies of each of these volumes have been distributed, and FDA's Bureau of Radiological Health will continue to provide individual copies free of charge for as long as supplies last.

43. One comment suggested that "any quality control programs should stress conservation of silver and other resources vital to radiology."

FDA notes that quality assurance programs can indirectly conserve resources by reducing retakes and thus by reducing film usage, which in turn would conserve resources such as silver. FDA believes, however, that including direct conservation suggestions would be beyond the scope of this recommendation, which concerns equipment performance. This should not be interpreted as downgrading the value of the important conservation effort.

44. The agency advises that the new references cited in this final recommendation have been added to the administrative record for this matter. These references as well as those cited in the April 28, 1978 proposal are on file in the office of the FDA Hearing Clerk under Docket No. 76N-0145, and are available for public review in Rm. 4-65, 5600 Fishers Lane, Rockville, MD, between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Therefore, under the Public Health Service Act, as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 356, 82 Stat. 1174–1175 (42 U.S.C. 263d)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), 21 CFR Part 1000 is amended in Subpart C by adding new § 1000.55, to read as follows:

§ 1000.55 Recommendation for quality assurance programs in diagnostic radiology facilities.

(a) *Applicability.* Quality assurance programs as described in paragraph (c) of this section are recommended for all diagnostic radiology facilities.

(b) *Definitions.* As used in this section, the following definitions apply:

(1) "Diagnostic radiology facility" means any facility in which an x-ray system(s) is used in any procedure that involves irradiation of any part of the human body for the purpose of diagnosis or visualization. Offices of individual physicians, dentists, podiatrists, and chiropractors, as well as mobile laboratories, clinics, and hospitals are all examples of diagnostic radiology facilities.

(2) "Quality assurance" means the planned and systematic actions that provide adequate confidence that a diagnostic x-ray facility will produce consistently high quality images with minimum exposure of the patients and healing arts personnel. The determination of what constitutes high quality will be made by the facility producing the images. Quality assurance actions include both "quality control" techniques and "quality administration" procedures.

(3) "Quality assurance program" means an organized entity designed to provide "quality assurance" for a diagnostic radiology facility. The nature and extent of this program will vary with the size and type of the facility, the type of examinations conducted, and other factors.

(4) "Quality control techniques" are those techniques used in the monitoring (or testing) and maintenance of the components of an x-ray system. The quality control techniques thus are concerned directly with the equipment.

(5) "Quality administration procedures" are those management actions intended to guarantee that monitoring techniques are properly performed and evaluated and that necessary corrective measures are taken in response to monitoring results. These procedures provide the organizational framework for the quality assurance program.

(6) "X-ray system" means an assemblage of components for the controlled production of diagnostic images with x-rays. It includes minimally an x-ray high voltage generator, an x-ray control, a tube-housing assembly, a beam-limiting device, and the necessary supporting structures. Other components that function with the system, such as image receptors, image processors, view boxes, and darkrooms, are also parts of the system.

(c) *Elements.* A quality assurance program should contain the elements listed in subparagraphs (1) through (10) of this paragraph. The extent to which each element of the quality assurance program is implemented should be determined by an analysis of the facility's objectives and resources conducted by its qualified staff or by qualified outside consultants. The extent of implementation should be determined on the basis of whether the expected benefits in radiation exposure reduction, improved image quality, and/or financial savings will compensate for the resources required for the program.

(1) *Responsibility.* (i) Responsibility and authority for the overall quality assurance program as well as for monitoring, evaluation, and corrective measures should be specified and recorded in a quality assurance manual.

(ii) The owner or practitioner in charge of the facility has primary responsibility for implementing and maintaining the quality assurance program.

(iii) Staff technologists will generally be delegated a basic quality assurance role by the practitioner in charge. Responsibility for specific quality control monitoring and maintenance techniques or quality administration procedures may be assigned, provided that the staff technologists are qualified by training or experience for these duties. The staff technologists should also be responsible for identifying problems or potential problems requiring actions beyond the level of their training. They should bring these problems to the attention of the practitioner in charge, or his or her representative, so that assistance in solving the problems may be obtained from inside or outside the facility.

(iv) In facilities where they are available, physicists, supervisory technologists, or quality control technologists should have a major role in the quality assurance program. Such specialized personnel may be assigned responsibility for day-to-day administration of the program, may carry out monitoring duties beyond the level of training of the staff technologist or, if desired by the facility, may relieve the staff technologists of some or all of their basic monitoring duties. Staff service engineers may also be assigned responsibility for certain preventive or corrective maintenance actions.

(v) Responsibility for certain quality control techniques and corrective measures may be assigned to personnel qualified by training or experience, such as consultants or industrial representatives, from outside of the facility, provided there is a written agreement clearly specifying these services.

(vi) In large facilities, responsibility for long-range planning of quality assurance goals and activities should be assigned to a quality assurance committee as described in paragraph (c)(9) of this section.

(2) *Purchase specifications.* Before purchasing new equipment, the staff of the diagnostic radiology facility should determine the desired performance specifications for the equipment. Initially, these specifications may be stated in terms of the desired performance of the equipment, or prospective vendors may be informed solely of the functions the equipment should be able to perform and asked to provide the performance specifications of items from their equipment line that can perform these functions. In either case, the responses of the prospective vendors should serve as the basis for negotiations to establish the final purchase specifications, taking into account the state of the art and balancing the need for the specified performance levels with the cost of the equipment to meet them. The final purchase specifications should be in writing and should include performance specifications. The availability of experienced service personnel should also be taken into consideration in making the final purchase decisions. Any understandings with respect to service personnel should be incorporated into the purchase specifications. After the equipment is installed, the facility should conduct a testing program, as defined in its purchase specifications, to ensure that the equipment meets the agreed upon specifications, including applicable Federal and State regulatory requirements. The equipment should not be formally accepted until any necessary corrections have been made by the vendor. The purchase specifications and the records of the acceptance testing should be retained through out the life of the equipment for comparison with monitoring results in order to assess continued acceptability of performance.

(3) *Monitoring and maintenance.* A routine quality control monitoring and

maintenance system incorporating state-of-the-art procedures should be established and conducted on a regular schedule. The purpose of monitoring is to permit evaluation of the performance of the facility's x-ray system(s) in terms of the standards for image quality established by the facility (as described in paragraph (c)(4) of the section) and compliance with applicable Federal and State regulatory requirements. The maintenance program should include corrective maintenance to eliminate problems revealed by monitoring or other means before they have a serious deleterious impact on patient care. To the extent permitted by the training of the facility staff, the maintenance program should also include preventive maintenance, which could prevent unexpected breakdowns of equipment and disruption of departmental routine.

(i) The parameters to be monitored in a facility should be determined by that facility on the basis of an analysis of expected benefits and cost. Such factors as the size and resources of the facility, the type of examinations conducted, and the quality assurance problems that have accurred in that or similar facilities should be taken into account in establishing the monitoring system. The monitoring frequency should also be based upon need and can be different for different parameters.

(ii) Although the parameters to be monitored will vary somewhat from facility to facility, every diagnostic radiology facility should consider monitoring the following five key components of the x-ray system:

(*a*) Film processing.

(*b*) Basic performance characteristics of the x-ray unit.

(*c*) Cassettes and grids.

(*d*) View boxes.

(*e*) Darkroom.

(iii) Examples of parameters of the above-named components and of more specialized equipment that may be monitored are as follows:

(*a*) For film processing:

An index of speed.
An index of contrast.
Base plus fog.
Solution temperatures.
Film artifact identification.

(*b*) For basic performance characteristics of the x-ray unit:

(*1*) For fluoroscopic x-ray units:

Table-top exposure rates.
Centering alignment.
Collimation.
kVp accuracy and reproducibility.
mA accuracy and reproducibility.
Exposure time accuracy and reproducibility.
Reproducibility of x-ray output.
Focal spot size consistency.
Half-value layer.
Representative entrance skin exposures.

(*2*) For image-intensified systems:

Resolution.
Focusing.
Distortion.
Glare.
Low contrast performance.
Physical alignment of camera and collimating lens.

(*3*) For radiographic x-ray units:

Reproducibility of x-ray output.
Linearity and reproducibility of mA stations.
Reproducibility and accuracy of timer stations.
Reproducibility and accuracy of kVp stations.
Accuracy of source-to-film distance indicators.
Light/x-ray field congruence.
Half-value layer.
Focal spot size consistency.
Representative entrance skin exposures.

(*4*) For automatic exposure control devices:

Reproducibility.
kVp compensation.
Field sensitivity matching.
Minimum response time.
Backup timer verification.

(*c*) For cassettes and grids:

(*1*) For cassettes:

Film/screen contact.
Screen condition.
Light leaks.
Artifact identification.

(*2*) For grids:

Alignment and focal distance.
Artifact identification.

(*d*) For view boxes:

Consistency of light output with time.
Consistency of light output from one box to another.
View box surface conditions.

(*e*) For darkrooms:

Darkroom integrity.
Safe light conditions.

(*f*) For specialized equipment:

(*1*) For tomographic systems:

Accuracy of depth and cut indicator.
Thickness of cut plane.
Exposure angle.
Completeness of tomographic motion.
Flatness of tomographic field.
Resolution.
Continuity of exposure.
Flatness of cassette.
Representative entrance skin exposures.

(*2*) For computerized tomography:

Precision (noise).
Contrast scale.
High and low contrast resolution.
Alignment.
Representative entrance skin exposures.

(iv) The maintenance program should include both preventive and corrective aspects.

(a) Preventive maintenance. Preventive maintenance should be performed on a regularly scheduled basis with the goal of preventing breakdowns due to equipment failing without warning signs detectable by monitoring. Such actions have been found cost effective if responsibility is assigned to facility staff members. Possible preventive maintenance procedures are visual inspection of the mechanical and electrical characteristics of the x-ray system (covering such things as checking conditions of cables, watching the tomographic unit for smoothness of motion, assuring cleanliness with respect to spilling of contaminants in the examination room or the darkroom, and listening for unusual noises in the moving parts of the system), following the manufacturer's recommended procedures for cleaning and maintenance of the equipment, and regular inspection and replacement of switches and parts that routinely wear out or fail. The procedures included would depend upon the background of the staff members available. Obviously, a large facility with its own service engineers can do more than an individual practitioner's office.

(b) Corrective maintenance. For maximum effectiveness, the quality assurance program should make provision, as described in paragraph (c)(5) of this section, for ascertaining whether potential problems are developing. If potential or actual problems are detected, corrective maintenance should be carried out to eliminate them before they cause a major impact on patient care.

(4) *Standards for image quality.* Standards of acceptable image quality should be established. Ideally, these should be objective, e.g., acceptability limits for the variations of parameter values, but they may be subjective, e.g., the opinions of professional personnel, in cases where adequate objective standards cannot be defined. These standards should be routinely reviewed and redefined as needed, as described in paragraph (c)(10) of this section.

(5) *Evaluation.* The facility's quality assurance program should include means for two levels of evaluation.

(i) On the first level, the results of the monitoring procedures should be used to evaluate the performance of the x-ray system(s) to determine whether corrective actions are needed to adjust the equipment so that the image quality consistently meets the standards for image quality. This evaluation should

include analysis of trends in the monitoring data as well as the use of the data to determine the need for corrective actions on a day-by-day basis. Comparison of monitoring data with the purchase specifications and acceptance testing results for the equipment in question is also useful.

(ii) On the second level, the facility quality assurance program should also include means for evaluating the effectiveness of the program itself. Possible means include ongoing studies of the retake rate and the causes of the repeated radiographs, examination of equipment repair and replacement costs, subjective evaluation of the radiographs being produced, occurence and reasons for complaints by radiologists, and analysis of trends in the results of monitoring procedures such as sensitometric studies. Of these, ongoing studies of the retake rate (reject rate) and its causes are often the most useful and may also provide information of value in the first level of evaluation. Such studies can be used to evaluate potential for improvement, to make corrections, and to determine whether the corrective actions were effective. The number of rejects should be recorded daily or weekly, depending on the facility's analysis of its needs. Ideally, the reasons for the rejection should also be determined and recorded. Should determining these reasons be impossible on a regular basis with the available staff, the analysis should be done for a 2-week period after major changes have occurred in diagnostic procedures or the x-ray system and at least semi-annually.

(6) *Records.* The program should include provisions for the keeping of records on the results of the monitoring techniques, any difficulties detected, the corrective measures applied to these difficulties, and the effectiveness of these measures. The extent and form of these records should be determined by the facility on the basis of its needs. The facility should view these records as a tool for maintaining an effective quality assurance program and not view the data in them as an end in itself but rather as a beginning. For example, the records should be made available to vendors to help them provide better service. More importantly, the data should be the basis for the evaluation and the reviews suggested in paragraph (c)(5) and (10) of this section.

(7) *Manual.* A quality assurance manual should be written in a format permitting convenient revision as needed and should be made readily available to all personnel. The content of the manual should be determined by the facility staff, but the following items are suggested as providing essential information:

(i) A list of the individuals responsible for monitoring and maintenance techniques.

(ii) A list of the parameters to be monitored and the frequency of monitoring.

(iii) A description of the standards, criteria of quality, or limits of acceptability that have been established for each of the parameters monitored.

(iv) A brief description of the procedures to be used for monitoring each parameter.

(v) A description of procedures to be followed when difficulties are detected to call these difficulties to the attention of those responsible for correcting them.

(vi) A list of the publications in which detailed instructions for monitoring and maintenance procedures can be found. Copies of these publications should also be readily available to the entire staff, but they should be separate from the manual. (Publications providing these instructions can usually be obtained from FDA or private sources, although the facility may wish to make some modifications to meet its needs more effectively.)

(vii) A list of the records, with sample forms, that the facility staff has decided should be kept. The facility staff should also determine and note in the manual the length of time each type of record should be kept before discarding.

(viii) A copy of each set of purchase specifications developed for new equipment and the results of the acceptance testing for that equipment.

(8) *Training.* The program should include provisions for appropriate training for all personnel with quality assurance responsibilities. This should include both training provided before the quality assurance responsibilities are assumed and continuing education to keep the personnel up-to-date. Practical experience with the techniques conducted under the supervision of experienced instructors, either in the facility or in a special program, is the most desirable type of training. The use of self-teaching materials can be an adequate substitute for supervised instruction, especially in continuing education programs, if supervised instruction is not available.

(9) *Committee.* A facility whose size would make it impractical for all staff members to meet for planning purposes should consider the establishment of a quality assurance committee whose primary function would be to maintain lines of communication among all groups with quality assurance and/or image production or interpretation responsibilities. For maximum communication, all departments of the facility with x-ray equipment should be represented. The committee may also be assigned policy-making duties such as some or all of the following: Assign quality assurance responsibilities; maintain acceptable standards of quality; periodically review program effectiveness, etc. Alternatively, the duties of this committee could be assigned to an already-existing committee such as the Radiation Safety Committee. In smaller facilities, all staff members should participate in the committee's tasks. The Quality Assurance Committee should report directly to the head of the radiology department, or, in facilities where more than one department operates x-ray equipment, to the chief medical officer of the facility. The committee should meet on a regular basis.

(10) *Review.* The facility's quality assurance program should be reviewed by the Quality Assurance Committee and/or the practitioner in charge to determine whether its effectiveness could be improved. Items suggested for inclusion in the review include:

(i) The reports of the monitoring and maintenance techniques to ensure that they are being performed on schedule and effectively. These reports should be reviewed at least quarterly.

(ii) The monitoring and maintenance techniques and their schedules to ensure that they continue to be appropriate and in step with the latest developments in quality assurance. They should be made current at least annually.

(iii) The standards for image quality to ensure that they are consistent with the state-of-the-art and the needs and resources of the facility. These standards should be evaluated at least annually.

(iv) The results of the evaluations of the effectiveness of the quality assurance actions to determine whether changes need to be made. This determination should be made at least annually.

(v) The quality assurance manual should also be reviewed at least annually to determine whether revision is needed.

Effective date: This recommendation shall become effective December 11, 1979. However, interested persons may at any time submit written comments on the recommendation to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857. The comments will be considered in determining whether further amendments to or revisions of the

recommendation are warranted. Comments should be in four copies (except that individuals may submit single copies), identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the Hearing Clerk's office between 9 a.m. and 4 p.m., Monday through Friday.

(Sec. 356, 82 Stat. 1174–1175 (42 U.S.C. 263d))

Dated: December 4, 1979.

Joseph P. Hile,

Acting Commissioner of Food and Drugs.

[FR Doc. 79-37739 Filed 12-10-79; 8:45 am]

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federal register

Tuesday
December 11, 1979

Part IV

Department of Health, Education, and Welfare

Food and Drug Administration

National Environmental Policy Act; Proposed Policies and Procedures

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

21 CFR Part 25

[Docket No. 79N-0335]

National Environmental Policy Act; Proposed Policies and Procedures

AGENCY: Food and Drug Administration.

ACTION: Proposed Rule.

SUMMARY: The agency proposes policies and supplemental procedures for compliance with the National Environmental Policy Act (NEPA) and the Council on Environmental Quality's (CEQ) National Environmental Policy Act Regulations. This proposal expands the environmental impact consideration regulations to include all programs administered by FDA and adopts in full the CEQ regulations.

DATES: Comments are due on or before February 11, 1980.

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: Kenneth E. Taylor, Bureau of Veterinary Medicine (HFV-2), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4500.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 15, 1977 (43 FR 19986), the Food and Drug Administration (FDA) revised its rules governing the need and procedures for preparing environmental impact statements under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), and revised guidelines on such procedures issued by the Council on Environmental Quality (CEQ) in the **Federal Register** of August 1, 1973 (38 FR 20550).

This proposal, which was developed in consultation with the CEQ staff, revises the procedures FDA uses for implementing NEPA to comply with CEQ regulations (40 CFR Parts 1500-1508) published November 29, 1978 and effective July 30, 1979. This proposal includes procedures FDA will use for implementing NEPA in all its programs. Several FDA administrative and regulatory programs are categorically excluded from requirements to prepare an EIS (environmental impact statement). The term "EIAR (environmental impact analysis report)," formerly used by FDA to identify a document containing an analysis of proposed actions for potential environmental impacts, is replaced by the term "EA (environmental assessment)" as required by the CEQ regulations (40 CFR 1508.9). The new term refers to a document containing a similar environmental analysis of proposed actions. Other terms have been changed to conform with CEQ terminology.

A detailed explanation of this proposal is not being provided because the proposal responds to mandatory requirements established by the CEQ regulations. The CEQ regulations were subject to public review and comment. The following specific requirements of the CEQ regulations are addressed in this proposal:

1. 40 CFR 1501.2(d) requires that agencies provide guidance and advice sufficient to apply NEPA early in the process of actions planned by private applicants or other non-Federal entities. This proposed regulation, in general, provides necessary guidance to applicants and petitioners. (See, in particular, proposed 21 CFR 25.10(a), 25.22, 25.23, 25.24, 25.30, and 25.31.)

2. 40 CFR 1501.4(a), 1507.3(b), and 1508.4 require that agencies identify actions normally requiring the preparation of EIS's, those normally requiring the preparation of EA's, and those which normally do not require the preparation of either EIS's or EA's. (See proposed 21 CFR 25.20 through 25.24.)

3. 40 CFR 1502.9 requires that agencies adopt procedures for introducing supplemental EIS's into a formal administrative record, if such a record exists. (See proposed 21 CFR 25.42(d).)

4. 40 CFR 1505.1 requires that agencies adopt procedures to ensure that decisions are made in accordance with the policies and purposes of NEPA. (See proposed 21 CFR 25.40.)

5. 40 CFR 1506.6 requires that agencies explain where interested persons can obtain information or status reports on EIS's and other elements of the NEPA process. (See proposed 21 CFR 25.41(b) and 25.42(b).)

6. 40 CFR 1507.3 requires that agencies adopt procedures to implement the CEQ regulations, including procedures required by 40 CFR 1501.2(d), 1502.9(c)(3), 1505.1, 1506.6(e), and 1508.4 of the CEQ regulations.

Other sections of the CEQ regulations are addressed in this proposal to provide additional details on FDA's NEPA procedures and policy. Sections, such as the one on terminology (21 CFR 25.15), are provided to ensure that FDA procedures and requirements are clear. The requirements of FDA's present environmental regulations are treated similarly in the proposal insofar as their being consistent with the CEQ regulations. In an effort to provide guidance for compliance with the regulations, the rationale for a number of requirements has been incorporated into the proposal.

Because the scope of this proposal includes each area now subject to the existing Part 25 and also provides terminology and supplemental procedures consistent with the CEQ regulations, which impose mandatory requirements for Federal agencies, FDA will follow the procedures required by this proposal pending publication of the final rule. The public (e.g., applicants and petitioners) are not obligated to follow this proposal until it is published as a final rule. However, in most cases the public may prefer to comply with the supplemental guidance and procedures provided in this proposal in addition to the binding CEQ regulations.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701, 52 Stat. 1055-1056 as amended (21 U.S.C. 371); the National Environmental Policy Act of 1969 (sec. 102(2)(C), 83 Stat. 853 (42 U.S.C. 4332)); 40 CFR 1500-1508 (43 FR 55978-56007), EO 11514 as amended by EO 11991; and EO 12114 of January 4, 1979; and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), it is proposed that Part 25 be revised to read as follows:

PART 25—ENVIRONMENTAL IMPACT CONSIDERATIONS

Subpart A—General Provisions

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Sec.

25.40 Procedures for incorporating environmental considerations into agency decisionmaking.
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25.50 Environmental effect abroad of major agency actions.

Authority.—Sec. 701, 52 Stat. 1055–1056 as amended (21 U.S.C. 371); sec. 102(2)(C), 83 Stat. 853 (42 U.S.C. 4332); 40 CFR Parts 1500–1508 (43 FR 55978–56007); Executive Order 11514 of March 4, 1970 (35 FR 4247) as amended by Executive Order 11991 of May 24, 1977; Executive Order 12144 of January 4, 1979.

Subpart A—General Provisions

§ 25.1 Purpose.

(a) The Food and Drug Administration (FDA) recognizes the National Environmental Policy Act of 1969 (NEPA) as the national charter for protection, restoration, and enhancement of the environment. NEPA establishes policy, sets goals (section 101), and provides procedures (section 102) for carrying out the policy. This part supplements the regulations for implementing the procedural provisions of NEPA, which were published by the Council on Environmental Quality (CEQ) in 40 CFR Parts 1500–1508. This part incorporates the CEQ regulations.

(b) These supplemental procedures overlap with the CEQ regulations. The overlap is necessary to highlight items of imporatance for FDA. It is not intended that any overlap supersede the existing body of the CEQ regulations.

(c) These supplemental procedures provide that: (1) Environmental information is to be available to the public and the decisionmaker before decisions are made about actions that may significantly affect the human environment: (2) FDA regulatory actions are to be supported by accurate scientific analyses; (3) FDA-prepared environmental documents are to be available for public scrutiny; and (4) environmental documents are to concentrate on the issues that are timely and significant to the action in question rather than amassing needless detail.

(d) These supplemental procedures for implementing NEPA are intended to ensure that environmental consequences are considered in decisionmaking, as required by NEPA. They allow FDA to assist individuals and non-Federal public entities to take actions that protect and enhance environmental quality.

(e) to avoid delays in decisionmaking, these supplemental procedures made possible the early identification of actions that may have significant efects on the quality of the human environment.

§ 25.5 Policies.

All FDA policies and programs will be planned, developed, and implemented so as to achieve the policies declared by NEPA and to satisfy the requirements of the CEQ regulations to ensure responsible stewardship of the environment for present and future generations.

§ 25.10 NEPA planning.

(a) Environmental impact consideration is an integral part of FDA's regulatory process. The process begins when FDA receives an environmental assessment from an applicant or petitioner or when FDA personnel consult with applicants or petitioners requesting FDA action on the NEPA-related aspects of their request. FDA also may issue a public call for environmental data or otherwise consult with affected individuals or groups when a contemplated action in which it is or may be involved poses potentially significant environmental impacts. Assessment of environmental factors continues throughout planning and is integrated with other program planning at the earliest possible time. FDA's assessment of environmental factors included the identification of the environment that may be affected by the action, the evaluation of pertinent environmental data, and the consideration of alternatives consistent with 40 CFR 1502.14. The level of study committed to environmental factors is to be consistent with planning objectives.

(b) FDA will be the lead agency for actions under programs it administers. If an action affects more than one bureau, the Commissioner of Food and Drugs will designate one bureau to be responsible for the preparation of any environmental documentation that may be required. FDA, as lead agency, will coordinate the participation of all concerned agencies in developing an environmental impact statement according to provisions of 40 CFR 1501.6(a).

(c) FDA and Federal agencies outside HEW will agree which will be the lead agency and which will be the cooperating agencies for actions under programs not administered by FDA. If an agreement cannot be reached, the procedures contained in 40 CFR 1501.5(e) will be followed.

(d) FDA will act as a cooperating agency if requested. FDA may request to be designated a cooperating agency if proposed actions may affect areas of FDA responsibility. FDA, as a cooperating agency, will comply with the requirements of 40 CFR 1501.6(b) to the extent possible, depending on priority and the availablity of funds and personnel.

§ 25.15 Terminology.

(a) Definitions that apply to the terms used in this part are set forth in the CEQ regulations under 40 CFR Part 1508. The terms and the sections of the CEQ regulations in which they appear are as follows:

(1) Categorical Exclusion (40 CFR 1508.4).
(2) Cooperating Agency (40 CFR 1508.5).
(3) Cumulative Impact (40 CFR 1508.7).
(4) Effects (40 CFR 1508.8).
(5) Environmental Assessment (40 CFR 1508.9).
(6) Environmental Document (40 CFR 1508.10).
(7) Environmental Impact Statement (40 CFR 1508.11).
(8) Federal Agency (40 CFR 1508.12).
(9) Finding of No Significant Impact (40 CFR 1508.13).
(10) Human Environment (40 CFR 1508.14).
(11) Lead Agency (40 CFR 1508.16).
(12) Legislation. (40 CFR 1508.17).
(13) Major Federal Action (4 CFR 1508.18).
(14) Mitigation (40 CFR 1508.20).
(15) NEPA Process (40 CFR 1508.21).
(16) Notice of Intent (4 CFR 1508.22).
(17) Proposal (40 CFR 1508.23).
(18) Scope (40 CFR 1508.25).
(19) Significantly (40 CFR 1508.27).

(b) The following terms are defined solely for the purpose of implementing the supplemental procedures provided by this part and are not necessarily applicable to any other statutory or regulatory requirements:

(1) "Agency" means the U.S. Food and Drug Administration (FDA).

(2) "Emissions requirements" specifies the limits on the quantities of pollutants allowed to be released into the work place and the area outside a production site or facility. These requirements or standards are set and enforced by local, State, and Federal (e.g., Environmental Protection Agency, Occupational Safety and Health Administration) government components.

(3) "Frequency of use" means the number of times a product is used in a given period of time as specified by the directions for use or label of the product. "Continuous use" means the product is intended to be used without interruption on a daily basis or for extended periods of time. For example, directions for use for animal drugs and feed additives are often continuous and include those for the "control of" and "prevention of" diseases, "increased rate of weight gain," "growth promotion," "increased

feed efficiency," and "improved pigmentation." "Noncontinuous use" means the product is used only on an infrequent, interrupted, or unscheduled basis. For example, directions for use for animal drugs and feed additives are often noncontinuous and include those "for treatment of" or "for diagnosis of" diseases.

(4) "Mode of administration" means the condition under which the product is used. For animals, when the product is used after a few individuals in a herd or flock have been diagnosed and segregated for receiving the product, then the mode of administration is termed "individual basis." Products administered on an "individual basis" are generally marketed and used in small quantities, and the proportion of the population receiving the product is small. Other products are used, generally without diagnosis of individuals, on whole populations of animals. This mode of administration is termed "whole population." An example of a "whole population" product would be an anthelminthic drug (wormer) for swine, which is generally administered because it is probable that the animals are infected, even though they have not been diagnosed.

(5) "Production" includes manufacture, processing (including reprocessing), and packaging operations for items to be introduced into the marketplace.

(6) "Responsible agency official" means the agency decisionmaker designated in Part 5 of this chapter; the Commissioner of Food and Drugs or the Commissioner's designated representative.

(7) "Toxic substance" means any substance that is harmful to some biological mechanism or system. A substance is considered to be toxic if, based on the data available to the agency, it is harmful to any organism at expected environmental concentration even though it may be relatively harmless to man or other organisms and may even be used by man because of its toxic properties. A substance is considered to be toxic if the maximum concentration of the substance at any point in the environment (i.e., either at any point of entry or any point where higher concentrations are expected as a result of bioaccumulation or other types of concentration processes) exceeds the concentration of the substance that causes any effect in a test organism (minimum effect level) or exceeds $\frac{1}{100}$ of the concentration that causes 50 percent mortality in a test organism, whichever concentration is less.

Subpart B—Agency Actions Requiring Environmental Consideration

§ 25.20 General procedures.

(a) These procedures apply to all FDA actions that are not covered by environmental documents prepared under environmental regulations previously in effect.

(b) All agency actions are subject to environmental consideration. Actions are individually examined for potential environmental impact unless excluded as a class by categorical exclusions under § 25.24.

§ 25.21 Actions requiring preparation of an environmental impact statement.

(a) There are no categories of agency actions that usually have a significant impact upon the quality of the human environment and therefore would normally require the preparation of an environmental impact statement.

(b) Environmental impact statements are prepared for agency actions when:

(1) Evaluation of data in an environmental assessment leads to a finding by the responsible agency official that a proposed action will have a significant impact upon the quality of the human environment.

(2) Initial evaluation by the responsible agency official of any action, including any action for which an environmental assessment would otherwise be required, establishes that significant environmental effects may be associated with one or more of the courses of action being considered for proposal.

§ 25.22 Actions requiring preparation of an environmental assessment.

(a) Proposed actions of the types specified in this paragraph (a)(1) through (18) normally required the preparation of an environmental assessment, unless they qualify for categorical exclusion under §§ 25.23 and 25.24:

(1) Major recommendations or reports made to Congress on proposals for legislation in instances where the agency has primary responsibility for the subject matter involved.

(2) Destruction of articles condemned after seizure or whose distribution or use has been enjoined.

(3) Destruction of articles following detention or recall at agency request.

(4) Disposition of Food and Drug Administration (FDA) laboratory waste materials.

(5) Approval or issuance of licenses for biological products.

(6) Establishment by regulation of labeling or other requirements for marketing articles other than through any of the other types of actions specified in this paragraph.

(7) Establishment by regulation of standards for articles.

(8) Approval of new drug and abbreviated new drug applications.

(9) Approval of new animal drug applications and supplements and amendments to new animal drug applications.

(10) Approval of requests to provide for certification of new antibiotic drugs (antibiotic form 5 or 6).

(11) Approval of food additive petitions.

(12) Approval of color additive petitions.

(13) Withdrawal of approval of drugs, Class III devices, food or color additives, and biological products.

(14) Amendments or exemptions with respect to existing regulations and approval of supplements to existing approvals.

(15) Establishment of tolerances or action levels for unavoidable posionous or deleterious substances in food for human consumption or in packaging materials to be used for food for human consumption.

(16) Approval of premarketing approval applications or declaration that product development protocols have been completed for Class III medical devices.

(17) Actions other than those listed in paragraph (a)(1) through (16) of this section, except those subject to categorical exclusion under §§ 25.23 and 25.24, that could significantly affect the quality of the human environment.

(b) A person who submits an application or petition requesting action by the agency of a type specified in paragraph (a) of this section shall include an environmental assessment of the requested action in the format prescribed in § 25.31, unless the action qualifies for categorical exclusion under §§ 25.23 and 25.24. Failure to submit an adequate environmental assessment in an application or petition if one is required shall be sufficient grounds to refuse to accept or file the application or petition.

(c) A manufacturer, distributor, or dealer who proposes to destroy or otherwise dispose of a food, drug, cosmetic, device, or electronic product that has been condemned, detained, recalled, or whose distribution or use has been enjoined shall submit to the agency an environmental assessment in the format prescribed in § 25.31 analyzing the environmental impact of the proposed disposition of such article, unless the action qualifies for categorical exclusion under §§ 25.23 and 25.24.

(d) The responsible agency official will evaluate the information contained in the environmental assessment to determine whether it is accurate, whether the proposed action will have a significant effect on the quality of the human environment and whether an environmental impact statement (EIS) will be prepared. FDA is responsible for assuring the accuracy of the environmental assessment, as required by 40 CFR 1506.5(b). When significant effects requiring the preparation of an environmental impact statement are identified, a "Notice of Intent" to prepare an EIS will be published in the Federal Register. When significant effects requiring the preparation of an environmental impact statement are not present and the decision is made not to prepare an EIS, the responsible agency official will prepare a "Finding of No Significant Impact."

§ 25.23 Actions that are excluded from the requirement for the preparation of an environmental assessment.

(a) Actions of a type that individually or cumulatively have been determined under § 25.24 not to have a significant impact on the quality of the human environment do not normally require the preparation of an environmental assessment or an environmental impact statement. In extraordinary circumstances the preparation of an environmental assessment may be required under paragraph (b) of this section for specific actions.

(b) An environmental assessment will be required for any specific action, normally excluded, if there is sufficient evidence available to the agency to establish that the proposed action may have significant environmental effects.

(c) An applicant or petitioner requesting action of a type subject to categorical exclusion under § 25.24 is not required to submit an environmental assessment if the applicant or petitioner specifies the provision of this part that exempts the action from the requirement for an environmental assessment and provides information that establishes to the agency's satisfaction that the action requested is included within an excluded category and meets the criteria for the applicable categorical exclusion.

(d) If an applicant or petitioner fails to specify the provision of this part that exempts the action from the requirement for an environmental assessment or fails to provide sufficient information to establish that the requested action is subject to a categorical exclusion under § 25.24, the agency may refuse to accept or file the application or petition.

§ 25.24 Categorical exclusions.

(a) General actions belonging to any of the classes designated in paragraph (b) of this section as categorical exclusions normally do not require the preparation of an environmental assessment because, as a class, they will not result in the production or distribution of any substance and, therefore, will not result in the introduction of any substance into the environment. Actions belonging to any of the classes designated in paragraph (c) of this section as categorical exclusions normally do not require the preparation of an environmental assessment because, as a class, they are routine maintenance or minor construction activities conducted or contracted for by the Food and Drug Administration (FDA). Actions belonging to any of the classes designated in paragraph (d) of this section as categorical exclusions normally do not require the preparation of an environmental assessment because they meet specific criteria that are intended to ensure that they will not cause significant environmental effects.

(b) Actions of any of the folllowing classes are categorically excluded:

(1) Routine administrative and management activities, including action on personnel matters; provision of legal services; conduct of public affairs activities, program evaluations, or inspections; issuance of field compliance programs, program circulars, as investigative field assignments.

(2) Recommendation for enforcement action to be initiated in a Federal court.

(3) Data processing and systems analysis.

(4) Liaison functions with other Federal, State, and local government agencies, foreign governments, the public, and industrial firms or organizations.

(5) Exchange of technical assistance with other Federal, State, and local government agencies, foreign governments, and the public.

(6) Promulgation of an interim food additive regulation.

(7) Extramural contracts, grants or other agreements for statistical and epidemiological studies, surveys and inventories, literature searches, and report and manual preparation, or any other studies meeting the criteria specified in paragraph (a) of this section;

(8) Training grants and contracts.

(9) Publication of notices in the Federal Register.

(10) Agency requests for the initiation of recalls.

(11) Activities of voluntary Federal-State cooperative programs, including issuance of model regulations proposed for state adoption.

(12) Issuance of procedural or administrative regulations.

(13) Issuance, amendment, or repeal of standards for foods, class II devices, and radiological products or variances from standards for radiological products.

(14) Testing and certification of batches of colors, antibiotics, or insulin.

(15) Establishment of action levels for natural or unavoidable defects in food for human use that present no health hazard (pursuant to section 402(a) of the Federal Food, Drug, and Cosmetic Act).

(16) Changes in new drug applications (NDA) and new animal drug applications (NADA) described in §§ 314.8(a)(5) and 514.8(a)(5) of this chapter, respectively.

(17) Promulgation of regulations governing the submission of a "Notice of Claimed Investigational Exemption for New Drug" (IND), "Notice of Claimed Investigational Exemption for New Animal Drug" (INAD), or "Investigational Device Exemption" (IDE).

(18) Approval of an animal feed bearing or containing a drug approved under the provisions of § 514.2 of § 514.9 of this chapter.

(19) Device premarket notifications and submissions.

(20) Reclassification of devices under Subpart C of Part 860 of this chapter.

(21) License applications for transfusable blood and blood products.

(22) Corrections and technical changes to regulations, including those providing for certification of antibiotic and antibiotic-containing drugs.

(c) Actions of any of the following classes are categorically excluded:

(1) Repair to or replacement of equipment or structural components (door, roof, window, etc.) of facilities controlled by FDA.

(2) Lease extensions, renewals, or succeeding leases.

(3) Construction or lease construction of 10,000 square feet or less of occupiable space.

(4) Relocation of employees into existing owned or currently leased office space.

(d) Actions of any of the following classes are categorically excluded:

(1) Approval of an NADA or supplemental NADA for a previously approved animal drug of the following types if the drug product will not be administered at higher dosage levels, for longer duration or for different indications than were previously in effect; and, if data available to the agency do not establish that the substance may be toxic to organisms in

the environment at the expected level of exposure:

(i) An animal drug to be distributed under conditions of approval of a previously approved animal drug;

(ii) A combination of previously approved animal drugs;

(iii) A new premix for a previously approved animal drug;

(iv) Changes specified in § 514.8(d) of this chapter; and

(v) Approval for additional distributors of a previously approved animal drug.

(2) Withdrawal of NDA's and NADA's when the drug is no longer being marketed or at the request of the application holder.

(3) Promulgation of an animal drug monograph if the monograph will not permit the animal drug that is the subject of the monograph to be administered at higher dosage levels, for longer duration, or for significantly different indications that were previously in effect.

(4) Approval of a request for diversion of adulterated or misbranded human food or animal feed to use as animal feed if such disposition of the article, including packaging material, will not result in the release of a toxic substance into the environment.

(5) Approval of a color additive petition to change a provisional listing to permanent listing if the additive is already marketed for the petitioned use and data available to the agency do not establish that is may be toxic to organisms in the environment at the expected levels of exposure.

(6) Affirmation of or approval of a petition for affirmation that a substance is generally recognized as safe (GRAS) for humans and animals under Part 182, 184, or 582 of this chapter if the substance is already marketed for the use for which affirmation is sought and data available to the agency do not establish that the substance may be toxic to organisms in the environment at the expected levels of exposure.

(7) Promulgation of regulations relating to the control of communicable disease and to interstate conveyance sanitation under:

(i) Part 1240 of this chapter if the method of destruction or disposition of any article, including packaging material, does not result in the release of a toxic substance into the environment; or

(ii) Part 1250 of this chapter.

(8) Approval of a supplement or amendment to an NDA for any of the types of changes specified in § 314.8(d) of this chapter if the proposed approval provides that the drug will not be administered at higher dosage levels, for longer duration, or for different indications than were previously in effect.

(9) Promulgation of a monograph for a "not new" drug, antibiotic drug, over-the-counter (OTC) drug, or in vitro diagnostic product if the proposed monograph will not permit the article to be administered at higher dosage levels, for longer duration, or for significantly different indications than were previously in effect.

(10) Promulgation of additional standards for licensed biological products or amendment to licenses for biological products if there is no change in the existing levels of use or intended uses for the product.

(11) Destruction or disposal of articles condemned after seizure or whose distribution or use has been enjoined or following detention or recall at agency request if the method of destruction or disposition of any article, including packaging material, will not result in the release of a toxic substance into the environment.

(12) Promulgation of current good manufacturing practices regulations (CGMPR's), emergency permit control regulations, and permits, exemptions, or variances issued under these regulations if there is no change in the existing uses of the product and if there is no increase in the quantities or toxicity of wastes entering the environment as a direct or indirect result of the action.

(13) Establishment by regulation of labeling requirements for marketing articles if there will be no increase in the existing levels of use or change in the intended uses of the product or its substitutes.

(14) Promulgation of good laboratory practice (GLP) regulations if there is no increase in the quantities or toxicity of wastes entering the environment as a direct or indirect result of the action.

(15) Action on a "Notice of Claimed Investigational Exemption for New Drug" (IND), "Notice of Claimed Investigational Exemption for New Animal Drug" (INAD), or "Investigational Device Exemption" (IDE) if the drug or device shipped under such notices is intended to be used for clinical studies or research in which waste will be controlled or the amount of waste be expected to enter the environment may reasonably expected to be nontoxic.

(16) Extramural contracts, grants, and other agreements for research to develop analytical methods or other test methodologies if the waste from such research will be controlled or the amount of waste expected to enter the environment may reasonably be expected to be nontoxic.

§ 25.25 Retroactive environmental consideration.

(a) The need for preparing an environmental impact statement for existing regulations or approvals of any of the types specified in §§ 25.21 through 25.24 that have not previously received environmental analysis shall be considered when such consideration is necessary to the consideration of the environmental effects of an amendment, supplement, or exemption proposed with respect to such a regulation or approval. Environmental documents prepared on existing regulations under this paragraph may govern classes of existing regulations as well as existing individual regulations. For existing regulations or approvals for which an amendment, supplement, exemption, or any other action based on existing approvals is proposed:

(1) The current applicant or petitioner shall submit an environmental assessment as described by § 25.31 with respect to the existing regulation or approval if notified by the agency in writing that one is required.

(2) Any applicant or petitioner who initiated the existing regulation, if different from the current applicant of petitioner, and other persons governed by such regulations or approvals shall submit an environmental assessment as described by § 25.31 with respect to the existing regulation or approval if notified by the agency in writing that one is required.

(b) The need for preparing an environmental impact statement for existing regulations or approvals of any of the types specified in §§ 25.21 through 25.24, whether or not previously subject to environmental analysis, may be considered by the agency when an amendment, supplement, or exemption is proposed with respect to such regulation or approval or there is new information before the agency with respect to the environmental effects of such regulation or approval.

Subpart C—Preparation of Environmental Documents

§ 25.30 Content and format.

(a) Sections 25.31 through 25.34 describe the environmental documents that may be required in the course of the agency's consideration of the environmental aspects of an action, their purpose, contents and format, and the relationships of these documents to each other. Additional information concerning the nature and scope of information required to be submitted in environmental documents by an applicant or petitioner may be obtained from the bureau or other office of the

agency having responsibility for the action that is the subject of the environmental evaluation.

(b) Data and information that are protected from disclosure by 18 U.S.C. 1905 or 21 U.S.C. 331(j) shall not be included in environmental documents prepared under this Part 25. When pertinent to the environmental review of a proposed action, such information shall be submitted separately as a confidential section of the application or petition. Such information shall be referenced in the environmental document and summarized there to the extent permissible.

§ 25.31 Environmental assessment.

(a) As defined by the Council on Environmental Quality (CEQ) in 40 CFR 1508.9, the environmental assessment is the public document in which the agency evaluates environmental and other pertinent information on a proposed action for the purpose of determining whether to prepare an environmental impact statement or a finding of no significant impact.

(b) An environmental assessment shall be prepared in the following format:

Environmental Assessment

1. Date:
2. Name of applicant/petitioner:
3. Address:
4. Description of the proposed actions: Briefly describe the purpose and need for the action, the locations where the action and activities consequent to the action will occur, and the types of environments present at those locations.
5. Introduction of substances into the environment: Specify to the extent possible the quantities and composition of substances expected to enter the environment at the sites of production, use, and/or disposal of products affected by the action. The physical/chemical characteristics, locations and duration of emissions, the controls exercised, and a citation of and statement of compliance with applicable emissions requirements at the state, local and Federal level should be specified.
6. Fate of emitted substances in the environment: "Worst case" environmental concentrations and exposures to compounds entering the environment as a consequence (direct or indirect) of the action shall be predicted for the following environmental compartments, including when possible the area (e.g., square miles, hectares, etc.) of each compartment affected, and consideration of the major environmental transport and transformation processes involved:

(a) Air—taking into account volatilization, photochemical and chemical degradation, rainout, dispersion, etc., to the extent possible;

(b) Freshwater, estuarine, and marine ecosystems—taking into account chemical and biodegradation; exchange between the water column and sediments via adsorption/desorption processes; accumulation in plantlife, plankton, and fish through bioconcentration, excretion, and decomposition processes; introductions due to rainfall; losses due to volatilization, etc.;

(c) Terrestrial ecosystems—taking into account chemical and biodegradation, adsorption/desorption and leaching in soils, bioaccumulation in animal and plantlife, inputs due to rainfall, losses due to volatilization, etc.

7. Effects on the environment of released substances: Given the information developed on the introduction (item 5) and fate (item 6) of substances which would be released as a consequence of an action, relevant toxicological data, worst case analyses, or other appropriate methods shall be used to predict effects, including chronic and subchronic effects on humans and other organisms and ecosystem-level effects in each of the environmental compartments listed in item 6.
8. Utilization of natural resources and energy: Specify the natural resources, including land use and energy, used to produce a given amount of any products which are the subject of the action, including the resources and energy used to dispose of wastes generated, as a consequence of the production, use, and/or disposal of the product.
9. Disruptions of the physical environment: Describe any noise, odors, construction, or other disruptions associated directly or indirectly with the action.
10. Mitigation measures: Describe measures taken to avoid or mitigate potential adverse environmental effects associated with the proposed action.
11. Alternatives to the proposed action: If potential adverse environmental effects have been identified for the proposed action, describe in detail the environmental impact of all reasonable alternatives (including no action) to the proposed action, particularly those that will enhance the quality of the environment and avoid some or all of the adverse environmental effects of the proposed action. Discuss in detail the environmental benefits and risks of each such alternative.
12. List of preparers: Those persons preparing the assessment and their areas of expertise shall be presented. Persons and agencies consulted and their areas of expertise shall also be listed.
13. Certification: The undersigned official certifies that the information presented is true, accurate, and complete to the best of the knowledge of the firm or agency responsible for preparation of the environmental assessment.

_____

(Date)

_____

(Signature of responsible official)

_____

(Title)

14. References: List complete citations for all referenced material. Copies of referenced articles not generally available should be attached.
15. Appendices: (a) Data summary charts (e.g., structural formula, vapor pressure, water solubility, octanol/water partition coefficient, biodegradation LC_{50} half-life for each species tested, etc.)

(b) Test reports (for each experiment: research objective, experimental design and procedure, all data relevant to interpretation of the test result given in item 15(a), sample calculations, and statistical analyses).

(c) Wherever consistent with a reasonable scientific approach, the existing scientific and engineering literature, chemical/physical properties of the substances released, the levels of production (environmental introduction) and any other existing knowledge shall be used, in lieu of conducting additional environmental impact studies. Where such studies are required to predict the potential environemental impacts associated with a proposed action, applicants and petitioners should consult with the agency to determine the most efficient, scientifically sound approach to gather the needed information.

(d) To the extent possible, the environmental impacts associated with the entire production-use-disposal cycle (raw materials to final product to disposal) of the product(s) which is the subject of a requested action should be addressed. When the petitioner or agency responsible for supplying information required in the environmental assessment has no direct control over some aspect of the production-use-disposal cycle, it will often not be possible to directly measure the environmental effects associated with those aspects. In those cases, the scientific and engineering literature may be used to develop a worst case analysis as the basis for predicting potential environmental effects of the proposal under 40 CFR 1502.22.

(e) The agency has determined that, for the following actions, only the factors specified in this paragraph are required to be assessed in items 5, 6, and 7 of the environmental assessment. Agency evaluation of these data may require that additional environmental information applicable to items 5, 6, or 7 of the environmental assessment be gathered and assessed.

(1) For the approval of NADA's and supplements and amendments to NADA's for animal drugs intended for use under prescription or veterinarian's order, for treatment of a disease, for use in nonfood animals, for opthalmic or topical application, for local or general anesthesia, or as in vitro diagnostics, the following factors are required to be assessed:

(i) The expected environmental concentrations of the product, its metabolites and degradation products resulting from the use of the product

based on the frequency of use, mode of administration, and availability of the product; and

(ii) Environmental impacts that are expected to occur at the site of production of the product.

(2) For the approval of food additive petitions for substances to be used as minor constituents of food-packaging material, the following factors are required to be assessed:

(i) Whether the substance, in the quantities that will enter the environment through use and disposal, estimated by a worst case analysis, may reasonably be expected to be a toxic substance;

(ii) Whether the substance will materially change the potential uses or disposal methods of the packaging material to which it is added;

(iii) Whether the substance is for the same use as another additive already in use; and

(iv) The environmental impacts that are expected to occur at the site(s) of production of the food additive and the packaging material.

(3) For approval of food additives to be used as components of food-contact surfaces of permanent or semipermanent equipment or of other food-contact articles intended for repeated use, the following factors are required to be assessed:

(i) Whether the substance, in the quantities that will enter the environment through use and disposal, estimated by a worst case analysis, may reasonably be expected to be a toxic substance; and

(ii) The environmental impacts that are expected to occur at the site of production.

(4) For approval of NDA's for human drugs intended for use for the prevention, treatment, or diagnosis of a rare disease or for a similarly infrequent use; for opthalmic or topical application; or for local or general anesthesia, the following factors are required to be assessed:

(i) The expected environmental concentrations of the product, its metabolites, and degradation products resulting from the use of the product based on the frequency of use, mode of administration, and availability of the product; and

(ii) Environmental impacts that are expected to occur at the site of production of the drug product.

(5) For approval of licenses for biological products intended for the prevention, treatment, or diagnosis of a rare disease or for a similarly infrequent use, the following factors are required to be assessed:

(i) The expected environmental concentrations of the product, its metabolites and degradation products resulting from the use of the product based on the frequency of use, mode of administration, and availability of the product; and

(ii) Environmental impacts that are expected to occur at the site of production of the product.

(6) When the agency approves or issues, for a substance that occurs naturally in the environment, an NDA, abbreviated or supplemental NDA, NADA, supplemental NADA, food or color additive petition, or biological product license, the following factors are required to be assessed:

(i) Whether the substance, its metabolites, degradation products, and its constituent parts may reasonably be considered to be a toxic substance in the amounts used;

(ii) Whether the use of the substance can reasonably be expected on the basis of all available evidence to alter significantly the prevalence and/or distribution of the substance, its metabolites, degradation products, or its constituent parts in the environment; and

(iii) Environmental impacts that are expected to occur at the site of production of the product.

(7) For withdrawal of approval of drugs, class III devices, animal drugs, food or color additives, and biological products, the following factors are required to be assessed:

(i) Whether there are substitute products or components for the restricted article; and

(ii) The environmental impact of increased use of any substitutes for the restricted article which have not been considered for their potential environmental impacts or have been previously considered by the agency and found to cause significant environmental effects.

(8) For approval or issuance by the agency of an NDA, abbreviated and supplemental NDA, NADA, supplemental NADA, food or color additive petition, or biological product license for a regulated product that has received approval from the Environmental Protection Agency (EPA) under section 4 or 5 of the Toxic Substances Control Act (TSCA) or under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) or its amendments for a use similar to that proposed under the Federal Food, Drug, and Cosmetic Act, the following information is required:

(i) A brief description and summary of results of each study submitted to EPA for review under TSCA or FIFRA;

(ii) An adequate explanation of the basis for the environmental review performed by EPA being accepted as sufficient to cover the environmental impact(s) resulting from the production, use, and disposal of the product for its proposed use regulated by FDA; and

(iii) A description of any potential environmental impacts determined to be adverse by EPA and how these are to be mitigated.

(9) For extramural contracts, grants, or other agreements subject to environmental assessment, specific information requirements will be provided in subsequent guidelines made available to prospective contractors and grantees.

§ 25.32 Finding of no significant impact.

(a) As defined by the Council on Environmental Quality regulation (40 CFR 1508.13), this document includes the environmental assessment and a finding that the action is one that "will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared."

(b) The finding of no significant impact will be prepared by the agency as appropriate for all proposed actions, including those for which an applicant or petititoner has prepared the environmental assessment.

(c) The finding of no significant impact will evaluate the information presented in the environmental assessment for potential environmental impacts, for its accuracy, and to identify any unknowns which remain. If the environmental assessment has been prepared by an applicant or petitioner, the agency may choose to include further evidence of its own in the finding of no significant impact.

(d) The agency official responsible for the preparation and approval of the finding of no significant impact will sign the document, thereby establishing that the official approves the conclusion not to prepare an environmental impact statement for the action under consideration.

§ 25.33 Notice of intent.

(a) As defined by the Council on Environmental Quality regulation (40 CFR 1508.22), the "Notice of Intent" notifies the public that the agency has determined that an environmental impact statement (EIS) will be prepared. This determination may occur after evaluation of the information contained in an environmental assessment or if other information available to the agency indicates that potentially significant effects may be associated with a proposed action.

(b) As required by 40 CFR 1508.22, the "Notice of Intent" will describe the proposed action, possible alternatives, the agency's proposed scoping process (which may include a request for information or suggestions regarding the scope of the EIS and notice of public meetings), and the identification of persons within the agency to contact for further information.

§ 25.34 Draft, final, and supplemental impact statements.

(a) The Council on Environmental Quality (CEQ) regulations (40 CFR Part 1502) provide detailed requirements for the preparation of environmental impact statements (EIS).

(b) The format recommended by CEQ for EIS's (40 CFR 1502.10) will be followed unless "the agency determines that there is a compelling reason to do otherwise."

(c) When chemical substances enter the environment as a result of a proposed action or other alternatives, the portion of the EIS format "Environmental Consequences" (40 CFR 1502.10(g)) will include discussions of the routes of environmental fate and effects of those substances similar to that described in § 25.31.

(d) Final EIS's will contain revisions and corrections resulting from comment or additional information gathered by the agency subsequent to the publication of the draft EIS and will contain the comments received on the draft and agency responses as required in 40 CFR Part 1503.

(e) Supplemental EIS's will conform to the EIS format (40 CFR 1502.10) when this is consistent with the concise presentation of changes, revisions, or clarification of issues raised after the publication of a final EIS.

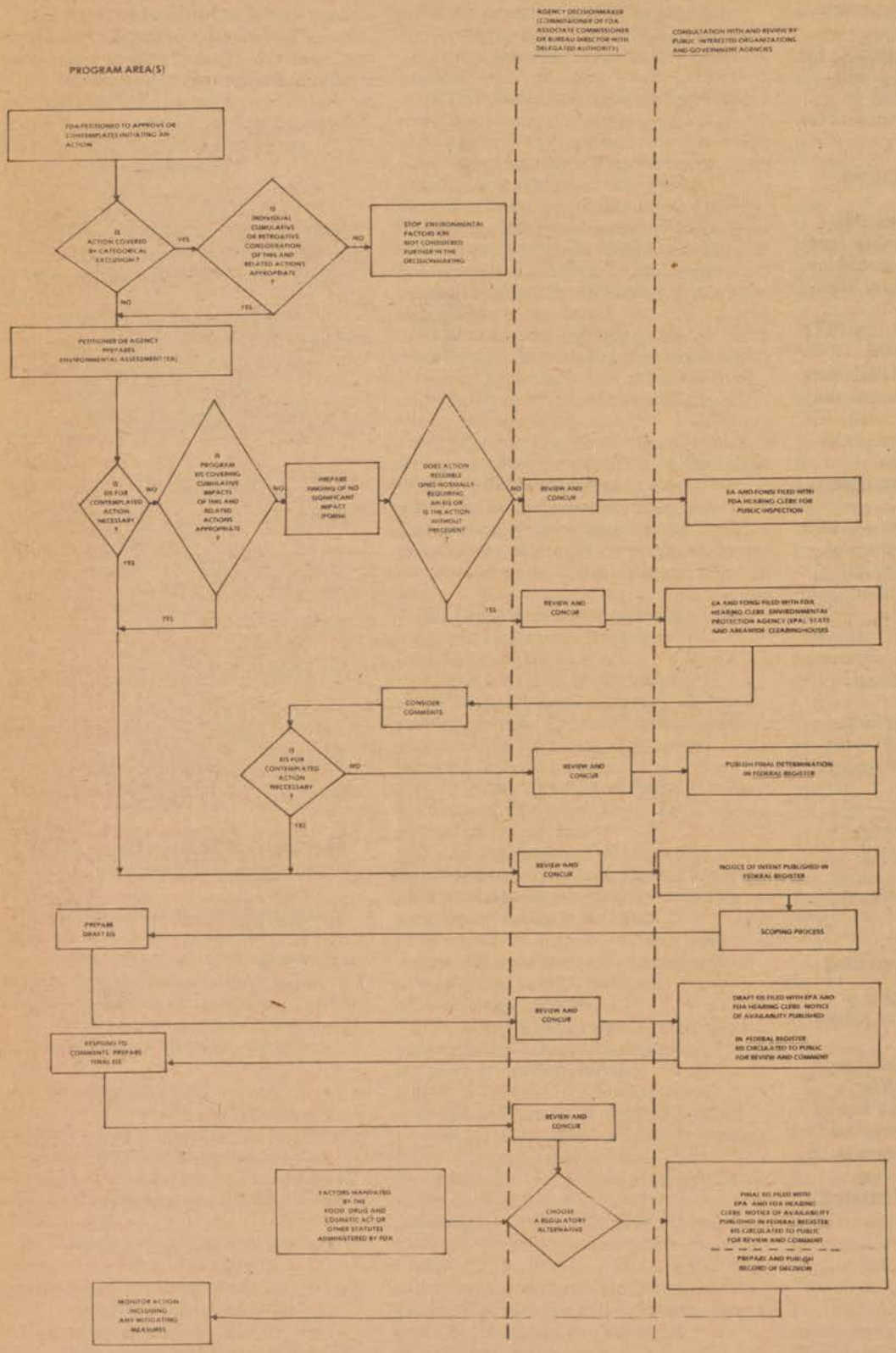
Subpart D—Agency Decisionmaking

§ 25.40 Procedures for incorporating environmental considerations into agency decisionmaking.

(a) These procedures are to ensure that environmental information is provided to decisionmakers in a timely manner. The National Environmental Policy Act of 1969 (NEPA) process is an integral part of the Food and Drug Administration (FDA) decisionmaking (Fig. 1);

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ENVIRONMENTAL FACTORS IN FDA DECISIONMAKING



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Agency decisionmakers ensure that the policies and purpose of NEPA and CEQ regulations are complied within FDA decisionmaking by:

(1) Completing an environmental assessment and determining whether an environmental impact statement (EIS) is required before deciding to propose an action subject to § 25.22.

(2) Including in decision documents and supporting environmental documents a discussion of all alternatives considered in the decision. Every action memorandum proposing an agency action included under § 25.21 or § 25.22 will contain an evaluation of the environmental impact of the proposed action and will be accompanied by a draft or final EIS if one is required.

(3) Submitting relevant environmental documents, comments, and responses with other decision documents through the review process.

(4) Including in the record of formal rulemaking or adjudicatory proceedings relevant environmental documents, comments, and responses.

(5) Completing and circulating a final environmental impact statement before the decision to implement an action that may significantly affect the quality of the human environment.

(b) There are certain regulatory actions which, because of their immediate importance to the public health, make adherence to the requirements of the CEQ regulations and these regulations concerning minimum periods of public review impractical. Compliance with the requirements for environmental analysis under NEPA is impossible where emergency circumstances require immediate regulatory action to safeguard the public health. For such actions, the responsible agency official may consult with the CEQ about alternative arrangements in the manner prescribed by 40 CFR 1506.11.

(c) Certain FDA actions are subject to statutorily prescribed time limits, which sometimes do not provide sufficient time to complete the required environmental document. Should the responsible agency official be unable to complete environmental consideration of the proposed action before the notice of filing is required to be published and the subsequent environmental analysis leads to the conclusion that no EIS is necessary, the **Federal Register** document publishing the regulation rather than the notice of filing shall state that no EIS is necessary and that the environmental assessment is available upon request and filed in the FDA Hearing Clerk's office.

§ 25.41 Actions for which an environmental assessment and finding of no significant impact are prepared.

(a) An environmental assessment and finding of no significant impact are prepared for an individual action or group of related actions that are not expected to significantly affect the quality of the human environment. If potentially adverse environmental impacts are identified for an action or group of related actions, the assessment will include a consideration of alternative courses of action. In these cases, any reasonable alternative courses of action that offer less environmental risk or that are environmentally preferable to the proposed action are considered under 40 CFR 1502.14(a).

(b) Environmental assessments and findings of no significant impact will be available to the public as follows:

(1) When the proposed action is the subject of a notice of proposed rulemaking or a notice of filing published in the **Federal Register**, the notice shall state that no environmental impact statement is necessary and that the finding of no significant impact, including the environmental assessment, is available for public inspection at the Food and Drug Administration Hearing Clerk's office.

(2) When the proposed action involves destruction of condemned, detained, recalled articles, articles whose distribution or use has been enjoined, or disposition of Food and Drug Administration laboratory waste materials, the agency will observe disposal guidelines consistent with Federal, State, and local regulations applicable on a case-by-case basis. The environmental assessments prepared for such actions shall be available upon request.

(3) For actions for which notice is not published in the **Federal Register**, the finding of no significant impact, including the environmental assessment, shall be made available to the public upon request according to the procedures in 40 CFR 1506.6.

(4) For a limited number of actions, the agency may file the finding of no significant impact and the environmental assessment with the Environmental Protection Agency and State and areawide clearinghouses for public review, under the requirements of 40 CFR 1501.4(e).

(c) Program area officials and environmental staff prepare or ensure that the information contained in environmental assessments is complete and accurate, and they prepare the finding of no significant impact. The responsible agency official designated in Part 5 of this chapter examines the environmental risks of the proposed action and the alternative courses of action, selects a course of action and ensures that any necessary mitigating measures are implemented as a condition for approving a course of action.

§ 25.42 Actions for which an environmental impact statement is prepared.

(a) An individual action or group of related actions requires the preparation of an environmental impact statement (EIS) when at least potentially significant environmental impacts are associated with one or more of the probable courses of action. The responsible agency official weighs the environmental impacts of each alternative course of action, including possible mitigating measures, and selects the course of action that is consistent with the applicable law and the agency's environmental analysis of the action.

(b) For actions for which an EIS is prepared, the public has the opportunity to offer comments and otherwise participate in the National Environmental Policy Act of 1969 (NEPA) process from the time the decision is made to prepare the document as described in this paragraph (b)(1) through (5):

(1) A notice of intent to prepare an EIS is prepared for publication in the **Federal Register** and serves as the first public notification that an EIS will be prepared.

(2) The scoping process, as announced in the Notice of Intent, allows the public and Federal, State, and local government agencies to participate in determining the issues to be considered in the EIS.

(3)(i) Draft EIS's are filed with the Environmental Protection Agency (EPA), sent to parties having an interest in the document, and are available to the public upon request for the purpose of receiving substantive comment, corrections, and additional information on the issues covered.

(ii) Where the subject of a draft EIS is also the subject of a notice of proposed rulemaking, the **Federal Register** notice of proposed rulemaking will state that the draft EIS is available upon request, and will solicit comments from all interested persons.

(iii) Where the subject of a draft EIS is not also the subject of a notice of proposed rulemaking published in the **Federal Register**, a notice will be published in the **Federal Register** describing the proposed action, and possible alternatives, stating that the

draft EIS is available upon request, and soliciting comments by all interested persons.

(iv) Comments will be solicited from Federal agencies having jurisdiction by law or special expertise with respect to the environmental impact of a proposed action by sending them a copy of a draft EIS.

(v) All comments on draft EIS's are required to be submitted in five copies to the Hearing Clerk (HFA–305), Food and Drug Administration, Department of Health, Education, and Welfare, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, where they will be available for public inspection from 9 a.m. to 4 p.m., Monday through Friday.

(vi) Draft EIS's will be prepared, forwarded to EPA, and made available to the public early enough in the consideration of the proposed action to permit meaningful review of the environmental issues involved. Except in emergencies, no final action will be taken on the proposal earlier than 90 days after a draft environmental impact statement has been prepared, forwarded to EPA, and made available to the public.

(4) The final text of an EIS will be prepared by the responsible agency official after comments on the draft statement have been reviewed and will receive full consideration in the agency's decisionmaking process. The responsible agency official will forward 10 copies of the final statement to the Office of the Secretary and 5 copies to EPA, and copies of the final statement will be made available for public inspection in the FDA Hearing Clerk's office. Copies of each final EIS will be forwarded to those persons who requested or submitted comments on the pertinent draft statements and upon request.

(5)(i) The weighing of environmental factors in choosing a final course of action, as described in paragraph (a) of this section, will be reflected in the agency record of formal decisionmaking as required by 40 CFR 1505.2.

(ii) Except in emergencies, no agency action will be effective earlier than 30 days after the final statement has been forwarded to EPA and made available by FDA for public inspection. Where the subject of a final statement is also the subject of a regulation published in the **Federal Register**, this requirement may be met by simultaneous publication of a notice of availability of the final statement and the regulation, provided the regulation becomes effective at least 30 days after the date of publication.

(iii) Where the subject of an EIS is an FDA action governed by specific time requirements under statute or regulation, those time requirements shall be extended, if at all, only as long as necessary to permit the agency to consider or issue an EIS for the action.

(c) As described in 40 CFR 1505.3, the agency may provide for monitoring to ensure that its decisions, any mitigating measures, and other conditions are carried out.

(d) Under the conditions prescribed in 40 CFR 1502.9(c), the agency will prepare a supplement for a draft or final EIS and introduce the supplement into its formal administrative record.

(e)(1) The responsible agency official designated in Part 5 of this chapter ensures that there will be a balancing of environmental impacts with objectives of the agency in choosing an appropriate course of action and that the public is involved and notified of the decision, as described in paragraphs (a) through (d) of this section.

(2) The Office of the Commissioner is responsible for preparing a draft or final EIS on actions not delegated by the Commissioner.

(3) The director of each bureau is responsible for preparing a draft or final EIS on actions delegated to that bureau by the Commissioner under Subpart B of Part 5 of the chapter.

(4) The Executive Director for Regional Operations is responsible for preparing a draft or final EIS on the destruction of articles condemned after seizure, subject to an injunction, under import detention, or under detention or recalled at agency request.

Subpart E—Other Requirements

§ 25.50 Environmental effects abroad of major Federal actions.

(a) In accordance with Executive Order 12114 "Environmental Effects Abroad of Major Federal Actions" of January 4, 1979 (44 FR 1957; January 9, 1979), the responsible agency official shall analyze actions under his/her program delegation authority giving due regard for the environmental effects abroad of such actions. The responsible agency official shall consider whether such actions involve:

(1) Potential environmental effects on the global commons (e.g., oceans and the upper atmosphere).

(2) Potential environmental effects on a foreign nation not participating with or otherwise involved in Food and Drug Administration activity.

(3) The export of products (or emissions) which in the United States are prohibited or strictly regulated because their effects on the environment create a serious public health risk.

(4) Potential environmental effects on natural and ecological resources of global importance.

(b) Before deciding on any action falling into the categories specified in paragraph (a) of this section, the responsible agency official shall determine whether such actions may have a significant environmental effect abroad.

(c) If the responsible agency official determines that an action may have a significant environmental effect abroad, the responsible agency official shall determine whether the subject action requires:

(1) An environmental impact statement; or

(2) Bilateral or multilateral environmental study and review of environmental issues.

Interested persons may, on or before February 11, 1980, 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 any comments are to be submitted, except that individuals may submit one copy. Comments are to 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.

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

Dated: November 29, 1979.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-37741 Filed 12-10-79; 8:45 am]

BILLING CODE 4110-03-M

federal register

Tuesday
December 11, 1979

Part V

Department of Health, Education, and Welfare

Public Health Service

Health Systems Agency and State Agency Reviews of the Appropriateness of Existing Institutional Health Services; Final Regulations

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

42 CFR Parts 122 and 123

Health Systems Agency and State Agency Reviews of the Appropriateness of Existing Institutional Health Services

AGENCY: Public Health Service, HEW.

ACTION: Final regulations.

SUMMARY: These regulations set forth the requirements for the review of the appropriateness of existing institutional health services by health systems agencies (Part 122, Subpart F) and State health planning and development agencies (Part 123, Subpart G). These reviews are required by sections 1513(g) and 1523(a)(6) of the Public Health Service Act and are intended to result in careful reviews by these agencies of all existing institutional health services, public findings as to the appropriateness of each service, and recommendations for remedial action when a service is found inappropriate.

EFFECTIVE DATE: December 11, 1979.

FOR FURTHER INFORMATION CONTACT: Colin C. Rorrie, Jr., Ph.D., Acting Director, Bureau of Health Planning, Center Building, Room 6–22, 3700 East-West Highway, Hyattsville, Maryland 20782, (301) 436–6850.

SUPPLEMENTARY INFORMATION: On May 16, 1978, a Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** (43 FR 21274–82), proposing to amend 42 CFR Part 122 and 42 CFR Part 123. That Notice set forth proposed regulations governing health systems agency and State health planning and development agency reviews of the appropriateness of existing institutional health services. These reviews are required by sections 1513(g) and 1523(a)(6) of the Public Health Service Act and are intended to result in careful reviews by these agencies of all existing institutional health services, public findings as to the appropriateness of each service, and recommendations for remedial action when a service is found inappropriate. Interested persons were invited to submit written comments, suggestions, or objections on or before June 30, 1978. Because of the interest raised by the proposed rules and numerous requests to allow more time for review, the comment period was reopened on August 1, 1978, for an additional 30 days. By the August 31 deadline, a total of 216 comments were received. All comments were considered in developing these final regulations.

These regulations include several changes based on the Health Planning and Resources Development Amendments of 1979 (Pub. L. 96–79). There are a number of technical changes regarding reviews of HMO services based on a revised definition of "institutional health services," and changes to the review criteria at § 122.607. Changes to the required review procedures resulting from the amendments are not being made at this time. Planning agencies are to use the procedures prescribed in these regulations, which reflect the Act prior to the amendments. The Secretary will issue proposed regulations for the necessary revisions to procedures in the near future. Furthermore, the Secretary wishes to point out that other changes in appropriateness reviews required by the amendments are effective one year from the enactment of the amendments; proposed regulations or guidance, as required, will be issued before that time.

Because of the similarity in the content and structure of Subpart F, Part 122, and Subpart G, Part 123, many individual comments addressed points included in both subparts or raised questions regarding aspects of one subpart which affect aspects of the other. This Preamble is organized to reflect this parallel structure. The first part of the Preamble includes general comments and those specific comments which are not readily encompassed in the discussion of the particular sections. The second part includes comments specific to particular sections of the proposed regulation. The comments received, the Department's responses, and the changes that have been made in the regulations are discussed below.

Comments of a General Nature

Many commenters objected to the implication that appropriateness reviews may serve a regulatory function. Some maintained that any sanctions imposed as a result of State health planning and development agency ("State Agency") findings would be counter to Congressional intent, and should be prohibited. Others expressed concern that a finding of inappropriateness would amount to an implicit sanction, creating financial hardships for many providers. One commenter felt that since appropriateness reviews are very similar to reviews of new institutional health services, providers might assume that the same sanctions apply.

On the other hand, several commenters felt that without sanctions, appropriateness reviews would have only limited impact, because agencies would not be able to enforce recommendations for remedial action.

To clarify this issue, the Secretary calls attention to the evolution of the concept of appropriateness review as reflected in the legislative history of Pub. L. 93–641 which enacted Title XV of the Act. The function of periodically reviewing existing institutional health services developed from a review combined with recertification authority, to a periodic determination as to the continuing need for a service (with sanctions not required), to the present requirement for periodic reviews of services as to their "appropriateness." While the required application of sanctions was dropped as the legislation evolved, there is no indication that Congress wished to prohibit agencies from considering sanctions. In fact, as stated in the Report of the House Committee on Interstate and Foreign Commerce on this legislation:

> The Committee has not required any sanction related to these reviews which would require that unneeded existing institutional health services be eliminated or closed. However, were a State to decide on its own initiative to create such a sanction the Committee would of course have no objection to this. The Committee did indicate its intent to consider requiring such a sanction at a later date. (H.R. Rep. No. 93–1382, 93d Cong. 2d Sess., Sept. 26, 1974, p. 79.)

Thus, the intent of Congress with respect to sanctions based on these reviews is clear: Sanctions are not required, but neither are they prohibited. Accordingly, the Secretary is not requiring the imposition of sanctions based on State Agency findings from an appropriateness review, nor is he prohibiting sanctions. He expects, however, that planning agencies will be extremely cautious in considering them.

The Secretary is concerned that there has been too much emphasis on the possible negative outcomes of appropriateness reviews. He sees these reviews as an excellent and exciting opportunity for providers and health planners to assess cooperatively the current health system and to make changes that can benefit the community. These reviews should not only address areas of excess and duplication but should also identify areas needing additional or improved services.

Several commenters felt that planning agencies would react in an arbitrary and capricious manner to a finding of inappropriateness. The Secretary points out that criteria developed with public input are used in making appropriateness review recommendations and findings and that these regulations contain procedural

safeguards which should help ensure an open and fair process.

Many commenters endorsed either linking appropriateness reviews to, or having these reviews replace, other project reviews, such as certificate of need reviews. The nature of appropriateness reviews differs from the other project reviews in that it is initiated by the planning agencies and may involve a service as it is provided in a number of facilities. In addition, appropriateness reviews are concerned only with existing institutional health services, whereas certificate of need reviews are concerned with proposed new institutional health services. Consequently, it may be overly burdensome to require the integration or coordination of reviews, and the Secretary has chosen not to require it. Nevertheless, where the regulatory and statutory provisions are satisfied, he would not object to having one review serve more than one purpose. The Secretary agrees with the commenter who suggested that the procedures and criteria developed for the various types of reviews should be largely in agreement, and, to the extent feasible, the same. He has therefore specified, where appropriate, minimal procedural requirements and considerations for criteria which are similar to those required for other types of reviews.

Several commenters objected to or asked for clarification of the phrase in the Preamble of the NPRM which indicated that appropriateness reviews "bridge the gap between planning and regulation." HSAs have no formal regulatory authority. Their responsibilities are limited in reviews of both proposed and existing institutional health services to making recommendations to the appropriate State Agency, which is then authorized to issue a certificate of need or make a finding, depending on the review performed. Because of the Act's emphasis on and the Secretary's endorsement of locally based health planning, it is expected that State Agency determinations will conform in most cases to the HSA's recommendations. These regulations therefore require the State Agency to justify any finding which is inconsistent with an HSA's recommendation, and enable the HSA to appeal any such State Agency finding.

Appropriateness reviews can be a valuable and logical extension of the health planning process. Through the process of using health plans as the basis for regulatory decisions, and using the results of reviews to aid in the development of better plans, planning agencies will have two effective tools, each complementing the other, for having a positive influence on the health care system. This process of adjustment and modification can be as effective in reviews of existing services, even without explicit sanctions, as are reviews of new services with sanctions.

The Secretary noted in the Preamble to the proposed rules that he was concerned that the appropriateness review workload was "potentially enormous" and that therefore he was proposing regulations which would "permit the gradual assumption of this function in accordance with agency capabilities." Commenters suggested that this be accomplished in the following ways: (1) To allow HSAs more than three years after full designation to complete their reviews; (2) not require *all* existing institutional health services to be reviewed in three years; and (3) exclude some HSAs, e.g., minimally funded agencies, from the three year requirement. The Secretary is unable to accept any of these recommendations because the Act requires that HSAs complete appropriateness reviews of all existing institutional health services within three years of their initial full designation.

To assist agencies, the Department has issued technical assistance documents on conducting appropriateness reviews, including recommended criteria and procedures for these reviews. These documents are available from the National Health Planning Information Center, 3700 East-West Highway, Hyattsville, Maryland 20782. In addition, the Department will issue further guidance on the development of these reviews, including recommendations on how appropriateness reviews of some institutional services may be conducted in more detail than those of other services. The Secretary understands the need to emphasize appropriateness reviews of acute care services, given the general excess of hospital beds in this country and the proliferation of expensive medical equipment. This approach is consistent with the resource standards of the National Guidelines for Health Planning issued on March 28, 1978. (See 43 FR 13040–13050).

One commenter noted that HSAs are being asked to assume other new responsibilities, such as the review of proposed uses of certain Federal funds, at the same time as appropriateness reviews and was concerned that the possibility of funding cutbacks might further lessen the capability of HSAs to perform reviews. HSAs have known for some time that both of these functions must be performed, and many HSAs have begun preparations for them. In addition, the conduct of appropriateness reviews is a statutory requirement; thus, the Secretary has no authority to delete it. The Secretary also notes that appropriation levels for the HSAs have risen in the last few years and he does not expect them to be reduced.

Several commenters noted the problems the HSAs have experienced in completing acceptable Health Systems Plans ("HSPs") and wondered how it is reasonable to expect such agencies to succeed in accomplishing quality appropriateness reviews. The Report of the House Committee on Interstate and Foreign Commerce (H.R. Rep. No. 93–1382, cited above, at p. 65) that accompanied the National Health Planning and Resources Development Act of 1974 noted that, "Good planning cannot be accomplished without an analysis of community needs, and how what it has already compares with those needs * * * either excesses or deficiencies * * *" The Secretary sees the appropriateness review function as integrally tied to the plan development function of each HSA. As the HSPs and Annual Implementation Plans ("AIPs") described more specifically resource needs and deficiencies, appropriateness reviews will become less burdensome. Departmental staff have noted that a number of initial HSPs have incorporated appropriateness reviews of some institutional health services.

One commenter recommended that the work program require specific information on the budget and staff resources to be used for appropriateness reviews. While the Secretary intends to monitor carefully the use of resources for this function, he feels that such a requirement would constitute overregulation of HSAs.

Some commenters were concerned about the apparent lack of experience of health planners in the delivery of health services, and the lack of information available to make reasoned judgments in areas such as pediatric services. The Secretary believes that judgments can be made by those who have not directly participated in the delivery of a service. In addition, providers of services and consumers are on project review and plan development committees of most HSAs. The Secretary believes that the professional expertise present in these committees will benefit the appropriateness review process. Additionally, appropriateness reviews, as well as other HSA activities, are conducted through a process in which the public, including health providers, is invited to participate. The Department

has issued detailed guidelines on the acquisition, analysis, use and development of data for health planning. The Secretary believes, therefore, that with consumer and provider involvement and with technical assistance from the Department, planning agencies can make fair and technically accurate findings on the appropriateness of services.

Many comments addressed the impact of appropriateness review on the providers of institutional health services. One commenter was concerned about the impact of reviews on the ability of providers to plan long term capital investments which might be judged inappropriate over the short range. This concern had been brought to the attention of Congress during hearings on the bills which were to become Pub. L. 93–641, and to the attention of the Department during the initial phases of developing these regulations. While the Secretary understands this concern, there is a statutory mandate for the conduct of these reviews. The Secretary encourages State Agencies, HSAs, and providers of institutional health services to work together in planning new services and the expansion of existing institutional health services to assure that they are needed by the residents of the health service area and the State and that they will be appropriate over the short range or immediate planning horizon. This does not guarantee that the emergence of new technology or unforeseen changes in demographics will not cause the service to be inappropriate at some future date.

Several commenters expressed concern that findings of inappropriateness would deter institutions from expanding. Appropriateness reviews are not intended to duplicate the activities of existing licensing and accreditation organizations. If a determination is made that the provision of that service is inappropriate for a particular institution, it might be inconsistent to grant a certificate of need or approve reimbursement under section 1122 of the Social Security Act, so as to permit the expansion of the inappropriate service. Other services could, of course, be expanded in accordance with the State's certificate of need program and section 1122 agreement with the Secretary.

Another commenter expressed concern that rate setters and third party reimbursers may use appropriateness review findings in making reimbursement decisions. Realizing the impact of these sanctions on providers, she urges providers, planners, and third party payors to work together to correct any situation found inappropriate.

One commenter expressed concern that appropriateness review would have a negative impact on the long-term care industry. The Secretary does not anticipate that appropriateness review will have a negative impact on any particular segment of the health care industry.

Numerous comments addressed the impact on providers of submitting data to State Agencies and HSAs for appropriateness reviews. To avoid duplication, these suggestions, while of general applicability, are discussed below in the specific section dealing with data (§ 123.603(c)).

Comments on Specific Portions of the Regulations

Sections 122.501 and 123.601 Definitions

These sections include definitions of appropriateness, areawide reviews and the services which are to be covered by appropriateness reviews. The comments on these sections were quite extensive and tended to fall into three categories: those which (1) requested further clarification of "appropriateness review"; (2) asked for clarification of the term "areawide"; and (3) questioned the definition of "existing institutional health services."

With respect to the proposed definition of "appropriateness," a few commenters believed that HSAs should be allowed to define appropriateness, although the vast majority felt that the regulations should define appropriateness more completely and specifically to prevent arbitrary and capricious decisions by local planning agencies. A few commenters suggested that "appropriateness" could be clarified by describing in greater detail the six characteristics agencies are to consider in developing criteria, i.e., availability, accessibility, acceptability, continuity, cost, and quality. Another commenter felt the need for elaboration on how planning agencies should weigh each of these six characteristics in making the "appropriateness" determinations. Finally, one commenter asked whether the certificate of need criteria (42 CFR 123.409) should be applied in the appropriateness review process.

The Secretary believes that it is of paramount importance to retain considerable flexibility in the way HSAs and State Agencies are able to conduct reviews and to relate these reviews to their other health planning responsibilities. Therefore, the proposed rules set forth only those minimal requirements which the Secretary considers necessary to achieve compliance with the statute and to insure an adequate level of coordination between HSAs and State Agencies. Appropriateness review is not only a logical outgrowth of the plan development process, but also it clearly has a regulatory aspect to it in that in all likelihood appropriateness review findings will influence other project review decisions.

Thus, the Secretary feels that further clarification of the term "appropriateness" is not desirable. The Guidelines for the Development of HSPs and AIPs, as well as other technical assistance materials, provide additional guidance on what agencies should consider within the six categories.

With respect to the definition of the term "areawide review," one commenter suggested that the definition be expanded to include contiguous areas, particularly in large metropolitan centers. The Secretary believes that while expanded areawide reviews may be desirable, they should not be required by regulation, since they would require local planning agencies to conduct reviews in areas outside of their jurisdiction. The Secretary strongly recommends, however, that HSAs governing contiguous areas with overlapping institutional service areas develop mechanisms for sharing information about institutions and services as part of an appropriateness review. He also calls attention to § 123.607(a)(7), which requires that consideration be given to the special needs and circumstances of those entities which provide a substantial portion of their services to individuals who do not reside in the health service area.

A second respondent requested that it be made clear that the planning agencies in conducting areawide reviews are not precluded from reviewing services on the basis of areas which are smaller or larger than an HSA's health service area. The Secretary notes that there may be circumstances where larger or smaller areas are proper, depending on institutional service areas, service areas for types of services (especially tertiary care services), and available data. Because of the wide local variations in these matters, the Secretary does not prescribe any one approach in regulation, believing they can best be addressed by specification of service and planning areas in HSPs and AIPs and by agency adoption of review criteria which address service area differences.

Finally, several commenters asked for clarification of the relationship between

areawide reviews and institution-specific reviews. One commenter suggested that the term "institution-service-specific reviews" be used to emphasize that the review is directed toward the service, and not the institution. The Secretary wishes to emphasize that the distinction between areawide reviews and institution-specific reviews was to be the nature of the findings, and not necessarily the techniques of analysis or data requirements for performing the reviews. For that reason, the term "institution-specific reviews" has been deleted as misleading, and the description of the two types of findings which may result are dealt with in the definition of "areawide reviews." Comments on required levels of review are discussed in this Preamble under § 122.503 and § 123.603, *"Appropriateness review work program."*

Other comments questioned the definition of the phrase "existing institutional health services" or asked that the definition be expanded to include services provided through community mental health centers, home health agencies, and alcohol and drug abuse treatment centers. The NPRM incorporated by reference the definition of institutional health services as it appears in the regulations governing reviews of new institutional health services (42 CFR 122.301). This definition includes services provided by HMOs and other health care facilities. The Amendments to the Health Planning Act contain a new definition of institutional health services which was effective on enactment and is included in these regulations. The statute now specifies that the services required to be reviewed include, at a minimum, those provided through private and public hospitals, rehabilitation facilities, and nursing homes, but that the Secretary may, by regulation, include other facilities. The Secretary has chosen not to expand the regulatory definition at this time. Rather, he will explore issues related to coverage in the proposed revisions to the certificate of need regulations which will be issued in the near future. At that time, the Department will entertain comments on whether "institutional health services" should be limited to facilities identified in the statute or whether coverage should be broader. In the interim, the Secretary encourages agencies to review all health services regardless of their setting and expects that any health services not reviewed will be addressed in the agencies' plan development activities, since they are part of the community's health system.

Sections 122.501 and 123.601 have been revised to include among the "existing institutional health services" which are subject to review, those services which will be offered during the 12 months following an appropriateness review. This will result in more complete appropriateness reviews.

Numerous commenters questioned whether the term "all existing health services" includes services provided through Federal health institutions. Many argued that the exclusion from review of Federal facilities (Veterans Administration, the Public Health Service, Department of Defense, and Indian Health Service hospitals) would present a less accurate view of the health care system's characteristics. The Secretary feels that a thorough review of the health care delivery system requires a review of the availability of Federal services to any population group which also is served by non-Federal services, and consideration of the impact of Federal services on the non-Federal system. Accordingly, the Secretary has chosen to submit services provided through the nine Public Health Service Hospitals to appropriateness reviews as well as other reviews. Departmental staff are working with other Federal agencies to encourage them to share data and plans with HSAs and SHPDAs. The Secretary notes, however, that States may not regulate Federal facilities, and that any regulation which States might choose to attach to appropriateness reviews would not apply to Federal facilities, and that any findings of inappropriateness would have the effect only of recommendations. Nonetheless, the Department will be encouraging the Federal facilities to cooperate with HSAs and State Agencies in supplying necessary operating data and statistics which are relevant in the review of the appropriateness of services.

Several commenters suggested that the review for appropriateness should include high cost services which are provided outside of institutions subject to review but which are made available to patients of these institutions (e.g., CT scanners located in physicians' offices). The Secretary agrees that agencies should attempt to review all existing institutional health services regardless of the settings in which they are located. He points out that the definition of "institutional health services" at Section 1531(5) of the Act includes health services provided *through* covered facilities, and that this provides a basis for review of some of these services.

A number of commenters suggested that in order to avoid confusion between planning agencies and providers, the terms "affected persons," and "directly affected persons," should be defined by the Secretary. The Secretary notes that the proposed rules defined these terms by reference to Subpart D of 42 CFR Part 122 and Subpart E of 42 CFR Part 123. However, because these terms as referenced are not entirely applicable to appropriateness reviews, (i.e., references are to "proposals"), they have been modified and placed in these regulations at § 122.505(a)(1) and § 123.605(a)(1). Furthermore, since the distinction between "affected persons" and "directly affected persons" is a small one and has little substantive impact on the conduct of appropriateness reviews, the term "affected persons" has been used for both categories.

Sections 122.503 and 122.603 Appropriateness Review Work Program

Sections 122.503 and 122.603 require HSAs and State Agencies to submit annual work programs to the Secretary which describe their plans for assuming the appropriateness review function and for performing appropriateness reviews on a continuing basis.

In order to address fully the issues raised, the comments received on these sections have been divided into six separate categories, as follows: (1) The coordination of the reviews between State Agencies and HSAs; (2) the timing and criteria for Departmental review; (3) the role of the State Agencies as to definitions, priorities and schedules; (4) the collection, transfer, and use of data; (5) the initiation of reviews; and (6) the level of reviews.

Coordination

Some commenters felt that the amount of coordination required by this regulation is excessive and will tend to hamper the expeditious development of a satisfactory program for performing appropriateness reviews. However, others suggested that additional coordination is necessary, including coordination with contiguous HSAs and with HSAs sharing common standard metropolitan statistical areas. And finally, a number of commenters suggested that a greater degree of coordination ought to be specified with provider groups in the health service areas involved.

The Secretary concurs that the additional coordination suggested would be of value in many instances. However, he believes that it is unnecessary to require this by regulation inasmuch as coordination between contiguous HSAs and HSAs sharing standard metropolitan statistical areas has been

dealt with in other regulations (at 42 CFR 122.107(c)(10), (11), and (12)) and Health Systems Agency Application Guidelines previously issued by the Department (November 1978) which apply to appropriateness review as well as to other agency functions.

One respondent asked how the State Agency should handle appropriateness review until all of the HSAs in the State are conducting appropriateness reviews. The Secretary recognizes that agencies will be developing their capabilities to conduct appropriateness reviews at different rates, and the local circumstances will require different strategies on the part of State Agencies which intend to proceed in the absence of recommendations from all HSAs in the State. There is no single answer to this question, and the actual response of State agencies to their situations rests with them; however, the Secretary does suggest that State Agencies review carefully their proposed strategies with members of the public, with their Statewide Health Coordinating Councils (SHCCs), and with all HSAs in the State regardless of whether those HSAs are able to assist them in appropriateness review at the time. Once a newly capable HSA is prepared to make its recommendations, the State agency should be willing to reevaluate any of its own previous findings and conclusions. Since appropriateness reviews are meant to be repeated every five years at the State level, and appropriateness review findings must be reconsidered when good cause is shown, both State Agencies and providers should be prepared to respond more than once to the same issue. The ability to reevaluate the appropriateness of any existing institutional health service in response to system changes should become an integral part of HSA and State Agency programs.

A commenter was concerned about the duplication of HSA and State Agency staff and volunteer time and suggested that whenever possible, one agency should take primary responsibility. The Secretary agrees that wherever feasible the planning agencies ought to assist one another in performing their respective functions, and that if arrangements can be made which satisfy the agencies involved, staff and volunteer time can be applied to reviews in a fashion which reflects State and local circumstances. He notes, however, that each agency must always retain its prerogative to reach its own conclusion.

Departmental Review—Timing and Criteria

One respondent questioned how the Department would judge the capability of agencies to carry out appropriateness review solely on the basis of their work programs. The Department's judgment will be made on the basis of many factors, such as their performance in other activities, in addition to the quality of agency work programs. Agencies which have shown that they are capable of carrying out an approved work program will find the Department willing to accept that past performance in combination with a satisfactory appropriateness review work program as sufficient evidence of their ability to do these reviews. Agencies whose past performance indicates that they frequently miss deadlines or fail to achieve adequate quality in essential actions will find that the Department requires evidence more convincing then a minimially satisfactory work program.

It was suggested that the regulations specify when agencies will be required to submit their work programs to the Department and that the agencies should be required to publish their appropriateness review work program in advance to obtain public comment. The Secretary agrees in general that greater public involvement at this point is warranted. In the NPRM neither HSA amendments to their work programs (for the performance of appropriateness reviews) nor State Agency changes to the State Administrative program were required to be subjected to public scrutiny prior to their adoption. The lack of a requirement for advance public comment on work program amendments at the HSA level is less of a problem than at the State Agency level because: (1) The requirements for adoption of procedures and criteria assure public participation for this element of reviews, (2) all meetings held by an HSA for whatever purpose are open to the public, and (3) it is not the HSA but the State Agency which prescribes the definitions of services to be reviewed, the priorities for reviews, and the schedule for reviews. Accordingly, no requirement for public comment on the HSA work program has been added. The State Agency lead role in coordinating appropriateness reviews poses a more difficult situation because there is no opportunity for public review of the State Agency's decision regarding the administrative framework for reviews. Accordingly, the regulations now require that the State Agency submit to the Secretary, with the work program, evidence that the public was afforded an opportunity to comment on it, and a summary of the comments.

One respondent suggested that the work program should allow for the development of review criteria over a number of years rather than a single deadline for the development of all criteria. The Department agrees, and § 123.503(a) has been amended to indicate that the work program developed by the health systems agency must "specify the steps to be taken to develop" procedures and criteria. This revision is intended to permit agencies to develop applicable procedures and criteria over time, rather than a one-time effort. The Secretary points out, however, that applicable procedures and criteria must be adopted prior to a review.

Sections 122.503(b) and 123.603(b) Lead Role of State Agency With Respect to Definitions, Priorities and Schedules

These regulations give the State Agency a lead role in defining the services to be reviewed and in establishing the review priorities and schedules. In addition, they establish that it is the State Agency's responsibility to collect and transfer data used in appropriateness reviews. However, in the event that a State Agency does not assume leadership, a provision has been added which would still enable HSAs to proceed with their reviews. The proposed regulations placed the lead role in the State Agency, which, after consultation with HSAs and the SHCC, would: (1) Define services to be reviewed, (2) establish review priorities, and (3) establish review schedules. The Secretary solicited public comment using the SHCC as a mediator when HSAs and the State Agency could not agree on these matters.

Although a number of those who commented on this issue, including many HSAs, endorsed this State Agency lead role provision, a greater number expressed concern because: (1) It preempts HSA prerogatives, and (2) in practice, it puts some HSAs in a difficult position because of review timing conflicts. It was also felt to be inconsistent with the intent of the Act, which the commenters felt emphasizes a more balanced HSA and State Agency approach. The Secretary believes, however, that the effectiveness of appropriateness review is largely dependent on coordination, and that designation of a leadership role is necessary. He has chosen the State Agency to provide this leadership, but notes that the responsibility for

developing procedures and criteria remains with each reviewing agency.

A great number of comments dealt with the proposed role of the SHCC as a mediator in the resolution of differences between HSAs and State Agencies. Some commenters felt that the SHCC ought to have a much stronger role, while others indicated that it would be overwhelmed with the volume of coordination required in States where there are many HSAs. Others thought the staff of the SHCC would have a conflict of interest, since as a rule it is also the State Agency staff. Additionally, some commenters suggested that the representatives of the HSAs on the SHCC would be in a position of conflict.

Since various strategies to health planning are being pursued, no single approach could be expected to work equally well in all of the States. Therefore, the Secretary has chosen to retain the flexible provisions of the proposed rules with respect to the SHCC's role in this process, recognizing that there will be differences in the effectiveness of the SHCC in mediating State Agency and HSA differences. The Secretary is confident that both agencies will realize the need to work closely with the SHCC to assure that it will have a positive role in resolving issues which may arise. The Department intends to develop technical assistance materials which will describe the roles that agencies are to play in the various States.

A number of commenters expressed concern that the review timing provisions of the proposed rules would allow a State Agency which is reluctant or not ready to proceed with appropriateness reviews to retard an HSA's ability to do so or to delay inordinately reviews of controversial services. Others pointed out that the statutory requirement for HSAs to complete their first reviews within three years of full designation, along with the fact that very few State Agencies have been fully designated, present potentially serious timing problems.

This timing problem stems primarily from some unavoidable overlapping of responsibilities among reviewing agencies during their early years of development, and from differences in the receipt of full designation status by the HSAs and State Agencies. The Secretary believes that this situation will improve over time.

In addition, the regulations now permit HSAs to develop their own definitions, priorities, and schedules if the State Agency has failed to do so within six months of the publication of these regulations. See § 122.503(b)(2). In this event, coordination will be achieved through requirements for common service definitions and schedules for reviews among HSAs in a given State and for giving priority to reviews of the services specified in the National Guidelines.

Review schedule may be established so that health systems agencies can complete their reviews prior to the deadlines established in the State schedule, rather than exactly on the dates set forth. This flexibility will enable different HSAs in a State to concentrate on different issues. Any schedule developed, whether by the State Agency or by the HSAs collectively, should be flexible enough to allow HSAs to proceed with certain appropriateness reviews as long as they complete them prior to the date set forth in the agreed schedule. A few comments suggested that the regulations define services which are subject to review in order to avoid unnecessary debate at the State level. The Secretary intends to assist agencies in their definitions of services and will provide technical assistance for that purpose. However, it would be inappropriate for her to define specifically the services covered, since there are many and varied State laws which provide long established definitions of services. Therefore, the Secretary has chosen not to specify and define the services which will be covered. She does, however, expect that agencies will (at a minimum) specify definitions for those services which are identified in the National Guidelines for Health Planning.

Another respondent suggested that the priorities among services should be tied in to those identified in the HSA's annual implementation plan (AIP). The relationship of the objectives of the AIP to the priorities of services which need to be reviewed for appropriateness is one which will vary from HSA to HSA. Further, the priorities will then be negotiated with the State Agency and other HSAs in the State. However, the Secretary believes that the HSP and AIP provide the analytical bases for this function and as a result that services which have been analyzed in the HSP form the basis for services selected for appropriateness review. The Secretary also agrees that in establishing the AIP and the appropriateness review work program, agencies should carefully examine the linkages between these two functions, including an assessment of staff time involved and a review of program priorities as they relate to the effectiveness of overall implementation of agency goals and objectives. It is possible, for example, that on the basis of an areawide appropriateness review the agency might determine that some aspect of the service is inappropriate, and subsequently and immediately decide that the issue is important enough to merit inclusion in the agency's AIP.

Section 123.603(c) Data

The largest number of public comments received respecting coordination matters concerned data issues. Discussed below are the most important and most frequently cited issues.

Commenters questioned the authority of State Agencies and HSAs to require data from appropriateness review purposes, citing both practical and legal problems. For example, alluding to lack of authority for sanctions, several commenters asked what would happen if providers simply refused to supply the required data. A commenter from one State noted that there is no existing State legislation which would "permit the State Agency to require institutions to submit such data." Another suggested that the State Agency be required to document its State legislative authority for requiring data submission for appropriateness review purposes on grounds that "State Agencies can perform only such functions as they are by State statute authorized to perform." Another stated that providers should be able to challenge the need for required data. Others said that the reviewing agency should justify its need for certain data and that an institution should not be required to submit certain information to the reviewing agencies if it could show that it must report that or similar information to other Federal or State Agencies. While one commenter stated that HSAs in particular do not have authority under terms of the Act to collect data, and that that task should be left to the State Agency, others suggested that HSAs should be able to collect data independently. Another recommended making a provision for submitting proprietary data in summary form as a protection against public revelation of competitive information. Finally, an opinion was offered that data would be required in such specificity that the effect of the appropriateness review function would be harrassment of institutions and public revelation of management prerogatives.

The Secretary is aware of the practical and legal problems associated with performance of appropriateness reviews, including problems of data collection, transfer, and use. Nevertheless, the function must be performed under the terms of the Act, which establishes data responsibilities

in the State Administrative Program in section 1522(b)(7) and in mandated review procedures, 1532(b)(3) of the Act. The former section requires that as a prerequisite for designation and funding renewal a State Agency must make certain operational provisions respecting data acquisition and use, including a requirement that "providers of health doing business in the State make statistical and other reports of such information (related to health and health care) to the State Agency." Also, while the Secretary agrees that State enabling legislation for securing data is desirable, she realizes that the advent of such authority is not imminent in every State, and urges States to use whatever means are available to obtain the data required for their functions.

While the State Agency must require certain data for use in these and other reviews, which data will be shared with the HSAs in the State, HSAs can go beyond the State requirements and request additional data from providers. However, they may lack the authority to require that it be submitted. The Act and these regulations require HSAs and State Agencies to use exisiting data sources before collecting new data and to coordinate data collection with the Cooperative Health Statistics System. Secretarial approval must also be obtained before any new data systems can be established. To avoid any duplicative data collection requirements, the Department will coordinate the implementation of these data provisions with that of the Medicare-Medicaid Anti-Fraud and Abuse Amendments (Pub. L. 95–142) data requirements. The Department has issued data guidelines which provide technical assistance to agencies in developing a cost-effective empirical base for planning and regulation. In addition, to prevent numerous requests during the course of a review, the Secretary has added language to § 122.505(a)(3) and § 123.605(a)(3) to require that agencies may not demand information of a person subject to review unless it is prescribed and published as being required. She also wishes to call attention to the Department's policy (at 42 CFR 122.107(c)(1), and "Guidelines for the Acquisition and Use of Data Under Pub. L. 93–641," June, 1978, p. 2.4) that new data systems are not be established without Secretarial approval and that all reasonable efforts be made to avoid duplicative data requirements.

Other commenters registered the following compliants as to the data provisions: (1) The lack of availability and/or existence of the kind of data necessary for determining the appropriateness of services; (2) the inability of reviewing agencies to effectively analyze and use data, because of limited agency staff expertise and experience, heavy staff workload, etc. and (3) the significant adverse cost implications for both providers and patients with little or no increased benefit in improved health care. The Secretary is aware of such problems but does not believe them to be so overwhelming as to negate the mandate to perform the reviews. She agrees that some additional costs may be incurred by providers and passed on to consumers, but she believes that the potential benefits to be derived from appropriateness review as discussed above reasonably outweigh the costs incurred. The Secretary does not wish to impose additional requirements on the agencies relating to the costs of providing data.

A number of commenters were concerned about the interpretation of data in the course of a review. One suggested starting with pilot reviews which would identify data used problems. Another suggested that agencies should develop and test sample data in limited situations to gain experience about the usefulness of those data, time required to conduct reviews, etc. Several commenters repeated or endorsed the requirement that notices of the kinds of data to be required be published in advance. There was considerable concern that data requirements not be duplicative. Several commenters advocated a more prominent role for the SHCC in data collection activities including approval of the reviewing agencies' data requirements. The Secretary has not adopted these suggestions, believing that to do so would be to overregulate in the absence of experience. She does, however, offer them to the planning agencies for their consideration.

Several commenters advocated strong coordination between State Agencies and HSAs respecting data. The Secretary concurs and calls attention to similar requirements respecting other key elements of reviews. Some commenters stated that in establishing data requirements State Agencies must take into account different review criteria which precipitate various data needs, and that limitations of data would necessarily affect review outcomes. The Secretary concurs with both statements, but she believes that like many of the problems cited above, these difficulties will be ameliorated with the passage of time and the expansion of data resources.

Other commenters raised the problem of the time required to obtain and forward data to the reviewing agency. Some advocated that such time not be included in the review period. The Secretary notes that data may be gathered well before reviews begin, and that agencies may wish to begin collecting it as soon as schedules are established for reviews. A few commenters indicated that data requirements should be allowed to vary according to the type of service reviewed and purpose of the review. The Secretary believes this approach is consistent with the regulations and the general philosphy of the appropriateness review program.

One commenter suggested that State Agencies and HSAs submit their data requests to providers simultaneously. The Secretary does not believe such requirements should be established in regulations but encourages that approach, see § 122.505(c) and § 123.605(c). While the suggestion that agencies requesting data be interviewed as to its intended use is probably not time and cost effective, the Secretary agrees that intended uses of data should be made clear by requesting agencies. Details of doing so are left to agency discretion and forthcoming guidances.

Many commenters expressed concern about the inability of agencies to collect data in the absence of sanctions for providers who refuse to meet the agencies' requests. The Department has been aware of this concern during the process of formulating these regulations; however, it has chosen not to go beyond the statute and specifically require sanctions for noncompliance with data requests. Rather, it relies on the individual States to decide whether or not sanctions are necessary and to develop them in their State Administrative Program if needed. The Secretary, however, urges both providers and planning agencies to cooperate in determining data requirements and the provision of required data so that these sanctions are not necessary.

Finally, several comments were received which indicated concern over the confidentiality of certain financial and medical data. Any data collected by a State Agency or HSA must be made available to the public under section 1532(b)(10) of the Act. The Secretary understands this concern, however, and has asked HSAs and State Agencies not to request data that have confidentiality or privacy requirements associated with them.

Section 123.603(d) Initiation of Appropriateness Reviews

One commenter asked the meaning of "initiating appropriateness reviews." The Secretary intends for State Agencies to develop work plans which call for areawide appropriateness reviews for some services to begin no later than the dates indicated in the regulations (§ 123.603(d)). If the process were allowed to be postponed any further, it would be very unlikely that all of the required appropriateness reviews could be completed within the total time available. This means, therefore, that definitions of at least some services to be reviewed and a schedule for their review will have to be worked out rapidly. The Secretary recommends that agencies give immediate consideration to early scheduling and definition of services which are dealt with in the National Guidelines for Health Planning.

Some commenters suggested that the initiation of appropriateness reviews be delayed until State Agencies and HSAs are fully designated in a State. Others suggested that the work program of the State should be developed first, and then the HSAs could develop their programs. Another commenter recommended that a common timeframe be developed for all agencies in the State which would be mandatory and which might be specified by regulation. Because of the statutory requirements, the Secretary has retained the time requirements specified in the proposed rules.

Sections 122.503(d) and 123.603(e) Levels of Review

When the NPRM was drafted, there was much discussion within the Department concerning whether HSAs and State Agencies should be performing institution-specific appropriateness reviews. While there were many in favor of requiring these reviews, others felt just as strongly that such reviews would alienate providers, require more sophisticated and detailed data, and make significant demands on planning agencies' manpower and time resources.

Numerous comments have been received on this issue. Some commenters objected to institution-specific reviews. Some questioned the ability of planning agencies to do the reviews, arguing that current staffing and funding levels of planning agencies are not sufficient to undertake the potentially enormous work load associated with these reviews. Some also suggested that agencies gain more experience before performing institution-specific reviews or that areawide reviews be done first in order to ensure an adequate aggregate data base before embarking on more specific reviews. Additional commenters expressed the view that the statute does not authorize institution-specific reviews and therefore, the Department has no authority to require them.

Some of the commenters pointed out that the distinction between areawide review and institution-specific review would become meaningless in some instances, particularly in the review of services which are provided by institutions in rural areas. Since all of the HSA's data and records must be made available to the public, there is no way to preclude public knowledge of the locations (hence, in a sparsely populated area, the institutions themselves). Moreover, one commenter suggested that the service area being considered for areawide review should be tailored to the type of service being reviewed. That is, if the services are highly sophisticated and provided by only a small number of institutions within the entire health service area, then it may be appropriate for purposes of that review to use the entire health service area as the "area" for conducting areawide review. On the other hand, at the secondary and primary care level, smaller service areas should be used in order to make the results of the review useful in the conduct of all the agencies' functions. Finally, one respondent indicated that a finding of inappropriateness on an areawide basis might be construed as a comment against all providers of that service within the area.

The Secretary wishes to reiterate that the principal distinction between areawide reviews and institution-specific reviews as defined in the proposed regulations was intended to be in their respective findings rather than the techniques of analysis. Areawide reviews require much of the same data and analysis as institution-specific reviews but were not to involve institution-specific recommendations or findings. In any event, the final regulations clarify that it is in the findings and recommendations that agencies may address specific institutions.

A large number of commenters supported reviews which would result in institution-specific findings. Reasons cited included: (1) Possible links to rate setting agencies, (2) areawide reviews already duplicate plan development activities, (3) institution-specific findings would be much more effective in eliminating excess capacity, and (4) areawide findings of inappropriateness could penalize all providers in the aggregate rather than those for which difficulties actually exist. The Secretary agrees that appropriateness reviews which result in institution-specific findings may be quite helpful. However, he has chosen not to require these findings at this time but to allow agencies to make institution-specific findings at their option as their capabilities and resources permit.

Many comments were received from provider organizations recommending that HSAs and State Agencies be precluded from conducting institution-specific reviews. Many of these commenters expressed the view that such a review is not authorized by the statute. Nearly all, including some planning agencies, indicated that they believed that HSAs and State Agencies would be unable to handle these reviews.

The Secretary emphasizes that under the statute, agencies are to review all services although the nature and depth of each review is best left to the judgment of the agencies. The Secretary agrees that in States where rate setting activities are carried out, HSAs and State Agencies should be sensitive to the need for a fairly high degree of specificity in their findings. Although he has not chosen to require institution-specific findings, he expects that planning agencies and rate setting agencies will work together to support one another's activities toward that end. Whether or not rate setting agencies are present, the Secretary strongly recommends that agencies convey any findings of inappropriateness in a fashion which indicates that the findings do not necessarily apply to all providers of that service. The Secretary feels that agencies must be aware of the problems associated with using vague criteria and standards to render decisions that may be viewed as regulatory in nature.

One correspondent raised the question as to whether the 180-day review period was mandatory for both areawide reviews and institution-specific reviews. The commenter felt that institution-specific reviews would probably take longer than areawide reviews. The Secretary points out that since the regulations now require all appropriateness reviews to take place within the 180-day review period, regardless of the nature of the findings (i.e., areawide or institution-specific), the specification of two time periods is not necessary.

Numerous commenters suggested that HSAs and State Agencies would be unable to complete their reviews of *all* existing institutional health services within the required time. The Secretary

agrees that this provision will be difficult to implement, but points out that the time limits for completing reviews of all services are statutory and cannot be waived. He notes, however, that the definition of services rests with the State Agencies, in consultation with the HSAs, and that this mechanism should allow agencies to collapse subcategories of services so that resources may be devoted to those specific services which merit the most attention. Agencies should concentrate initially on the services for which the National Guidelines for Health Planning have been issued.

Several commenters recommended additions to the list of requirements for HSA and State Agency work programs for appropriateness review. These include suggestions that: (a) Work programs specify the new data which must be obtained from providers as well as those which can be obtained from secondary sources, (b) work programs include a description of how agencies intend to coordinate their appropriateness reviews with their plan development and project reviews, (c) a section be added to encourage the participation of task forces in appropriateness review and to advise agencies on the development of procedures and criteria, (d) work programs describe the agency budget and staff resources that will be applied to the appropriateness reviews, and (e) the State Agency document its authority for conducting appropriateness review. The Secretary will consider these suggestions if and when requirements for work programs are revised, but finds it unnecessary to do so at this time.

Finally, several editorial improvements have been made to this section of the regulations as a result of comments received. These include the following:

Section 123.603 (a) has been revised to clarify that the review procedures and criteria which a State Agency is required to develop and apply are those which that State Agency will be applying; thus these do not govern HSAs in that State. Sections 123.603(a) and (c) have been amended to indicate the need for coordination with agencies in *all* of the States (as opposed to *both* States) where health service areas are shared by more than one State.

Sections 122.504 and 123.604 Adoption and Public Notice of Review Procedures and Criteria

One commenter emphasized that all review procedures should be made known to providers subject to appropriateness review prior to the initiation of a review. Sections 122.305 and 123.406 of 42 CFR provide ample opportunity for providers (as well as consumers) to becomes aware of appropriateness review procedures prior to their initiation.

. Another commenter suggested that State Agency appropriateness review procedures should be approved by the SHCC so that consumers and providers would have direct input into decisions affecting the health care delivery system. While the intent of Title XV of the Act is to involve consumers and providers in these decisions at the local level, there is no statutory authority for the SHCC to approve or disapprove the State Agency's appropriateness review procedures. However, residents of a State may comment on the State Agency's proposed procedures under 42 CFR 123.406, as may the SHCC. Furthermore, SHCCs are required to advise the State Agencies generally on the performance of their functions.

Sections 122.505 and 123.605 Health Systems Agency and State Agency Procedures; General Comments

One commenter suggested that these procedures be expanded to enable use of a screening process in setting the priorities of services to be reviewed or in defining the services subject to review. While the Secretary realizes that the HSAs and State Agencies may elect to perform a screening process for this purpose, it is not expected that a screening process would result in recommendations and finding as to the appropriateness or inappropriateness of a specific service. If a recommendation or findings were to be made as a result of a screening process, these procedures would be applicable. It should be pointed out that there are two ways in which State Agencies and HSAs have an opportunity to perform "non-substantive" or "non-intensive" reviews. The provisions found in § 122.505(b) and § 123.605(b) permit health planning agencies to adopt review procedures which, while meeting all the requirements of § 122.505 and § 123.605, may vary according to the type of health service being reviewed. In addition, § 122.506 and § 123.606 permit the agencies to seek an exception to the requirements of § 122.505 and § 123.605. One possible use of this latter provision is for an HSA or a State Agency to propose alternative procedures which it will utilize in the case of services defined by the HSA to require a less intensive or expedited review.

Sections 122.505(a)(1) and 123.605(a)(1) Notification of the Beginning of a Review by Health Systems Agencies and State Agencies

A number of commenters suggested that the written notification should include what service is to be reviewed, the review authority of the agency (including citations to the statute and regulations), review procedures and criteria, the work program, and the review timetable. While the Secretary agrees that this information should be made available to providers and persons subject to appropriateness review, in the interest of allowing agencies flexibility in establishing procedures beyond the minimum statutory requirements, he has not chosen to require this of the agencies at this time. Furthermore, review procedures and criteria are available to the community through the agencies' process for adoption and public notice of procedures and criteria as required by §§ 122.504 and 123.604.

One commenter asked clarification on when notification was required and suggested that it be required 30 days before the initiation of a review. Another writer asked for a specific definition of the term "initiate," as a review could be judged to have been initiated at any time from its initial planning until its implementation. The Secretary agrees that providers need ample advance notice of the beginning of a review, but he wishes to allow planning agencies flexibility to establish procedures to suit local circumstances.

Another commenter suggested that a newsletter or a legal notice in a newspaper of general circulation could serve to notify affected persons of the beginning of a review. In view of the demands that appropriateness review will place on HSAs' and State Agencies' resources, the Secretary has added language to §§ 122.505(a)(1) and 123.605(a)(1) to permit agencies to provide written notification to members of the public through newspapers of general circulation in the area and other public information channels. However, notification to all other affected persons shall be by mail (which may be as part of a newsletter).

Sections 122.505(a)(2) and 123.605(a)(2) Health Systems Agency and State Agency Schedules for Reviews

In addition to the previously cited comments on schedules for and the timing of reviews, a number of commenters questioned the Secretary's authority to establish procedures not specified in the statute. When the proposed regulations were drafted, careful consideration was given to the

problem of the amount of time for conducting an appropriateness review. The Secretary decided that the statutory time limit was insufficient because of the complexity of these reviews and extended the time limit under section 1532(a) of the Act. The Secretary also views this matter as falling within his general rulemaking authority under the Act.

One commenter urged that there be a provision for deferring a scheduled review under extenuating circumstances. The procedures in these regulations are minimal requirements, and agencies may adopt procedures beyond those required in this subpart. The Secretary encourages agencies to consider concerns such as this one when developing and adopting their review procedures, and points out that agencies may wish to define "to the extent practicable" to cover just such circumstances.

Another commenter urged that there be a mechanism for extending the review period, upon request and for good reason. Sections 122.506 and 123.606 permit HSAs and State Agencies to request an exception to the requirement that they use review procedures which meet the requirements of §§ 122.505 and 123.605; a mechanism of this sort may be proposed in such a request.

On the other hand, one commenter suggested deletion of the phrase, "to the extent practicable," as some agencies would routinely extend the review period. The Secretary notes that this phrase is derived from the statute and has determined in any event that an absolute limit on the time period for conducting these reviews is too rigid and would generate an excessive number of requests for exceptions under §§ 122.506 and 123.606.

Another commenter requested clarification on what activities take place in the 180-day review period. One commenter requested that the regulations specifically define and restrict the activities to be performed by the agencies in conducting these reviews. The Secretary believes that the regulations should allow sufficient flexibility for State Agencies and HSAs to implement this function consistent with other review and planning activities within the State or health service area. Therefore, he has chosen not to define further or restrict the agencies' activities in this regard.

Another commenter suggested that persons and institutions subject to review be given 30 days to submit data and that the 180 days should be counted from the date the materials are submitted. The Secretary believes that the review periods specified in the regulations provide adequate time for submission of data and performance of the review and has rejected this suggestion.

Another commenter suggested that the regulations should stipulate that more than one service may be reviewed simultaneously. While the Secretary does not choose to add language to the regulations as suggested, he does wish to indicate here that agencies may need to conduct simultaneous reviews of more than one service.

Several commenters recommended that State Agency reviews be sequential to those of the HSAs so that determinations regarding a specific service will be made within a reasonable time frame. In this regard, there is no language in the statute which mandates either a sequential or concurrent review by the State Agency. Although the Secretary believes that sequential reviews best permit State Agencies to consider HSA's recommendations, he has chosen not to require this result by regulation, leaving this to the State Agencies' discretion.

Sections 122.505(a)(3) and 123.605(a)(3) Submission of Information by Persons Subject To Review to Health Systems Agencies and State Agencies

The issues raised by commenters concerning the procedures for submitting data for appropriateness review have already been addressed in the section on data, above, at § 123.603(c).

Sections 122.505(a)(4) and 123.605(a)(4) Provision for Written Findings

One commenter recommended that the regulations should specify which parties should receive written notification of an HSA recommendation or State Agency finding, including the institutions offering the service under review, the State Agency, contiguous HSA's, and others upon request. Another commenter asked how the public will be informed about the HSA's and State Agency's recommendations and findings. Sections 122.505(a)(5) and 123.605(a)(5) require the HSA's and State Agencies to notify providers of health services and other persons subject to review of the status of reviews, findings made in the course of the reviews, and other appropriate information respecting the reviews. Section 122.5503(c) also requires the establishment of procedures for transmittal of the HSA's recommendations to the State Agency. Finally, §§ 122.505(a)(8) and 123.605(a)(8) require that the planning agencies give the general public access to all written materials pertinent to their reviews. Accordingly, the Secretary has concluded that no further notification requirements are necessary.

One commenter recommended that § 123.605(a)(4) be revised to require that a finding of inappropriateness made by a State Agency should be accompanied by (1) a detailed statement of the reasons for the finding, (2) the data and evidence upon which the finding was based, and (3) identification of which published criteria were not used in the review and the reasons why. Section 123.608(b) requires the State Agency to state in a finding of inappropriateness that the service has not met one or more of its established criteria and the ways in which the service failed to meet the criteria, including any that are beyond the control of the persons providing that service. The Secretary believes that this requirement will provide sufficient detail to the providers and the public as to the inappropriateness of a particular service. This does not preclude State Agencies from providing additional information to support their findings, and the Secretary encourages the agencies to do so to the extent practicable.

Sections 122.505(a)(5) and 123.605(a)(5) Notification of providers and other Persons Subject To Review of the Status of the Review

A number of comments was received requesting that this requirement be further clarified as to who should receive this notification, how frequently this notification is to be made, the substance of the notification, and the process for providing the notification. The Secretary does not wish to elaborate on this subparagraph through regulation. While planning agencies are required to notify only the providers of health services and other persons subject to review, they may and are encouraged to inform other providers and persons at their discretion. Furthermore, since §§ 122.505(a)(8) and 123.605(a)(8) require that the general public be given access to all written materials concerning reviews, the concerns expressed by the commenter are satisfied.

Several commenters suggested that State Agencies and HSAs notify providers of the service being reviewed of their interim recommendations and findings. Similarly, several commenters suggested that persons subject to review be provided an opportunity to respond to the HSA's recommendations and that this response be forwarded to the State Agency with the HSA recommendations. Again, the Secretary does not wish to restrict planning agencies in developing

their procedures through regulation. Rather, he chooses to allow these agencies flexibility in developing their procedures, to receive comments from providers and consumers through the public notice and adoption process and to modify these procedures to reflect local and State concerns.

Sections 122.505(a)(6) and 123.605(a)(6) Provision by Health Systems Agencies and State Agencies of Public Hearings in the Course of Agency Review and Hearings for Good Cause Shown

Several commenters suggested that public hearings should not be required during the course of the review while many others suggested that a public hearing be required for all appropriateness reviews. The Secretary notes that the statute requires that persons directly affected by a review be given the opportunity to request a public hearing in the course of a review. The Secretary believes that the present requirement is fair and equitable to all parties concerned.

One commenter requested that the regulations provide the procedures for conducting a public hearing. Planning agencies have already established procedures for conducting public hearings during certificate of need and new institutional health service reviews. These proceduree may be applicable to appropriateness reviews and should be adopted by the agencies with any necessary changes.

One commenter suggested that health systems agencies be required to post notices of hearings in public locations at the institutions providing the service under review. While the Secretary believes that the planning agencies have generally established effective mechanisms for notifying affected persons of a public hearing, he does urge the agencies to evaluate the adequacy of their procedures and to modify them as appropriate.

A large number of commenters urged that the procedures provide an opportunity for providers to appeal or ask for a reconsideration of an HSA recommendation or State Agency finding of inappropriateness. These commenters pointed out that even though there are no official sanctions attached to this function, there may be some impact on providers, and therefore, as a matter of due process, the provider should have an opportunity to appeal the finding. In addition, since the State Agency has a year to make findings after the HSA recommendations, providers are concerned that adverse recommendations will be public for a full year and they will have no formal channel through which to refute the findings. The proposed regulations called for hearings during the course of a review for persons directly affected at both the HSA and State Agency level. They also included a requirement that a State Agency provide the opportunity for a public hearing at which it would reconsider its findings if a person can show good cause for reconsideration. For purposes of this subparagraph, "good cause" has the same meaning as that in § 123.407(a)(8) of the regulations for review of new institutional health services.

This provision states that a request for a public hearing will be deemed by the HSA or State Agency to have shown good cause if it (1) presents significant, relevant information not previously considered by the agency, (2) demonstrates that there have been significant changes in factors or circumstances relied upon by the agency in reaching its decision, (3) demonstrates that the HSA or State Agency has materially failed to follow its adopted procedures in reaching its decision, or (4) provides such other basis for a public hearing as the planning agency determines constitutes good cause.

The Secretary has given careful consideration to these arguments. Accordingly, the regulations now provide for "good cause" hearings at the HSA level after a recommendation derived from a review which results in an institution-specific finding (§ 122.505(a)(6)) and also add a requirement for an administrative appeal after the State Agency finding at the request of any provider whose services have been found inappropriate in such a review (§ 123.605(a)(10)). Because these procedures tend to be expensive and time-consuming, he has decided to require that they be available only with respect to institution-specific findings.

Sections 122.505(a)(7) and 123.605(a)(7) Preparation and Publication by Health Systems Agencies and State Agencies of Regular Reports of the Reviews Being Conducted

Several commenters requested clarification of the term "regular." One commenter questioned the statutory basis for this requirement, while others suggested that agencies be permitted to use existing mechanisms to comply with this requirement or that only the State Agency be required to prepare and publish these reports. Section 1532(b)(9) of the Act mandates that both HSAs and State Agencies prepare and publish reports of this nature. The Secretary has chosen not to elaborate on the statutory language in these regulations and believes that the details of meeting this requirement should be determined by State Agencies and HSAs.

Sections 122.505(a)(8) and 123.605(a)(8) Access by the General Public to all Written Materials Pertinent to Reviews

Numerous comments were received expressing concern about the confidentiality of data submitted by providers to health planning agencies. These concerns have been addressed in the Preamble under section 123.603(c).

Section 123.605(a)(9) Health Systems Agency Appeal of a State Agency Finding

One commenter expressed concern that allowing HSAs to appeal State Agency decisions would weaken the leadership role of the State Agency. While the Secretary is sensitive to this concern, the HSA's right to appeal is required by section 1522(a)(13)(A) of the Act.

Numerous comments were received which urged that the regulations permit providers to appeal a State Agency finding of inappropriateness particularly when specific institutions are cited. The Secretary agrees with the suggestion and has amended this section, providing that if a State Agency makes a finding regarding the appropriateness of an existing institutional health service on an institution-specific basis, the providers of that service may appeal the State Agency's finding under an appeals mechanism consistent with State law governing the practices and procedures of administrative agencies, by an agency of the State (other than the State health planning and development agency) designated by the Governor and that the finding of the reviewing agency shall be considered the final finding of the State Agency. This requirement does not preclude providers from appealing a finding of inappropriateness on an areawide basis: however, the States are not required to provide a mechanism for such an appeal.

Section 123.605(a)(11) State Agency Decisions Inconsistent with Health Systems Agency Plans

Note.—This subparagraph was numbered § 123.605(a)(10) in the NPRM.

Several comments were received which indicated confusion as to the intent of this requirement. This provision clearly provides that the emphasis of this procedure is to be on the inconsistency of the State Agency's findings with the goals of the HSP or the priorities of the AIP, not the inconsistency of the service with the goals of HSP or the priorities of the AIP.

Sections 122.505(c) and 123.605(c) Provision for Corresponding Procedures

The Secretary has concluded that because of the length of time (up to one year) between the HSA's and the State Agency's reviews of an existing institutional health service, both agencies should provide procedures for written notification to affected persons of the beginning of their reviews and procedures for the provisions of public hearings in the course of the review if requested by persons directly affected by the review. The provisions permitting one agency to satisfy these requirements for both agencies have therefore been deleted. However, since the State Agency has been given the responsibility to establish requirements for submission of data after consultation with the SHCC and the HSAs of the State (§ 123.604(c)), the Secretary has maintained the provision that § 122.505(a)(3) is deemed satisfied for the HSA if the State Agency has provided for a corresponding procedure.

Sections 122.506 and 123.606 Exceptions To Use of Procedures

One commenter urged that no exceptions be allowed to the procedures required in § 122.505 and 123.605. The statute does not require that the procedures adopted by the planning agencies be the same for every HSA or State Agency, and permits every agency to develop and publish its own set of procedures. Agencies may find it necessary, with respect to any type or group of reviews, to deviate from the minimal requirements set forth in section 1532(b) of the Act. The Secretary has the authority, under section 1532(a) of the Act, to permit exceptions to use of these procedures, although he anticipates doing so only in unusual circumstances.

Sections 122.507 and 123.607 Criteria for Health Systems Agency and State Agency Reviews; General Comments

A number of comments revealed that there is a great deal of confusion concerning the respective roles of the State Agencies and the HSAs in developing the criteria to be used in appropriateness reviews. Unlike the role accorded to the State Agency in coordinating and establishing definitions, schedules, and priorities for reviews, no comparable role has been assigned for the development of review procedures or criteria. The agencies must, under § 122.503(b)(1) and 123.603(a), consult with each other and the SHCC before they decide on the criteria they will use, but neither agency is bound by the decisions of the other.

Several commenters were concerned over how the criteria would be used in determining appropriateness. Specific concerns were expressed over how the criteria will be balanced by the State Agency and whether or not all criteria will be used in making a finding of appropriateness. The Secretary intends that the State Agency and the HSAs use judgment in developing specific criteria to be applied in the review of each type of existing service which they undertake. The regulations allow considerable latitude in § 123.607(a) and (b) and § 123.608(b) in the selection and application of criteria. A minimum of one negative finding must be made in order to support a finding of inappropriateness. The Secretary believes mechanistic formulas for the weighing of criteria would overly simplify a complex set of local judgments.

Several respondents sought either additional considerations for criteria or more detail in those listed in § 123.607(a). The Secretary believes that the considerations as presently enumerated enable the agencies to develop all the criteria relevant and necessary to make a recommendation or a finding concerning appropriateness. He prefers that the regulations allow flexibility so that the agencies can develop and apply criteria suitable to local situations rather than to regulate fixed and rigid considerations aimed at meeting all possible needs.

A number of respondents felt strongly that providers should be involved in the development of review criteria. Since providers are represented on the governing bodies of each HSA, they should be directly involved in the development of criteria at the local agency level. The State Agency, however, might not have direct provider participation. The Secretary, therefore, strongly urges that the State Agencies give proper consideration to both provider and consumer concerns which are conveyed in the consultation meetings that take place between the State Agency, the HSA, and the SHCC. In addition, the Secretary reminds all interested parties that under § 122.504 and § 123.604 the HSAs and the State Agencies must give the public an opportunity to comment on criteria as well as procedures prior to their adoption. The Secretary feels that through these means, participation by government officials, providers, consumers, and planners in the formulation of review criteria is assured.

One commenter thought that since quality of care is monitored by Professional Standards Review Organizations (PSROs), it should not be included as a consideration. The Secretary does not agree with this suggestion, but rather believes that the quality of health care is important and that to remove it from consideration in appropriateness reviews would be contrary to the best interests of the public. It should be noted that section 1513(d)(1) of the Act requires each HSA to coordinate its activities with those of the PSRO in its area. It is through this mechanism that PSROs are expected to have a significant role in identifying quality considerations for use as review criteria.

The Secretary notes that Pub. L. 95–619, the National Energy Conservation Policy Act, which became law on November 9, 1978, amends section 1532(c)(9) of the Act to provide that in the case of a construction project, the "costs and methods of the proposed construction" to be considered must include the "costs and methods of energy provision." Because appropriateness reviews do not include reviews of proposed construction projects, the original provisions of section 1532(c)(9) of the Act were not included in the proposed regulation; for the same reason the amended provisions are not included in these regulations. Reviews of proposed construction projects are already required to employ this criterion when they are conducted as reviews of new institutional health services (including certificate of need) by 42 CFR 123.409(a)(12)(i).

Pub. L. 95–619 also added paragraph (c)(10) to section 1532(c) of the Act, providing for an additional criterion. This requires consideration of the special circumstances of health care facilities and HMOs with respect to the need for conserving energy. This provision has been incorporated into the regulations as § 123.607(a)(11).

Section 123.607(a)(1) Relationship of Services Reviewed to Plans

Several respondents stated that review criteria should not be required to include the relationship of the health services to the State health plan (SHP). The major reason given for this assertion is that these plans may not have been completed in time to allow the HSAs to complete their reviews in the required time. Since the new health planning amendments now require that reviews consider the relationship to the State health plan, these regulations continue to contain this provision.

The Secretary has revised this paragraph to describe more fully the "population" served as including low income persons, racial and ethnic minorities, women, handicapped

persons, and other underserved groups. Further discussion of these population groups is set forth below in regard to § 123.607(a)(10).

Section 123.607(a)(3) Need for the Services

Several commenters requested that the regulation make provision for the special needs and circumstances of osteopaths, including their facilities and patients. The Secretary has considered these comments and concludes (as noted in the Preamble to the final regulations governing the reviews of new institutional health services (42 FR 4018) January 21, 1977) that to include such a provision in Federal regulations would interfere with the local planning process which the statute was designed to foster. As the distribution of osteopathic services varies greatly from State to State, and as the governing bodies of the HSAs must include consumers, public officials, and representatives of provider groups, the Secretary feels that osteopathic concerns can be adequately voiced on the boards of the HSAs. Furthermore, he notes that the statute provides for public hearings by a planning agency and that there is opportunity for community input in the development of both the HSP and the SHP, as well as in the adoption of other review criteria. Thus, osteopathic concerns, in areas where they are a factor, may be addressed in the applicable health plans and criteria.

The Secretary reiterates his intent that there be no discrimination against populations which wish to have osteopathic services and facilities available. He therefore encourages State Agencies and HSAs to incorporate consideration of the needs of those being served by such services into the health plans. However, he is not advocating the development of duplicative systems of health care and of expensive facilities and equipment.

Other requests for special consideration were received from rural providers, the developmentally disabled, and clinical health manpower training facilities. The Secretary feels that the rationale regarding opportunity to participate in HSA and State Agency decisions in areas of the country where a particular need exists, as discussed above, is applicable to a number of the other requests for special consideration.

One writer asked whether a service ought to be considered inappropriate if it is insufficient to meet the needs of the community. The Secretary believes that an insufficiency might be a basis for a finding of inappropriateness, but should be weighed against the availability of the service outside the immediate community, the alternative services to meet the same health needs, and other adopted criteria. The Secretary encourages the use of appropriateness reviews to identify areas in need of additional services, as well as to identify excess capacity and he calls attention to § 123.608(d), which requires that a finding of inappropriateness lead to a recommendation for remedial action.

Section 123.607(a)(4) Availability of Alternatives

One commenter suggested that consideration be given to making comparisons of the costs of services by institutions in a health service area. Another suggested that the alternate form of care also be judged as to whether it is less restrictive, citing court decisions which state that disabled persons have the right to treatment in the least restrictive environment appropriate to their needs. The Secretary declines to accept this suggestion. He feels that the revised language for § 123.607(a)(3) and (10) provides adequate assurance that the needs of handicapped persons will be considered in reviewing existing services, and although he is not prescribing language for the handicapped (nor for that matter any other group), he expects planning agencies to develop criteria consistent with these considerations as local circumstances require.

Section 123.607(a)(5) The Relationship of Services Reviewed to Existing System

One commenter pointed out the relativity of the term "inappropriate," suggesting the decision depended on determining which services were least appropriate. Clarification was also requested as to whether the term relates to oversupply. While the Secretary is concerned with excess capacity, he maintains that appropriateness review must address, to the extent practicable, all of the characteristics of health service delivery systems in the State. As discussed above, the insufficiency of a service should also be identified during appropriateness reviews, and the agencies have a responsibility for recommending remedial action.

Section 123.607(a)(6) Availability of Resources

A number of providers requested deletion of this section, which addresses the availability of resources for the provision of the service being reviewed and the possible alternate use of these resources for the provision of other health care services. They asserted that this provision is an unwarranted intrusion into the way providers conduct their day to day business and that such a provision would lead to the destruction of free enterprise in the health care system. The Secretary believes that health care resources are not infinitely expandable, that decisions need to be made concerning their allocation, and that he would be undermining the planning process if he complied with this request.

Section 123.607 (a)(8) and (c) Reviews of Health Maintenance Organizations

The Secretary notes (see the Preamble to the NPRM for appropriateness review, 43 FR 21277, May 16, 1977) his expectation that *areawide* appropriateness reviews will not impact adversely on HMOs. It was with this expectation that the special HMO related provisions of the regulations (specifying and limiting criteria and providing for required findings) apply only with regard to institution-specific findings. He notes, however, that the Act clearly requires that institutional health services provided by or through an HMO be subject to appropriateness reviews, even if the findings are stated only on an areawide basis. Accordingly, planning agencies are now required to review only those services of HMOs which are provided through public and private hospitals, rehabilitation facilities and nursing homes. Other services provided by HMOs, such as outpatient services, are no longer required by statute to be reviewed.

A few respondents felt that if the Federal government wants to foster the development and growth of HMOs, the Secretary should exclude them from all planning and regulatory activities. The Secretary has no authority to exempt HMOs from all planning and regulatory activities, and he does not agree that the special criteria place HMOs outside the regulatory process. The purpose of these regulations is to ensure that reviews of HMOs are performed in a manner consistent with the Federal initiative to aid in their development, as mandated by section 117(a) of the HMO Amendments of 1976 (Pub. L. 94–460) and the National Health Priorities in section 1501 of the Act. He submits further that the history of the development of the HMO system of health delivery shows that they have been the object of discrimination by some in the medical community. He feels that these regulations will establish a process which may help protect them from this discrimination and will place them on an equal footing with other providers.

Other commenters asserted that HMOs should not be given special privileges or be judged by special criteria, since this approach is discriminatory against other health care providers and sets a precedent for other exceptions. The Secretary does not agree that this regulation discriminates against other providers. It simply implements the Congressional intent, as set forth in Pub. L. 93–641, 93–222, 96–79 and 94–460, that the development of HMOs be encouraged and that HMOs be given special consideration in the health planning process.

One commenter suggested that HMO members be subtracted from the population base which is used to justify new non-HMO services. The Secretary notes that it is the responsibility of health planning agencies to plan for health services for the total population of their planning areas for all types of services. Nothing in these regulations lessens the responsibility of health planning agencies to plan for the segment of the population who are HMO enrollees, or to implement their plans within the requirements of the regulations. However, the Secretary does feel that population based planning must take into consideration that certain populations obtain service from separate providers, such as Federal health care facilities or HMOs.

The Secretary has reviewed these sections and agrees with the commenters who questioned the applicability of § 122.508(d) and § 123.608(d) (as well as § 123.607(a)(8)(ii)) to appropriateness reviews. He notes that while it is necessary to consider the relationship of HMO services to the health system services as a whole, it is not advisable to evaluate the HMO services in such a way as to encourage their being deemed inappropriate simply because the service may be, or may become, available from non-HMO providers. He feels that these proposed provisions, although helpful in certificate of need reviews, would create unintended hardships for HMO's in appropriateness reviews. Therefore, the Secretary has: (1) Deleted two of these paragraphs (§ 122.508(d) and § 123.608(d)) from the regulations, and (2) clarified the other provision (§ 123.607(a)(8)(ii)) to state that the agencies shall consider whether the services could be obtained from non-HMO, or other HMO, providers in a reasonable and cost-effective way, consistent with the HMO mode of operation. He does not, however, agree with the commenter who also advised deleting § 123.607(a)(8)(iii). He urges health planning agencies to submit, under the provisions of § 123.607(a)(8)(iii), any other factors which they propose to use to determine the appropriateness of these HMOs within the health delivery system, including the relationship of one HMO to other HMOs or to non-HMO providers.

Section 123.607(a)(9) Special Needs and Circumstances of Biomedical and Behavioral Research Projects

One commenter asked whether specific criteria should be used by the State Agency for review of research projects of national importance and whether, in fact, findings regarding such projects would have the effect of recommendations to the Secretary. The Secretary points out that this subparagraph requires the HSAs and State Agencies to take into consideration needs of projects which may extend beyond their boundaries. Appropriateness reviews, based in part on this consideration, result in findings, not in recommendations to the Secretary. He points out that these findings may provide the basis for HSA's reviews of proposed uses of Federal funds within their areas under section 1513(e) of the Act. Nevertheless, the Secretary encourages the State Agencies to notify the appropriate Federal funding agency when it determines that a Federally funded research project is inappropriate, although he is not requiring by regulation that they do so.

Section 123.607(a)(10) Needs of medically underserved groups and groups with problems of equal access to health care.

Commenters both praised and criticized the proposal that consideration be given the contribution of the institutional health service in meeting the health related needs of women, minorities and the handicapped. Some suggested that the regulations be expanded to include additional groups such as the elderly, children, pregnant women and the medically underserved generally, whose health care problems merit special consideration.

Others thought that there is no evidence that women and minorities have special unmet health care needs and that requiring their consideration places HSAs in the role of civil rights investigators. Another commenter questioned the legal basis for the section and said that § 123.607(a)(3), (the "need that the population served * * * has for such services") logically includes consideration of any special needs. One commenter suggested that such consideration prevented giving equal consideration to needs of *all* individuals in the health service area. And finally, a State Agency stated that this provision was unnecessary because consideration of the needs of these and other groups would already be part of an agency's planning process.

After thoughtful consideration of the comments, the Secretary is revising § 123.607(a)(10) by stating that special consideration shall be given to the needs of "members of medically underserved groups and members of groups which have traditionally experienced difficulties in obtaining equal access to health services."

The regulation then cites low income persons, racial and ethnic minorities, women, and handicapped persons as examples of these groups. The Secretary points out that these are only illustrative and that there may be other groups whose needs merit special attention in particular health service areas or States. The regulation also calls attention to those health related needs identified in the applicable health systems plan and annual implementation plan as deserving of priority.

The Secretary believes the revision serves several purposes. First, while highlighting several of the more prominent groups which are underserved or have problems of access, it does not limit consideration exclusively to them. Second, it enables agencies to identify the groups in their area which have traditionally experienced access problems and to provide special consideration as to how the health related needs of these groups can be met. Third, the section is designed to remind the agencies that the Secretary is vitally interested in the health care that is accorded to these example groups and will be monitoring their situations closely.

While the Secretary agrees that consideration of the "need the population served * * * has for such (proposed) services" can be read broadly to include the needs of these groups, he has concluded that this more explicit statement is necessary because it is the most appropriate way to call attention to problems of equal access and medical underservice, given the Department's strong commitment to resolving these problems.

The Secretary views the promulgation of paragraph (a)(10) as clearly being authorized because: (1) Section 1532(c) of the Act refers to criteria which include consideration of "at least" the factors specified in the Act, (2) the Secretary views paragraph (a)(10) as being a more explicit statement of paragraph (a)(3) (which is derived from Section 1532(c)(3) of the Act), and (3)

issues of equal access and medical underservice were so explicitly referred to by the Congress in enacting Title XV (see, for example, Sections 2(a)(2) and (3) of Pub. L. 93–641, Sections 1502 and 1532(c) of the Act).

Section 123.607(b) Criteria for different types of reviews.

The individual character of each State and health service area will dictate the criteria to be used in reviewing the services offered in that area. Different factors will assume different degrees of importance, depending on such considerations as the nature of the service under review and the characteristics of the area where the review is being conducted. The recommendation or finding that results from an appropriateness review should be based on the integrated application of all criteria, rather than absolute compliance with each set. The Secretary agrees that additional clarity is needed and therefore, is revising § 123.607(b), by adding that "should an agency fail to use criteria addressing all six of the characteristics of appropriateness in a review, it must explain this in the finding." Technical assistance, in the form of suggestions of possible measures of the six characteristics of appropriateness, will be made available to the agencies. Definitions of these six characteristics are in the *Guidelines for the Development of Health Systems Plans and Annual Implementation Plans*, distributed with the Bureau of Health Planning's Program Policy Notice 79–05.

Sections 122.508 and 123.608 Required recommendations/findings.

One commenter questioned the negative impact on an institution of making public a finding of inappropriateness. In the absence of regulatory sanctions, planning agencies can rely only on voluntary actions which may be stimulated (in part) by the public finding. While this may have a negative impact upon a given institution, it should result in better overall health care by stimulating the institutions affected, the community, and the planning agency to seek solutions through suggested remedial action to the causes of the finding.

Several commenters objected to paragraphs (e) of these sections, regarding inpatient facilities of HMOs. Some advised deleting the provisions entirely because it was not suitable for use in appropriateness reviews. The Secretary has reexamined the proposed required findings and has deleted proposed § 122.508(e) and § 123.608(e) as superfluous. He has also deleted § 122.508(d) and § 123.608(d) because he has concluded that the limited review criteria which may be applied to HMOs are sufficient to prevent discrimination against HMOs in the review process.

Sections 122.508(f) and 123.608(f) (Renumbered as § 122.508(d) and § 123.608(d) Plan for remedial action.

A number of commenters were concerned about the requirement that HSAs and State Agencies suggest remedial actions whenever they find a service inappropriate. Some commenters felt it should be clear that the remedial actions would be voluntary, and one felt that development of remedial action plans should not be a function of HSAs or State Agencies; rather it should be performed by the governing body of the institutions in question.

Another commenter was concerned that the kinds of findings and recommendations which might be developed would need to provide an adequate basis for administrative or judicial review which might occur in the event of an appeal. Several other commenters believed that the language in the proposed rule did not adequately emphasize that HSAs and State Agencies should actively work with all affected groups to change or eliminate inappropriate services.

The Secretary believes that a finding of inappropriateness carries with it an obligation for suggesting remedial action which is consistent with the planning functions of Sections 1513 and 1523 of the Act. This requirement to develop remedial action suggestions is intended to encourage HSAs and State Agencies to refine their analyses of the appropriateness of services to the point where specific actions can be suggested. The Secretary intends that it will serve as a check on health planning agencies, preventing them from arbitrarily finding services provided in the area to be inappropriate.

Although some States may wish to develop regulatory programs around the appropriateness review function, the Secretary expects that most States and agencies will rely, at least initially, on the voluntary efforts of institutions to implement the remedial actions suggested to them. Moreover, the Secretary feels strongly that planning agencies should work closely with institutions which provide services that have been deemed inappropriate in order to obtain agreement on reasonable remedial actions.

With regard to the need for findings and recommendations to constitute an adequate basis for further administrative or judicial review, the Secretary concurs that such findings and recommendations need to go beyond the mere statement of whether a service is deemed appropriate or inappropriate. Any finding or recommendation should be supported by a summary of major comments and information received. It should also explain how any concerns or problems raised were resolved by the agency and what led the agency to its ultimate finding or recommendation. Moreover, although findings and recommendations need not address all six characteristics in detail, the record should show that the agency gave consideration during the course of its review to all six of those characteristics (availability, accessibility, acceptability, continuity, cost, and quality) as well as all other criteria which apply to the service being reviewed, or explain in its findings why it has chosen not to do so.

Remedial action plans should be developed by the HSA and the State Agency after due consideration of the suggestions received from the institutions involved, major creditors, third party insurers, consumers, and providers of health services which would be affected by the proposed remedial action. Examples of potential remedial action would include the possibility of conversion of some services to other health care uses, use of facilities that are nearby, or the elimination of the service together with some plan for providing patient access to other convenient facilities.

One commenter felt that the remedial plans could not be effective unless they dealt with specific institutions. As indicated previously, the Secretary agrees that remedial plans which address changes in individual institutions will ultimately have a greater impact on the health care system than those which deal generally with services being provided in the area. However, remedial plans which are applicable to services provided over an entire health service area will still have value which will vary as a function of the services being reviewed. For example, if there is a widespread problem of access to primary care in a health service area, such a finding and the formulation of a remedial action plan could be used to assist in the development of additional primary care resources. A second example is a finding that the delivery of a particular service is inappropriate because of the setting in which it is offered or most frequently offered in the area (e.g., end stage renal disease services provided primarily at clinics, as opposed to a home setting). Another example might be psychiatric services provided primarily on an inpatient basis instead

of community alternatives such as outpatient services or partial hospitalization services.

As agencies gain experience with appropriateness reviews, the nature of remedial actions which they suggest will provide a basis to evaluate the need for further action. The Secretary will be carefully monitoring the effectiveness of remedial action plans. If it becomes evident that remedial action plans lack adequate specificity, the Secretary will consider changing the requirements for these plans. For the time being, however, he feels that the lack of experience with appropriateness review does not justify any greater degree of specificity than was set forth in the NPRM.

One change, however, has been adopted to make § 122.508(f) and § 123.608(f) of the NPRM, now numbered § 122.508(d) and § 123.608(d) more consistent. That is, both sections now require agency plans for remedial action only to the extent practicable.

Accordingly, 42 CFR Parts 122 and 123 are amended in the manner set forth below.

Dated: February 6, 1979.

Julius B. Richmond,

Assistant Secretary for Health.

Approved: November 26, 1979.

Patricia Roberts Harris,

Secretary.

PART 122—HEALTH SYSTEMS AGENCIES

1. Part 122 of Title 42, CFR, is amended by adding thereto a new Subpart F, to read as follows:

Subpart F—Health Systems Agency Reviews of Existing

Institutional Health Services for Appropriateness

Sec.

122.501 Definitions.
122.502 Purpose and applicability.
122.503 Appropriateness review work program.
122.504 Adoption and public notice of review procedures and criteria.
122.505 Procedures for health systems agency review.
122.506 Exceptions to use of procedures.
122.507 Criteria for health systems agency review.
122.508 Required recommendations.

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690 (42 U.S.C. 216); sections 1513 and 1532 of the Public Health Service Act, as amended, 93 Stat. 592–630 (42 U.S.C. 300l–2, 300n–1)

Subpart F—Health Systems Agency Reviews of Existing Institutional Health Services for Appropriateness

§ 122.501 Definitions.

Except for the term "institutional health services," terms used in this subpart shall have the meaning given them in Subparts A (Definitions) and D (Procedures and Criteria for Review of New Institutional Health Services) of this part. In addition, as used in this subpart:

The term "institutional health services" means health services which (a) are provided through private or public hospitals, rehabilitation facilities, and nursing homes, and (b) entail annual operating costs of at least the expenditure minimum. For purposes of this paragraph, the term "expenditure minimum" means $75,000 for the twelve month period beginning with October 1979, and for each twelve month period thereafter, $75,000 or, at the discretion of the State, the figure in effect for the preceding twelve month period, adjusted to reflect the change in the preceding twelve month period in an index to be specified by the Secretary.

The term "existing institutional health services" or "services" means institutional health services:

(a) Being offered in the health service area at the time of review for appropriateness, or

(b) Offered at any time in the 12 months prior to the review and also planned to be offered at any time in the 12 months following the review, or

(c) which will be offered during the 12 months following the review.

A finding of "appropriateness" means a finding that a service meets the needs of a population, in accordance with the criteria development and published under § 122.507.

The term "areawide review" means the review of a specific institutional health service as delivered by all the institutions providing the service in the health service area (a) which shall culminate in recommendations regarding the appropriateness of that service over the entire health service area, and (b) which may result in recommendations regarding the appropriateness of that service in a particular institution.

§ 122.502 Purpose and applicability.

Section 1513(g) of the Act requires each health systems agency to review on a periodic basis, but at least every 5 years, all institutional health services offered in its health service area and to make recommendations to the State Agency for each State in which any part of the health systems agency's health service area is located respecting the appropriateness in the area of such services (hereinafter referred to as an appropriateness review). Section 1532(a) of the Act requires that in performing its review functions under section 1513(g) of the Act or in conducting any other reviews of existing health services, each health systems agency shall follow procedures and apply criteria developed and published by the health systems agency in accordance with regulations of the Secretary. This subpart sets forth minimum procedures and criteria to be used by health systems agencies in conducting these reviews and the requirements respecting the assumption, conduct, and timing of the appropriateness review function by health systems agencies; requirements respecting the coordination with the State Agency and the Statewide Health Coordinating Council; and the administrative steps which are necessary for the effective performance of the appropriateness reviews.

Note.—Under 42 CFR 122.106(c), a health systems agency may not perform the appropriateness review function during its first year of conditional designation, and may not in any event perform this function during its period of conditional designation until it has established a health systems plan and annual implementation plan in accordance with sections 1513(b)(2) and (3) of the Act, and the Secretary has in writing authorized the agency to perform this function.

§ 122.503 Appropriateness review work program.

(a) Each appropriateness review shall be performed on an areawide basis and shall result in a finding as to the appropriateness of the service being reviewed as it is delivered in the health service area. The health systems agency may, at the same time, make findings as to the appropriateness of that service in particular institutions.

(b) The work program submitted by each health systems agency in accordance with 42 CFR 122.104(a)(3) or (b)(9), whichever is applicable, shall with respect to the assumption and continuing performance of the appropriateness review function:

(1) Specify the steps to be taken to develop procedures and criteria to be applied in performance of appropriateness reviews, in consultation with the Statewide Health Coordinating Council and State Agency of each State in which any part of the health systems agency's health service area is located;

(2) Include an assurance (i) that the health systems agency will abide by the decision of the State Agency with respect to the definitions of services, priorities among services, and the schedule for areawide reviews of such

services if the State Agency written decision is communicated to the health systems agency within 6 months following publication of these regulations; or after such time (ii) that the health systems agency will abide by the definitions of services and schedules for reviews agreed to by the majority of the health systems agencies in the State, and will give priority in its reviews to services for which National Guidelines for Health Planning have been issued.

(3) Provide for the establishment of administrative procedures governing the transmittal of appropriateness review recommendations to the State Agency in accordance with procedural requirements established by the State Agency; and

(4) Specify the steps necessary to complete areawide appropriateness reviews of all existing institutional health services within 3 years of the date of the health systems agency's initial full designation and during each succeeding 5-year period. Review schedule priorities may be established, but such review priority setting shall not result in the exclusion from review of any existing institutional health service during any applicable time period.

(c) Each health systems agency shall, within three months after the effective date of these regulations, submit to the Secretary a revised work program under § 122.104(a)(3) or (b)(9) of this title, whichever is applicable, which conforms to the requirements of this section.

§ 122.504 Adoption and public notice of review procedures and criteria.

The provisions of 42 CFR 122.305 apply to the adoption and public notice of review procedures and criteria under this subpart.

§ 122.505 Procedures for health systems agency review.

(a) The procedures adopted and used by a health systems agency conducting the reviews covered by this subpart shall include at least the following:

(1) Written notification to affected persons of the beginning of a review. Written notification to members of the public may be provided through newspapers of general circulation in the area and public information channels; notification to all other affected persons shall be by mail (which may be as part of a newsletter). "Affected persons" include at a minimum, the person whose service is being reviewed, the State Agency for each State in which all or any part of the agency's health service area is located, health systems agencies serving contiguous health service areas, health care facilities and HMOs located in the health service area which provide institutional health services, entities with which the health systems agency must coordinate its activities pursuant to section 1513(d) of the Act, any agency which establishes rates for health care facilities or HMOs in its health service area, and those members of the public who are to be served by the service subject to review.

(2) Schedules for areawide reviews which provide that no review shall, to the extent praticable, take longer than 180 days from the date of notification to affected persons made in accordance with paragraph (a)(1) of this section to the date of submission of the health systems agency's recommendations to the State Agency.

(3) Provision for persons subject to a review to submit to the health systems agency such information as the health systems agency may require concerning the subject of such review, in the form and manner and containing the information which the health systems agency shall prescribe and publish. Such information requirements may vary according to the purpose for which a particular review is being conducted or the type of health service being reviewed; however, the health systems agency may require no information of a person subject to review which is not prescribed and published as being required in accordance with § 122.504.

(4) Provision for written findings which state the basis for any recommendations made by the health systems agency.

(5) Notification of providers of health services and other persons subject to the health systems agency review of the status of the health systems agency's review of the institutional health services, findings made in the course of the review, and other appropriate information respecting the review.

(6) Provision for (i) public hearings in the course of the health systems agency review if requested by persons affected by the review, and (ii) that any person may, for good cause shown, request in writing a public hearing for purposes of reconsideration of a health systems agency recommendation derived from an institution-specific finding.

(7) Preparation and publication of regular reports by the health systems agency of the reviews being conducted (including a statement concerning the status of each such review), and of the reviews completed by the health systems agency (including a general statement of the findings made in the course of these reviews and the recommendations made to the State Agency) since the publication of the last report.

(8) Access by the general public to all written materials pertinent to any health systems agency review.

(b) Procedures adopted for reviews in accordance with paragraph (a) of this section may vary according to the type of health service being reviewed.

(c) The procedures adopted for reviews may provide that the requirements of paragraph (a)(3) of this section shall be deemed satisfied for any health service area within the State if the State Agency has provided for a corresponding procedure.

§ 122.506 Exceptions to use of procedures.

A health systems agency may, with respect to any type or group of reviews, request from the Secretary an exception to the requirement that it use review procedures which meet the requirements of § 122.506. The requirements of 42 CFR 122.307 apply to such a request for an exception.

§ 122.507 Criteria for health systems agency review.

The provisions of 42 CFR 123.607 apply to the adoption and use of review criteria under this subpart.

§ 122.508 Required recommendations.

(a) After completing its review of an existing institutional health service a health systems agency shall make recommendations respecting the appropriateness of the service in its health service area to the State Agency of each State in which all or any part of the health systems agency's health service area is located.

(b) A health systems agency may not recommend that a State Agency find an existing institutional health service to be inappropriate unless the health systems agency has stated in writing that the service has not met one or more of the established criteria of the health systems agency and the ways in which the service failed to meet the criteria, including any that are beyond the control of the person(s) providing that service.

(c) A health systems agency, in conducting an areawide review which results in institution-specific findings may not recommend that an existing institutional health service provided by or through an HMO be found inappropriate solely because there is an HMO of the same type, as specified in section 1310(b) of the Act, in the same health service area, or solely because the services being reviewed are not discussed in the applicable health systems plan, annual implementation plan, or State health plan.

(d) When a health systems agency recommends to a State Agency that a service be found inappropriate, the health systems agency shall, to the extent practicable, suggest to the State Agency a plan for remedial action.

PART 123—STATE HEALTH PLANNING AND DEVELOPMENT AGENCIES

2. Part 123 of Title 42, is amended by adding thereto a new Subpart G, to read as follows:

Subpart G—State Agency Reviews of Existing Institutional Health Services for Appropriateness

Sec.

123.601 Definitions.
123.602 Purpose and applicability.
123.603 Appropriateness review work program.
123.604 Adoption and public notice of review procedures and criteria.
123.605 Procedures for State Agency review.
123.606 Exceptions to use of procedures.
123.607 Criteria for State Agency review.
123.608 Required findings.

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690 (42 U.S.C. 216); secs. 1523 and 1532 of the Public Health Service Act, as amended, 93 Stat. 592–630 (42 U.S.C. 300m–2, 300n–1).

Subpart G—State Agency Reviews of Existing Institutional Health Services for Appropriateness

§ 123.601 Definitions.

Except for the term "institutional health services," terms used in this subpart shall have the meaing given them in Subparts A (definitions) and E (certificate of need and review of new institutional health services) of this part. In addition, as used in this subpart:

The term "institutional health services," means health services which (a) are provided through private or public hospitals, rehabilitation facilities, and nursing homes, and (b) entail annual operating costs of at least the expenditure minimum. For purposes of this paragraph, the term "expenditure minimum" means $75,000 for the twelve month period beginning with October 1979, and for each twelve month period thereafter, $75,000 or, at the discretion of the State, the figure in effect for the preceding twelve month period, adjusted to reflect the change in the preceding twelve month period in an index to be specified by the Secretary.

The term "existing institutional health services" or "services" means institutional health services:

(a) Being offered in the State at the time of review for appropriateness, or

(b) Offered at any time in the 12 months prior to the review and also planned to be offered at any time in the 12 months following the review, or

(c) Which will be offered during the 12 months following the review.

A finding of "appropriateness" means a finding that the service meets the needs of a population in accordance with the criteria developed and published under § 123.607.

The term "areawide review" means the review of a specific institutional health service as delivered by all the institutions providing the service in a health service area or State (a) which shall culminate in findings regarding the appropriateness of that service over the entire health service area or State, and (b) which may result in recommendations regarding the appropriateness of that service in a particular institution.

§123.602 Purpose and applicability.

Section 1523(a)(6) of the Act requires each State health planning and development agency to review on a periodic basis (but not less often than every 5 years) all institutional health services being offered in the State (hereinafter referred to as an appropriateness review) and, after consideration of the recommendations submitted by health systems agencies under Section 1513(g) of the Act and 42 CFR Part 122, Subpart F, to make public its findings as to the appropriateness of such services. Section 1523(b)(3) of the Act requires the State Agency to complete its findings as to the appropriateness of any existing institutional health service within one year after the date a health systems agency has made its recommendation with respect to the appropriateness of the service under Section 1513(g) of the Act and 42 CFR Part 122, Subpart F. Section 1532(a) of the Act requires that in performing its review functions under Section 1523 of the Act (which includes reviews conducted under Section 1523(a)(6)), each State Agency shall (except to the extent approved by the Secretary) follow procedures and apply criteria developed and published by the State Agency in accordance with regulations of the Secretary. This subpart sets forth minimum procedures and criteria to be used by State Agencies in conducting these reviews; requirements respecting the assumption, conduct, and timing of the appropriateness review function; requirements respecting the coordination with health systems agencies and statewide health coordinating councils and the administrative steps which are necessary for the effective performance of appropriateness reviews.

§123.603 Appropriateness review work program.

(a) Each appropriateness review shall be performed on an areawide basis and shall result in a finding as to the appropriateness of the service being reviewed as it is delivered in the State or health service area. The State Agency, may, at the same time, make findings as to the appropriateness of that service in particular institutions.

(b) Each State Agency must, within three months after the effective date of these regulations, develop and submit to the Secretary a work program for the orderly assumption and/or continued performance of appropriateness reviews. This work program will be used in the Secretary's determination of the State Agency's capability of assuming and performing the appropriateness review function in a satisfactory manner as required by Sections 1521(b)(1)(B), (b)(2)(A), and (b)(4) of the Act. The State Agency must submit to the Secretary, with the work program, evidence that prior to its adoption, the public was afforded an opportunity to comment in writing or at a public hearing. It shall also submit a summary of the comments received. The work program shall provide for:

(1) The development of the review procedures and criteria to be applied by the State Agency in the performance of appropriateness reviews, in consultation with the statewide health coordinating council and all the health systems agencies in the State, and the State Agency(s) and statewide health coordinating council(s) of any contiguous State(s) where a health service area is shared by more than one State.

(2) The establishment of the definitions of services to be reviewed, priorities among services, and the schedule for reviews of such services, after consultation with the statewide health coordinating council and all the health systems agencies in the State, and the State Agency(s) and statewide health coordinating council(s) of any contiguous States where a health service area is shared by both States. In establishment of these definitions, priorities, and schedules, the State Agency must take into account the statutory time limits applicable to appropriateness reviews by health systems agencies, and the need within the State for priority reviews of the services for which National Guidelines for Health Planning have been issued.

(3) The establishment of requirements for submission by providers of data to be used in performance of appropriateness reviews to the State Agency and to the health systems

agencies, after consultation with the statewide health coordinating council and all the health systems agencies in the State, and the State Agency(s) and statewide health coordinating council(s) of any contiguous States where a health service area is shared by more than one State. At a minimum, the State Agency shall establish such data requirements for services provided by hospitals and nursing homes during the first and second years, respectively, of its reviews of appropriateness. Data requirements shall be limited to data reasonably needed for appropriateness reviews and the State Agencies shall use existing data sources to the maximum extent feasible.

(4) Plans for initiating appropriateness reviews:

(i) No later than 6 months after the effective date of these regulations if: (A) The State Agency is fully designated prior to the date of publication of these regulations, or (B) the State Agency is conditionally designated and the Secretary has determined that the State Agency is capable of performing appropriateness reviews (see 42 CFR 123.105) prior to the effective date of these regulations; or

(ii) In the case of a State Agency not covered by paragraph (b)(4)(i) of this section, no later than 6 months after: (A) The date of full designation, or (B) the date the Secretary determines that the State Agency, although conditionally designated, is capable of performing appropriateness reviews, whichever is earlier.

(5) Plans for completing areawide reviews of all existing institutional health services within 5 years of the date of the State Agency's initial full designation and during each succeeding 5-year period, but in any event within 1 year of receipt of an appropriate health system agency recommendation. Review schedule priorities may be established, but such review priority setting shall not result in the exclusion from review of any existing institutional health service during any applicable time period.

§ 123.604 Adoption and public notice of review procedures and criteria.

The provisions of 42 CFR 123.406 apply to the adoption and public notice of review procedures and criteria under this subpart.

§ 123.605 Procedures for State Agency review.

(a) The procedures adopted and used by a State Agency for conducting the reviews covered by this subpart shall include at least the following:

(1) Written notification to affected persons of the beginning of a review. Written notification to members of the public may be provided through newspapers of general circulation in the area and public information channels; notifications to all other affected persons shall be by mail (which may be part of a newsletter). "Affected persons" include at a minimum, the person(s) whose service is being reviewed, the State Agency for each State in which all or any part of the agency's health service area is located, health systems agencies serving contiguous health service areas, health care facilities and HMOs located in the health service area which provide institutional health services, any agency which establishes rates for health care facilities or HMOs in its health service area, and those members of the public who are to be served by the service subject to review.

(2) Schedules for review which provide that no areawide review shall, to the extent practicable, take longer than 180 days from the date of notification to affected persons made in accordance with paragraph (a)(1) of this section to the date of the written findings made in accordance with paragraph (a)(4) of this section.

(3) Provisions for persons subject to a review to submit to the State Agency any information which the State Agency may require in accordance with its work program under § 123.603(c) concerning the subject of the review in the form and manner and containing the information which the State Agency shall prescribe and publish. These information requirements may vary according to the purpose for which the particular review is being conducted or the type of health service being reviewed; however, the State Agency may require no information of a person subject to review which is not prescribed and published as being required in accordance with § 123.604

(4) Provision for written findings which state the basis for any findings made by the State Agency.

(5) Notification of providers of health services and other persons subject to the State Agency review of the status of the State Agency's review of the institutional health services, findings made in the course of the review, and other appropriate information respecting the review.

(6) Provision for (i) public hearings in the course of the State Agency review if requested by persons affected by the review; and for (ii) public hearings, for good cause shown, respecting the State Agency finding.

(7) Preparation and publication of regular reports by the State Agency of the reviews being conducted (including a statement concerning the status of each review), and of the reviews completed by the State Agency (including a general statement of the findings made in the course of these reviews) since the publication of the last report.

(8) Access by the general public to all written materials pertinent to any State Agency review.

(9) Provision that if the State Agency makes a finding regarding the appropriateness of an existing institutional health service which is inconsistent with a recommendation made with respect thereto by the health systems agency making such recommendation pursuant to 42 CFR 122.508: (i) the finding (and the record upon which it was made) shall, upon request of the health systems agency, be reviewed, under an appeals mechanism consistent with State law governing the practices and procedures of administrative agencies, by an agency of the State (other than the State health planning and development agency) designated by the Governor, and (ii) the finding of the reviewing agency shall be considered the final finding of the State Agency.

(10) Provision that a decision of the State Agency resulting in an institution-specific finding of inappropriateness shall, upon request of the person(s) providing that service, be reviewed, under an appeals mechanism consistent with State law governing the practices and procedures of administrative agencies, by an agency of the State (other than the State Agency) designated by the Governor. The decision of the reviewing agency shall be considered the final decision of the State Agency.

(11) Provision that if a State Agency (or a reviewing agency, under paragraph (a)(9) of this section) makes a finding regarding an existing institutional health service which the State Agency determines is not consistent with the goals of the applicable health systems plan (established under Section 1513(b)(2) of the Act) or the priorities of the applicable annual implementation plan (established under Section 1513(b)(3) of the Act, the State Agency (or the reviewing agency, as appropriate) shall submit to the appropriate health systems agency a detailed statement of the reasons for the inconsistency.

(b) Procedures adopted for reviews in accordance with paragraph (a) of this section may vary according to the type of health service being reviewed.

(c) The procedures adopted for reviews may provide that the requirements of paragraph (a)(3) of this section shall be deemed satisfied for

any health service area within the State if the health systems agency has provided for a corresponding procedure.

§ 123.606 Exceptions to use of procedures.

A State Agency may, with respect to any type or group of reviews, request from the Secretary an exception to the requirement that it use review procedures which meet the requirements of § 123.605. The requirements of 42 CFR 123.408 apply to such a request for an exception.

§ 123.607 Criteria for State Agency review.

(a) The State Agency shall adopt, and use as appropriate, specific criteria for conducting the reviews covered by this subpart. These criteria shall relate to availability, accessibility, acceptability, continuity, cost, and quality and shall include at least the general considerations listed below, but in the case of areawide reviews which result in institution-specific findings of services provided by or through HMOs, the considerations shall be limited to those set forth in paragraph (a)(8) of this section.

(1) The relationship of the health services being reviewed to the applicable health systems plans, annual implementation plans, and State health plan.

(2) The relationship of the services reviewed to the long-range development plan (if any) of the person providing the services.

(3) The need that the population served has for the services, and the extent to which low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups have access to those services.

(4) The availability of less costly or more effective alternative methods of providing the services.

(5) The relationship of the services reviewed to the existing health care system of the area in which the services are provided.

(6) The availability of resources (including health manpower, management personnel, and funds for capital and operating needs) for the provision of the services reviewed and the availability of alternative uses of these resources for the provision of other health services.

(7) The special needs and circumstances of those entities which provide a substantial portion of their services or resources or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health services areas. These entities may include medical and other health professions schools, multidisciplinary clinics, and specialty centers.

(8) The special needs and circumstances of HMOs. In the case of areawide reviews which result in institution-specific findings regarding services provided by or through an HMO, the needs and circumstances shall be limited to:

(i) The needs of enrolled members and reasonably anticipated new members of the HMO for the existing institutional health services provided by the organization.

(ii) Whether the services could be obtained from non-HMO, or other HMO, providers in a reasonable and cost-effective manner which is consistent with the basic method of operation of the HMO.

(iii) Any other factors which the State Agency may propose and the Secretary may, in accordance with paragraph (c) of this section, find to be consistent with the purpose of Title XIII of the Act.

(9) The special needs and circumstances of biomedical and behavorial research projects which are designed to meet a national need and for which local conditions offer special advantages.

(10) The contribution of the existing institutional health services in meeting the health related needs of members of medically underserved groups and groups which have traditionally experienced difficulties in obtaining equal access to health services (for example, low income persons, racial and ethnic minorities, women, and handicapped persons) particularly those needs identified in the applicable health systems plan and annual implementation plan as deserving of priority.

(11) The special circumstances of health service institutions with respect to the need for conserving energy.

(12) In accordance with Section 1502(b) of the Act, the effect of competition on the supply of the health services being reviewed.

(13) Improvements or innovations in the financing and delivery of health services which foster competition, in accordance with Section 1502(b) of the Act, and serve to promote quality assurance and cost effectiveness.

(14) The quality of care provided by the services or facilities in the past.

(b) Criteria adopted for reviews in accordance with paragraph (a) of this section may vary according to the type of health service being reviewed and the purpose of the review. Furthermore, the criteria used in the review of a particular service need not address all six of the characteristics of appropriateness (availability, accessibility, acceptability, continuity, cost, and quality). Should an agency fail to use criteria addressing all six of the characteristics of appropriateness in a review, it must explain this in the finding.

(c) Where a State Agency proposes under paragraph (a)(8)(iii) of this section that it be permitted to base areawide reviews resulting in institution-specific findings of services provided by or through HMOs on criteria which consider factors not set forth in paragraph (a)(8) of this section, it shall do so in a written request to the Secretary, specifying the reasons for the proposal. The Secretary will approve the request if he finds the additional factors to be consistent with the purpose of Title XIII of the Act. Unless the Secretary has approved the additional factors, the State Agency shall base its review solely on the factors set forth in paragraph (a)(8) of this section.

§ 123.608 Required findings.

(a) A State Agency shall, in accordance with the requirements of this subpart, make public its findings with respect to the appropriateness of existing institutional health services.

(b) A State Agency may not make a finding that an existing institutional health service is inappropriate unless it has stated in writing that the service has not met one or more of the established criteria of the State Agency and the ways in which the service failed to meet the criteria, including any that are beyond the control of the person(s) providing that service.

(c) A State Agency, in conducting an areawide review resulting in institution-specific findings, may not make a finding that an existing institutional health service provided by or through an HMO is inappropriate solely because there is an HMO of the same type, as specified in section 1310(b) of the Act, in the same health service area, or solely because the services being reviewed are not discussed in the applicable health systems plan, annual implementation plan, or State health plan.

(d) Where a State Agency has made a finding that a service is inappropriate, the State Agency shall, to the extent practicable, at the same time, make recommendations for remedial action.

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Tuesday
December 11, 1979

Part VI

Department of the Interior

Office of the Secretary

Proposed Policy for Federal Land Acquisition/Protection Studies and Recommendations Under the Land and Water Conservation Fund Program; Public Meetings

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Proposed Policy for Federal Land Acquisition/Protection Studies and Recommendations Under the Land and Water Conservation Fund Program; Public Meetings on Proposed Policy Statement

The Assistant Secretary for Fish and Wildlife and Parks is proposing to adopt a policy statement concerning land acquisition/protection studies and recommendations. This policy statement is intended to provide general guidance concerning the study of new areas that could result in use of the Federal portion of the Land and Water Conservation Fund (LWCF) by the National Park Service, Fish and Wildlife Service, Bureau of Land Management, and USDA—Forest Service. This policy will not address studies or acquisition programs within the boundaries of areas previously authorized by Congress or the Secretary of the Interior.

The Land and Water Conservation Fund Act of 1965, as amended, authorizes appropriations for acquisitions of land, waters, or interests in land or waters for certain additions to the National Park System, National Wildlife Refuge System, other areas authorized to be adminsitered by the Secretary of the Interior (Bureau of Land Management) for outdoor recreation purposes, and the National Forest System. Each Federal agency with authority to use LWCF moneys for acquisition currently follows its own policies and procedures in developing studies and recommendations for potential new national areas or major expansions of existing areas. These studies and recommendations are coordinated by the Land and Water Conservation Fund Policy Group (LPG) which is composed of the Directors of the Bureau of Land Management, Fish and Wildlife Service, Heritage Conservation and Recreation Service, National Park Service, the Chief of the Forest Service—USDA, and the Deputy Assistant Secretary for Fish and Wildlife and Parks as chairman. The LPG was established in 1974 to review, comment, and make recommendations on studies and preliminary legislative proposals which may require significant expenditures from the Federal portion of the Land and Water Conservation Fund. The LPG has developed the proposed statement of general policy as recommended by the Nationwide Outdoor Recreation Planning Program to improve administration of the Federal portion of the Land and Water Conservation Fund.

This proposed policy is not intended to replace the more detailed policies and procedures currently guiding each agency's study programs. However, the proposed statement is intended to provide general guidance on what type of areas will be studied, how priorities will be established, and what alternative protection techniques will be considered. The policy also addresses schedules for implementing adopted protection strategies in newly authorized areas.

The Assistant Secretary for Fish and Wildlife and Parks requests public participation in the formulation of this policy statement. Therefore, public meetings have been scheduled to receive comments on the proposed policy. Written and oral comments will be compiled, reviewed, and considered by the Land and Water Conservation Fund Policy Group. The intent is to have a general statement of policy by April 16, 1980.

Statement of policy. The following policy statement will be the basis for comments and discussion:

Policy for Federal Land Acquisition/Protection Studies and Recommendations Under the Land and Water Conservation Fund Program

General. It is the policy of the member agencies of the Land and water Conservation Fund Policy Group (National Park Service, Fish and Wildlife Service, Bureau of Land Management, and Heritage Conservation and Recreation Service in the Department of the Interior and Forest Service in the Department of Agriculture) to identify and develop recommendations to protect, for the use and benefits of present and future generations, those natural, cultural, and recreational resources which exhibit sufficient qualities to merit Federal action.

Studies. Studies of potential new national areas or major expansions of existing areas will be conducted as part of an adopted planning process. Areas eligible for study will be identified by systematic inventories and analytical procedures as having natural, cultural, or recreational qualities of importance to the nation.

Priorities. Priorities for studying potential new areas and formulating budget requests will be determined in light of agency program missions and responsibilities by a combination of relevant criteria which may include:

—Relationship to national goals established by congressional and administrative directives, including the Nationwide Outdoor Recreation Plan.
—Adequacy of representation in areas already being protected by Federal, State, local, or private action.
—Potential to increase benefits from land already in Federal ownership or from other Federal program expenditures.
—Potential to generate complementary activities by State, local, private, or other Federal agencies.
—Unique, threatened, or outstanding characteristics of the resource.
—Proximity to population concentration and accessibility.
—Price escalation.
—Support or opposition by State and local governments, citizen organizations, individuals, or other interests.
—Relationship to Statewide Comprehensive Outdoor Recreation Plans (SCORP) and other adopted plans at the State, local, or regional level.

Alternatives. Protection strategies may involve various types of direct or indirect Federal action. Recommendations concerning the appropriate Federal role in resource protection and management will consider a full range of applicable alternatives including:

—Reliance on State, local, or private initiatives.
—Registration (natural or historic landmarks, etc.).
—Technical and financial assistance.
—Coordination and consistency of existing Federal or federally-assisted programs.
—Implementation of Federal, State, or local regulatory authorities.
—Acquisition of less-than-fee interests.
—Purchase with reserved interests or provisions for leaseback.
—Acquisition of fee-simple interests.

For potential new areas, recommendations to use any individual technique will be based upon an anlysis of alternatives with respect to their ability to protect resource values and meet management objectives, considering long and short term costs as well as benefits.

Implementation. Adopted protection and management strategies for potential new national areas or major expansions of boundaries of existing areas will be implemented as promptly as possible to protect resource values and maintain purchasing power of available funds. Each newly authorized area of major expansion will have a plan for management and development, including a schedule for implementation which identifies primary values to be protected, land to be acquired in fee, and land to be protected through other means.

Meeting Schedule. Public meetings will be held on the following schedule:

January 9, 1980, at 10:00 a.m., Ceremonial Courtroom, U.S. Courthouse, 450 Golden Gate, San Francisco, California.
January 11, 1980, at 10:00 a.m., Geological Survey Lecture Hall, Building 25, Denver Federal Center, Denver, Colorado.
January 15, 1980, at 10:00 a.m., Main Interior Auditorium, Interior Building, 18th and C Streets, NW., Washington, D.C.

Written comment. Written remarks, offered independent of, or in addition to, any oral comments given at the public hearings, will be accepted through January 31, 1980. Comments should be addressed to:

John G. Tkach, Staff Director, Land and Water Conservation Fund Policy Group, Department of the Interior, Heritage Conservation and Recreation Service, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:
John Tkach at the address given above. Telephone # (202) 343–7665.

Dated: December 5, 1979.

David F. Hales,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

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Part VII

Environmental Protection Agency

Air Pollution Control; Recommendation for Alternative Emission Reduction Options Within State Implementation Plans; Policy Statement

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 1360-3]

Air Pollution Control; Recommendation for Alternative Emission Reduction Options Within State Implementation Plans

AGENCY: Environmental Protection Agency.

ACTION: Policy Statement.

SUMMARY: The policy statement set forth below (1) outlines how states can revise their State Implementation Plans to permit sources to place a greater burden of control where the marginal cost of control is low and to reduce control requirements where the cost is high and (2) encourages states to be receptive to proposals from sources seeking to employ a more economically efficient mix of controls.

This policy statement, commonly referred to as the "bubble" concept, is one in a series of steps designed to produce a coherent, easy-to-use system, which we have sometimes called "controlled trading." Other steps have included the offset and banking policies. This system will reconcile improved air quality with economic growth at the least possible cost, encourage firms to develop new ways to control pollution, and enable government and industry to solve problems more flexibly.

EFFECTIVE DATE: December 11, 1979.

FOR FURTHER INFORMATION CONTACT:

General inquiries regarding the policy may be directed to:

Deborah Taylor, Office of Planning and Evaluation (PM-220), EPA Headquarters, 401 M Street, SW., Washington, DC 20460, (202) 755-2770.

Leo Stander, Control Programs Operations Branch, Control Programs Development Division, EPA, Office of Air Quality Planning and Standards (MD-15), Research Triangle Park, NC 27711, (919) 541-5365.

Inquiries regarding specific proposals for alternative control strategies should be directed to the appropriate regional contact:

Linda Murphy, Chief, Stationary Source Section, Air Branch, EPA Region I, JFK Federal Building, Boston, MA 02203, (617) 233-4448 (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont).

Kennth Eng, Chief, Air and Environmental Applications Section, Permits Administration Branch, EPA Region II, 26 Federal Plaza, New York, NY 10007, (212) 264-4711 (New York, New Jersey, Puerto Rico, Virgin Islands).

Glen Hanson, Chief, PA, DE, WV Section, Air Planning Branch, EPA Region III, Curtis Building, Sixth and Walnut Streets, Philadelphia, PA 19106, (215) 597-8173 (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia).

Roger Pfaff, Technical Advisor, Air Programs Branch, EPA Region IV, 345 Courtland Street, NE., Atlanta, GA 30308, (404) 881-3286 (Alabama, Georgia, Florida, Kentucky, Mississippi, North Carolina, Tennessee, South Carolina).

Ronald Van Mershbergen, New Source Review Coordinator, Air Programs Branch, EPA Region V, 230 South Dearborn Street, Chicago, IL 60604, (312) 886-6037 (Indiana, Illinois, Michigan, Minnesota, Ohio, Wisconsin).

Randy Brown, Chief, Technical Support Section, Air Programs Branch, EPA Region VI, 1201 Elm Street, Dallas, TX 75270, (214) 767-2742 (Arkansas, Louisiana, Oklahoma, New Mexico, Texas).

Gale Wright, Chief, Technical Analysis Section, Air Support Branch, EPA Region VII, 324 East 11th Street, Kansas City, MO 64106, (816) 374-3791 (Nebraska, Iowa, Kansas, Missouri).

Elliot Cooper, Planning and Operations Section, Air Programs Branch, EPA Region VIII, 1860 Lincoln Street, Denver, CO 80295, (303) 837-3711 (Montana, Utah, North Dakota, South Dakota, Wyoming, Colorado).

Wally Woo, Engineering Section, Air Technical Branch, EPA Region IX, 215 Fremont Street, San Francisco, CA 94105, (415) 556-8063 (California, Nevada, Arizona, Hawaii, American Samoa, Guam, Northern Mariana Islands).

Dave Bray, Technical Support and Special Projects Section, Air Programs Branch (M/S 625), EPA Region X, 1200 Sixth Avenue, Seattle, WA 98101 (206) 442-1125 (Alaska, Washington, Oregon, Idaho).

SUPPLEMENTARY INFORMATION:

Summary of Key Changes

EPA has extensively evaluated the alternative emission control approach and has considered comments submitted regarding the proposed policy. As a result, the Agency has made three key changes in the policy: (1) Sources may use alternative strategies involving more than one plant; (2) states may consider open dust trades in some circumstances, though EPA will closely scrutinize such requests and will require conclusive demonstrations of equivalence before granting approval; and (3) EPA may approve compliance date extensions in special cases. The policy also contains many clarifications and less significant changes. These are discussed in the summary of comments, which follows the policy statement.

This policy statement does not establish conclusively how EPA will resolve issues in individual cases. The Clean Air Act and the Administrative Procedure Act guarantee the opportunity for public comment in each proceeding that places alternative control requirements into effect as a State Implementation Plan revision. Therefore, although the public has had the opportunity to comment on the issues in this policy statement, EPA will consider additional comment on these same issues in individual proceedings.

Policy Statement on Alternative Emission Reduction Options Within State Implementation Plans

Introduction

The Clean Air Act requires states to develop State Implementation Plans (SIPs) and source-specific compliance schedules to attain and maintain ambient air quality standards. In developing these plans, states establish emission limits which, when applied to emission points contributing to the ambient air problem, are calculated to ensure that the standards are met. In making these decisions, states regularly take into account the nature and amount of emissions from each emission point, the control technology available, and the time required for its installation.

SIPs, however, are not always as economically efficient as they could be, and current regulations and policies do not prompt companies to seek innovations in control technology. For these reasons, the Environmental Protection Agency is adopting this policy explaining how plants can reduce control where costs are high in exchange for a compensating increase in control where abatement is less expensive. We strongly recommend that the states (1) inform sources that the alternative emission reduction approach is available, (2) explain this policy's advantages and conditions of use, and (3) be receptive to proposals from sources that want to use a more cost-effective mix of controls. Properly applied, this policy should promote greater economic efficiency and increased innovation by providing plant managers with an economic incentive to develop new control strategies. This is a rare opportunity to provide such positive incentives.

It is important to note, however, that with one exception EPA can only approve alternative control strategies in areas where states have successfully demonstrated that they can meet air quality standards by the statutory deadlines. Therefore, EPA will not allow sources to use the alternative approach in a way that jeopardizes attaining requirements of the Clean Air Act by permitting degradation of air quality in excess of the SIP requirements or by weakening enforcement. To avoid these

problems, EPA has carefully stipulated the use of the alternative approach, as described in detail in the body of this statement.

With this policy, we are urging states to be receptive to alternative emission reduction applications whenever eligible sources propose them and particularly when the states are drawing up or revising SIPs.[1] EPA will work with the states in expediting the SIP revision process, especially where the trades are straightforward. The Agency is committed to promptly reviewing alternative proposals so that the maximum benefits can be derived from this policy.

The Alternative Emission Reduction Concept

A. What Is the Concept?

The primary tests to which EPA subjects State Implementation Plans include: [2]

- Do their provisions ensure the attainment and maintenance of ambient air quality standards as expeditiously as practicable?
- Do their provisions ensure reasonable further progress toward attainment?
- Are their provisions enforceable?

If the control method adopted meets these requirements, EPA generally does not stipulate the degree to which a source must control individual emission points.

Under the alternative emission reduction concept, a source with multiple emission points (stacks, vents, ports, etc.)—each of which is subject to specific emission limitation requirements under an approved SIP—may propose to meet the SIP's total emission control requirements for a given criteria pollutant with a mix of controls that is different from that mandated by the existing or proposed [3] regulations. Sources will have the opportunity to come forward with alternative abatement strategies that would result in the same air quality impact but at less expense by placing relatively more control on emission points with a low marginal cost of control and less on emission points with a high cost.

Of course, these strategies are subject to restrictions that might apply under the Clean Air Act, such as National Emission Standards for Hazardous Pollutants (NESHAPS) or rules for the Prevention of Significant Deterioration (PSD).

EPA has already introduced the concept of trading emissions in previous policies. For example, the concept is generally similar to the offset policy (40 CFR, Part 51, Appendix S).

B. Eligibility

1. *Applicability.* Sources may apply for alternative emission approaches for existing [3] emission limitations established under Section 110 and/or Part D as part of the SIP. Sources may also propose alternative approaches for SIP requirements that are under development. This policy statement does not apply to or supersede the conditions that sources must meet under nonattainment or PSD permit programs, New Source Performance Standards (NSPS), NESHAPS [4], or other conditions that the Act specifically requires for new or modified sources. Separate Federal Register notices [5] discuss requirements for trading under permit programs for new or modified stationary sources.

2. *Demonstration of Attainment by Statutory Deadlines.* Sources may use alternative emission reduction approaches only in areas that can demonstrate attainment by the statutory deadlines (and reasonable further progress toward attainment) for those pollutants included in emission reduction alternatives. An adequate demonstration may include commitments to specific control measures on a specified schedule. However, trades involving emission points that will be regulated in the future under such commitments may not be undertaken until the state adopts the measures. A state may submit an alternative control strategy involving these emission points at the same time or after it submits its newly adopted general regulation to EPA for approval.

There is one exception to the condition that areas demonstrate attainment before alternative control strategies are allowed. Under certain circumstances, ozone SIPs may be approved by EPA despite a failure to demonstrate attainment by 1982. Such SIPs must require use of Reasonably Available Control Technology (RACT) for sources of Volatile Organic Compounds (VOC) included in Control Techniques Guidelines (CTG) categories. These sources may use alternative control strategies to meet RACT, but only for those emission points that are within the same CTG category.[6]

3. *Effect of Compliance Status.* Sources that wish to use an alternative approach to existing SIP requirements will be requesting that emission limitations and compliance schedules for individual emission points be changed. In order to properly evaluate whether the alternative approach is equivalent to the existing requirement, it is necessary to have established compliance agreements for all of the emission points affected by the alternative approach. Thus, any source that is adhering to its compliance agreements for the emission points included in the alternative approach, regardless of any past history of noncompliance, is eligible to apply.

In the absence of such compliance, consideration of SIP revisions setting forth alternative control strategies would only protract and confuse efforts to enforce the SIP. Sources that have successfully deferred compliance would be tempted to use the alternative approach to argue for further delay or to alter emission requirements so as to frustrate enforcement efforts. Permitting use of the alternative approach in such instances would only serve to continue unlawful pollution and increase the inequity between sources that have incurred the expense and difficulty of compliance and those that have so far avoided compliance.

Accordingly, sources that wish to use an alternative control strategy, but have not yet reached an EPA-approved agreement with the state (or reached agreement with EPA as appropriate) on their compliance schedules for all of the emission points included in the alternative approach [7] or are not complying with these agreements, may apply for the alternative approach only if they:

i. Come into compliance; or

ii. Meet an EPA-approved compliance schedule; or

iii. Become subject to court decree: (1) In an action in which EPA was a party or which decree EPA has found to be

[1] Under the Clean Air Act, in certain cases, EPA may draw up or revise SIPs. In those cases, we will advise eligible sources and will be receptive to such applications where appropriate.

[2] See 44 FR 20373 for a complete list and discussion.

[3] "Existing" emission limitations are those requirements that the state has adopted or EPA has promulgated at the time a source proposes an alternative strategy. States may submit alternative strategies to EPA at the same time or after they submit their applicable newly adopted state regulations.

[4] Under limited circumstances, sources may include pollutants that are listed or regulated under Section 112 in alternative control strategies. Section D.1.c. discusses this further.

[5] See the Emission Offset Interpretative Ruling, 40 CFR Part 51, Appendix S, as revised 44 FR 3274 (January 16, 1979); proposed rule, 44 FR 51924 (September 5, 1979).

[6] For further information regarding the use of CTGs, See 44 FR 53762–63.

[7] Of course, this consideration does not apply to those emission points for which EPA or the state have not required controls.

satisfactory, and (2) which decree recognizes the possibility of SIP revision and allows for timely modification of the decree without delay in the final compliance date.

To be acceptable, any compliance schedule under ii and any decree under iii (1) must set out a timetable and emissions limitations with which the source has agreed to comply (i.e., is not appealing or otherwise contesting), (2) must provide for a resolution of penalty issues and other sanctions, and (3) must not contain any provisions allowing the source to delay its compliance or to avoid sanctions for noncompliance with the existing requirement until EPA has promulgated the alternative proposal as a SIP revision.

C. Implementing the Alternative Approach

1. *Sources Initiate Alternatives.* It is the regulatee's responsibility to come forward with the alternative control approach. EPA encourages the states also to require the regulatee to demonstrate satisfactorily, *entirely at its expense,* that the proposal is equivalent to the existing SIP requirements in enforceability and environmental impact. Because of the cost, we advise sources to discuss the demonstration requirements with control agencies before preparing the demonstration. Control agencies, however, should not begin to formally review proposals until the source has completed the demonstrations. In this way the resource demands on control agencies are limited primarily to deciding what kind of demonstration is required and to reviewing the results. To minimize the possibility of subsequent delays, EPA also encourages control agencies to discuss issues with EPA as they arise.

The process of approving alternative control strategies will differ depending on whether the source is proposing an alternative to existing SIP requirements or to requirements that are under development. Where existing SIP requirements are concerned, overall emission limits and compliance deadlines are known. Once a plant comes forward with a promising alternative proposal that seems capable of attaining the goals of the current compliance schedule, the control agency will decide on a test to verify the equivalency of the proposed trade. If the source is able to present evidence that the control agency judges to be sufficient, the control agency may submit the alternative approach to EPA as a SIP revision.

Although sources may propose an alternative for existing SIP requirements at any time, it is clearly to their advantage to do so as early as possible. Control agencies should expect sources to meet the requirements of their existing schedules on time until EPA approves the alternative approach. In some cases, a source may have to make a pollution control investment that it would not have to make under the alternative approach. By presenting alternative proposals as early as possible (preferably during the engineering and design period that is provided at the beginning of most compliance schedules), sources can avoid such conflicting investments.

When a state (or EPA) is developing a new SIP, sources may present a counterproposal in anticipation of overall emissions limits or in response to limits being proposed. The source would then have to show that its alternative mix of controls would be environmentally equivalent to the process-specific standards. If the demonstration is successful, the state can adopt the counterproposal as part of the SIP.

The SO_2 regulation for the Cincinnati Gas and Electric Company's Beckjord Power Plant in Ohio provides one example of how a source can use the alternative emission reduction approach. This SIP regulation contains an alternative set of limits that the power plant may use in lieu of a uniform limit at each of its five boiler stacks. The plant still must meet specific limits at its individual stacks, but it can select these limits by using equations that make the air quality effects of the emissions under the emission reduction alternative equal to the air quality impact permitted under the uniform emissions limit. This flexibility allows the power plant to apply the lowest-cost mix of low sulfur coal, and/or stack gas cleaning controls among the plant's five boilers. In this case, a clear and conclusive demonstration has been made that differences in emissions from each of the stacks will not result in overall differences in ambient air quality attainment or maintenance.

Another situation where a source can apply this approach is in different stages of a plant's production process that emit the same kind of pollutant. For example, the surface coating and miscellaneous metal categories within an automotive assembly plant are both sources of hydrocarbons. A source may want to continue using lacquer in its repair operation within the assembly plant. By applying greater control to the miscellaneous metal category (such as switching to powder coating) the source could reduce the amount of control needed for the auto assembly category. This approach would allow the source to achieve the same overall emissions requirement at a lower cost.

2. *SIP Revisions Required.* Each alternative approach must be adopted in a SIP revision approved or promulgated by EPA.[8]

D. Conditions for Using the Alternative Approach

States applying the alternative approach must continue to ensure (1) attainment and maintenance of ambient air quality standards as expeditiously as practicable, (2) reasonable further progress, (3) enforceability, and (4) compliance with all other requirements of the Act. To assist states in achieving this basic requirement, EPA has established certain conditions that an alternative approach must meet before it can be approved.

1. *Air Quality Considerations.*—a. *Air quality standards must be met.* The overriding command of the statute is to attain and maintain ambient air quality standards. Many states have been required to submit revised SIPs because existing regulations were insufficient to meet this basic condition of the Act. Where the revised plans are inadequate to meet the statutory deadlines contained in the Clean Air Act, as amended, states may not approve alternative control strategies except as discussed in Section B, Eligibility. Furthermore, if attainment is not achieved as expected in the areas where the revised plans were approved, control agencies may require sources to install more stringent controls on emission points where the requirements were relaxed under this policy.

The treatment of certain low-emitting processes deserves special mention with regard to ensuring that attainment is achieved as expected. Some existing emission points may be releasing less pollutants than existing SIP regulations allow, for example, because they are burning a clean fuel or operating at less that full capacity. Sources may not use the difference between the SIP-allowable emissions and the lower actual emissions to increase emissions from another emission point unless they can show that the SIP is not relying on the actual emissions of the low-emitting process to attain and maintain the ambient air quality standard and achieve reasonable further progress toward attainment in the interim. Similarly, if a source proposes to include an emission point in an alternative

[8] Revisions to construction or operating permits are not adequate unless they are made part of the SIP.

control strategy that is not accounted for in the state's control strategy, the source must demonstrate that consideration of the additional emission does not affect the state's demonstration of attainment.

States must also disapprove proposals where controlling one emission point less and another more might violate a basic condition of attainment, even though total emissions do not increase. For example, particulates emitted from a stack might have a totally different and more harmful impact upon ambient air quality than road dust stirred up by trucks within the plant site.

EPA will insist on an adequate equivalency demonstration proving that the alternative emission reduction approach will result in attainment and maintenance of standards and will comply with Prevention of Significant Deterioration requirements. The greater the difference in the types of emissions to be traded, the more detailed the demonstration must be. Thus, a trade between a stack emission and a fugitive emission will require a more detailed demonstration of equivalence than would a trade between two emissions of a more similar nature, such as two closely located stacks of the same height.

This condition will apply with particular force to trades involving open dust emissions (such as emissions from roads and storage piles). It is especially difficult to ensure equivalent effects on air quality for such trades because of (1) the uncertainty in determining emission rates from open dust sources, (2) the difficulty of predicting the effectiveness of control technology, and (3) the shortcomings of air quality models for this type of source. In addition, the adequacy of modeling techniques has not been verified for certain situations. As a result, there is substantial uncertainty regarding the accuracy of some model projections, such as for the complex interaction between open dust sources and structures at industrial sites, although these techniques may be verified and improved in the future. In such situations, EPA believes that the economic benefits that might result from a reduced marginal cost of control are not sufficiently great to outweigh the risk of having trades approved that would not adequately protect air quality standards. Therefore, EPA generally will not approve any proposed alternative emission strategy based on a modeling demonstration that proposes to substitute controls on open dust emissions for reasonable controls on the more significant sources of process emissions.

Sources may use modeling demonstrations for open dust trades that do not affect the use of such process controls. These modeling demonstrations must be particularly comprehensive, and states should review them with special care. The diffusion models used for open dust demonstrations are generally more complex and more sensitive to input data than those used for stack emissions. EPA will insist on a thorough justification and explanation of the basis for all critical inputs to the emission and air quality calculations. There are a number of factors that control agencies should keep in mind when evaluating open dust modeling demonstrations.

- Control agencies should require that the best and most appropriate models be used, such as the Industrial Complex Source Model. Both annual and short-term concentrations must be examined, and particle deposition and fallout should be taken into account.
- Control agencies should ensure that the emission factors of different sources involved in trades are of equal reliability. Where they are not and a range of values is possible, the more conservative values in the range should be used. This determination should include consideration of any relative uncertainty in the effectiveness of control technology and of any expected variation in emissions with plant utilization.
- In demonstrating the adequacy of a particular mix of controls to attain the National Ambient Air Quality Standards, the modeling must use the maximum emission rates that are legally enforceable.

As an alternative to modeling, sources may demonstrate the equivalency of the trades by installing the open dust source controls and monitoring the results. In making this showing sources and control agencies should be sure that monitors are properly sited and that data are collected over an appropriate period of time.

b. *All emissions under the alternative approach must be quantifiable, and trades among them must be even.* A source that wishes to control one emission point less in exchange for controlling another emission point more must demonstrate that the trade will in fact be even. This can only be done if the emissions from both emission points (and increases and decreases in them) can be acceptably quantified and related to ambient air quality considerations. Direct measurement is preferred, although indirect quantification is acceptable if a source establishes a clear and convincing link between the emissions and other quantifiable measures, such as application rates, work practices, or equipment standards. Section IV.C of EPA's Emission Offset Ruling contains guidance on such items as operating rates, source shutdowns, and averaging times in determining whether a trade will result in equal emissions.

The test for equivalence will generally be consistent with the SIP's demonstration of attainment. Some SIP demonstrations are based on atmospheric simulation modeling, while others are based on more simplified techniques, such as linear rollback or an "example" region approach. Sources in areas where a simplified demonstration of attainment has been used may show equivalence by establishing that the overall emissions level will not increase if the alternative approach is implemented.

Where the alternative strategies involve more than one plant, EPA will always require air quality modeling to demonstrate that the increases and decreases in plant emissions will not adversely affect air quality in the area affected by the sources. Such demonstrations are described in the offset policy (see **Federal Register**, January 16, 1979, pp. 3274–82).

In those cases where the SIP requirements are derived through modeling, EPA will require a modeling demonstration to ensure that the trades will result in the same air quality level overall, and emissions may vary accordingly. Ideally, in all instances, total emissions levels will also be equivalent. However, more than one-for-one emissions trades may be necessary in some cases to protect ambient air quality. This could occur, for example, where stack heights are different or where emissions are so difficult to quantify or model that a margin of safety is necessary.

EPA recognizes that the Clean Air Act permits states to revise their SIPs to allow increases in total emissions. There are significant restrictions on this authority: The revised SIP must demonstrate attainment and maintenance of the standards; the requirements for reasonable further progress in reducing emissions and for attainment as expeditiously as practicable must be satisfied; and the revisions must not interfere with the Prevention of Significant Deterioration program. However, the fact that the Act does not completely prohibit SIP revisions that increase overall emissions does not lead EPA to encourage such revisions as an element of this policy statement.

In EPA's opinion there are important policy reasons to discourage SIP revisions that increase overall emissions. A growing number of serious air quality problems are now recognized as covering broad regions of the country: Ozone violations, elevated sulfates and

"acid rain," and visibility reduction. SIP revisions that permit significant increases in total emissions of the criteria pollutants can exacerbate some or all of the current wide-scale air quality problems. Therefore, EPA does not encourage by this policy, or as a more general matter, SIP revisions that result in overall emissions increases. More specifically, EPA will not approve such SIP revisions to the extent consistent with its current legal authority.

c. *The pollutants under the alternate proposal must be comparable.* Clearly, sources cannot apply trade-offs across criteria pollutant categories, e.g., they cannot trade SO_2 against hydrocarbons. Further, even within a category, pollutants that pose significant health hazards cannot be traded against less harmful pollutants. For example:

i. Coke oven particulate emissions, because of their carcinogencity, should not be traded against particulate emissions from any other source.

ii. Some criteria pollutants are also hazardous pollutants (e.g., vinyl chloride and benzene are hydrocarbons that have been designated as hazardous under section 112). Emissions of criteria pollutants that contain hazardous pollutants can be used in alternative emission control strategies subject to the following restrictions:

• *In all cases,* sources must meet applicable section 112 regulations. Except as permitted under specific NESHAPS regulations, a source may not use an alternative emission control approach to meet section 112 regulations (as discussed in Eligibility), and a source may not increase emissions regulated under section 112 beyond the levels that the applicable section 112 regulation allows. Furthermore, when new section 112 regulations become effective, sources must comply with those regulations, notwithstanding any previously approved trades.

• The emission of asbestos, beryllium, vinyl chloride, or benzene, which are listed under section 112, may be increased at one emission point (subject to the above constraints) only as long as there is a compensating decrease in the emission of *the same* pollutants at another emission point at the same location or at a contiguous location. For example, a source may increase one vinyl chloride emission as long as there is an equal decrease in another vinyl chloride emission. Since EPA believes that the limited number of pollutants it expects to list over the next several years under section 112 will be significantly more hazardous than others in the same criteria pollutant category, restraints on trading similar to those discussed above will apply when such pollutants are listed. Should EPA list a pollutant that it judges to be less hazardous than those currently listed, EPA will indicate what pollutant-specific trading restraints are appropriate. Trading restrictions will not apply to alternative emission control strategies that EPA has approved before the announcement of the trading restraints. As noted above, however, even previously approved trades may not be continued if they conflict with section 112 regulations when they become effective.

• In addition, where the hazardous pollutant is an insignificant contaminant of the emission, exceptions to the trading restraints may be appropriate. This is likely to be the case when the source is not using the hazardous material in question as a raw material or when the source is not producing the hazardous material. Control agencies should consult EPA when considering such exceptions.

• Sources may equally trade hazardous pollutants with nonhazardous pollutants in the same criteria pollutant category only in those cases where the source decreases the emission of the hazardous pollutant. For example, a source may equally trade vinyl chloride with any nonhazardous hydrocarbon if it reduces the vinyl chloride emission.

iii. EPA will closely examine the comparability of particle size distribution in particulate emission trades because fine particles disperse more widely in the air than coarse particles and stay in the air longer. Sources should also be aware that EPA is considering an inhalable particulate standard. If EPA promulgates such a standard, some alternative approaches that EPA has approved may no longer be adequate to meet new standards. Trades involving open dust sources are of particular concern in this regard.

2. *Enforcement Considerations.* If the alternative emission reduction policy is improperly carried out, it could delay compliance and impede effective enforcement. Therefore, to avoid any additional grounds for legal challenges to revised SIPs, delays in enforcement, or any weakening of the enforceability or sanctions of SIP requirements, EPA has established the following conditions.

a. *Specific, enforceable control requirements are mandatory.* EPA will approve alternative proposals only if they contain (1) enforceable, specific emissions limits (including limits on quantity of emissions or quantifiable surrogates, such as equipment or work practice standards) on each regulated emission point or (2) an easily enforceable technique for multiple emissions points. Of course, these limits must be accompanied by enforceable testing techniques, which may include specific control measures, performance measures, and performance standards. In general, the new limits must be at least as enforceable as the existing requirements. This applies with special force to alternative control strategies that involve multiple sources.

b. *Existing SIP provisions submitted under Section 110 must not be replaced.* Litigation for SIP requirements established under Section 110 of the Clean Air Act has long since run its course. In almost all cases these section 110 SIP requirements are enforceable and are being enforced. EPA will not allow these SIP provisions to be replaced by new alternative SIP requirements that are subject to litigation and that could result in a delay or lapse in enforceability. Therefore, states must incorporate any control strategy that is an alternative to § 110 requirements as an addition to the SIP, not as a replacement. This principle of coexisting old and new requirements is consistent with EPA's guidance to the states regarding the continuity of the SIPs when establishing Part D SIP revisions.[9]

It should be noted that under the "continuity of the SIPs" policy, the section 110 requirements can be replaced only if a Part D requirement is unavoidably incompatible with an existing SIP. Alternative control strategies to Part D requirements are optional. Therefore, if the original part D requirement is compatible with the section 110 requirement, but the alternative control strategy is not, section 110 SIP provisions cannot be replaced merely because they are incompatible with the alternative approach. Otherwise, sources might be encouraged to develop incompatible alternative strategies solely to avoid the consequences of noncompliance with section 110 requirements. Thus, EPA will only approve alternative strategies to section 110 requirements as additions to the existing SIPs.

c. *Compliance dates generally should not be extended.* Some sources have not yet achieved final compliance with SIP requirements that took effect several years ago. States are free if they wish, subject to the conditions in this statement, to apply the alternative approach to these requirements as well. However, that revision should not have the effect of relieving sources of the

[9] See General Preamble for Proposed Rulemaking on the Approval of SIP Revisions for Nonattainment Areas 44 FR 20373 (April 4, 1979).

consequences of such delay. To make sure of this, any such alternative requirement should have the same SIP compliance deadline as the existing requirements. Of if the new requirement allows controls that a source can adopt more quickly than those included in the existing compliance schedule, the states should consider establishing earlier compliance dates.

In some cases, it may be impossible for a source to implement alternative control strategies within the time frame allowed in the existing schedule. EPA does not have the statutory authority to extend compliance schedules solely for the purpose of implementing alternative strategies. However, EPA's statutory authority does provide for the extension of compliance schedules for Part D requirements under certain conditions. Where sources need additional time to implement the alternative approach and where they qualify for a time extension, they should apply for a time extension for their existing Part D requirements before or when they apply for the alternative approach.

d. *There will be no delay of existing enforcement actions.* Since sources may not delay compliance with existing schedules while awaiting the review of the alternative approach, states should continue to pursue enforcement actions and seek compliance with the existing SIP as expeditiously as practicable.

Further, until EPA approves the alternative proposal, all noncompliance penalties under authority of Section 113 or 120 of the Clean Air Act or equivalent state provisions will be based on the pre-alternative proposal definition of cost. Afterward, noncompliance penalties will be based on the cost of the alternative control strategy.

e. *Requirements in some court decrees should not be changed.* Control agencies in routine situations frequently obtain court decrees to ensure compliance. In these circumstances, it may be appropriate to modify court decrees if a source presents an approvable alternative approach.

Over the past few years, control agencies and EPA have devoted considerable time and effort to arrive at decrees with some important sources, often involving several plants. EPA considers such court decrees to be of critical importance in achieving air quality objective. Therefore, alternative control strategies should not be used to change the requirements specified in these existing court decrees. The only exception is the use of alternatives to remedy the failure of control strategies specified in the consent decrees to work as expected.

In the future, important sources may be involved in similar negotiations to which the states and EPA have devoted considerable resources. These sources may wish to use the alternative approach. Under these conditions, sources should be sure either to: (1) Come forward with their alternatives and obtain agreement from the control agencies that the proposal is acceptable before entering into the court decree or (2) include a provision in the decree that explicitly allows for consideration of alternatives. Otherwise they may well find that the states and EPA will be unwilling to modify the requirements of the court decree to allow the use of an alternative approach because of the amount of effort already invested to obtain a settlement. Consent decree negotiations now nearing completion should not be delayed for the formulation of alternative plans.

Conclusion

EPA believes that the alternative emission reduction approach, properly applied, will be of significant benefit to the states and to industry. We therefore encourage states to review the policy carefully, to inform sources of the options, to explain the policy's advantages and conditions of use, and to be receptive to industry proposals.

Summary of Comments

Many individuals and organizations took the opportunity to comment on the policy statement as it was proposed on January 18, 1979 (44 FR 3740). Our responses to the issues raised follow.

Innovative Technology

The Environmental Protection Agency believes that the alternative emission reduction concept will promote economic efficiency and increase innovation, since it offers plant managers an economic incentive to develop new control strategies. Some commenters expressed concern with the statement in the proposed policy which suggested that EPA could use the new control strategies developed in response to this policy as a basis for setting tighter standards in the future. They mistakenly interpreted this to mean new standards would be set regardless of ambient air quality considerations.

Under the Clean Air Act, EPA cannot limit emissions of criteria pollutants from existing sources unless this is necessary to meet the National Ambient Air Quality Standards (NAAQS) or NESHAPS. If an existing source is in an area that has already attained the standards or will attain them by the statutory dates, then EPA will not require further control. However, if a source is in an area where the State cannot make a satisfactory demonstration of attainment by the statutory date, then a source may have to meet tighter standards which may necessitate using innovative technology.

One comment suggested that EPA exempt a plant that develops an innovative control technique from any new emission limitation that may be set as a result of that technique. EPA is not in a position to do this, since it is usually the state that sets specific source emission limitations in the State Implementation Plan (SIP). However, if a state chooses to exempt a source and this exemption does not violate the statutory requirements of the Clean Air Act, then EPA will approve it.

Resource burden

In the proposed policy, the Agency specifically solicited comments on the resource burden that final adoption of an alternative emission reduction policy might place on state air pollution control agencies. In addition, EPA contacted 38 states to further explore this question. We found that the expected volume of alternative proposals and the resulting resource requirements vary widely. Some states believe they may experience resource problems because: (1) They may receive a large number of applications, including some complex ones that could take a lot of time to review; (2) processing the applications through case-by-case SIP revisions is a lengthy process, and rejected proposals may tie up resources with appeals; and (3) it may take more time and testing to determine compliance with an alternative plan than if the source used a traditional control approach.

Recognizing that some states' resource burdens may increase, the Agency has tried to incorporate safeguards into the proposed policy and has made some changes to the final policy to further reduce any additional demands on the states. EPA has taken measures to avoid overloading the state staffs with alternative approach applications that are not well prepared. First, the Agency has tried to minimize demands on state resources by specifying that the source must initiate the proposal if it wishes to use an alternative approach. EPA also encourages states to require that the source pay for all demonstrations relevant to its proposal and that the proposal be complete before the state review process begins. There are also provisions that help to screen out applications submitted for the purpose of delaying compliance. For instance, the policy does not create any new opportunities for extensions of compliance schedules beyond those

already available under existing laws. Additionally, enforcement of existing requirements continues while the applications are under review. Applicants do not qualify for stays against their compliance schedule or exemptions from noncompliance fees (unless they otherwise would under the law). It should be noted that the section 110 SIP requirements can be replaced only if a Part D requirement is unavoidably incompatible with an existing SIP. However, since alternatives to Part D requirements are optional, existing SIP provisions cannot be replaced merely because they are incompatible with the alternative approach. Therefore, alternative strategies to section 110 requirements may only be adopted as an addition to the SIP, not as a replacement.

Some states thought that enforcing an alternative approach might be more time consuming since (1) such an approach requires that the enforcement staff become familiar with the source-specific plan, as opposed to relying on knowledge of traditional means of control, and (2) there may be an increased need for testing because, under traditional approaches, states infrequently test installations whose emissions are well below their allowable limit. In some cases enforcement may be more time consuming, but we feel the differences will be small. Although states may have to initially invest some additional time to learn about an alternative approach, once familiar with the source's alternative plan, they can proceed as rapidly as before with testing and enforcement. On the other hand, some alternative approaches will require less enforcement resources. For example, alternative control strategies may lead sources to focus their control efforts on fewer emission points so that the overall frequency of testing may be reduced. In any event, if a state does believe that reviewing or enforcing a particular alternative approach would require excessive resources, the state is free under Section 116 of the Clean Air Act to reject the approach on that basis.

Some commenters requested guidance for evaluating equivalency among pollutants and means of quantifying emissions. EPA does not think a new guidance document is necessary. In general, the Agency will require the same type of demonstrations that were necessary for comprehensive SIP revisions, except where trades involve open dust source emissions, increases in overall emissions, or multiple plants. In those cases, EPA may require additional monitoring data or source-specific modeling data (these requirements are spelled out in the policy). EPA is, however, taking measures to ease any problems that might arise in implementing this policy. First, we will hold workshops around the country to explain the policy. Second, we have apppointed coordinators to answer any questions about the policy. We have also designated a contact person in each Regional office to answer technical questions. These people are listed at the beginning of this policy statement.

Clarifications

1. *Definition of terms and relationship to other policies.* In the proposed policy, some readers found that such terms as source, facility, plant, and site were unclear or inconsistent with definitions used in other EPA air-related regulations. We believe these terms are commonly understood and the precise definitions are not important since this policy is no longer restricted to a single source, facility, plant, or site.

Several commenters also asked how this policy affected Best Available Control Technology (BACT), New Source Performance Standards (NSPS), Lowest Achievable Emission Rate (LAER), and Prevention of Significant Deterioration (PSD). This policy applies only to emission limitations approved or promulgated as part of a SIP. It does not apply to BACT, LAER NSPS, or other conditions specifically required by the Act for new or modified sources. However, EPA is applying a similar "bubble" policy to some conditions for new and modified sources. (See footnote 5 of the policy.) PSD concerns are explicitly mentioned in the policy where appropriate.

One commenter requested clarification of the relationship between this policy statement and the RACT emission limitations recommended in the Control Techniques Guidelines (CTG). The policy states that it is essential to have specific limits for each of the emission points included in alternative control strategy. Under some circumstances, states must require the use of RACT in establishing these limits and must establish these RACT requirements in EPA-approved regulations. EPA published in the **Federal Register** (see 44 FR 53762–63) the role of CTGs in the development and approval of the state RACT regulations.

2. *Specific emission limits.* One commenter asked which emission points must have a specified emission limit if a source uses an alternative plan. The policy requires that the source specify an emission limitation only for those points actually involved in the alternative trades. For example, if a source has five emission points that emit SO2 but wants to use an alternative approach that involves only three of them, then for the purposes of this policy the source has to specify an emission limitation for those three points only. The other emission points would continue to be subject to the level of control (if any) specified in the SIP.

3. *Compliance status.* Commenters frequently misunderstood the intent of the policy regarding the restrictions on eligibility for noncomplying sources. To clarify our intent, there is a new section in the policy entitled "Eligibility." Basically, the alternative approach does not prevent those sources not now in compliance with emission limitations from ever using a bubble. Rather, the policy requires that a source agree to a legally enforceable schedule for achieving the appropriate standards in order to establish an adequate basis for considering alternative control strategies. Without such an agreement, consideration of an alternative approach can only lead to further delays in compliance. A source can apply for an alternative approach to achieve compliance after it agrees to an appropriate schedule.

Processing Alternative Proposals

1. *SIP revisions.* Some commenters suggested that EPA would not need to use a case-by-case SIP revision for alernative approaches if the state incorporated a general regulation for alternative control strategies in its SIP that EPA has approved. Instead, EPA should depend on spot audits to determine if the state is faithfully adhering to the requirements of the general SIP revision.

In response, the Agency believes that case-by-case SIP revisions are necessary for an alternative approach to be legally enforceable. The Clean Air Act requires EPA to review and process all SIP revisions, and this cannot be eliminated or delegated. Additionally, a spot audit would not be a practical means of oversight, since any errors it would turn up are not easily reversible.

EPA realizes that promptness in processing the SIP revisions is necessary if the maximum benefits are to be derived from this policy. Therefore, the Agency is committed to expediting the SIP revision process, especially for those proposals where the trades are straightforward.

There was some question concerning EPA's authority to impose conditions on the use of alternative approaches. EPA has carefully evaluated each of the conditions in this statement and is convinced that each condition is

necessary to protect air quality and is fully consistent with the Clean Air Act.

2. *Actual vs. SIP allowable emission limits.* Some existing installations may be emitting a lesser amount of pollutants than existing SIP regulations allow because, for example, they may be burning a clean fuel, such as natural gas. Several commenters were concerned that the policy would allow a source to use the difference between such a low-emitting installation's actual emissions and the SIP's allowable emissions to offset any proposed higher emissions from another installation, with a resulting increase in overall emissions from this source.

EPA's primary concerns in any alternative approach are that the trades will be equal and result in attainment and maintenance of air quality standards as demonstrated by the SIP. In those cases where the SIP's demonstration of attainment is implicitly or explicitly based on the source maintaining the actual emission level, even though that level is lower in practice than what the SIP allows, that source cannot use the difference to increase its emissions through trading. But EPA will consider alternative approaches where the SIP can demonstrate attainment using the difference between the emission levels to offset proposed higher emissions from another installation. However, states should realize if they approve such trades they will be consuming part of their margin for growth and should explicitly take that into consideration before approving the trades.

3. *Testing techniques and determination of specific emission limits.* The proposed policy stated that each emission point must have a specific emission limit, and the limit must be tied to enforceable testing techniques. Several commenters pointed out that these requirements would prevent some sources, such as those that emit Volatile Organic Compounds (VOCs), from using the alternative approach. EPA did not intend to preclude the use of quantifiable surrogate measures that would allow such sources to use the alternative approach. Therefore, the policy now states that enforceable testing techniques can include specific control measures, performance measures, and performance standards.

4. *Attainment and nonattainment.* The alternative emission reduction approach may be used in those areas currently in attainment or in areas where EPA has judged the SIP adequate to achieve attainment by the future statutory deadlines (this means use of the alternative approach is allowed for control of oxidants beyond 1982 for states that obtain an extension of the deadline, if the SIP can demonstrate attainment by 1987). The alternative approach can also be used within CTG categories in areas that fail to demonstrate attainment (see Section B.2 of the policy).

Some commenters asked what happens to the sources that are using an alternative approach if attainment is not achieved as expected in the area where the source is located. If such a situation arises, the sources may have to install more stringent controls on facilities where the requirements have been relaxed under the alternative approach because the statute requires that all reasonable control measures have to be taken in an effort to meet NAAQS.

5. *Limited review period.* A few commenters mentioned that by inaction on an alternative proposal, EPA or a state could cause a source to come into compliance late. Consequently, they suggested that the policy specify a reasonable time limit during which the state and EPA must act on the proposal.

Although EPA agrees that prompt review is needed, it does not believe it can limit this process to a specific time period. The amount of time necessary to review an alternative approach depends on many factors, such as the complexity of the proposal and the quality of the demonstration the source submits. EPA will handle the alternative approach proposals as quickly as possible, but it must have enough time to ensure that these proposals are consistent with air quality goals. The Agency will make every attempt to expedite the processing of those proposals that are straightforward. The Agency is asking the states to work with it in expediting the SIP revision process.

6. *Time extensions.* As originally proposed, the alternative emission reduction policy stated that existing compliance dates could not be extended in any case. Several commenters argued that this stipulation is unfair because in some cases it may be impossible for a source to implement alternative control strategies within the time allowed in the existing schedule. They also felt that equity requires EPA to consider delaying compliance dates in some instances, since the states can establish earlier dates where the alternative approach can be implemented more quickly than the existing compliance schedule.

EPA agrees that for some it may be difficult to implement an alternative approach on the existing schedule. This is an important reason for sources to submit their alternative proposals as early as possible. However, EPA does not have the authority to extend compliance schedules for the purpose of implementing alternative strategies. Nevertheless, there are circumstances where sources can obtain time extensions for Part D requirements under existing law.

For example, a Part D SIP submission may have established a new particulate requirement for a source with an immediately effective compliance date. Assuming that immediate compliance is not truly practicable for that source (except by shutdown), the Clean Air Act would allow a new schedule with a final compliance date no later than December 31, 1982, to be established for the source as long as the new schedule requires compliance as expeditiously as practicable and reasonable further progress is not jeopardized. An alternative emission limitation could be adopted for that source with an expeditious compliance date even though that expeditious date is later than the immediately effective compliance date for the existing SIP requirement.

The policy for alternative emission reduction approaches is not intended to prohibit sources from applying for time extensions where they would otherwise qualify for them under the law. Thus, under some circumstances sources may be able to obtain additional time to implement alternative approaches for meeting Part D requirements. Applications for time extensions should be made prior to or simultaneously with the application for the alternative strategy.

Several commenters objected to the requirement that they agree in writing not to seek stays of compliance with the existing requirement or avoidance of sanction if the alternative proposal is disapproved, challenged, or delayed. EPA no longer asks this. However, before considering alternative approaches, we will require sources to come to an agreement with the control agency regarding compliance with existing SIPs. These agreements must not contain provisions that grant the source stays or waivers of sanctions to consider an alternative approach.

There were requests for guidance in handling noncompliance penalties associated with an alternative approach. Under Section D.2. of the policy, paragraphs b, c and d deal with penalty fees. The appropriate regional contact person can answer questions that arise in conjunction with a particular application.

7. *Comparable trades.* The alternative emission reduction policy only allows trading of comparable pollutants. Some commenters said that when determining comparability of pollutants the policy must consider that pollutants within the

same criteria category may have different effects on air quality. However, other commenters were of the opinion that without any specific standards for individual pollutants within a criteria category, EPA cannot prevent trades between pollutants in the same category. EPA recognizes that pollutants in the same category may have different impacts, and will take this into consideration to the extent legally possible when reviewing proposed trades.

8. *Open dust source trades.* The proposed policy did not allow trading particulate emissions from open dust sources against particulate emissions from stacks or industrial processes. Many commenters objected to this prohibition and the reasoning that EPA used to support its decision. EPA has reviewed this issue and has decided to no longer categorically prohibit open dust trades. However, the Agency still believes it is especially difficult to ensure equivalent air quality impacts for such trades. Due to the shortcomings of air quality models for open dust sources, EPA will insist on a thorough justification and explanation of all critical inputs to the emission and air quality calculations for any proposals based on modeling demonstrations. Generally, EPA will not approve any proposed alternative emission strategy based on a modeling demonstration that proposes to substitute controls on open dust emissions for reasonable controls on the more significant sources of process emissions. EPA will accept good modeling demonstrations for trades that do not affect the use of basic controls. As an alternative to modeling, sources can propose trades without these restrictions if they demonstrate the equivalency of the trades by installing open dust source controls and monitoring the results.

9. *Hazardous pollutant trades.* Several commenters suggested that the policy should allow trades between the same hazardous pollutant. We have clarified our position on this matter and have stated that the emissions of pollutants that are currently listed under Section 112 (but not specifically regulated) may be increased at one emission point only as long as there is a compensating decrease in the emission of the same pollutant at another point. For those pollutants listed under §112 in the future, similar trading restraints will apply. However, in all cases, sources must comply with applicable Section 112 regulations and they cannot use an alternative emission control to do this.

10. *Trades between criteria pollutant categories.* Other commenters urged EPA to consider allowing trades between criteria categories if the results will be beneficial, e.g., trading a decrease in a pollutant seriously violating NAAQS for an increase in a pollutant with a minor violation. EPA cannot consider any trades involving pollutants from different criteria categories because the Clean Air Act requires SIPs to provide for attainment for every standard. EPA may not approve a revision that makes a violation worse for one standard, regardless of any offsetting benefits for another standard.

11. *Equal emissions.* There were comments that suggested that it was unduly restrictive to require trades under an alternative approach to be equal, since in some cases this is more control than is necessary to protect ambient air quality. One commenter thought that the policy should not prevent VOC sources from increasing emissions because, unlike other pollutants, they do not create a localized nonattainment problem.

EPA recognizes that the Clean Air Act permits states to revise their SIPs in ways that allow increases in total emissions from a source, a plant, or an area. But, there are significant restrictions on this authority: The revised SIP must demonstrate attainment and maintenance of the standards; the requirements for reasonable further progress in reducing emissions and for attainment as expeditiously as practicable must be satisfied; and the revision must not interfere with the Prevention of Significant Deterioration program. However, the fact that the Act does not completely prohibit SIP revisions that increase overall emission does not lead EPA to encourage such revisions as an element of this policy statement.

In EPA's opinion there are important policy reasons to discourage SIP revisions that increase overall emissions. A growing number of serious air quality problems are now recognized as covering broad regions of the country: ozone violations, elevated sulfates and "acid rain," and visibility reduction. SIP revisions that permit significant increases in total emissions of the major criteria pollutants can exacerbate some or all of the current wide-scale air quality problems. Therefore, EPA does not encourage by this policy, or as a more general matter, SIP revisions that result in overall emission increases. In particular, EPA will not approve such SIP revisions to the extent consistent with its current legal authority.

12. *Multiplant emissions trades.* Several commenters said that use of an alternative approach should not be restricted to a single plant. They said that this restriction creates an arbitrary boundary for trading emissions since the policy already requires a source to demonstrate that the alternative strategy will not harm air quality.

EPA has changed the policy to allow more than one plant in the same area to be included in an alternative emissions abatement strategy. However, EPA will require modeling (except in the case of hydrocarbons and ozone) to show that air quality will be protected.

Other Issues

1. *Worker exposure.* The Agency received a recommendation that it disapprove any alternative approach that will increase the concentration of pollutants to which any group of workers is exposed. EPA has specifically forbidden trades involving coke oven particulate emissions. In many instances emissions close to ground level, where workers are located, may have to be weighed differently than emissions from high stacks. While EPA does not have the statutory authority to specifically prohibit a trade because of increased worker exposure, we encourage states to examine this issue and avoid decisions that would increase worker exposure.

2. *Energy management.* There was a suggestion that the alternative emission policy should encourage innovative energy management approaches by providing for greater flexibility in the use of alternative fuels to meet SIP requirements. EPA feels that the alternative approach provides flexibility for fuel switching to balance emission limits, and to the extent that energy is a growing component of the cost of meeting pollution control requirements, sources will seek to minimize energy use. However, EPA does not have the authority to take into account such factors as energy savings or choice of fuel when it reviews alternative strategies.

Dated: November 29, 1979.

Douglas M. Costle,

Administrator.

[FR Doc. 79-37844 Filed 12-10-79; 8:45 am]

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federal register

Tuesday
December 11, 1979

Part VIII

Federal Emergency Management Agency

Disaster Assistance: Community Disaster Loans; Fire Suppression Assistance; and General Insurance Requirements

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 205

[Docket No. FEMA-DR 205]

Disaster Assistance: Community Disaster Loans

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule describes policies, procedures, and responsibilities for local governments and State and Federal officials concerning the Community Disaster Loan program under the Disaster Relief Act of 1974. It includes material previously in the program regulations and material published in the Federal Disaster Assistance Administration's Community Disaster Loan Handbook. The regulations concern loan eligibility, applications, administration, cancellations, and repayment.

EFFECTIVE DATE: January 10, 1980.

FOR FURTHER INFORMATION CONTACT: Gene Morath, Office of Public Assistance, Disaster Response and Recovery, Federal Emergency Management Agency, Washington, D.C. 20472, Telephone (202) 634–7835.

SUPPLEMENTARY INFORMATION: A notice issued in the **Federal Register** on May 2, 1979, establishing CFR Title and Chapter for FEMA regulations (Title 44, Chapter I, Federal Emergency Management Agency, with Subchapters A–E) indicated that Disaster Assistance would be Subchapter D, Parts 200–299.

On September 28, 1979, FEMA published a Notice of Transfer and Redesignation that transferred the Federal Disaster Assistance Regulations from 24 CFR Parts 2200–2205 to 44 CFR Part 200 *et seq.*

The regulations implementing the Disaster Relief Act of 1974, Pub. L. 93–288 (44 CFR Part 205), are in the process of reorganization and revision.

On August 10, 1979, the Acting Director for Disaster Response and Recovery (then the Administrator, Federal Disaster Assistance Administration) published in the **Federal Register** (44 FR 47105) a proposed rule to revise and recodify the material in the existing 44 CFR 205.56, as a new Subpart F. The rule is expanded to incorporate material previously published in the FEMA Community Disaster Loan Handbook, 3300.14, concerning loan eligibility, applications, administration, cancellations, and repayment. Portions of the material have been revised to clarify existing policy and procedures. Comments were invited to September 24, 1979. In addition, copies were sent to the Senate and the House Banking Committee for review. One comment was received and incorporated: the American Institute of Certified Public Accountants suggested that the proposed language of § 205.96 (c)(1)(iii) be revised to follow GAO's guidelines concerning qualification of public accountants. A Finding of Inapplicability of Section 102 (2)(c) of the National Environmental Policy Act of 1969 has been made in accordance with "Procedures for Protection and Enhancement of Environmental Quality." Interested parties may obtain and inspect copies of this Finding of Inapplicability at the Office of the Rules Docket Clerk of the Federal Emergency Management Agency in Washington, D.C. 20472.

Accordingly, 44 CFR Part 205 of the Federal Disaster Assistance Regulations is revised by deleting § 205.56 and adding a new Subpart F as follows:

§ 205.56 [Deleted]

Subpart F—Community Disaster Loans.

Sec.

205.90 Purpose.
205.91 Loan program.
205.92 Responsibilities.
205.93 Eligibility criteria.
205.94 Loan application.
205.95 Loan administration.
205.96 Loan cancellation.
205.97 Loan repayment.

Authority. Secs. 601, Disaster Relief Act of 1974, as amended, Pub. L. 93–288, 88 Stat. 143 (42 U.S.C. 5201); Executive Order 12148 (44 FR 43239); and Delegation of Authority (44 FR 44792).

Subpart F—Community Disaster Loans

§ 205.90 Purpose.

This subpart provides policies and procedures for local governments and State and Federal officials concerning the Community Disaster Loan program under Section 414 of the Act.

§ 205.91 Loan program.

(a) *General.* The Associate Director, Disaster Response and Recovery (the Associate Director) may make a Community Disaster Loan to any local government which may suffer a substantial loss of tax and other revenues as a result of a major disaster or emergency and which demonstrates a need for financial assistance in order to perform its governmental functions.

(b) *Amount of loan.* The amount of the loan is based on need, not to exceed 25 percent of the operating budget of the local government for the fiscal year in which the disaster occurs. The term "fiscal year" as used in this subpart means the local government's fiscal year.

(c) *Interest rate.* The interest rate is the rate determined by the Secretary of the Treasury in effect on the date that the loan (i.e., Promissory Note) is executed. This Treasury rate takes into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity adjusted to the nearest ⅛ percent.

(d) *Time limitation.* The Associate Director may approve a loan in either the fiscal year in which the disaster occurred or the fiscal year immediately following that year, when requested by the local government. Only one loan may be approved for any local government as the result of a single disaster.

(e) *Term of loan.* The term of the loan is three years, unless otherwise approved by the Associate Director. The Associate Director may consider requests for an extension of the term based on the local government's financial condition. The total term of any loan may not exceed 10 years.

(f) *Use of loan funds.* The local government shall use the loaned funds to carry on existing local government functions of a municipal operation character or to expand such functions to meet disaster-related needs. The funds shall not be used to finance capital improvements nor the repair or restoration of damaged public facilities. Neither the loan nor any cancelled portion of the loans may be used as the non-Federal share of any Federal program, including those under the Act.

(g) *Cancellation.* The Associate Director shall cancel repayment of all or part of a Community Disaster Loan to the extent that revenues of the local government during the three fiscal years following the disaster are insufficient to meet the operating budget of that local government because of disaster-related revenue losses and additional disaster-related municipal operating expenses.

(h) Any community disaster loans including cancellations made under this subpart shall not reduce or otherwise affect any commitments, grants, or other assistance under the Act or these regulations.

§ 205.92 Responsibilities.

(a) The local government shall submit the financial information required by FEMA and, if a loan is made, comply with the assurances on the application and the terms of the Promissory Note.

(b) The Governor's Authorized Representative shall certify on the loan application that the local government

can legally assume the proposed indebtedness and that any proceeds will be used and accounted for in compliance with the Federal-State Agreement.

(c) The Regional Director shall review each loan application or loan cancellation request received from a local government and monitor the local government's use of the loan. He/She shall inform the Associate Director and submit recommendations when appropriate.

(d) A loan officer, designated by the Associate Director, shall execute a Promissory Note with the local government, establish and maintain a loan account, and administer the loan until repayment or cancellation is completed and the Promissory Note is discharged.

(e) The Associate Director, or a person designated by the Associate Director, shall approve or disapprove each loan request, taking into consideration the information provided in the local government's request and the recommendations of the Governor's Authorized Representative and the Regional Director. The Associate Director, or the Associate Director's designee, shall approve or disapprove a request for loan cancellation in accordance with the criteria for cancellation in these regulations.

§ 205.93 Eligibility criteria.

(a) *local government.* The local government must be located within the area designated by the Associate Director as being eligible for assistance under a major disaster or emergency declaration. In addition, State law must not prohibit the local government from incurring the indebtedness resulting from a Federal loan. Factors considered by FEMA in determining the eligibility of a local government for a Community Disaster Loan include the loss of tax and other revenues as a result of a disaster, a demonstrated need for financial assistance in order to perform its governmental functions as a political entity, the maintenance of an annual operating budget, and its responsibilities for providing essential municipal operating services to the community. Eligibility for other assistance under the Act does not, of itself, establish entitlement to such a loan.

(b) *Loan eligibility.*—(1) *General.* To be eligible, the local government must show that it may suffer or has suffered a substantial loss of tax and other revenues as a result of a disaster and must demonstrate a need for financial assistance in order to perform its governmental functions. Loan eligibility is based on the financial condition of the local government and a review of financial information and supporting justification accompanying the application.

(2) *Substantial loss of tax and other revenues.* The fiscal year of the disaster or the succeeding fiscal year is the base period for determining whether a local government may suffer or has suffered a substantial loss of revenue. Guidelines include the following disaster-related factors:

(i) A large enough reduction in cash receipts from normal revenue sources, excluding borrowing, which affects significantly and adversely the level and/or categories of essential municipal services provided prior to the disaster.

(ii) A revenue loss of over 5 percent of total revenue estimated for the fiscal year in which the disaster occurred or for the succeeding fiscal year.

(3) *Demonstrated need for financial assistance.* The local government must demonstrate a need for financial assistance in order to perform its governmental functions. Guidelines include the following:

(i) Sufficiency of funds to meet current fiscal year operating requirements;

(ii) Availability of cash on other liquid assets which can be applied from the prior fiscal year;

(iii) Current financial condition considering projected expenditures for governmental services and availability of other financial resources;

(iv) Fixed debt requirements;

(v) Debt ratio (relationship of annual receipts to debt service);

(vi) Ability to obtain financial assistance or needed revenue from State and other Federal agencies for direct program expenditures;

(vii) Displacement of revenue-producing business due to property destruction;

(viii) Necessity to reduce or eliminate essential municipal services; and

(ix) Danger of municipal insolvency.

§ 205.94 Loan application.

(a) *Application.* (1) The local government shall submit an application for a Community Disaster Loan through the Governor's Authorized Representative. The loan must be justified on the basis of need and shall be based on the actual and projected expenses, as a result of the disaster, for the fiscal year in which the disaster occurred and for the three succeeding fiscal years. This loan request shall be prepared by the affected local government and certified as legal by the Governor's Authorized Representative.

(2) Waiver of state review. The Regional Director may waive the requirement for a State review if an otherwise eligible applicant is not subject to State administrative authority and the State cannot legally participate in the loan application process.

(b) *Financial requirements.* (1) The loan application shall be developed from financial information contained in the annual operating budget (§ 205.94(b)(2) below) and shall include a Summary of Revenue Loss and Disaster-Related Expenses, a Statement of the Applicant's Operating Results-Cash Position, a Debt History, Tax Assessment Data, Financial Projections, Other Information, a Certification, and the Assurances listed on the application. Copies of the local government's financial reports (Revenue and Expense and Balance Sheet) for the three fiscal years prior to the fiscal year of the disaster must accompany the application.

(2) Operating Budget. For purposes of the loan, the operating budget is that document or documents approved by an appropriating body, which contains an estimate of proposed expenditures, other than capital outlays for fixed assets for a stated period of time, and the proposed means of financing the expenditures.

(3) Operating budget increases. Budget increases due to increases in the level of, or additions to, municipal services not rendered at the time of the disaster or not directly related to the disaster shall be identified.

(4) Revenue and assessment information. The applicant shall provide information concerning its method of tax assessment, to include assessment dates and the dates payments are due. Tax revenues assessed but not collected or other revenues which the local government chooses to forgive, stay, or otherwise not exercise the right to collect are not a legitimate revenue loss for purposes of evaluating the loan application.

(5) Estimated disaster-related expenses. Disaster-related expenses of a municipal operation character should be estimated. These are discussed in § 205.96(b).

(c) *Federal review.* (1) The Associate Director shall approve a community disaster loan to the extent it is determined that the local government may suffer a substantial loss of tax and other revenues and demonstrate a need for financial assistance needed to perform its governmental function as the result of the disaster.

(2) The loan shall not exceed the lesser of: (i) The amount of projected loss plus the projected disaster-related expenses of a municipal operating character or (ii) 25 percent of the annual

operating budget for the fiscal year in which the disaster occurred.

(3) Promissory note. Upon approval of the loan by the Associate Director, FEMA, the Loan Officer will execute a Promissory Note with the applicant. The applicant should indicate its funding requirements on the Schedule of Loan Increments.

§ 205.95 Loan administration.

(a) *Funding.* (1) FEMA will disburse funds to the local government when requested, generally in accordance with the Schedule of Loan Increments. As funds are disbursed, interest will accrue.

(2) When each incremental payment is requested, the local government shall submit a copy of its most recent financial report (if not submitted previously) for consideration by FEMA in consultation with the borrower of whether or not the level and frequency of periodic payments continue to be justified. The local government shall also provide the latest available data on anticipated and actual tax and other revenue collections for the most recent period. Desired adjustments in the disbursement schedule shall be submitted in writing at least 30 days prior to the proposed disbursement date in order to ensure timely receipts of the funds.

(b) *Financial management.* Each local government with an approved Community Disaster Loan shall establish necessary accounting records, consistent with the local government's financial management system, to account for loan funds received and disbursed and to provide an audit trail.

(c) *Loan Servicing.* Whether or not all loan funds have been drawn, FEMA will reevaluate the total loan justification periodically. The purpose of the reevaluation is to determine whether projected revenue losses, disaster-related expenses, operating budgets, and other factors have changed significantly to warrant adjustment of the scheduled payments of the loan proceeds.

(d) *Inactive loans.* If no funds have been disbursed from the Treasury, and if the local government does not anticipate a need for such funds, the note may be cancelled at any time upon a written request to FEMA. However, since only one loan may be approved, cancellation precludes submission of a second loan application request by the same local government for the major disaster.

§ 205.96 Loan cancellation.

(a) *Policies.* (1) FEMA shall cancel repayment of all or any part of a Community Disaster Loan to the extent that the Associate Director determines that revenues of the local government during the full 3 fiscal year period following the disaster are insufficient, as a result of the disaster, to meet the operating budget of the local government, including additional disaster-related expenses of a municipal operating character.

(2) If the local government reduces the tax and other revenue rates or the tax assessment valuation of property which was not damaged or destroyed by the disaster, the tax and other revenue rates and tax assessment valuation factors applicable to such property in effect at the time of the major disaster or emergency shall be used without reduction for purposes of computing revenues received. This may result in decreasing the amount of any potential loan cancellations as a result of a general reduction in property tax.

(b) *Disaster-related expenses of a municipal operation character.* (1) For purposes of this loan, expenses of a municipal operation character are those incurred for general government purposes, such as police and fire protection, trash collection, collection of revenues, maintenance of public facilities, flood and other hazard insurance, and those other expenses normally budgeted for in special revenue, enterprise, and general funds, as defined by the Municipal Finance Officers Association.

(2) Disaster-related expenses do not include expenditures associated with debt service, any major repairs, rebuilding, replacement or reconstruction of public facilities or other capital projects, intragovernmental services, special assessments, and trust and agency fund operations. Disaster expenses which are eligible for reimbursement under project applications or other Federal programs are not eligible for loan cancellation.

(c) *Cancellation application.* A local government which has drawn loan funds from the Treasury may request cancellation of the principal and related interest by submitting an Application for Loan Cancellation prior to the expiration date of the loan through the Governor's Authorized Representative to the Regional Director.

(1) Financial information submitted with the application shall include the following:

(i) Annual Operating Budgets for each fiscal year;

(ii) Financial Records (Revenue and Expense and Balance Sheet) for each fiscal year;

(iii) Audit reports for each fiscal year certifying to the validity of the Operating Statements. The financial statements of the local government shall be examined in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants licensed on or before December 31, 1970, who are certified by a regulatory authority of a State or other political subdivision of the United States. As required by the American Institute of Certified Public Accountants standards, or the equivalent thereof, the auditor must be independent within the meaning of the code of professional ethics of the AICPA; and

(iv) Other financial information specified in the Application for Loan Cancellation.

(2) Narrative justification. The applicant may include an appropriate narrative presentation to amplify the financial material accompanying the application and to present any extenuating circumstances which the local government wants to be considered.

(3) Audit report. The audit report accompanying the application shall certify to the fiscal integrity of financial transactions and reports and to compliance with applicable laws, regulations, and administrative requirements. The report should not include recommendations concerning cancellation or repayment.

(d) *Determination.* (1) If, based on a review of the Application for Loan Cancellation and a State and/or Federal audit, the Associate Director determines that all or part of the Community Disaster Loan funds should be cancelled, the principal amount which is cancelled will become a grant and the related interest will be forgiven.

(2) A loan or cancellation of a loan does not reduce or affect other disaster-related grants or other disaster assistance. However, no cancellation may be made that would result in a duplication of benefits to the applicant.

(3) The uncancelled portion of the loan must be repaid in accordance with 205.97 below.

§ 205.97 Loan repayment.

(a) *Prepayments.* The local government may make prepayments against the loan at any time.

(b) *Repayment.* To the extent not otherwise cancelled, Community Disaster Loan funds become due and payable in accordance with the terms and conditions of the promissory note. The note shall include the following provisions:

(1) The term of a loan made under this program is three years, unless extended by the Associate Director. Interest will accrue on outstanding cash from the actual date of its disbursement by the Treasury.

(2) Each payment made against the loan will be applied first to the interest computed to the date of the payment, and then to the principal. Prepayments of scheduled installments, or any portion thereof, may be made at any time and shall be applied to the installments last to become due under the loan and shall not affect the obligation of the borrower to pay the remaining installments.

(3) The Associate Director may defer payments of principal and interest until he makes his final determination with respect to any application for loan cancellation which the borrower may submit.

(4) Any costs incurred by the Federal Government in collecting the note shall be added to the unpaid balance of the loan, bear interest at the same rate as the loan, and be immediately due without demand. Default on the note shall also constitute default under any other debit of the Borrower owing to, or insured by, the Federal Government. Upon any such default, the Federal Government may declare all or part of the note immediately due.

(Secs. 601, 414, Disaster Relief Act of 1974, as amended, Pub. L. 93–288, 88 Stat. 143 (42 U.S.C. 5201 and 5184); Executive Order 12148 (44 FR 43239); and Delegation of Authority (44 FR 44792))

Issued at Wahington, D.C., December 4, 1979.

William H. Wilcox,

Acting Director, Disaster Response and Recovery, Federal Emergency Management Agency.

[FR Doc. 79-37849 Filed 12-10-79; 8:45 am]

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44 CFR Part 205

[Docket No. FEMA-DR 205]

Disaster Assistance: Fire Suppression Assistance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This final rule amends FEMA's regulations regarding fire suppression assistance costs eligible for reimbursement. Based on experience in administering the fire suppression assistance program under the Disaster Relief Act of 1974, and upon consultation with the Forest Service, USDA, and the Bureau of Land Management, DOI, it was determined that the existing eligibility criteria should be expanded to include the cost of certain field support personnel, direct travel and per diem costs, and the operation of field camps.

EFFECTIVE DATE: January 10, 1980.

FOR FURTHER INFORMATION CONTACT: Gene Morath, Office of Public Assistance, Disaster Response and Recovery, Federal Emergency Management Agency, Washington, D.C. 20472, Telephone (202) 634–7835.

SUPPLEMENTARY INFORMATION: A notice issued in the **Federal Register** on May 2, 1979, establishing CFR Title and Chapter for FEMA regulations (Title 44 Chapter I, Federal Emergency Management Agency, with Subchapters A–E) indicated that Disaster Assistance would be Subchapter D, Parts 200–299.

On September 28, 1979, FEMA published a Notice of Transfer and Redesignation that transferred the Federal Disaster Assistance Regulations from 24 CFR Parts 2200–2205 to 44 CFR Part 200 *et seq.* The regulations implementing the Disaster Relief Act of 1974, Pub. L. 93–288 (44 CFR Part 205) are in the process of reorganization and revision.

On February 15, 1979, the Acting Director, Disaster Response and Recovery (then the Administrator, Federal Disaster Assistance Administration) published in the **Federal Register** (44 FR 9770) a proposed rule to amend the cost reimbursement policies contained in 44 CFR 205.38 by incorporating into the regulations existing cost eligibility criteria contained in the FEMA Fire Suppression Assistance Handbook, 3300. 9 (Rev.), and redesignating § 205.38 as a new § 205.104. Comments were invited to April 16, 1979. No comments were received.

Consistent with the recodifications of FEMA regulations, the balance of Subpart C, 44 CFR Part 205 with minor editorial changes, is redesignated as a new Subpart G with §§ 205.34–205.38 redesignated as §§ 205.100–205.104.

A Finding of Inapplicability of Section 102(2)(c) of the National Environmental Policy Act of 1969 has been made in accordance with "Procedures for Protection and Enhancement of Environmental Quality." Interested parties may inspect and obtain copies of this Finding of Inapplicability of Environmental Impact at the Office of the Rules Docket Clerk of the Federal Emergency Management Agency in Washington, D.C. 20472.

Accordingly, 44 CFR Part 205 of the Federal Disaster Assistance Regulations is revised by deleting §§ 205.34–205.38 and adding new §§ 205.100–205.104 as follows:

§ 205.34—205.38 [Deleted]

Subpart G—Fire Suppression Assistance

Sec.

205.100 General.
205.101 Federal-State agreements.
205.102 Request for assistance.
205.103 Providing assistance.
205.104 Reimbursement.

Authority: (Sec. 601 and 417, Disaster Relief Act of 1974, as amended, Pub. L. 93–288, 88 Stat. 143 (42 U.S.C. 5201 and 5187); Executive Order 12148 (44 FR 43239); and Delegation of Authority (44 FR 44792).)

Subpart G—Fire Suppression Assistance

§ 205.100 General.

When the Associate Director for Disaster Response and Recovery (the Associate Director) determines that a fire or fires threaten such destruction as would constitute a major disaster, he/she may authorize assistance, including grants, equipment, supplies, and personnel to any State for the suppression of any fire on publicly or privately owned forest or grassland.

§ 205.101 Federal-State agreements.

Federal assistance under section 417 of the Act is provided in accordance with a continuing Federal-State Agreement for Fire Suppression (the Agreement) signed by the Governor and the Regional Director. The Agreement contains the necessary terms and conditions consistent with the provisions of applicable laws, Executive orders, and regulations, as the Associate Director may require and specifies the type and extent of Federal assistance. The Governor may designate authorized representatives to execute requests and certifications and otherwise act for the State during fire emergencies. Supplemental agreements shall be executed at least annually in advance of the fire season to update the continuing Agreement.

§ 205.102 Request for assistance.

When a Governor determines that fire suppression assistance is warranted, his/her request for assistance shall specify in detail the facts supporting the request. In order that all actions in processing a State request are executed as rapidly as possible, the State may submit a request to the Regional Director by telephone, promptly followed by a confirming telegram or letter.

§ 205.103 Providing assistance.

Following the Associate Director's decision on the State request, the Regional Director will notify the Governor and the Federal fire-fighting agency involved. The Regional Director

may request assistance from Federal agencies if requested by the State. For each fire or fire situation, the State shall prepare a separate Fire Project Application and submit it to the Regional Director for approval.

§ 205.104 Reimbursement.

(a) Payment is made to the State for its actual eligible costs, subject to verification, as necessary, by Federal inspection and audit. When requested by the State, such payments may be made directly to other Federal agencies for eligible assistance provided by them.

(b) Eligible State costs are reimbursed in accordance with the terms and provisions of the Agreement. Only certain costs incurred in fire suppression operations are eligible for reimbursement. The following paragraphs describe those specific items which are clearly eligible or clearly ineligible.

(1) Eligible costs of the State consist of the following costs reasonably and directly related to fire suppression:

(i) All compensation for employees, except as noted under paragraph (b)(2)(i) of this section, directly engaged in authorized fire suppression activities. Included are field support personnel, such as cooks, guards, timekeepers, and supply personnel.

(ii) Travel and per diem costs for employees directly engaged in fire suppression activities.

(iii) Expenses to provide field camps and meals when made available to the eligible employees in lieu of per diem costs.

(iv) Cost for use of publicly-owned equipment used on eligible fire suppression work is based on the FEMA Schedule of Equipment Rates.

(v) Cost for use of privately-owned equipment is based on the rental rate: *Provided,* Such costs are comparable to the going rate for the same or similar equipment in the locality, as determined by the Regional Director.

(vi) Cost to the State for use of U.S. Government-owned equipment is based on reasonable costs as billed by the Federal agency and paid by the State.

(vii) Cost of firefighting tools, materials, and supplies expended or lost, to the extent not covered by reasonable insurance.

(viii) Repair and reconditioning costs of tools and equipment used in eligible fire suppression activities (other than equipment covered by the FEMA Schedule of Equipment Rates).

(ix) Replacement value of equipment lost in fire suppression, to the extent not covered by reasonable insurance.

(x) Costs for personal comfort and safety items normally provided by the State under field conditions for firefighter health and safety.

(xi) Mobilization and demobilization costs directly relating to the Federal fire suppression assistance approved by the Associate Director.

(xii) Eligible costs of local governmental fire-fighting organizations reimbursed by the State, pursuant to an existing cooperative agreement, in suppressing an approved incident fire.

(xiii) State costs for suppressing fires on Federal land in cases where the State has a responsibility under a cooperative agreement to perform such action on a nonreimbursable basis.

(2) Costs which are ineligible for reimbursement are:

(i) Any clerical or overhead costs other than field administration and supervision.

(ii) Any costs for presuppression, salvaging timber, restoring facilities, seeding and planting operations.

(iii) Any costs not incurred during the incidence period as determined by the Regional Director other than reasonable and directly related mobilization and demobilization costs.

(iv) State costs for suppressing a fire on Federal land where such costs are reimbursable to the State by another Federal agency under another statute.

(3) In those instances in which assistance under section 417 of the Act is provided pursuant to existing Interstate Forest Fire Protection Compacts, third party eligible costs are reimbursed in accordance with paragraph (b) of this section.

Issued at Washington, D.C., December 4, 1979.

William H. Wilcox,

Acting Director, Disaster Response and Recovery, Federal Emergency Management Agency.

[FR Doc. 79-37850 Filed 12-10-79; 8:45 am]

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44 CFR Part 205

[Docket No. FEMA-DR 205]

Disaster Assistance; General Insurance Requirements

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule implements Section 314 of the Disaster Relief Act of 1974. It describes specific requirements concerning insurance, other than flood insurance, which are conditions for approving certain forms of disaster assistance. These requirements include matter relating to type, extent, and duration of coverage and the required assurances by grantees.

EFFECTIVE DATE: January 10, 1980.

FOR FURTHER INFORMATION CONTACT: Gene Morath, Office of Public Assistance, Disaster Response and Recovery, Federal Emergency Management Agency, Washington, D.C. 20472, Telephone (202) 634-7835.

SUPPLEMENTARY INFORMATION: A notice issued in the **Federal Register** on May 2, 1979, establishing CFR Title and Chapter for FEMA regulations (Title 44, Chapter I, Federal Emergency Management Agency, with Subchapters A–E) indicated that Disaster Assistance would be Subchapter D, Parts 200–299.

On September 28, 1979, FEMA published a Notice of Transfer and Redesignation that transferred the Federal Disaster Assistance Regulations from 24 CFR Parts 2200–2205 to 44 CFR Part 200 *et seq.*

The regulations implementing the Disaster Relief Act of 1974, Pub. L. 93-288, (44 CFR Part 205) are in the process of reorganization and revision. On July 5, 1979, the Acting Director, Disaster Response and Recovery (then the Administrator, Federal Disaster Assistance Administration), published in the **Federal Register** (44 FR 39198) a proposed rule to redesignate the existing Subpart F (Other Insurance) of 44 CFR Part 205 as a new Subpart J (General Insurance Requirements) and combine §§ 205.14 and 205.65–205.74 of the existing disaster assistance regulations. Comments were invited to September 5, 1979. No comments were received. A Finding of Inapplicability of section 102(2)(c) of the National Environmental Policy Act of 1969 has been made in accordance with "Procedures for Protection and Enhancement of Environmental Quality." Interested parties may obtain and inspect copies of this Finding of Inapplicability at the Office of the Rules Docket Clerk of the Federal Emergency Management Agency in Washington, D.C. 20472.

Accordingly, 44 CFR Part 205 of the Federal Disaster Assistance Regulations is revised by deleting the existing Subpart F and adding a new Subpart J as follows:

Subpart F—Other Insurance [Deleted]

Subpart J—General Insurance Requirements

Sec.

205.200 General.
205.201 Definitions.
205.202 Exclusions.
205.203 Applicability.
205.204 Type of insurance.
205.205 Extent of insurance.
205.206 Duration of insurance coverage.

Sec.

205.207 Assurances for categorical grants.
205.208 Assurances for flexible funding.
205.209 Self-insurance.

Authority: Sec. 601, Disaster Relief Act of 1974, as amended, Pub. L. 93–288, 88 Stat. 143 (42 U.S.C. 5201); Executive Order 12148 (44 FR 43239); and Delegation of Authority (44 FR 44792).

Subpart J—General Insurance Requirements

§ 205.200 General.

(a) Section 314 of the Act, and the Flood Disaster Protection Act of 1973, Pub. L. 93–234, establish insurance requirements as a condition for approving certain disaster assistance under the Act. This subpart pertains to assistance under sections 402 and 419 of the Act. Specific requirements pertaining to flood insurance under Pub. L. 93–234, as amended, are contained in Subpart K of this regulation.

(b) Prior to approval of a Federal grant for the restoration of property, the applicant shall notify the Regional Director of any entitlement to insurance settlement or recovery for such property. The Regional Director shall reduce the grant by the actual amount of insurance proceeds received by the applicant. In the event that insurance recovery is contingent upon the amount of reimbursement under the Act, reimbursement shall be limited to eligible costs as determined by the Regional Director after deducting the maximum amount otherwise recoverable under and to the limit of the applicant's insurance policy.

§ 205.201 Definitions as used in this subpart.

(a) "Assistance" means any form of Federal grant under sections 402 or 419 of the Act to replace, restore, repair, reconstruct, or construct any property as the result of a major disaster or emergency declaration and which property is not excluded pursuant to § 205.202.

(b) "Property" means any structure, vehicles, equipment, materials, or supplies.

§ 205.202 Exclusions.

The following categories of Federal disaster assistance are excluded from the requirements to obtain and maintain such insurance as is required by section 314 of the Act and by this subpart:

(a) Emergency assistance provided under section 305 or 306 of the Act.

(b) Assistance otherwise eligible under section 402 or 419 of the Act for any State-owned property that is covered by an adequate State policy of self-insurance approved by the Associate Director for Disaster Response and Recovery (the Associate Director).

(c) Assistance under section 402 or 419 of the Act for any property for which insurance is not reasonably available, adequate, and necessary, such as: Roads, streets, bridges, and other highway facilities; traffic controls; parking meters; drainage channels and debris basins; dikes and levees; pumping stations; and utility distribution systems.

(d) Assistance for which flood insurance is required under Pub. L. 93–234, as implemented by 44 CFR Part 205, Subpart K.

§ 205.203 Applicability.

(a) The requirements of this subpart shall apply to all assistance pursuant to section 402 or 419 of the Act with respect to any major disaster or emergency declared by the President after May 22, 1974, unless excluded under § 205.202.

(b) The Regional Director may not approve any such assistance unless the applicant has provided assurances, acceptable to the Regional Director, that the applicant will obtain and maintain any insurance required under these regulations.

(c) The Regional Director may defer approval of otherwise eligible project applications for up to 6 months to permit the applicant to provide such assurances referred to in paragraph (b) of this section. The Associate Director may extend the time for submission of such assurances by the applicant.

(d) No applicant for assistance under sections 402 or 419 of the Act shall receive assistance for any property or part thereof for which it has previously received assistance under the Act unless the applicant obtained and maintained the insurance required under section 314 of the Act and these regulations with respect to such property. In cases where insurance was not maintained, any assistance shall be reduced by the insurance settlement which would have been received had the required insurance coverage been maintained in force.

(e) Insurance requirements prescribed in this subpart shall apply equally to private nonprofit facilities which receive assistance under section 402(b) of the Act. Private nonprofit organizations shall submit the necessary documentation and assurances required by this subpart through the appropriate applicant.

(f) The Regional Director shall require flood insurance as the result of the flooding major disaster, when reasonably available, adequate, and necessary under section 314 of the Act for assistance even though the flood damaged building concerned is located outside the base floodplain.

§ 205.204 Type of insurance.

(a) Assurances by the applicant under this subpart to obtain reasonably available, adequate, and necessary insurance shall be required only for the type or types of hazard for which the major disaster was declared. The Regional Director shall not require greater types and extent of insurance than are certified to him/her as reasonable by the appropriate State Insurance Commissioner responsible for regulation of such insurance.

(b) The Regional Director shall make a determination as to the type and extent of insurance that is reasonable when he/she is unable to obtain a prompt certification by the State Insurance Commissioner in response to a formal written request.

§ 205.205 Extent of insurance.

Prior to approval of assistance under section 402 or 419 of the Act to replace, restore, repair, reconstruct, or construct any property for which insurance is required under this subpart, the applicant shall provide assurances acceptable to the Regional Director that it will obtain and maintain reasonably available, adequate, and necessary insurance to protect against future loss in an amount equal to the amount of the grant under section 402 or 419.

§ 205.206 Duration of insurance coverage.

The applicant shall provide assurances that the required insurance coverage will be maintained for the anticipated life of the restorative work or of the insured property, which is the lesser.

§ 205.207 Assurances for categorical grants.

Where insurance is required under this subpart, the applicant shall submit evidence of applicable insurance coverage or other related assurances with the project application. The type and extent of such insurance coverage shall be subject to approval by the Regional Director.

§ 205.208 Assurances for flexible funding.

When applying for assistance under the provisions of sections 402(f) and 419 of the Act, the applicant shall provide assurances acceptable to the Regional Director that it will obtain and maintain such insurance as required by section 314 of the Act and the regulations in this subpart. As part of such assurance, the applicant shall agree to provide to the Regional Director a listing of insured property, including location, description,

extent and duration of insurance coverage, name and address of the insurer, and applicable insurance policy numbers. The Regional Director, after a review of the listing and schedule required by Subpart H (Project Administration) and other reviews as he/she considers necessary shall, if appropriate, require the applicant to obtain additional insurance under the Act and these regulations.

§ 205.209 Self-insurance.

A state may elect to act as a self-insurer with respect to any or all of the facilities belonging to it. Such an election, if declared in writing at the time of accepting assistance under sections 402 or 419 of the Act or subsequently, and if accompanied by a plan for self-insurance which is satisfactory to the Associate Director, shall be considered as complying with subsection 314(a) of the Act. After approval as self-insurer by the Associate Director, no State shall receive assistance under such sections for any property or part thereof for which it has previously received assistance under the Act, to the extent that insurance for such property or part thereof would have been reasonably available.

Issued at Washington, D.C., Dec. 4, 1979.

William H. Wilcox,

Acting Director, Disaster Response and Recovery, Federal Emergency Management Agency.

[FR Doc. 79-37851 Filed 12-10-79; 8:45 am]

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federal register

Tuesday
December 11, 1979

Part IX

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Wyoming Permanent Regulatory Program; Notice of Public Hearing and Public Comment Period

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Public Hearing and Public Comment Period on the Wyoming Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior.

ACTION: Notice of Hearing and Comment Period for Initial Decision on Permanent Program Submission.

SUMMARY: OSM is announcing procedures for the public comment period and hearing on the substantive adequacy of the proposed Wyoming regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

This notice sets forth the times and locations that the Wyoming program is available for public inspection; additions and/or modifications to the submission made since August 15, 1979; the date when and location where OSM will hold a public hearing on the submission; the comment period during which interested persons may submit written comments and data on the proposed program and other information relevant to public participation during the comment period and public hearing.

DATES: A public hearing to review the substance of the Wyoming program submission will be held at 9:00 a.m., on January 7, 1980, at the address listed below. Written comments, data or other relevant information may be submitted to supplement or in lieu of an oral presentation at the hearing. Comments from members of the public must be received on or before the close of business on January 7, 1980, or at the conclusion of the public hearing in Cheyenne, Wyoming, on January 7, 1980, whichever is later, in order to be considered in the Secretary's initial decision on the Wyoming proposed state program.

ADDRESSES: The public hearing will be held at the Hitching Post Motel, located at Interstate 25, in Cheyenne, Wyoming. Written comments should be sent to Mr. Donald A. Crane, Regional Director, Office of Surface Mining, Department of the Interior, Brooks Towers, Room 5010, 1020—15th Street, Denver, Colorado 80202, or may be hand delivered to the Regional Office.

A listing of scheduled public meetings and copies of all written comments are available for review and copying at the OSM Region V Office and central office of the State Regulatory Authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

Office of Surface Mining, Reclamation and Enforcement, Department of Interior, Region V, Brooks Towers, Room 5010, 1020—15th Street, Denver, Colorado 80202.
Wyoming Land Quality Division, Department of Environmental Quality, Hathaway Building, Cheyenne, Wyoming 82002.

Copies of the full text of the proposed program are available for inspection during regular business hours at the OSM Region V Office and the central office of the State Regulatory Authority listed below, and the field offices of the State Regulatory Authority listed below:

Land Quality Division, 30 East Grinnell Street, Sheridan, Wyoming 82801.
Land Quality Division, 933 Main Street, Lander, Wyoming 82520.

A copy of this notice along with a copy of the Wyoming state statutes and regulations regarding the proposed Wyoming regulatory program has been placed on file and is available for inspection in the Library of the Office of the Federal Register, Room 8301, 1100 L Street, NW., Washington, D.C.

For Further Information Contact: Sylvia Sullivan, Public Information Officer, Office of Surface Mining Reclamation & Enforcement, Department of the Interior, Region V, Brooks Towers, Room 5010, 1020—15th Street, Denver, Colorado 80202, Telephone: (303) 837–4731.

SUPPLEMENTARY INFORMATION: On August 15, 1979, the state of Wyoming submitted to OSM a proposed State regulatory program. Pursuant to the provisions of 30 CFR Part 732 (44 FR 15326–15328, March 13, 1979) the Regional Director published notification of receipt of the program submission in the August 22, 1979, **Federal Register** (Vol. 44, No. 164, Page 49313) and in newspapers of general circulation within the State. In accordance with that announcement, public comments were solicited and a public meeting was held on September 20, 1979, on the issue of the program's completeness.

On October 24, 1979, the Regional Director published notice in the **Federal Register** announcing that he had determined the program to be complete (Vol. 44, No. 207, Page 61266). The notice specified that the program submission was complete in accordance with the Federal Act and regulations, as required by 30 CFR 731.14(c). Since the program submission, there has been correspondence concerning analysis of the proposed program. This material may be reviewed at the Region V Office of Surface Mining.

As a complete submission the proposed program may now be considered for permanent regulatory program approval. Subsequent to the public hearing and review of all comments the Regional Director will transmit to the Director his recommended decision along with a record composed of the hearing transcript, written presentations, exhibits and copies of all public comments.

Upon receipt of the Regional Director's recommendation, the Director will consider all relevant information in the record and will recommend to the Secretary that the program be approved or disapproved, in whole or in part, or conditionally approved. The recommendation will specify the reasons for the decision. The procedures for the recommended decisions of the Regional Director and the Director to the Secretary are established in 30 CFR 732.12 (d) and (e) (44 FR 15326–15327). For further details, refer to §§ 732.12 and 732.13 of the permanent regulatory program (44 FR 15326–15327) and corresponding sections of the preamble (44 FR 14959–14961).

At the public hearing parties wishing to comment on the proposed program will have opportunity to be listed on the speaker's agenda anytime prior to commencement of the hearing. Sign up for listing may be made either by writing the regional office or in person, or on before the day of the hearing. In addition, the Regional Director has prescribed the following hearing format and rules of procedure in accordance with 30 CFR 732.12(b)(1) (44 FR 15326).

1. The hearing shall be informal and follow legislative procedures.

2. Each participant will be allowed 15 minutes.

3. Participants will be called in the order requests for testifying are received.

Public participation in the review of State programs is a vital component in fulfilling the purposes of SMCRA. On September 19, 1979, OSM published Guidelines in the **Federal Register** (44 FR 54444–54445) governing contacts between the Department of the Interior and both State officials and members of the public. It is hoped that issuance of these Guidelines will encourage full cooperation by all affected persons with the procedures being implemented.

Set forth below is a summary of the contents of the proposed Wyoming program:

1. Wyoming's existing State laws and regulations and proposed laws and regulations.

2. Other existing and proposed State laws and regulations.

3. Attorney General opinions as to adequacy of existing and proposed State laws and rules and regulations to meet the requirements of Pub. L. 95–87.

4. Designation of Land Quality Division Department of Environmental Quality as the State Regulatory Authority.

5. Comparison of State and Federal laws and regulations.

6. Descriptions and organization charts for agencies involved in the State program.

7. Description of the systems for the proposed permanent program.

a. Exploration and mining permits.

b. Permit application fees.

c. Bonding and insurance.

d. Inspection and monitoring.

e. Enforcement of administrative, civil and criminal sanctions.

f. Administering and enforcing permanent program standards.

g. Assessing and collecting civil penalties.

h. Public notices and hearings.

i. Coordination with other agencies on permits.

j. Consultation with other agencies on environmental, historical, cultural and archeological resources.

k. Lands unsuitable for surface mining.

l. Restrictions on financial interests.

m. Trainings, examining and certifying blasters.

n. Public participation.

o. Administrative and judicial review.

p. The small operator assistance program.

8. Description of mining, reclamation and exploration statistics for 1979–1983

9. Description of Land Quality Division existing and proposed staff.

10. Staff adequacy for implementation of the State program.

11. Description of use of other agencies by the State Regulatory Authority for the State program.

12. Land Quality Division budget.

13. Land Quality Division Offices and Equipment.

14. Special environmental protection performance standards.

15. Other programs administered by Land Quality Division.

16. Proposed Cooperative Agreement between Department of the Interior and State of Wyoming.

On October 18, 1979, OSM published in the **Federal Register** a proposed amendment deleting the requirement in § 732.12(a) to publish the full text of State statutes and regulations with this notice. The public comment period for the proposed amendment closed on November 21, 1979, and publication of the final amended rule will occure shortly. OSM believes that publication of the complete text of the Wyoming statutes and regulations would severely burden both OSM and the Government Printing Office and may be impossible to accomplish. In addition, the cost would be excessive in comparison to the expected benefits.

Accordingly, OSM has decided not to publish the full text of the Wyoming statute and regulations. Instead, OSM announces that single copies of the Wyoming statute and regulations will be available to all requesters at no charge. Persons interested in obtaining copies should write the Regional Director. OSM believes that this arrangement and the availability of copies for public review of the entire State program, including State statutes and regulations, at the office of the Regional Director and the offices of the State agency will accomplish wide dissemination without unnecessary expense or confusion to the public.

No Environmental Impact Statement is being prepared in connection with the process leading to the approval or disapproval of the proposed Wyoming program. Under section 702(d) of SMCRA (30 U.S.C. section 1292(d)) approval does not constitute a major action within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

Dated: December 4, 1979.

Donald A. Crane,

Regional Director.

[FR Doc. 79-37887 Filed 12-7-79; 8:45 am]

BILLING CODE 4310-05-M

Federal Register

Tuesday
December 11, 1979

Part X

Department of Agriculture

Agricultural Marketing Service

Plan for Review of Existing Regulations and Policy Statements; Request for Comments

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

9 CFR Parts 201 and 203

Plan for Review of Existing Regulations and Policy Statements; Request for Comments

AGENCY: Packers and Stockyards, Agricultural Marketing Service, U.S. Department of Agriculture.

ACTION: Request for comments on plan for review of existing regulations and policy statements.

SUMMARY: The agency is planning to review the regulations and statements of general policy issued under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), including reporting and recordkeeping requirements, under the procedures described in the report, "Improving USDA Regulations," 43 FR 50988 (November 1, 1978), and hereby invites comments on the plan for such review. A schedule for complete review will be based on the response to this notice.

DATES: Comments must be received on or before February 11, 1980.

ADDRESS: Send comments to: Paschal O. Drake, Acting Deputy Administrator, Packers and Stockyards, Agricultural Marketing Service, Room 3039 South Building, 14th and Independence Avenue, S.W., United States Department of Agriculture, Washington, D.C. 20250. All comments received may be reviewed by any interested person in Mr. Drake's office during normal business hours.

FOR FURTHER INFORMATION CONTACT:

John A. Sands, Director, Packer and Poultry Division, P&S, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, Phone: (202) 447–6771.

Harry L. Williams, Director, Livestock Marketing Division, P&S, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, Phone: (202) 447–6951.

SUPPLEMENTARY INFORMATION: The Packers and Stockyards Act is a fair trade practices law regulating business practices of those engaged in livestock, meat and poultry marketing in interstate and foreign commerce.

Regulations issued under the Act are intended to provide for fair business practices and for free, open competition in the marketing of livestock, meat, meat food products, poultry, and poultry products.

The Act was passed by Congress in 1921 and recently amended in 1976 and 1978. The 1976 amendment provided greater financial protection to those who sell livestock to meat packers, and clarified and strengthened other portions of the Act. The 1978 amendment dealt with rates and charges.

All sections of 9 CFR Chapter II, Parts 201 and 203 are, for purposes of the plan for review, divided into three categories:

Category I—Sections which are believed not to need review at this time because they have been deleted, reviewed, promulgated or repromulgated since July 1976;

Category II—Sections proposed for deletion; and

Category III—Sections proposed for complete review. Categories II and III comprise all the sections that have not been reviewed, revised, deleted or promulgated within the past five years.

The schedule for this complete review will be determined by Packers and Stockyards, AMS, based upon the response to this notice. Comments on the overall review (Categories I, II, and III) should address whether sections of the regulations are in the proper category for review. Comments on Category III should include the specific needs and reasons for changes in any of the sections which will be analyzed in the course of the review.

An additional section in the notice lists the reporting and recordkeeping requirements. Comments may also be addressed to the needs and reasons for review and specific changes to be considered in revising the items in this section.

After the review, all changes in reporting forms will be subject to approval by the Office of Management and Budget under the Federal Reports Act of 1942.

Category I

This category contains sections which are believed not to need review at this time because they have been considered since 1976. However, with respect to regulations in effect, the agency is open to comment as to whether this detemination is correct. If substantive comment is received indicating the need to review any particular sections listed in this category, those sections will be reviewed and revised as needed. This category includes sections 72–1, 72–2, 73–1, 78–1, 106–1, 106–2, and 108–1, which deal with scales and weighing, and also the following:

Section and Title

201.1 Meaning of words.
201.8 Investigation.
201.9 Publication.
201.13 Registrants to report changes in name, address, control, or ownership.
201.14 Requirements and procedures.
201.15 Licensee must maintain satisfactory financial condition or furnish surety bond or equivalent.
201.16 Licensee to report changes in name, address, control, or ownership.
201.18 Requirements as to filing by licensees.
201.25 Proposed increases in existing charges must be supported by specific data.
201.27 Underwriter; equivalent in lieu of bonds; standard forms.
201.28 Duplicates of bonds or equivalents to be filed with Regional Supervisor.
201.29 Market agencies, packers and dealers required to file and maintain bonds.
201.30 Amount of market agency, dealer and packer bonds.
201.31 Conditions in market agency, dealer and packer bonds.
201.32 Trustee in market agency, dealer and packer bonds.
201.33 Persons damaged may maintain suit; filing and notification of claims; time limitations; legal expenses.
201.34 Termination of market agency, dealer and packer bonds.
201.35 Standards for bonds submitted by applicants for licenses and licensees.
201.36 Trustee in licensee bonds.
201.37 Persons damaged may maintain suit to recover on licensee bonds.
201.38 Termination of licensee bonds.
201.43 Payment and accounting for livestock and live poultry.
201.46(b) Stockyard owners, market agencies, dealers, and licensees to keep daily record.
201.48 Sellers of live poultry to issue sales tickets at designated markets.
201.83 Live poultry; care and promptness in feeding, watering, weighing, transporting and handling.
201.100 Records to be furnished poultry growers and sellers.
201.101 Records; disposition.
201.102 Live and dressed poultry market conditions and prices.
201.103 Inspection of records and property of packers and live poultry dealers and handlers.
201.104 Packers, live poultry dealers, or handlers; information concerning business not to be divulged.
201.105 Accurate weights.
201.106 Scales: Testing, repairs, adjustments, replacement and use.
201.107 Requirements regarding scale tickets evidencing weighing of live poultry.
201.108 Scale operators to be competent.
201.109 Reweighing.
201.110 Time of weighing.
201.111 Purchasers to pay promptly for live poultry purchases.
201.200 Sale of livestock to a packer on credit.
203.11 Statement with respect to vacation of rate orders under the Packers and Stockyards Act.
203.15 Trust benefits under Section 206 of the Act.
203.16 Mailing of checks in payment for livestock purchased for slaughter, for cash and not on credit.
203.17 Statement with respect to rates and charges at posted stockyards.

Category II

This category contains sections proposed for deletion.

Section and Title

201.82 Livestock; care and promptness in yarding, feeding, watering, weighing, and handling.
201.84 Feed and water furnished livestock or live poultry.
201.85 Livestock auctions; requirements as to accommodations and persons entering auction ring.
201.94 Information as to business; furnishing of by packers; stockyard owners, market agencies, dealers, and licensees.
201.95 Inspection of records and property of packers; stockyard owners, market agencies, dealers, and licensees.
201.96 Packers, stockyard owners, market agencies, dealers, or licensees; information concerning business not to be divulged.
203.1 Statement of general policy with respect to lamb buying practices.
203.6 Statement with respect to the purchase of livestock by packers for export.
203.13 Statement with respect to voluntary filing of surety bonds under the Packers and Stockyards Act.

Category III

This category contains sections proposed for complete review.

201.2 Terms defined.
201.3 Authority.
201.4 Bylaws, rules and regulations, and requirements of exchanges, associations, or other organizations; applicability, establishment.
201.5 Investigation, notice, and posting of stockyards.
201.6 Investigation, notice and deposting of stockyards.
201.7 Change in name, address, management, control, or ownership to be reported by stockyard owner.
201.10 Requirements and procedures.
201.11 Officers, agents and employees of registrants whose registrations have been suspended or revoked.
201.12 Registrants whose registrations have been suspended or revoked.
201.17 Requirements as to filing by stockyard owners and market agencies operating at a stockyard; use of term "yardage" in stockyard schedules.
201.19 Size, style, and number of copies.
201.20 Numbering, arrangement, and substance of schedules and amendments.
201.21 Rules or regulations affecting rates and charges.
201.22 Time and place stockyard owners market agencies, and licensees are to file schedules and amendments.
201.23 Joint schedules.
201.24 Prescribed rates, charges, practices, and regulations.
201.26 Form.
201.39 Payment to be made to consignor or shipper by market agencies and licensees; exceptions.
201.40 Market agencies or licensees not to use shippers' proceeds or funds received from pruchases on commission for own

Section and Title

purposes through "bank float" or otherwise.
201.41 Market agencies and licensees to make faithful and prompt accounting to consignors or shippers or other interested persons of whom they have knowledge.
201.42 Custodial accounts for trust funds.
201.44 Market agencies and licensees to render prompt accounting for purchases on order.
201.45 Market agencies and licensees to make records available for inspection by owners, consignors, and purchasers.
201.46(a) Stockyard owners, market agencies, dealers, and licensees to keep daily record.
201.47 Market agencies and licensees to disclose business relationships, if any, with purchasers
201.49 Requirements regarding scale tickets evidencing weighing of livestock.
201.50 Records; disposition.
201.51 Contracts; stockyard owners to furnish copies of.
201.52 Information as to sales on commission or agency basis not to be furnished to unauthorized parties.
201.53 Livestock and live poultry market conditions and prices; persons subject to the act not to circulate misleading reports.
201.54 Gratuities.
201.55 Purchases and sales to be made on actual weights.
201.56 Filling orders; price to be paid.
201.57 Livestock sold at auctions; purchases form consignments.
201.58 Sales to be made openly and in a manner to promote interests of consignors and not conditioned on sales of other consignments.
201.59 Taking consignments into own account, accounting; resales.
201.60 Consignments on commission; sale of livestock.
201.61 Market agencies engaged in selling or purchasing livestock on commission.
201.62 Using consigned livestock to fill orders.
201.63 Consignments; when not to be solicited or intercepted.
201.64 Consignments; guaranties not to be given.
201.65 Restrictions on employment of salesmen on split commission basis.
201.66 Market agencies not to employ persons engaged in buying livestock.
201.67 Packers or dealers not to own or finance selling agencies.
201.68 Packers not to own or finance dealers or buying agencies; dealers and buying agencies not to own or finance packers.
201.69 Furnishing information to competitor buyers.
201.70 Restriction or limitation of competition between packers and dealers prohibited.
201.70a Packers not to own or finance custom feedlots; custom feedlots not to own or finance packers.
201.71 Accurate weights.
201.72 Scales; testing of.
201.73 Scale operators to be competent.
201.74 Scales; reports of tests and inspections.
201.75 Scales; repairs, adjustments, or replacements after inspection.

Section and Title

201.76 Reweighing
201.77 Weighing for purposes other than purchase or sale.
201.78 Packer scales.
201.79 Facilities and services at stockyards or designated cities, markets, or places.
201.80 Stockyard facilities or services to be furnished only to unsuspended, properly registered, and bonded parties.
201.81 Suspended registrants and persons whose licenses have been suspended or revoked.
201.86 Application for authorization by State agencies and duly organized State livestock associations; requisites.
201.87 Two or more applications from same State; procedure.
201.88 Registration and filing of schedules.
201.89 Records of authorized agencies or associations.
201.90 Fees; deduction and accounting.
201.91 Inspections; reciprocal arrangements by authorized agencies or associations.
201.92 Maintenance of identity of consignments; inspection to be expedited.
201.93 Existing contracts between authorized agencies; recognition and continuation.
201,97 Annual reports.
201.98 Packers and dealers not to charge, demand, or collect commission, yardage, or other service charges.
201.99 Purchase of livestock by packers on a carcass grade, carcass weight, or carcass grade and weight basis.
203.2 Statement of general policy with respect to the giving by meat packers of meat and other gifts to Government employees.
203.3 Statement with respect to meat packer sales promotion programs.
203.4 Statement with respect to the disposition of certain records made or kept by packers.
203.5 Statement with respect to market agencies paying the expenses of livestock buyers.
203.7 Statement with respect to meat packer sales and purchase contracts.
203.8 Statement with respect to regulations and practices of stockyard owners and market agencies.
203.9 Statement with respect to the handling of custodial funds by livestock market agencies and poultry licensees.
203.10 Statement with respect to insolvency; definition of current assets and current liabilities.
203.12 Statement with respect to providing services and facilities at stockyards on a reasonable and nondiscriminatory basis.
203.14 Statement with respect to advertising allowances and other merchandising payments and services.

Reporting and Recordkeeping Requirements

Section and Reporting Requirements (No forms)

201.7 Stockyard owners to report changes in name, address, control, or ownership of posted stockyards. (Letter)
201.13 Registrants to report changes in name, address, control, or ownership of business. (Letter)
201.22 through 201.26 Market agency and stockyard owner to submit copies of

Section and Reporting Requirements (No forms)

schedule of rates, rules of operations, and changes thereto. (Format specified)
201.51 Stockyard owners to submit copies of contract. (Contracts)
201.86 Application for authorization to inspect brands, marks, etc. (Letter)
201.94 Packer, stockyard owner, market agency, dealer, licensee to supply information on business as requested. (Letter)

Reporting Requirements (Specific Forms Requiring OMB Clearance)

201.10(a) and 201.11 through 201.14 Application for Registration under P&S Act (P&S–116,116–1).
201.27 Trust Fund Agreement—Special Report (P&S–5)
201.42 Special Report—Status of Custodial Bank Account for Shippers' Proceeds (P&S–131)
201.43 Special Report—Statement of Accounts Payable for Livestock (P&S–135).
201.74 Livestock Scale Test Reports and Instructions (P&S–212).
201.78 Monorail Scale Test Reports and Instructions (P&S–218).
201.97 Annual Report of Packers (P&S–125); Annual Report of Brokers or Clearing Agencies (P&S–122); Annual Report of Posted Stockyards (P&S–129); Annual Report of Auction and Commission Firms and Dealers or Market Agencies and Supplemental Balance Sheet (P&S–130, 124, 124–1, 126 and 134); and Packer Inquiry under P&S Act (P&S–132).
201.106 Poultry Scale Test Reports and Instructions (P&S–122).

Section and Recordkeeping Requirements

201.42(f) Market agency and licensee to keep adequate accounts and records of handling custodial accounts.
201.43(b)(3) Record of agreement for payment and accounting for livestock and live poultry.
201.46(a) Stockyard owner, market agency or dealer to keep daily record of receipt and sales of livestock.
201.49 Stockyard owner, market agency or dealer, licensee requirements for scale tickets to be retained.
201.50 and 201.101 Business records to be retained two years (minimum).
201.89 Agency or association authorized to inspect brands, marks, etc., to maintain adequate records of operations.
201.95 Packer, stockyard owner, market agency, dealer, licensee to permit inspection of records and property, as required.
201.99(b) Packers to maintain record of purchases made on a carcass grade, carcass weight, or carcass grade and weight basis.
201.200(a)(1) Sale of livestock to a packer on credit—record of acknowledgment.
203.4 Specific retention periods stipulated for various types of records retained by packers.

Section and Recordkeeping Requirements

203.15 Trust benefits under Section 206—record for notice of preservation.
203.16 Mailing of checks in payment for livestock purchased for cash and not on credit—record of notification.

Done at Washington, D.C., December 5, 1979.

Paschal O. Drake,

Acting Deputy Administrator, Packers and Stockyards, AMS.

[FR Doc. 79–37875 Filed 12–10–79; 8:45 am]

BILLING CODE 3410–02–M

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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/SECRETARY*	USDA/ASCS		DOT/SECRETARY*	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/FHWA	USDA/FSQS		DOT/FHWA	USDA/FSQS
DOT/FRA	USDA/REA		DOT/FRA	USDA/REA
DOT/NHTSA	MSPB/OPM		DOT/NHTSA	MSPB/OPM
DOT/RSPA	LABOR		DOT/RSPA	LABOR
DOT/SLSDC	HEW/FDA		DOT/SLSDC	HEW/FDA
DOT/UMTA			DOT/UMTA	
CSA			CSA	

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 July 2, 1979, all agencies in the Department of Transportation, will publish on the Monday/Thursday schedule.**

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.

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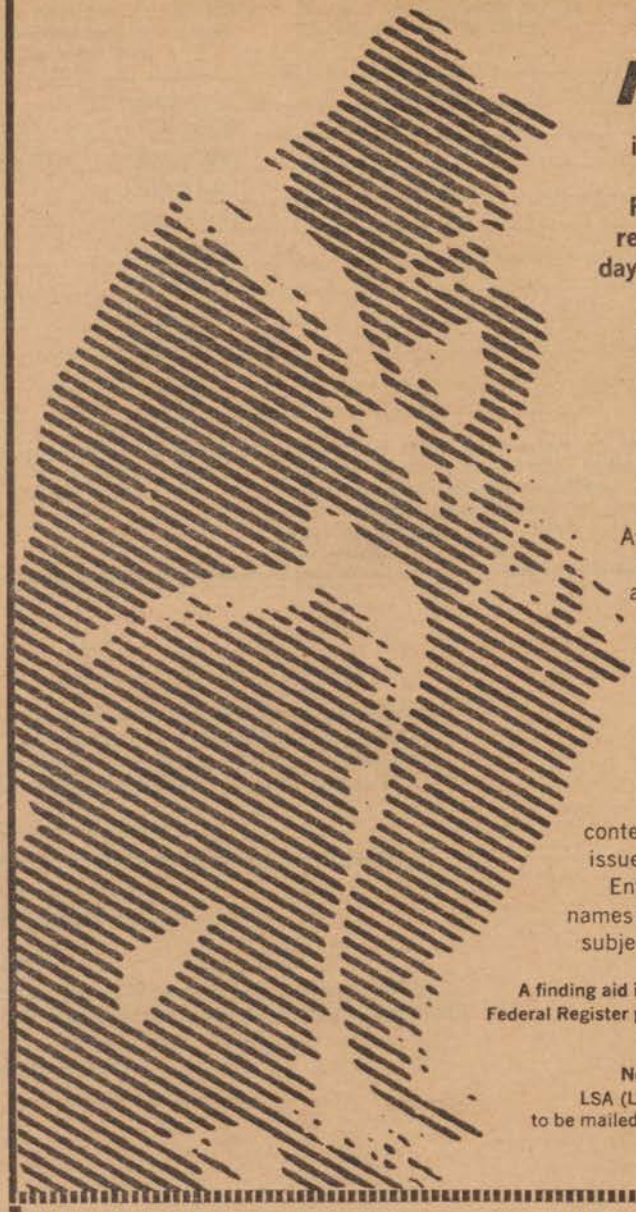
Public Health Service—

58911 10–12–79 / Disinsection of aircraft

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 December 10, 1979



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