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# federal register

Tuesday
July 8, 1980

## Highlights

46036 **Food Stamp Program** USDA/FNS issues interim final rule limiting eligibility for participation; effective 9–1–80; comments by 9–8–80 (Part IV of this issue)

46044 **Energy Assistance Regulations** DOE issues regulation implementing authority to issue Cooperative Agreements as a type of Financial Assistance; effective 10–6–80 (Part V of this issue)

45891 **Exports** Commerce/ITA issues interim regulations on processing export license applications; effective 7–1–80; comments by 9–2–80

45898 **Exports** Commerce/ITA issues interim rule on licensing procedures for exports of wheat and corn to U.S.S.R. between 10–1–80 and 9–30–81; effective 7–2–80; comments by 9–8–80

45911 **Financial Assistance Programs** HHS/SSA clarifies factors used in determining eligibility under Aid to Families with Dependent Children Program; effective 7–8–80

45933 **School Lunch** USDA/FNS amends regulations governing cash in lieu of commodities for school year 1980

CONTINUED INSIDE

# Highlights

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

45894 **Exports** Commerce/ITA issues interim rule establishing Qualified General License procedure; effective 7–1–80; comments by 9–2–80

46012 **Housing** HUD/Sec'y issues proposal regarding debarments, suspensions, temporary denials of participation, and voluntary exclusions; comments by 9–8–80 (Part II of this issue)

46022 **Nonprofit Organizations** OMB publishes final policy on principles for determining costs of grants, contracts, and other agreements

45924 **Biologics** HHS/FDA proposes to amend regulations to require quality control testing of Platelet Concentrate and Cryoprecipitated Antihemophilic Factor only during months these products are prepared for use; comments by 9–8–80

45986 **Manpower Training Programs** Labor/ETA intends to reallocate funds under Title II–D of the Comprehensive Employment and Training Act (CETA); comments by 8–4–80 (republished from 7–3–80)

45938 **Privacy Act Document** DOD/Navy

46001 **Sunshine Act Meetings**

**Separate Parts of This Issue**

46012 **Part II, HUD/Sec'y**
46022 **Part III, OMB**
46036 **Part IV, USDA/FNS**
46044 **Part V, DOE**

# Contents

Federal Register
Vol. 45, No. 132
Tuesday, July 8, 1980

**Actuaries, Joint Board for Enrollment**
NOTICES
Committees; establishment, renewals, terminations, etc.:
45985 Actuarial Examinations Advisory Committee; invitation for membership

**Agricultural Marketing Service**
PROPOSED RULES
45914 Plant variety protection; limits of reciprocity; determination procedures

**Agriculture Department**
*See also* Agricultural Marketing Service; Animal and Plant Health Inspection Service; Energy Office, Agriculture Department; Food and Nutrition Service; Food Safety and Quality Service.
NOTICES
Meetings:
45933 Meat and Poultry Inspection National Advisory Committee

**Animal and Plant Health Inspection Service**
RULES
Animal and poultry import restrictions:
45888 Horses, male, from countries affected with CEM

**Civil Aeronautics Board**
NOTICES
45933 Certificates of public convenience and necessity and foreign air carrier permits
Committees; establishment, renewals, terminations, etc.:
45935 Aviation Mobilization Industry Advisory Committee
46001 Meetings; Sunshine Act

**Commodity Futures Trading Commission**
NOTICES
45996 Contract market rules, proposed alteration or disapproval of; hearing

**Defense Department**
*See* Navy Department

**Commerce Department**
*See* International Trade Administration; National Oceanic and Atmospheric Administration.

**Delaware River Basin Commission**
NOTICES
45940 Comprehensive plan, water quality standards and conservation, hydroelectric power policy; hearings

**Economic Regulatory Administration**
NOTICES
Consent orders:
45947 Warrior Asphalt Co.
Crude oil, domestic; allocation program, 1980; entitlement notices:
45942 April
Decisions and orders:
45948 Powerine Oil Co.

**Education Department**
*See also* Museum Services Institute.
NOTICES
Meetings:
45941 Adult Education National Advisory Council

**Employment and Training Administration**
NOTICES
Comprehensive Employment and Training Act programs:
45986 Reallocation of funds; prime sponsors; republication

**Energy Department**
*See also* Economic Regulatory Administration; Environment Office, Energy Department; Federal Energy Regulatory Commission.
RULES
Assistant regulations:
46044 Cooperative agreements
NOTICES
International atomic energy agreements; civil uses; subsequent arrangements:
45954 European Atomic Energy Community
45954 European Atomic Energy Community et al
45954 International Atomic Energy Agency
45954 Japan
45955 Taiwan
Meetings:
45942 International Energy Agency Industry Advisory Board
45941 National Petroleum Council

**Energy Office, Agriculture Department**
RULES
Natural gas; essential agricultural uses; certification
45887 Petroleum wax, synthetic petroleum wax, and polyethylene wax (food grade only)
45887 Sugar refining for production of alcohol, set-aside acreage for commodity conversion into alcohol, and distillation of fuel-grade alcohol from food grains, etc.

**Environment Office, Energy Department**
NOTICES
Meetings:
45955 Environmental Advisory Committee

**Environmental Protection Agency**
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States, etc.:
45931 Massachusetts
NOTICES
Air pollution control; new motor vehicles and engines:
45956 Carbon monoxide emission standards, light-duty vehicles; 1981 and 1982 model years; applications for waiver; hearing

Meetings:
45955 Administrator's Toxic Substances Advisory Committee

**Farm Credit Administration**
PROPOSED RULES
45917 Personnel administration

**Federal Energy Regulatory Commission**
RULES
Natural Gas Policy Act of 1978:
45904 Deregulated high-cost natural gas; definitions for gas produced from geopressured brine, coal seams, and Devonian shale; rehearing denied
45905 Jurisdictional agency determinations, filing requirements; partial granting of rehearing; correction
Practice and procedure:
45902 Settlement negotiations; appointment of judges

**Federal Maritime Commission**
NOTICES
45957 Agreements filed, etc.
46001 Meetings; Sunshine Act

**Federal Reserve System**
NOTICES
Applications, etc.:
45957 Bandera Bancshares, Inc.
45959 Escrow Corp. of America, Inc.
45959 First City Corp.
45959 MidAmerica Bancshares, Inc.
45958 Security Pacific Corp.
45960 Toledo Trustcorp
45958 Utah Bancorp et al.
Meetings:
45959 Consumer Advisory Council
46001 Meetings; Sunshine Act

**Federal Trade Commission**
RULES
Prohibited trade practices:
45901 Jordan-Simner, Inc., et al.

**Food and Drug Administration**
RULES
Animal drugs, feeds, and related products:
45906–45909 Pyrantel tartrate (6 documents)
45905 Tylosin
45905 Orange juice, reduce acid frozen concentrated; identity standard; confirmation of effective date
PROPOSED RULES
Biological products:
45924 Platelet concentrate (human) and cryoprecipitated antihemophilic factor (human); quality control testing
NOTICES
Food additives, petitions filed or withdrawn:
45961 Ciba-Geigy Corp. (2 documents)
45961 Ciba-Geigy Corp.; correction
Human drugs:
45961 Protocol development and NDA submissions, general statistical documentation guide; draft availability
Meetings:
45962 Food labeling formats

**Food and Nutrition Service**
RULES
Food stamp program:
46036 Eligibility limits; interim rule and request for comments
NOTICES
Child nutrition programs:
45933 School lunch program; cash in lieu of commodities; donated commodities; value for 1980 school year

**Food Safety and Quality Service**
RULES
Meat and poultry inspection, mandatory; special provisions for designated States:
45889 Northern Mariana Islands Commonwealth; removal from list of approved foreign countries
PROPOSED RULES
Meat and poultry inspection, mandatory:
45915 Poultry parts; chilling by cold water or mixture of ice and water; solicitation of information

**General Accounting Office**
NOTICES
45960 Regulatory reports review; proposals, approvals, violations, etc. (ICC, NRC) (2 documents)

**Health, Education, and Welfare Department**
*See* Health and Human Services Department.

**Health and Human Services Department**
*See* Food and Drug Administration; Public Health Service; Social Security Administration.

**Heritage Conservation and Recreation Service**
NOTICES
Historic Places National Register; additions, deletions, etc.:
45965 Alabama et al.

**Housing and Urban Development Department**
PROPOSED RULES
46012 Debarments, suspensions, temporary denials of participation, and voluntary exclusions

**Indian Affairs Bureau**
RULES
45909 Rights-of-way over Indian lands; clarification

**Interior Department**
*See* Heritage Conservation and Recreation Service; Indian Affairs Bureau; Land Management Bureau; Surface Mining Office.

**Internal Revenue Service**
PROPOSED RULES
Income taxes:
45924 Withholding tax; Virgin Island inhabitants; exemption clarification
Procedure and administration:
45926 Actuarial report filing by administrators of defined benefit plans

**International Trade Administration**
RULES
Export licensing:
45891 Application procedures and time limits; interim rule and request for comments

45898 Corn and wheat to U.S.S.R.; interim
45897 Foreign-based warehouse procedure, elimination
45894 Qualified general license procedures; interim rule and request for comments
NOTICES
Scientific articles; duty free entry:
45935 Stanford University et al.

**International Trade Commission**
NOTICES
46001 Meetings; Sunshine Act

**Interstate Commerce Commission**
RULES
Railroad car service orders; various companies:
45912 Kansas City Southern Railway Co.
45913 Southern Pacific Transportation Co.
PROPOSED RULES
Motor carriers:
45932 Freight rates for common carriers of property; no suspend zone; extension of time
NOTICES
45967 Petitions, applications, finance matters (including temporary authorities), alternate route deviations, intrastate applications, gateways, and pack and crate
Railroad operation, acquisition, construction, etc.:
45966 Kyle Railways, Inc., et al.

**Justice Department**
*See* Parole Commission.

**Labor Department**
*See also* Employment and Training Administration.
NOTICES
Meetings:
45986 Steel Tripartite Advisory Committee

**Land Management Bureau**
RULES
Public land orders:
45910 Alaska
45911 Wyoming
NOTICES
Environmental statements; availability, etc.:
45964 Bannock-Oneida Resource Area, Idaho; grazing management program
45964 MAPCO Rocky Mountain liquid hydrocarbons pipeline project, N. Mex. et al.
45964 Sun Valley grazing management, Idaho; intent to prepare and meeting

**Management and Budget Office**
NOTICES
46022 Cost principles for nonprofit organizations (A–122)

**Museum Services Institute**
NOTICES
46001 Meetings; Sunshine Act

**National Oceanic and Atmospheric Administration**
NOTICES
Fishery conservation and management:
45936 Northern anchovy; optimum yield and harvest quotas, preliminary determination
Marine mammal permit applications, etc.:
45937 Kuljis, Barbara A., and Baker, C. Scott
45937 Washington Department of Game

**National Transportation Safety Board**
NOTICES
46001 Meetings; Sunshine Act

**Navy Department**
NOTICES
45938 Privacy Act; systems of records

**Nuclear Regulatory Commission**
RULES
Practice rules:
45890 Domestic licensing proceedings; case review initiatives, and time limits for granting or denying petitions to review
PROPOSED RULES
Production and utilization facilities, domestic licensing:
45916 Nuclear power reactors; technical specifications; advance notice
NOTICES
46002 Meetings; Sunshine Act

**Parole Commission**
NOTICES
46002 Meetings; Sunshine Act

**Peace and Conflict Resolution, Commission on Proposals for National Academy**
NOTICES
45938 Hearings

**Public Health Service**
NOTICES
Organization, functions, and authority delegations:
45963 Administrator, Health Resources Administration; loan default prevention and protection of interest of U.S. in event of default

**Securities and Exchange Commission**
NOTICES
Hearings, etc.:
45986 Capitol Life Separate Insurance Co. et al.
45988 CorTerra Corp.
45988 G.T. Pacific Fund, Inc.
45990 Profit-Sharing Plan of Kadison, Pfaelzer, Woodward, Quinn & Rossi
45993 Societe Generale de Banque S.A., et al.
46002 Meetings; Sunshine Act
Self-regulatory organizations; proposed rule changes:
45991 Chicago Board Options Exchange, Inc.
45992 Midwest Clearing Corp.
45989–45990 National Association of Securities Dealers, Inc. (2 documents)

**Social Security Administration**
RULES
Financial assistance programs:
45911 Eligibility; equity value for resources

**Surface Mining Office**
PROPOSED RULES
Coal mining; Federal/State cooperative agreements:
45927 Wyoming

**Treasury Department**
*See also* Internal Revenue Service.
NOTICES
Meetings:
45995 Debt Management Advisory Committees

## MEETINGS ANNOUNCED IN THIS ISSUE

AGRICULTURE DEPARTMENT
Office of the Secretary—
45933 Meat and Poultry Inspection Advisory Committee, 7–29–80

EDUCATION DEPARTMENT
45941 National Advisory Council on Adult Education, Effectiveness and Evaluation Committee, 7–10 through 7–12–80

ENERGY DEPARTMENT
45955 Environment Office, Environmental Advisory Committee, 7–28 and 7–29–80
45941 National Petroleum Council, Unconventional Gas Sources Committee, Task Group, 7–30 and 7–31–80
45942 Voluntary Agreement and plan of action to implement the international energy program, 7–21 and 7–22–80

ENVIRONMENTAL PROTECTION AGENCY
45955 Toxic Substances Advisory Committee, 7–24 and 7–25–80

FEDERAL RESERVE SYSTEM
45959 Consumer Advisory Council, 7–30 and 7–31–80

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration—
45962 Food labeling formats, 10–6–80, comments by 9–8–80

LABOR DEPARTMENT
Office of the Secretary—
45986 Steel Tripartite Advisory Committee, Working Group on International Trade, 7–16–80

TREASURY DEPARTMENT
Office of the Secretary—
45995 Debt Management Advisory Committee, 7–29 and 7–30–80

## HEARINGS

COMMISSION ON PROPOSALS FOR NATIONAL ACADEMY OF PEACE AND CONFLICT RESOLUTION
45938 Foreign Affairs Committee, 7–22–80
45938 Senate Budget Committee, 7–23–80

COMMODITY FUTURES TRADING COMMISSION
45996 Proposed Alteration or Disapproval of Contract Market Rules, 7–10–80

DELAWARE RIVER BASIN COMMISSION
45940 Water Quality Standards, 7–29–80
45940 Hydroelectric Power Policy, 7–29–80
45941 Water Conservation, 7–30–80

ENVIRONMENTAL PROTECTION AGENCY
45956 Motor Vehicle Pollution Control; Waiver of Carbon Monoxide Emission Standards, 7–17–80

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**3 CFR**
Executive Orders:
5327 (Amended by PLO 5732)..... 45911

**7 CFR**
272..... 46036
273..... 46036
2900 (2 documents)..... 45887
Proposed Rules:
180..... 45914

**9 CFR**
92..... 45888
327..... 45889
Proposed Rules:
381..... 45915

**10 CFR**
2..... 45890
600..... 46044
Proposed Rules:
50..... 45916

**12 CFR**
Proposed Rules:
612..... 45917

**15 CFR**
370..... 45891
372..... 45891
373 (2 documents)..... 45894–45897
374..... 45897
375..... 45897
376..... 45898
386..... 45898
387..... 45897

**16 CFR**
13..... 45901

**18 CFR**
1..... 45902
272..... 45904
274..... 45905

**21 CFR**
146..... 45905
510..... 45905
558 (7 documents)..... 45905–45909
Proposed Rules:
640..... 45924

**24 CFR**
Proposed Rules:
24..... 46012

**25 CFR**
161..... 45909

**26 CFR**
Proposed Rules:
1..... 45924
301..... 45926

**30 CFR**
Proposed Rules:
950..... 45927

**40 CFR**
Proposed Rules:
52..... 45927

**43 CFR**
Public Land Orders:
693 (Amended by PLO 5731)..... 45910
4522 (Amended by PLO 5732..... 45911
5731..... 45910
5732..... 45911

**45 CFR**
233..... 45911

**49 CFR**
1033 (2 documents)..... 45912–45913
Proposed Rules:
Ch. X..... 45932

# Rules and Regulations

Federal Register
Vol. 45, No. 132
Tuesday, July 8, 1980

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

### Office of the Secretary

### 7 CFR Part 2900

### Amendment of Certification of Essential Agricultural Uses and Requirements; Natural Gas Policy Act of 1978

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture hereby amends its regulations certifying essential agricultural uses and requirements under the Natural Gas Policy Act of 1978 (NGPA) 7 CFR Part 2900.

This amendment conforms such regulations in accordance with the statutory mandate of the Energy Security Act of 1980, Public Law 96–294, by adding to the list of essential agricultural uses certified by the Secretary of Agriculture (1) sugar refining for production of alcohol, (2) agricultural production on set-aside acreage or acreage diverted from production of a commodity to be devoted to the production of any commodity for conversion into alcohol or hydrocarbons for use as a motor fuel or other fuel, and (3) distillation of fuel-grade alcohol from food grains or other biomass for a period of 5 years in certain facilities.

**EFFECTIVE DATE:** This amendment is effective June 30, 1980.

**FOR FURTHER INFORMATION CONTACT:** Earle E. Gavett, Policy Analyst, Office of Energy, USDA (202) 447–6667.

**SUPPLEMENTARY INFORMATION:** The Energy Security Act of 1980, Public Law 96–294 enacted by Congress and signed into law by President Carter June 30, 1980 provides this Nation significant legislative authority to enhance development of a major synthetic fuels program that will permit utilization of indigenous plentiful and renewable energy resources. Title II of the Act, Biomass Energy and Alcohol Fuels, section 273, amends the natural gas priorities established in the Natural Gas Policy Act of 1978 (Pub. L. 95–621) as follows:

For the purposes of section 401 of the Natural Gas Policy Act of 1978 (Public Law 95–621, the term "essential agricultural use" shall—

(1) include use of natural gas in sugar refining for production of alcohol;

(2) include use of natural gas for agricultural production on set-aside acreage or acreage diverted from the production of a commodity (as provided under the Agricultural Act of 1949) to be devoted to the production of any commodity for conversion into alcohol or hydrocarbons for use as motor fuel or other fuels; and

(3) for the 5-year period beginning on the date of the enactment of this Act, include use of natural gas in the distillation of fuel-grade alcohol from food grains or other biomass by facilities in existence on the date of the enactment of this Act which do not have the installed capability to burn coal lawfully.

This action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been determined to be exempt from those requirements. Weldon Barton, Director, Office of Energy made this determination because it is essential that it become effective immediately to conform with the statutory requirements of Pub. L. 96–294.

**Authority:** Pub. L. 96–294, June 30, 1980: Pub. L. 95–621, November 8, 1979, 92 Stat. 3350, 15 U.S.C. 3301 et seq.

**§ 2900.3 [Amended]**

Accordingly, Chapter XXIX of Title 7 section 2900.3 Code of Federal Regulations is amended by adding a new section after Marketing and Distribution, 54 Food Stores:

**Energy Production**

(1) Agricultural production on set-aside acreage or acreage diverted from the production of a commodity (as provided under the Agricultural Act of 1949) to be devoted to the production of any commodity for conversion into alcohol or hydrocarbons for use as motor fuel or other fuels;

(2) Sugar refining for production of alcohol; and

(3) Distillation of fuel-grade alcohol from food grains and other biomass by facilities in existence on June 30, 1980 which do not have the installed capability to burn coal lawfully, for a period ending June 29, 1985."

Dated: July 1, 1980.

**Jim Williams,**

*Acting Secretary of Agriculture.*

[FR Doc. 80–20350 Filed 7–7–80; 8:45 am]
BILLING CODE 3410–01–M

### 7 CFR Part 2900

### Amendment of Certification of Essential Agricultural Uses and Requirements; Natural Gas Policy Act

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture hereby amends its regulations certifying essential agricultural uses and requirements under the Natural Gas Policy Act. This amendment adds petroleum wax, synthetic petroleum wax, and polyethylene wax (food grade only) as entire food containers to the list of essential agricultural uses certified by the Secretary of Agriculture.

**EFFECTIVE DATE:** This amendment will become effective on August 7, 1980.

**FOR FURTHER INFORMATION CONTACT:** Earle E. Gavett, Policy Analyst, Office of Energy, USDA, Room 116–A Administration Building, Washington, D.C. 20250; (202) 447–6667.

Actions of this kind were anticipated under the provisions of 7 CFR 2900 and are specifically considered in the combined Environmental Impact Statement and Final Impact Statement, and addendum, prepared for that action. Thus, the Combined Environmental Impact Statement and Final Impact Statement, as amended, describing the options considered in developing this final rule and the impact of implementing each option is available on request from the above named individual.

**SUPPLEMENTARY INFORMATION:** This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified as "not significant."

Under section 401 of the NGPA, the Secretary of Agriculture is required to

certify to the Secretary of Energy and the Federal Energy Regulatory Commission (FERC) essential agricultural uses of natural gas and the amounts of natural gas for such essential agricultural uses necessary for full food and fiber production. A final rule containing such certification was issued by the Secretary of Agriculture on May 17, 1979 (44 FR 28782).

The Secretary of Energy and the FERC have incorporated the USDA certification in their rules promulgating and implementing agricultural priority in curtailment plans of interstate pipelines in accordance with the NGPA.

In accordance with 7 CFR 2901.5(b), on March 31, 1980, the Director, Office of Energy, USDA issued a proposed rule which would amend USDA's certification of essential agricultural uses and requirements to include under 7 CFR 2900.3 under Sanitary Food Packaging, petroleum wax, synthetic petroleum wax and polyethylene wax (food grade only) as an essential agricultural use.

The proposed amendment was in response to a petition submitted by the Bareco Division of Petrolite Corporation.

Food-grade petroleum waxes, synthetic petroleum waxes, and polyethylene waxes all are products of petroleum refining, and all but the production by the Bareco Division of Petrolite Corporation are small but integral products of operating classical petroleum refineries. The Bareco Division, however, is not a refinery although it is classified as such by SIC code. With respect to Bareco's Barnsdall, Oklahoma plant, Bareco produces only petroleum waxes and synthetic petroleum and polyethylene waxes from byproducts of lubricating oil manufacture purchased from major oil refiners. In 1979, over 94 percent of the product of the Barnsdall plant was food-grade product in that it could be used either as the entire package for a food product or could be purchased by an entity which coats paper for food packaging. In effect, the entire output is devoted to food-grade products.

The public was invited to participate in any aspect of the proposed amendment by submitting data, views, or arguments with respect to the inclusion of petroleum wax, synthetic petroleum wax and polyethylene wax (food grade only) as an essential agricultural use in USDA's certification. No public comments were received during the comment period associated with the proposed rule. The USDA has based its determination on information provided in the petition for amendment and other relevant information, including its treatment of other analogous functions in its certification of "essential agricultural uses."

Section 401(f) of the NGPA defines "essential agricultural use" to include "when used with respect to natural gas, any use of natural gas—(a) for . . . food quality maintenance . . . which the Secretary of Agriculture determines is necessary for full food and fiber production."

As was indicated in the preamble to the proposed rule, the principal argument in favor of inclusion of food grade waxes as an essential agricultural use, is that in the case of cheeses these wax products constitute the entire food package and when used on fruits and vegetables provide a moisture seal for each individual fruit or vegetable. In the above examples, the wax is in effect the food container much the same as the metal can, glass jar or paper carton contains and protects agricultural products. The use of food grade waxes as food containers has been determined an essential agricultural use necessary for maintenance of food quality.

In the preamble to the proposed rule, discussion also centered on the use of food grade waxes as an essential coating or lining for many food packages including frozen food packages, meat wraps and milk cartons. In this role, food grade waxes are secondary inputs to the manufacture of food packaging materials. They are of the same category as paper, paperboard, corregated fiber, glue, sheet steel, tin and other ingredients purchased by food packaging manufacturers which are not included in 7 CFR 2900.3. It was brought to our attention that to include the production of food grade waxes which become an input for paper coating and glazing would constitute unequal treatment for similar kinds of inputs which have been regarded as secondary to the food quality maintenance function of actually fabricating containers.

Based on the foregoing, USDA has determined that the use of natural gas in the production of petroleum wax, synthetic petroleum wax, and polyethylene wax (food grade only) for use as entire food containers is a use of natural gas for food quality maintenance which is necessary for full food and fiber production. USDA finds that the use of these food grade waxes as coatings and linings to food packaging materials are secondary inputs to food packaging and are not included as essential agricultural uses.

**§ 2900.3 [Amended]**

Accordingly, Chapter XXIX of Title 7, section 2900.3, Code of Federal Regulations is amended by adding under "Food Quality Maintenance, Food Packaging," immediately after "3497 Metal Foil and Leaf (food related only)": Petroleum wax, synthetic petroleum wax and polyethylene wax (food grade only) as food containers.

(Pub. L. 95-621, November 8, 1978, 92 Stat. 3350.15 U.S.C. 3301 et seq.)

Dated: July 2, 1980.

**Weldon V. Barton,**

*Director, Office of Energy.*

[FR Doc. 80-20357 Filed 7-7-80; 8:45 am]

BILLING CODE 3410-01-M

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## Animal and Plant Health Inspection Service

## 9 CFR Part 92

## Restrictions on Importation of Horses From Japan

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This document extends to Japan the prohibitions previously placed on the importations into the United States of certain horses from or that have been in countries affected with contagious equine metritis (CEM). This action is necessary to protect the livestock of the United States from such disease.

**DATES:** Effective date: The foregoing amendment shall become effective July 1, 1980, except for horses then in transit to the United States from Japan (i.e., loaded aboard a commercial carrier and en route to the United States). Comments must be received on or before September 8, 1980.

**ADDRESS:** Written comments to Deputy Administrator, USDA, APHIS, VS, Federal Building, Room 817, Hyattsville, MD 20782.

**FOR FURTHER INFORMATION CONTACT:** Dr. D. E. Herrick, USDA, APHIS, VS, Federal Building, Room 815, Hyattsville, MD 20782, 301-436-8170.

**SUPPLEMENTARY INFORMATION:** This final action has been reviewed under procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified as "not significant." The emergency nature of this action warrants publication of this final action without completion of a Final Impact Statement. A Final Impact Statement will be developed after public comments have been received.

Dr. E. C. Sharman, Acting Assistant Deputy Administrator, Animal Health Programs, Veterinary Services, Animal and Plant Health Inspection Service, USDA, has determined that an

emergency situation exists which warrants publication without opportunity for a public comment period on this final action because importation of horses from Japan, a country affected with contagious equine metritis (CEM), must be restricted in order to protect the livestock of the United States from the introduction and dissemination of disease.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this emergency final action are impracticable and contrary to the public interest; and good cause is found for making this emergency final action effective less than 30 days after publication of this document in the Federal Register. Comments have been solicited for 60 days after publication of this document, and this emergency final action will be scheduled for review so that a final document discussing comments received and any amendments required can be published in the Federal Register as soon as possible.

On September 9, 1977, (42 FR 45895) a prohibition was placed on the importation into the United States of certain horses from England, Ireland, and France and the importation into the United States of certain horses that have been in such countries within the 60 days immediately preceding their export to the United States because of the existence of CEM in such countries. On September 16, 1977 (42 FR 48327–48328), the prohibition was extended to include Australia and all of the United Kingdom (England, Scotland, Northern Ireland, Wales, and Isle of Man); and on November 30, 1978 (43 FR 56876) the prohibition was again extended to include Belgium and the Federal Republic of Germany. On October 12, 1979 (44 FR 58896–58897) the prohibition was again extended to include Italy.

On December 8, 1977 (42 FR 63384–63385) an amendment extended the specified period as a condition for entry of such horses which have been in countries infected with CEM listed under § 92.2(i) of Title 9, Code of Federal Regulations from 60 days to 12 months. This action was taken to protect the livestock of the United States against the introduction and dissemination of CEM, a communicable disease of horses, into the United States. CEM has now been found to exist in Japan, and prohibitions on the importation of certain horses from or that have been in that country within 12 months immediately preceding their export to the United States are hereby placed in effect. The same restrictions that now apply to horses from Australia, Ireland, France, the United Kingdom, Belgium, Italy and the Federal Republic of Germany are hereby placed on the importation of certain horses from or that have been in Japan.

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

In § 92.2 paragraph (i)(1) is amended to read:

**§ 92.2 General prohibitions; exceptions.**

* * * * *

(i)(1) Except as provided in paragraph (i)(2) of this section notwithstanding the other provisions of this part concerning the importation of horses into the United States, the importation of all horses from the following listed countries and the importation of all horses which have been in any such country within the 12 months immediately preceding their export to the United States is prohibited because of the existence of CEM in such countries: Australia, Belgium, Ireland, Italy, Japan, Federal Republic of Germany, France, and the United Kingdom (England, Scotland, Northern Ireland, Wales, and the Isle of Man).

(Sec. 2, 32 Stat. 792, as amended; secs. 4 and 11, 76 Stat. 130, 132 (21 U.S.C. 111, 134c, 134f); 37 FR 28464, 28477; 38 FR 19141)

All written submissions made pursuant to this notice will be made available for public inspection at the Federal Building, 6505 Belcrest Road, Room 821, Hyattsville, Maryland, during regular hours of business (8:00 a.m. to 4:30 p.m., Monday to Friday, except holidays) in a manner convenient to the public business (7 CFR 1.27(b)).

Comments submitted should bear a reference to the date and page number of this issue in the Federal Register.

Done at Washington, D.C., this 1st day of July 1980.

J. K. Atwell,

*Acting Deputy Administrator, Veterinary Services.*

[FR Doc. 80-20344 Filed 7-7-80; 8:45 am]

BILLING CODE 3410-34-M

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## Food Safety and Quality Service

## 9 CFR Part 327

## Imported Products; Removal of the Trust Territory of the Pacific Islands From the List of Countries Approved for Importation of Meat Food Product of Cattle, Sheep, Swine and Goats Into the United States

**AGENCY:** Food Safety and Quality Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This document removes the Commonwealth of the Northern Mariana Islands (referred to in the Federal meat inspection regulations as the Trust Territory of the Pacific Islands) from the list of countries approved for importation of product of cattle, sheep, swine and goats into the United States under the Federal Meat Inspection Act. The Islands are now considered a "State" with respect to the administration of the Federal Meat Inspection Act since their designation by the Secretary of Agriculture on September 28, 1979, effective October 29, 1979, and, therefore, it is incorrect to continue their inclusion in this list.

**EFFECTIVE DATE:** July 8, 1980.

**FOR FURTHER INFORMATION CONTACT:** Dr. H. M. Steinmetz, Director, Foreign Programs Staff, Meat and Poultry Inspection Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–7610.

**SUPPLEMENTARY INFORMATION:**

### Significance

This final rule has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant."

### Background

On September 28, 1979, the Secretary of Agriculture designated the Commonwealth of the Northern Mariana Islands (referred to in the Federal meat inspection regulations as the Trust Territory of the Pacific Islands) as a "State" with respect to the administration of the Federal Meat Inspection Act. The designation for Federal meat inspection as provided for in sections 205 and 301(c)(3) of the Federal Meat Inspection Act (21 U.S.C. 645 and 661(c)(3)) was effective October 29, 1979. Prior to becoming a Commonwealth pursuant to Pub. L. 94–241 (90 Stat. 263 *et seq.*) and Presidential Proclamation 4534 and thereafter being designated as a "State" by the Secretary of Agriculture (44 FR 55809), the Northern Mariana Islands (referred to in the Federal meat inspection regulations as the Trust Territory of the Pacific Islands) was included in section 327.2(b) of the Federal meat inspection regulations (9 CFR 327.2(b)) as a country approved for importation of product of cattle, sheep, swine and goats into the United States. This "approved foreign country" status was necessary in order to provide for the continuation of a traditional trade in meat food products from the Northern Mariana Islands to

Guam which, as an organized Territory, was treated as a "State."

Since the Commonwealth of the Northern Mariana Islands is no longer considered a "foreign country" with respect to the Federal Meat Inspection Act and would, therefore, no longer be subject to import requirements, it is appropriate and necessary to remove it from the list of foreign countries approved for importation of product of cattle, sheep, swine and goats into the United States.

Accordingly, § 327.2(b) of the Federal meat inspection regulations (9 CFR 327.2(b)) is amended by removing the "Trust Territory of the Pacific Islands" from the list of countries approved for importation of product of cattle, sheep, swine and goats into the United States.

(Sec. 20, 34 Stat. 1264, 21 U.S.C. 620, as amended, 42 FR 35625, 35626, 35631)

It does not appear that any additional relevant information would be made available to the Administrator by an impact statement or public participation in this rulemaking proceeding. Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedures are impracticable, and contrary to the public interest.

Done at Washington, DC, on: June 27, 1980.

**Donald L. Houston,**

*Administrator, Food Safety and Quality Service.*

[FR Doc. 80-20077 Filed 7-7-80; 8:45 am]

BILLING CODE 3410-DM

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 2

### Rules of Practice for Domestic Licensing Proceedings

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is amending its rules of practice to provide more realistic time limits within which the Commission may determine whether to grant or deny petitions to review, and whether to review on its own initiative in such cases, a decision or action of the Atomic Safety and Licensing Appeal Board under 10 CFR 2.786.

**EFFECTIVE DATE:** July 8, 1980.

**FOR FURTHER INFORMATION CONTACT:** Mark E. Chopko, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, 202-634-3224.

**SUPPLEMENTARY INFORMATION:** On May 2, 1977, the Commission issued a final rule which provided a procedure for parties to petition the Commission for a discretionary review of a decision or action of the Atomic Safety and Licensing Appeal Board. If twenty (20) days passed after the filing of a petition without Commission action granting it in whole or in part, the rule provided that the petition would be "deemed denied." However, since other parties to the proceeding were afforded a period of ten (10) days after service of a petition for review to file an answer opposing Commission review, the effective time for Commission consideration of the decision, petition and answers has a always been very short.

On April 26, 1978, the Commission issued miscellaneous amendments to its rules of practice which became effective on May 26, 1978. One of these amendments enlarged the time for parties "to do some act or take some proceeding within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail" by providing that five days, rather than the previous three, be added to the prescribed period. 10 CFR 2.710. Accordingly, a situation has been created where a party opposing a petition for review which was served by mail, as is usually the case, has fifteen days after filing of the petition to file an answer. The Commission's rules provide that filing of documents, such as answers to petitions for review, will be deemed to be complete as of the time of deposit in the mail, 10 CFR 2.701. The answers likely may not actually arrive at the Commission for several days thereafter.

As a result of these rules, the Commission's experience has been that in almost every case in which a petition for review is filed, an extension of the twenty-day period within which the Commission must decide whether to grant or deny it is necessary. Therefore, the Commission has decided to amend paragraph (b)(5) of § 2.786 to extend the period within which it may consider petitions to review to thirty (30) days, after which if it does not grant the petition in whole or in part, the petition shall be deemed denied.

On occasion confusion has been expressed about whether the time for exercising the Commission's discretion to review a decision or action on its own motion which is addressed in paragraph (a) of 10 CFR 2.786 is automatically extended when a petition for review has been filed to coincide with the schedule established for consideration of petitions in paragraph (b). In almost every instance, the latter period may extend beyond the thirty (30) days now afforded by paragraph (a). The Commission recognizes that cases may occur in which it will determine that issues raised by a petition do not warrant review, but will elect to review on its own motion an issue not pressed by any party. In order to clarify that aspect of its regulations, the Commission has decided to amend paragraph (a) of 10 CFR 2.786 to provide that the time within which it may determine whether to review a case on its own motion is thirty days from the date of decision or action when no petitions for review are filed, or thirty (30) days after a petition has been filed, that is, co-extensive with the times described in § 2.786(b)(5).

Because this amendment relates solely to matters of agency procedure, notice of proposed rulemaking and public procedure thereon are not required by section 553 of Title 5 of the United States Code and shall be omitted from this proceeding. As a rule applying only to internal agency procedure, this final rule shall be effective upon publication in the **Federal Register.**

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of Title 5 of the United States Code, the following amendment to Title 10, Chapter I, Code of Federal Regulations, Part 2, § 2.786 (a) and (b)(5) are amended as follows:

**§ 2.786 Review of decisions and actions of an Atomic Safety and Licensing Appeal Board.**

(a) Within thirty (30) days after the date of a decision or action by an Atomic Safety and Licensing Appeal Board under § 2.785, or within thirty (30) days after a petition for review of such decision or action has been filed under paragraph (b) of this section, the Commission may, in cases of exceptional legal or policy importance, review the decision or action on its own motion.

* * * * *

(b) * * *

(5) If within thirty (30) days after the filing of a petition for review the Commission does not grant the petition, in whole or in part, the petition shall be deemed denied, unless the Commission in its discretion extends the time for its consideration of the petition and any answers thereto.

(Sec. 161p., Pub. L. No. 83-703, 68 Stat. 948 (42 U.S.C. 2201); Sec. 201, as amended, Pub. L. No. 93-438, 88 Stat. 1243 (42 U.S.C. 5841))

Dated at Washington, DC, this 30th day of June 1980.

For the Nuclear Regulatory Commission.

**Samuel J. Chilk,**

*Secretary of the Commission.*

[FR Doc. 80-20242 Filed 7-7-80; 8:45 am]

BILLING CODE 7590-01-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

### 15 CFR Parts 370 and 372

### Processing Export License Applications; Procedures and Time Limits

**AGENCY:** Office of Export Administration, International Trade Administration, U.S. Department of Commerce.

**ACTION:** Interim Rule.

**SUMMARY:** These regulations implement Section 10 of the Export Administration Act of 1979 (Pub. L. 96-72, to be codified at 50 U.S.C. App. 2401 *et seq.*) which establishes procedures and time limits for processing export license applications received by the Office of Export Administration (OEA) on or after July 1, 1980. They provide for the initial screening of applications and a notice to the applicant describing the processing his/her application will receive. They also reflect the time limits within which applications must be reviewed at various stages of processing. In addition, the regulations establish a procedure for the applicant to petition the OEA for compliance with the processing requirements.

**DATES:** These rules are effective July 1, 1980. Comments must be received by the Department by close of business September 2, 1980.

**ADDRESS:** Written comments (six copies when possible) should be sent to: Richard J. Isadore, Acting Director Operations Division, Office of Export Administration, U.S. Department of Commerce, Room 1617M, Washington, D.C. 20230.

**FOR FURTHER INFORMATION CONTACT:** Mr. Archie Andrews, Director, Exporters Services Staff, Office of Export Administration, Department of Commerce, Washington, D.C. 20230 (202) 377-5247 or 377-4811).

**SUPPLEMENTARY INFORMATION:**

**Rulemaking Requirements**

Section 13(a) of the Export Administration Act of 1979 (Pub. L. 96-72, to be codified at 50 U.S.C. App. 2401 et seq.) exempts regulations promulgated under the Act from the public participation in rulemaking procedures of the Administrative Procedure Act. Because they relate to a foreign affairs function of the United States, it has been determined that these regulations are not subject to Department of Commerce Administrative Order 218-7 (44 FR 2082, January 9, 1979) which implements Executive Order 12044 (43 FR 12661, March 23, 1978), "Improving Government Regulations."

However, because of the importance of the issues raised by these regulations and the intent of Congress set forth in section 13(b) of the Act, these regulations are issued in interim form and comments will be considered in developing final regulations. The period for submission of comments will close September 2, 1980. No comments received after the close of the comment period will be accepted or considered by the Department in the development of the final regulations. Public comments that are accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason, will not be accepted. Such comments and materials will be returned to the submitter and will not be considered in the development of the final regulations.

All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interests of accuracy and completeness, comments in written form are preferred. If oral comments are received, they must be followed by written memoranda that will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, Room 3012, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW. Washington, D.C. 20230. Records in the facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Mrs. Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377-3031.

**Substance of the Regulations**

The regulations establish a 10 day initial screening process during which OEA informs the applicant of the procedures required under section 10, indicates whether the application will be referred to another agency or to COCOM (multilateral review) or returns the application as incomplete.

If any application does not need to be referred to other agencies OEA must either issue or deny a license within 90 days. When referred to other agencies, section 10 of the Act provides them a maximum of 60 days for reviews. At the end of 60 days they must send their recommendations to OEA or OEA may deem such agency to have no objection to the approval of the application. Within 90 days of receipt of the recommendations or the expiration of the 60 day agency review period, whichever is earlier, OEA must issue or deny a license.

When questions (including requests for essential information) or negative considerations or recommendations arise an applicant will be given an opportunity to respond before a decision is made. The time an applicant takes to respond to a question, negative consideration or recommendation will be excluded from the applicable time limits.

Applications requiring CoCom approval will be referred to CoCom after OEA has tentatively approved the application. The applicant will be informed of the tentative approval. If a CoCom decision is not received within 60 days, OEA will approve the application unless it determines that it would be detrimental to the national security of the United States to approve the application without CoCom concurrence. If it makes this determination the period may be extended successively for additional 60 day periods.

When an application is denied the applicant will be informed of the denial and the specific considerations (to the extent consistent with national security and foreign policy) that led to the denial.

Subsection (m) establishes a petition process by which applicants can petition to compel compliance with any of the processing deadlines except when the time has been extended pursuant to § 370.13(k) (1) or (2).

A number of relatively minor changes have also been made in the existing regulations to eliminate duplication between the different procedures which apply to applications filed before and after July 1, 1980.

Accordingly, the Export Administration Regulations (15 CFR Parts 368–399) are revised as follows:

## PART 370—EXPORT LICENSING GENERAL POLICY AND RELATED INFORMATION

### § 370.1 [Amended]

1. Section 370 1(c)(1) is amended to revise the first sentence and add a new sentence immediately following to read:

* * * * *

(c) * * *

(1) Each export license application and request for reexport authorization received in the Office of Export Administration prior to July 1, 1980, will be approved or disapproved within 90 days of receipt of the application or request except as hereafter provided. (See § 370.13 for time periods applicable to applications received on or after July 1, 1980.)

### § 370.11 [Amended]

2. 370.11 is amended to:

a. Revise the second sentence of § 370.11(a) to read:

(a) * * * At the request of an exporter, the Office of Export Administration will undertake to provide such information to the extent consistent with the national security and foreign policy of the United States, and the confidentiality provisions of the Export Administration Acts of 1969 and 1979.

* * * * *

b. Add to the end of § 370.11(c)(2) the following:

* * * * *

(c) * * *

(2) * * * For applications received on or after July 1, 1980, this notification will be automatic (see § 370.13(e)).

* * * * *

3. A new § 370.13 is established as follows:

### § 370.13 procedures for processing license applications.

(a) *General.* This section implements section 10 of the Export Administration Act of 1979 (the Act), which prescribes procedures for processing export license applications, including time limits for certain stages of the process. The procedures and time limits set forth in this section apply to all applications received in the Office of Export Administration (OEA) on or after July 1, 1980. As set forth in paragraph (g) of this section, applications subject to nuclear non-proliferation controls are not subject to all the requirements of this section. As used in this section:

(1) "Application" means applications for individual validated export licenses, requests for reexport authorizations, parts and components requests, requests to export the foreign product of U.S. technical data, and requests to amend any of the foregoing.

(2) "Date of receipt" means the date a case number is assigned to the application, but in no event later than the next work day following physical delivery to the Exporters Service Staff of OEA, Room 1623, U.S. Department of Commerce, or receipt in the mail by the Processing Branch of OEA.

(b) *Initial Screening.* Within 10 days after the date an application is received in OEA, that Office will either accept the application for further processing or, if it determines that the application is improperly completed or additional information is required, return the application to the applicant without action. When returning an application, OEA will inform the applicant of the specific deficiencies that must be corrected. Any such applications that are resubmitted to OEA will be treated as new applications for the purpose of establishing processing time limits. If OEA accepts an application for further processing it will send the applicant an acknowledgement that:

(1) Includes the date of receipt, the applicable case number, and a description of the procedures required by section 10 of the Act, the responsibilities of the various agencies that will be reviewing the application, and the rights of the applicant;

(2) Informs the applicant if, based on an initial analysis, the application needs to be referred to any other agency, and identifies the agencies; and

(3) Notifies the applicant if, based on an initial analysis, the application must be referred for multilateral (CoCom) review.

(c) *Decision by Office of Export Administration When Referral to Other Agencies is not Necessary.* When an application need not be referred to other agencies, OEA will either issue or deny a license within 90 days of reciept.

(d) *Referral to Other Agencies.* (1) To the maximum extent possible, OEA will make licensing decisions without referral of applications to other agencies. When referral of an application to other agencies has been determined to be necessary, OEA will, within 30 days of receipt, refer the application, together with all necessary analysis and recommendations, concurrently to all agencies identified in the acknowledgement. However, OEA may refer the application at any time if (i) an agency requests referral to additonal agencies, (ii) referral becomes necessary due to changes in policies, or (iii) more detailed analysis during the processing of the application indicates the need for referral. The applicant shall be informed of any such referral.

(2) If requested by the applicant, provide the applicant an opportunity to review for accuracy any documentation describing the proposed export that accompanies a referral to other agencies, to determine whether such documentation accurately describes the proposed export. (See § 370.11(b) regarding requests for such review.)

(e) *Action of Other Agencies.* When an application is submitted to another agency, section 10 of the Act imposes specific requirements. The agency shall furnish to OEA, within 30 days of receipt by the agency, the requested information or recommendations. If the agency is unable to complete its review within 30 days, it may advise OEA that it requires an additional 30 days. If no response is received by OEA at the end of the 30 days, or at the end of 60 days if the extension is used, OEA will deem that agency to have no objection to approval.

(f) *Action by Department of Defense.* (1) The Secretary of Defense is authorized by Section 10(g) of the Act to review proposed exports to countries to which exports are controlled for national security purposes, and, in consultation with the Secretary of Commerce, to identify the types and categories of transactions to be subject to such review.

(2) Not later than 30 days (or 60 days if the extension described in paragraph (e) of this section is required) after receipt by the Secretary of Defense of a referral of an export license application for a transaction described in paragraph (f)(1) of this section the Secretary of Defense is required under section 10 of the Act to advise the Secretary of Commerce that he/she:

(i) Recommends approval;

(ii) Recommends approval subject to specified conditions; or

(iii) Recommends denial, based on a determination that the export would make a significant contribution to the military potential of a country described in paragraph (f)(1) of this section that would prove detrimental to the national security of the United States. If the Secretary of Commerce does not agree that the application should be denied, and differences cannot be resolved in interagency discussions, the matter shall be referred to the President for decision.

(3) If the application is referred to the President by the Secretary of Defense with a recommendation for denial, the Secretary of Commerce may not approve such an application until the President has had an opportunity to review the application. If the President

notifies the Secretary of Commerce that he/she concurs in the Defense recommendation, the license will be denied.

(g) *Special Procedure for Certain Nuclear-Related Applications.* In accordance with section 17(d) of the Act, the provisions of this § 370.13 apply to applications referred to the Subgroup on Nuclear Export Coordination only to the extent they are consistent with procedures published pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978 (See Supplement No. 1 to Part 378). If processing of such an application is not completed within 180 days of receipt by OEA, the applicant has the right of petition set forth in § 370.13(m).

(h) *Action on Agency Recommendations.* Except as provided in § 370.13(k) below, within 90 days of receipt of the recommendations of other agencies or expiration of the times allowed for comment by § 370.13 (e) and (f) above, whichever is earlier, OEA shall resolve any interagency conflict and issue or deny a license.

(i) *Denials of Licenses.* The applicant shall be informed in writing within 5 days of the formal decision by OEA to deny a license. The notice will state the statutory basis for denial, the policies set forth in section 3 of the Act that would be furthered by denial, the specific considerations that led to denial (to the extent consistent with national security and foreign policy), and the availability of appeal procedures. If appropriate, the notice will indicate what modifications in or restrictions on the goods or technology would allow the export to be compatible with export control policies, or indicate which officers or employees of OEA will be made reasonably available for consultation with the applicant.

(j) *Questions, and Negative Considerations or Recommendations.* (1) If during the processing of an application that has been referred to another agency for review, such agency raises questions (including requests for additional information), or negative considerations or recommendations, to the maximum extent consistent with the national security or foreign policy of the United States, OEA will inform the applicant in writing of, and provide an opportunity to respond in writing to, any such questions or negative considerations or recommendations. OEA will consider the applicant's response, if any, before a decision is made.

(2) OEA may at its own initiative inform the applicant in writing of any questions or negative considerations regarding the application if it determines during the review of an application that this is necessary. The applicant will be given an opportunity to respond in writing and the response will be considered in making a decision.

(3) If an applicant is informed of any questions, or negative considerations or recommendations, the OEA will allow the applicant 15 days to provide a written response, but will consider reasonable requests for extensions. Failure to respond within the time period set by OEA may result in a denial of the application or return of the application without action.

(4) When questions are raised, the application may be returned to the applicant for revision when, in the view of OEA, this would facilitate further processing.

(k) *Extension of Time Period and Suspension of Processing.* (1) Any of the time limits set forth in this § 370.13 may be extended by OEA upon a determination that a particular application or set of applications is of exceptional importance and complexity, and that additional time is required to negotiate modifications. The applicant and the Congress shall be notified of any such extensions and the reasons therefor.

(2) The time limits set forth in this § 370.13 may be extended by OEA to take into account delays in processing an application as a result of the provisions of section 7(d) of the Act (60 day notification of Congress regarding the export of certain crude oil) and section 7(e) (30 day notification of Congress regarding certain exports of refined petroleum products).

(3) The applicant may voluntarily extend any processing time limits. The time provided by such voluntary extension shall not count against the time limits set forth in this section.

(4) In any case where the applicant is provided the opportunity to respond to any questions, or negative considerations or recommendations, further processing of the application shall be suspended pending receipt of the applicant's written response. Accordingly, the time taken by the applicant to provide such written response will be excluded from the computation of the time limits of this section.

(l) *Multilateral Review.* Pursuant to international agreement, certain applications for export to Country Groups P, Q, W, and Y must be referred for multilateral (CoCom) review and concurrence. Such referral is made only after full review by Commerce and other agencies, as necessary, and a tentative decision that the application should be approved. The applicant will be notified of Commerce's tentative approval and the date thereof. No shipments may be made until a license is issued by OEA. If a decision by CoCom is not received within 60 days of the date of tentative approval, the license will be issued unless it is determined by an appropriate official in OEA that issuance of the license without CoCom approval would be detrimental to the national security of the United States. If such a determination is made, the applicant will be notified of the status of the application and that additional time is required, both at the expiration of the original 60 day period and if necessary, at 60 day intervals thereafter.

(m) *Petition for Compliance with License Application Processing Requirements*—(1) *Who May File a Petition.* Any person who on or after July 1, 1980 has filed an application for an export license with OEA pursuant to the Act, and whose application has not been processed within the time periods set forth in this section, including any extensions pursuant to § 370.13(k) (1) or (2), may file a petition requesting compliance with the requirements of this section.

(2) *Where to File a Petition.* A petition shall be filed with the Office of the Deputy Assistant Secretary for Export Administration, Room 3810, U.S. Department of Commerce, Washington, D.C. 20230.

(3) *Content of Petition.* Each petition submitted under this § 370.13(m) must be in writing, and shall cite the case number assigned to the license application, the date on which the application was filed with OEA, and the specific processing deadlines that allegedly are not being complied with. The petitioner shall attach to the petition a copy of the license application and copies of all correspondence with the Department of Commerce relating to the processing of the application.

(4) *Response to Filing of Petition.* (i) Upon receipt of a petition, the Deputy Assistant Secretary for Export Administration or his/her designee (DAS), shall send a acknowledgment of receipt of the petition and review the merits of the petition.

(ii) If the DAS determines that the license application is being processed in conformity with the prescribed time periods, the DAS shall so notify the petitioner, and shall state the reasons for that determination.

(iii) If the DAS determines that the application is not being processed in accordance with the prescribed time periods, the DAS shall notify the petitioner of the steps to be taken to correct the situation giving rise to the petition. The DAS shall continue to

monitor the license application that is the subject of the petition to assure that the processing of the application is brought into conformity with the prescribed time periods and shall immediately notify the petitioner when this is done.

## PART 372—INDIVIDUAL VALIDATED LICENSES AND AMENDMENTS

**§ 372.4 [Amended]**

4. The "Note" following § 372.4(a)(4) is deleted.

**Authority.** (Sec. 10, 13, 15, 17, 19, Pub. L., 96–72 Stat. 503, to be codified at 50 U.S.C. App. sec. 2401 *et seq.*; E.O. 12214, 45 FR 29783 (May 6, 1980); Department Organization Order 10–3, 45 FR 6141 (January 25, 1980); and Department Organization Order 41–1, 45 FR 11862 (February 22, 1980))

Dated: July 1, 1980.

**Eric L. Hirschhorn,**

*Deputy Assistant Secretary for Export Administration.*

[FR Doc. 80–20290 Filed 7–2–80; 1:52 pm]

BILLING CODE 3510–25–M

## 15 CFR Part 373

## Qualified General License

**AGENCY:** Office of Export Administration, International Trade Administration, U.S. Department of Commerce.

**ACTION:** Interim Rule With Request for Comments.

**SUMMARY:** Pursuant to section 5(e) of the Export Administration Act of 1979 (Pub. L. 96–72, to be codified at 50 U.S.C. App. 2401 *et seq.*), (the "Act"), this rule establishes a Qualified General License (QGL) procedure which authorizes multiple exports to designated countries of certain commodities for certain end-uses to consignees approved in advance by the Office of Export Administration. The QGL authorizes, to the extent consistent with U.S. national security, such exports without the need for further Government approval, and thus reduces the number of individual validated license applications which must be prepared by exporters and processed by the Government.

**DATES:** This rule is effective July 1, 1980, but may be revised in light of any comments received. Comments must be received by the Department by September 2, 1980.

Written comments (six copies when possible) should be sent to:

**ADDRESS:** Richard J. Isadore, Acting Director, Operations Division, Office of Export Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230.

**FOR FURTHER INFORMATION CONTACT:** Archie Andrews, Director, Exporters' Service Staff, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230. Telephone: (202) 377–5247 or 377–4811.

**SUPPLEMENTARY INFORMATION:**

### Substance of Regulation

Prior to establishment of the Qualified General License (QGL) procedure, U.S. exporters were required to apply for an individual validated license each time they wished to export commodities controlled for national security reasons to ultimate consignees located in the P, Q, W, and Y County Groups. The time expended in preparing export license applications, processing applications and issuing validated export licenses creates a significant burden for exporters and the Government, and may discourage some exporters from filing for additional licenses.

Sections 4(a)(2) and 5(e) of the Act authorize and encourage the establishment and use of the QGL. The number of required validated license applications is greatly reduced because the QGL allows, to the extent consistent with U.S. national security, repeated export transactions consistent with its terms without the need for further license submissions or Government approval during the validity period of the QGL.

These regulations specify the eligible commodities, exporters, and consignees for the QGL procedure. Under the regulations technical data may not be exported under a QGL. However, technical data associated with equipment licensed under QGL may be exported if it is permissible under GTDA and/or GTDR. Additionally, end-users who propose to sell or distribute commodities will not normally qualify as eligible consignees under these regulations.

The regulations also spell out the documentation requirements for making an application under the QGL procedure and the reports that must be filed when a license granted under the procedure is used. A timely filing of reports is a condition on the use of the QGL. Before application is made, an exporter must reasonably expect that a QGL will replace a minimum of ten validated export licenses per year to all eligible countries.

Because of the substantial amount of time and work involved in the preparation and review of an application, prior consultation with the Office of Export Administration is encouraged.

A QGL initially issued to a particular exporter is valid for one year, and may be extended by amendment once for an additional two years. Subsequent licenses issued to that exporter will be valid for two years and may be extended by amendment for an additional two years. During the QGL validity period, an exporter can make unlimited exports of certain commodities to OEA-approved consignees in countries in the P, Q, W, and Y groups identified in Supplement No. 1 to 15 CFR Part 370.

### Rulemaking Requirements

Section 13(a) of the Act exempts regulations promulgated under it from the public participation in rulemaking procedures of the Administrative Procedure Act. Because they relate to a foreign affairs function of the United States, it has been determined that these regulations are not subject to Department of Commerce Administrative Order 218–7 (44 FR 2082, January 9, 1979) and International Trade Administration Administrative Instruction 1–6 (44 FR 2093, January 9, 1979) which implement Executive Order 12044 (43 FR 12661, March 23, 1978), "Improving Government Regulations."

However, because of the importance of the issues raised by these regulations and the intent of Congress set forth in section 13(b) of the Act, these regulations are issued in interim form and comments will be considered in developing final regulations.

The period for submission of comments will close (60 days following publication). No comments received after the close of the comment period will be accepted or considered by the Department in the development of final regulations. Public comments which are accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason, will not be accepted. Such comments and materials will be returned to the submitter and will not be considered in the development of the final regulations.

All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, comments in written form are preferred. If oral comments are received, they must be followed by written memoranda which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, Room 3012, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the *Code of Federal Regulations*. Information about the inspection and copying of records at the facility may be obtained from Mrs. Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377–3031.

## PART 373—SPECIAL LICENSING PROCEDURES

Accordingly, the Export Administration Regulations (15 CFR Parts 368 *et seq.)* are amended by adding a new § 373.4, reading as follows:

### § 373.4 Qualified General License.

A Qualified General License (QGL) is established which authorizes multiple exports to P, Q, W and Y destinations of certain commodities to certain end-users for certain approved end-uses. Commodities, end-users and end-uses must be approved in advance by the Office of Export Administration (OEA). Subject to any conditions applicable to a particular license, the QGL will authorize the license holder to export commodities from the United States or to reexport U.S.-origin commodities from foreign countries. The export of technical data under QGL is not authorized. Technical data associated with equipment licensed under a QGL may be exported if it is permissible under GTDA and/or GTDR. Sections 4(a)(2) and 5(e) of the Export Administration Act of 1979 (the "Act") authorize and encourage the establishment and use of the QGL. The QGL is intended to lessen the administrative burden on both exporters and the U.S. Government by reducing the number of validated license applications that have to be filed for the export of commodities controlled for reasons of national security. Thus, the QGL will authorize, to the extent consistent with U.S. national security, multiple export transactions to certain destinations without the need for approval of each transaction by the Government. Although the QGL is similar to a general license in that it authorizes multiple transactions, the QGL is also similar to a validated license in that it requires the filing of an application and specific Government approval. For purposes of the provisions of the Export Administration Regulations (the "Regulations") relating to validated licenses, the QGL will be construed as a form of validated license. A QGL issued to an exporter for the first time will be valid for a period of one year, and may be extended by written amendment for an additional period of up to two years. The validity period of a QGL may be extended by amendment only once; thereafter, a new QGL application must be submitted. A new QGL subsequently issued to the same exporter will be valid for two years and may be extended for two years.

(a) *Eligible Countries.* The QGL may authorize exports from the United States to Country Groups P, Q, W and Y. Reexports to these countries are authorized to the extent that a QGL authorizes shipment directly from the United States.

(b) *Eligible Commodities and Technical Data.* (1) Any commodity that for national security reasons requires a validated license for export to P, Q, W or Y countries, and is either described in the Advisory Notes in Supplement No. 1 to Part 385 or is under unilateral U.S. control may be included in an application for a QGL, *except:*

(i) Commodities related to nuclear weapons, nuclear explosive devices, nuclear testing, the chemical processing of irradiated special nuclear or source material, the production of heavy water, the separation of isotopes of source and special nuclear material, or the fabrication of nuclear reactor fuel containing plutonium, as described in Part 378;

(ii) Unilaterally controlled commodities listed in Supplement No. 1 to this Part 373;

(iii) Electronic, mechanical or other devices, as described in § 376.13, which are primarily useful for surreptitious interception of wire or oral communications; and

(iv) Shipments of spare parts for equipment the export of which was not licensed under this procedure, unless that equipment can be exported under general license.

(2) Where two or more eligible products are to be combined into configurations (*e.g.*, computer systems), proposed configurations must be defined, except that indivisible electronic components (*i.e.*, components consisting of two or more parts which if disassembled would not function individually) shall not normally require a statement of combinations and/or proposed configurations.

(3) Technical data and/or software may be shipped in support of QGL-approved commodities only to the extent that it does not exceed that permissible under GTDR and/or GTDA. Accordingly, data which can be used or adapted for use in the design, production, manufacture or reconstruction of a commodity are excluded. Exports of such technical data to a controlled country require individual validated licenses.

(4) Each application for a QGL shall be limited as follows:

(i) *Processing Codes CD or MG:* Not more than 20 types of commodities or configurations;

(ii) *Processing Code EE:* Not more than 50 types of electronic devices, sub-assemblies, assemblies, subsystems or systems.

(c) *Eligible Exporters and Consignees*—(1) *Eligible Exporters.* The exporter shall have a reasonable expectation that the QGL, if granted, will replace a minimum of ten validated export licenses per year to all eligible countries.

(2) *Eligible Consignees.* Any actual or prospective end-users in the eligible countries to whom the exporter sells or expects to sell eligible commodities may be considered under this license. End-users who propose to sell or distribute commodities will not normally be eligible.

(3) *Order Requirement.* An applicant for a QGL need not hold an order, as defined in § 372.6(a), from consignee(s) at the time he applies for the license.

(4) *Number of Consignees.* An application for a QGL may not cover more than 25 consignees unless the exporter can demonstrate anticipated activity with more than that number.

(d) *Application for Qualified General License*—(1) *Prior consultation.* The preparation and review of an initial application for a QGL requires a substantial amount of work by the exporter and the U.S. Government. Therefore, a prospective applicant is encouraged to consult the Office of Export Administration before submitting a QGL application and, in particular, to discuss with appropriate agency technical representatives the specifications of the products, related technical data and/or software proposed for export.

(2) *Documents Required.* Each application for a Qualified General License shall include the following documents:

(i) Form ITA–622P, Application for Export License (see (3)(i) below);

(ii) A separate detailed description of consignee(s) and proposed end-use(s). (See paragraph (d)(3)(ii) of this section for requirements relative to submission of Form ITA-629); and

(iii) A comprehensive narrative statement by the exporter (see paragraph (d)(3)(iii) of this section).

(3) *Preparation of Documents*—(i) *Form ITA-622P.* The applicant shall prepare and submit the QGL application in accordance with the provisions of § 372.4, except that the applicant shall:

(A) Write "Qualified General License" above the "Date of Application" space.

(B) Insert "See attached list of consignees" in the "Ultimate Consignee in Foreign Country" space.

(C) Attach a list in duplicate of proposed consignees, alphabetically by country, including name and complete address, type of activity and proposed end-use of commodities.

(D) Insert "See attached list(s)" in the "Commodity Description" space.

(E) On an attachment thereto, list all products or commodities individually. Each QGL application should refer only to products falling within a single processing code, (i.e., CD, EE or MG). For each commodity listed, state the model number, commodity description and a comparison of its technical parameters or specifications with the QGL qualifying limitations, where appropriate. Where two or more eligible products are combined into configurations, (e.g., computer systems), proposed configurations must be defined, except that indivisible electronic components shall not normally require a statement of combinations and/or proposed configurations. This list may include related spare parts, accessories, technical data and/or software and should include any available estimates of quantities to be shipped.

(F) Enter the following statement at the bottom of the "Commodity Description" space:

The Qualified General License authorizes shipments only of specifically approved commodities, subject to any applicable limitations including those relating to configurations, specifications and end-uses, and only to approved consignees. No shipment will be made under this License except as specifically authorized by the license.

(G) The spaces entitled "Quantity to be Shipped," "Unit Price," and "Total Price" are to be left blank. Enter only the processing code in the column entitled "Export Control Commodity Number and Processing Code."

(ii) *Form ITA-629 for each consignee.* Refer to Forms Supplement S-6 of the Regulations for instructions in filling out this form. This form must be completed by each proposed end-user, and may be submitted with the application. If submitted at a later date, it must be received by OEA prior to any shipment to the particular consignee.

(iii) *Comprehensive Narrative Statement.* A comprehensive narrative statement shall be submitted by the applicant in support of the application. This statement shall describe the applicant's general activities and experience in marketing in the proposed countries, and should include a summary of past exports and anticipated activity related to the commodities requested to be approved for export under QGL.

(e) *License Validation, Utilization and Reporting*—(1) *Validation.* When a QGL application is approved, a license will be issued whose number will consist of the prefix "Q," followed by a four-digit number. A validated copy of the license, a list of approved consignees with assigned identification numbers, and a list of approved commodities, including any applicable limitations as to configurations and specifications, will be sent to the U.S. exporter. If all or part of the application is not approved, or if quantity or other conditions or limitations are imposed, the applicant will be notified, consistent with the requirements of national security, of the reason for the action.

(2) *Utilization.* A valid QGL becomes effective and authorizes an export of approved commodities to approved consignees each time a shipment is made, subject to any conditions applicable to the QGL. As a condition for the use of the QGL, an exporter undertakes the responsibility for the timely filing of the report(s) required by paragraph (e) (3) of this section.

(3) *Reporting.* The licensee must report all shipments occurring in a calendar month by the end of the month following the date of export or as directed in a specific condition to the approved license. Each report must be submitted to the Director, Operations Division, Office of Export Administration, and must indicate the exporter's name, QGL number, CCL number, commodity description (including model number, quantity and value), the date of each shipment, the name and identification number of the approved consignee and any other specifically requested information. A brief description of any technical data and/or software shipped under GTDA or GTDR must be included. If shipment is made of commodities already abroad under Permissive Reexports provisions of § 374.2(b), indicate the country or countries from which shipment was made. Failure to file timely reports may result in the suspension or revocation of the QGL and in enforcement action described in Part 387 of the Regulations.

(f) *Export Clearance*—(1) *Shipper's Export Declaration.* The Shipper's Export Declaration describing an export made under a QGL shall be prepared in accordance with standard instructions as provided in § 386.3 of the Regulations. Commodity descriptions on the Declaration shall:

(i) Conform to the applicable Commodity Control List description; and

(ii) Incorporate any additional information where required by Schedule B, for example, the type, size or name of the specific commodity. In addition, the Declaration shall include in the lower portion of column 10 a licensing symbol consisting of the current QGL number followed by a blank space, and then a three-digit numerical designation identifying the licensee's approved consignee to whom the shipment is being made. These consignee numbers will be assigned by the Office of Export Administration to all the licensee's approved consignees for the purpose of monitoring exports under this procedure.

(2) *Mail Shipments.* Shipments by mail shall be made in accordance with the instructions contained in § 386.1(b).

(3) *Destination Control Statement.* As provided in § 386.6 of the Regulations, the exporter and exporting carrier shall enter on the commercial invoice and bill of lading respectively the following destination control statement covering exports under the QGL procedure:

These commodities are licensed by the United States for ultimate destination (country). Diversion contrary to U.S. law is prohibited.

(4) *Corrections.* Refer to §§ 386.3(q) and 386.6 for provisions covering correction of inaccuracies in Shippers' Export Delcarations (SEDs) and commercial invoices. Copies of any such corrections shall be forwarded to the Director, Compliance Division, Office of Export Administration.

(g) *Extensions and Amendments of QGL*—(1) *Extensions.*—(i) *Form to use.* Requests to extend an existing QGL shall be submitted on Form ITA-685P, "Request for and Notice of Amendment Action", supported by the following certification:

I (we) certify that all the facts and intentions set forth in our previously submitted comprehensive narrative statement and other documents submitted in connection with the QGL remain the same, except (enter the word "none", or specify change(s)). We have no knowledge of any violations of any end-use or other conditions or limitations applicable to our QGL.

The extended validity period will generally be of two-year duration unless a shorter period is specifically requested. When the exporter is not entitled to file a request for extension, a complete new application must be submitted in accordance with the provisions of this Part 373.

(ii) *When to Apply.* An extension request should be submitted to the Office of Export Administration at least 90 days before the existing license's expiration date in order to avoid interruption of shipments under the license. (Refer to § 372.12 for general provisions on amendment of licenses.)

(iii) *Action by Office of Export Administration.* Each extension request will be analyzed by the Office of Export Administration as to whether the extension is justified. When action has been taken by the Office of Export Administration, a duplicate copy of this form will be returned to the licensee for retention in his files.

(2) *Amendments*—(i) *Form to Use.* All requests for amendment shall be submitted on Form ITA–685P as specified in § 372.11.

(ii) *New Consignees, Commodities or Configurations.* If the exporter desires to add a new consignee, commodity or configuration, he should file Form ITA–685P, "Request for and Notice of Amendment Action," in accordance with the provisions of § 372.11, and submit the information required by paragraph (d)(3) of this section, as applicable. If the addition of a new consignee is proposed, a Form ITA–629P must be supplied as previously specified.

(h) *Export Records.* All forms, documents, correspondence, memoranda, books and other records relating to a QGL shall be kept and made available for inspection in accordance with the recordkeeping requirements of § 387.11.

(i) *Inspection of Records.* All of the above-mentioned records shall be made available for inspection, upon request, by the Office of Export Administration or any other accredited representative of the U.S. Government.

(j) *Exceptions.* In the event that an exporter is unable to meet one or more of the QGL requirements but believes that unusual circumstances exist, he may consult with or write to the Office of Export Administration, explaining the circumstances in full and requesting a waiver or exception.

(k) *Export Administration Regulations.* Except as provided herein, all other provisions of the Regulations will apply to the QGL.

(Secs. 4(a)(2), 5(e), 13, 15 and 21, Pub. L. 96–72 (93 Stat. 503, to be codified at 50 U.S.C. App. 2401 *et seq.*); E.O. 12214 (45 FR 29783, May 6, 1980); Department Organization Order 10–3 (45 FR 6141, January 25, 1980); and International Trade Administration Organization and Function Order 41–1 (45 FR 11862, February 22, 1980))

Dated: July 1, 1980.

**Eric L. Hirschhorn,**

*Deputy Assistant Secretary for Export Administration.*

[FR Doc. 80–20292 Filed 7–2–80; 1:52 pm]

BILLING CODE 3510–25–M

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## 15 CFR Parts 373, 374, 375 and 387

## Nonsubstantive Revisions in Export Administration Regulations Necessitated by Elimination of Foreign-Based Warehouse Procedure

**AGENCY:** Office of Export Administration, International Trade Administration, U.S. Department of Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Distribution License procedure (§ 373.3) is a procedure for exports of certain controlled commodities to consignees that have been approved as foreign distributors or users. This procedure was amended, effective January 9, 1979 (44 FR 1971), to include provisions which were previously part of the Foreign-Based Warehouse procedure (§ 373.4). According to that revision, foreign subsidiaries of U.S. exporters which had been assigned multinational sales territories and other foreign distributors which had entered into written agreements with U.S. exporters to distribute commodities in more than one country became eligible as foreign consignees under the Distribution License procedure. This amendment deletes the Foreign-Based Warehouse procedure and all references to that procedure.

**EFFECTIVE DATE:** July 1, 1980.

**FOR FURTHER INFORMATION CONTACT:** Mr. Archie Andrews, Director, Exporters' Service Staff, Office of Export Administration, Washington, D.C. 20230, Telephone: (202) 377–5247 or 377–4811.

**SUPPLEMENTARY INFORMATION:** Section 13(a) of the Export Administration Act of 1979 (Pub. L. 96–72 to be codified at 50 U.S.C. App. 2401 *et seq.*) (the "Act") exempts regulations promulgated thereunder from the public participation in rulemaking procedures of the Administrative Procedure Act. Because they relate to a foreign affairs function of the United States, it has been determined that these regulations are not subject to Department of Commerce Administrative Order 218–7 (44 FR 2082, January 9, 1979) and Industry and Trade Administration Administrative Instruction 1–6 (44 FR 2093, January 9, 1979) which implement Executive Order 12044 (43 FR 12661, March 23, 1978), "Improving Government Regulations." Therefore these regulations are issued in final form.

Accordingly, Parts 373, 374, 375, and 387 of the Export Administration Regulations are amended as follows:

## PART 373—SPECIAL LICENSING PROCEDURES

1. Section 373.1(a)(2) is revised to read as follows:

**§ 373.1 Introduction.**

* * * * *

(a) * * *

(2) *Certifications Required.* To assure compliance with the limitations set forth in paragraph (a)(1) of this section by foreign consignees approved under Project and Distribution licenses, distributors approved under the Distribution License procedure, and U.S. exporters and service facilities approved under the Service Supply License (SL) procedure, the appropriate certifications described in paragraph (a)(2) (i) and (ii) of this section shall be submitted to the Office of Export Administration. The appropriate certification must be submitted in support of special licenses valid as of February 16, 1978 before additional commodities may be shipped to the foreign parties concerned, and certifications must be submitted before new or pending applications for special licenses will be considered.

(i) Sale to and servicing in the Republic of South Africa and Namibia. The following certification is to be completed by distributors and end-users approved under the Distribution License procedure and located in the Republic of South Africa or Namibia, and U.S. exporters and service facilities approved under the Service Supply (SL) procedure to service equipment in the Republic of South Africa or Namibia:

"I (We) certify that commodities received under this (enter Distribution or Service Supply) License will not be sold or otherwise made available, directly or indirectly, to or for the use by or for police or military entities in the Republic of South Africa or Namibia or used to service equipment owned, controlled or used by or for these entities."

(ii) Production of foreign-made end products for sale to the Republic of South Africa and Namibia. The following certification is to be completed by all foreign consignees of

Project and Distribution licenses who have been authorized to use U.S.-origin parts in the manufacture of foreign-origin end products intended for export:

"I (We) certify that the commodities received under this (enter Project or Distribution) license will not be used in the production abroad of commodities that will be sold or otherwise made available, directly or indirectly, to or for the use by or for police or military entities in the Republic of South Africa or Namibia."

**§ 373.4 [Reserved]**

2. Section 373.4 is removed and reserved.

## PART 374—REEXPORTS

3. The footnote to § 374.2(a)(2) is revised to read as follows:

The permissive reexport provisions set forth above relating to the reexport of commodities within the established GLV dollar-value limits do not apply to exports, reexports, or distributions made under the Distribution License or Aircraft and Vessel Repair Station Procedures. (See §§ 373.3 and 373.8.)

**§ 374.2 [Amended]**

4. Section 374.2(f) is removed and reserved.

## PART 375—DOCUMENTATION REQUIREMENTS

**§ 375.2 [Amended]**

5. Section 375.2(b)(8) is removed, (9) is renumbered (8), and (10) is renumbered (9) and is revised to read as follows:

* * * * *

(b) * * *

(9) * * * The license application is for a Project License (§ 373.2), Distribution License (§ 373.3), Service Supply License (§ 373.7), or is supported by Form ITA–686, Statement by Foreign Importer of Aircraft or Vessel Repair Parts (§ 373.8).

* * * * *

**§ 375.4 [Amended]**

6. Section 375.4(b)(2) is revised to read as follows:

* * * * *

(b) * * *

(2) *Approved Form ITA–686.* A license application to export commodities to Switzerland or Liechtenstein is exempted from the Import Certificate requirement if such license application is supported by Form ITA–686, Statement by Foreign Importer of Aircraft or Vessel Repair Parts, or the current Station Number or validation number of this form.

* * * * *

**§ 375.5 [Amended]**

7. Section 375.5(b)(2) is revised to read as follows:

* * * * *

(b) * * *

(2) *Approved Form ITA–686.* A license application to export commodities to Yugoslavia is exempted from the requirement for a Yugoslav End-Use Certificate if such application is supported by Form ITA–686, Statement by Foreign Importer of Aircraft or Vessel Repair Parts, or the current Station Number or validation number of this form.

* * * * *

## PART 387—ENFORCEMENT

**§ 387.11 [Amended]**

8. The second sentence in § 387.11(c) is amended by deleting "373.4."

**Authority:** Secs. 4, 13, 15 and 21, Pub. L. 96–72, to be codified at 50 U.S.C. App. 2401 *et seq.;* E. O. 12214 (45 FR 29783, May 6, 1980); Department Organization Order 10–3 (45 FR 6141, January 25, 1980); International Trade Administration Organization and Function Order 41–1 (45 FR 11862, February 22, 1980)

Dated: June 30, 1980.

**Eric L. Hirschhorn,**

*Deputy Assistant Secretary for Export Administration.*

[FR Doc. 80–20291 Filed 7–2–80; 1:52 pm]

BILLING CODE 3510–25–M

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**15 CFR Parts 376 and 386**

## Licensing Procedures for Exports of Wheat and Corn to the U.S.S.R. During the Period October 1, 1980, to September 30, 1981

**AGENCY:** Office of Export Administration, International Trade Administration, U.S. Department of Commerce.

**ACTION:** Interim rule.

**SUMMARY:** This rule revises the regulations governing the export of agricultural commodities to the U.S.S.R. first published in the **Federal Register** on January 9, 1980 (45 FR 1883), and revised by rule published in the **Federal Register** on February 7, 1980 (45 FR 8289). It provides for the licensing of exports and reexports of up to eight million metric tons of wheat and corn combined during the period October 1, 1980—September 30, 1981, the fifth year of the U.S.–U.S.S.R. Grain Agreement, on a first-come, first-served basis. It further establishes a requirement that documentation covering actual exports and reexports of such commodities be submitted to the Office of Export Administration.

**DATES:** This rule is effective July 2, 1980. Comments must be received by September 8, 1980.

**ADDRESS:** Written comments, in five copies, should be sent to: Short Supply Division, Office of Export Administration, P.O. Box 7138, Ben Franklin Station, Washington, DC, 20044.

**FOR FURTHER INFORMATION CONTACT:** Mr. Converse Hettinger, Director, Short Supply Division, Office of Export Administration, Department of Commerce, Washington, DC, 20230 (Telephone: (202) 377–3984.

**SUPPLEMENTARY INFORMATION:** On January 7, 1980, the President directed the Secretary of Commerce to take immediate action under the Export Administration Act to terminate shipments of agricultural commodities to the U.S.S.R. except for the eight million metric tons of wheat and corn specifically provided for in the U.S.–U.S.S.R. Grain Agreement. This action was taken in the national security and foreign policy interests of the United States in response to the Soviet invasion of Afghanistan. Pursuant to the President's directive, regulations were issued and published in the **Federal Register** on January 9, 1980 (45 FR 1883), providing for the licensing of wheat and corn as necessary to permit shipments during the fourth year of the Agreement up to the aggregate eight million metric ton level, and restricting exports of other agricultural commodities. Those regulations were amended, on February 7, 1980 (45 FR 8289), to permit a resumption of shipments of agricultural commodities which would not undermine the thrust of the President's decision and would not have a significant impact on the Soviet grain/livestock complex.

The present rule amends these earlier regulations to establish the procedures under which exports of wheat and corn to the U.S.S.R. will be licensed for shipment during the period October 1, 1980—September 30, 1981, the fifth and final year of the U.S.–U.S.S.R. Grain Agreement. Consistent with the President's earlier decision, aggregate exports of wheat and corn combined will be permitted up to a maximum of eight million metric tons.

This rule provides that applications to export or to reexport U.S.-origin wheat or corn during the fifth year of the Agreement will be considered on a first-come, first-served basis according to the order in which the applications are received in the Short Supply Division of the Department's Office of Export Administration. An application may be filed as soon as a bona fide sale of U.S.-

origin grain has been made for delivery to the U.S.S.R. Export sales which are required to be reported under the export sales reporting program of the Department of Agriculture must have been so reported before the application will be assigned priority.

Applicants will be permitted 45 days following receipt of their applications to submit export sales contracts in support of their applications, and licenses will not be issued until copies of such export sales contracts have been received. If sales have been made to an intermediary abroad who, in turn, has sold the commodities to the U.S.S.R., then copies of both the contract of sale to the intermediary and the sale from the intermediary to the U.S.S.R. must be submitted except that, in lieu of the contract of sale to the U.S.S.R., a copy of a written or telexed confirmation of that sale from a U.S.S.R. state trading agency may be submitted.

An application for registration of priority should be submitted for the total quantity covered by the sale. Once priority has been established, it will apply to the total quantity of the sale, irrespective of how many licenses may ultimately be issued to cover shipments against that sale.

It is anticipated that applications may be received and that licenses may be issued prior to October 1. All licenses issued hereunder will be valid for shipment during a 90 day period, although extensions may be considered in the event that unforeseen circumstances prevent shipment during that 90 day period. However, no license, reexport authorization or extension will be valid for shipment prior to October 1, 1980, nor after September 30, 1981. For exports from the United States, this means that while a vessel may be loaded earlier, it may not clear the final U.S. port of export prior to October 1, 1980.

Licenses will be issued up to an aggregate quantity of eight million metric tons for wheat and corn combined, but not to exceed five million metric tons of either wheat or corn. No shipping tolerance is authorized on a license for the export or authorization for the reexport of wheat or corn to the U.S.S.R. This means that actual shipments may not exceed the quantity stated on the license or reexport authorization but may be less than that quantity. Exporters or reexporters who make shipments in excess of licensed quantities will be subject to the civil, criminal, and administrative sanctions described in Section 11 of the Export Administration Act of 1979 and Part 387 of the Export Administration Regulations (15 CFR Part 387).

To permit close monitoring of exports of wheat and corn to the U.S.S.R., within 5 working days of completing the final shipment under the license, exporters are required to complete and sign the record of shipments on the reverse of the license, certify to its accuracy, and return the license to the Office of Export Administration, together with a copy of each Shipper's Export Declaration and each on-board Bill of Lading covering a shipment under that license. Reexport shipments of U.S.-origin wheat and corn to the U.S.S.R. must be similarly reported to the Office of Export Administration.

This rule also revises the title of Supplement No. 2 to Part 376 and the general provision relating to shipping tolerance to reflect the changes made herein. Finally, these regulations correct an error in the dates of prior shipments to be covered in the affidavit to be submitted in support of applications to export agricultural commodities listed in Supplement No. 3 to Part 376, commodities which are subject to validated licensing to the U.S.S.R. and to consideration on a case-by-case basis.

### Rulemaking Requirements

Section 13(a) of the Act exempts regulations promulgated under it from public participation in rulemaking procedures of the Administrative Procedure Act. However, because of the importance of the issues raised by these regulations and the intent of Congress set forth in section 13(b) of the Act, they are issued in interim form and public comments are requested. Because they relate to a foreign affairs function of the United States, it has been determined that these regulations are not subject to Department of Commerce Administrative Order 218–7 (44 FR 2082, January 9, 1979) and the International Trade Administration Administrative Instruction 1–6 (44 FR 2093, January 9, 1979) which implement Executive Order 12044 (43 FR 12661, March 23, 1978), "Improving Government Regulations."

The period for submission of comments will close September 8, 1980. No comments received after the close of the comment period will be accepted or considered by the Department in the development of final regulations. Public comments which are accompanied by a request that part or all of the material be treated confidentially for whatever reason, will not be accepted. Such comments and materials will be returned to the submitter and will not be considered.

All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, comments in written form are preferred. If oral comments are received, they must be followed by written memoranda which will also be a matter of public record. Communications from agencies of the United States government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, Room 3012, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Records in this facility pertaining to these regulations may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Mrs. Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377–3031.

Accordingly, the Export Adminstration Regulations (15 CFR Part 368 *et seq.*) are amended as follows:

## PART 376—SPECIAL COMMODITY POLICIES AND PROVISIONS

1. Section 376.5 is amended by renumbering paragraphs (h), (i), (j), (k) and (l) to read, respectively, (j), (k), (l), (m) and (n); adding new paragraphs (h) and (i); and revising paragraphs (b), (d) (1) and (3), (e), (f), (g), and (l) to read as follows:

### § 376.5 Exports or Reexports of Agricultural Commodities to the U.S.S.R.

* * * * *

(b) *Wheat and Corn.* (1) Application for validated licences to export and authorizations to reexport wheat or corn to the U.S.S.R. during the period October 1, 1980–September 30, 1981, will be considered by the Office of Export Administration in order of priority as decribed below, up to an aggregate quantity of 8 million metric tons for both commodities combined: *Provided,* Such applications are supported by the appropriate documentation and submitted as specified below.

(2) Applications will be considered on a first-come, first-served basis according to the order of their receipt in the Short Supply Division, Office of Export Administration. Upon receipt in the Short Supply Division, Office of Export Administration, each application will be examined to determine whether it qualifies for registration of priority. If it does, it will be stamped with the date

and time of receipt, and the applicant's name and the aggregate quantity of wheat and/or corn listed on the application will be entered in the order of receipt on both a combined priority list and on a separate wheat or corn priority list.

(3) Application will be considered to qualify for registration of priority if (i) it has been properly completed and signed, (ii) it covers a bona fide sale of U.S.-origin grain for delivery to the U.S.S.R., and (iii) if the sale is required to be reported under the Department of Agriculture's Export Sales Reporting Program (7 CFR Part 20), that it has been properly reported to that Department. Either in the application, or in an accompanying letter, the applicant must provide details of the sale, such as the parties involved, the date of the sale and the date of the change in destination or origin if applicable, the contract number (if known), the commodity, the quantity, the selling price, and the delivery date(s). Within 45 days of the date the application is filed, the documentation required by (e) below must be received by the Short Supply Division, Office of Export Administration. No license will be issued prior to receipt of such documentation, and failure to submit this documentation within 45 days of submission of the application will result in the applicant's name being stricken from the priority lists and the return of the application without action.

(4) An application for registration of priority should be submitted for the total quantity covered by the sale. Once priority has been established, it will apply to the total quantity of the sale, irrespective of how many licenses may ultimately be issued to cover shipments against that sale.

* * * * *

(d) *Submission of Applications.*—(1) *Wheat and Corn.* An application for a license to export or authorization to reexport wheat or corn to the U.S.S.R. during the period October 1, 1980–September 30, 1981, may be submitted to the Short Supply Division, Office of Export Administration, Department of Commerce, at any time after a bona fide sale of U.S.-origin grain has been made to the U.S.S.R. If the applicable export sale is required to be reported under the Department of Agriculture's Export Sales Reporting Program, it should be reported under that program before the application is submitted.

* * * * *

(3) *Method of Submission.* Applications submitted under this section may be hand carried to Room 1617–A, Main Commerce Building, 14th and E Streets, NW, Washington, DC, during normal business hours (8:30 a.m.–5:00 p.m.) or mailed to the Short Supply Division, Office of Export Administration, Post Office Box 7138, Ben Franklin Station, Washington, DC, 20044.

(e) *Documentation.* An application for a validated license to export an agricultural commodity from the United States to the U.S.S.R. must be submitted on Form ITA–622P, Application for Export License. An applicaiton for an authorization to reexport to the U.S.S.R. a U.S.-origin agricultural commodity previously exported from the United States must be submitted on Form ITA–699P, Request to Dispose of Commodities or Technical Data Previously Exported. Although, as provided in paragraph (b) of this section, supporting documentation need not accompany the license or reexport application, the documentation listed below must be submitted in support of each application before it will be considered for approval.

(1) *Wheat and Corn.* A certified true copy or photocopy of the export sales contract or contracts calling for shipment to the U.S.S.R. during the period October 1, 1980–September 30, 1981. If the applicant's sale is to an intermediate party rather than a state trading agency in the U.S.S.R., a copy of both the sales contract to the intermediate party and that intermediate party's sales contract to the U.S.S.R. will be required, except that, in lieu of the contract between the intermediate party and the U.S.S.R., the Office of Export Administration will accept a copy of a written or telexed confirmation of such sale from a U.S.S.R. state trading agency: *Provided,* The confirmation clearly identifies the commodity(ies), the agreed delivery date(s), the contracting parties, the quantity(ies), and the date the sale to the U.S.S.R. was made. Such sales contract between the intermediate party and the U.S.S.R. or confirmation of the sale from a U.S.S.R. state trading agency may be submitted directly to the Office of Export Administration by the exporter, the intermediate party, or the U.S.S.R. state trading agency. All such documentation will be subject to the confidentiality provisions of Section 12(c) of the Export Administration Act.

(2) *Agricultural Commodities Listed in Supplement No. 3 to Part 376.* (i) A certified copy or photocopy of the export sales contract or contracts evidencing the sale to the U.S.S.R. And,

(ii) An affidavit signed by an authorized representative of the exporter stating the number of separate shipments of the commodities listed on the application, the approximate quantity of each shipment, and the aggregate quantity of all such shipments made by the exporter to the U.S.S.R. during the period October 1, 1976–September 30, 1978.

(f) *Validity of Licenses and Reexport Authorizations*—(1) *Wheat and Corn.* All licenses and reexport authorizations for wheat or corn issued under this section will be valid for shipment during a 90 day period, although extensions may be considered in the event that unforeseen circumstances prevent shipment during that 90 day period. However, no license or extension will be valid for shipment before October 1, 1980 or after September 30, 1981.

(2) *Other commodities.* Any other licenses which may be issued hereunder will expire as stated thereon.

(g) *Shipping Tolerance*—(1) *Wheat and Corn.* No shipping tolerance is authorized on a license for the export or authorization for the reexport of wheat or corn to the U.S.S.R. and exporters who make shipments in excess of licensed quantities will be subject to the penalties described under paragraph (g)(1) of this section. (For reporting of shipments of wheat and corn to the U.S.S.R. see paragraph (j)(2) of this section.) However, nothing herein is intended to preclude the shipment of quantities lower than those authorized.

(2) *Agricultural Commodities Listed in Supplement No. 3 to Part 376.* A shipping tolerance of 5 percent is allowed over the unshipped balance remaining on a validated export license or reexport authorization for the shipment of an agricultural commodity to the U.S.S.R. under the provisions of this section (See also § 386.7 for a more complete discussion of shipping tolerance, including examples.)

(h) *Units of Quantity.* All export licenses and reexport authorizations issued under this section will use the official U.S. Bureau of the Census Schedule B unit of quantity. (For wheat and corn this unit of quantity is bushel. For commodities other than wheat and corn this unit of quantity may be different.) The same unit of quantity must be used on Shipper's Export Declarations, the record of shipments on the reverse of a completed license and in the affidavits required under paragraph (e)(2)(ii) of this section.

(i) *Conversion Factors.* For purposes of converting sales contracts and loading documents expressed in terms other than the official unit of quantity (see paragraph (h) of this section), calculating allowable tolerances, if any, and other purposes only the official U.S. Bureau of the Census Schedule B conversion factors may be used. (For wheat, this conversion factor is one metric ton equals 36.744 sixty-pound

bushels. For corn, this conversion factor is one metric ton equals 39.368 fifty-six pound bushels. Authorized conversion factors for other commodities will be supplied by the Short Supply Division, Office of Export Administration, on request.)

* * * * *

(l) *Reporting to Office of Export Administration of Shipments to the U.S.S.R. of Agricultural Commodities Listed in Supplements Nos. 1 and 2.*—(1) *Commodities Listed in Supplemental No. 1.* Upon filing a Shipper's Export Declaration [1] covering the export from the U.S. to the U.S.S.R. of one or more of the agricultural commodities listed in Supplement No. 1 to this Part 376, exporters are required to mail a copy of the Shipper's Export Declaration filed with the exporting carrier (or the Post Office if shipment is made by mail), to the Office of Export Administration within 48 hours of filing the original Declaration at the port of export. These copies should be mailed to the following address: Office of Export Administration, ATTENTION: Short Supply Division, P.O. Box 7138, Ben Franklin Station, Washington, D.C. 20044.

(2) *Commodities Listed in Supplement No. 2.* Within 5 working days of completing all shipments to be made against a validated license [2] for the export of a commodity listed in Supplement No. 2 to Part 376 (wheat and corn are the only commodities listed in this supplement whose licensing will be considered), the exporter is required to complete and sign the record of shipments on the reverse side of the license noting, for each shipment made, the quantity, description, value, name of exporting carrier, port of export or post office of mailing, date and initials of person making entry, to certify to the accuracy of this information, and to mail the license, accompanied by a photostatic copy of each on-board bill of lading and each Shipper's Export Declaration [2] covering a shipment made under the license, to the following address: Office of Export Administration, ATTENTION: Short Supply Division, P.O. Box 7138, Ben Franklin Station, Washington, D.C. 20044.

[1] (Note—See § 386.3 of the Export Administration Regulations for provisions relating to the filing of Shipper's Export Declarations.)

[2] (Note—See §§ 386.2 and 386.3 of the Export Administration Regulations, respectively, for a further discussion of the use of validated licenses and the filing of Shipper's Export Declarations.)

* * * * *

2. The title of Supplement No. 2 to Part 376 is revised to read as follows:

**Supplement No. 2 to Part 376 Agricultural Commodities and Products [1] Subject to Validated Licensing and Reporting of Exports to the U.S.S.R. the Export of Which is Restricted. (See [6] 376.5) [2] and Agricultural Commodities and Products [1] Subject to Validated Licensing to Afghanistan—Applications Considered Under [6] 376.15**

* * * * *

[1] Commodity description, not Schedule B Number, determines the commodity subject to validated licensing.

[2] These commodities are subject to controls under the authority of the foreign policy provisions contained in section 6 of the Export Administration Act of 1979. Wheat and corn are also subject to controls under the authority of the national security provisions contained in section 5 of that Act.

## PART 286—EXPORT CLEARANCE

3. Section 386.7(a) is revised to read as follows:

**§ 386.7 Shipping tolerance.**

(a) *Increase in Quantity.* A shipping tolerance of 10 percent is allowed over the unshipped balance of a commodity on a validated export license when the quantity specified for that commodity is in terms of weight or measure, *e.g.*, pound, barrel, foot, etc., *except* when (1) specifically limited by a note on the face of a validated export license, (2) a smaller tolerance has been established for commodities under short supply control, i.e., as listed in a supplement to Part 377, or (3) the license covers an export to the U.S.S.R. of an agricultural commodity listed in Supplements Nos. 2 or 3 to Part 376, in which case the allowable tolerance is as specified in § 376.5(g).

**Examples**

A validated export license authorizes the export of 100,000 pounds of a commodity:

(1) If one shipment is made, the quantity that may be exported shall not exceed 110,000 pounds.

(2) If the first shipment is for 40,000 pounds, the second shipment may not exceed 10 percent of the unshipped balance of 60,000 pounds, i.e., 66,000 pounds.

(3) If the first shipment is for 40,000 pounds and the second shipment is for 20,000 pounds, the third shipment may not exceed 10 percent of the unshipped balance of 40,000 pounds, i.e., 44,000 pounds.

* * * * *

(Secs. 5, 6, 12, 13, 15, and 21 Pub. L. 96-72, to be codified at 50 U.S.C. app. 2401 *et seq.*; Presidential Memorandum dated January 7, 1980; Executive Order 12214 (45 FR 29783, May 6, 1980); Department Organization Order 10-3, dated January 3, 1980 (45 FR 6141, January 25, 1980); International Trade Administration Organization and Function Order 41-1 (45 FR 11862, February 22, 1980).)

Dated: July 1, 1980.

**Eric L. Hirschhorn,**

*Deputy Assistant Secretary for Export Administration.*

[FR Doc. 80-20271 Filed 7-2-80; 12:10 pm]

BILLING CODE 3510-25-M

## FEDERAL TRADE COMMISSION

### 16 CFR Part 13

**[Docket No. C-3022]**

### Jordan-Simner, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Final order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Ft. Lauderdale, Florida manufacturer of pharmaceutical products to cease making any misrepresentations of the efficacy or novel performance characteristics of its vaginal contraceptive suppository products. The order specifically prohibits any exaggerated efficacy claims for the products such as "highly" or "extremely" effective. Additionally, respondent is prohibited from making claims of efficacy without a reasonable basis consisting of a consistent body of valid and scientific evidence.

**DATES:** Complaint and order issued June 19, 1980.[1]

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

**SUPPLEMENTARY INFORMATION:** On Wednesday, March 5, 1980, there was published in the **Federal Register**, 45 FR 14221, a proposed consent agreement with analysis In the Matter of Jordan-Simner, Inc. a corporation, and Robert Cohen, individually and as an officer of said corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease

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

and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.170 Qualities or properties of product or service; 13.170–18 Contraceptive; 13.170–70 Preventive or protective; § 13.190 Results; § 13.205 Scientific or other relevant facts; § 13.265 Tests and investigations; § 13.280 Unique nature or advantages. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533–20 Disclosures; 13.533–45 Maintain records. Subpart—Disseminating Advertisements, Etc.: § 13.1043 Disseminating advertisements, etc. Subpart—Misrepresenting Oneself and Goods—Goods: § 13.1710 Qualities or properties; § 13.1730 Results; § 13.1740 Scientific or other relevant facts; § 13.1762 Tests, purported; § 13.1770 Unique nature or advantages. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1863 Limitations of product; § 13.1885 Qualities or properties; § 13.1890 Safety; § 13.1895 Scientific or other relevant facts.

(Sec. 6, 38 Stat. 721; (15 U.S.C. 46). Interprets or applies sec. 5, 38 Stat. 719, as amended; (15 U.S.C. 45, 52))

Carol M. Thomas,

*Secretary.*

[FR Doc. 80-20307 Filed 7-7-80; 8:45 am]

BILLING CODE 6750-01-M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Part 1

**[Docket No. RM80-57; Order No. 90]**

## Rules of Practice and Procedure

Issued June 23, 1980.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** By this rule the Federal Energy Regulatory Commission is supplementing the existing settlement procedures contained in § 1.18 of its regulations. This addition to § 1.18 will provide the means for the appointment of a settlement judge to preside over settlement negotiations.

**DATE:** Effective June 23, 1980.

**FOR FURTHER INFORMATION CONTACT:** Mary Jane Reynolds, Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 (202) 357–8455.

### Amendment to § 1.18 of the Rules of Practice and Procedure

Issued June 23, 1980.

Before Commissioners: Charles B. Curtis, Chairman; Georgiana Sheldon, Matthew Holden, Jr., and George R. Hall.

The Federal Energy Regulatory Commission (Commission) by this rule amends § 1.18 of its Rules of Practice and Procedure to provide for the appointment of a settlement judge to preside over settlement negotiations.

*Background*

One of the Commission's most important and continuing objectives has been to reduce delay in the decisional process. This was the subject of the Chairman's *Report to Congress.*[1] The amendment to § 1.18 adopts the recommendations of the chairman contained in that *Report* as they relate to the settlement process.

The purpose of the amendment to § 1.18 in providing a procedure for the appointment of a judge to conduct settlement negotiations is to further promote and encourage the use of settlement process as a means for expeditiously resolving cases. This amendment is not intended to replace the settlement procedures already provided for in § 1.18. Rather, it should be viewed as a supplemental and optional procedure which may be available when either the Commission or the Chief Administrative Law Judge is persuaded that the prospects for settling a particular case would be enhanced by such appointment.

In appropriate cases, the Commission believes that the appointment of a settlement judge will greatly reduce the inherent and sometimes tactical delay found in the settlement process. The settlement judge, as a knowledgeable and neutral person of authority, will be in a position to lend a structure to the negotiations and reduce the adversarial nature of the process. In addition, the settlement judge will be able to control the pace of the negotiations and to objectively assess and report to either the Commission or the Chief Administrative Law Judge on whether settlement is in fact likely.

This new procedure will be available for oil pipeline rate matters as well as other on-the-record proceedings conducted at the Commission.

The Commission specifically wishes to call attention to the availability under § 1.18(g)(i)(C) of these procedures for the appointment of settlement judges for proceedings in which the records have been closed and the matter is pending before the Commission for decision.

*Section Analysis*

The amendment to § 1.18 is an addition to the existing rule. The procedure for the appointment of a settlement judge will be contained in § 1.18(g). Section 1.18(g) will apply to any matter or any issue respecting such matter that the Commission has set for hearing before an Administrative Law Judge. In addition, it will apply to any other matter or issue respecting such matter that the Commission designates.

Section 1.18(g)(2) contains definitions of the terms "presiding judge" and "settlement judge." Both judges will be appointed by the Chief Administrative Law Judge (Chief ALJ); the presiding judge will preside at the hearing in the proceeding and the settlement judge will conduct settlement negotiations.

Section 1.18(g)(3) sets forth the procedures to be followed by the parties or staff in seeking the appointment of a settlement judge. If a matter has been set for hearing but a presiding judge has not yet been appointed, a motion requesting the appointment of a settlement judge must be filed with the Chief ALJ. If a presiding judge has been appointed and the matter is still pending before him, the motion must be filed with the presiding judge. However, if the matter has not been set for hearing or is no longer pending before the presiding judge, the motion must be filed with the Commission. In addition, § 1.18(g)(3)(ii) provides that a presiding judge may on his own motion request the Chief ALJ to appoint a settlement judge.

The form and contents of the motion requesting an appointment should follow the requirements of § 1.12 of the current regulations. However, § 1.18(g)(3)(iii) provides that notwithstanding the provisions of § 1.12(c), which allows 15 days to answer or object to motions, a motion may be acted upon at any time. In addition, the action upon a motion filed under § 1.18(g)(3)(iii) need not be in writing and answers or objections filed after a motion has been acted on will not be considered.

Section 1.18(g)(5) relates to the actual appointment of a settlement judge. Under § 1.18(g)(5)(ii) the Chief ALJ must appoint a settlement judge if directed to do so by Commission Order issued under paragraph (g)(4). In all other

[1] C. Curtis, Chairman, FERC, *Decisional Delay in Wholesale Electric Rate Cases: Causes, Consequences, and Possible Remedies.* (January 23, 1980).

circumstances, the appointment of a settlement judge is within the sole discretion of the Chief ALJ. Thus § 1.18(g)(5)(i)(A) provides that, upon request, the Chief ALJ may appoint a settlement judge with respect to proceedings in which a presiding judge has not been assigned. If a presiding judge has been assigned then under § 1.18(g)(5)(i)(B) the Chief ALJ may appoint a settlement judge if the presiding judge has either requested an appointment on his own motion or concurred in a request made by the parties or staff for an appointment.

Section 1.18(g)(6) requires the Chief ALJ to issue an order when appointing a settlement judge. The Commission anticipates that the procedural posture of each case at the time of appointment may dictate suspension of different aspects of a proceeding and that this decision can be made most appropriately by the Chief ALJ. Therefore, the order must specify whether and to what extent the proceeding is suspended pending termination of the settlement negotiations. In addition, the order may confine the scope of settlement negotiations to specified issues.

Section 1.18(g)(7) delineates the powers and duties of a settlement judge. The settlement judge has the authority to schedule and preside over conferences and settlement negotiations of the parties and to assess the practicalities of a potential settlement. In addition, no later than 30 days following his appointment, the settlement judge is required to submit a report to the Commission or Chief ALJ, as appropriate, regarding the status of the negotiations and an evaluation as to settlement prospects. The report may also contain recommendations as to the continuation of the negotiations. The Commission or the Chief ALJ may request additional reports which may be earlier than or subsequent to the report required no later than 30 days following appointment.

Section 1.18(g)(8) specifies that unless the order of the Commission directing the appointment of a settlement judge provides otherwise, the termination of settlement negotiations will be by order of the Chief ALJ, acting within his discretion after consultation with the settlement judge. Notwithstanding such termination, § 1.18(g)(10) provides that the Chief ALJ may subsequently appoint a settlement judge to conduct further settlement negotiations in the same proceeding should the need arise.

Finally, § 1.18(g)(9) of the rule provides that any decision concerning the appointment of a settlement judge or the termination of settlement negotiations is not subject to review by, appeal to, or rehearing by the presiding judge, the Chief ALJ or the Commission.

Since this rule concerns a matter of agency practice and procedure, notice and public procedure thereon is unnecessary pursuant to 5 U.S.C. § 553(b). In addition, the Commission believes the settlement process and the decisional process as a whole will be benefited by making the provisions of § 1.18(g) available as soon as possible. Therefore, the Commission finds good cause pursuant to 5 U.S.C. § 553(d)(3) to make this rule effective immediately.

(Federal Power Act, *as amended*, 16 U.S.C. § 792 *et seq.*; Natural Gas Act, *as amended*, 15 U.S.C. § 717 *et seq.*; Department of Energy Organization Act, 42 U.S.C. § 7101 *et seq.*; E.O. 12009, 42 *Fed. Reg.* 46267; Interstate Commerce Act, *as amended*, 47 U.S.C. 1 *et seq.*; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. §§ 2601–2645; Natural Gas Policy Act of 1978, 15 U.S.C. §§ 3301–3432).

In consideration of the foregoing, Part 1, Chapter I of Title 18 of the Code of Federal Regulations is amended as set forth below, effective immediately.

By the Commission.

**Lois D. Cashell,**

*Acting Secretary.*

Section 1.18 is amended by adding a new paragraph (g) at the end thereof to read:

**§ 1.18 Conferences; offers of settlement.**

* * * * *

(g) *Settlement negotiations conducted by settlement judges.*

(1) *Applicability.* This paragraph applies to:

(i) any matter (including any issue respecting such matter) set by Commission for hearing before an Administrative Law Judge; and

(ii) any other matter (including any issue respecting such matter) designated by the Commission.

(2) *Definitions.* For purposes of this paragraph:

(i) "Settlement Judge" means the Administrative Law Judge appointed by the Chief Administrative Law Judge to conduct settlement negotiations under this paragraph;

(ii) "Presiding Judge" means the Administrative Law Judge appointed by the Chief Administrative Law Judge to preside at the hearing set by Commission order.

(3) *Requests for appointment of settlement judges.*

(i) Any party, or staff, may file a motion for the appointment of a settlement judge. The motion shall be filed:

(A) with the presiding judge if:

(I) one has been appointed and (II) the matter is pending before the presiding judge; or

(B) with the Chief Administrative Law Judge if a presiding judge has not yet been appointed; or

(C) with the Commission if the matter is not yet set for hearing or is no longer pending before a presiding judge.

(ii) Any presiding judge may, on the judge's own motion, request the Chief Administrative Law Judge to appoint a settlement judge.

(iii) Notwithstanding the provisions of § 1.12(c), the motion may be acted upon at any time. Answers or objections filed after a motion has been acted upon will not be considered.

(4) *Commission orders directing appointment of settlement judge.* The Commission may by order, upon request or acting on its own motion, direct the Chief Administrative Law Judge to appoint a settlement judge.

(5) *Appointment of settlement judge.* (i) The Chief Administrative Law Judge may appoint a settlement judge:

(A) upon request for appointment of a settlement judge with respect to proceedings in which a presiding judge has not yet been assigned, and

(B) with respect to a proceeding before a presiding judge, if the presiding judge requests, or concurs in a request for, the appointment of a settlement judge.

(ii) The Chief Administrative Law Judge shall appoint a settlement judge if the Commission by order directs the Chief Administrative Law Judge to appoint a settlement judge.

(6) *Order appointing settlement judge.* The appointment of a settlement judge shall be by order of the Chief Administrative Law Judge. Such order shall specify whether and to what extent the proceeding is suspended pending termination of the settlement negotiation. Any such order may confine the scope of settlement negotiations to specified issues.

(7) *Powers and duties of settlement judge.* (i) The settlement judge shall call and preside over conferences and settlement negotiations of the parties and assess the practicalities of a potential settlement.

(ii) The settlement judge shall submit a report to the Chief Administrative Law Judge or Commission, as appropriate, of the status of the settlement negotiations and an evaluation as to settlement prospects. The settlement judge may make recommendations as to the continuation of settlement negotiations. The first report shall be made no later than 30 days following the appointment of the settlement judge. The Commission or the Chief Administrative Law Judge

may order additional reports at any time.

(8) *Termination of settlement negotiations before a settlement judge.* Unless the order of the Commission directing the appointment of a settlement judge otherwise provides, settlement negotiations under this paragraph shall terminate upon the order of the Chief Administrative Law Judge after consultation with the settlement judge.

(9) *Non-reviewability.* Any decision concerning the appointment of a settlement judge or termination of settlement negotiations shall not be subject to review by, appeal to, or rehearing by the presiding judge, Chief Administrative Law Judge or the Commission.

(10) *Multiple settlement negotiations.* Notwithstanding the termination of settlement negotiations under subparagraph (8), the Chief Administrative Law Judge may subsequently appoint a settlement judge in the same proceeding to conduct settlement negotiations in accordance with this paragraph.

[FR Doc. 80-20358 Filed 7-7-80; 8:45 am]
BILLING CODE 6450-85-M

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**18 CFR Part 272**

**[Docket No. RM79-44]**

## High-Cost Natural Gas; Order Denying Rehearing of Order No. 78

June 20, 1980.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Order Denying Rehearing of Order No. 78.

**SUMMARY:** This order denies two applications for rehearing of Order No. 65 (Docket No. RM79-44, 45 FR 28092, April 28, 1980). In Order No. 78, the Commission issued the final rule implementing section 121 of the Natural Gas Policy Act of 1978 (NGPA) (15 U.S.C. 3331). Section 121(b) deregulates certain high-cost gas described in section 107(c) (1) through (4) of the NGPA (15 U.S.C. 2217).

**FOR FURTHER INFORMATION CONTACT:** Teresa Ponder, Office of the General Counsel, Room 8100, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8151.

On April 22, 1979, the Federal Energy Regulatory Commission (Commission) issued Order No. 78 in Docket No. RM79-44 (45 FR 28092, April 28, 1980). Applications for rehearing of that order were filed on May 21, 1980, by Kentucky West Virginia Gas Company (Kentucky West) and on May 22, 1980, by Consolidated Gas Supply Corporation (Consolidated). Consolidated's application requested, in the alternative, clarification of Order No. 78.

In Order No. 78 the Commission issued the final rule implementing section 121 of the Natural Gas Policy Act of 1978 (NGPA) (15 U.S.C. 3331). Section 121 deregulates certain high-cost natural gas described in section 107(c) (1) through (4) of the NGPA (15 U.S.C. 2217).

### I. Application of Kentucky West.

Kentucky West submits that the Commission unlawfully excluded certain sales of pipeline production from deregulation by improperly excluding them from first sale treatment under § 270.203. Section 121 eliminates price controls only with respect to the first sale of gas described in section 107(c) (1) through (4). Section 270.203, as issued in Order No. 58 (44 FR 66577, November 20, 1979) in Docket No. RM80-7, provides that a sale by a pipeline or distributor is not a first sale unless the sale is comprised exclusively of production by the pipeline or distributor or the sale is a mixed volume sale which would not be regulated pursuant to the Natural Gas Act (15 U.S.C. 717-717w) or by a state statute to establish modify, or set aside the rate for such sale. All issues raised by Kentucky West regarding deregulation relate to the Commission's definition of a first sale in Order No. 58. Therefore, they fall outside the scope of this rulemaking on deregulation, and petition for rehearing is denied.[1]

### II. Application of Consolidated

Consolidated claims that the Commission's definition of "natural gas produced from Devonian shale" is unlawful and does not reflect Congressional intent. The definition reads as follows in § 272.103(e):

" 'Natural gas produced from Devonian shale' means natural gas produced from the fractures, micropores and bedding planes of shales deposited during the Paleozoic Devonian Period. 'Shales deposited during the Paleozoic Devonian Period' means the gross Devonian age stratigraphic interval encountered by a well bore, at least 95 percent of which has a gamma ray index of 0.7 or greater. The gamma ray index at any point is to be calculated by dividing the gamma ray log value at that point by the gamma log value at the shale base line established over the entire Devonian age interval penetrated by the well bore."

Consolidated contends that the definition should require that 95 percent of the producing interval rather than 95 percent of the gross Devonian age stratigraphic interval encountered by the well bore should have a gamma ray index of 0.7 or greater. Consolidated claims that the Commission's definition will disqualify a significant number of wells producing from Devonian shale and will qualify other wells which are producing from traditional sandstone and siltstone formations. The Commission does not agree that the definition adopted by the Commission disqualifies a "significant" number of wells producing from Devonian shale, or that Consolidated's suggestion would qualify a significant number of wells that do produce from Devonian shale and are disqualified by the present definition.

Admittedly Consolidated's definition might serve to qualify a limited amount of production which is disqualified under the existing definition. However, Consolidated's suggested definition would have a net effect of disqualifying most of the volumes of gas which would qualify under the present definition. The present definition qualifies gas produced from Devonian shale even if the perforation is located at a sand stringer so long as the presence of sand stringers along the well bore in the Devonian age interval does not exceed 5 percent of the Devonian age interval. Consolidated's definition would exclude much production where the producer has perforated at a sand stringer because the presence of the sand stringer, when measuring only the producing interval, would represent a much higher percentage of the length of the production interval.

Consolidated also argues that the definition qualifies production from traditional sandstone and siltstone formations. The NGPA requries that a high-cost gas category be extended to Devonian shale production; the NGPA does not require that the category be limited only to production from qualifying Devonian shale formations which are pure shale rather than predominantly shale. Because of the problems inherent in delineating shale boundaries, discussed in the Preamble to Order No. 78, the Commission defined Devonian shale in a manner which includes production from any zone consisting predominantly of shale. The Commission believes that this inclusive definition is permitted by the language of section 107(c)(4).

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[1] Kentucky West raised similar issues regarding the definition of first sale in its petition for rehearing in Docket NO. RM80-7. Those issues will be dealt with in that docket. As the Commission indicated in Order No. 58, decision regarding sales of pipeline production that are not first sales should be made in the context of Docket No. RM80-6.

Moreover, section 501(b) of the NGPA authorizes the Commission to define accounting, technical and trade terms used in the Act. "Natural gas produced from Devonian shale" is defined pursuant to that authority. That the final definition would qualify more gas than Consolidated would prefer because it qualifies production from a *de minimus* quantity of sand stringers in the Devonian shale formation does not render the definition unlawful. Consolidated's specification of error is rejected and the petition is denied.

*The Commission Orders:*

The applications for rehearing of Order No. 78 of Kentucky West and Consolidated are denied.

By the Commission.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 80-20308 Filed 7-7-80; 8:45 am]

BILLING CODE 6450-85-M

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[Docket No. RM80-15]

## 18 CFR Part 274

## Determination by Jurisdictional Agencies; Order Granting in Part and Denying in Part Rehearing of Order No. 65, Correction

June 23, 1980.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final rule, correction.

**SUMMARY:** This notice contains a correction of Order No. 65–A Order Granting in Part and Denying in Part Rehearing of Order No. 65. Order No. 65 provided final regulations for minimum filing requirements for applications to jurisdictional agencies for determinations of eligibility for various categories of natural gas.

**FOR FURTHER INFORMATION CONTACT:** Clarence C. Burris, Office of the General Counsel, Federal Energy Regulatory Commission, Room 8100–E, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357–8446.

**SUPPLEMENTARY INFORMATION:** In the Federal Energy Regulatory Commission's Order No. 65–A, Granting in Part and Denying in Part Rehearing of Order No. 65, issued February 29, 1980 (45 *Fed. Reg.* 15523, March 11, 1980) at 45 *Fed. Reg.* 15524, the third sentence of the first paragraph following footnote number 1 should be corrected to read as follows:

"In such cases, the Commission does not expect the applicant to search the jurisdictional agency's records, as long as the applicant has no reason to believe that the jurisdictional agency's records contain relevant information in addition to copies of the applicant's own records."

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 80-20359 Filed 7-7-80; 8:45 am]

BILLING CODE 6450-85-M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 146

[Docket No. 78P-0122]

## Canned Fruit Juices; Reduced Acid Frozen Concentrated Orange Juice; Establishment of Identity Standard; Confirmation of Effective Date

**AGENCY:** Food and Drug Administration.

**ACTION:** Confirmation of effective date.

**SUMMARY:** This document confirms the effective date for compliance with the standard of identity for reduced acid frozen concentrated orange juice. The purpose of the final regulation which is being confirmed by this notice is to provide the consumer with a sweeter tasting orange juice without the addition of a sweetner.

**DATES:** Effective July 1, 1981, for all affected products initially introduced into interstate commerce on or after that date. Voluntary compliance may have begun April 28, 1980.

**FOR FURTHER INFORMATION CONTACT:** F. Leo Kauffman, Bureau of Foods (HFF–214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–245–1164.

**SUPPLEMENTARY INFORMATION:** The Food and Drug Administration (FDA), based on a petition submitted by the Coca-Cola Co., Foods Division, P.O. Box 2079, Houston, TX 77001, issued a final regulation in the **Federal Register** of February 26, 1980 (45 FR 12414) to establish a standard of identity for reduced acid frozen concentrated orange juice. The final regulation provided that any person who would be adversely affected could at any time, on or before March 27, 1980, file written objections to the final regulation and request a hearing on the specific provisions to which there were objections. No objections have been filed.

**§ 146.148 [Confirmed effective]**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), notice is given that § 146.148 *Reduced acid frozen concentrated orange juice* (21 CFR 146.148) as promulgated in the **Federal Register** of February 26, 1980 (45 FR 12414) will become effective July 1, 1981. Voluntary compliance may have begun April 28, 1980.

Dated: June 20, 1980.

**William F. Randolph,**

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 80-20347 Filed 7-7-80; 8:45 am]

BILLING CODE 4110-03-M

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## 21 CFR Parts 510 and 558

## New Animal Drugs for Use in Animal Feeds; Tylosin

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The regulations are amended to reflect approval of a new animal drug application (NADA) filed for Nutra-Blend Corp., providing for safe and effective use of 4- and 10-grams-per-pound tylosin premix for making complete swine feeds, and to add this firm to the list of approved NADA sponsors.

**DATE:** Effective July 8, 1980.

**FOR FURTHER INFORMATION CONTACT:** Jack C. Taylor, Bureau of Veterinary Medicine (HFV–136), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5247.

**SUPPLEMENTARY INFORMATION:** Nutra-Blend Corp., P.O. Box 485, Neosho, MO 64850, is sponsor of NADA 122–158 submitted on its behalf by Elanco Products Co. The NADA provides for use of premixes containing 4 and 10 grams of tylosin (as tylosin phosphate) per pound for making complete swine feeds used to increase rate of weight gain and improve feed efficiency.

Approval of this NADA relies upon safety and effectiveness data contained in Elanco Product Co.'s approved NADA 12–491. Use of the data in NADA 12–491 to support this NADA has been authorized by Elanco. This approval does not change the approved use of the drug. Consequently, approval of this NADA poses no increased human risk from exposure to residues of the animal drug, nor does it change the conditions of the drug's safe use in the target animal species. Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977) approval of

this NADA has been treated as would an approval of a Category II supplement and did not require reevaluation of safety and effectiveness data in NADA 12-491.

Nutra-Blend Corp. has not previously been included in the regulations under the list of approved sponsors. The regulations are amended to reflect this approval and to include this firm in the list of sponsors.

In accordance with the provisions of Part 20 (21 CFR Part 20) promulgated under the Freedom of Information Act (5 U.S.C. 552) and the freedom of information regulations in § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of the safety and effectiveness data and information submitted to support approval of this application is released for public examination at the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.83), Parts 510 and 558 are amended as follows:

1. In Part 510, § 510.600 is amended by adding a new sponsor alphabetically to paragraph (c)(1) and numerically to paragraph (c)(2) to read as follows:

**§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.**

* * * * *

(c) * * *

(1) * * *

| Firm name and address | Drug labeler code |
|---|---|
| * * * * * | |
| Nutra-Blend Corp., P.O. Box 485, Neosho, MO 64850 | 050568 |
| * * * * * | |

(2) * * *

| Drug labeler code | Firm name and address |
|---|---|
| * * * * * | |
| 050568 | Nutra-Blend Corp., P.O. Box 485, Neosho, MO 64850. |
| * * * * * | |

2. In Part 558, § 558.625 is amended by adding new paragraph (b)(71) to read as follows:

**§ 558.625 Tylosin**

* * * * *

(b) * * *

(71) To 050568: 4 and 10 grams per pound: Paragraph (f)(1)(vi)(*a*) of this section.

* * * * *

*Effective date.* This amendment is effective July 8, 1980.

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

Dated: June 30, 1980.

**Lester M. Crawford,**

*Director, Bureau of Veterinary Medicine.*

[FR Doc. 80-20129 Filed 7-7-80; 8:45 am]

BILLING CODE 4110-03-M

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**21 CFR Part 558**

## New Animal Drugs for Use in Animal Feeds; Pyrantel Tartrate

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) amends the animal drug regulations to reflect approval of a new animal drug application (NADA) filed for Dale Alley Co., providing for safe and effective use of 9.6- and 19.2-gram-per-pound pyrantel tartrate premixes for making complete swine feeds.

**EFFECTIVE DATE:** July 8, 1980.

**FOR FURTHER INFORMATION CONTACT:** Charles E. Haines, Bureau of Veterinary Medicine (HFV-138), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3410.

**SUPPLEMENTARY INFORMATION:** Dale Alley Co., Box 444, St. Joseph, MO 64502 is sponsor of NADA 118-875 submitted on its behalf by Pfizer, Inc. The NADA provides for use of premixes containing 9.6 and 19.2 grams of pyrantel tartrate per pound for making complete swine feeds used (1) as an aid in prevention of migration and establishment of large roundworm (*Ascaris suum*) infections, (2) as an aid in prevention of nodular worm (*Oesophagostomum*) infections, and (3) for removal and control of large roundworm (*Ascaris suum*) and nodular worm (*Oesophagostomum*) infections.

Approval of this application relies on safety and effectiveness data contained in Pfizer's approved NADA 43-290. Use of the data in NADA 43-290 to support this application has been authorized by Pfizer. This approval does not change the approved use of the drug. Consequently, approval of this NADA poses no increased human risk from exposure to residues of the animal drug, nor does it change the conditions of the drug's safe use in the target animal species. Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy, issued in the **Federal Register** of December 23, 1977 (42 FR 64367), the approval of this NADA has been treated as would an approval of a Category II supplement and did not require reevaluation of the safety and effectiveness data in NADA 43-290.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(iii) (proposed December 11, 1979, 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessement nor an environmental impact statement is required.

In accordance with the provisions of Part 20 (21 CFR Part 20) promulgated under the Freedom of Information Act (5 U.S.C. 552) and the freedom of information regulations in § 514(e)(2)(ii) of the animal drug regulations (21 CFR 514.11(e)(2)(ii)), a summary of the safety and effectiveness data and information submitted to support approval of this application is released publicly. The summary is available for public examination at the Office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.485 by adding new paragraph (a)(6) to read as follows:

**§ 558.485 Pyrantel tartrate.**

(a) * * *

(6) To 018083: 9.6 and 19.2 grams per pound, paragraph (e) (1) through (3).

* * * * *

*Effective date.* This amendment is effective July 8, 1980.

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

Dated: June 27, 1980.

**Lester M. Crawford,**

*Director, Bureau of Veterinary Medicine.*

[FR Doc. 80-20127 Filed 7-7-80; 8:45 am]

BILLING CODE 4110-03-M

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**21 CFR Part 558**

## New Animal Drugs for Use in Animal Feeds; Pyrantel Tartrate

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) amends the animal drug regulations to reflect approval of a new animal drug application (NADA) filed for Carl S.

Akey, Inc., providing for safe and effective use of 9.6- and 19.2-gram-per-pound pyrantel tartrate premixes for making complete swine feeds.

**EFFECTIVE DATE:** July 8, 1980.

**FOR FURTHER INFORMATION CONTACT:** Charles E. Haines, Bureau of Veterinary Medicine (HFV–138), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3410.

**SUPPLEMENTARY INFORMATION:** Carl S. Akey, Inc., Lewisburg, OH 45338, is sponsor of NADA 118–814 submitted on its behalf by Pfizer, Inc. The NADA provides for use of premixes containing 9.6 and 19.2 grams of pyrantel tartrate per pound for making complete swine feeds used (1) as an aid in prevention of migration and establishment of large roundworm (*Ascaris suum*) infections, (2) as an aid in prevention of nodular worm (*Oesophagostomum*) infections, and (3) for removal and control of large roundworm (*Ascaris suum*) and nodular worm (*Oesophagostomum*) infections.

Approval of this application relies on safety and effectiveness data contained in Pfizer's approved NADA 43–290. Use of the data in NADA 43–290 to support this application has been authorized by Pfizer. This approval does not change the approved use of the drug. Consequently, approval of this NADA poses no increased human risk from exposure to residues of the animal drug, nor does it change the conditions of the drug's safe use in the target animal species. Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy, issued in the **Federal Register** of December 23, 1977 (42 FR 64367), the approval of this NADA has been treated as would an approval of a Category II supplement and did not require reevaluation of the safety and effectiveness data in NADA 43–290.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(iii) (proposed December 11, 1979, 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

In accordance with the provisions of Part 20 (21 CFR Part 20) promulgated under the Freedom of Information Act (5 U.S.C. 552) and the freedom of information regulations in § 514.11(e)(2)(ii) of the animal drug regulations (21 CFR 514.11(e)(2)(ii)), a summary of the safety and effectiveness data and information submitted to support approval of this application is released publicly. The summary is available for public examination at the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.485 by adding new paragraph (a)(5) to read as follows:

**§ 558.485 Pyrantel tartrate.**

(a) * * *

(5) To 017790: 9.6 and 19.2 grams per pound, paragraph (e) (1) through (3).

* * * * *

Effective date. This amendment is effective July 8, 1980.

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

Dated: June 27, 1980.

**Lester M. Crawford,**

*Director, Bureau of Veterinary Medicine.*

[FR Doc. 80-20128 Filed 7-7-80; 8:45 am]

**BILLING CODE 4110-03-M**

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**21 CFR Part 558**

## New Animal Drugs for Use in Animal Feeds; Pyrantel Tartrate

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) amends the animal drug regulations to reflect approval of a new animal drug application (NADA) filed for Feed Fortifiers, Inc., providing for safe and effective use of 9.6- and 19.2-gram-per-pound pyrantel tartrate premixes for making complete swine feeds.

**EFFECTIVE DATE:** July 8, 1980.

**FOR FURTHER INFORMATION CONTACT:** Charles E. Haines, Bureau of Veterinary Medicine (HFV–138), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3410.

**SUPPLEMENTARY INFORMATION:** Feed Fortifiers, Inc., Manson, IA 50563, is sponsor of NADA 119–063 submitted on its behalf by Pfizer, Inc. The NADA provides for use of premixes containing 9.6 and 19.2 grams of pyrantel tartrate per pound for making complete swine feeds used (1) as an aid in prevention of migration and establishment of large roundworm (*Ascaris suum*) infections, (2) as an aid in prevention of nodular worm (*Oesophagostomum*) infections, and (3) for removal and control of large roundworm (*Ascaris suum*) and nodular worm (*Oesophagostomum*) infections.

Approval of this application relies on safety and effectiveness data contained in Pfizer's approved NADA 43–290. Use of the data in NADA 43–290 to support this application has been authorized by Pfizer. This approval does not change the approved use of the drug. Consequently, approval of this NADA poses no increased human risk from exposure to residues of the animal drug, nor does it change the conditions of the drug's safe use in the target animal species. Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy, issued in the **Federal Register** of December 23, 1977 (42 FR 64367), the approval of this NADA has been treated as would an approval of a Category II supplement and did not require reevaluation of the safety and effectiveness data in NADA 43–290.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(iii) (proposed December 11, 1979, 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

In accordance with the provisions of Part 20 (21 CFR Part 20) promulgated under the Freedom of Information Act (5 U.S.C. 552) and the freedom of information regulations in § 514.11(e)(2)(ii) of the animal drug regulations (21 CFR 514.11(e)(2)(ii)), a summary of the safety and effectiveness data and information submitted to support approval of this application is released publicly. The summary is available for public examination at the office of the Hearing Clerk (HFA–305), Rm. 4–62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.485 by adding new paragraph (a)(7) to read as follows:

**§ 558.485 Pyrantel tartrate.**

(a)* * *

(7) To 017255: 9.6 and 19.2 grams per pound, paragraph (e)(1) through (3).

* * * * *

*Effective date.* This amendment is effective July 8, 1980.

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

Dated: June 27, 1980.

**Lester M. Crawford,**

*Director, Bureau of Veterinary Medicine.*

[FR Doc. 80-20130 Filed 7-7-80; 8:45 am]

BILLING CODE 4110-03-M

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**21 CFR Part 558**

## New Animal Drugs for Use in Animal Feeds; Pyrantel Tartrate

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) amends the animal drug regulations to reflect approval of a new animal drug application (NADA) filed for Quali-Tech Products, Inc., providing for safe and effective use of 9.6- and 19.2-gram-per-pound pyrantel tartrate premixes for making complete swine feeds.

**EFFECTIVE DATE:** July 8, 1980.

**FOR FURTHER INFORMATION CONTACT:** Charles E. Haines, Bureau of Veterinary Medicine (HFV-138), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3410.

**SUPPLEMENTARY INFORMATION:** Quali-Tech Products, Inc., 318 Lake Hazeltine Dr., Chaska, MN 55318 is sponsor of NADA 118-815 submitted on its behalf by Pfizer, Inc. The NADA provides for use of premixes containing 9.6 and 19.2 grams of pyrantel tartrate per pound for making complete swine feeds used (1) as an aid in prevention of migration and establishment of large roundworm (*Ascaris suum*) infections, (2) as an aid in prevention of nodular worm (*Oesophagostomum*) infections, and (3) for the removal and control of large roundworm (*Ascaris suum*) and nodular worm (*Oesophagostomum*) infections.

Approval of this application relies on safety and effectiveness data contained in Pfizer's approved NADA 43-290. Use of the data in NADA 43-290 to support this application has been authorized by Pfizer. This approval does not change the approved use of the drug. Consequently, approval of this NADA poses no increased human risk from exposure to residues of the animal drug, nor does it change the conditions of the drug's safe use in the target animal species. Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy, issued in the **Federal Register** of December 23, 1977 (42 FR 64367), the approval of this NADA has been treated as would an approval of a Category II supplement and did not require reevaluation of the safety and effectiveness data in NADA 43-290.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(iii) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an enviromental assessment nor an environmental impact statement is required.

In accordance with the provisions of Part 20 (21 CFR Part 20) promulgated under the Freedom of Information Act (5 U.S.C. 552) and the freedom of information regulations in § 514.11(e)(2)(ii) of the animal drug regulations (21 CFR 514.11(e)(2)(ii)), a summary of the safety and effectiveness data and information submitted to support approval of this application is released publicly. The summary is available for public examination at the office of the Hearing Clerk (HFA-305), Rm. 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.485 by adding new paragraph (a)(3) to read as follows:

**§ 558.485 Pyrantel tartrate.**

(a) * * *

(3) To 016968: 9.6 and 19.2 grams per pound, paragraph (e)(1) through (3).

* * * * *

*Effective date:* This amendment is effective July 8, 1980.

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

Dated: June 27, 1980.

**Lester M. Crawford,**

*Director, Bureau of Veterinary Medicine.*

[FR Doc. 80-20131 Filed 7-7-80; 8:45 am]

BILLING CODE 4110-03-M

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**21 CFR Part 558**

## New Animal Drugs for Use in Animal Feeds; Pyrantel Tartrate

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** This document amends the animal drug regulations to codify a previously approved supplemental new animal drug application (NADA) providing for safe and effective use of 9.6- and 19.2-gram-per-pound pyrantel tartrate premixes for making complete swine feeds. The supplement is sponsored by Pfizer, Inc.

**EFFECTIVE DATE:** July 8, 1980.

**FOR FURTHER INFORMATION CONTACT:** Charles E. Haines, Bureau of Veterinary Medicine (HFV-138), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3410.

**SUPPLEMENTARY INFORMATION:** Pfizer, Inc., 235 E. 42nd St., New York, NY 10017, is sponsor of a supplemental NADA 43-290 providing for use of 2.1 and 4.2 percent (9.6- and 19.2-gram-per-pound) pyrantel tartrate premixes for making complete swine feeds. The feeds are used (1) as an aid in prevention of migration and establishment of large roundworm *(Ascaris suum)* infections, (2) as an aid in prevention of nodular worm (*Oesophagostomum* Species) infections, and (3) for removal and control of large roundworm *(Ascaris suum)* nodular worm (*Oesophagostomum* Species) infections. Pfizer's supplement was originally approved by letter of March 13, 1979, but was not published in the **Federal Register.** Pfizer currently holds approval for the same conditions of use for two pyrantel tartrate premixes of higher concentrations—10.6 and 17.6 percent (48- and 80-grams-per-pound). The regulations are amended to add the two lower concentration premixes.

Approval of this supplement, for use of the 9.6- and 19.2-gram-per-pound pyrantel tartrate premixes, relies on data and information in the parent application for use of the 48- and 80-gram-per-pound premixes. Under the Bureau of Veterinary Medicine's supplemental approval policy issued in the **Federal Register** of December 23, 1977 (42 FR 64367), this is a Category II supplemental approval which provides for use of a less concentrated premix to be used as currently approved. The supplement does not change the use of the drug. Thus, approval of this supplement poses no increased human risk from exposure to residues of the new animal drug nor does it adversely affect the safety and effectiveness of the drug. Therefore, under the supplemental policy this action did not require a reevaluation of the safety and effectiveness data in the parent application.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(iii) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

In accordance with the provisions of Part 20 (21 CFR Part 20) promulgated under the Freedom of Information Act (5 U.S.C. 552) and the freedom of

information regulations in § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted supporting approval of this application is available for public examination at the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))), under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.485 by revising paragraph (a) to read as follows:

**§ 558.485 Pyrantel tartrate.**

(a) *Approvals.* Premix levels of pyrantel tartrate granted to firms as sponsor(s) and identified by drug labeler codes in § 510.600(c) of this chapter for the specific usage indicated in paragraph (e) of this section:

(1) To 000069: 9.6, 19.2, and 80 grams per pound, paragraph (e) (1) through (3); 48 grams per pound, paragraph (e) (1) through (4).

(2) To 017800: 48 grams per pound, paragraph (e) (1) through (3).

* * * * *

*Effective date.* This amendment is effective July 8, 1980.

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

Dated: June 18, 1980.

**Robert A. Baldwin,**

*Associate Director for Scientific Evaluation.*

[FR Doc. 80-20132 Filed 7-7-80; 8:45 am]

BILLING CODE 4110-03-M

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## 21 CFR Part 558

## New Animal Drugs for Use in Animal Feeds; Pyrantel Tartrate

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) amends the animal drug regulations to reflect approval of a new animal drug application (NADA) filed for Henwood Feed Additives, Inc., providing for safe and effective use of 9.6- and 19.2-gram-per-pound pyrantel tartrate premixes for making complete swine feeds.

**EFFECTIVE DATE:** July 8, 1980.

**FOR FURTHER INFORMATION CONTACT:** Charles E. Haines, Bureau of Veterinary Medicine (HFV–138), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3410.

**SUPPLEMENTARY INFORMATION:** Henwood Feed Additives, Inc., P.O. Box 577, Lewisburg, OH 45338 is sponsor of NADA 118–874 submitted on its behalf by Pfizer, Inc. The NADA provides for use of premixes containing 9.6 and 19.2 grams of pyrantel tartrate per pound for making complete swine feeds used (1) as an aid in prevention of migration and establishment of large roundworm (*Ascaris suum*) infections, (2) as an aid in prevention of nodular worm (*Oesophagostomum*) infections, and (3) for removal and control of large roundworm (*Ascaris suum*) and nodular worm (*Oesophagostomum*) infections.

Approval of this application relies on safety and effectiveness data contained in Pfizer's approved NADA 43–290. Use of the data in NADA 43–290 to support this application has been authorized by Pfizer. This approval does not change the approved use of the drug. Consequently, approval of this NADA poses no increased human risk from exposure to residues of the animal drug, nor does it change the conditions of the drug's safe use in the target animal species. Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy, issued in the **Federal Register** of December 23, 1977 (42 FR 64367), the approval of this NADA has been treated as would an approval of a Category II supplement and did not require reevaluation of the safety and effectiveness data in NADA 43–290.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(iii) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

In accordance with the provisions of Part 20 (21 CFR Part 20) promulgated under the Freedom of Information Act (5 U.S.C. 552) and the freedom of information regulations in § 514.11(e)(2)(ii) of the animal drug regulations (21 CFR 514.11(e)(2)(ii)), a summary of the safety and effectiveness data and information submitted to support approval of this application is released publicly. The summary is available for public examination at the office of the Hearing Clerk (HFA–305), Rm. 4–62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.485 by adding new paragraph (a)(4) to read as follows:

**§ 558.485 Pyrantel tartrate.**

(a)* * *

(4) To 026186: 9.6 and 19.2 grams per pound, paragraph (e)(1) through (3).

* * * * *

*Effective date.* This amendment is effective July 8, 1980.

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

Dated: June 27, 1980.

**Lester M. Crawford,**

*Director, Bureau of Veterinary Medicine.*

[FR Doc. 80-20133 Filed 7-7-80; 8:45 am]

BILLING CODE 4110-03-M

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## DEPARTMENT OF THE INTERIOR

## Bureau of Indian Affairs

## 25 CFR Part 161

## Rights-of-Way Over Indian Lands; Revision to Final Rule

**AGENCY:** Bureau of Indian Affairs, Department of the Interior.

**ACTION:** Final rule.

**SUMMARY:** The Bureau proposes to make minor revisions in the regulations concerning the granting of rights-of-way over and across tribal land, individually owned Indian lands, and Government-owned land under the jurisiction of the Bureau. These regulations were extensively revised in 1968, and there has been no subsequent major legislation affecting rights-of-way over and across Indian lands. Hence these minor revisions are considered necessary to clarify certain policies and procedures governing the granting of rights-of-way.

**EFFECTIVE DATE:** August 7, 1980.

**FOR FURTHER INFORMATION CONTACT:** Richard S. McDermott, Director, Palm Springs Area Field Office, Bureau of Indian Affairs, P.O. Box 2245, Palm Springs, California 92263, telephone (714) 325–2086.

**SUPPLEMENTARY INFORMATION:** The primary author of this document is Richard S. McDermott, whose address appears above. The updating and necessary revision of Title 25, Code of Federal Regulations is one of ten major management improvement projects undertaken by the Bureau of Indian Affairs which is nearing fruition. The author is the chairman of a sub-task force appointed by the Commissioner of Indian Affairs in 1976 to recommend revisions of Part 161, Rights-of-way. The

sub-task force consisted of Bell C. Haney, Anadardo, Oklahoma, Area Office; Joseph P. Donahue, Juneau, Alaska, Area Office; Marcus J. Sekayouma, Phoenix, Arizona, Area Office; and Hubert C. McCloskey, Rosebud Agency, Rosebud, South Dakota. Since appointment, the sub-task force has met several times both before and after publication in the **Federal Register** on July 7, 1978 (43 FR 29317), of the proposed revision to Part 161.

The revision proposed that § 161.3(c) be revised to include "service line agreements" within the granting authority of the Secretary without consent in special circumstances. There was so little support expressed for this proposal in the written comments received and in the panel discussions at the Conference of Real Property Managers of the Bureau of Indian Affairs held in Denver, Colorado, from October 30 to November 3, 1978, that the sub-task force elected to withdraw the proposed revision and not include it in the Final Rule.

It was the consensus that the matter of a service line agreement is adequately covered in 25 CFR Part 161.22 in its present form. The sub-task force members hasten to emphasize, however, that if the proposed service line traverses intervening Indian land of different ownership, then all the applicable provisions of 25 CFR Part 161 are called into play.

The provisions of 25 CFR Part 161.5 cover the procedure to be followed in applying for a right-of-way. The proposed revision provides that the application must specify the specific use which will be the subject of the right-of-way granted. The right-of-way granted will then be limited to the specific use. The purpose of this revision is to halt the practice of multiple uses of a right-of-way area under a prior grant of easement that did not specifically limit the scope of the right-of-way. The prior practice has led to additional uses in accordance with state law but without agency approval or payment of compensation for a subsequent compatible use of the right-of-way area. The oral and written comments received were substantially in accord with this proposed revision.

The next revision is a rewrite of Section 161.12 to provide that the determination of fair market value is to be considered the minimum acceptable valuation for negotiation purposes, not to be confused with and considered as the maximum acceptable valuation. A new sentence is added requiring that the landowners be advised of the valuation information prior to the commencement of negotiations which goes without saying that that is also prior to the obtaining of consents by the prospective grantee of the easement.

Numerous written comments were received concerning this proposed revision, including comments from the General Counsel for the All Indian Pueblo Council and from the Department of Transportation of the State of Washington. It was not the intention of this revision to alter the existing practices by which fair market value is determined. The change in procedure speaks to the use of the fair market value information after determination.

The final revision concerns a minor change in wording in the first sentence of Section 161.20 in which the words "shall be terminable" are changed to "may be terminated". The thinking of the sub-task force members is that this is a grammatical clarification and does not increase or decrease the discretionary authority contained within the section.

The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

The amended sections of 25 CFR Part 161 are as follows:

## PART 161—RIGHTS-OF-WAY OVER INDIAN LANDS

1. In § 161.5, the first sentence is revised to read as follows:

**§ 161.5 Application for right-of-way.**

Written application identifying the specific use requested shall be filed in duplicate with the Secretary. * * *

2. Section 161.12 is revised to read as follows:

**§ 161.12 Consideration for right-of-way grants.**

Except when waived in writing by the landowners or their representatives as defined in § 161.3 and approved by the Secretary, the consideration for any right-of-way granted or renewed under this Part 161 shall be not less than but not limited to the fair market value of the rights granted, plus severance damages, if any, to the remaining estate. The Secretary shall obtain and advise the landowners of the appraisal information to assist them (the landowner or landowners) in negotiations for a right-of-way or renewal.

3. In § 161.20, the introductory text is revised to read as follows:

**§ 161.20 Termination of right-of-way grants.**

All rights-of-way granted under the regulations in this part may be terminated in whole or in part upon 30 days written notice from the Secretary mailed to the grantee at its latest address furnished in accordance with § 161.5(j) for any of the following causes:

* * *

* * * * *

Dated: June 27, 1980.

**Ralph R. Reeser,**

*Acting Deputy Assistant Secretary—Indian Affairs.*

[FR Doc. 80-20353 Filed 7-7-80; 8:45 am]

**BILLING CODE 4310-02-M**

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## 43 CFR Public Land Order 5731

**[F-031036]**

## Alaska, Partial Revocation of Public Land Order 693 and Classification of Lands for Conveyance to Cook Inlet Region, Inc.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This public land order partially revokes Public Land Order 693 of December 12, 1950, and classifies and considers as withdrawn certain lands for conveyance to Cook Inlet Region, Inc., under the Alaska Native Claims Settlement Act (ANCSA).

**EFFECTIVE DATE:** July 8, 1980.

**FOR FURTHER INFORMATION CONTACT:** Beau McClure 202-343-6511, or Bob Arnold, Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

The lands in paragraph 1 of this order were withdrawn by Public Land Order (PLO) 693 on December 12, 1950, and reserved under the jurisdiction of the Department of the Air Force for military purposes. On June 14, 1971, the Department of the Air Force filed a notice of intention to relinquish a 361-acre portion of the Murphy Dome Air Force Station near Fairbanks, Alaska. On March 15, 1972, the lands were further withdrawn by PLO 5187 for study and review to determine the proper classification under Sec. 17(d)(1) of the Alaska Native Claims Settlement Act (ANCSA).

By virtue of the authority vested in the Secretary of the Interior, by Sec. 17(d)(1) of the ANCSA, 85 Stat. 688, 708, and pursuant to Sec. 204 of the Act of October 21, 1976, 90 Stat. 2751 (43 U.S.C. 1714), it is ordered as follows:

1. PLO 693 of December 12, 1950, is revoked as to the lands described below

and, subject to valid existing rights, the following described lands are hereby classified as suitable for conveyance to Cook Inlet Region, Inc., in accordance with paragraph I.C.(2) of the "Terms and Conditions for Land Conveyance and Management in the Cook Inlet Area" as clarified August 31, 1976, and Sec. 12(b)(6) of the Act of January 2, 1976, 89 Stat. 1151:

**Parcel B, Fairbanks Meridian:**

T. 1 N., R. 3 W.
Sec. 20, E½ and E½W½, those portions lying west of the west right-of-way of the Alaska Railroad.

The lands described contain approximately 361 acres.

2. PLO 5187 is hereby modified to the extent that the lands described in paragraph 1 are now considered withdrawn for selection for the purposes of Sec. 2 of the Act of January 2, 1976, and are classified for the purpose of conveyance to Cook Inlet Region, Inc., as part of its entitlement under the ANCSA.

3. This order shall not effect the lands included in Parcel A of PLO 693, as amended by PLO 1604.

4. Prior to any conveyance of the lands described in paragraph 1, the lands shall be subject to administration by the Secretary of the Interior, under applicable laws and regulations, and his authority to make contracts and to grant leases, permits, rights-of-way, or easements shall not be impaired by this order. Applications for leases under the Mineral Leasing Act, as amended, 30 U.S.C. 181–287 (1970), will be rejected until this order is modified or the lands are appropriately classified to permit mineral leasing.

**Guy R. Martin,**

*Assistant Secretary of the Interior.*

June 30, 1980.

[FR Doc. 80-20298 Filed 7-7-80; 8:45 am]

**BILLING CODE 4310-84-M**

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## Bureau of Land Management

## 43 CFR Public Land Order 5732

**[W-71313]**

## Wyoming; Modification of Executive Order No. 5327 and Public Land Order No. 4522

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order will modify previous orders to the extent necessary to permit the sale and conveyance of the surface estate of the following described lands which are needed for community expansion of the City of Green River, Wyoming.

**EFFECTIVE DATE:** July 8, 1980.

**FOR FURTHER INFORMATION CONTACT:** Marla Bohl, Wyoming State Office, 307–778–2336.

By virtue of the authority contained in section 204 of the Federal Land Policy and Management Act of 1976, (90 Stat. 2751; 43 U.S.C. 1714), it is ordered as follows:

1. Executive Order No. 5327 of April 15, 1930 (as modified by Executive Order No. 6016 of February 6, 1933 and Executive Order No. 7038 of May 13, 1935) and Public Land Order No. 4522 of September 13, 1968, which withdrew public lands for the protection of the multiple development of the minerals and other resources in the lands are hereby modified only to the extent described in paragraph two below and only as to the following described lands:

**Sixth Principal Meridian**

T. 18 N., R. 107 W.,
Sec. 24, N½, SE¼, N½SW¼ and SE¼SW¼;
Sec. 34, All.

The area described contains 1,240 acres in Sweetwater County.

2. Except as any of the above-described lands may be subject to a Reservoir Reserve Withdrawal for the Colorado River Storage Project (W–29542), the surface estate in the above-described lands may be appropriated by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713). They remain subject to Public Land Order 4522 and Executive Order No. 5327 (as modified) and their withdrawals from all other forms of appropriation under the public land laws, including the mining laws, 30 U.S.C. Ch. 2, and the mineral leasing laws except as leasing were authorized by said withdrawals.

**Guy R. Martin,**

*Assistant Secretary of the Interior.*

June 30, 1980.

[FR Doc. 80-20258 Filed 7-7-80; 8:45 am]

**BILLING CODE 4310-84-M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Social Security Administration

## 45 CFR Part 233

## Financial Assistance Programs; Need and Amount of Assistance; Using Equity Value for Resources

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** This regulation clearly provides that, in determining eligibility for financial assistance, States must consider the value of a resource to be the applicant's or recipient's equity in that resource. Equity is defined as fair market value less encumbrances (legal debts). This policy reflects the court decision in *NWRO* v. *Mathews* (533 F. 2d 637).

The regulation affects applicants and recipients under the Aid to Families with Dependent Children program (title IV, Part A of the Social Security Act), and the adult assistance programs (titles I, X, XIV, and XVI (AABD) of the Social Security Act) administered in Guam, Puerto Rico, and the Virgin Islands.

**EFFECTIVE DATE:** This regulation shall be effective on July 8, 1980. However, we are providing a grace period of 90 days during which States that have to amend their rules and procedures in order to comply with this regulation will not be adversely affected by quality control sanctions.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Juanita Henderson, Office of Family Assistance, Social Security Administration, 2100 Second Street, S.W., Washington, D.C. 20024, telephone (202) 245–2015.

**SUPPLEMENTARY INFORMATION:**

*Background*

Section 402(a)(7) of the Social Security Act specifies that all income and resources not otherwise disregarded must be considered in determining a person's need for and the amount of an assistance payment. The Federal regulations at 45 CFR 233.20(a)(3)(ii) (D) and (E) state:

"(D) net income available for current use and currently available resources shall be considered; income and resources are considered available both when actually available and when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintence.

(E) income and resources will be reasonably evaluated."

Prior to 1966, the Department permitted States to set their own resource limits; therefore, each State established the amount of resources that applicants and recipients could reserve. In 1966, however, a maximum reserve of $2,000 per person was established in the Handbook of Public Assistance Administration as an upper limit for applicants' and recipients' reserves. This provision was added to the Code of Federal Regulations in 1974. In practice, States used equity value or gross market value in evaluating resources. The $2,000

maximum remained in effect until a new resource limitation regulation was published on March 19, 1975 (40 FR 12507). The new regulation set maximums for the value of particular categories of resources a State could permit an AFDC family to retain. It also required States to evaluate all resources at their gross market value, regardless of encumbrances (legal debts).

The 1975 regulation was declared invalid on February 20, 1976, by the United States Court of Appeals for the District of Columbia, in the case of *NWRO* v. *Mathews* (533 F. 2d 637). The Court found that the regulation conflicted with the Social Security Act in that the regulation required personal and real property to be valued without regard to encumbrances. Accordingly, the regulation was changed to delete the offending language. However, while the requirement that market value be used was deleted, the regulation was not revised to clearly specify that States *may not* use market value (which is what the Court had ruled).

Because the current regulation does not clearly prohibit the use of market value, there has been confusion as to whether the Federal policy permits the use of market value. Thus, a regulation is necessary to reflect the court decision that Health and Human Services (HHS) may not require or permit States to disregard encumbrances in evaluating real and personal property in the public assistance programs.

*Difference Between the Current and Final Regulation*

Under the current regulation, 45 CFR 233.20(a)(3)(ii)(E), income and resources are required to be reasonably evaluated. However, the regulation does not specify a method for assessing the value of resources. The final regulation clearly specifies that resources will be assessed according to equity value. Equity is defined as fair market value minus encumbrances (legal debts).

*Good Cause for Dispensing With Notice and Public Comment*

This amendment to Department regulations clarifies existing federal policy which is required by the Social Security Act and for which the Department has no discretion. In 1976, the Court of Appeals for the District of Columbia held that the Social Security Act does not allow States to value resources without regard to encumbrances. The Department adopted the court's binding interpretation of the statute as its official policy. Since this amendment merely clarifies regulations to reflect existing statutory requirements and Departmental policy, the Department has determined that notice and opportunity for public comment are unnecessary and contrary to the public interest (5 U.S.C. 553(b)(B)).

*Grace Period for Quality Control Sanctions*

Our current regulations do not clearly state that the equity value rule must be followed, although the Social Security Act so required after the 1976 court decision *NWRO* v. *Mathews*, 553 F. 2d. 637.

We realize that some States may have been confused about the Department's position on this issue and that we may not have been effective in removing the confusion in a timely manner. Therefore, we are providing a 90-day grace period during which States that have to amend their rules and procedures in order to comply with this regulation will not be adversely affected by quality control sanctions. However, States are expected to implement this regulation immediately upon its publication in the **Federal Register**. This means that upon publication States are required to establish an applicant's or recipient's eligibility for AFDC by evaluating his or her resources on the basis of equity, rather than market value.

Section 233.20 is scheduled for recodification some months from now; it will be completely rewritten for increased clarity under Operation Common Sense.

(Secs. 402 and 1102 of the Social Security Act, as amended, 49 Stat. 629 as amended, 49 Stat. 647 as amended; 42 U.S.C. 602 and 1302)

(Catalog of Federal Domestic Assistance Program No. 13.808, Assistance Payments—Maintenance Assistance (State Aid))

Dated: May 28, 1980.

**William J. Driver,**

*Commissioner of Social Security.*

Approved: June 30, 1980.

**Patricia Roberts Harris,**

*Secretary of Health and Human Services.*

In part 233, Chapter II, Title 45 of the Code of Federal Regulations, § 233.20(a)(3)(ii)(E) is amended to read as follows:

**§ 233.20 Need and amount of assistance.**

* * * * *

(3) *Income and resources:* OAA, AFDC, AB, APTD, AABD. (i) * * *

(ii) * * *

(E) income and resources will be reasonably evaluated. Resources will be evaluated according to their equity value.

For purposes of this paragraph (a)(3); Automobile means a passenger car or other motor vehicle used to provide transportation of persons or goods; Equity value means fair market value minus encumbrances (legal debts); Fair market value means the price an item of a particular make, model, size, material or condition will sell for on the open market in the geographic area involved; Liquid assets are those properties in the form of cash or other financial instruments which are convertible to cash and include savings accounts, checking accounts, stocks, bonds, mutual fund shares, promissory notes, mortgages, loan value of insurance policies, and similar properties; Need standard means the money value assigned by the State to the basic and special needs it recognizes as essential for applicants and recipients;

* * * * *

[FR Doc. 80-20309 Filed 7-7-80; 8:45 am]

BILLING CODE 4110-07-M

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1033

**[Amdt. No. 10 to Service Order No. 1242]**

### The Kansas City Southern Railway Co. Authorized To Operate Over Certain Tracks of Southern Pacific Transportation Co.

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Amendment No. 10 to Service Order No. 1242.

**SUMMARY:** Service Order No. 1242 permits the Kansas City Southern to operate over certain tracks of the Southern Pacific. This amendment establishes a date certain for expiration, thus encouraging prompt filing for permanent authority.

**EFFECTIVE DATE:** 11:59 p.m., July 2, 1980. Expires: 11:59 p.m., Aug. 31, 1980.

**FOR FURTHER INFORMATION CONTACT:** M. F. Clemens, Jr. (202) 275-7840.

Decided: July 1, 1980

Upon further consideration of Service Order No. 1242, (41 FR 18053, 31824, 48344; 42 FR 6584, 39221; 43 FR 4432, 34147, 39795; and 44 FR 6731 and 39406) and good cause appearing therefor:

*It is ordered,*

**§ 1033.1242 [Service Order No. 1242].**

*In the matter of the Kansas City Southern Railway Company authorized to operate over certain tracks of Southern Pacific Transportation Company.*

Service Order No. 1242 is amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.* The provisions of this order shall remain in effect until

11:59 p.m., August 31, 1980, unless otherwise modified, amended or vacated by order of this Commission.

*Effective date.* This amendment shall become effective at 11:59 p.m., July 2, 1980.

This action is taken under the authority of 49 U.S.C. 10304–10305 and 11121–11126.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission, at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John H. O'Brien.

**Agatha L. Mergenovich,**

*Secretary.*

[FR Doc. 80–20355 Filed 7–7–80; 8:45 am]

BILLING CODE 7035–01–M

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**49 CFR Part 1033**

**[Amdt. No. 1 to Service Order No. 1393]**

## Southern Pacific Transportation Co. Authorized To Operate Over Tracks of the Kansas City Southern Railway Co. at Beaumont, Tex.

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Amendment No. 1 to Service Order No. 1393.

**SUMMARY:** Service Order No. 1393 permits the Southern Pacific to operate over certain tracks of the Kansas City Southern at Beaumont, Texas, to relieve congestion for traffic destined to the Gulf ports. This amendment establishes a date certain for expiration, thus encouraging prompt filing for permanent authority.

**EFFECTIVE DATE:** 11:59 p.m., July 2, 1980. Expires: 11:59 p.m., Aug. 31, 1980.

**FOR FURTHER INFORMATION CONTACT:** M. F. Clemens, Jr. (202) 275–7840.

Decided July 1, 1980.

Upon further consideration of Service Order No. 1393, (44 FR 47773), and good cause appearing therefor:

**§ 1033.1393 [Service Order No. 1393].**

*It is ordered,* § 1033.1393 *Southern Pacific Transportation Company authorized to operate over tracks of the Kansas City Southern Railway Company at Beaumont, Texas.*

Service Order No. 1393 is amended by substituting the following paragraph (f) for paragraph (f) thereof:

(f) *Expiration date.* The provisions of this order shall remain in effect until 11:59 p.m., August 31, 1980, unless otherwise modified, amended or vacated by order of this Commission.

*Effective date.* This order shall become effective at 11:59 p.m., July 2, 1980.

This action is taken under the authority of 49 U.S.C. 10304–10305 and 11121–11126.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission, at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington, and John H. O'Brien.

**Agatha L. Mergenovich,**

*Secretary.*

[FR Doc. 80–20354 Filed 7–7–80; 8:45 am]

BILLING CODE 7035–01–M

# Proposed Rules

Federal Register
Vol. 45, No. 132
Tuesday, July 8, 1980

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 Marketing Service

### 7 CFR Part 180

### Plant Variety Protection; Limits of Reciprocity

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Plant Variety Protection Office, Livestock, Poultry, Grain and Seed Division, offers statutory protection for 17 years to developers of new varieties of plants that reproduce through seeds (sexually). In order for foreign nationals to apply for protection in the United States reciprocity limitations must first be determined, consistent with the plant variety protection laws of each country, and then set forth in the regulations after appropriate rulemaking proceedings. The proposed change in regulations would maintain protection currently afforded to foreign nationals, however, it would eliminate the need for amending the regulations to establish reciprocity limits for each interested country or to take into account changes in the law of countries already referred to in the regulations. The change would also make it easier for U.S. nationals to obtain protection in foreign countries.

**DATES:** Comments must be received on or before August 7, 1980.

**ADDRESS:** Send two copies of comments to the Hearing Clerk, Room 1077, South Agricultural Building, U.S. Department of Agriculture, Washington, D.C. 20250, where they will be available for public inspection during regular business hours (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** Bernard M. Leese, Commissioner, Plant Variety Protection Office, Livestock, Poultry, Grain and Seed Division, AMS, National Agricultural Library Building, Beltsville, Maryland 20705 (301) 344–2518). The Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from the above named individual.

**SUPPLEMENTARY INFORMATION:** This proposed rule has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified "not significant".

The Department of Agriculture proposed simplifying the procedures for determining reciprocity limits recognized under section 43 of the Plant Variety Protection Act and section 180.5 of the Regulations and Rules of Practice.

The present procedure for establishing reciprocity requires an amendment to the rules of practice in section 180.5(a) to set the specific limits on protection for each country that indicates that a foreign national is interested in applying for plant variety protection in the U.S.A. This procedures requires unnecessary and time consuming rulemaking each time a new country requests reciprocity. In addition, for countries already covered by the rules of practice, amendment proceedings are required to take into account any changes in the laws of such countries that affect the limits on reciprocity previously set forth in the rules of practice. Rules now cover the United Kingdom, Federal Republic of Germany, Republic of South Africa, Israel, and the Netherlands. Several other countries have passed or have proposed plant variety protection legislation and are likely to request reciprocity agreements in the future, which would require USDA to amend the reciprocity regulations to permit applications from the requesting nations and to establish the appropriate limits. Such amendments require a thorough review of the current laws of each foreign country at the time of the original request, in addition, USDA must keep continuously informed of changes in foreign plant variety protection laws so that reciprocity agreements and the regulations can be changed to maintain the limits on protection for foreign nations equal to that which the foreign countries grant U.S. nationals.

The proposed rule modification would eliminate the need to amend the regulations to establish or update the reciprocity limits each time a foreign national seeks protection by establishing a general procedure to require foreign applicants to furnish a copy of their current national law and an English translation. Based on a review of these materials, the eligibility of the applicant and the limits on the protection to be granted would be determined so as to give the foreign applicant the amount of the protection that is afforded a U.S. national in that foreign country. However, the proposed regulation would not affect the rights of any foreign national whose application has been accepted in accordance with section 180.5 (a), since the reciprocity limits on any pending applications would already have been established at the time of filing of the applications based on the current regulations.

## PART 180—REGULATIONS AND RULES OF PRACTICE UNDER THE PLANT VARIETY PROTECTION ACT

Accordingly, in order that all foreign applicants may receive protection equal to that afforded U.S. nationals in their country, consistent with the reciprocity limits recognized under section 43 of the Act, § 180.5(a) including subparagraphs (1) through (4) should be deleted and replaced with new language as follows:

**§ 180.5 General Requirements.**

(a) Protection under this Act shall be limited to nationals of the United States except where this limitation would violate a treaty, and except that nationals of the United States except where this limitation would violate a treaty, and except that nationals of a foreign State:

(1) Shall be entitled to only so much of the protection afforded under this Act as is afforded by said foreign State to nationals of the United States for the same genus and species under the laws of said foreign State in effect at the time that the application for protection under this Act is filed.

(2) Shall, at the time of filing an application for plant variety protection in the United States, furnish the Plant Variety Protection Office, for use in determining the extent of protection to be provided in accordance with subparagraph (a)(1) above, with a copy of the current plant variety protection laws, and the regulations thereunder, for the country of which the applicant is a national and an accurate English translation of such laws and regulations.

* * * * *

(7 U.S.C. 2326 and 2403; 84 Stat. 1542 and 1547, section 6 and 43)

Signed at Washington, D.C. on: July 2, 1980.

**William T. Manley,**

*Deputy Administrator, Marketing Program Operations.*

[FR Doc. 80-20368 Filed 7-7-80; 8:45 am]

BILLING CODE 3410-02-M

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**Food Safety and Quality Service**

**9 CFR Part 381**

## Chilling Poultry Parts; Notice, Solicitation of Information

**AGENCY:** Food Safety and Quality Service, USDA.

**ACTION:** Notice, solicitation of information.

**SUMMARY:** The Food and Quality Service has been petitioned to amend the Federal poultry products inspection regulations to permit the chilling of hot-cut poultry backs and necks in a mixture of ice and water, or in mechanically refrigerated water in order to remove the body heat. Chilling poultry in cold water is more efficient than air or ice chilling. However, it also results in the absorption of water by the poultry. For this reason, the Agency is seeking additional information from interested members of the public before deciding what changes in existing regulations, if any, to propose.

**DATE:** Comments and information must be received on or before September 8, 1980.

**ADDRESS:** Written comments to: Annie Johnson, Regulations Coordination Division, Food Safety and Quality Service, U.S. Department of Agriculture, Room 2637, South Agriculture Building, Washington, D.C. 20250. Oral comments to: Dr. Arnold V. Giesemann, (202) 447-3219. (See also comments under Supplementary Information.)

**FOR FURTHER INFORMATION CONTACT:** Dr. Arnold V. Giesemann, Acting Director, Slaughter Inspection Standards and Procedures Division, Meat and Poultry Inspection Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-3219.

**SUPPLEMENTARY INFORMATION:**

### Comments

Interested persons are invited to submit comments and information concerning this request. Written comments must be sent in duplicate to the Regulations Coordination Division. Comments should bear reference to the date and page number of this issue of the **Federal Register.** Any person desiring opportunity for oral presentation of views concerning this request must make such request to Dr. Giesemann so that arrangements may be made for such views to be presented. A transcript shall be made of all views orally presented. All comments submitted pursuant to this notice will be made available for public inspection in the Regulations Coordination Division during regular business hours.

### Background

In the processing of poultry, it is necessary to remove the body heat from the carcass as rapidly as possible after slaughter to show the growth of microorganisms which cause spoilage and unwholesomeness. One of the most efficient methods of accomplishing this heat removal is by immersion of the carcass in mechanically refrigerated or ice-chilled water. However, water cooling also results in the absorption of water by the carcass.

Under section 381.66 of the Federal poultry products inspection regulations (9 CFR 381.66), USDA permits mechanically refrigerated or ice-chilled water to be used for chilling whole poultry carcasses in order to remove body heat and preserve the condition and wholesomeness of the poutry. However, the regulations restrict the amount of water which may be absorbed. The restrictions vary with the class of poultry, the weight of the carcass and the method of handling subsequent to chilling. For example, chickens weighing not more than 4½ pounds, to be consumer packaged, frozen or cooked as whole poultry, are permitted to absorb, on the average and in 4 weight checks out of 5, no more than 8 percent water.

Current Federal poultry products inspection regulations do not permit chilling of cut up poultry parts in water or in "slush" ice (a mixture of water and ice). However, parts may be chilled in crushed ice in continuously drained containers or by immediate entry into a freezer.

The USDA has received a petition from Hillcrest Foods, Inc., Lewiston, Maine, to amend § 381.65(h) of the Federal poultry products inspection regulations (9 CFR 381.65(h)) to authorize "slush ice chilling" of hot-cut poultry backs and necks.

Hillcrest Foods claims that the current regulation has caused their company severe production and financial hardships. The company states that it is ". . . not physically and economically feasible to chill . . . hot-cut backs and necks in layered ice as required by this regulation." It is contended that ". . . to effectively cool the product to USDA temperature requirements within the specified time period, an inordinate amount of ice must be used. The extra labor required for this method pushes this operation into an unprofitable position." The company further states that when minimal amounts of ice were used, the product spoiled before it reached the consumer. In addition to increased labor costs required in layering the ice over the product, the company claimed that added labor costs were involved in ". . . the hand removal of surplus ice which has a tendency to tenaciously cling to fat and meat."

In further support of its petition, Hillcrest Foods noted that "[t]he ice also creates another major problem for customers and the USDA when the product is used in further processing, particularly for such items as comminuted meat. The extra ice becomes mixed with the ground meat, creating excessive moisture buildup to the degree it is unacceptable to both the USDA and the customer."

Hillcrest Foods conducted tests to determine the amount of water absorption that occurred when hot-cut chicken backs and necks were chilled in ice and water. In four tests conducted in June and July 1979, they showed water absorption of 10.64 percent, 8.09 percent, 4.07 percent, and 8.67 percent was detected when the backs and necks were chilled in ice and water for 2 hours and then drained for 1 hour.

In August 1979, the USDA conducted four tests of ice vs. ice and water chilling of chicken backs and necks, and backs separately in the Hillcrest Foods plant. When backs and necks were chilled in ice alone as authorized by the regulations, they absorbed 0.97 percent water. When they are chilled in ice and water, they asborbed 7.18 percent water. Chilling backs alone, the comparable water absorption figures were 2.74 percent and 11.25 percent.

These tests showed that substantial water absorption does occur when hot-cut poultry parts are chilled in ice and water. In addition, USDA does not have reliable data concerning the relative cost of ice vs. ice and water chilling of hot-cut chicken backs and necks. The petitioner has presented no data showing the relative-costs and benefits to all affected parties of ice or air chilling vs. ice and water chilling. For this reason, the Department does not have a basis for either supporting or denying Hillcrest Foods' petition. To obtain the data and information required for further action of this petition, the Administrator is requesting that interested parties present their views on this matter. These comments will assist the Department in determining if a proposal should be issued to amend section 381.65(h) of the

Federal poultry products inspection regulations to permit the chilling of hot-cut poultry backs and necks in a mixture of ice or water, or in mechanically refrigerated water.

Done at Washington, D.C. on: July 1, 1980.

**Donald L. Houston,**

*Administrator, Food Safety and Quality Service.*

[FR Doc. 80-20365 Filed 7-7-80; 8:45 am]

BILLING CODE 3410-DM-M

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 50

### Domestic Licensing of Production and Utilization Facilities; Technical Specifications for Nuclear Power Reactors

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is considering the adoption of changes to its regulations pertaining to technical specifications for nuclear power reactors. The changes would (1) establish a standard for deciding which items derived from the safety analysis report must be incorporated into technical specifications, (2) modify the definitions of categories of technical specifications to focus more directly on reactor operation, (3) define a new category of requirements that would be of lesser immediate significance to safety than technical specifications, and (4) establish appropriate conditions that must be met by licensees to make changes to the requirements in the new category without prior NRC approval. The Commission seeks written public comment on the changes to the regulation.

**DATES:** Comment period expires September 8, 1980.

**ADDRESSES:** Interested persons are invited to submit written comments and suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of comments received by the Commission may be examined in the Commission's Public Document Room at 1717 H Street, NW, Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** Mr. J. Wetmore, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, phone 301-492-7306.

**SUPPLEMENTARY INFORMATION:** Each license for operation of a nuclear power reactor, issued by the NRC, contains technical specifications which set forth the specific characteristics of the facility and the conditions for its operation that are required to provide adequate protection to the health and safety of the public. Technical specifications cannot be changed by licensees without prior NRC approval.

*Historical background:* Before 1968, 10 CFR Part 50, § 50.36, Technical Specifications", required technical specifications to include "those significant design features, operating procedures, and operating limitations which [were] considered important in providing reasonable assurance that the facility [would] be constructed and operated without undue hazard to public health and safety." Technical specifications that were formulated in accordance with this regulation, as it was then written, generally contained more detailed design information than was considered to be necessary to assure safe reactor operation. These technical specifications proved to be difficult to organize, unduly restricted flexibility of reactor operation, and necessitated the processing of many changes that were not significantly related to safety.

In 1968 the Atomic Energy Commission (AEC), predecessor of the NRC, amended its regulations in §§ 50.26 and 50.59 (33 FR 18610, December 17, 1968). § 50.36 was amended to include a more precise definition of those categories of technical specifications that must be included in an application for an operating licens. The amended regulation narrowed the scope of the material contained in technical specifications by defining five specific categories of technical specifications. The five categories defined for nuclear reactors are: (1) Safety limits and limting safety system settings, (2) limiting conditions for operation, (3) surveillance requirements, (4) design features, and (5) administrative controls. The design information that was required to be retained included only those items which, if altered, would have a significant effect on safety. Amendments to § 50.59, among other things, clarified requirements for keeping records of design changes and defined more adequately the term "unreviewed safety question." The latter change established criteria for allowing licensees to make certain kinds of design changes (i.e., those not involving an unreviewed safety question or a change to technical specifications) without prior NRC approval. These amendments to §§ 50.36 and 50.59 (1) eliminated detailed design information from technical specifications, which, in turn, reduced the need for a large number of change requests, and (2) resulted in a system of technical specifications and regulations that more effectively directed the attention of both licensees' management and the NRC to matters important to safety.

As knowledge in the field of reactor safety increased, the level of complexity and detail in technical specifications also increased, and a divergence in content of technical specifications from one facility to another began to emerge. In addition, an increasing diversity of opinion among applicants and the staff as to what should be included as technical specifications resulted in protracted negotiations during the licensing process, and misapplication and misinterpretation of requirements by plant operating staffs after a license was issued.

In recognition of these difficulties, in 1972, the AEC instituted the Standard Technical Sepcifications (STS) program. The first set of STS was applicable to reactors designed by the Westinghouse Electric Corporation. Other sets of STS were later developed for reactor types designed by other vendors. For the latest revisions of these documents see: NUREG-0452, Rev. 2, July 1979; NUREG-0123, Rev. 2, August 1979; NUREG-0212, Rev. 1, August 1979; and NUREG-0103, Rev. 3, July 1979 for Westinghouse, General Electric, Combustion Engineering and Babcock and Wilcox, respectively. The STS provide applicants with model specifications to be used in formulating plant-specific technical specifications. They served to make technical specifications for facilities licensed since 1974 more consistent with one another, and they tended to reduce the number of disagreements between applicants and the NRC staff regarding items to be included as technical specifications.

*Current Problem:* Recent disagreements among parties to a proceeding (In the Matter of Portland General Electric Company, *et al.* (Tojan Nuclear Plant), ALAB-531, 9 NRC 263 (1979)) have highlighted the need to establish a specific standard in the regulations for deciding which items derived from the safety analysis report must be incorporated into the technical specifications.

In addition, the substantial growth in both the number of items, and in the detail of the requirements contained in technical specifications that has taken place since the STS were instituted, indicates that more precise definitions

of the existing categories of technical specifications contained in § 50.36 may need to be considered. The Commission is concerned that the increased volume of technical specifications may be decreasing the effectiveness of these specifications to focus the attention of licensees on matters of more immediate importance to safe operation of the facility.

While each of the requirements in today's technical specifications plays a role in protecting public health and safety, some requirements have greater immediate importance than others in that they relate more directly to facility operation. These are the requirements that pertain to items which the facility operator must be aware of and which he must control to operate the facility in a safe manner. To a large extent, the relative importance of these requirements, as distinguished from those related to long term effects or concerns, has been diminished by the increase in the total volume of technical specification requirements.

Moreover, the increased volume and detail of technical specifications and the resultant increase in the number of proposed change requests that must be processed, has increased the paperwork burden for both licensees and the NRC staff. This is because § 50.36 requires that technical specifications be included in each operating license; and thus, any proposed change, regardless of its importance to safety, must be processed as a license amendment. For changes involving matters of lesser importance to safety, the processing of a license amendment with the associated increased paperwork has had no significant benefit with regard to protecting the public health and safety.

*Proposed Solution:* To resolve the difficulties associated with the current system of technical specifications for nuclear power reactors, the Commission is contemplating changes to §§ 50.36 and 50.59 of 10 CFR Part 50. The changes would: (1) Establish a standard for deciding which items derived from the safety analysis report must be incorporated into the technical specifications for a facility; (2) modify the definitions of categories of technical specifications to focus more directly on the aspects of reactor operation that are important to the protection of the health and safety of the public; (3) define a new category of requirements that would be of lesser immediate importance to safety than technical specifications, thereby providing greater flexibility to both the NRC and licensees in processing proposed changes; and (4) establish appropriate conditions that must be met by licensees to make changes to the requirements in the new category without prior NRC approval.

Advice and recommendations on the proposed areas of revision to the regulation are invited from all interested persons. Specifically comments are requested on the following questions:

1. Would it be appropriate to establish a fixed standard for deciding which items derived from the safety analysis report must be incorporated into the technical specifications?

2. If so, what should the standard be based on?

3. Would a standard incorporating the concept of "immediate importance to safety" be appropriate?

4. Would it be appropriate to modify § 50.36 to require technical specifications to focus more directly on reactor operation?

5. Are surveillance requirements, as currently defined in § 50.36, appropriate subjects for technical specifications?

6. Should the current scope of surveillance requirements be reduced?

7. If so, would it be appropriate to change the scope to include only those requirements related to assuring that safety limits and limiting conditions for operation are being met, and not to include other requirements?

8. Would it be appropriate to define a new category of requirements, separate from technical specifications, that would have a different level of importance to safety?

9. What types of requirements currently included in technical specifications would be appropriately included in the new category?

10. Should the new category of requirements be physically attached to the license, or included in a separate document, for example, the FSAR?

11. How should the enforceability of the requirements that are moved into the new category be maintained?

12. Would it be appropriate to allow licensees to make certain changes to the requirements in the new category without prior NRC approval?

13. If so, what conditions should be established to assure that such changes would not adversely a effect safety?

14. What specific changes to the regulations should be included in response to the preceding questions?

15. What advantages and disadvantages could be expected from the system of requirements derived from the answers to the preceding questions, for:

a. License applicants?
b. Operating licensees?
c. The NRC?
d. The public?

Changes in the process for improving or changing license conditions relating to environmental and antitrust matters are beyond the scope of this rulemaking.

The Commission has concluded that the changes being considered would be insignificant from the standpoint of environmental impact and thus, pursuant to 10 CFR Part 51, § 51.5(d)(3), will not require the preparation of an environmental impact statement, negative declaration, or environmental impact appraisal.

(5 U.S.C. 552; Sec. 161b and i, Pub. L. 83–703, 68 Stat. 948; sec. 201, Pub. L. 93–438, 88 Stat. 1242 (42 U.S.C. 2201, 5841))

Dated at Washington, D.C., this 30th day of June 1980.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

*Secretary of the Commission.*

[FR Doc. 80-20241 Filed 7-7-80; 8:45 am]

BILLING CODE 7590-01-M

## FARM CREDIT ADMINISTRATION

## 12 CFR Part 612

## Personnel Administration

**AGENCY:** Farm Credit Administration.

**ACTION:** Proposed Rule.

**SUMMARY:** The Farm Credit Administration, by its Federal Farm Credit Board, has under consideration proposed amendments to its regulations pertaining to district personnel policies. The proposed amendments address the bank's human resources management program and define Agency, board, and management responsibility and accountability for human resources management.

**DATES:** Written comments must be received on or before September 8, 1980.

**ADDRESSES:** Submit any comments or suggestions in writing to Donald E. Wilkinson, Governor, Farm Credit Administration, Washington, D.C. 20578. Copies of all communications received will be available for examination by interested persons in the Office of Director, Public Affairs Division, Office of Administration, Farm Credit Administration.

**FOR FURTHER INFORMATION CONTACT:** Larry H. Bacon, Acting Deputy Governor, Office of Administration, Farm Credit Administration, 490 L'Enfant Plaza East, S.W., Washington, D.C. 20578 (202–755–2181).

**SUPPLEMENTARY INFORMATION:** Part 612 governs the personnel administration of the banks and associations of the Farm Credit System. The Farm Credit Administration is proposing to reissue these regulations pursuant to 12 U.S.C. 2243 and 2252 in a manner which will provide greater flexibility to the institutions in the management of their human resource. Various requirements in the current regulations which are covered by other applicable laws and regulations are proposed to be eliminated.

This draft regulation will expand the concept of responsibility and accountability of district boards and

management for all aspects of bank and association human resources management programs. It provides for the updating of personnel policy manuals and requires that supervisors and employees be provided with written policies and practices. As an aspect of total human resources management, salary administration programs will have to be established which are effective and consistent with the management system of the banks. In addition, the regulation will provide for clarification of compensation plans available to bank employees.

For the convenience of the reader a redesignation table showing the old sections of Part 612 and the new is shown below.

## PART 612—PERSONNEL ADMINISTRATION

### Subpart A—Human Resources Management

| Sec. | | *Previous Sec.* |
|---|---|---|
| 612.2000 | Policy statement | New |
| 612.2010 | Responsibility | 612.2000 |
| 612.2020 | District human resources management policies. | 612.2010 |
| 612.2030 | Associations | 612.2020 |
| 612.2040 | Human resources forecasting | 612.2050 |
| 612.2050 | Staffing, training and development | 612.2100 |
| 612.2060 | Performance evaluation | New |
| 612.2070 | Salary administration | New |
| 612.2080 | Salary and range approvals | 612.2080 |
| 612.2090 | Other compensation plans | 612.2090 |
| 612.2100 | Benefits administration | 612.2290 |
| 612.2110 | District retirement plans | 612.2310 |
| 612.2120 | Summary of requirements for Farm Credit Administration review and approval. | New |

### Subpart B—Standards of Conduct for Directors, Officers, and Employees

| | | |
|---|---|---|
| 612.2130 | Director, officer, and employee responsibilities and conduct. | 612.2110 |
| 612.2140 | District and association directors | 612.2120 |
| 612.2150 | Soliciting support in polls for association, district, or Federal Farm Credit Board membership. | 612.2130 |
| 612.2160 | Reports and recommendations on proposed or pending legislation. | 612.2140 |
| 612.2170 | Political activity | 612.2060 |
| 612.2180 | Devotion of time to official duties | 612.2150 |
| 612.2190 | Nepotism | 612.2030 |
| 612.2200 | Reporting violations | 612.2031 |
| 612.2210 | Prohibited acts for salaried employees. | 612.2160 |
| 612.2220 | Legal provision cited | 612.2165 |
| 612.2230 | Prohibited acts procedures | 612.2170 |
| 612.2240 | Gifts or favors from subordinates | 612.2180 |
| 612.2250 | Borrowing from subordinates | 612.2190 |
| 612.2260 | Improper use of official property | 612.2200 |
| 612.2270 | Evasions and circumventions of rules of conduct. | 612.2210 |
| 612.2280 | Official loans | 612.2220 |
| 612.2290 | Report by personnel | 612.2230 |
| 612.2300 | Prohibited acts enforcement | 612.2240 |
| 612.2310 | Reports of transactions with directors, officers, or employees. | 612.2250 |
| 612.2320 | Other reports to the Farm Credit Administration. | 612.2270 |
| 612.2330 | Fidelity bonds required | 612.2280 |

Therefore, it is proposed to amend 12 CFR, Chapter VI by revising and recodifying Part 612 as follows:

## PART 612—PERSONNEL ADMINISTRATION

### Subpart A—Human Resources Management

Sec.

612.2000 Policy statement
612.2010 Responsibility
612.2020 District human resources management policies
612.2030 Associations
612.2040 Human resources forecasting
612.2050 Staffing, training and development
612.2060 Performance evaluation
612.2070 Salary administration
612.2080 Salary and range approvals
612.2090 Other compensation plans
612.2100 Benefits administration
612.2110 District retirement plans
612.2120 Summary of requirements for Farm Credit Administration review and approval

### Subpart B—Standards of Conduct for Directors, Officers and Employees

Sec.

612.2130 Director, officer, and employee responsibilities and conduct
612.2140 District and association directors
612.2150 Soliciting support in polls for association, district, or Federal Farm Credit Board membership
612.2160 Reports and recommendations on proposed or pending Federal legislation
612.2170 Political activity
612.2180 Devotion of time to official duties
612.2190 Nepotism
612.2200 Reporting violations
612.2210 Prohibited acts for salaried employees
612.2220 Legal provision cited
612.2230 Prohibited acts procedures
612.2240 Gifts or favors from subordinates
612.2250 Borrowing from subordinates
612.2260 Improper use of official property
612.2270 Evasions and circumventions of rules of conduct
612.2280 Report by personnel
612.2300 Prohibited acts enforcement
612.2310 Reports of transactions with directors, officers, or employees
612.2320 Other reports to the Farm Credit Administration
612.2330 Fidelity bonds required

## PART 612—PERSONNEL ADMINISTRATION

### Subpart A—Human Resources Management

**§ 612.2000 Policy statement.**

Statement of Purpose and Intent of the Human Resources—Management Relations.

(a) Human Resources Management is a vital element of total bank responsibility. Every aspect of the business, from its public image to the quality of loan service received by an individual farmer, relates directly to the quality of employees selected and the adequacy of their individual training. In addition, the widely fluctuating economy, increasing costs of compensation and benefits, growing social awareness and a vast new body of legislation dealing with equal employment opportunity, manpower, safety and benefits have created unprecedented demands on the banks for effective and comprehensive human resources management systems. The intent of the revised personnel sections of the Regulations is to outline those areas that should be addressed by a bank's human resources management program in general terms, and to define Agency, board and management responsibility and accountability for human resources management.

(b) Most districts already have a district personnel policy manual and employee handbook. These will likely be adequate documentation to meet most of the requirements of these regulations. The banks are encouraged to build on this existing base by reviewing and updating the content of policy manuals and handbooks as appropriate and determining areas that will need additional emphasis under these regulations, and developing an appropriate implementation strategy.

(c) These regulations recognize that a district board also acts as a board of each of the three banks, and that the bank president, as chief executive officer, is ultimately accountable for the bank's performance. In many cases, one set of district human resources management policies will be appropriate for all three banks and associations. However, there may be valid reasons for each bank to develop its separate, but compatible, human resources management policies and programs. The selection of either approach by the district board is acceptable under these regulations. The philosophy of the regulations is to promote flexibility so that human resources management programs can be tailored to the operational requirements of the banks and associations.

(d) In addition to these regulations, each bank and association is subject to and required to comply with other Federal, State and local laws and regulations related to the employment process. This includes, but is not limited to civil rights laws, the Occupational Safety and Health Act, the Fair Labor Standards Act and regulations of the Equal Employment Opportunity Commission, Department of Labor and Internal Revenue Service. The Farm Credit Administration will not duplicate the regulatory requirements of these other agencies but may assist a bank in cases of non-compliance to attain compliance and retain its position of public trust.

(e) Because of the general nature and wording of the regulations, compliance takes on a new meaning. The Farm

Credit Administration's supervision of district human resources management programs is meant to be consultative, constructive and based on professional evaluation of the effectiveness of bank and district human resources management programs in meeting management needs, rather than technical compliance of a specific program. In accordance with FCA's policy of coordinated supervision, the personnel staff will work closely with the regional supervisory staffs to ensure consistency of overall bank supervisory efforts and to avoid duplications and overlap. The Farm Credit Administration personnel staff will also work closely with examiners to assist them in determining areas to be reviewed and in collecting, analyzing and evaluating data. Such evaluations will emphasize program effectiveness and quality in meeting a bank's mission and goals and transactional review will be for the purpose of making those analyses.

(f) The Farm Credit Administration will utilize information gathered by examination and supervisory efforts to consult with and assist bank management in the effective discharge of its responsibility and in maintenance of accountability to the bank board of directors. Matters of a policy nature will be taken to the board only after proper communication with management.

**§ 612.2010 Responsibility.**

It is the responsibility of each bank, within the provisions of these regulations and policy direction adopted by the district board of directors under § 611.1010(f) of these regulations, to manage its human resources function, including the supervision of association human resources management, where applicable. Plans, actions, and activities shall be documented appropriately and provide adequate operational controls for routine audit and review. Each bank's human resources management system shall provide for regular reporting of information to the president and the board.

**§ 612.2020 District human resources management policies.**

In the interest of effective human resources management, each Farm Credit district shall issue a human resources policy manual(s), including board policies relating to the district, individual banks and the program applicable to Federal land bank and production credit associations. It shall include statements of district philosophy toward human resources management and the objectives envisioned for both employer and employee. Appropriate management and supervisory personnel shall be provided with a copy of the policy manual for guidance in managing human resources. The manual provisions shall be in accordance with applicable rules and regulations and a copy shall be submitted to the Farm Credit Administration for review. The policy manual(s) should address the following:

(a) A general statement of human resources philosophy and objectives.

(b) Recruiting and employment practices.

(c) Employee training and development.

(d) Performance evaluation.

(e) Salary administration program.

(f) Employee benefits.

(g) Employee responsibilities and conduct.

Each employee shall be provided with a written summary such as a handbook that outlines the bank's employment practices and procedures.

**§ 612.2030 Associations.**

In accordance with the principle of decentralization, each Federal land bank and Federal intermediate credit bank shall develop human resources policies for associations within the district consistent with these regulations and policy direction provided by the bank board. Association human resource management programs developed within these policies shall be consistent with district policy and within parameters of required district compensation and benefits programs.

**§ 612.2040 Human resources forecasting.**

Plans should be made in advance by banks and associations to recruit and train qualified employees for prospective vacancies caused by turnover, business growth, approaching retirements, or other reasons that can be anticipated. Such plans should attempt to identify numbers and skill levels required by anticipated vacancies and assess the availability of the required skills in the existing work force.

**§ 612.2050 Staffing, training and development.**

Under policies established by the bank boards, each bank and association shall be responsible for the design, implementation, communication, and maintenance of programs for recruitment, selection, placement, training and development of employees. The purpose of such policies and programs shall be to recruit, train, develop, effectively utilize and retain a staff competent to carry out the functions of each bank and association.

**§ 612.2060 Performance evaluation.**

Under policies established by the bank boards, each bank and association shall be responsible for development, implementation, communication and maintenance of effective systems for evaluating employee performance.

**§ 612.2070 Salary administration.**

Salary administration policies shall assure development of effective salary administration programs consistent with established district philosophy. Such programs should be developed in accordance with sound principles and techniques of salary administration.

**§ 612.2080 Salary and range approvals.**

(a) All salary ranges for senior officers of the banks shall be submitted to the Farm Credit Administration for approval 15 days prior to the effective date of any changes.

(b) Upon initial appointment, the salary of the chief executive officer of a bank shall be referred to the Farm Credit Administration for approval 10 days prior to release of any announcements. Changes in salary levels of such chief executive officers shall be submitted to the Farm Credit Administration for approval 10 days prior to final confirmation of changes.

(c) A copy of all personnel actions at the bank senior officer level shall be submitted to the Farm Credit Administration for record purposes.

**§ 612.2090 Other compensation plans.**

All plans for bank officer and employee compensation (other than wages) and any amendments to such plans shall be submitted to the Farm Credit Administration for prior approval. This includes but is not limited to incentive, bonus and deferred compensation plans. For the purposes of this section, employee benefit programs, such as medical/hospital plans, group life insurance plans and other similar benefits, are not considered compensation plans.

**§ 612.2100 Benefits administration.**

District boards shall adopt policies governing employee benefit programs and assure that such programs are developed and based on clearly defined obectives with full coordination of benefits to eliminate coverage gaps and duplication of benefits and costs. Employee benefits should be developed as a total program including leave, retirement, and insurance programs. A degree of consistency in benefit programs between districts is desirable and the inclusion of portability provisions between districts should be

an objective in formulating employee benefit programs.

(a) All employee benefits programs should be periodically reviewed in light of appropriate and competitive standards, employee need and consistency with the management objectives of the bank.

(b) The pension formula will take into consideration, directly or indirectly, present and anticipated future levels of social security benefits.

**§ 612.2110 District retirement plans.**

The district boards and the bank boards shall provide retirement benefits for their employees who are not under the Civil Service Retirement Act. Any such retirement plans, including thrift or savings plans, and any amendments thereto, shall be submitted for the prior approval of the Farm Credit Administration. The banks shall secure approval of the plan by the Internal Revenue Service.

**§ 612.2120 Summary of requirements for Farm Credit Administration review and approval.**

(a) *Requirements for review.* The following shall be submitted to the Farm Credit Administration for review:

(1) District human resources management policies and amendments (612.2020).

(2) Copies of all personnel actions on bank senior officers (612.2080(c)).

(b) *Requirements for prior approval.* The following shall be submitted to the Farm Credit Administration for prior approval:

(1) Salary ranges for bank senior officers (612.2080(a)).

(2) Establishment or change of salary of bank chief executive officer (612.2080(b)).

(3) All compensation plans other than wages or benefits programs and amendments thereto (612.2090).

(4) Retirement and thrift plans and amendments thereto (612.2110).

(c) *Periodic reports.*

The Farm Credit Administration may periodically require such reports as may be needed to discharge its supervisory responsibility.

## Subpart B—Standards of Conduct for Directors, Officers and Employees

**§ 612.2130 Director, officer, and employee responsibilities and conduct.**

The maintenance of high standards of industry, honesty, integrity, impartiality, and conduct by directors, officers, and employees of all institutions and organizations in the Farm Credit System is essential to insure the proper performance of System business and continued public confidence in the System and all its entities. The avoidance of misconduct and conflicts of interest, either real or apparent, by all personnel is indispensable to the maintenance of these standards. All personnel shall observe both the letter and the intent of the laws, regulations, instructions, and procedures applicable to them and to entities in the System, whether issued by the Farm Credit Administration or by the entities themselves. Such written criteria, however, cannot alone provide for maximum accomplishments of the aims of the Farm Credit law. Such accomplishment must rely, in addition, on positive effort and the exercise of ingenuity and good judgment by all who have a part in carrying out the authorized Farm Credit programs. District Boards shall adopt rules and guidelines of conduct for directors and employees, which shall implement these regulations and may include other guidelines, and secure compliance therewith. District Board guidelines and instructions shall be made available to each employee, each district and association director, and each nominating committee.

**§ 612.2140 District and association directors.**

The democratically controlled, borrower-owned structure of the Farm Credit System makes it essential that each member of the boards of directors of the institutions of the System, as well as the officers and employees, be aware of potential conflicts of interest. Each director shall:

(a) Refrain from divulging or using for his personal benefit information acquired as a director, except in the performance of his official duties.

(b) Abstain from participating directly or indirectly in the deliberations on any question affecting his personal interests or those of his family or of any corporation or other business organization in which he has an interest.

(c) Avoid any action toward or the appearance of obtaining special advantage or favortism in dealing with borrowers from any of the institutions of the System, or with officers or employees thereof, particularly in relation to real or personal property which any such institution owns or in which it claims a lien or other interest, and

(d) Consider the potential conflict of interest arising from his employment by, or directorship of, other lending institutions and his ability to impartially and objectively perform his duties and responsibilities as a director of the Farm Credit institutions.

**§ 612.2150 Soliciting support in polls for association, district, or Federal Farm Credit Board membership.**

(a) No salaried officer or employee of a bank or association shall take any part, directly or indirectly, in the designation of nominees for the Federal Farm Credit Board, or in the nomination or election of members of a district Farm Credit Board, or association board, or make any statement, either orally or in writing, which may be construed as intending to influence any vote in such designations, nominations, or elections, except that a statement by such officer or employee of biographical and other data and matters relating to a candidate shall not be so construed if it is made at the request of and to the board of directors of the employing institution, or is made to the nominating committee as directed by the board of directors of an association in connection with the selection of nominees for an association election. Action shall immediately be taken, for suspension or dismissal in accordance with applicable procedures, against any such officer or employee who violates the provisions of this section.

(b) No bank or association property, transportation, communications and official stationery shall be used in the interest of any candidate, unless the same facilities and resources are simultaneously made known to and are available for use by all candidates.

(c) No director, officer, or employee shall, for the purpose of furthering the interests of any candidate, furnish or make use of Farm Credit System records which would not be available to all candidates.

**§ 612.2160 Reports and recommendations on proposed or pending Federal legislation.**

Any contacts on behalf of the bank or association or its board with the Office of Management and Budget with reference to proposed or pending legislation affecting the Farm Credit System shall be made through the Farm Credit Administration.

**§ 612.2170 Political activity.**

(a) No salaried officer, employee, or agent of a Farm Credit institution shall hold a public office or be a candidate for such office unless the bank by which he is employed or which supervises his employer has, after investigation and consideration of all facts involved, determined in writing that such candidacy or holding of public office would not bring justified criticism on the grounds of political activities or partialities or in any other manner adversely affect the best interests of the borrowers or the operations and public

image of the System or any institutions thereof. All determinations made hereunder shall be reported to the board of directors of the bank concerned.

(b) No salaried employee shall take an active part or issue public statements relating to the nomination or candidacy of any person or participate in partisan political campaigns for national or statewide elective office, in any way that would implicate by support, endorsement or otherwise, his connection with the Farm Credit institution by which he is employed. This statement shall not be construed to prohibit an employee from expressing his personal opinion on political affairs or candidates or making voluntary campaign contributions.

**§ 612.2180 Devotion of time to official duties.**

Salaried officers, employees, and agents of Farm Credit institutions are required to devote the full business time for which they are employed to the effective accomplishment of the duties assigned them by the institutions in which they are employed. They are also expected to refrain from accepting employment or compensation for activities, even for services rendered outside the business hours for which they are employed, which might embarrass the Farm Credit institution or the Farm Credit Administration or reflect adversely upon their ability to take an unbiased and impartial view of its operations.

**§ 612.2190 Nepotism.**

(a) To emphasize and assist the merit system of appointments and promotions of salaried officers and employees of the institutions of the Farm Credit System, the following restrictions shall be observed:

(1) A relative of a director of a Farm Credit institution shall not serve as a salaried officer or employee of that institution.

(2) A relative of a director of a Farm Credit bank shall not serve as chief executive officer of an association supervised by that bank.

(3) A person shall not serve as a salaried officer or employee of a Farm Credit institution in any position which is directly or indirectly supervised by a relative except that this restriction shall not apply when the salaried officer or employee of an association is other than a chief executive officer and the relationship is with a director, an officer, or an employe of the supervising bank.

(4) Notwithstanding the other provisions of this subsection (a), a person may serve as a salaried officer or employee in a position directly or indirectly supervised by a relative for a period in any calendar year not exceeding a total of 75 workdays provided that positive documented efforts have been made to recruit a qualified nonrelative for the position.

(b) The term "relative" as used in this section means parent, son, daughter, sibling, stepparent, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, uncle, aunt, first cousin, nephew, niece, spouse, parent-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandson, granddaughter, and any person having a similar relationship by marriage.

(c) Any person engaged by a Farm Credit institution to provide professional services for a fee or other compensation is considered to be within the term "salaried officer or employee" for the purpose of this section.

(d) The provisions of this section shall not preclude any persons involved in a nepotistic relationship allowable under previous regulations from continuing to serve in a position occupied by him or her on the effective date of this regulation.

(e) To prevent the creation of relationships prohibited under this regulation, the following actions shall be taken:

(1) Each bank shall establish the mechanism by which a nominee for a director position is informed of the provisions of this section. Specifically, a nominee whose election would create a prohibited relationship must be fully aware of the consequences of his or her election.

(2) Prior to the employment or promotion of a person, the institution shall determine whether a prohibited relationship would be created by the action.

(3) Stockholders shall be notified prior to any election of those nominees whose election would create a prohibited relationship.

**§ 612.2200 Reporting violations.**

In any instance of violation or prospective violation of § 612.2190, it is the responsibility of the related individuals to notify the employing entity's chief executive officer regarding the situation immediately upon becoming aware of it. It is the responsibility of any such officer or manager who becomes aware of such a situation, by this or any other means, to take prompt corrective action, or, if it is beyond his power or ability to do so, to request instructions from the supervising bank or the Farm Credit Administration, as appropriate.

**§ 612.2210 Prohibited acts for salaried employees.**

A salaried officer, employee, or agent of any institution of the Farm Credit System:

(a) Shall not participate, directly or indirectly, in the deliberation upon, or the determiniation of, any question affecting his personal interests, those of any person related to him by blood, marriage, or adoption, or those of any partnership, association, or any business organization in which he is directly or indirectly interested. An act shall not be deemed enjoined by this paragraph (a) if the employing institution determines that the degree of interest or relationship in question is not substantial but so trivial as to create little probability that the officer's, employee's, or agent's impartiality or judgment and action has been affected, and such determination has been reported to the board of directors of the employing institution. Such report shall be reflected in the minutes of the board meeting;

(b) Shall not use for his own personal benefit or that of another or, except in the performance of his official duties, divulge to another person any fact or information acquired, directly or indirectly, by virtue of his employment which is not generally available to the public;

(c)(1) Shall not solicit or accept, directly or indirectly, any "benefit" (i.e., salary, fee, commission, honorarium, gift, or favor):

(i) From any "borrower" (i.e., a debtor, loan applicant, or representative) of the Farm Credit institution which is his employer;

(ii) From any borrower of a Farm Credit institution supervised by his employer;

(iii) From any borrower of a Farm Credit institution which supervises his employer;

(iv) From any person who purchases real or personal property from a borrower;

(v) From any person who sells real or personal property to a borrower; or

(vi) From any person transacting business with his employer.

(2) An officer, employee, or agent may enter into the following transactions for a benefit with a person (as identified in paragraph (c)(1) of this section) if such transactions are arranged in good faith as a result of arm's-length negotiations and the fair market value of services, supplies, or products involved in any single transaction, or any series of transactions with the same person, during one calendar year does not exceed a total of $1,000:

(i) For services to be performed on a farm owned or rented by him or on other property in which he has an interest;

(ii) For the purchase of farm supplies and products to be used on a farm owned or rented by him;

(iii) For the sale of farm supplies and products on a farm owned or rented by him; or

(iv) For the rental of real property by or to him; Provided, that for any single transaction, or any series of transactions with the same person, during one calendar year the total of which exceeds $1,000, prior written authorization of the board of directors of his employer shall be obtained. When such authorization is given, the action of the board of directors shall be reported to the bank officer designated pursuant to § 612.2230.

(3) The board of directors of the supervising bank may, in lieu of the provisions of paragraph (c)(2) of this section, prescribe a policy addressed to the transactions identified therein and submit it for approval of the Farm Credit Administration, and establish guidelines applicable to officers, employees, and agents of the bank and of associations under its supervision, which shall assure that the types and values of permitted transactions do not have a reasonable potential for conflicts of interest.

(4) An officer, employee, or agent may:

(i) Accept food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting where such officer, employee, or agent is in attendance;

(ii) Accept unsolicited advertising or promotional material such as pens, pencils, note pads, calendars, and other items of nominal value; or

(iii) Accept any benefit otherwise enjoined by this paragraph (c) if the circumstances make clear that the motivating factor for the extension of such benefit is not based on the official responsibilities of such officer, employee, or agent or of the institution by which he is employed and, in any way, connected with any business activity he is engaged in, other than an activity referred to in paragraph (c)(1), and with any business of the other person or organization concerned, and that the offer of such benefit has been reported to and its acceptance has received the prior written authorization of the board of directors of the employing institution and, if an association officer, employee, or agent is involved, by the board of directors of the supervising bank. The action of the board shall be reflected in the minutes of the board meeting and brought to the attention of the bank officer designated pursuant to § 612.2230(c).

(d) Shall not acquire, directly or indirectly (including acquisition by membership in syndicates, but not by will or inheritance):

(1) Any lands or interests therein, including mineral interests, which are owned by any Farm Credit institution or which were thus owned at any time within the preceding 12 months,

(2) Any mineral interests in lands which are mortgaged to any Farm Credit institution or which were thus mortgaged at any time within the preceding 12 months, but this shall not prohibit the acquisition of mineral interests incidentally with surface interests, or which were severed prior to the preceding 12 months from lands currently mortgaged to the institution and are owned by a person who has no interest in such lands, or

(3) Any interests in lands (including mineral interests being acquired incidentally with surface interests) which are mortgaged to any Farm Credit institution or which were thus mortgaged at any time within the preceding 12 months, without obtaining the specific prior approval of such institution's board of directors, such action shall be reported in the minutes of the board meeting.

As used in this paragraph (d), "mineral interests" means any interest in minerals, oil, or gas, including but not limited to, any right derived, directly or indirectly, from a mineral, oil, or gas lease, deed, or royalty conveyance.

(e) Shall not participate, directly or indirectly, in any transaction concerning the purchase or sale of corporate stocks or bonds, commodities, or other property for speculative purposes if such action might tend to interfere with the proper and impartial performance of his duties or bring discredit upon any Farm Credit institution. Employees are not prohibited by this paragraph from making bona fide investments. When an employee is uncertain as to whether a contemplated transaction would constitute a violation of this paragraph, he should seek the advice, in accordance with procedures adopted by the district bank, of the officer designated pursuant to § 612.2230(c).

(f) Shall not have a business relation, directly or indirectly:

(1) With a "borrower" (i.e., a debtor, loan applicant, or representative) of the Farm Credit institution which is his employer;

(2) With a borrower of a Farm Credit institution supervised by his employer;

(3) With a borrower of a Farm Credit institution which supervises his employer;

(4) With a person who purchases real or personal property from any borrowers;

(5) With a person who sells real or personal property to any borrowers; or

(6) With a person transacting business with his imployer; except in an official capacity as officer, employee, or agent of a Farm Credit institution, unless the board of directors of the employing institution, in carrying out the intention of this § 612.2210 has made a prior determination in writing that such business relation reasonably cannot be viewed as a means to influence a decision in which a Farm Credit institution has an interest. If the employing institution is an association, such determination shall be reported to and concurred in by the supervising bank. The action of the board shall be reflected in the minutes of the board meeting and brought to the attention of the bank officer designated pursuant to § 612.2230(c). Examples of such business relation include the purchase or sale of personal or real property, sale or placement of insurance, sales-barn activities, and auctioneering, appraisal, and other professional services but do not include the transactions described in paragraph (c)(2) and (4)(iii) or transactions involving nonfarm goods purchased to meet family needs for food, clothing, and household furnishings and equipment from usual commercial sources at prices available to the public in general, or involving medical or dental services.

(g) Shall not purchase or acquire, directly or indirectly while he serves on a finance committee or subcommittee, except by will or inheritance, any interest in any obligations of the bank or banks for which he participated in establishing rates.

(h) Shall not also serve as an officer or director of an organization that transacts business with a Farm Credit institution, or of a financial institution unless the board of directors of the bank by which he is employed or which supervises his employer has determined that the involvement by such financial institution in the type of lending engaged in by the bank or his employer is so trivial as to create little probability of any significant impact upon the bank's or his employer's business, and he has agreed in writing not to participate on the financial institution's loan committee or in the deliberation upon, or determination of, any question coming before the financial institution's board which has more than nominal significance to the bank or his employer.

Such action shall be reported in the minutes of the board meeting.

(i) The provisions of §§ 612.2130 and 612.2140, and not his § 612.2210 apply to directors of Farm Credit banks and associations.

**§ 612.2220 Legal provision cited.**

In the above connection, particular attention is directed to the following provisions of law containing the Federal penal provisions which relate particularly to officers and employees of the institutions under the supervision of the Farm Credit Administration: Sections 212, 213, 215, 216, 371, 493, 657, 658, 1006, 1011, 1013, 1014, 1907 and 1909 of title 18, United States Code.

**§ 612.2230 Prohibited acts procedures.**

Under a policy of its board applicable to the acts prohibited by § 612.2210 each district bank shall adopt procedures which will assure that:

(a) The provisions of § 612.2210 are brought to the attention from time to time of all officers, employees and agents of Farm Credit institutions and directors of associations in the district;

(b) All cases arising under § 612.2210 involving officers, employees, or agents of the bank, or of associations under its supervision, are brought to the attention of the bank's board;

(c) An officer of the bank is designated (1) to receive reports of all cases arising under § 612.2210 involving officers, employees, or agents of the bank and of associations under its supervision, (2) to report promptly in writing to the Deputy Governor, Office of Supervision, cases arising under paragraphs (a) through (g) thereof, (3) to record actions taken to resolve every case involving § 612.2210, and (4) to submit a semiannual report in writing of such actions to the Deputy Governor, Office of Supervision.

**§ 612.2240 Gifts or favors from subordinates.**

No salaried officer or employee of any Farm Credit institution shall at any time solicit contributions from other employees for a gift or present to anyone in a superior position, nor shall any such superior receive any gift or present offered or presented to him as a contribution from employees receiving a less salary than himself, nor shall any such officer or employee make any donation as a gift or present to any official superior; provided, however, that this section shall not apply to gifts of a nominal value traditionally exchanged among business associates as part of acceptable social amenities.

**§ 612.2250 Borrowing from subordinates.**

No salaried officer or employee shall borrow from or obtain endorsement of a note or other obligation from any subordinate employee.

**§ 612.2260 Improper use of official property.**

No director, officer, or employee shall use the space, personal property, communication, transportation, or other facility of a Farm Credit institution for activities or business in his personal interest or the personal interest of another, except under lease, contract, concession, or authorization in writing, pursuant to agreements and negotiations fairly arrived at and evidenced in writing, setting forth the terms and conditions of such use. Official stationery shall not be used for personal communication or for communications on controversial public matters expressing opinions which do not represent the official views of those having a responsibility for expression of official views of the institution.

**§ 612.2270 Evasions and circumventions of rules of conduct.**

No officer or employee shall use any scheme or device to avoid compliance with any of the rules or guidelines established under §§ 612.2130 through 612.2260 or avoid compliance with the intent of those rules through the use of subterfuge, evasions, or circumventions. Examples of acts of subterfuge or circumventions include (a) obtaining a loan or assisting another borrower to obtain a loan from a Farm Credit institution knowing that the proceeds thereof are planned to be used to provide financing for a person who is ineligible for such a loan, (b) inducing or assisting another person to obtain a loan from any institution of the System, the proceeds of which are planned to be used for the employee's benefit or for the benefit of any legal entity in which the employee has a director or indirect personal interest.

**§ 612.2280 Official loans.**

Officers and employees as well as directors may receive bona fide loans to the extent that they are eligible for such loans and in strict compliance with policies and regulations governing such loans.

**§ 612.2290 Report by personnel.**

The director, officer, or employee involved or interested in any transaction to which §§ 612.2140 and 612.2210 are applicable shall report in writing to the appropriate officer of the interested bank or association and disclose his interest and status in the matter unless, in the case of a loan application, the application itself discloses such information. The interested bank or association is the one that is a party to the transaction and not the employing bank or association or the one on whose board the director serves, unless they happen to be the same.

**§ 612.2300 Prohibited acts enforcement.**

(a) The Office of Examination shall investigate any case involving an act prohibited by paragraphs (a) through (g) of § 612.2210 if it determines that such action is necessary or advisable. A copy of the investigation report shall be submitted to the president of the district bank concerned and to the officer designated as provided in § 612.2230(c).

(b) The bank shall, with regard to any prohibited act evidenced by the investigation report, take prompt action in a manner that will assure the integrity of the Farm Credit institution concerned and the confidence of the public in it.

(c) The board of directors of the bank shall, with regard to a case arising under paragraph (h) of § 612.2210 take prompt action to assure compliance therewith.

**§ 612.2310 Reports of transactions with directors, officers, or employees.**

The associations shall report transactions to which §§ 612.2140, 612.2210, 612.2270, and 612.2290 apply fully in writing to the officer of the supervising bank designated pursuant to § 612.2230(c).

**§ 612.2320 Other reports to the Farm Credit Administration.**

A report of any violation or possible violation of a regulation in this Subpart B shall be included in the loan transaction submission of any loan requiring the prior approval, advice or counsel of the Deputy Governor, Office of Supervision. Such report shall be made even though the report required by § 612.2230 is filed. The bank shall assure that all directors, officers and employees shall be advised of the circumstances requiring reports under this section.

**§ 612.2330 Fidelity bonds required.**

Provision shall be made by the banks for insurance coverage against losses by all banks and association employees through the continuation of present coverage. Bankers Blanket Bond, Standard Form No. 10, or substitute, may be used. The Act does not require a faithful performance provision in the bond coverage. The district boards shall determine that bond coverage is in an amount that will adequately protect the banks and associations, taking into consideration the increased dollar amount of assets and lending activity of these institutions.

(Secs. 5.9, 5.12, 5.18, Pub. L. 92-181, 85 Stat. 619, 620, 621 (12 U.S.C. 2243, 2246, 2252))

Carl T. Fredrickson,
*Acting Governor.*

[FR Doc. 80-20313 Filed 7-7-80; 8:45 am]
BILLING CODE 6705-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 640

[Docket No. 80N-0035]

### Quality Control Testing of Platelet Concentrate (Human) and Cryoprecipitated Antihemophilic Factor (Human)

**AGENCY:** Food and Drug Administration

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) proposes to amend the biologics regulations to require quality control testing of Platelet Concentrate (Human) and Cryoprecipitated Antihemophilic Factor (Human) only during those months these products are prepared for use. This action would relieve an unnecessary restriction.

**DATE:** Written comments by September 8, 1980.

**ADDRESS:** Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Richard E. Fisher, Bureau of Biologics (HFB-620), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-443-1306.

**SUPPLEMENTARY INFORMATION:** Current biologics regulations, 21 CFR 640.25(b) and 640.56(a), require that quality control testing be conducted on at least 4 units of Platelet Concentrate (Human) and 4 units of Cryoprecipitated Antihemophilic Factor (Human), respectively, each month. The purpose of the quality control testing is to ensure that personnel are familiar and proficient with techniques for processing a potent final product. Because the regulations require that quality control testing be conducted each month, blood banks that infrequently issue Cryoprecipitated Antihemophilic Factor (Human) and Platelet Concentrate (Human) must prepare at least 4 units of each product for quality control testing each month, even when the product is not prepared for transfusion during the month. The agency believes that quality control testing of Cryoprecipitated Antihemophilic Factor (Human) and Platelet Concentrate (Human) conducted on the product prepared during those months that the product is prepared for transfusion will provide adequate assurances concerning familiarity and proficiency of blood bank personnel for processing a potent final product. Therefore, the current requirement that quality control testing be conducted each month represents an unnecessary resource burden and expense on manufacturers that prepare these products infrequently without any corresponding benefit to the public health. Accordingly, the agency proposes to amend 21 CFR 640.25(b) and 640.56(a) to require that each month in which Platelet Concentrate (Human) and Cryoprecipitated Antihemophilic Factor (Human) are prepared for transfusion, quality control tests shall be performed on the product prepared that month.

The agency has determined pursuant to 21 CFR 25.24(d)(10) (proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Public Health Service Act (sec. 351, 58 Stat. 702, as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), it is proposed that Part 640 be amended as follows:

1. In § 640.25, by revising the introductory text of paragraph (b) to read as follows:

**§ 640.25 General requirements.**

* * * * *

(b) *Quality control testing.* Each month in which Platelet Concentrate (Human) is prepared for transfusion, quality control tests shall be performed on four units from different donors prepared that month, as follows:

* * * * *

2. In § 640.56, by revising paragraph (a) to read as follows:

**§ 640.56 Quality control tests for potency.**

(a) Each month in which Cryoprecipitated Antihemophilic Factor (Human) is prepared for transfusion, quality control tests for potency of antihemophilic factor shall be performed on at least four representative containers prepared that month.

* * * * *

Interested persons may, on or before September 8, 1980, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments. The 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: June 24, 1980.

William F. Randolph,
*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 80-19819 Filed 7-7-80; 8:45 am]
BILLING CODE 4110-03-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

[LR-2139]

### Income Tax; Withholding of Tax Under Chapter 3 of the Internal Revenue Code of 1954 With Respect to Virgin Islands Inhabitants; Intent To Revoke Regulation

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of intent to revoke regulation.

**SUMMARY:** This document contains a notice of intent to revoke a regulation to clarify an exemption from withholding of tax under chapter 3 of the Internal Revenue Code of 1954 (sections 1441 and 1442). The revocation of a portion of the regulations will eliminate any need to "mirror" this provision of the regulations, as required by a decision of the Third Circuit in *Vitco, Inc.* v. *Government of the Virgin Islands*, 560 F.2d 180 (3rd Cir. 1977), *cert. denied*, 98 S. Ct. 1630 (1978). That case held that the Virgin Islands is not entitled to withhold tax under section 1441 or 1442 on payments from V.I. inhabitants to U.S. persons. The revocation will provide

withholding agents with the guidance needed to comply with the Revised Organic Act of the Virgin Islands (68 Stat. 508; 48 U.S.C. 1642).

**DATES:** Written comments and requests for a public hearing must be delivered or mailed by September 8, 1980. The amendments are proposed to be effective after adoption as a Treasury decision.

**ADDRESS:** Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–2139), Washington, D.C. 20224.

**FOR FURTHER INFORMATION CONTACT:** Jason R. Felton of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T, 202–566–3289, not a toll-free call.

**SUPPLEMENTARY INFORMATION:**

## Background

This document contains a revocation of a regulation under the Income Tax Regulations (26 CFR Part 1) under section 1441 of the Internal Revenue Code of 1954. The revocation of this regulation is to be effectuated under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Section 1441 provides for the withholding of a 30-percent tax imposed by section 881 on the gross amount of specific classes of income from sources within the United States received by persons who are not U.S. persons (other than foreign corporations). Section 1442 provides for the withholding of that tax on the gross amount of those specific classes of income from U.S. sources received by foreign corporations. Under section 1461, the withholding agent is liable for this 30-percent withholding tax.

Sections 1441 and 1442 are designed to serve as the mechanism for the collection of the tax imposed on the specified classes of income in section 1441.

## Exemption From Withholding in Certain Cases

Paragraph (d) of § 1.1441–4 provides a narrowly-drawn exemption from the withholding obligations of sections 1441 and 1442 for payments of income from U.S. sources to V.I. permanent residents. This exemption in paragraph (d) is expressly based on section 28(a) of the Revised Organic Act of the Virgin Islands (68 Stat. 508; 48 U.S.C. 1642), which specifies that V.I. permanent residents with U.S. income tax liability satisfy that liability by paying income tax on their worldwide (including U.S.) income to the Virgin Islands. Since there is no U.S. liability with respect to these payments where V.I. permanent residents pay their tax on this income to the Virgin Islands, U.S. income tax withholding is not in order.

## Virgin Islands Tax System

The Virgin Islands does not have a separate income tax law nor is the Internal Revenue Code the applicable statute. Rather, the Naval Service Appropriation Act of 1922 (42 Stat. 123; 48 U.S.C. 1397) is the taxing authority in the Virgin Islands. The Act states that "The income tax laws in force in the United States of America and those which may hereafter be enacted shall be held to be likewise in force in the Virgin Islands of the United States, except that the proceeds of such taxes shall be paid into the treasuries of said islands." The accepted interpretation of this language is that while the Naval Act is the authority upon which tax is imposed, the text of the tax law in force in the Virgin Islands consists of the Internal Revenue Code of 1954, wherein the words "Virgin Islands" are substituted for the words "United States" where appropriate. The substitution of the words Virgin Islands for the United States results in a device known as a mirrored Code. In this mirrored Code, V.I. corporations are domestic corporations, while U.S. corporations are foreign corporations.

By applying sections 1441 and 1442 of the mirrored Code, V.I. withholding agents are required to withhold at the source a 30-percent tax on certain classes of income payments specified in section 1441 being paid to U.S. recipients.

In *Vitco, Inc.* v. *Government of the Virgin Islands*, 560 F.2d 180 (3rd Cir. 1977), *cert. denied*, 98 S. Ct. 1630 (1978), the United States Court of Appeals for the Third Circuit held that not merely the Internal Revenue Code, but also regulations under the Code, must be mirrored and that the correct interpretation of the Naval Act and the "mirror" system requires exactly identical tax treatment for the Virgin Islands as for the United States (see Vitco, 560, F.2d 180, at 185). Therefore, the Third Circuit felt compelled to mirror § 1.1441–4(d) to exempt from withholding payments from V.I. sources to U.S. recipients.

Whether or not the Naval Act and the mirror system it created should be interpreted to require that this exact equality principle be followed, requiring § 1.1441–4(d) to be mirrored is legally inaccurate since present law necessitates unequal tax treatment as to this exemption from withholding. While section 28(a) of the Revised Organic Act provides that the U.S. tax liability for V.I. permanent residents on their U.S. source income is satisfied by paying the tax to the V.I., thus justifying an exemption from withholding for U.S. payments to V.I. recipients, there is no reciprocal provision in U.S. law providing that the V.I. tax liability for U.S. residents on their V.I. source income is satisfied by paying the tax to the U.S. Therefore, there must be withholding on payments of V.I. source income to U.S. persons (not V.I. inhabitants).

The proposed action of revoking § 1.1441–4(d) eliminates any necessity to mirror the exemption. It should thus be clear that the exemption from withholding cannot be mirrored to make it part of V.I. tax law. The revocation will be effective prospectively.

The Internal Revenue service will issue a revenue procedure when this notice of proposed rulemaking is adopted as a final rule. The revenue procedure will set forth the obligations of U.S. withholding agents with regard to payments to V.I. residents to properly reflect the Revised Organic Act.

## Comments and Requests for a Public Hearing

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

## Drafting Information

The principal author of these proposed regulations is Catherine Kelly Bouknight 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.

## Proposed Revocation of Regulations

Paragraph (d) of § 1.1441–4 is revoked by inserting at the beginning thereof "This paragraph shall not apply after (date which is 30 days after adoption as a Treasury decision.)"

**Jerome Kurtz,**

*Commissioner of Internal Revenue.*

[FR Doc. 20259 Filed 7–2–80; 10:13 am]

BILLING CODE 4830–01–M

26 CFR Part 301

[EE-27-78]

## Periodic Report of Actuary; Proposed Rulemaking

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations relating to the requirement that the plan administrator of a defined benefit plan periodically file an actuarial report for the plan. Changes to the applicable tax law were made by the Employee Retirement Income Security Act of 1974 ("ERISA"). The regulations will provide plan administrators the guidance needed to comply with ERISA.

**DATES:** Written comments and requests for public hearing are to be delivered or mailed by September 8, 1980. In the case of a plan in existence on January 1, 1974, the regulations are proposed to be effective for plan years beginning after December 31, 1975. In the case of a plan not in existence on January 1, 1974, the regulations are proposed to be effective for plan years beginning after September 2, 1974.

**ADDRESS:** Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T:EE-27-78, Washington, D.C. 20224.

**FOR FURTHER INFORMATION CONTACT:** Richard L. Johnson of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T:EE-27-78, 202-566-3544 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

This document contains proposed amendments to the Regulations on Procedure and Administration (26 CFR Part 301) under sections 6059 and 6692 of the Internal Revenue Code of 1954. The amendments are proposed to conform the regulations to section 1033 of the Employee Retirement Income Security Act of 1974 (88 Stat. 947) ("ERISA"), and are to be issued under the authority contained in sections 6059 and 7805 of the Internal Revenue Code of 1954 (88 Stat. 947, 68A Stat. 917; 26 U.S.C. 6059, 7805).

### Actuarial Report

ERISA requires that the plan administrator of a defined benefit plan that is subject to the minimum funding standards of ERISA periodically file an actuarial report of the plan with the Internal Revenue Service. Under the proposed regulations, the report is to be filed on Schedule B as an attachment to the Annual Return/Report of Employee Benefit Plan (Form 5500 series). The actuarial report calls, in part, for information based upon an actuarial valuation of the plan. The proposed regulations govern only the report, and not the valuation. For example, although Schedule B of Form 5500 may require that an actuarial report be filed for each plan year, an actuarial valuation is required only as described under Code section 412(c)(9). In general, that section requires an actuarial valuation not less frequently than once every three years.

### Comments and Requests for a Public Hearing

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

### Drafting Information

The principal author of these proposed regulations is Richard L. Johnson of the Employee Plans and Exempt Organizations 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.

### *Proposed Amentments to the Regulations*

The proposed amendments to 26 CFR Part 301 are as follows:

**Paragraph 1.** There is added in the appropriate place the following new section:

**§ 301.6059-1 Periodic report of actuary.**

(a) *In general.* The actuarial report described in this section must be filed on behalf of a defined benefit plan to which the minimum funding standards of section 412 apply. The actuarial report must be filed by the plan administrator (within the meaning of section 414(g)) on Schedule B as an attachment to the annual Return/Report of Employee Benefit Plan (Form 5500 series). The instructions accompanying the Form 5500 series prescribe the place and date for filing Schedule B.

(b) *Plan years for which report required.* In the case of a plan in existence on January 1, 1974, Schedule B must be filed for the first plan year beginning after December 31, 1975, for which the minimum funding standards apply to the plan, and for each plan year thereafter for which the Schedule must be filed under the instructions accompanying the Schedule and the Form 5500 series. In the case of a plan not in existence on January 1, 1974, Schedule B must be filed for the first plan year beginning after September 2, 1974, for which the minimum funding standards apply to the plan, and for each plan year thereafter for which the Schedule must be filed under the instructions accompanying the Schedule and the Form 5500 series. For rules relating to when a plan is considered to be in existence, see § 1.410(a)-2([c). For purposes of this section, "plan year" means the plan year as determined for purposes of the minimum funding standards.

(c) *Actuarial report*—(1) *Contents.* The actuarial report of a plan filed on Schedule B must be prepared by an enrolled actuary (within the meaning of section 7701(a)(35)) and must contain—

(i) The date of the actuarial valuation applicable to the plan year for which the report is filed (see section 412(c)(9) for rules relating to the frequency with which an actuarial valuation of the plan is required to be made),

(ii) A description of the funding method and actuarial assumptions used to determine costs under the plan,

(iii) A certification of the contribution necessary to reduce the accumulated funding deficiency (as defined in section 412(a)) to zero,

(iv) A statement that to the best of the knowledge of the preparing actuary the report is complete and accurate,

(v) A statement that in the opinion of the preparing actuary the actuarial assumptions used are (A) in the aggregate reasonably related to the experience of the plan and to reasonable expectations, and (B) represent the preparing actuary's best estimate of anticipated experience under the plan,

(vi) Such other information as may be necessary to fully and fairly disclose the actuarial position of the plan, and

(vii) Such other information as may be required by Schedule B or the instructions accompanying the Schedule and the Form 5500 series.

(2) *Signature by preparing actuary.* The actuarial report filed on Schedule B must be signed by the preparing actuary or there may be attached to the report a statement signed by the preparing

actuary which contains that statement described in subparagraph (1) (v) and (iv) of this paragraph. An actuarial report does not satisfy the requirements of this section if the preparing actuary in any manner seeks to limit or qualify the statements required by subparagraph (1) (iv) and (v) of this paragraph.

(d) *Relief from filing.* Notwithstanding paragraph (a) of this section, the Commissioner may, in the Commissioner's discretion, relieve a plan administrator from filing Schedule B or from reporting information required by Schedule B or paragraph (c) of this section.

(e) *Penalty.* For the penalty imposed in the case of a failure to file the actuarial report required by this section, see section 6692 and § 301.6692–1.

**Par. 2.** There is added in the appropriate place the following new section:

**§ 301.6692–1 Failure to file actuarial report.**

(a) *Penalty.* In each case in which the plan administrator (within the meaning of section 414(g)) of a defined benefit plan to which the minimum funding standards of section 412 apply fails to file the actuarial report described in section 6059 and § 301.6059–1 within the time prescribed, the plan administrator shall pay a penalty of $1,000. A failure to provide a material item of information called for in the actuarial report is considered a failure to file the report. For this purpose, the signature of the actuary preparing the report is considered a material item of information. Further, in any case in which the preparing actuary in any manner seeks to limit or qualify the statements required by § 301.6059–1(b)(1) (iv) and (v) there is a failure to provide a material item of information called for in the actuarial report.

(b) *Failure to make actuarial valuation.* Section 412(c)(9) and the regulations thereunder prescribe the time for making an actuarial valuation of a defined benefit plan. For purposes of this section, the failure to base information called for in the actuarial report upon an actuarial valuation of the plan which is made within the time prescribed by section 412(c)(9) and the regulations thereunder is considered a failure to file the actuarial report.

(c) *Showing of reasonable cause.* The penalty imposed by this section does not apply if it is established to the satisfaction of the appropriate district director or the director of the Internal Revenue Service Center at which the actuarial report is required to be filed that the failure to file the report was due to reasonable cause. An affirmative showing of reasonable cause must be made in the form of a written statement setting forth all the facts alleged as reasonable cause. The statement must contain a declaration by the appropriate individual that the statement is made under the penalties of perjury.

(d) *Joint liability.* If more than one person is responsible for a failure to file the actuarial report, all such persons are jointly and severally liable with respect to the failure.

(e) *Manner of payment.* The penalty imposed for the failure to file an actuarial report shall be paid in the same manner as a tax upon the issuance of notice and demand therefor.

(f) *Effective dates.* In the case of a plan in existence on January 1, 1974, this section is effective beginning with the first plan year beginning after December 31, 1975, for which the minimum funding standards of section 412 apply to the plan. In the case of a plan not in existence on January 1, 1974, this section is effective beginning with the first plan year beginning after September 2, 1974, for which the minimum funding standards apply to the plan.

**Jerome Kurtz,**

*Commissioner of Internal Revenue.*

[FR Doc. 80–20184 Filed 7–7–80; 8:45 am]

BILLING CODE 4830–01–M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 950

### Surface Coal Mining and Reclamation Operations on Federal Lands Under the Permanent Program; State-Federal Cooperative Agreements; Wyoming

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Department of the Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) intends to commence rulemaking to amend the existing cooperative agreement between the Department of the Interior and the State of Wyoming for the regulation of surface coal mining and reclamation operations on Federal lands in Wyoming.

The existing cooperative agreement appears in 30 CFR 211.77(a). The existing cooperative agreement was promulgated pursuant to the second sentence of Section 523(c) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1273(c), and relates to State regulation of Federal lands under OSM's interim regulatory program. This notice announces OSM's intent to amend the existing cooperative agreement for the purpose of giving Wyoming a role in the administration of the permanent regulatory program on Federal lands. See the first sentence of Section 523(c) of the Surface Mining Act.

**DATES:** Comments must be received on or before September 8, 1980, at the Office listed below under "Address" by no later than 5 p.m.

Representatives of OSM will be available to meet with interested persons upon request between July 8, 1980, and September 8, 1980. A supplemental notice will announce the date and location for a public hearing.

**ADDRESS:** Written comments must be mailed or hand delivered to the Office of Surface Mining, U.S. Department of the Interior, Room 153, South Building, 1951 Constitution Avenue NW., Washington, D.C. 20240.

Summaries of meetings with representatives of OSM will be prepared and made available for public review in Room 153 of the Interior South Building. Comments received will also be available for inspection at this address.

Copies of the proposed agreement and of the related information required under 30 CFR Part 745 are available for inspection at Wyoming Land Quality Division, Department of Environmental Quality, Hathaway Building, Cheyenne, Wyoming 82002; Land Quality Division, 30 East Grinnel Street, Sheridan, Wyoming 82801; and Land Quality Division, 933 Main Street, Lander, Wyoming 82520; Office of Surface Mining, U.S. Department of the Interior, Room 153, South Building, 1951 Constitution Ave. NW., Washington, D.C. 20240; Region V, Office of Surface Mining, U.S. Department of the Interior, Brooks Tower, 1020 15th Street, Denver, Colorado 80201, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

**FOR FURTHER INFORMATION CONTACT:** Donald Crane, Regional Director, Region V, Office of Surface Mining, U.S. Department of the Interior, Brooks Tower, 1020 15th Street, Denver, Colorado 80201, (303) 837–5421.

**SUPPLEMENTARY INFORMATION:**

#### Rulemaking Under 30 CFR Part 745 and 43 CFR Part 14

The regulations for the development, approval, administration and enforcement of permanent program cooperative agreements appear at 30 CFR Part 745. The State of Wyoming has submitted the proposed permanent program cooperative agreement and related information required by 30 CFR 745.11(b). This information is available

for inspection at the locations listed above under the heading "Address."

This notice of intent to propose rulemaking is issued pursuant to 30 CFR 745.11(c) and 43 CFR 14.5(b)(2). (The latter regulations are the Department of the Interior's rulemaking procedures.) Pursuant to 30 CFR 745.11(c)(3), this notice specifies that the public comment period within which representatives of the public may submit written comments on the proposed permanent program cooperative agreement with the State of Wyoming will be 60 days. OSM intends to publish a Notice of Proposed Rulemaking and Notice of Public Hearing in the near future. See 30 CFR 745.11(c) and (d) and 43 CFR 14.5(b)(3).

**Background**

Consistent with Congress' intent that implementation of the Surface Mining Act be accomplished in two phases, Section 523(c) of that Act provides for two kinds of State-Federal cooperative agreements. The second sentence of Section 523(c) provides that "[S]tates with cooperative agreements existing on the date of enactment of this Act, may elect to continue regualtion on Federal lands within the State, prior to approval by the Secretary of their State program, or imposition of a Federal program, provided that such existing cooperative agreement is modified to fully comply with the initial regulatory procedures set forth in Section 502 of this Act." 30 U.S.C. 1273(c). Six States had cooperative agreements with the Department of the Interior prior to August 3, 1977. (Wyoming, Utah, New Mexico, North Dakota, Montana and Colorado.)

On March 5, 1979, OSM announced a proposed rulemaking for the purpose of modifying Wyoming's pre-August 3, 1977, cooperative agreement to fully comply with the initial program regulations promulgated pursuant to Section 502 of the Surface Mining Act. 44 FR 12052–57, March 5, 1979. Comments were received on the proposal and the final cooperative agreement was published on June 11, 1979 (44 FR 33655–62) and codified at 30 CFR 211.77(a) (1979). (For purposes of this notice, the June 11, 1979, cooperative agreement is called the "Interin program cooperative agreement.") The first sentence of Section 523(c) of the Surface Mining Act provides that "[a]ny State *with an approved State program* may elect to enter into a cooperative agreement with the Secretary to provide for State regulation of surface coal mining and reclamation operations on Federal lands within the State, provided the Secretary determines in writing that such State has the necessary personnel and funding to fully implement such a cooperative agreement in accordance with the provisions of this Act." 30 U.S.C. 1273(c) (emphasis added). (For purposes of this notice, such agreements are called "permanent program cooperative agreements.") The procedures for States to elect to enter into permanent program cooperative agreements and found in 30 CFR Part 745.

By letter of August 13, 1979, the Governor of the State of Wyoming submitted the Wyoming State program for approval pursuant to Section 503 of the Surface Mining Act and 30 CFR Part 731. See Notice of Receipt, 44 FR 49313–14, August 22, 1979. Part Q of that submittal contained a proposed permanent program cooperative agreement and the related information required by 30 CFR 745.11. By notice in the **Federal Register** on March 31, 1980, (45 FR 20930–82), the Secretary of the Interior approved in part and disapproved in part the August 13, 1979, Wyoming submittal. Because the entire State program is not approved, the permanent program under the Surface Mining Act is not yet in effect in Wyoming. No findings with respect to Wyoming's proposed permanent program cooperative agreement were made in the March 31, 1980, notice.

The interim program (and the interim program cooperative agreement) will continue in effect on all lands in Wyoming until the Secretary has reviewed those parts of the program which were resubmitted. See also Article IX of the Wyoming interim program cooperative agreement at 30 CFR 211.77(a) regarding termination. If the resubmitted parts are not all approved, the Secretary will implement a Federal program in Wyoming. A State with a Federal program is precluded from having a permanent program cooperative agreement by Section 523(c) of the Surface Mining Act.

On June 4, 1980, OSM announced receipt of the resubmitted portions of the proposed Wyoming State program. 45 FR 37697–99. Part Q of the Wyoming resubmission contains a newly revised permanent program cooperative agreement and a letter from the Secretary of the Interior acknowledging receipt of the revised agreement. As noted in the June 4, 1980, notice of receipt, the revised permanent program cooperative agreement was to be the subject of a rulemaking which is separate from the procedures for review, public comment and decision on the Wyoming State program resubmission. 45 FR at 37699. The Department also intends to follow the "Guidelines for Contacts With Employees and Officials During Consideration of State Permanent Regulatory Programs" published at 44 FR 54444–45, September 19, 1979. The guidelines will apply from the time of submission of the proposed cooperative agreement until the signing of the agreement by the Governor and the Secretary of the Interior.

This notice begins the process of review and comment of the proposed Wyoming permanent program cooperative agreement. The full text of the proposed permanent program cooperative agreement appears at the end of this notice.

**Request for Comments**

The public is invited to comment on the following issues as they relate to Wyoming's proposed permanent program cooperative agreement:

1. Does the proposal meet the requirements of 30 CFR 745.12 relating to the content of a permanent program cooperative agreement?

*2. Does the State have the legal authority to administer the proposed permanent program cooperative agreement? See 30 CFR 745.11(f)(3).

*3. Does the State have sufficient budget, equipment and personnel as required by 30 CFR 745.11(f)(2)?

4. Should the proposal include terms for compliance with a variety of Federal statutes and executive orders which are not reserved to the Secretary under 30 CFR 745.13 (*e.g.*, National Historic Preservation Act, 16 U.S.C. 470 *et seq.*; Floodplain Management, Executive Order 11988 (May 24, 1977); Protection of Wetlands, Executive Order 11990 (May 24, 1977))?

As this list is not intended to be an exhaustive summary of issues or considerations, the public is further invited to comment on any articles of the proposed permanent program cooperative agreement and any other issues or areas pertaining to the proposed permanent program cooperative agreement.

*Information relating to questions 2 and 3 above may be found in Wyoming's State program submission at the addresses noted above.

**Principal Authors**

Donald T. Maurer, Chief Division of Federal Programs, Office of Surface Mining, 1951 Constitution Avenue, Washington, D.C. 20240, Telephone (202) 343–5335.

Richard Bryson, Staff Assistant, Office of Surface Mining, 1951 Constitution Avenue, Washington, D.C. 20240, Telephone (202) 343–5335.

Linda Hodge, Office of the Solicitor, Division of Surface Mining, 1951

Constitution Avenue, Washington, D.C. 20240, Telephone (202) 343-5207.

**Statement of Significance and of Environmental Impact**

The Department of the Interior invites comments on whether this rulemaking is a significant rule requiring preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Pursuant to Section 702(d) of the Surface Mining Act, proceedings relating to adoption of a permanent program cooperative agreement are part of the Secretary's implementation of the Federal lands program and are therefore exempt from the requirement to prepare a detailed statement pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(c).

Dated: June 30, 1980.

**Joan M. Davenport,**

*Assistant Secretary of the Interior.*

**Cooperative Agreement**

The State of Wyoming (State) acting through the Governor and the Department of the Interior (Department) acting through the Secretary enter into a Cooperative Agreement (Agreement) to read as follows:

*Article I: Introduction and Purpose*

1. This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (Act) 30 U.S.C. 1273 which allows a State with a Permanent Regulatory Program (Program) approved under 30 U.S.C. 1253 to elect to enter into an Agreement for the regulation and control of coal mining on federal lands.

The Agreement provides for State regulation consistent with the Act and the federal lands program for surface coal mining and reclamation operations on leased federal lands.

2. The purpose of this Agreement is to (a) foster federal-state cooperation in the regulation of surface coal mining, (b) eliminate intergovernmental overlap and duplication, and (c) provide uniform and effective application of the Program in Wyoming, in accordance with the Act.

*Article II: Effective Date*

3. This Agreement shall take effect upon the Department's approval of Wyoming's Program.

*Article III: Scope*

4. This Agreement makes the laws, regulations, terms and conditions of Wyoming's Program applicable to federal lands except as otherwise stated in this Agreement.

*Article IV: Policies and Procedures: Mine Plan Review*

5. To eliminate duplication and overlap, the State will assume the primary responsibility for the review and analysis of mining and reclamation plans subject to legal, budgetary and personnel restrictions. Legal constraints include those limitations in 30 U.S.C. 1272(b) and 1273 and in 42 U.S.C. 4321-4335. Personnel and budget constraints mean that the state of Wyoming is not obligated to assume responsibility for any item covered by this Agreement for which it does not have sufficient money or personnel.

6. The Department is responsible for coordination among the State Regulatory Authority, other federal surface managing agencies, the United States Geological Survey, and the Office of Surface Mining Reclamation and Enforcement.

*Article V: Funding*

7. The State will devote adequate funds to the administration and enforcement of the requirements of this Agreement, as required in 30 CFR 745.12(d). If this Agreement has been carried out to the satisfaction of the Department, and if necessary funds have been appropriated, the Secretary shall reimburse the State as provided in Section 705(c) of the Act, for costs associated with carrying out responsibilities under the Agreement. Reimbursement shall be in the form of annual grants, and applications for said grants shall be processed and awarded in a timely and prompt manner. The Department shall advise the State of Wyoming within a reasonable period of time after the effective date of this Agreement and periodically thereafter, of the amount the Department would have expended if the State had not entered into this Agreement.

*Article VI: Reports, Records and Fees*

8. The State Regulatory Authority shall make reports to the Department containing information respecting its compliance with the terms of this Agreement, as the Department shall from time to time require pursuant to 30 CFR 745.12(c). The State and the Department shall exchange, upon request, information developed under this Agreement.

9. The amount of the fee accompanying an application for a permit shall be determined in accordance with this agreement. All permit fees shall be retained by the State and deposited with the State Treasurer in the General Fund. The Financial Status Report submitted pursuant to 30 CFR 735.26 shall include a report of the amount of fees collected and attributable to federal lands proposed within permit applications submitted during the prior federal fiscal year. This amount shall be deducted from the Annual Cooperative Agreement Grant.

*Article VII: Mining and Reclamation Plans*

10. State and federal laws and regulations require the operator of lands leased, permitted or licensed for coal mining to receive approval from the State Regulatory Authority of a permit application and from the Department of a mining and reclamation plan prior to conducting operations and to receive renewals or revisions of an approved permit or plan.

11. (a). An operator on Federal lands must submit a single application to the State Regulatory Authority and the Department containing that information required by the State, along with any supplemental information required by the Department to carry out its statutory obligations under laws other than the Act. Within one month from program approval the Department shall submit to the State a list containing those statutes and regulations on which the Department will primarily rely to require supplemental informatin from an applicant.

11. (b). When an application has all of the elements required, and both the Department and the State Regulatory Authority have certified that the application is reviewable, formal review will begin in accordance with Article IV, and a decision to approve or disapprove will be made in one year.

12. Each application shall include: (a) A minimum fee of $100.00 plus $10.00 for each acre in the requested permit area, but the maximum fee for any single permit application shall not exceed $2,000.00.

(b) A statement certifying that identical copies of the application have been given to both the State Regulatory Authority and the Department.

13. Upon receipt of each application the Department shall designate a single contact person as the Department's primary representative on all matters concerning that application.

14. If the State Regulatory Authority requires the operator to submit additional information, the operator shall submit the information to the State Regulatory Authority and to the Department. If, for the matters covered by this Agreement, the Department requires additional information, its request shall be directed to the operator through the State Regulatory Authority.

15. The State Regulatory Authority shall review the application and if approval of the application is proposed, shall submit its decision for the Department's review.

16. The Department shall notify the State Regulatory Authority of its proposed action on the application, including any proposed conditions and stipulations. Upon receipt of the notice of the Department's proposed action, the State Regulatory Authority shall consult with the Department for the purpose of agreeing to the final actions to be taken by the Department and the State Regulatory Authority on the application.

17. Any final approval of an application, or modifications or revisions thereto, by the State Regulatory Authority or the Department which would create a right of appeal by an aggrieved person shall be mutually acceptable to the State Regulatory Authority and the Secretary and shall be concurrent. Neither the State Regulatory Authority nor the Secretary will take final action approving an application which fails to comply with the requirements of the applicable laws and regulations.

18. In the event the State and the Department cannot agree to the final actions to be taken by the State Regulatory Authority and the Department on the application, the matter shall be referred to the Governor and the Secretary for resolution. This duty may not be delegated except upon mutual agreement of the Secretary and the Governor.

19. When acting on an application, the Department reserves the right to impose such additional conditions or requirements as authorized by 30 U.S.C. 1292(b), and all other laws other than the Act.

*Article VIII: Inspections*

20. The State shall conduct inspections on federal lands and prepare and file inspection reports in accordance with its Program.

21. The State shall, subsequent to conducting any inspection, file with the Secretary an inspection report adequately describing (1) the general conditions of the lands under the lease, permit and license; (2) the manner in which the operations are being conducted; and (3) whether the operator is complying with applicable performance and reclamation requirements.

22. The State will be the point of contact and sole inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by this Agreement, except as described hereinafter. Nothing in this Agreement shall prevent federal inspections by authorized federal or State agencies for purposes other than those covered by this Agreement.

23. The Department may conduct any inspections necessary to comply with 30 CFR Parts 842 and 743, as Part 743 relates to obligations under laws other than the Act.

24. The Secretary shall give the State Regulatory Authority reasonable notice of his intent to conduct an inspection in order to provide State inspectors with an opportunity to join in the inspection.

25. Personnel of the State and representatives of the Department shall be mutually available to serve as witnesses in enforcement actions taken by either party.

*Article IX: Enforcement*

26. The State shall be the primary enforcement authority concerning compliance with the requirements of this Agreement and its Program.

27. During any joint inspection by the Department and the State Regulatory Authority, the State shall have primary responsibility for enforcement procedures, including issuance of orders of cessation, notices of violation, and assessment of penalties. The Department and the State shall consult prior to issuance of any decision to suspend or revoke a permit.

28. During either any inspection made solely by the Department or any joint inspection where the State and the Department fail to agree regarding the propriety of any particular enforcement action, the Department may take any enforcement action necessary to comply with 30 CFR Parts 843 and 845.

29. The State Regulatory Authority and the Department shall promptly notify each other of all violations of applicable laws, regulations, orders, aproved mining and reclamation plans and permits subject to the Agreement and of all actions taken with respect to such violations.

30. This Agreement does not limit the Department's authority to enforce violations of federal law which establish standards and requirements which are authorized by laws other than the Act.

*Article X: Bonds*

31. The State Regulatory Authority and the Secretary shall require all operators on federal lands to submit a single bond payable to both the United States and the State Regulatory Authority. Such bond shall be of sufficient amount to comply with the requirements of both State and Federal law and shall be conditional upon compliance with all applicable requirements of the Program and federal law.

32. Prior to releasing the operator from an obligation under the bond required under the Program, the State Regulatory Authority shall obtain the consent of the Department. The State Regulatory Authority shall also advise the Department of annual adjustments to the bond, pursuant to the Program.

33. The operator's performance bond shall be subject to forfeiture in accordance with the procedures and requirements of the State Program and Federal laws other than the Act.

*Article XI: Termination of Cooperative Agreement*

34. The Agreement may be terminated by the State upon written notice to the Department, specifying the date upon which the Agreement shall be terminated, provided that no termination date shall be effective less than 90 days from the date of the notice.

35. This Agreement may be terminated by the Secretary after giving notice to the State Regulatory Authority and affording the State Regulatory Authority and the public an opportunity for a public hearing and comment period if the Secretary finds tht the State has substantially failed to comply with the requirements of 30 CFR Part 745, the Program, grants by the Department for administration or enforcement of the Program or the provisions of this Agreement.

36. This Agreement shall terminate by operation of law when no longer authorized by federal law or applicable Wyoming laws and regulations.

*Article XII: Reinstatement of Cooperative Agreement*

37. If this Agreement has been terminated in whole or in part it may be reinstated upon application by the State and upon giving evidence satisfactory to the Department that the State can and will comply with all the provisions of the Agreement, and has remedied all defects in administration or law for which this Agreement was terminated.

*Article XIII: Amendments of Cooperative Agreement*

38. This Agreement may be amended by mutual agreement of the State and Secretary. An amendment proposed by one party shall be submitted to the other with a statement of the reasons for such proposed amendment. The amendment shall be adopted after rulemaking and the party to whom the proposed amendment is submitted shall signify its acceptance or rejection of the proposed amendment, and if rejected shall state the reasons for rejection.

*Article XIV: Changes in State or Federal Standards*

39. The Department of the State may from time to time revise and promulgate new or revised performance or reclamation requirements or enforcement and administration procedures. Each party shall, if it determines it to be necessary to keep this Agreement in force, change or revise its respective laws or regulations. For changes which may be accomplished by rulemaking, each party shall have six months in which to make such changes. For changes which require legislative authorization, the State shall have until the close of its next regular legislative session in which to make the changes.

40. The State and the Department shall provide each other with copies of any changes to their respective laws, rules, regulations, and standards pertaining to the enforcement and administration of this Agreement.

*Article XV: Changes in Personnel and Organization*

41. The State and the Department shall, consistent with 30 CFR Part 745, advise each other of changes in the organization, structure, functions, duties, and funds of the offices, departments, divisions, and person within their organizations. Each shall promptly advise the other in writing of changes in key personnel, including the heads of a department or division, or changes in the functions or duties of persons occupying the principal offices within the structure of the Program. The State and the Department shall advise each other in writing of changes in the location of offices, addresses, telephone numbers, and changes in the names, locations and telephone numbers of their respective mine inspectors and the area within the State for which such inspectors are responsible.

*Article XVI: Reservation of Rights*

In accordance with 30 CFR 745.13, this Agreement shall not be construed as waiving or preventing the assertion of any rights that have not been expressly addressed in this Agreement, that the State or the Secretary may have under other laws or regulations, including the Mineral Leasing Act, as amended, the Mineral Leasing Act for Acquired Lands, the Stockraising Homestead Act, the Surface Mining Control and Reclamation Act of 1977, the Federal Land Policy and Management Act, and the Constitution of the United States, the Constitution of the State or State laws.

*Article XVII: Definitions*

Terms and phrases used in this Agreement which are defined in 30 CFR Parts 700 and 701 shall be given the meanings set forth in said definitions.

Ed Herschler,
*Governor of Wyoming.*

Date

Cecil D. Andrus,
*Secretary of the Interior.*

Date

[FR Doc. 80-20312 Filed 7-7-80; 8:45 am]
BILLING CODE 4310-05-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[FRL 1533-3]

### Approval and Promulgation of Implementation Plans—Massachusetts; Notice of Proposed Rulemaking: Revision to the Massachusetts State Implementation Plan

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** This proposal announces the receipt of a request from the Commonwealth of Massachusetts on March 20, 1980 to approve a temporary revision to its State Implementation Plan. This revision to 310 CMR 7.05(1) "Sulfur Content of Fuels and Control Thereof", which EPA is proposing to approve, would allow Seaman Paper Company, Otter River, Massachusetts to burn 2.2 percent sulfur fuel oil until July 1, 1982.

**DATE:** Comments must be received on or before August 7, 1980.

**ADDRESSES:** Copies of the Massachusetts submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02003; Public Information Reference Unit, Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460; and Department of Environmental Quality Engineering, 600 Washington Street, Boston, Massachusetts 02111.

Comments should be submitted to the Regional Administrator, Region I, Environmental Protection Agency, Room 2203, JFK Federal Building, Boston, Massachusetts 02003.

**FOR FURTHER INFORMATION CONTACT:** Magaret McDonough, Air Branch, EPA Region I, Room 1903,. JFK Federal Building, Boston, Massachusetts 02003, (617) 223-5609.

**SUPPLEMENTARY INFORMATION:** On March 20, 1980 the Commissioner of the Department of Environmental Quality Engineering (The Department) submitted a request to the EPA to approve a revision to the Massachusetts State Implementation Plan (SIP) which would temporarily vary the provisions of Massachusetts Regulation 310 CMR 7.05(1) "Sulfur Content of Fuels and Control Thereof". This revision, which EPA is proposing to approve, would allow Seaman Paper Company, Otter River, Massachusetts to burn fuel oil having a sulfur content not in excess of 1.21 pounds per million BTU heat release potential (approximately equivalent to 2.2 percent sulfur content residual fuel oil) until July 1, 1982. The facility, rated at 28.2 million BTU's per hour heat input capacity, is located in the Central Massachusetts Air Pollution Control District (CMAPCD). The CMAPCD has the same geographical boundaries as the Central Massachusetts Intrastate Air Quality Control Region (AQCR).

Under regulation 310 CMR 7.05(1), certain sources in the CMAPCD rated at 100 Million BTU's per hour or greater are allowed to burn 2.2 percent sulfur fuel oil. This regulation limits sources rated at less than 100 million BTU's per hour to the burning of fuel oil having a sulfur content not in excess of 0.55 pounds per million BTU heat release potential (approximately equivalent to 1 percent sulfur content residual fuel oil). The requested variance would allow Seaman Paper Company to burn residual fuel oil having a maximum sulfur content of 2.2 percent for a period not to exceed two years pending conversion of the facility to coal. The variance applies only to the burning of residual fuel oil and specifically prohibits the burning of coal having a sulfur content in excess of 0.55 pounds per million BTU heat release potential. Seaman Paper Company has demonstrated that it will take the necessary steps to convert its oil burning facility to a low-sulfur coal burning facility prior to July 1, 1982.

No monitoring data exist for Otter River and, therefore, EPA conservatively estimated background concentrations by averaging maximum and second maximum 24-hour and 3-hour values from three rural sites which approximate the mix of area sources surrounding Seaman Paper Company. The average values of 100$\mu g/m^3$ (24-hour average) and 189 $\mu g/m^3$ (3-hour average are considered realistic background concentrations. The assumed value of 20 $\mu g/m^3$ is

considered appropriate for the annual average background concentration.

Technical support for the proposed revision includes an evaluation of compliance with National Ambient Air Quality Standards (NAAQS) and Prevention of Significant Deterioration (PSD) increments for sulfur dioxide ($SO_2$) using mathematical modeling. NAAQS are maximum ambient pollutant concentrations which are set to protect public health and welfare. The NAAQS for $SO_2$ is 80 $\mu g/m^3$ (annual average), 365 $\mu g/m^3$ (24-hour average), and 1300 $\mu g/m^3$ (3-hour average). The PSD increments are allowable incremental increases in ambient pollutant concentrations which are set to limit the degradation of air quality over baseline levels. The PSD increments which apply to the Otter River Area for $SO_2$ are 91 $\mu g/m^3$ (24-hour average), 512 $\mu g/m^3$ (3-hour average), and 20 $\mu g/m^3$ (annual average).

EPA approved modeling techniques used to predict ambient air quality levels and increment consumption include: The VALLEY model, a conservative "screening" model; the PTMTP model which is used to predict air quality in instances where emissions from two sources may interact; the PTMAX model which predicts the maximum impact (highest level of $SO_2$ that could be attributed to a given source) for a wide range of meteorological conditions and the CDM model which is used to predict annual concentrations.

The results of the modeling analysis predicted a maximum PSD increment consumption of 5 $\mu g/m^3$, 86 $\mu g/m^3$ and 346 $\mu g/m^3$ on an annual, 24-hour and 3-hour averaging time, respectively. The sum of the background concentrations and predicted maximum impacts based on an annual, 24-hour and 3-hour averaging time are 25 $\mu g/m^3$, 258 $\mu g/m^3$ and 821 $\mu g/m^3$ respectively. Therefore, the entire available PSD increment will not be consumed and the NAAQS will not be violated.

Although 2.2 percent fule oil burning will cause an increase in particulate emissions, the current Massachusetts' particulate emission limitation (0.12 pounds per million BTU) will not be violated.

The Administrator's decision to approve or disapprove the plan revision will be based on whether it meets the requirements of Section 110(a)(2)(A)(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51. This revision is being proposed pursuant to Sections 110(a) and 301 of the Clean Air Act, as amended (42 U.S.C. 7401 and 7601).

Dated: June 6, 1980.

**Robert C. Thompson,**

*Acting Regional Administrator, Region I.*

[FR Doc. 80-20352 Filed 7-7-80; 8:45 am]

BILLING CODE 6560-01-M

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Ch. X

**[Ex Parte No. MC 137]**

### No Suspend Zone—Motor Common Carriers of Property

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Postponement of filing date of proposed rule.

**SUMMARY:** We are entending the comment period in Ex Parte No. MC 137, in which the Commission is considering establishment of a "no suspend zone" for freight rates published by motor common carriers of property for general application in the entire industry, to give parties an additional opportunity to refocus their comments in light of the "Motor Carrier Act of 1980" (H.R. 6418 & S. 2245). We recognize that some comments may already have been filed. Interested persons may submit, if desired, supplemental comments by the July 11 date. This opportunity may not be used to reply to comments already filed.

The original Notice of Proposed Rulemaking was published at 45 FR 6974, Jan. 31, 1980, and corrected at 45 FR 12273, Feb. 25, 1980. A previous extension of time in this proceeding (45 FR 39316, June 10, 1980) had postponed the comment period from April 23, 1980 to July 1, 1980.

**DATES:** The comment period is postponed until July 11, 1980.

**FOR FURTHER INFORMATION CONTACT:** Richard Felder, (202) 275-7693.

This decision will not significantly affect either the quality of the human environment or conservation of energy resources.

This notice is issued under authority of 49 U.S.C. 10321 and 5 U.S.C. 553.

Decided: July 1, 1980.

By the Commission, Darius W. Gaskins, Jr., Chairman.

**Agatha L. Mergenovich,**

*Secretary.*

[FR Doc. 80-20367 Filed 7-7-80; 8:45 am]

BILLING CODE 7035-01-M

# Notices

Federal Register
Vol. 45, No. 132
Tuesday, July 8, 1980

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### Cash in Lieu of Commodities; Value of Donated Commodities for School Year 1980

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Notice.

Section 6(b) of the National School Lunch Act (the Act), as amended (7 U.S.C. 1755) and the regulations governing cash in lieu of commodities (7 CFR Part 240) require the Secretary of Agriculture to make an estimate not later than May 15, 1980, of the value of agricultural commodities and other foods that will be delivered to States under the food donation regulations (7 CFR Part 250) during the school year ending June 30, 1980, for use in lunch programs by schools participating in the National School Lunch Program. If the estimated value is less than the total level of assistance authorized under Section 6(e) of the Act, as amended, for the school year ending June 30, 1980, the Secretary is required to pay to each State administering agency, not later than June 15, 1980, an amount of funds that is equal to the difference between the value of such deliveries as then programmed for each State and the total level of assistance authorized for such State under Section 6(e).

For school year 1980, the adjusted minimum national average value per lunch of donated foods or payment of cash in lieu thereof has been established under Section 6(e) at 15.75 cents per lunch (44 FR 43326) and, in accordance with these requirements, the Secretary has determined that $706,089,303 in commodities will be delivered nationally by June 30, 1980. Notice is hereby given, therefore, that no shortfall cash payments will be made for the school year ending June 30, 1980 (7 CFR Part 240).

On January 29, 1980, the amount of commodities needed to meet the requirements of Section 6(e) was revised to reflect increased participation trends, and commodities were shipped to States against their share of the revised national entitlement level of $706,966,540. By May 15 commodities valued at $706,089,303 had been purchased for shipment by June 30 to meet these requirements. However, during the May 15 review, later participation reports indicated that growth would be somewhat less than expected in January, and that the national commodity assistance level would be only $703,626,820. It was decided that since States had already been given an entitlement figure of $706,966,540, it would be impractical to lower entitlements to the calculated May 15 figure of $703,626,820. Further, since commodities valued in excess of the May 15 calculations have been delivered, no further adjustments will be made for the 1980 school year.

Effective Date: This notice shall become effective July 8, 1980. Dated: July 2, 1980.

**Carol Tucker Foreman,**

*Assistant Secretary for Food and Consumer Services.*

[FR Doc. 80-20311 Filed 7-7-80; 8:45 am]

BILLING CODE 3410-30-M

### Office of the Secretary

### National Advisory Committee on Meat and Poultry Inspection; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the National Advisory Committee on Meat and Poultry Inspection will be held on July 29 (beginning at 1:00 p.m.) and 30, 1980, (beginning at 9:00 a.m.) in Conference Room "B" of the Departmental Auditorium, 12th and Constitution Avenue, NW., Washington, DC.

The purpose of the Committee is to advise the Secretary of Agriculture regarding the issues pertaining to the meat and poultry inspection program, pursuant to sections 7(c), 24, 205, and 301(a)(4) of the Federal Meat Inspection Act (21 U.S.C. 607(c), 624, 645, and 661(a)(4) and sections 5(a)(4), 8(b), and 11(e) of the Poultry Products Inspection Act (21 U.S.C. 454(a)(4), 457(b), and 460(e)). The meeting will include a discussion of the following topics:

1. Dry-cured bacon proposal,
2. Recent State designations,
3. Net weight proposal,
4. FSQS plans to diminish the problem of chemical contamination of meat and poultry products,
5. FSQS surveys on salmonella in poultry and pork sausage,
6. Nitrosamine report, and
7. The 1980 FSQS legislative package.

The meeting is open to the public, but space is limited. Comments of interested persons may be filed with the Committee before or after the meeting, by sending them to Nancy F. Moody, Director, Executive Secretariat, Room 335-E, Administration Building, U.S. Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250, (202) 447-3002.

Done at Washington, DC, on June 30, 1980.

**Donald L. Houston,**

*Vice Chairman.*

[FR Doc. 80-20118 Filed 7-7-80; 8:45 am]

BILLING CODE 3410-DM-M

## CIVIL AERONAUTICS BOARD

### Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations

Notice is hereby given that, during the week ended June 27, 1980 CAB has received the applications listed below, which request the issuance, amendment, or renewal of certificates of public convenience and necessity or foreign air carrier permits under Subpart Q of 14 CFR 302.

Answers to foreign permit applications are due 28 days after the application is filed. Answers to certificate applications requesting restriction removal are due within 14 days of the filing of the application. Answers to conforming applications in a restriction removal proceeding are due 28 days after the filing of the original application. Answers to certificate applications (other than restriction removals) are due 28 days after the filing of the application. Answers to conforming applications or those filed in conjunction with a motion to modify scope are due within 42 days after the original application was filed. If you are in doubt as to the type of application

which has been filed, contact the applicant, the Bureau of Pricing and Domestic Aviation (in interstate and overseas cases) or the Bureau of International Aviation (in foreign air transportation cases).

**Subpart Q Applications**

| Date filed | Docket No. | Description |
|---|---|---|
| June 23, 1980 | 38353 | Ozark Air Lines, Inc., Lambert-St. Louis International Airport, St. Louis, Missouri 63145.<br>SApplication of Ozark Air Lines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests amendment of its certificate of public conve<nience and necessity for Route 107 so as to eliminate the requirement that Ozark serve at least one intermediate point on Flights operating between Chicago, Illinois, and Ro<chester, Minnesota.<br>Conforming Applications and Answers are due July 7, 1980. |
| June 23, 1980 | 38354 | Lone Star Airways, Inc., c/o Harry A. Bowen, 234 Georgetown Building, 2233 Wisconsin Avenue, N.W., Washington, D.C. 20007.<br>Application of Lone Star Airways, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests a certificate to engage in scheduled air transportation of passengers, property and mail as follows:<br>Between the terminal point Houston, Texas, the intermediate point Lisbon, Portugal and the terminal point Zurich, Switzerland.<br>Conforming Applications and Answers are due July 21, 1980. |
| June 24, 1980 | 38359 | Ozark Air Lines, Inc., Lambert-St. Louis International Airport, St. Louis, Missouri 63145.<br>Application of Ozark Air Lines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests an amendment of its certificate of public convenience and necessity for Route 107 so as to eliminate the requirement that Ozark serve at least one intermediate point on flights operating between Denver, Colorado and Sioux Falls, South Dakota.<br>Conforming Applications and Answers are due July 7, 1980. |
| June 24, 1980 | 38372 | Pan American World Airways, Inc., c/o James M. Verner, Verner, Liipfert, Bernhard and McPherson, Suite 1100, 1660 L Street, N.W., Washington, D.C. 20036.<br>Application of Pan American World Airways, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's procedural regulations requests issuance of an amended certificate of public convenience and necessity for Route 31 authorizing it to engage in air transportation of persons, property, and mail between the points Houston, Texas and Orange county-Santa-Ana Anaheim, California.<br>Conforming Applications and Answers are due July 22, 1980. |
| June 25, 1980 | 38379 | Caribbean Air Cargo Company, Ltd., c/o Harry A. Bowen, 234 Georgetown Building, 2233 Wisconsin Avenue, N.W., Washington, D.C. 20007.<br>Application of Caribbean Air Cargo Company, Ltd., pursuant to Section 402 of the Act and Subpart Q of the Board's Procedural Regulations requests authority to engage in nonscheduled air transportation of property and mail between:<br>The coterminal points Barbados and Trinidad and Tobago, the intermediate points Antigua, Dominica, Grenana, Guadeloupe, Martinique, St. Kitts, St. Lucia, St. Maarten, St. Vincent, Tortola-Beef Island, and Kingston, Jamaica; and the coterminal points San Juan, Puerto Rico, Miami, Florida, Houston, Texas, and New York, New York.<br>Answers may be filed by June 23, 1980. |
| June 27, 1980 | 38388 | Air Florida, Inc., c/o Robert P. Silverberg, 2020 K Street, N.W., Suite 435, Washington, D.C. 20006.<br>Application of Air Florida, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Regulations requests an amendment of its certificate of public convenience and necessity authorizing it to engage in air transportation with respect to passengers, property and mail, as follows:<br>Between New York, on the one hand and Puerto Plata and Santo Domingo, Dominican Republic, on the other.<br>Conforming Applications and Answers are due July 25, 1980. |
| June 27, 1980 | 38389 | Air Florida, Inc., c/o Robert P. Silverberg, 2020 K Street, N.W., Suite 435, Washington, D.C. 20006.<br>Application of Air Florida, Inc., pursuant to Section 401 of the Act and Subpart Q of the Board's Regulations requests an amendment of its certificate of public convenience and necessity authorizing it to engage in air transportation with respect to passengers, property and mail, as follows:<br>Between a point or points in the United States on the one hand and a point or points in France on the other.<br>Conforming Applications and Answers are due July 25, 1980. |
| June 27, 1980 | 38395 | Trans World Airlines, Inc., 605 Third Avenue, New York, New York 10158.<br>Application of Trans World Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Regulations requests that its certificate of public convenience and necessity for Route 2 be amended by removing the one-stop restriction imposed by Condition (3), Appendix A thereto (Order 80-5-41, May 7, 1980) for service between Chicago, Illinois and Oklahoma City, Oklahoma.<br>Conforming Applications and Answers are due July 11, 1980. |
| June 27, 1980 | 38396 | Trans World Airlines, Inc., 605 Third Avenue, New York, New York 10158.<br>Application of Trans World Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Regulations requests that its certificate of public convenience and necessity for Route 2 be amended by removing the one-stop restriction imposed by Condition (3), Appendix A thereto (Order 80-5-41, May 7, 1980) for service between Chicago, Illinois and Tulsa, Oklahoma.<br>Conforming Applications and Answers are due July 11, 1980. |
| June 27, 1980 | 38397 | Trans World Airlines, Inc., 605 Third Avenue, New York, New York 10158.<br>Application of Trans World Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Regulations requests that its certificate of public convenience and necessity for Route 2 be amended by removing the one-stop restriction imposed by Condition (3), Appendix A thereto (Order 80-5-41, May 7, 1980) for service between Syracuse, New York and Chicago, Illinois.<br>Conforming Applications and Answers are due July 11, 1980. |

**Subpart Q Applications—Continued**

| Date filed | Docket No. | Description |
|---|---|---|
| June 27, 1980 | 38396 | Trans World Airlines, Inc., 605 Third Avenue, New York, New York 10158. Application of Trans World Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Regulations requests that its certificate of public convenience and necessity for Route 2 be amended by removing the one-stop restriction imposed by Condition (3), Appendix A thereto (Order 80-5-41, May 7, 1980) for service between Albany, New York and Chicago, Illinois. Conforming Applications and Answers are due July 11, 1980. |

**Phyllis T. Kaylor,**

*Secretary.*

[FR Doc. 80-20315 Filed 7-7-80; 8:45 am]

BILLING CODE 6320-01-M

## CAB-Industry Advisory Committee on Aviation Mobilization; Notice of Renewal

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (P.L. 92-463, 86 Stat. 770-776, U.S.C. App) the Chairman of the Civil Aeronautics Board has renewed the CAB-Industry Advisory Committee on Aviation Mobilization for an additional period of two years ending June 30, 1982.

The Committee's charter is unchanged. A copy has been filed with the Library of Congress, pursuant to Section 9(c) of the Act.

Dated at Washington, D.C. July 1, 1980.

**Joseph F. Laufer,**

*Chairman, CAB—Industry Advisory Committee on Aviation Mobilization.*

[FR Doc. 80-20314 Filed 7-7-80; 8:45 am]

BILLING CODE 6320-01-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

## Stanford University et al.; Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230, within 20 calendar days after the date on which this notice of application is published in the **Federal Register.**

Regulations (15 CFR 301.9) issued under the cited Act prescribe the requirements for comments.

A copy of each application is on file, and may be examined between 8:30 a.m. and 5:00 p.m., Monday through Friday, in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No.: 80-00308. Applicant: Stanford University, Procurement Services Dept., 851 Welch Road, Palo Alto, CA 94304. Article: Mass Spectrometer, Model Ribermag R 10-10 and Accessories. Manufacturer: NERMAG, S.A., France. Intended use of article: The article is intended to be used for mass spectral analyses of marine natural products especially free sterols and other terpenoids, including model compounds to elucidate mass spectral behavior of new systems; biogenetic and biomimetic precursors, intermediates and products in steroidal biogenesis; neuropharmacologically active compounds; cytochrome P-450 porphyrin analogs; human steroid profiles; and prophyrin dimers. The article plays an absolutely indispensable role in the research activities which are part of the formal education of graduate students and postdoctoral fellows. Application received by Commissioner of Customs: May 28, 1980.

Docket No.: 80-00309. Applicant: University of Pennsylvania School of Medicine, Division of Neuropathology, 454 Johnson Pavilion/G2, 36th and Hamilton Walk, Philadelphia, PA 19104. Article: Electron Microscope, Model JEM 100CX and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used for research centered on the study of the surface distribution and intracellular traffic of hormones, growth factors and toxins. Experiments will be conducted with the aim of unraveling mechanisms of action of physiologically or pathologically active molecules. Application received by Commissioner of Customs: May 28, 1980.

Docket No.: 80-00310. Applicant: Sandia Laboratories, 1515 Eubank Blvd., SE, Albuquerque, NM 87115. Article: 10 ea SPIR-1 (Short Perimeter Intrusion Radar) Processor Units, 20 sets ported Coax Sensor Cable Pairs, and 10 each Preliminary Operators Manuals. Manufacturer: Computing Devices Company, Canada. Intended use of article: The article is surveillance equipment which will be evaluated for performance in the field. Application received by Commissioner of Customs: May 28, 1980.

Docket No.: 80-00311. Applicant: Electric Power Research Institute, Inc., 3412 Hillview Avenue, P.O. Box 10412, Palo Alto, CA 94303. Article: UNIWEMA 400 Machine. Manufacturer: Kabelmetal of Hanover, West Germany. Intended use of article: The article will be used in the project "Flexible Gas-Insulated Metal-Enclosed Transmission System Design" in which new areas of research and development of gas-insulated transmission lines will be undertaken. If successful the use and economic impact of gas-insulated transmission lines will be broadened. The project will involve the study of manufacturing procedures, metal properties and raw material availability for a corrugated metal enclosure. Other work will be directed at the design of a flexible conductor and insulated spacers to support the conductor in the corrugated enclosure. Corrosion, gas dielectric and installation studies will conclude the analytical and designed portion of the development program. Application received by Commissioner of Customs: May 28, 1980.

Docket No.: 80-00312. Applicant: Sandia National Laboratories, 1515 Eubank Blvd., S.E., Albuquerque, NM 87115. Article: Mass Spectrometer, MM ZAB-2F. Manufacturer: VG Micromass, United Kingdom. Intended use of article: The article is intended to be used for absolute analysis of mixtures of (a) the hydrogen isotopes regardless of their equilibrium state, (b) helium isotopes, (c) air components and various fixed gases, and (d) a & b & c on a routine basis. Application received by Commissioner of Customs: May 28, 1980.

Docket No.: 80-00313. Applicant: Childrens Hospital of Los Angeles, P.O. Box 54700, Los Angeles, California 90054. Article: Automated Ultrasonic Body Imager. Manufacturer: Ausonics Ltd., Australia. Intended use of article: The article is intended to be used for imaging small children and the pregnant uterus as well as small body parts. Accurate images of the entire organ will be obtained without touching or moving the sleeping child. This is particularly

valuable in the brain where an accurate display of structures can be obtained without ionizing radiation. The water path feature is also ideal for study of high risk pregnancies. It provides a safe and comfortable method of studying the developing fetus and placenta. The article will also be used in furthering the education of pediatricians, obstetricians and radiologists who can see more accurately the anatomic and disease characteristics of processes within the body, particularly the brain, than can be obtained currently on manual scanners. Application received by Commissioner of Customs: May 28, 1980.

Docket No.: 80–00314. Applicant: Purdue University, FREH Hall, W. Lafayette, IN 47907. Article: Superconducting 4.6T Wide Bore Solenoid. Manufacturer: Oxford Instruments, Ltd., United Kingdom. Intended use of article: The article is intended to be used to carry out a wide scope of health related projects, e.g. isolation and structure elucidation of novel antineoplastic agents from higher plants, structure and mobility of plastoquinone in membranes, structure elucidation of microbial natural products, the role of chlorophyll in photosynthesis, etc. Specific problems under investigation include: (1) the active sites of serine proteinases; (2) The mechanisms of interactions between proteinase inhibitors and proteinases; (3) The structures of glycoproteins; (4) The mechanisms of folding staphylococcal nuclease; and (5) The mechanism of electron transport in photocynthesis. The article will also be used for educational purposes in the course Chemistry #696B which is designed as an introduction to the theory of NMR spectroscopy and its applications to biochemical problems. Application received by Commissioner of Customs: May 28, 1980.

Docket No.: 80–00315. Applicant: Indiana University, 1101 East 17th Street, Bloomington, Indiana 47505. Article: UV Excimer Laser, Model TE–861. Manufacturer: Lumonics Research Ltd., Canada. Intended use of article: The article is intended to be used in the study of a variety of laser-induced photochemical phenomena in the gas phase. Of particular interest is the investigation of the quantum state distribution of the free radical products generated in the vacuum-ultraviolet photodissociation of polyatomic molecules. This will be accomplished by combining laser photolysis with fluorescence and absorption spectroscopy. Application received by Commissioner of Customs: May 30, 1980.

Docket No.: 80–00316. Applicant: University of Colorado, Health Sciences Center, 4200 E. 9th Avenue, Denver, CO 80262. Article: Mass Spectrometer, Model MM 7070H and Accessories. Manufacturer: VG Micromass, United Kingdom. Intended use of article: The article is intended to be used to develop methods of quantitative analysis of leukotriene C and D by stable isotope techniques. the objective of the quantitative technique development is to evaluate the production of slow reacting substance of analphylaxis during pharmacologic manipulation of the immunological events leading to clinical asthma by a specific physico-chemical technique rather than biossay. The equipment will be used to study the conversion of leukotriene C and D into plasma-borne and urinary metabolites. In addition, the article will be used to train graduate students and postdoctoral fellows in the state-of the art high resolution mass spectrometry. Application received by Commissioner of Customs: May 29, 1980.

Docket No.: 80–00317. Applicant: Stanford University, 851 Welch Road, Palo Alto, CA 94304. Article: Rotating Anode X-Ray Generator, Model GX–13 and Accessories. Manufacturer: Elliot Brothers Ltd., United Kingdom. Intended use of article: The article will be used for studies of ordered assemblies of biological molecules of molecular complexes derived from tissues such as chick embryos or rat liver. These materials, when placed in an X-Ray beam, give informative low angle diffraction patterns. From features in these patterns, one will learn about the structure of the molecules and their mode action. Application received by Commissioner of Customs: May 29, 1980.

Docket No.: 80–00318. Applicant: Cedars of Lebanon Health Care Center, 1400 N.W. 12 Avenue, Miami, Florida 33126. Article: Electron Microscope, Model EM 109 and Attachments. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used for studies of biologic tissues, thyroid, bone, connective tissues. These studies will involve the examination by electron microscopy of radiation associated tumors and adjacent non-tumorous tissue which was in the previously radiated field and similarly irradiated areas in which no tumor has occurred. In addition, the article will be used for educational purposes in the course Anatomic Pathology. Application received by Commissioner of Customs: May 29, 1980.

Docket No.: 80–00319. Applicant: Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge, MA 02139. Article: Electron Microscope, Model JEM 100CX and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used for various research progams involving the study of steels, non-ferrous metals, ceramics, polymers, combustion products, etc. Experiments will consist of examination of thin foils of materials for determination of one or more of: crystal structure, faults in crystal structure presence of and size and distribution of precipitates, size and distribution of particles in finely divided specimens, structure of grain boundaries, etc. The objectives of these research programs will be to relate the microstructure with macroscopic properties to: i) verify theoretical models of the structure of materials and ii) to provide empirical data concerning the microstructure of materials of commercial or research importance. Application received by Commissioner of Customs: May 29, 1980.

Docket No.: 80–00320. Applicant: University of California, Lawrence Berkeley Laboratory, One Cyclotron Road, Berkeley, CA 97420. Article: Electron Beam Ionizer. Manufacturer: Anac Inc., New Zealand. Intended use of article: The article is intended to be used to provide the required increase in polarized $H^+$ and $D^+$ beams in nuclear physics research. The article produces a beam of polarized ions from an incident beam of polarized neutral atoms. This is achieved by electron bombardment in a specially shaped magnetic field. The polarized ions are injected into a cyclotron, accelerated to higher energies, and then are used for basic research in nuclear physics. Application received by Commissioner of Customs: May 29, 1980.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

**Frank W. Creel,**

*Acting Director, Statutory Import Programs Staff.*

[FR Doc. 80-20261 Filed 7-7-80; 8:45 am]

BILLING CODE 3510-25-M

## National Oceanic and Atmospheric Administration

## Northern Anchovy Fishery: Preliminary Determination of Optimum Yield and Harvest Quotas for the 1980–81 Season

**AGENCY:** National Oceanic and Atmospheric Administration/ Commerce.

**ACTION:** Notice of preliminary determination of optimum yield and harvest quotas for 1980–81 season.

**SUMMARY:** This notice announces the preliminary determination of estimated spawning biomass and limits on harvest of northern anchovy *(Engraulis mordax)* in the U.S. fishery conservation zone (FCZ) for the 1980–81 fishing season pursuant to the fishery management plan (FMP) for the northern anchovy. The limits on total harvest and on harvests by different sectors of the fishery have been determined in accordance with the formulas in the FMP. A final determination will be announced on or about August 1, 1980.

**EFFECTIVE DATE:** August 1, 1980.

**FOR FURTHER INFORMATION CONTACT:** Mr. Floyd S. Anders, Jr., Acting Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731; telephone 213–548–2575.

**SUPPLEMENTARY INFORMATION:** The Regional Director has made a preliminary determination that the spawning biomass of northern anchovy (central subpopulation) is estimated to be 924,100 short tons. This preliminary determination is based on Administrative Report Number LJ–80–09, Southwest Fisheries Center, National Marine Fisheries Service. This Report documents the method used to estimate the 1980 spawning biomass of the central subpopulation of northern anchovies. The biomass was estimated by the Southwest Fisheries Center using information on the number of anchovy eggs in the sea and the spawning characteristics of the adult stock. The data were collected over the range of the central subpopulation during the period from March 20 to April 29, 1980, from a survey in which both plankton and mid-water trawl stations were occupied. Estimates of spawning biomass in previous years were based on the anchovy larval census method documented in Appendix One of the northern anchovy fishery management plan. The egg production method was selected this year since it is considered more reliable.

Applying the formulas in the FMP for the northern anchovy to calculate optimum yield (OY), harvest quotas, expected processing levels for various sectors of the domestic anchovy fishery, and total allowable level of foreign fishing (TALFF), the National Marine Fisheries Service has made a preliminary determination for the 1980–81 fishing season that:

1. OY will be 12,600 short tons;
2. The portion of the OY reserved for non-reduction fisheries is 12,600 short tons;
3. There will be no harvest of anchovies for reduction purposes;
4. The extent to which U.S. vessels are capable of harvesting and will harvest anchovies is estimated to be 12,600 short tons, including 8,500 short tons for the live bait fishery whose catch is not processed;
5. The extent to which U.S. firms are capable of and intend to process anchovies is 4,100 short tons in the frozen bait and human consumption sectors of the fishery;
6. The TALFF for the anchovy fishery is zero (0); and
7. The amount of northern anchovies available for joint venture fishing is zero (0) short tons.

This announcement is made to provide an opportunity for respective sectors of the fishery to plan their activities during the 1980–81 season, which begins August 1, 1980.

The Administrative Report cited above is under review, and a final determination of OY and quotas will be announced on or about August 1, 1980. The Administrative Report is available from the Regional Director at the address found above under "For further information contact."

**Note.**—The Assistant Administrator for Fisheries has determined that these regulations are not significant under Executive Order 12044. An environmental impact statement for the northern anchovy FMP is on file with the Environmental Protection Agency.

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

Signed at Washington, D.C., this 1st day of July, 1980.

Dated: July 1, 1980.

**Winfred H. Meibohm,**

*Executive Director, National Marine Fisheries Service.*

[FR Doc. 80-20424 Filed 7-7-80; 8:45 am]

BILLING CODE 3510-22-M

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## Receipt of Application for Marine Mammal Permit

Notice is hereby given that an Applicant has applied in due form for a permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:
a. Name: Ms. Barbara A. Kuljis and Mr. C. Scott Baker (P252).
b. Address: National Marine Fisheries Service, P.O. Box 3830 Honolulu, Hawaii 96812.
2. Type of Permit: Scientific Research.
3. Name and Number of Animals: Pacific bottlenose dolphin (*Tursiops gilli*)—2.
4. Type to Take: The animals will be subject to an experiment to determine if they will develop an aversion to food treated with lithium chloride.
5. Location of Activity: Hawaii.
6. Period of Activity: 4–6 months.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register** the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, Washington, D.C., 20235, on or before August 7, 1980. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, 3300 Whitehaven Street, N.W., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: June 30, 1980.

**Richard B. Roe,**

*Deputy Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.*

[FR Doc. 80-20337 Filed 7-7-80; 8:45 am]

BILLING CODE 3510-22-M

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## Receipt of Application for Marine Mammal Permit

Notice is hereby given that an Applicant has applied in due form for a permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:
a. Name: Washington Department of Game (P250).

b. Address: Astoria Field Office, 53 Portway Street, Astoria, Oregon 97103.

2. Type of Permit: Scientific Research.

3. Name and Number of Animals:

Pacific harbor seal (*Phoca vitulina richardii*)—250.

Northern sea lion (*Eumetopias jubatus*)—50.

California sea lion (*Zalophus californianus*)—50.

4. Type of Take: 150 Pacific harbor seals will be taken by killing, 100 Pacific harbor seals will be tagged with permanent flipper tags and pelage dye, 25 of those will be radio-tagged. Blood samples will be collected from live-captured harbor seals before release. Aerial and small boat survey will be made of pinniped hauling sites. Naturally beached/stranded marine mammals will be collected and marine mammals killed incidental to commercial fishing operations will be salvaged.

5. Location of Activity: Columbia River and adjacent waters.

6. Period of Activity: 5 years.

Concurrent with the publication of this notice in the **Federal Register** the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, on or before August 7, 1980. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Northwest Region, 1700 Westlake Avenue, North, Seattle, Washington 98109.

Dated: July 1, 1980.

**Richard B. Roe,**

*Deputy Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.*

[FR Doc. 80-20338 Filed 7-7-80; 8:45 am]

BILLING CODE 3510-22-M

## COMMISSION ON PROPOSALS FOR THE NATIONAL ACADEMY OF PEACE AND CONFLICT RESOLUTION

### Public Seminar-Hearings

The U.S. Commission on Proposals for the National Academy of Peace and Conflict Resolution will conduct one of a series of Public Seminar-Hearings on July 22–23, 1980. Dates and location are as indicated below:

Tuesday, July 22—Foreign Affairs Committee Hearing Room 2172, Rayburn House Office Building, Washington, D.C.

Wednesday, July 23—Senate Budget Committee Hearing Room 357, Russell Senate Office Building, Washington, D.C.

The Commission was established by Congress under Pub. L. 95–5U: Education Amendments of 1979, Title XV—Part B, Section 1511–1519. Section 1515 of this legislation authorizes the Commission to "hold such hearings, sit and act at such times and places, take such testimony and receive such evidence as the Commission considers advisable" in order to accomplish the purpose of this legislation as set forth below:

### Duties of Commission

Sec. 1512. (a) The Commission shall undertake a study to consider—

(1) Whether to establish a National Academy of Peace and Conflict Resolution;

(2) The size, cost, and location of an Academy;

(3) The effects which the establishment of an Academy would have on existing institutions of higher education;

(4) The relationship which would exist between an Academy and the Federal Government;

(5) The feasibility of making grants and providing other forms of assistance to existing institutions of higher education in lieu of or in addition to, establishing the goal or promoting peace.

(b) In conducting the study required by subsection (a), the Commission shall—

(1) Review the theory and techniques of peaceful resolution of conflict between nations; and

(2) Study existing institutions which assist in resolving conflict in the areas of international relations.

Expert and public testimony is invited during the period from 9:00 am to 1:00 pm with registration at 8:30 am. For further information on the Public Seminar/Hearing call the Commission's Regional Field Representative, Reverend Leslie H. Carter, at 202/653–5665.

Dated: July 1, 1980.

**William J. Spencer,**

*Director, Commission on Proposals for the National Academy of Peace and Conflict Resolution.*

[FR Doc. 80-20304 Filed 7-7-80; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Addition of New System of Records

**AGENCY:** Department of the Navy (DON).

**ACTION:** Notice of a new system of records.

**SUMMARY:** The Department of the Navy proposes to add one new systems notice subject to the Privacy Act of 1974.

**DATES:** The system shall be effective as proposed without further notice on August 7, 1980, unless comments are received on or before August 7, 1980, which would result in a contrary determination.

**ADDRESS:** Any comments, including written data, views or arguments concerning the action proposed should be addressed to the systems manager identified in the particular systems notice.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Gwendolyn R. Rhoads, Privacy Act Coordinator, Office of the Chief of Naval Operations (OP–09B1P), Department of the Navy, The Pentagon, Washington, D.C. 20350, telephone 202–694–2004.

**SUPPLEMENTARY INFORMATION:** The Navy systems of records notices as prescribed by the Privacy Act of 1974, Title 5 U.S.C. Section 552a (Public Law 93–579) have been published in the **Federal Register** as follows:

FR DOC (44 FR 67703) November 27, 1979
FR DOC (44 FR 68947) November 30, 1979
FR DOC (44 FR 74553) December 17, 1979
FR DOC (45 FR 13794) March 3, 1980

The Department of the Navy has submitted a new system report dated May 29, 1980 for this new system report under provisions of 5 U.S.C. 552a(o) as implemented by Office of Management and Budget (OMB) Circular No. 1 and No. 3, dated September 30, 1975 and May 17, 1976 respectively. The OMB guidance was set forth in the **Federal**

Register (40 FR 45877) on October 3, 1975.

M. S. Healy,

*OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.*

July 2, 1980.

**N1875-01**

**SYSTEM NAME:**

Correction Board Case Files System.

**SYSTEM LOCATION:**

Board for Correction of Naval Records, Department of the Navy, Washington, D.C. 20370; Decentralized segments located in the Naval Military Personnel Command, Headquarters, U.S. Marine Corps, and the individual military personnel record of the service member concerned.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Any member or former member of the U.S. Navy or Marine Corps who has applied for the correction of his/her naval record.

**CATEGORIES OF RECORDS WITHIN THE SYSTEM:**

Records consist of file cards with basic information and computer records derived therefrom, case files containing records of board proceedings, material submitted for correction and supporting documentation, correspondence and transcripts of board formal hearings. The basic case information and computer records derived therefrom include the following: rank; social security number/service number; docket number; date application received; subject category; subject category description; examiner's initials; date examiner assigned; branch of service; board decision; date of board decision; date decision promised if interested members of Congress; date case forwarded to the Secretary of the Navy; lineal number of officer applicant; officer designated; date officer case forwarded to Naval Military Personnel Command/Commandant of the Marine Corps; date officer case returned from Naval Military Personnel Command/Commandant of the Marine Corps; date advisory opinion requested; identity of advisor's organization; date advisory opinion received; date service record ordered; date medical record ordered; date court-martial record ordered; date confinement record order; date Navy Discharge Review Board record ordered; date other record ordered; date service record received; date medical record received; date court-martial record received; date confinement record received; date Navy Discharge Review Board record received; date other record received; number of Navy applications received; number of Marine Corps applications received; total number of Navy and Marine Corps applications received; percent of total to grand total; total number of Navy discharge cases; total number Marine Corps discharge cases; Navy grant count; Navy deny count; Navy modify count; Marine grant; Marine deny count; Marine modify count.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Section 1552, Title 10 United States Code; Part 723 Title 32 Code of Federal Regulations.

**ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

**INTERNAL:**

*Board for Correction of Naval Records*—To review applicant's naval record to determine the existence of alleged error or injustice and to recommend appropriate corrective action when warranted—to report its findings, conclusions and recommendations to the Secretary of the Navy in appropriate cases—to respond to inquires from applicants, their counsel and members of Congress.

*Naval Military Personnel Commend*—To provide advisory opinions in cases involving present and former Navy personnel, to correct records of present and former Navy personnel in accordance with approved Board decisions.

*Bureau of Medicine and Surgery*—To provide advisory opinions on medical matters.

*Naval Council of Personnel Board/ Office of Naval Disability Evaluation*—To provide advisory opinions on medical matters.

*Headquarters, United States Marine Corps*—To provide advisory opinions in cases involving present and former Marine Corps personnel, to correct records of present and former Marine Corps personnel in accordance with approved correction Board decisions.

*Litigation Division, Office of the Judge Advocate General, Department of the Navy*—To prepare legal briefs and answers to complaints against the Department of the Navy, etc.

**EXTERNAL:**

*Department of Justice*—To defend law suits instituted against the Department of the Navy in cases involving applications to the Board for Correction of Naval Records.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained as paper and microfiche records in file folders, and manually retrieved file cards.

**RETRIEVABILITY:**

Records are filed alphabetically, by the last name of the applicant and are cross filed by docket number, and service or social security account numbers.

**SAFEGUARDS:**

Access to building is protected by uniformed security officers requiring positive identification; for admission after hours, records are maintained in areas accessible only to authorized personnel.

**RETENTION AND DISPOSAL:**

All file cards are permanently retained by the agency. Case files are permanent. They are retained in the active files for three years and then retired to the Washington National Records Center, Suitland, Maryland.

**SYSTEM MANAGER(S) AND ADDRESS:**

Executive Director, Board for Correction of Naval Records, Department of the Navy, Washington, D.C. 20370.

**NOTIFICATION PROCEDURES:**

Information should be obtained from the systems manager. Requesting individuals should specify a full name, and social security account numbers or service numbers. Visitors should be able to provide proper identity, such as a drivers license. Written requests must be signed by the requester or his/her legal representative.

**RECORD ACCESS PROCEDURES:**

Information may be obtained from the Board for Correction of Naval Records, Department of the Navy, Washington, D.C. 20370 by providing name, military status, branch of service and social security number. Current address and telephone numbers should be included. Personal visits may be made only to the Board for Correction of Naval Records, Arlington Annex, Columbia Pike and Southgate Road, Arlington, Virginia. For personal visits, identification will be required.

**CONTESTING RECORDS PROCEDURES:**

The agency's rules for contesting contents of records and appealing initial determinations by the individual concerned may be obtained from the systems manager.

**RECORD SOURCE CATEGORIES:**

All official Naval records, Veteran's Administration and police and law enforcement records.

**EXEMPTION:**

None.

[FR Doc. 80-20317 Filed 7-7-80; 8:45 am]

BILLING CODE 3810-71-M

## DELAWARE RIVER BASIN COMMISSION

### Public Hearings

Notice is hereby given that the Delaware River Basin Commission will hold three public hearings on July 29 and 30, 1980 in accordance with this notice. All of the hearings will be held in the Goddard Conference Room of the Commission's office building, 25 State Police Drive, West Trenton, New Jersey, at the hours noted below:

*Hearing No. 1—Part A, Water Quality Standards;* July 29—*10:00 a.m.*

The Comprehensive Plan for the Delaware River Basin includes water quality standards. These standards are also contained in the Commission's *Basin Regulations—Water Quality.* Article 3 of these regulations are the Comprehensive Plan's water quality standards. Article 4 of these regulations concerns the application of the standards and includes, among other things, effluent quality requirements. Limitations on the discharge of oil and grease have not heretofore been included among the Commission's effluent quality requirements but are reflected in Interpretive Guideline No. 1, adopted in January 1972 (Resolution 72-1). The Commission is now considering an amendment of its Comprehensive Plan and *Basin Regulations—Water Quality* that would include an effluent quality requirement applying to the discharge of oil and grease. Specifically, it is proposed to:

1. Amend the Comprehensive Plan and Section 3.10.4.D.1 of the *Basin Regulations—Water Quality* by the addition thereto of a new subsection b. to read as follows:

b. *Oil and Grease—*

1. Shall not exceed 15 mg/1 as an average of samples taken during any 30-day period;

2. Shall not exceed 30 mg/1 in any single sample.

2. Amend Section 4:30.5 of *Basin Regulations—Water Quality* by the addition thereto of a new subsection E. to read as follows:

E. *Oil and Grease—*

1. Shall not exhibit readily visible oil;

2. Shall not exceed 15 mg/1 as an average of samples taken during any 30-day period.

3. Shall not exceed 30 mg/1 in any single sample;

4. Samples shall be collected in such manner and at such location as to be representative of the actual discharge;

5. Samples shall be analyzed in accordance with the freongravimetric method specified in Part 502A of the 14th Edition of *Standard Methods for the Examination of Water and Wastewater,* or equivalent approved method.

3. Amend Interpretive Guideline No. 1 by deleting Section B(3)a.

*Hearing No. 1—Part B, Water Quality Standards; 10:00 a.m.*

The Commission's water quality standards as adopted in 1967 include certain stream quality objectives for the Delaware River Basin. Included among these objectives are limitations on radioactive materials which restrict alpha emitters to three picocuries per liter, and beta emitters to 1000 picocuries per liter. Since the time that Commission standards were approved, control of radioactive materials has been largely preempted by the federal government. The Environmental Protection Agency, pursuant to the Safe Drinking Water Act of 1974, has adopted drinking water regulations including limitations on a broad range of radioactive materials. In light of these developments the Commission considers that its standards relating to radioactivity may no longer be necessary and is proposing an amendment to its *Basin Regulations—Water Quality* to delete them. Specifically it is proposed to:

1. Amend the Comprehensive Plan and Article 3 of the *Basin Regulations—Water Quality* by deleting paragraph 7 of subsection C. of Sections 3.20.2, 3.20.3, 3.20.4, 3.20.5, 3.20.6, 3.20.7, 3.20.8, 3.20.9, 3.20.10, 3.20.11, 3.20.12, 3.20.13, 3.20.14, 3.20.15, 3.20.16, 3.20.17, 3.20.18, 3.20.19, 3.30.2, 3.30.3, 3.30.4, 3.30.5 and 3.30.6.

*Hearing No. 2, Hydroelectric Power Policy;* July 29—*2:00 p.m.*

Interest in new or increased hydroelectric power development has increased in recent years as the Nation responds to higher energy costs. In the Delaware River Basin, as elsewhere, public and private agencies are investigating possible new hydroelectric power sites and the feasibility of installing hydroelectric generating facilities at existing dams. Programs of the Federal Energy Regulatory Commision, the Army Corps of Engineers and the Department of Energy support the search for new power generating operations. Several existing impoundments within the Delaware River Basin are under investigation for possible adaption to generating hydroelectric energy. The Commission supports these activities.

Article 9 of the Delaware River Basin Compact provides that the waters of the Delaware River and its tributaries may be impounded and used by or under authority of the Commission for generating hydroelectric power and energy, in accordance with the Comprehensive Plan. Proposed new hydroelectric power projects will be reviewed by the Commission under Section 3.8 of the Compact in order to ensure compatability with other water resources management objectives. To establish a framework for such review, the Commission is considering an amendment to its Comprehensive Plan so as to include the following general statement of policy:

*Hydroelectric Power Policy*

1. The Commission encourages the development of hydroelectric power by private and public agencies as a beneficial use of the basin's water resources and as an addition to the nation's renewable energy supply.

2. Feasibility studies of new impoundments or modification of existing impoundments for the storage and release of water of the basin shall include consideration of the hydroelectric power potential of the site. Analysis of the hydroelectric power potential shall take into account the requirements of the Commission's Comprehensive Plan relating to designated scenic riverways, fish and wildlife resources, water quality, flood control and other affected water management objectives.

3. Streamflow shall not be diminished by the operation of new hydroelectric power projects during periods when such flow is being augmented at the direction of the Commission to accomplish water quality or minimum streamflow objectives.

4. The use of Basin waters for the generation of hydroelectric power shall be subject to a charge by the Commission according to the following conditions:

(a) Owners of pumped storage hydroelectric power projects that rely upon the use of water supply storage capacity financed by the Commission shall be required to compensate the Commission for the use of such storage capacity in proportion to the benefits thus realized. The Commission shall determine the fair value of such benefits.

(b) Owners of conventional hydroelectric power projects at locations which rely upon head, storage and other facilities and appurtenances financed by the Commission shall be required to compensate the Commission in proportion to the benefits thus realized. The Commission shall determine the fair value of such benefits.

*Hearing No. 3, Water Conservation; July 30—10:00 a.m.*

In 1976, the Commission amended its Comprehensive Plan by the addition of a statement of policy supporting a long-range program to reduce water use throughout the Delaware River Basin (Resolution 76–17). The purposes of such a program are to reduce the likelihood of severed low streamflows that may adversely affect fish and wildlife resources and recreational enjoyment; to assist in the maintenance of good water quality by the provision of minimum dilution flows for the control of salinity; and to defer the need for construction of new storage reservoirs and other water supply structures. In support of these objectives it is the policy of the Commission to require maximum feasibility efficiency in the use of water by new industrial, municipal and agricultural users throughout the basin, and to require eventual application of those water-conserving practices or technologies that can feasibly be employed by existing water users.

In support of these policies the Commission is considering an amendment to its *Rules of Practice and Procedure* that would require the adoption of certain water-conserving measures by applicants who seek Commission approval of new ground and surface water withdrawals. Such approval by the Commission is now required under Section 3.8 of the Compact and the Commission's *Rules of Practice and Procedure* for those proposed withdrawals in excess of a daily average of 100,000 gallons during any calendar month. Specifically, it is proposed to amend the *Rules of Practice and Procedure* by the adoption of the following requirement:

*Conservation Requirements—Water Supply Projects.* Maximum feasible efficiency in the use of water is required on the part of water users throughout the basin. Effective January 1, 1981, applications under Section 3.8 of the Compact for new water withdrawals subject to review by the Commission shall include and describe water conserving practices and technology designed to minimize the use of water by municipal and industrial users, as provided in this section. Approval of a project by the Commission shall be conditioned upon satisfactory compliance with the provisions of this section.

(a) Applications for approval of new withdrawals from surface or ground water sources submitted by a municipality, public authority or private water works corporation shall contain or be in reference to (1) a program for leakage control providing for the monitoring, prevention and repair of significant leakage; (2) a program for the introduction and use of water-saving devices by all classes of users, and the provision of customer information relative thereto; and (3) a water shortage contingency plan including use priorities and emergency conservation measures to be instituted in the event of a water shortage. Water shortage contingency plans of a public authority or private water works corporation shall be prepared in cooperation with all municipalities in the service area dependent upon the project.

(b) Applications for approval of new industrial or commercial water withdrawals from surface or ground water sources shall contain (1) a report of the water-conserving procedures and technology considered by the applicant, and the extent to which they will be applied in the development of the project; and (2) a water shortage contingency plan including emergency conservation measures to be instituted in the event of a water shortage.

(c) Reports, programs and contingency plans required under this section shall be submitted by the applicant as part of the water supply permit application to the state agency having jurisdiction over the project, or directly to the Commission in those cases where the project is not subject to the jurisdiction of a state agency.

Persons wishing to testify are requested to notify the Secretary to the Commission prior to the hearings. Written testimony may be submitted in lieu of oral presentation.

**W. Brinton Whitall,**

*Secretary.*

June 27, 1980.

[FR Doc. 80-20297 Filed 7-7-80; 8:45 am]

BILLING CODE 6360-01-M

## DEPARTMENT OF EDUCATION

### Program Effectiveness and Evaluation Committee of the National Advisory Council on Adult Education; Meeting

Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, Sec. 10(a)(2), notice is hereby given that the Program Effectiveness and Evaluation Committee of the National Advisory Council on Adult Education will meet on July 28–30, 1980, Hotel Washington, 15th and Pennsylvania Ave., NW., Washington, D.C., rather than July 10–12, 1980, Council offices, which was announced in the **Federal Register** of Friday, June 20, 1980, page 41693.

All other meeting arrangements will remain as announced June 20, 1980.

Signed at Washington, D.C., on June 30, 1980.

**Gary A. Eyre,**

*Executive Director, National Advisory Council on Adult Education.*

[FR Doc. 80-20296 Filed 7-7-80; 8:45 am]

BILLING CODE 4110-02-M

## DEPARTMENT OF ENERGY

### National Petroleum Council, Task Group of the Committee on Unconventional Gas Sources; Meeting

Notice is hereby given that a task group of the Committee on Unconventional Gas Sources will meet in July 1980. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Unconventional Gas Sources will analyze the potential constraints in these areas which may inhibit future production and will report its findings to the National Petroleum Council. Its analysis and findings will be based on information and data to be gathered by the various task groups. The task group scheduling a meeting is the Tight Gas Reservoirs Task Group. The time, location and agenda of the meeting follows:

The nineteenth meeting of the Tight Gas Reservoirs Task Group will be held on Wednesday, July 30, 1980, and Thursday, July 31, 1980, starting at 9:00 a.m. on both days, in the Ford Room of the Vail Athletic Club Hotel, 352 East Meadow Drive, Vail, Colorado.

The tentative agenda for the meeting follows:

1. Introductory remarks by Chairman and Government Cochairman.
2. Review draft work of the Tight Gas Reservoirs Task Group.
3. Discuss the completion of the Tight Gas Reservoirs Task Group's Assignment.
5. Discussion of any other matters pertinent to the overall assignment of the Tight Gas Reservoirs Task Group.

The meeting is open to the public. The Chairman of the Committee is

empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the task group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Lucio A. D'Andrea, Office of Resource Applications, 202/633–8383, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 5B–180, DOE, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on June 23, 1980.

**R. Dobie Langenkamp,**

*Deputy Assistant Secretary, Resource Development & Operations, Resource Applications.*

June 23, 1980.

[FR Doc. 80–20321 Filed 7–7–80; 8:45 am]

BILLING CODE 6450–01–M

## Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meetings

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272), notice is hereby provided of the following meetings:

I. A meeting of Subcommittee A of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on July 21, 1980, at the headquarters of the IEA, 2 rue Andre Pascal, Paris, France, beginning at 10:00 a.m.

The agenda for the meeting is as follows:

Discussion of and preparation for briefing meetings of Reporting Companies and NESOs re AST–3.

Pursuant to section 252(c)(3) of the Energy Policy and Conservation Act, a verbatim transcript of this meeting will be made; the transcript, with such deletions as are determined to be necessary or appropriate pursuant to E.O. 12065 (43 FR 28949, July 3, 1978), E.O. 11932 (41 FR 32691, August 5, 1976) and 22 CFR 9a.1–9a.8, will be available in the Reading Room of the Department of Energy, Room 5B–180, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, between the hours of 8:00 a.m. and 4:00 p.m. weekdays, except Federal holidays.

II. A meeting of the IAB to the IEA will be held on July 22, 1980, at the headquarters of the IEA, 2 rue Andre Pascal, Paris, France, beginning at 10:00 a.m.

The purpose of this meeting is to permit attendance by representatives of the IAB at a meeting of the IEA Standing Group on Emergency Questions (SEQ) which is being at Paris on that date.

The agenda for the meeting is under the control of the SEQ. It is expected that the following preliminary agenda will be followed:

1. Adoption of draft agenda.
2. Summary record of 33rd meeting.
3. Import target monitoring:
   a. First quarter 1980 final results.
   b. Second quarter 1980 preliminary results. Countries' policies to achieve targets.
4. Emergency Reserves:
   a. Report of Working Party on Naphtha and Bunkers.
   b. April 1, 1980 IEA Countries' emergency reserves.
5. Demand Restraint:
   a. Review of Japan.
   b. Review of Ireland.
6. Simplified Sharing System:
   a. Draft of Governing Board paper.
   b. IAB position.
7. Assessment of the Supply/Demand/Stock Situation:
   a. May, June, July Questionnaire A & B analysis.
   b. Recent market developments.
   c. Quarterly Oil Forecast.
8. Data System:
   a. Early results of new reporting—new stock details, stocks-at-sea, consumer stocks.
   b. Synthetic oil reporting.
   c. Continuation of Questionnaire A & B reporting.
   d. Progress report on the work of the SEQ *ad hoc* group on the Emergency Data System.
   e. Base Period Final Consumption (BPFC) (Second Quarter 1979–First Quarter 1980).
   f. Accuracy of Questionnaire B data.
9. AST–3 Preparation:
   a. Progress report of the Design Group (3rd meeting).
   b. Preliminary AST–3 Test Guide.
   c. AST–3 data base.
   d. Summary of countries' preparations and NESO organizations.
   e. Test briefing of NESO's and Reporting Companies.
   f. Final test schedule.
   g. Status of clearances.
10. Legal Basis:
   a. Summary of emergency legislation in Participating Countries.
   b. U.S. Government "Plan of Action".
11. Dispute Settlement Center (DSC):
   a. Progress report on Governing Board actions taken.
   b. DSC Operating Procedures.
12. Computerization of the IEA Emergency System:
   a. Status report on development to an interactive system.
   b. Further development plans.
13. Future meeting dates.
14. Other business.

As provided in section 252(c)(3) of the Energy Policy and Conservation Act, these meetings will not be open to the public.

Issued in Washington, D.C., July 2, 1980.

**Craig S. Bamberger,**

*Assistant General Counsel, International Trade and Emergency.*

[FR Doc. 80–20322 Filed 7–7–80; 8:45 am]

BILLING CODE 6450–01–M

## Economic Regulatory Administration

## Domestic Crude Oil Allocation Program; Entitlements Notice for April 1980

**AGENCY:** Department of Energy, Economic Regulatory Administration.

**ACTION:** April 1980 entitlements notice.

**SUMMARY:** Under the Department of Energy's (DOE) domestic crude oil allocation (entitlements) program, this is the monthly entitlement notice which sets forth the entitlements purchase or sale requirements of domestic refiners for April 1980.

**DATES:** Payments for entitlements required to be purchased under this notice must be made by June 30, 1980. The monthly transaction report specified in § 211.66(i) shall be filed with the DOE by July 10, 1980.

**FOR FURTHER INFORMATION CONTACT:**

David Welsh (Entitlements Program Office), Economic Regulatory Administration, 2000 M Street, NW., Room 6212 C, Washington, D.C. 20461, (202) 653–3873.

Jeffrey Stoermer (Office of General Counsel), Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Room 6A–1227, Washington, D.C. 20585, (202) 252–6911.

**SUPPLEMENTAL INFORMATION:** In accordance with the provisions of 10 CFR 211.67 relating to the domestic crude oil allocation program of the Department of Energy (DOE), administered by the Economic Regulatory Administration (EREA), the monthly notice specified in § 211.67(i) is hereby published.

Based on reports for April 1980 submitted to the DOE by refiners and other firms as to crude oil receipts, crude oil runs to stills, eligible product imports, eligible petroleum substitutes, and imported naptha utilized as a petrochemical feedstock in Puerto Rico; application of the entitlements adjustment for residual fuel oil production shipped in foreign flag

tankers for sale in the East Coast Market and Michigan provided in § 211.67(d)(4); application of the entitlement adjustments for California lower tier and upper tier crude oil provided in § 211.67(a)(4), the national domestic crude oil supply ratio for April 1980 is calculated to be .197774.

In accordance with § 211.67(b)(2), to calculate the number of barrels of deemed old oil included in a refiner's adjusted crude oil receipts for the month of April 1980, each barrel of old oil is equal to one barrel of deemed old oil and each barrel of upper tier crude oil is equal to .692558 of a barrel of deemed old oil.

The issuance of entitlements for the month of April 1980 to refiners and other firms is set forth in the Appendix to this notice. The Appendix lists the name of each refiner or other firm to which entitlements have been issued, the number of barrels of deemed old oil included in each such refiner's adjusted crude oil receipts, the number of entitlements issued to each such refiner or other firm, and the number of entitlements required to be purchased or sold by each such refiner or other firm.

Pursuant to 10 CFR 211.67(i)(4), the price at which entitlements shall be sold and purchased for the month of April 1980 is hereby fixed at $25.74 which is the exact differential as reported for the month of April 1980 between the weighted average per barrel cost to refiners of old oil and of imported and exempt domestic crude oil.

In accordance with 10 CFR 211.67(b), each refiner that has been issued fewer entitlements for the month of April 1980 than the number of barels of deemed old oil included in its adjusted crude oil receipts is required to purchase a number of entitlements for the month of April 1980 equal to the difference between the number of barrels of deemed old oil included in those receipts and the number of entitlements issued to and retained by that refiner. Refiners which have been issued a number of entitlements for the month of April 1980 in excess of the number of barrels of deemed old oil included in their adjusted crude oil receipts for the month and other firms issued entitlements shall sell such entitlements to refiners required to purchase entitlements.

The listing of refiner's old oil receipts contained in the appendix reflects any adjustments made by ERA pursuant to § 211.67(h).

Included in the appendix are entitlements issued pursuant to the provisions of 10 CFR 211.67(a)(5) under which ERA may approve a firm's application for designation as a producer of a petroleum substitute.

The listing contained in the Appendix identifies in a separate column labeled "Exceptions and Corrections", additional entitlements issued to refiners pursuant to relief granted by the Office of Hearings and Appeals (prior to March 30, 1978, the Office of Administrative Review of the Economic Regulatory Administration). Also set forth in this column are adjustments for relief granted by the Office of Hearings and Appeals for 1975 and 1976, which adjustments are reflected in monthly installments. The number of installments is dependent on the magnitude of the adjustment to be made. For a full discussion of the issues involved, see *Beacon Oil Company, et al.*, 4 FEA par. 87,024 (November 5, 1976).

The listing contained in the Appendix continues the "Consolidated Sales" entry initiated in the October 1977 entitlement notice. The "Consolidated Sales" entry is equal to the April 1980 entitlements purchase requirement of Arizona Fuels. The purpose of providing for the "Consolidated Sales" entry is to ensure that Arizona Fuels is not relieved of its April 1980 entitlements purchase requirement and that no one firm will be unable to sell its entitlements by reason of a default by Arizona Fuels. For a full discussion of the issues involved, see *Entitlements Notice for October 1977* (42 FR 64401, December 23, 1977).

For purposes of § 211.67(d) (6) and (7), which provide for entitlement issuances to refiners or other firms for sales of imported crude oil to the United States Government for storage in the Strategic Petroleum Reserve, the Government made no purchases of imported crude oil.

For the month of April 1980, imports of residual fuel oil eligible for entitlement issuances totaled 15,310,866 barrels.

In accordance with § 211.67(a)(4), the number of barrels of California lower tier and upper tier crude oil as reported by refiners to the DOE, and the weighted average gravity thereof are as follows:

| | Volumes | Weighted average gravity |
|---|---|---|
| California lower tier crude oil | 1,837,715 | 28 |
| California upper tier crude oil | 3,254,136 | 28 |

The total number of entitlements required to be purchased and sold under this notice is 18,277,724.

Based on reports submitted to the DOE by refiners as to their adjusted crude oil receipts for April 1980, the pricing composition and weighted average costs thereof are as follows:

| | Volumes in thousands of B/D | Weighted average cost | Percent of total volumes [1] |
|---|---|---|---|
| Lower tier | 1,505 | $6.89 | 10.5 |
| Upper tier | 2,281 | 14.81 | 15.9 |
| Exempt domestic: | | | |
| Alaskan | 1,456 | 25.27 | 10.2 |
| Heavy and market tier | 1,142 | 32.66 | 8 |
| Naval petroleum reserve | 154 | 33.54 | 1.1 |
| Newly discovered | 361 | 38.81 | 2.5 |
| Stripper | 1,761 | 34.45 | 12.3 |
| Tertiary | 12 | 32.19 | .1 |
| Total domestic | 8,672 | 22.89 | 60.6 |
| Imported | 5,647 | 33.54 | 39.4 |
| Total uncontrolled (exempt domestic and imported | 10,532 | $32.64 | 73.6 |
| Total reported crude oil receipts | 14,319 | $27.09 | |
| Total reported crude oil runs to stills | 14,047 | | |

[1] Volumes may not total 100 percent due to rounding.

Payment for entitlements required to be purchased under 10 CFR 211.67(b) for April 1980 must be made by June 30, 1980.

On or prior to July 10, 1980, each firm which is required to purchase or sell entitlements for the month of April 1980 shall file with the DOE the monthly transaction report specified in 10 CFR 211.66(i) certifying its purchases and sales of entitlements for the month of April 1980. The monthly transaction report forms for the month of April 1980 have been mailed to reporting firms. Firms that have been unable to locate other firms for required entitlements transactions by June 30, 1980, are requested to contact the ERA at (202) 653–3873 to expedite consummation of these transactions. For firms that have failed to consummate required entitlement transactions on or prior to June 30, 1980, the ERA may direct sales and purchases of entitlements pursuant to the provisions of 10 CFR 211.67(k).

On May 8, 1980, DOE issued a Notice of Proposed Rulemaking (45 FR 31682) concerning changes to the entitlements program which would impose an obligation on upper tier Alaskan North Slope (ANS) crude oil. In that notice, DOE indicated that the final rule might be issued in June 1980, applicable to the entitlements transactions required by this notice. The final rule has not yet been issued, and therefore the entitlements transactions required by this notice do not include entitlements obligations on upper tier Alaskan North Slope crude oil. DOE expects the final ANS rule to be applicable to the entitlements transactions required by the May 1980 entitlements data, which will be published in July.

This notice is issued pursuant to

Subpart G, 10 CFR Part 205. Any person aggrieved hereby may file an appeal with the Office of Hearings and Appeals in accordance with Subpart H of 10 CFR Part 205. Any such appeal shall be filed on or before August 7, 1980.

Issued in Washington, D.C. on June 27, 1980.

**Barton R. House,**
*Acting Administrator.*

**Notice of Entitlements for Domestic Crude Oil [June 1980]**

| Reporting firm short name | Deemed old oil adjusted receipts | Entitlement position | | | | | |
|---|---|---|---|---|---|---|---|
| | | Total issued | Exceptions and appeals | Entitlements | | Required to buy | Required to sell |
| | | | | Product | California | | |
| -Consol'd-Sales | −50,996 | 0 | 0 | 0 | 0 | 0 | [1] 50,996 |
| A-Johnson | 0 | 82,800 | 0 | 15,410 | 0 | 0 | 82,800 |
| Adm | 0 | 13,008 | 0 | 0 | 0 | 0 | 13,008 |
| Akron-Ohio | 0 | 1,603 | 0 | 0 | 0 | 0 | 1,603 |
| Allied | 41,909 | 49,137 | 0 | 0 | 0 | 0 | 7,228 |
| Amer-Agri-Fuels | 0 | 804 | 0 | 0 | 0 | 0 | 804 |
| Amer-Petrofina | 540,904 | 787,032 | 0 | 0 | 0 | 0 | 246,128 |
| Amerada-Hess | 2,091,601 | 2,952,129 | 0 | 113,543 | 0 | 0 | 860,528 |
| American-Can-Co | 0 | 2,657 | 0 | 0 | 0 | 0 | 2,657 |
| Ames-Iowa | 0 | 721 | 0 | 0 | 0 | 0 | 721 |
| Amoco | 8,273,244 | 4,608,395 | 0 | 0 | 0 | 3,664,849 | 0 |
| Anchor | 0 | 21,075 | 0 | 0 | 0 | 0 | 21,075 |
| Anschutz | 0 | 11,403 | 0 | 11,403 | 0 | 0 | 11,403 |
| Apex | 0 | 32,906 | 0 | 32,906 | 0 | 0 | 32,906 |
| Arco | 2,036,885 | 4,401,931 | 0 | 0 | −11,064 | 0 | 2,365,046 |
| Arizona | 76,794 | 25,798 | 0 | 0 | 1,213 | [1] 50,996 | 0 |
| Arizona-Chem | 0 | 2,130 | 0 | 0 | 0 | 0 | 2,130 |
| Asamera | 64,993 | 114,730 | 0 | 0 | 0 | 0 | 49,737 |
| Ashland | 1,002,467 | 2,031,818 | 0 | 0 | 0 | 0 | 1,029,351 |
| Bayou | 4,580 | 13,217 | 0 | 0 | 0 | 0 | 8,637 |
| Beacon | 155,392 | 80,736 | 0 | 0 | 5,910 | 74,656 | 0 |
| Belcher | 0 | 83,777 | 0 | 83,777 | 0 | 0 | 83,777 |
| Bergen-County | 0 | 1,783 | 0 | 0 | 0 | 0 | 1,783 |
| Braintree | 0 | 10,937 | 0 | 0 | 0 | 0 | 10,937 |
| Bronco | 0 | 13,122 | 0 | 0 | 0 | 0 | 13,122 |
| Bruin | 29,408 | 55,423 | 0 | 0 | 0 | 0 | 26,017 |
| C&H | 0 | 227 | 0 | 0 | 0 | 0 | 227 |
| Cadence-Chem | 0 | 2,064 | 0 | 0 | 0 | 0 | 2,064 |
| Calcasieu | 56,426 | 41,919 | 0 | 0 | 0 | 14,507 | 0 |
| Calumet | 10,731 | 15,918 | 0 | 0 | 0 | 0 | 5,187 |
| Canal | 120,104 | 47,444 | 0 | 0 | 0 | 72,660 | 0 |
| Carbonit | 34,699 | 18,257 | 0 | 0 | 0 | 16,442 | 0 |
| Caribou | 67,644 | 44,893 | [3] 4,251 | 0 | 0 | 22,751 | 0 |
| Castle | 0 | 29,637 | 0 | 29,637 | 0 | 0 | 29,637 |
| Champlin | 1,393,797 | 156,949 | 0 | 0 | 23,673 | 1,236,848 | 0 |
| Charter | 72,182 | 373,124 | 0 | 20,129 | 0 | 0 | 300,942 |
| Charter-Bahamas | 0 | 47,810 | 0 | 47,810 | 0 | 0 | 47,810 |
| Chevron | 5,741,157 | 6,697,642 | 0 | 11,593 | 30,484 | 0 | 956,485 |
| Cibro | 0 | 41,353 | [4] −12,382 | 0 | 0 | 0 | 41,353 |
| Citgo | 1,148,701 | 1,523,098 | 0 | 0 | 0 | 0 | 374,397 |
| City-of-Seward | 0 | 3 | 0 | 0 | 0 | 0 | 3 |
| City-of-Wichita | 0 | 1,855 | 0 | 0 | 0 | 0 | 1,855 |
| Claiborne | 22,318 | 28,285 | 0 | 0 | 0 | 0 | 5,967 |
| Clark | 347,043 | 623,956 | 0 | 0 | 0 | 0 | 276,913 |
| Coastal | 316,618 | 962,280 | 0 | 24,823 | 0 | 0 | 645,662 |
| Coastal-Petro | 0 | 35,043 | 0 | 0 | 0 | 0 | 35,043 |
| Colonial | 0 | 46,209 | 0 | 46,209 | 0 | 0 | 46,209 |
| Columbus-Ohio | 0 | 212 | 0 | 0 | 0 | 0 | 212 |
| Conoco | 2,554,769 | 1,799,012 | 0 | 10,019 | 17,117 | 755,757 | 0 |
| Consumers-Power | 0 | 50,077 | 0 | 50,077 | 0 | 0 | 50,077 |
| Copano | 1,307 | 47,242 | 0 | 0 | 0 | 0 | 45,935 |
| Coral | 0 | 113,718 | 0 | 0 | 0 | 0 | 113,718 |
| Corco | 0 | 566,321 | [4,5] −24,221 | 185,149 | 0 | 0 | 566,321 |
| Cra-Farmland | 245,471 | 311,006 | 0 | 0 | 0 | 0 | 65,535 |
| Cross | 5,993 | 50,806 | 0 | 0 | 0 | 0 | 44,813 |
| Crown | 258,825 | 441,847 | 0 | 0 | 0 | 0 | 183,022 |
| Crystal-Oil | 121,783 | 65,549 | 0 | 0 | 0 | 56,234 | 0 |
| Crystal-Ref | 0 | 11,559 | 0 | 0 | 0 | 0 | 11,559 |
| Delta | 62,471 | 242,908 | 0 | 0 | 0 | 0 | 180,437 |
| Demenno | 0 | 40,474 | 0 | 0 | 0 | 0 | 40,474 |
| Detroit-Ed | 0 | 41,016 | 0 | 41,016 | 0 | 0 | 41,016 |
| DFSC | 0 | 10,453 | 0 | 10,453 | 0 | 0 | 10,453 |
| Diamond | 310,696 | 354,156 | 0 | 0 | 0 | 0 | 43,460 |
| Dillman | 0 | 126 | 0 | 0 | 0 | 0 | 126 |
| Dorchester | 10,784 | 120,860 | 0 | 0 | 0 | 0 | 110,076 |
| Dow | 48,787 | 347,065 | 0 | 0 | 0 | 0 | 298,278 |
| E-Seaboard | 0 | 52,165 | 0 | 52,165 | 0 | 0 | 52,165 |
| East-Bay-Mud | 0 | 201 | 0 | 0 | 0 | 0 | 201 |
| Eco | −4,646 | 2,794 | 0 | 0 | −306 | 0 | 7,440 |
| Eddy | 35,885 | 24,248 | 0 | 0 | 0 | 11,637 | 0 |
| Elgin-Il | 0 | 10 | 0 | 0 | 0 | 0 | 10 |
| Energy-Coop | −2,792 | 298,950 | 0 | 0 | 0 | 0 | 301,742 |
| Erickson | 19,226 | 71,182 | 0 | 0 | 0 | 0 | 51,956 |
| Essex-Union | 0 | 270 | 0 | 0 | 0 | 0 | 270 |
| Evangeline | 36,524 | 17,738 | 0 | 0 | 0 | 18,786 | 0 |
| Exxon | 9,720,947 | 7,392,160 | 0 | 220,156 | 0 | 2,328,787 | 0 |
| Ez-Serve | 5,889 | 15,070 | 0 | 0 | 0 | 0 | 9,181 |
| Farmers-Un | 151,658 | 160,807 | 0 | 0 | 0 | 0 | 9,149 |
| Fletcher | 205,613 | 175,879 | 0 | 0 | 3,340 | 29,734 | 0 |
| Flint | 6,623 | 4,809 | 0 | 0 | 0 | 1,814 | 0 |
| Friendswood | 49,336 | 48,774 | 0 | 0 | 0 | 562 | 0 |
| Funding | 60,908 | 30,372 | 0 | 0 | 0 | 30,536 | 0 |
| Gary | 163,213 | 59,012 | 0 | 0 | 0 | 104,201 | 0 |
| Getty | 1,197,677 | 1,509,327 | 0 | 0 | 11,527 | 0 | 311,650 |

Notice of Entitlements for Domestic Crude Oil [June 1980]—Continued

| Reporting firm short name | Deemed old oil adjusted receipts | Entitlement position | | | | | |
|---|---|---|---|---|---|---|---|
| | | Total issued | Exceptions and appeals | Entitlements | | Required to buy | Required to sell |
| | | | | Product | California | | |
| Getty-Syn | 0 | 1,198 | 0 | 0 | 0 | 0 | 1,198 |
| Giant | 4,371 | 34,716 | 0 | 0 | 0 | 0 | 30,345 |
| Gibson | 0 | 14,829 | 0 | 0 | 0 | 0 | 14,829 |
| Glacier-Park | 92,408 | 27,845 | 0 | 0 | 0 | 64,563 | 0 |
| Gladieux | 37,713 | 68,586 | 0 | 0 | 0 | 0 | 30,873 |
| Golden-Eagle | 0 | 46,480 | 0 | 0 | 0 | 0 | 46,480 |
| Goldking | 124,635 | 111,172 | 0 | 0 | 0 | 13,463 | 0 |
| Good-Hope | 22,050 | 386,190 | 0 | 0 | 0 | 0 | 364,140 |
| Guam | 0 | 167,657 | 0 | 0 | 0 | 0 | 167,657 |
| Gulf | 6,234,777 | 4,549,432 | 0 | 21,158 | 5,546 | 1,685,345 | 0 |
| Gulf-Energy | 44,236 | 13,732 | 0 | 0 | 0 | 30,504 | 0 |
| Gulf-Sts | 134,238 | 75,590 | 0 | 0 | 0 | 58,648 | 0 |
| Harrisburg-Pa | 0 | 5,748 | 0 | 0 | 0 | 0 | 5,748 |
| Health-Care | 0 | 81 | 0 | 0 | 0 | 0 | 81 |
| Hempstead-Town | 0 | 24,074 | 0 | 0 | 0 | 0 | 24,074 |
| Hirl | 0 | 273,344 | 0 | 0 | 0 | 0 | 273,344 |
| Howell | 551,187 | 181,357 | 0 | 0 | 0 | 369,830 | 0 |
| Hudson-Oil | 30,503 | 111,346 | 0 | 0 | 0 | 0 | 80,843 |
| Hunt | 190,524 | 159,921 | 0 | 0 | 0 | 30,603 | 0 |
| Huntway | −257 | 21,967 | 0 | 0 | −3 | 0 | 22,224 |
| Husky | 511,595 | 511,595 | [3]37,288 | 0 | 0 | 0 | 0 |
| Independent-Ref | 0 | 82,724 | 0 | 0 | 0 | 0 | 82,724 |
| Indiana-Farm | 25,014 | 92,483 | 0 | 0 | 0 | 0 | 67,469 |
| Indust-Fuel | 1,832 | 839 | 0 | 0 | 0 | 993 | 0 |
| Inter-Process | 136,584 | 88,614 | 0 | 0 | 0 | 47,970 | 0 |
| Irving | 0 | 21,636 | 0 | 21,636 | 0 | 0 | 21,636 |
| Kenco | 47,119 | 17,039 | 0 | 0 | 0 | 30,080 | 0 |
| Kentucky | 15,821 | 15,627 | [2]7,745 | 0 | 0 | 194 | 0 |
| Kern | 13,148 | 206,264 | [3]82,604 | 0 | 101 | 0 | 193,116 |
| Kerr-McGee | 881,733 | 723,592 | 0 | 0 | 0 | 158,141 | 0 |
| Koch | 745,814 | 679,750 | 0 | 19,444 | 0 | 66,064 | 0 |
| La-County | 0 | 4,060 | 0 | 0 | 0 | 0 | 4,060 |
| Lagloria | 294,385 | 275,119 | 0 | 0 | 0 | 19,266 | 0 |
| Lake-Charles | 0 | 96,213 | 0 | 0 | 0 | 0 | 96,213 |
| Lakeside | 31,759 | 13,195 | 0 | 0 | 0 | 18,564 | 0 |
| Laketon | −4,267 | 72,076 | [3]40,226 | 0 | 0 | 0 | 76,343 |
| Little-Amer | 1,784,873 | 1,784,873 | [3]1,205,853 | 0 | 0 | 0 | 0 |
| Los-Angeles-Ca | 0 | 2,854 | 0 | 0 | 0 | 0 | 2,854 |
| Louisiana-Land | 759,470 | 189,645 | 0 | 0 | 0 | 569,825 | 0 |
| Macmillan | 30,023 | 92,688 | 0 | 0 | 1,429 | 0 | 62,665 |
| Madison-Chatham | 0 | 33 | 0 | 0 | 0 | 0 | 33 |
| Madison-City-Wi | 0 | 455 | 0 | 0 | 0 | 0 | 455 |
| Madison-Wi | 0 | 126 | 0 | 0 | 0 | 0 | 126 |
| Mallard | 2,979 | 29,059 | 0 | 0 | 0 | 0 | 26,080 |
| Marathon | 3,117,917 | 2,836,027 | 0 | 0 | 0 | 281,890 | 0 |
| Marion | −10,877 | 107,718 | 0 | 0 | 0 | 0 | 118,595 |
| Marlex | −52,527 | 73,835 | 0 | 0 | −4,446 | 0 | 126,362 |
| Metro-Seattle | 0 | 2,362 | 0 | 0 | 0 | 0 | 2,362 |
| Metropolitan | 0 | 67,305 | 0 | 67,305 | 0 | 0 | 67,305 |
| Mid-Amer | 516 | 35,942 | [3]18,072 | 0 | 0 | 0 | 35,426 |
| Midwest-Solv | 0 | 926 | 0 | 0 | 0 | 0 | 926 |
| Milwaukee-Wi | 0 | 508 | 0 | 0 | 0 | 0 | 508 |
| Mobil | 4,611,723 | 4,408,583 | 0 | 0 | 2,710 | 203,140 | 0 |
| Mobile-Bay | 1,808 | 28,849 | 0 | 0 | 0 | 0 | 27,041 |
| Mohawk | 0 | 79,473 | [2]79,473 | 0 | 0 | 0 | 79,473 |
| Monoco | 0 | 15,787 | [3]0 | 15,787 | 0 | 0 | 15,787 |
| Monsanto | 590,410 | 174,296 | 0 | 0 | 0 | 416,114 | 0 |
| Morrison | 17,281 | 7,681 | 0 | 0 | 0 | 9,600 | 0 |
| Mountaineer | 4,604 | 1,959 | 0 | 0 | 0 | 2,645 | 0 |
| MSDGC | 0 | 1,767 | 0 | 0 | 0 | 0 | 1,767 |
| Mt-Airy | 67,771 | 70,424 | 0 | 0 | 0 | 0 | 2,653 |
| Murphy | 814,515 | 554,522 | 0 | 0 | 0 | 259,993 | 0 |
| N-Amer-Petro | 42,021 | 80,217 | 0 | 0 | 0 | 0 | 38,196 |
| Nashville-Tenn | 0 | 2,881 | 0 | 0 | 0 | 0 | 2,881 |
| Natl-Coop | 170,975 | 287,234 | 0 | 0 | 0 | 0 | 116,259 |
| Navajo | 326,308 | 264,046 | [3]76,292 | 0 | 0 | 62,262 | 0 |
| Nevada | 0 | 19,126 | 0 | 0 | 0 | 0 | 19,126 |
| New-Edgington | 94,224 | 77,810 | 0 | 0 | 8,468 | 16,414 | 0 |
| New-Engl-Power | 0 | 78,783 | 0 | 78,783 | 0 | 0 | 78,783 |
| New-York-Ep | 0 | 12,848 | 0 | 0 | 0 | 0 | 12,848 |
| Newhall | 13,826 | 95,059 | 0 | 0 | 571 | 0 | 81,233 |
| Northeast-Petro | 0 | 16,336 | 0 | 16,336 | 0 | 0 | 16,336 |
| Northville | 0 | 15,294 | 0 | 15,294 | 0 | 0 | 15,294 |
| Ocean-Township | 0 | 57 | 0 | 0 | 0 | 0 | 57 |
| OKC | −12,806 | 135,433 | 0 | 0 | 0 | 0 | 148,239 |
| Okla-Ref | 32,117 | 91,924 | 0 | 0 | 0 | 0 | 59,807 |
| Orange-County | 0 | 1,384 | 0 | 0 | 0 | 0 | 1,384 |
| Osceola-Ar | 0 | 234 | 0 | 0 | 0 | 0 | 234 |
| Oxnard | 1,653 | 18,008 | 0 | 0 | 118 | 0 | 16,355 |
| Peerless | 0 | 22,293 | 0 | 0 | 0 | 0 | 22,293 |
| Pennzoil | 457,886 | 317,763 | [4]119 | 0 | 0 | 140,123 | 0 |
| Peoria-Il | 0 | 257 | 0 | 0 | 0 | 0 | 257 |
| Pester | 64,221 | 139,641 | 0 | 0 | 0 | 0 | 75,420 |
| Philadelphia-Pa | 0 | 617 | 0 | 0 | 0 | 0 | 617 |
| Phillips | 1,937,867 | 1,560,844 | 0 | 0 | 0 | 377,023 | 0 |
| Phillips-Pr | 0 | 168,326 | 0 | 168,326 | 0 | 0 | 168,326 |
| Pioneer | 47,624 | 37,655 | 0 | 0 | 0 | 9,969 | 0 |
| Placid | 550,919 | 277,082 | 0 | 0 | 0 | 273,837 | 0 |
| Plateau | 180,552 | 160,458 | [3]58,421 | 0 | 0 | 20,094 | 0 |
| Port | 0 | 14,483 | 0 | 0 | 0 | 0 | 14,483 |

**Notice of Entitlements for Domestic Crude Oil [June 1980]—Continued**

| Reporting firm short name | Deemed old oil adjusted receipts | Entitlement position | | | | | |
|---|---|---|---|---|---|---|---|
| | | Total issued | Exceptions and appeals | Entitlements | | Required to buy | Required to sell |
| | | | | Product | California | | |
| Powerine | 46,198 | 199,273 | 0 | 0 | 2,542 | 0 | 153,075 |
| Pride | −35 | 170,559 | 0 | 0 | 0 | 0 | 170,594 |
| Quaker-St | 16,535 | 142,126 | 0 | 0 | 0 | 0 | 125,591 |
| Quitman | 0 | 43,973 | 0 | 0 | 0 | 0 | 43,973 |
| Racine-Waste-Ut | 0 | 74 | 0 | 0 | 0 | 0 | 74 |
| Rahway | 0 | 123 | 0 | 0 | 0 | 0 | 123 |
| Rancho-Ref | 215 | 19,560 | 0 | 0 | 0 | 0 | 19,345 |
| Resco | 0 | 9,368 | 0 | 0 | 0 | 0 | 9,368 |
| Richards | 0 | 371 | 0 | 0 | 0 | 0 | 371 |
| Road-Oil | 0 | 12,143 | 0 | 0 | 0 | 0 | 12,143 |
| Rock-Island | 141,399 | 172,102 | 0 | 0 | 0 | 0 | 30,703 |
| Saber-Tex | 33,220 | 99,614 | 0 | 0 | 0 | 0 | 66,394 |
| Sabre-Cal | 5,989 | 41,829 | [3] −1,589 | 0 | 93 | 0 | 35,840 |
| Sage-Creek | 3,378 | 4,241 | [5] 2,278 | 0 | 0 | 0 | 863 |
| Salem-Va | 0 | 519 | 0 | 0 | 0 | 0 | 519 |
| San-Joaquin | 0 | 80,468 | 0 | 0 | 0 | 0 | 80,468 |
| Scallop | 0 | 157,625 | 0 | 157,625 | 0 | 0 | 157,625 |
| Scanoil | 0 | 62,425 | 0 | 62,425 | 0 | 0 | 62,425 |
| Seaview | 0 | 152,535 | 0 | 0 | 0 | 0 | 152,535 |
| Sector | 32,069 | 24,280 | 0 | 0 | 0 | 7,789 | 0 |
| Seminole | 9,289 | 74,371 | 0 | 0 | 0 | 0 | 65,082 |
| Sentry | 0 | 66,218 | 0 | 0 | 0 | 0 | 66,218 |
| Shell | 7,301,288 | 4,998,155 | 0 | 0 | 3,663 | 2,303,133 | 0 |
| Shepherd | −328 | 0 | 0 | 0 | 0 | 0 | 328 |
| Sigmor | 18,085 | 112,748 | 0 | 0 | 0 | 0 | 94,663 |
| Silver-Eagle | 2,489 | 1,269 | 0 | 0 | 0 | 1,220 | 0 |
| Slapco | 32,337 | 67,140 | 0 | 0 | 0 | 0 | 34,803 |
| SMRSA | 0 | 19 | 0 | 0 | 0 | 0 | 19 |
| So-Hampton | 43,594 | 97,613 | 0 | 0 | 0 | 0 | 54,019 |
| Sohio | 729,414 | 2,074,715 | 0 | 0 | 0 | 0 | 1,345,301 |
| Somerset | 21,918 | 24,858 | 0 | 0 | 0 | 0 | 2,940 |
| Sound | 0 | 50,127 | 0 | 0 | 0 | 0 | 50,127 |
| Southern-Union | 128,570 | 194,816 | 0 | 0 | 0 | 0 | 66,246 |
| Southland | 175,806 | 155,361 | [5] 47,216 | 0 | 0 | 20,445 | 0 |
| Southwestern | 12,277 | 3,822 | [5] 1,180 | 0 | 0 | 8,455 | 0 |
| Sprague | 0 | 32,488 | 0 | 32,488 | 0 | 0 | 32,488 |
| St & San-Chicago | 0 | 66,163 | 0 | 0 | 0 | 0 | 66,163 |
| St-Cloud/Minn | 0 | 306 | 0 | 0 | 0 | 0 | 306 |
| Steuart | 0 | 30,611 | 0 | 30,611 | 0 | 0 | 30,611 |
| Sunland | 4,112 | 58,206 | 0 | 0 | 136 | 00 | 54,094 |
| Sunoco | 3,312,632 | 2,527,549 | 0 | 19,820 | 0 | 785,083 | 0 |
| T&S | 10,915 | 19,796 | 0 | 0 | 0 | 0 | 8,881 |
| Tarco | 28,385 | 6,819 | [3] 0 | 0 | 0 | 21,566 | 0 |
| Tenneco | 609,420 | 595,629 | 0 | 0 | 2,800 | 13,791 | 0 |
| Tesoro | 243,360 | 342,859 | 0 | 0 | 0 | 0 | 99,499 |
| Texaco | 6,865,722 | 6,084,639 | 0 | 86,032 | 13,385 | 781,083 | 0 |
| Texas-American | 32,116 | 42,468 | 0 | 0 | 0 | 0 | 10,352 |
| Texas-City | 494,402 | 532,237 | 0 | 0 | 0 | 0 | 37,835 |
| Thagard | 32,416 | 31,602 | 0 | 0 | 1,125 | 814 | 0 |
| Thorn-Creek | 0 | 41 | 0 | 0 | 0 | 0 | 41 |
| Thriftway | 49,333 | 48,842 | [5] 22,809 | 0 | 0 | 491 | 0 |
| Thunderbird | 36,177 | 43,361 | 0 | 0 | 0 | 0 | 7,184 |
| Tipperary | −47,250 | 6,751 | 0 | 0 | 0 | 0 | 54,001 |
| Tonkawa | 20,721 | 62,888 | 0 | 0 | 0 | 0 | 42,167 |
| Tosco | 802,447 | 925,537 | 0 | 0 | 24,820 | 0 | 123,090 |
| Total-Petroleum | 43,336 | 405,656 | 0 | 0 | 0 | 0 | 362,320 |
| Ucc-Caribe | 0 | 150,820 | 0 | 150,820 | 0 | 0 | 150,820 |
| Uni-Ref | 0 | 90,419 | 0 | 0 | 0 | 0 | 90,419 |
| Union-carbide | 0 | 24,174 | 0 | 024,174 | 0 | 0 | 24,174 |
| Union-Oil | 2,774,719 | 2,185,632 | 0 | 0 | 8,337 | 589,087 | 0 |
| Unto-Ref | 109,574 | 242,030 | 0 | 0 | 0 | 0 | 132,456 |
| US-Oil | 11,963 | 84,423 | 0 | 0 | 767 | 0 | 72,460 |
| USA-Petrochem | 56,982 | 111,326 | 0 | 0 | 1,978 | 0 | 54,344 |
| Val-Verde | 2,366 | 3,771 | 0 | 0 | 0 | 0 | 1,405 |
| Vickers | 97,773 | 372,109 | 0 | 0 | 0 | 0 | 274,336 |
| Vicksburg | 3,560 | 29,879 | 0 | 0 | 0 | 0 | 26,319 |
| Warrior | 24,038 | 29,691 | [5] 10,942 | 0 | 0 | 0 | 5,653 |
| Watson | 0 | −23 | [4] −594 | 0 | 0 | 23 | 0 |
| West-Coast | 5,066 | 28,764 | 0 | 0 | 293 | 0 | 23,698 |
| West-Monmouth | 0 | 31 | 0 | 0 | 0 | 0 | 31 |
| Western | 0 | 61,144 | 0 | 0 | 0 | 0 | 61,144 |
| Winston | 28,096 | 76,736 | 0 | 0 | 0 | 0 | 48,640 |
| Wireback | 0 | 301 | 0 | 0 | 0 | 0 | 301 |
| Witco | 7,272 | 95,431 | 0 | 0 | 69 | 0 | 88,159 |
| Wyatt | 0 | 24,006 | 0 | 24,006 | 0 | 0 | 24,006 |
| Wyoming | 0 | 64,415 | 0 | 0 | 0 | 0 | 64,415 |
| Yetter | 0 | 470 | 0 | 0 | 0 | 0 | 470 |
| Young | 37,982 | 22,152 | [5] 8,229 | 0 | 0 | 15,630 | 0 |
| Total | 89,131,683 | 89,131,683 | 1,964,212 | 2,018,345 | 156,396 | 18,277,724 | 18,277,724 |

[1] See discussion in Notice.

[2] This is consistent with the court's order prohibiting any further entitlement purchase requirements by this firm pursuant to the terms of the court's Judgment in *Husky Oil Co.* v. DOE, et al., Civ. Action Action No–C77–190–B (D.Wyo., filed March 14, 1978), *remanded* 582 F. 2d 644 (TECA, August 10, 1978).

[3] This does not include the purchase obligation stayed by court order in *Texas Asphalt & Refinery Co.* v. *FEA*, Civ. Action No. 4–75–268 (N.D.Tex., filed October 31, 1975).

[4] Correction of prior month.

[5] Exception from Office of Hearings and Appeals.

[FR Doc. 80–20265 Filed 7–7–80; 8:45 am]

BILLING CODE 6450–01–M

## Warrior Asphalt Co.; Action Taken and Opportunity for Comment on Consent Order

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of action taken and opportunity for comment on consent order.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

**DATE:** Effective date June 10, 1980.

**COMMENTS BY:** August 7, 1980.

**ADDRESS:** Send comments to: James C. Easterday, District Manager of Enforcement, 1655 Peacetree Street, NE., Atlanta, Georgia 30367.

**FOR FURTHER INFORMATION CONTACT:** James C. Easterday, District Manager of Enforcement, 1655 Peachtree Street, NE., Atlanta, Georgia 30367, Telephone (404) 881–2396.

**SUPPLEMENTARY INFORMATION:** June 10, 1980 the Office of Enforcement of the ERA finalized a Consent Order with Warrior Asphalt Company, a Holt, Alabama small refiner. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution. Because of the settlement negotiations involved in this case and the desire to conclude this matter expeditiously, the DOE has determined that it is in the public interest to make the Consent Order with Warrior Asphalt Company effective as of July 8, 1980.

### I. The Consent Order

Warrior Asphalt Company (Warrior), located in Holt, Alabama is a small refiner, and is subject to the jurisdiction of the DOE with regard to prices charged in sales of covered products, pursuant to 10 CFR 212.31. To resolve certain civil actions which could be brought by the Office of Enforcement of the ERA as a result of its audit of Warrior, the Office of Enforcement, ERA, and Warrior entered into a Consent Order, the significant terms of which are as follows:

1. The Consent Order relates to the sales of covered products by Warrior during the period August 19, 1973 through June 30, 1976.

2. From the audit conducted during the above period, the Office of Enforcement concluded that Warrior improperly determined classes of purchaser and selling prices to each class of purchaser; improperly allocated increased costs among and within classes of purchaser and product categories; improperly calculated maximum allowable selling prices, and did not fully comply with the reporting requirements as set forth in the Federal Energy Guidelines.

3. Warrior agrees to refund the total sum of $456,000, plus applicable interest, in full settlement of all outstanding overcharges found by DOE during the audit period. The refunded total shall include $26,713 to identified end users by cash or credit memo; $25,000 civil penalty payment and $404.287 by certified check, in six monthly installments, submitted to the Office of the Assistant Administrator for Enforcement, ERA, Washington, D.C., who will ensure distribution in accordance with current DOE policies and procedures.

4. The provisions of 10 CFR 205.199J, including the publication of this Notice, are applicable to the Consent Order.

### II. Disposition of Refunded Overcharges

In the Consent Order, Warrior agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I.1. and I.2. above, the sum of $456,000, within six (6) months of execution of the Consent Order. Refund methodology will be as specified in I.3 above. The amounts submitted to the Assistant Administrator will be in the form of certified checks made payable to the United States Department of Energy and will be delivered to the Office of the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determinaton of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67.

In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

### III. Submission of Written Comments

A. *Potential Claimants.* Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments.* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to James C. Easterday, District Manager of Enforcement, 1655 Peachtree Street, NE., Atlanta, Georgia 30367. You may obtain a copy of this Consent Order with proprietary information deleted by writing to the same address.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Warrior Consent Order." Comments received by 4:30 p.m., local time on August 7, 1980 will be considered. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Atlanta, Georgia on the 25th day of June 1980.

**James C. Easterday,**

*District Manager of Enforcement.*

Concurrence:

**Leonard F. Bittner,**

*Chief Enforcement Counsel.*

[FR Doc. 80-20284 Filed 7-7-80; 8:45 am]

BILLING CODE 6450-01-M

## Powerine Oil Co. Application for Market Withdrawal From Petroleum Administration for Defense District (PADD) III

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of issuance of order.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that on July 1, 1980, a Decision and Order was issued pursuant to the provisions of 10 CFR 205.90 *et seq.* and § 211.10(b) denying Powerine Oil Company's May 18, 1979 request for permission to withdraw from Petroleum Administration for Defense District (PADD) III. The application, if granted, would have caused DOE to permanently reassign all of Powerine's PADD III base period purchasers to other replacement suppliers. A copy of the Decision and Order, with proprietary information deleted, is attached.

**FOR FURTHER INFORMATION REGARDING THIS ORDER, PLEASE CONTACT:**

Charles R. McCrea, Economic Regulatory Administration, Office of Petroleum Operations, Room 6222, 2000 M Street, NW., Washington, D.C. 20461. Telephone: (202) 653-3445.

Joel M. Yudson, Office of General Counsel, Room 6A-127, 1000 Independence Avenue SW., Washington, D.C. 20585. Telephone: (202) 252-6744.

Issued in Washington, D.C., on the 1st day of July 1980.

**Doris J. Dewton,**

*Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.*

**Economic Regulatory Administration Decision and Order**

July 1, 1980.

To: Powerine Oil Company, 12354 Lakeland Road, Santa Fe Springs, Calif.

Subject: Powerine Oil Company's Application for market withdrawal from petroleum administration for defense district III—Case No. WD79-002.

### I. Introduction

On May 18, 1979, Powerine Oil Company (Powerine) filed an application with the Department of Energy's (DOE) Economic Regulatory Administration (ERA) for permission to withdraw from its marketing operations and allocation obligations in Petroleum Administration for Defense District (PADD) III. *(1)* The relief, if granted, would cause DOE to permanently reassign all of Powerine's PADD III base period purchasers to other replacement suppliers.

### II. Legal Authority

Powerine's application is being processed in accordance with 10 CFR § 205.90 *et seq.* and § 211.14(d).

### III. Background History

Powerine is a small and independent refiner located at Santa Fe Springs, California, where, for the past twenty years, it has refined and marketed petroleum products. Powerine's refinery has a DOE certified capacity of 44,100 barrels per day.

Powerine operates two marketing systems. The first is located in PADD V, predominantly in the States of Arizona and California. There it distributes and sells the majority of its motor gasoline production to more than 100 independent marketers and resellers, primarily for direct distribution to retail sales outlets, with the balance marketed through Powerine's own retail outlets. The primary source of motor gasoline supply in PADD V is Powerine's Santa Fe Springs refinery.

The second marketing system is located in PADD III, predominantly in the State of Texas. There Powerine distributes and markets its motor gasoline to refiners and wholesale purchaser-resellers. *(2)* The PADD III marketing operation was established on a trial basis in the fall of 1977. In order to provide a primary source of motor gasoline to support the PADD III marketing operation, Powerine established a processing arrangement with Champlin Petroleum Company (Champlin) of Fort Worth, Texas. *(3)* It began receiving motor gasoline volumes at Champlin's Corpus Christi, Texas, refinery in October 1977. Powerine also purchased crude oil, primarily of a foreign origin, from Champlin for use as feedstock. Gasoline derived from the processing arrangement amounted to about XXXXX percent of Powerine's total base period motor gasoline supply in PADD III. The balance was purchased from the Gulf Coast spot market. Approximately one year later, during November 1978, Powerine discontinued its PADD III marketing operation. It closed its Houston, Texas, office and cancelled the Champlin processing arrangement.

On February 22, 1979, with the updating of the motor gasoline base period by Activation Order No. 1 (hereinafter referred to as the Activation Order) *(4)*, Powerine was required to reestablish its PADD III marketing operations. Thus, Powerine resumed the sale of motor gasoline to its former PADD III customers even though it no longer had employees in Texas nor access to motor gasoline that it previously received under its processing arrangement with Champlin.

### IV. Contentions of Powerine

In its application, Powerine claims that it should be permitted to withdraw from its marketing operations in PADD III because it is impractical and uneconomical for the firm to fulfill its supply obligations. Powerine contends that if it continues its PADD III marketing operations it will cause the firm severe financial difficulties and result in the transfer of its high PADD III motor gasoline costs and supply shortages to the firm's PADD V base period customers.

According to Powerine's submission, its withdrawal from PADD III marketing operations had occurred approximately four months before the promulgation of the Activation Order issued on February 22, 1979. Since terminating its processing agreement with Champlin, Powerine has substantially changed its marketing structure and strategy. Therefore, according to Powerine, the reestablishment of its PADD III base period sales system has been difficult, if not totally impractical, because the firm has an assured source of supply under the allocation regulations for only XXXXX percent of the quantity of motor gasoline which it actually delivered during the base period. Powerine states that its only assured sources of gasoline to fulfill its supply obligation to the wholesale purchasers and refiners in PADD III are the Texas suppliers from which Powerine purchased gasoline during the base period. *(5)* Furthermore, as a result of terminating its processing arrangement with Champlin (which had accounted for about XXXXX gallons of Powerine's PADD III base period sales), Powerine claims it no longer has access to a reasonably priced source of motor gasoline. Powerine contends that Champlin has rejected its offer to reestablish their processing arrangement. In addition, Powerine asserts that it is unlikely that the firm can establish a similar processing arrangement in PADD III with any other refiner.

Powerine alleges that in order to meet its supply obligations in PADD III it must:

(1) Purchase gasoline on the high priced Gulf Coast spot market;

(2) Exchange product from its refinery in PADD V into PADD III and pay high exchange differentials; or

(3) Transport gasoline from its PADD V refinery to PADD III at very high transportation rates.

According to the firm, any of these methods could possibly result in losses as

high as XXXXX cents per gallon, thus causing Powerine a severe financial hardship. Powerine also asserts that supplying gasoline by means of exchange would result in large deficit exchanges balances; i.e. it would owe more product to its exchange partners than is due Powerine via exchange agreements.

In addition, Powerine states it is precluded from passing through the full amount of the incurred cost of purchased gasoline in PADD III due to the 3 cents per gallon ceiling limitation on the unequal passthrough of increased costs which is set forth in the Refiner Price Rule, 10 CFR § 212.83. *(6)* Consequently, Powerine alleges that it lost approximately $XXXXX attributed to PADD III sales in September 1979. *(7)*

Moreover, the firm contends that because of the uncertainty of whether PADD III purchasers will seek their entitlement in any particular month, Powerine is exposed to the risk that it will be unable to sell the product which it purchases for resale and, thus, will incur costs which cannot be recovered.

Powerine further asserts that it should be permitted to withdraw from marketing operations in PADD III because Powerine is neither a major supplier to the Gulf Coast area nor a major supplier to any of its PADD III base period customers and because its PADD III customers have the capability to deal directly on the spot market for motor gasoline without Powerine's intervention.

Finally, Powerine contends that since the firm is required to supply quantities of gasoline in PADD III, its PADD V base period purchasers are adversely affected because the available supply of gasoline for allocation to those firms is substantially diminished, and they must pay higher prices to subsidize Powerine's high cost PADD III sales.

### V. Comments Received to Powerine's Application

On June 7, 1979, the ERA provided several firms, which were identified by Powerine as parties that could adversely be affected by its withdrawal from PADD III, with notice and an opportunity to participate in a conference, which was convened on June 13, 1979, to consider the matter. (8) On November 8, 1979, ERA published notice of the pendency of Powerine's application in the Federal Register. Six firms filed written comments. Five commenters, Thomas P. Reidy, Inc.; Sigmor Corporation; Koch Refining Company; Mobil Oil Corporation; and Gasoline Marketers of America (GMA) were opposed to the proposed withdrawal. One, Chevron U.S.A. generally had no objections.

Some commenters stated that the application should not be approved because Powerine has not provided sufficient evidence to demonstrate that it is impractical for the firm to meet its supply obligations in PADD III. Three companies indicated that they are substantially dependent on Powerine's supply of motor gasoline for those months in which they have an entitlement. Powerine represents approximately XXXXX percent of Sigmor's total gasoline supply in March. Approximately XXXXX percent of GMA's April supply is furnished by Powerine, XXXXX percent in May. Although Koch alleges it is significantly dependent on Powerine for its supply of gasoline, the firm has provided no supporting data. If Powerine were relieved of its obligations to continue its supplier/purchaser relationships with those customers, they could experience significant disruptions in their operations.

### VI. Applicable Regulations, Rulings, and Criteria

Under the provisions of 10 CFR § 211.14(d), suppliers which seek to withdraw from marketing and distribution activities in a region may apply to DOE for reassignment of their base period and assigned wholesale purchasers in that region. Section 211.14(d) states that:

> Any refiner, importer, or other supplier which has significantly reduced or which intends to reduce marketing or distribution activities in any region or area and which is required by DOE regulations to supply its base period and assigned wholesale purchasers in that region or area may apply to the National DOE to seek a change in the method of supplying such wholesale purchasers. The DOE may order the reassignment of wholesale purchasers or end-users from one supplier to another * * *"

In Ruling 1974–3, the Federal Energy Administration (FEA), a predecessor of DOE, construed § 211.14(d) to require that an application for redirection of product contain "* * * an explanation of the reasons why it is impractical for that supplier to provide allocations to its base period wholesale purchasers in that region—either directly or through exchange agreements with other suppliers." Ruling 1974–3, 39 *Fed. Reg.* 4467 (February 4, 1974). However, DOE regulations provide no additional standards which govern the consideration of an application to withdraw from marketing activities in a particular area. As a result, the ERA has a large degree of discretion in determining when such an application should be approved. See *Mobil Oil Corporation*, 5 FEA Para. 80,586 (1977). In two DOE decisions, the Office of Hearings and Appeals (OHA) (9) described factors which the ERA (10) should consider in determining whether to authorize reassignment of customers pursuant to § 211.14(d). In those decisions, OHA indicated that these factors include findings concerning the effect the withdrawal would have upon independent marketers in the area, and upon the alternate suppliers and their customers. See *Mobil Oil Corporation*, supra., and *Caldo Oil Company, Inc.*, 3 DOE Para. 80,135 (1979).

In order for a firm to make a showing that its withdrawal from a marketing area is proper, the applicant must establish that it is impractical under present and prospective market conditions to supply such a region, either directly or through exchange agreements with other suppliers. The determination which ERA makes regarding the impracticality of a firm to supply its customers is based, in part, on the following factors:

(1) Whether there are any methods which the firm can use to transport gasoline into the affected area;

(2) Whether the firm is capable of entering into exchanges or processing arrangements with other refiners to obtain supplies of motor gasoline to meet its sales obligations; and

(3) Whether the firm, after diligent effort, has been or will be unable to purchase gasoline on the open market.

### VII. Analysis and Findings

In order to arrive at a determination in regard to the issues which Powerine raises, the ERA held a conference, weighed the considerable body of written material which has been submitted, and has considered the comments of potentially aggrieved parties submitted in opposition to Powerine's request.

In applying the applicable criteria, the ERA has concluded that Powerine has failed to make the type of showing necessary for the approval of its request to withdraw from marketing operations in PADD III. Powerine has given no indication of the extent to which it has endeavored to acquire gasoline by means of exchange agreements which are commonly used in the oil industry. Through such agreements, oil companies often trade quantities of crude oil or petroleum products in order to defray transportation costs, alleviate shortages, etc. Although the ERA has requested Powerine to substantiate its claim that it is unable to arrange exchange agreements, the firm has failed to do so.

Powerine has produced no verifiable evidence that it has attempted to reestablish its cancelled processing arrangement with Champlin or that it has attempted to negotiate a similar arrangement with any other refiner.

Furthermore, Powerine has not shown that surplus or spot market product cannot be obtained to supply its PADD III customers. There is little doubt that situations may arise as a result of the expiration or termination of a processing arrangement in which a supplier is unable to furnish its base period purchasers with an adequate quantity of a petroleum product. Due to the updated base period, Powerine must continue to supply gasoline to its PADD III customers despite the fact that it no longer receives gasoline from Champlin under the processing arrangement which led Powerine to supply gasoline in the first place. However, this does not, in and of itself, constitute sufficient grounds for a finding that an inequitable supply burden exists. In evaluating the impracticability of a firm to supply its customers, the ERA inquires as to whether a supplier is able to purchase the allocated product on the surplus or spot markets. The information provided to ERA indicates that during the months since Powerine submitted its application, substantial volumes of surplus product have been available in PADD III.

Under the provisions of § 211.10(g) of the Mandatory Petroleum Allocation Regulations, Powerine may purchase motor gasoline from any supplier which has surplus product available (after it has been offered to the supplier's base period customers) and which is willing and able to sell that product to Powerine. Under the surplus product regulations, any supplier that has an allocation fraction in excess of 1.0 and is, therefore, meeting its supply obligations to its base period purchasers, may seel any surplus product which remains providing that it meets the reporting and other requirements specified in § 211.10(g). Under certain

circumstances, suppliers with allocation fractions equal to or less than 1.0 may also sell surplus product to purchasers other than based period purchasers (10 CFR § 211.10(f)(2)). Data reported to ERA during the period March 1979 through June 1980 indicate that a significant number of firms capable of supplying gasoline in the Gulf Coast area has sufficient quantities of surplus product to satisfy all of Powerine's PADD III base period requirements. Powerine has furnished no evidence that it has attempted to locate a supplier of surplus motor gasoline. The firm has asserted that it would be unprofitable if it were forced to purchase substantial quantities of gasoline on the spot market. However, Powerine has failed to set forth any supportive information which would indicate that the purchase of adequate volumes of surplus gasoline to raise its allocable supply of gasoline in PADD III to the level at which it wishes to distribute that product in PADD III would be burdensome or impractical. Powerine has introduced no evidence to show that its operations could not bear the prevailing market price of surplus gasoline or that it is experiencing severe economic difficulties. Even if market conditions would not permit Powerine to recover the full amount of the costs of the PADD III gasoline immediately, the firm is entitled to accumulate its unrecovered cost increases in its maximum allowable selling prices at a later date. Powerine has not presented any data that would indicate that it would be unable to recover such cost increases in the future.(*11*) The fact that it might be expensive for Powerine to obtain product to supply its PADD III customers does not necessarily show that it is impractical for Powerine to supply those customers.

Powerine's assertions with respect to its profitability are not substantiated by the record in this matter. Recent information submitted by Powerine indicates that its PADD III customers have not purchased gasoline from the firm since September 1979. Thus, Powerine's claims concerning its inability to pass through the increased costs of supplying its PADD III purchasers are highly speculative at this time. Despite the alleged amount of unrecovered cost increases, Powerine has failed to demonstrate that present market conditions preclude the firm from recovering incurred PADD III gasoline costs by increasing the price of its motor gasoline in PADD V above present levels. Although Powerine claims that it was forced to absorb $XXXXX of increased product costs attibutable to PADD III sales in September 1979, it has not demonstrated that its failure to recover these increased costs significantly affected Powerine's overall financial posture or seriously impaired any aspect of its operations. Indeed, data which the firm has submitted to DOE indicate that during the period June 1979 through January 1980, Powerine has little or no difficulty in passing through its increased motor gasoline costs in its firm-wide sales. Powerine is generally permitted by the DOE price regulations to recover increases in the cost of supplies by increasing its selling prices pursuant to the provisions of 10 CFR Part 212. To the extent that the purchase of motor gasoline causes Powerine to incur increased product costs, Powerine may recoup those costs in the month after they are incurred and "bank" them for recovery in subsequent months. See § 212.83. Data which the firm has submitted monthly to DOE on its forms EIA–14, Refiners' Monthly Cost Allocation Report, indicate that during those months the firm consistently recovered all the increased costs of motor gasoline in the very first month in which recovery was permitted.

Moreover, during the above period, the firm successfully passed through substantial amounts of banked costs in addition to those increased motor gasoline costs incurred during the prior month. As a result, Powerine's "banked costs" for gasoline dropped from a total of $XXXXX in June 1979 to $XXXXX in January 1980.

If Powerine's firm-wide motor gasoline "banked costs" have increased since that time, it clearly is not the result of any PADD III sales. In analyzing the allegations advanced by Powerine in its application, the ERA obtained motor gasoline cost data from *Platt's Oilgram Price Report*, a trade publication. The cost data set forth in *Platt's Oilgram* indicate that present Gulf Coast spot market gasoline prices are more favorable than in the past. Therefore, in view of Powerine's historical performance, there is little reason at the present time to conclude that the firm is unable to pass through its PADD III motor gasoline costs. (*12*)

Because Powerine has failed to show that the costs associated with purchasing available surplus product could not be recovered, it is not necessary to determine whether delivering significant volumes of gasoline by truck, rail or ocean tanker from PADD V is feasible or whether the transportation costs are recoverable. (*13*) For the same reason, it is not necessary at the present time to determine the validity of Powerine's assertion that it is unable to arrange for an economical exchange of gasoline from PADD V to PADD III or that maintaining large deficit exchange balance is burdensome.

Powerine's allegation that it may not be able to sell the gasoline in PADD III at the time it is available for delivery because of a customer's decision not to exercise its purchase rights and thereby causing Powerine to incur a financial loss is without merit. Typically, a transaction among firms, such as Powerine, engaged in buying and reselling cargo lots of refined products involves an agreement between a supplier and purchaser for a specified quantity of product to be furnished at a set price on a specific date. The supplier arranges to buy the product from a third party for delivery to the purchaser' however, the product seldom physically enters the supplier's terminal or distribution system. Agreements regarding the purchase and resale of particular cargo lots in such transactions normally occur only after a purchaser notifies it supplier the portion of its allocation it will lift. Thus, Powerine would not incur the cost of acquiring such cargo lots until its PADD III purchasers make a firm commitment to lift all or part of their allocation entitlement.

A further factor which must be considered in withdrawal applications under § 211.14(d) is whether the firm has attempted to arrange to supply its purchasers through another supplier or suppliers under the provisions of 10 CFR § 211.25. There is little evidence to demonstrate that Powerine took affirmative action to arrange to meet its supply obligations through a substitute supplier. The ERA does recognize that continuing supply obligations specified in 10 CFR Part 211 could, in particular circumstances, create difficulties for suppliers that have altered their marketing and distribution systems subsequent to the base period. In this connection, it should be noted that the regulations themselves provide certain mechanisms which a firm may utilize to supply it customers located in areas where it is deficient in supply or has closed down facilities and, thereby, mitigate any inconvenience which would otherwise result from strict adherence to the regulatory requirements of maintaining base period supplier/purchaser relationships.

Section 211.25 permits a firm to furnish motor gasoline to its customers, other than by direct delivery, through a substitute supplier. Under this section, the original supplier retains its base period supply obligations to the purchaser even though the substitute supplier has assumed the primary responsibility to supply the customer. No provision in the rule requires prior DOE approval of such arrangements. We note that in July 1979 Energy Specialists of Fort Worth, Texas, entered into an agreement with Powerine to assume Powerine's PADD III supply obligation to Petro, Inc., under § 211.25(a). While we recognize that Powerine's obligation to Petro, Inc., is relatively small, such arrangements between Powerine and other substitute suppliers could well mitigate any burdens or inconveniences which adherence to the requirements of the regulations may produce. However, the record does not show the Powerine has made all diligent efforts on its own behalf to secure any other substitute supplier arrangements.

Although Powerine has stated that its PADD III customers have the capability to deal directly on the spot market for motor gasoline, under the allocation regulations, as a general rule, wholesale purchaser-resellers have an entitlement to purchase an allocated product, such as motor gasoline, only from their base period suppliers. A supplier has an obligation to allocate product to wholesale purchaser-resellers which it supplied during the base period. A wholesale purchaser-reseller, however, is not required to purchase the product allocated to it by its base period supplier. The fact that a purchaser does not purchase product from his base period supplier does not terminate the supplier/purchaser relationship required by 10 CFR § 211.9(a)(2)(i). Even if, during a particular month, a wholesale purchaser-reseller chooses not to purchase from its base period supplier because the purchaser is able to acquire surplus product from another supplier under terms advantageous to the purchaser, the base period supplier is not freed from its responsibility to allocate product to the purchaser in any succeeding period which corresponds to a base period.

In its present application, Powerine is requesting that the DOE enter an order which

would modify the base period supply relationship that it has with its PADD III purchasers. Modifications of existing base period supply relationship would require an assignment of a new supplier to assure that the downstream customers of the wholesale purchaser-resellers would not receive less product. In considering the impracticability of maintaining supply obligations in an area, ERA weighs the hardships involved in maintaining those obligations against the hardships involved if the supplier were allowed to leave the marketing area.

While Powerine states that any hardship which is caused by the requirement that it sell gasoline to its PADD III customers would be incurred by Powerine's PADD V purchasers, this contention is not supported by any factual data. Powerine has not articulated the basis for its contention that either the passthrough by Powerine of increased costs to purchase gasoline on the open market or a reduction of Powerine's allocation fraction for gasoline to reflect those sales to its PADD III purchasers, would have results of such magnitude as to impair the business operations or profitability of its PADD V customers. Moreover, the record in this matter contains no submissions from any of Powerine's PADD V customers showing that they have been forced to curtail operating hours, layoff personnel, borrow funds to meet current operating expenses or close certain retail outlets as a result of Powerine's supply difficulties. It is especially important that this type of showing be made here since the relief which Powerine seeks would result in the issuance of an order directing a replacement supplier to sell motor gasoline to Powerine's PADD III purchasers when that supplier would not have otherwise chosen to do so. The new supplier's based period customer might also be adversely affected since the relief which Powerine seeks could well reduce the available supply which the supplier would be able to provide these purchasers. In addition, Powerine has not submitted any information which would indicate why requiring the firm to maintain its base period sales obligations would affect it in a manner which is so different or disproportionate from that experienced by other similarly situated firms. Most refiners have, at one time or another, been compelled to purchase product on the open market to meet their supply obligations. Thus, the approval of Powerine's application without the presence of circumstances which would justify the type of relief which is requested would simply give preferential treatment to Powerine and its PADD V customers at the expense of the customers of replacement suppliers and result in an unfair distribution of burdens upon the third parties affected by the present proceeding. Furthermore, if such sales to firms which have the capability to deal directly on the open market were excluded from current supply obligations of all refiners, while all other base period supplier/purchaser relationships were maintained, it is possible that severe supply/demand imbalances could occur.

With respect to Powerine's contention that the regulations impose significant burdens on Powerine's PADD V base period purchasers by substantially reducing the firm's total available supply in PADD V, Powerine is not required to reduce its supplies to its customers located in PADD V. It may maintain an optimum distribution level in PADD V by purchasing motor gasoline on the open market in PADD III. Thus, any reduction in supplies to Powerine's PADD customers results from the exercise of Powerine's discretion. Moreover, Powerine has not documented that its PADD V customers are bearing a significantly disproportionate share of the burdens and inconveniences under DOE's allocation program.(*14*)

It is important to emphasize that if Powerine is experiencing supply difficulties, those difficulties are directly attibutable to the firm's prior discretionary business decisions and marketing strategy which prompted the firm to terminate its processing arrangement with Champlin. It must be presumed that Powerine made this business decision with the full realization that the DOE might update the base period for motor gasoline to a more recent representative twelve-month period. (*15*) In this respect Powerine is no different than any other firm which had changed its marketing operations prior to the base period update.

Insofar as Powerine has failed to make a threashold showing that it is truly impractical for the firm to provide allocations to its base period wholesale purchasers in PADD III either directly or through exchange agreements with other suppliers, it is not necessary for ERA to evaluate the effect of the proposed withdrawal on the independent sector of the petroleum industry in the withdrawal area. It is also unnecessary to assess whether the assignment of other suppliers in the withdrawal area to furnish motor gasoline to Powerine's base period purchasers will seriously and adversely affect those alternate suppliers and their base period customers.

Powerine would naturally prefer to be relieved of the obligation to supply customers in an area where it is deficient in supply. Nevertheless, as OHA pointed out in *Mobile Oil Corporation, supra:*

"[A] mere showing that a firm would prefer to discontinue supplying a market area with allocated petroleum products does not, in and of itself, constitute a sufficient basis for approval of an application for withdrawal from a marketing area. Certainly, the entire [DOE] allocation program would be disrupted if suppliers of refined petroleum products were permitted to select the particular sections of the country in which it is least burdensome for them to operate and to withdraw from all other areas."

We wish to emphasize that we expect Powerine to pursue all reasonable avenues available to it in order to alleviate on its own, the supply difficulties which it is experiencing. In order for the ERA to direct another firm to supply motor gasoline in place of Powerine, there must be a compelling reason for deviating from the base period supply relationships which are at the heart of the allocation program. In this case, there appear to be insufficient reasons which justify deviating from those base period supplier/purchaser relationships. Furthermore, Powerine has made no showing that the burdens which it is experiencing as the result of the application of DOE regulations are so markedly different from the burdens experienced by other similarly situated firms.

Based on the considerations set forth above, the ERA has determined that the circumstances set forth in Powerine's application do not appear to warrant the borad and comprehensive relief which a market withdrawal entails.

## VIII. Order

This order is issued pursuant to the provisions of 10 CFR § 205.90 *et seq.* and § 211.14(d).

It is, therefore, ordered that:

(1) The application filed by Powerine Oil Company for permission to withdraw from PADD III be and hereby is denied.

(2) In accordance with the provisions of 10 CFR, Part 205, an aggrieved party may file an appeal from this decision and order with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. The provisions of 10 CFR, Part 205, Subpart H, set forth the procedures and criteria which govern the filing and determination of any such appeal.

(3) Communications, other than appeals, regarding this directive, should be referred to Alan T. Lockard, Chief, General Fuels Branch, Office of Petroleum Operations, Economic Regulatory Administration, 2000 M Street, N.W., Washington, D.C. 20461, telephone number (202) 653–3443.

Doris J. Dewton

*Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.*

## Footnotes

[1] The application was supplemented with additional Powerine comments on January 21, 1980.

[2] Tale A lists the names and monthly base period volumes of Powerine's PADD III purchasers.

[3] In *Champlin Petroleum Company,* Interpretation 1976–23, issued on December 6, 1976, the Federal Energy Administration (FEA), a predecessor of DOE, determined that a refiner which processes crude oil pursuant to a processing agreement as defined in § 211.62 of the Mandatory Petroleum Allocation Regulations is not a supplier as defined in § 211.51 with respect to the refined products so produced and, therefor, incurs no base period supply obligations as to those products.

[4] On February 22, 1979, Activation Order No. 1, Standby Petroleum Product Allocation Regulations, was adopted, 44 FR 11202 (February 28, 1979). In that order, ERA activated certain portions of the Standby Petroleum Product Allocation Regulations in order to update the base period for motor gasoline allocation from the 1972 base period to the corresponding month of the period July 1, 1977, to June 30, 1978, and implemented the updated base peiod for an initial period of March, April and May 1979. Subsequently, on May 1, 1979, ERA issued an Interim Final Rule, 44 FR 26712 (May 4, 1979), which superseded the Activation Order. Under the Interim Rule, the updated base period for motor gasoline allocation was designated as the corresponding month of the period

November 1977 through October 1978. The updated base period was permanently established by the Final Rule, 44 FR 42549 (July 19, 1979).

[5] Table B lists the names of Powerine's PADD III suppliers and the firm's monthly motor gasoline entitlements.

[6] The Refiner Price rule provides that in calculating maximum allowable selling prices, refiners must apply their product costs and nonproduct costs allocable to the product concerned equally among their classes of purchaser for that product on a firm-wide basis. To ensure that costs are allocated equally, the Equal Application Rule, § 212.83(h), provides that a refiner, in calculating the amount of increased costs not recovered in a given month and available for carry-forward, is deemed to recover for each class of purchaser of the product concerned, the greatest per unit amount of increased costs that it recovers in sales of that product to any class of purchaser. For motor gasoline, a refiner had flexibility in calculating its maximum allowable price, as the Regional Pricing Rule for Gasoline, 10 CFR § 212.83(h)(2)(i), permits the refiner to pass through increased costs to a class of purchaser of gasoline located in one PADD in amounts up to 3 cents per gallon greater than the amount of increased costs passed through to any class of purchaser located in any other PADD, without affecting the carry-forward of unrecouped increased costs.

[7] According to the Powerine submission, in September 1979, the firm purchased XXXXX barrels of regular grade motor gasoline at a cost of $.XXXXX per gallon. The price Powerine charged a PADD III customer for the product was $.XXXXX per gallon.

[8] Those firms are Koch Industries, Inc.; Kenco Refining; Gasoline Marketers of America; Thomas P. Reidy, Inc.; Petro, Inc.; Enterprise Products; Hydrocarbon Trading and Transportation; and Mellon Energy.

[9] On March 31, 1978, OHA assumed the responsibilities previously exercised by the ERA Office of Administrative Review and its predecessor, the FEA Office of Exceptions and Appeals.

[10] In Delegation No. 0204–4, the Secretary of Energy delegated responsibility for the administration of the pricing and allocation regulations to the Administrator of the ERA.

[11] A Powerine official at the June 13, 1979, conference which was held to discuss the firm's application made the following remarks:

If the regulations don't change and if the market in California holds firm, we can take these losses [in PADD III] and roll them back into our bank and someplace support a higher ceiling price in California * * * Powerine would not only be able to recover banked recouped losses but would even make a profit * * *

Official Transcript of Proceeding, *Powerine Oil Company*, Case No. WD79–002 (June 13, 1979) at pages 12 and 41.

[12] We also note that Powerine filed an Application for Exception and a Request for Stay of the provisions of 10 CFR § 212.83(h)(2)(i) (the Equal Application Rule) with the DOE's Office of Hearings and Appeals (OHA) on March 23, 1979. The relief sought in those applications is similar in many respects to the present Powerine request, which was filed approximately two months later, because they were also based on the hardship Powerine alleged would occur if it supplied its Texas customers. In considering the Request for Stay (see *Powerine Oil Company*, 3 DOE Para. 82,049, April 23, 1979) the OHA found unpersuasive Powerine's contention that it would incur serious financial hardship because unrecovered costs can be "banked" and the firm's financial position at that time was relatively strong. The basis upon which the OHA denied the stay was a finding that Powerine projected full recovery of all of its banked costs by June 1979. The OHA further concluded that Powerine would be able to recover any additional banked costs resulting from PADD III transactions with minimal delay. Thereafter, Powerine withdrew its Application for Exception. After the issuance of the April 23, 1979, order, Powerine directed the present submission to ERA.

[13] We note in this regard that Powerine's assertions are not entirely unrebutted. For instance, at a hearing convened on April 6, 1979, by DOE pursuant to Powerine's March 23, 1979, Request for Stay, *supra*, a representative of Powerine admitted that "* * * one month we brought a cargo around [sic] of gasoline out of the Gulf through the Canal [to PADD V]." Official Transcript of Proceeding, *Powerine Oil Company*, Case No. DES–2878 (April 6, 1979) at p. 12.

[14] 10 CFR § 211.107(c) provides:

Pursuant to the procedures of Subpart C of Part 205, if sufficient supplies of gasoline are available to mitigate the adverse impact on firms unable to obtain adequate volumes of product, ERA may redirect product or take other appropriate action to enable a purchaser to obtain in any month up to 75 percent of its base period volume for that month.

[15] Approximately 8 months prior to issuing the Activation Order, DOE requested comments with respect to its proposal to put into place various standby price and allocation rules which could be activated in the event of a major petroleum supply interruption. One of the proposed special rules provided for updating the base year to a more current basis. See "Standby Product Allocation and Price Regulations and Imposed Allocation Fractions," 43 FR 29565 (July 10, 1978). Powerine was aware of the proposal and submitted comments.

BILLING CODE 6450-01-M

Table A

POWERINE'S BASE PERIOD CUSTOMERS AND ENTITLEMENTS OF MOTOR GASOLINE (VOLUME IN BARRELS)

| CUSTOMER | JAN | FEB | MAR | APR | MAY | JUN | JUL | AUG | SEP | OCT | NOV | DEC |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Buckeye Gas Products Company | | | | XXXXX | | | | | | | | |
| Coastal States | | | | | | | | | | XXXXX | | |
| Enterprise Products | | | XXXXX | | | | | | | | | |
| E-Z Serve | | | XXXXX | | | | | | | | | |
| Gasoline Marketers of America, Inc. | | | | XXXXX | XXXXX | | | | | | | |
| Hydrocarbon Trading & Transport | | | | XXXXX | | XXXXX | | | | | | |
| Kenco Refining | | | | | | XXXXX | | | | | XXXXX | |
| Kern County Refining | | | | | | | | XXXXX | | | | |
| Koch Industries | | | | | | | | | | | XXXXX | |
| M&A Petroleum | | | | | | | | | | | | |
| Mellon Energy Products Co. | | | | | | XXXXX | | | XXXXX | | | |
| Saber Petroleum Co. | | | | XXXXX | | | | | | | | |
| Shell Oil Company | | | XXXXX | | | | | | | | | |
| Sigmor Corporation | | | XXXXX | | | | | | | | | |
| Tauber Oil Company | | | | | | XXXXX | XXXXX | | XXXXX | | | |
| Thomas P. Reidy, Inc. | | | | | | | | | | | XXXXX | XXXXX |
| Triangle Refining Company | | | | | | | | | | | | |
| Totals | XXXXX | XXXXX | XXXXX | XXXXX | XXXXX | XXXXX | XXXXX | XXXXX | XXXXX | XXXXX | XXXXX | XXXXX |

Table B

POWERINE'S BASE PERIOD SUPPLIERS AND MONTHLY SUPPLY VOLUMES (IN BARRELS)

| SUPPLIER | JAN | FEB | MAR | APR | MAY | JUN | JUL | AUG | SEP | OCT | NOV | DEC |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Champlin Petroleum Company | | XXXXX | | | | | | | | | XXXXX | XXXXX |
| Enterprise Products | | | | | | | | | XXXXX | | | |
| Fedco | | | | | | | | | | | XXXXX | |
| Good Hope Refining, Inc. | | | | | | | | | | | XXXXX | XXXXX |
| Gulf States | | | | | XXXXX | | | | | | XXXXX | |
| Hepco | | | | | XXXXX | | | | | | | |
| Northeast Petroleum | | | | | | | | | | | XXXXX | |
| Thomas P. Reidy, Inc. | | XXXXX | XXXXX | XXXXX | | | | | | | XXXXX | XXXXX |
| Totals | XXXXX | XXXXX | XXXXX | XXXXX | XXXXX | XXXXX | XXXXX | XXXXX | XXXXX | XXXXX | XXXXX | XXXXX |

[FR Doc. 80-20328 Filed 7-7-80; 8:45 am]

BILLING CODE 6450-01-C

## Office of Assistant Secretary for International Affairs

### Proposed Subsequent Arrangements Between United States and European Atomic Energy Community, et al.

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, the Agreement for Cooperation Between the Government of the United States of America and the Government of Canada Concerning Civil Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the International Atomic Energy Agency (IAEA) Concerning Cooperation in Peaceful Application of Atomic Energy, as amended.

These subsequent arrangements involve the sale or retransfer of source material, special nuclear material, and equipment of United States origin as shown below:

Contract S–EU–650, sale to the United Kingdom of 25 milligrams of plutonium enriched to approximately 88% in Pu–244, to be used for mass spectrometric measurements of isotopic mass and cross-sections.

Contract DE–SC05–80 LEU–0504, sale to France of 1 kilogram of depleted uranium, to be used by CERCA for prototype fuel element fabrication.

Contract DE–SC05–80 LEU–0505, sale to the Federal Republic of Germany, 1 kilogram of depleted uranium to be used by NUKEM for prototype fuel element fabrication.

Contract S–EU–648, sale to the United Kingdom, 25 milligrams of uranium, enriched to greater than 99 percent in U–236, to be used for sub-threshold measurements.

Contract S–EU–652, sale to the United Kingdom of 1 gram of thorium, to be used for instrument calibration.

Contract S–CA–291, transfer to Canada of one pulsed neutron generator containing approximately 8 curies of tritium, to be used in a research program for development of a system to measure coolant flow in nuclear reactors.

Contract S–CA–294, sale to Canada of 1 microcurie of plutonium 236, to be used as a tracer to characterize the plutonium content in particulate material from the primary heat transport system in the Bruce Nuclear Generating Station.

Contract S–IA–105, sale to the IAEA in Vienna, Austria, 0.00045 grams of uranium, containing 33 percent U–233 and 33 percent U–235, 148 grams of neutral uranium, and 750 grams of depleted uranium to be used for equipment calibration.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the aforementioned nuclear material and equipment will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than July 23, 1980.

For the Department of Energy.

Dated: July 1, 1980.

**Harold D. Bengelsdorf,**

*Director for Nuclear Affairs, International Nuclear and Technical Programs.*

[FR Doc. 80–20323 Filed 7–7–80; 8:45 am]

BILLING CODE 6450–01–M

### Proposed Subsequent Arrangement Between United States and International Atomic Energy Agency

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the International Atomic Energy Agency (IAEA), as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves the signature of a supplemental contract pursuant to the Master Agreement Between the Agency and the United States of America Governing Sales of Source, By-Product and Special Nuclear Materials for Research Purposes, signed on June 14, 1974. This supplemental contract will provide for the supply to New Zealand through the IAEA of 1 milligram of plutonium-242, 90 percent purity in solution, for use as a tracer at the National Radiation Laboratory in Christchurch, New Zealand, in connection with the measurement of plutonium in environmental samples. Export of this material will be subject to the issuance of an export license, which is a separate matter. The material is expected to be shipped to the Department of Health in Wellington, New Zealand.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that approval of this subsequent arrangement will not be inimical to the common defense and security and that it lacks significance for nuclear explosive purposes.

This subsequent arrangement will take effect no sooner than July 23, 1980.

For the Department of Energy.

Dated: June 23, 1980.

**Fred F. McGoldrick,**

*Deputy Director for Nuclear Affairs, International Nuclear and Technical Programs.*

[FR Doc. 80–20324 Filed 7–7–80; 8:45 am]

BILLING CODE 6450–01–M

### Proposed Subsequent Arrangements Between United States and European Atomic Energy Community

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of proposed "subsequent arrangements" under the Additional Agreement Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning the Peaceful Uses of Atomic Energy, as amended.

These subsequent arrangements to be carried out under the above mentioned agreement involve the shipment of enriched uranium/aluminum alloy fuels from the locations below to the DOE Savannah River facility for reprocessing and storage of recovered uranium.

*Reactor location, and kilograms of contained uranium.*

| | |
|---|---|
| HFR, Netherland | 80 |
| FRJ 1 and 2, West Germany | 65 |
| FRG 1 and 2, West Germany | 25 |

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security. These arrangements for returning U.S. origin highly enriched uranium (HEU) to the U.S. are consistent with U.S. non-proliferation policy in that they serve to reduce the amount of HEU abroad.

These subsequent arrangements will take effect no sooner than June 23, 1980.

For the Department of Energy

Dated: July 1, 1980.

**Harold D. Bengelsdorf,**

*Director for Nuclear Affairs, International Nuclear and Technical Programs.*

[FR Doc. 80–20323 Filed 7–7–80; 8:45 am]

BILLING CODE 6450–01–M

### Proposed Subsequent Arrangement Between United States and Japan

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the shipment of enriched uranium/aluminum alloy fuels from the location below to the DOE Savannah River facility for reprocessing and storage of recovered uranium:

Reactor and location: JMTR, Japan
Kilograms of contained uranium: 20

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security. This arrangement for returning U.S. origin highly enriched uranium (HEU) to the U.S. is consistent with the U.S. nonproliferation policy in that it serves to reduce the amount of HEU abroad.

This subsequent arrangement will take effect no sooner than July 23, 1980.

For the Department of Energy.

Dated: June 30, 1980.

**Harold D. Bengelsdorf,**

*Director for Nuclear Affairs, International Nuclear and Technical Programs.*

[FR Doc. 80-20326 Filed 7-7-80; 8:45 am]

BILLING CODE 6450-01-M

## Proposed Subsequent Arrangement Between United States and Taiwan

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" authorized by the Taiwan Relations Act of 1979 (Pub. L. 96-8).

The subsequent arrangement to be carried out under the above mentioned authority involves the approval of contractual arrangements for the supply of the following material:

Contract WC-CI-5, 87.9 grams of uranium enriched to 2.35% in U-235, and 20.0 grams of uranium enriched to 3.1% in U-235. These materials are to be used in the Safeguards Analytical Laboratory Evaluation (SALE) program, which is designed to evaluate the capabilities of participating laboratories to analyze materials to be safeguarded in the nuclear fuel cycle and to provide means by which measurement capability can be improved through the interchange of measurement technology.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of these nuclear materials will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than July 23, 1980.

For the Department of Energy.

Dated: July 1, 1980.

**Harold D. Bengelsdorf,**

*Director for Nuclear Affairs, International Nuclear and Technical Programs.*

[FR Doc. 80-20327 Filed 7-7-80; 8:45 am]

BILLING CODE 6450-01-M

## Office of Environment

### Environmental Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee. Act (Public Law 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Environmental Advisory Committee

Date, time, and place: Monday, July 28, 1980—9:00 a.m.-5:00 p.m.; Tuesday, July 29, 1980—9:00 a.m.-5:00 p.m.; Department of Energy, Forrestal Building, Room 4A104, 1000 Independence Avenue SW., Washington, D.C. 20585.

Contact: Rhoda Shechtel, Department of Energy, Forrestal Building, Room 4G052, 1000 Independence Avenue SW., Washington, D.C. 20585. Telephone: 202-252-4616.

Purpose of Committee: To advise the Department of Energy on the overall activities which pertain to the goals of restoring, protecting and enhancing environmental quality and assuring public health and safety.

Tentative Agenda: *Monday, July 28, 1980*—9:00 a.m.-12:00 noon

- Opening Remarks by Chairman
- Report by Demand Subcommittee on oil import reduction options
- Report by Ms. Louise B. Young on Office of Environment peer review process for research proposals
- Briefing by Mr. Terry Sopher, Chief of Division of Wilderness and Environmental Areas, Bureau of Land Management, on Bureau of Land Management's Wilderness Review Program

1:30 p.m.-5:00 p.m.

- Discussion of National Energy Plan III
- Public Comment (10 minute rule)

*Tuesday, July 29, 1980*—9:00 a.m.-12:00 noon

- Status briefings
  —Energy legislation
  —$2.2 billion alternative fuels program
- Discussion of exploration and development of energy sources on Indian lands. Briefings by representatives of:
  —Council of Energy Resource Tribes
  —U.S. Bureau of Indian Affairs

1:30 p.m.-5:00 p.m.

- Committee business
- Public Comment (10 minute rule)

Public participation: The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact the Advisory Committee Management Office at 202-252-5187. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. Members of the public who have not previously requested an opportunity to make an oral presentation, but who wish to speak, will be permitted to do so at a time determined by the Chairman.

Transcripts: Available for public review and copying at the Public Reading Room, Room 5B180, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Executive summary: Available approximately 30 days following the meeting from the Advisory Committee Management Office.

Issued at Washington, D.C. on July 1, 1980.

**Georgia Hildreth,**

*Director, Advisory Committee Management.*

[FR Doc. 80-20320 Filed 7-7-80; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL 1533-5]**

### Toxic Substances Advisory Committee; Meeting

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of Public Meeting.

**SUMMARY:** There will be meeting of the Administrator's Toxic Substances Advisory Committee from 2:00-5:15 on Thursday, July 24, 1980, and 8:30-3:00 on Friday, July 25, 1980. The meeting will be held in rooms 3906-3908, Waterside Mall, EPA, 401 M Street, SW., Washington, D.C. and will be open to the public.

**FOR FURTHER INFORMATION CONTACT:** Ms. Marsha Ramsay, Executive Secretary, Administrator's Toxic Substances Advisory Committee, Office of Pesticides and Toxic Substances (TS-793), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Telephone: (202) 755-4854.

**SUPPLEMENTAL INFORMATION:** The purpose of this meeting is to discuss

matters related to EPA's implementation of the Toxic Substances Control Act (Pub. L. 94–569). The agenda includes a discussion of the high-level OECD meetings; the Committee's report on the implementation of TSCA in its first three years, and recommendations for the future; an update on the implementation of Toxic Substances Control Act; and a general section 8 (Reporting and Retention of Information) discussion.

The meeting will be open to the public and time will be set aside for public comments. Any member of the public wishing to present an oral or written statement should contact Ms. Marsha Ramsay at the address or phone number listed above.

Dated June 30, 1980.

Steven D. Jellinek,

*Assistant Administrator for Pesticides and Toxic Substances.*

[FR Doc. 80-20277 Filed 7-7-80; 8:45 am]

BILLING CODE 6560-01-M

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[FRL 1534-3]

## Motor Vehicle Pollution Control; Waiver of Carbon Monoxide Emission Standards; Public Hearing

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of public hearing to consider applications for waiver of 1981 and 1982 model year light-duty vehicle emission standard for carbon monoxide (CO).

**SUMMARY:** On June 11, 1980, Rolls-Royce Motors Limited (Rolls-Royce) applied for a CO waiver for its 6.75 liter V.8 engine family. EPA plans to hold a public hearing on this waiver application and any others which EPA may receive in time for consideration at this hearing.

**DATES:** This notice announces that EPA will hold a public hearing in Washington, D.C., beginning at 10:00 a.m. on July 17, 1980, to consider Rolls-Royce's waiver application and any other manufacturer's application received by July 13, 1980. Interested parties may also submit written comments to the public docket by July 27, 1980, to ensure consideration of those comments in the Administrator's evaluation of these waiver applications.

**ADDRESS:** All public portions of the CO waiver applications and other relevant information are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday, at: Central Docket Section, Gallery I, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 (Docket Number EN–80–14).

**FOR FURTHER INFORMATION CONTACT:** Mr. Glenn Unterberger, Manufacturers Operations Division, (EN–340), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 472–9421.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Under section 202(b)(5)(A) of the Clean Air Act, as amended, 42 U.S.C. 7521(b)(5)(A) (1977) ("Act"), at any time after August 31, 1978, any manufacturer may file with the Administrator an application requesting the waiver of the effective date of the carbon monoxide (CO) emission standard applicable to any model of light-duty motor vehicles and engines manufactured by the applicant during model years 1981 and 1982. Section 202(b)(5)(C) requires the Administrator to issue a decision granting or denying such waiver within 60 days after receipt of the application and after public hearing. Guidelines for the submission of such waiver requests have been previously published in the **Federal Register** at 43 FR 47272, October 13, 1978.

Section 202(b)(1)(A) requires that emissions of CO from 1981 and later model year light-duty motor vehicles be reduced by at least 90% from 1970 CO emission standards. A CO emission standard of 3.4 grams per vehicle mile, determined to achieve such reduction and made applicable by regulation to 1981 and later model year light-duty vehicles, has been published in the **Federal Register** 43 FR 37972, August 24, 1978. If the Administrator determines that a waiver from the CO standard of 3.4 grams per vehicle mile (gpm) should be granted, he must, simultaneously with such determination, prescribe by regulation CO emission standards to apply to those model vehicles or engines to which the waiver applies. Under section 202(b)(5)(B), the maximum CO level for which a waiver may be granted is 7.0 gpm.

Under section 202(b)(5)(C), the Administrator may grant such a waiver only if he finds that protection of the public health does not require attainment of the statutory CO standard of 3.4 gpm for those model years and vehicles for which the waiver is sought. In addition, a wavier may be granted only if the Administrator determines that (1) such waiver is essential to the public interest or the public health and welfare of the United States, (2) the applicant has made all good faith efforts to meet the established standards, (3) the applicant has established that effective control technology, processes, operating methods, or other alternatives are not available or have not been available with respect to the model in question for sufficient period of time to achieve compliance prior to the effective date of such standards, taking into consideration costs, driveability, and fuel economy, and (4) studies and investigations of the National Academy of Sciences and other information available to him have not indicated that technology, processes, or other alternatives are available to meet such standards.

EPA already has held several public hearings regarding CO waiver applications. The Administrator's decisions on these applications have been published in the **Federal Register**, and can be found at 44 FR 53376 (September 13, 1979); 44 FR 69416 (December 3, 1979); 45 FR 7122 (January 31, 1980); 45 FR 17914 (March 19, 1980); 45 FR 37360 (June 2, 1980); and 45 FR 40030 (June 12, 1980). The Administrator will announce his seventh consolidated CO waiver decision shortly, and is also in the process of formulating a decision with respect to the waiver application heard at the latest CO waiver hearing.

### II. Waiver Applications

Rolls-Royce submitted its CO waiver application on June 11, 1980. EPA will hold a public hearing on Rolls-Royce's application and on applications received from any other motor vehicle manufacturers on or before July 13, 1980, in the General Services Administration Auditorium, 7th and D Streets, S.W., Washington, D.C. 20460 beginning on July 17, 1980 at 10:00 a.m. EPA encourages all manufacturers still planning to request a CO waiver to file their applications by the July 13 deadline. This will facilitate review of as many outstanding waiver applications as possible in one consolidated proceeding. Submitting applications at a reasonable time before the scheduled proceedings will facilitate the Administrator in making a timely decision.

In addition to testimony provided by each waiver applicant, testimony has been given at these hearing by other automobile manufacturers and by several emission control system part suppliers. Information considered for each of these decisions is contained in public dockets EN–79–4, EN–79–17, EN–79–19, EN–80–1, EN–80–9 and EN–80–13, respectively. Each new docket in these waiver proceedings incorporates the previous waiver hearing docket by reference. Thus, public docket EN–80–14, pertaining to this waiver application of Rolls-Royce, will incorporate all of the previous dockets.

In order of a waiver to be granted, the Administrator must determine that the application has provided information sufficient to satisfy each of the waiver criteria set out above. However, the Administrator is not required to make his determination solely on the record of the public hearing, and may consider any additional information as well. All information considered by the Administrator will be included in the public docket.

**III. Hearing Procedures**

The public hearing is intended to provide an opportuntiy for interested persons to state their views or arguments , or to provide pertinent information concerning the action requested of the Administrator by the applicant. Any person desiring to make an oral statement at the hearing should file a notice of such intention and 10 copies of the proposed testimony and other relevant material in the Central Air Docket Section at the address listed above no later tthan July 13, 1980. If feasible, at least 25 copies of such statement or material for the hearing record and for general circulation shoud be submitted to the Presiding Officer at the time of the hearing. In addition, any person may submit written questions at any time during the hearing to be propounded to the witnesses by the hearing panel to the extent practicable. Any person may file relevant statements and information not specifically required by the hearing panel in the public docket until July 27, 1980, to ensure their consideration in the Administrator's evaluation of the waiver application at issue. The Administrator will consider submissions received after that date to the extent practicable in reaching decisions within the time periods specified by the Act.

Where appropriate, EPA will require representatives of the applicants under the subpoena authority of section 307(a)(1) of the Act to attend the hearing and respond to the hearing panel's questions. Moreover, EPA may also subpoena other parties to produce relevant information and provide testimony before the hearing panel. Section 307(a)(1) also authorized the administration of oaths to testifying parties.

The Presiding Officer will have the responsibility for maintaining order, excluding irrelevant or repetitious material, scheduling presentations, directing that corroborative material be submitted in writing and, to the extent possible, notifying participants of the time at which they may appear.

As was the case in the previous CO Waiver public hearings, presentations by the participants in this hearing should address exclusively the following considerations:

1. Whether protection of the public health requires attainment of the establishment CO standard of 3.4 gpm for the model years to which the waiver would apply.

2. Whether the requested waiver is essential to the public health and welfare of the United States.

3. Whether the applicants have made all good faith efforts to meet the CO standard for those model years and vehicles for which the waiver is sought.

4. Whether effective control technology, processes, operating methods, or other alternatives are not available or have not been available with respect to the model in quesion for a sufficient period of time to achieve compliance prior to the effective date of such standards, taking into consideration costs, driveability, and fuel economy.

5. Whether studies and investigations of the National Academy of Sciences and other information indicate that alternative are available to meet such standards.

6. The level of CO emissions, not to exceed 7.0 gpm, which could be met in each of the models years for which a waiver is requested and which would reflect the greatest degree of emission control achievable by use of available technology, giving appropriate considereation to the cost of applying such technology within the available time period.

A verbatim record of the proceedings will be available for public inspection. Any person may request a copy of the transcript from the hearing reporter during the hearing at the party's own expense. Any person also may obtain copies of other documents in the public record as specified in 40 CFR Part 2.

Dated: July 2 1980.

**Jeffrey G. Miller,**

*Acting Assistant Administrator for Enforcement.*

[FR Doc. 80-20442 Filed 7-7-80; 8:45 am]

BILLING CODE 6560-01-M

## FEDERAL MARITIME COMMISSION

### Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for review and approval, if required, pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, NW., Room 10423; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and Old San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before July 18, 1980. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Agreement No.: 10395.

Filing Party: Peter P. Wilson, Senior Counsel, Matson Navigation Company, P.O. Box 3933, San Francisco, California 94119.

Summary: Agreement No. 10395, between Splosna Plovba Piran, also know as United Yugoslav Lines (SPP) and the Matson Agencies Division of Matson Navigation Company (Matson) provides for Matson's appointment to act as SPP's (1) booking agent in the United States for liner services and (2) port agent and husbanding agent on the U.S. Pacific coast for liner services and tramp operations. The agreement provides that Matson will not represent directly or indirectly, nor become the agent of direct or indirect competitor lines to any of SPP's lines without SPP's written consent.

Dated: July 1, 1980

By order of the Federal Maritime Commission.

**Francis C. Hurney,**

*Secretary.*

[FR Doc. 80-20272 Filed 7-7-80; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Bandera Bancshares, Inc.; Formation of Bank Holding Company

Bandera Bancshares, Inc., Bandera, 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 percent or more of the voting shares of First State Bank, Bandera, 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 July 30, 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, June 30, 1980.

**Cathy L. Petryshyn,**

*Assistant Secretary of the Board.*

[FR Doc. 80-20280 Filed 7-7-80; 8:45 am]

BILLING CODE 6210-01-M

## Bank Holding Companies; Proposed de Novo Nonbank Activities

This notice is a republication of a previous **Federal Register** Document (FR Doc. 80-19260) appearing at page 43250 of the issue for Thursday, June 26, 1980. The proposed activities would be conducted from additional offices of the subsidiary in Fairfield and Monterey, California.

The bank holding company listed in this notice 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)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo*, (or continue to engage in an activity earlier commenced *de novo*,), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to the application, 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 interest, or unsound banking practices." Any comment on the application that requests a hearing must include 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 that proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than July 24, 1980.

A. *Federal Reserve Bank of San Francisco,* (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

Security Pacific Corporation, Los Angeles, California (finance and credit-related insurance activities; California): To engage through its subsidiary, Security Pacific Finance Corp., in making or acquiring for its own account or for the account of others, loans and extensions of credit, including making consumer installment personal loans, purchasing consumer installment sales finance contracts, making loans to small businesses and other extensions of credit such as would be made by a factoring company or a consumer finance company, and acting as broker or agent for the sale of credit-related life, accident and health insurance and credit-related property and casualty insurance. These activities would be conducted from offices of the subsidiary in Fairfield and Monterey, California, serving the State of California.

B. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, July 1, 1980.

**Cathy L. Petryshyn,**

*Assistant Secretary of the Board.*

[FR Doc. 80-20281 Filed 7-7-80; 8:45 am]

BILLING CODE 6210-01-M

## Bank Holding Companies; Proposed de Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, 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 interest, or unsound banking practices." Any comment on an application that requests a hearing must include 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 that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than July 30, 1980.

A. *Federal Reserve Bank of San Francisco* (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. Utah Bancorp, Salt Lake City, Utah (industrial loan company activities; Utah): To engage, through a branch of its subsidiary, Intermountain Loan Corporation, in the business of an industrial loan company as authorized by Utah law, including the making, acquiring, and servicing of loans and other extensions of credit, and acceptance of time and savings deposits. These activities would be conducted from an office in Salt Lake City, Utah, serving Salt Lake County, Utah.

2. Security Pacific Corporation, Los Angeles, California (data processing activities; Georgia): To engage through its subsidiary, Loan Closing Services, Inc., in the processing for attorneys of data relating to closing documents, including calculation of monthly principal and interest payments, annual percentage rates, and closing costs, and entering such data onto closing documents in connection with the making of loans by Applicant's subsidiary, Security Pacific Mortgage Corporation, and other lenders. These activities would be conducted at an office in Atlanta, Georgia, serving the State of Georgia.

B. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, July 1, 1980.

**Cathy L. Petryshyn,**

*Assistant Secretary of the Board.*

[FR Doc. 80-20282 Filed 7-7-80; 8:45 am]

BILLING CODE 6210-01-M

## Consumer Advisory Council; Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Wednesday, July 30, and Thursday, July 31. The meeting, which will be open to public observation, will take place in Terrace Room E of the Martin Building. The July 30 session is expected to begin at 1 p.m. and to continue until 5 p.m. The July 31 session is expected to begin at 9 a.m. and to conclude at 3 p.m. The Martin Building is located on C Street, Northwest, between 20th and 21st Streets in Washington, D.C.

The Council's function is to advise the Board on the exercise of the Board's responsibilities with regard to consumer credit legislation and regulation. Time permitting, the Council will consider the following topics:

1. *Truth in Lending Simplification and Reform*—A discussion of the Board's proposal to simplify Regulation Z, under the Truth in Lending Simplification and Reform Act of 1980.

2. *Credit Restraint Program*—A discussion of (1) the Board's program to limit the expansion of certain classes of credit after March 14, 1980, (2) whether alternative methods might have been better in slowing credit growth, and (3) other aspects of the program.

3. *Regulation of Alternative Mortgages*—A discussion of (1) consumer protection concerns regarding variable rate and renegotiable rate mortgages and (2) whether the Board should issue regulations for banks so as to establish basic protections.

4. *Consumer-Related Actions by the Board*—A staff update on and subsequent discussion of any consumer-related actions taken recently or expected to be taken in the near future by the Board.

Other matters previously considered by the Council or initiated by Council members also may be discussed.

Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statements to Ms. Kay Oliver, Secretary, Consumer Advisory Council, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Comments must be received no later than close of business Friday, July 25, and must be of a quality suitable for reproduction.

Information with regard to this meeting may be obtained from Mr. Joseph R. Coyne, Assistant to the Board, at (202) 452-3204.

Board of Governors of the Federal Reserve System, July 1, 1980.

**Griffith L. Garwood,**

*Deputy Secretary of the Board.*

[FR Doc. 80-20279 Filed 7-7-80; 8:45 am]

BILLING CODE 6210-01-M

## Escrow Corporation of America, Inc.; Formation of Bank Holding Company

Escrow Corporation of America, Inc., Pennock, Minnesota, has applied for the Board's approval under 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 96.5 per cent of the voting shares of State Bank of Pennock, Pennock, Minnesota. The factors that are considered in acting on the application are set forth in 3(c) of the Act (12 U.S.C. 1842(c)).

Escrow Corporation of America, Inc., Pennock, Minnesota, as also 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 acquire voting shares of Pennock Agency, Pennock, Minnesota.

Applicant states that the proposed subsidiary would engage in general insurance agency activities. These activities would be performed from offices of Applicant's subsidiary in Pennock, Minnesota, and the geographic areas to be served are Pennock and Sunburg, Minnesota and surrounding areas. 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 outweight 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 Minneapolis.

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 July 30, 1980.

Board of Governors of the Federal Reserve System, June 30, 1980.

**Cathy L. Petryshyn,**

*Assistant Secretary of the Board.*

[FR Doc. 80-20283 Filed 7-7-80; 8:45 am]

BILLING CODE 6210-01-M

## First City Corp.; Formation of Bank Holding Company

First City Corp., Fort Smith, Arkansas, 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 100 percent (less directors' qualifying shares) of the voting shares of the successor by merger to City National Bank, Fort Smith, Arkansas. 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 St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than July 25, 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, June 27, 1980.

**Cathy L. Petryshyn,**

*Assistant Secretary of the Board.*

[FR Doc. 80-20289 Filed 7-7-80; 8:45 am]

BILLING CODE: 6210-01-M

## Midamerica Bancshares, Inc., Proposed Retention of Lincoln Trail Insurance Agency, Inc.

This notice is a republication of a previous **Federal Register** document (FR Doc. 80-17315) published at page 38447 of the issue for Monday, June 9, 1980.

MidAmerica Bancshares, Inc., Lebanon, Illnois, 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 retain voting shares of Lincoln Trail Insurance Agency, Inc., Lebanon, Illinois.

Applicant states that the subsidiary is a general insurance agency selling insurance in a community of less than 5,000. These activities would be performed from offices of Applicant's subsidiary in Lebanon, Illinois, and the geographic area to be served includes Lebanon, Illinois and the immediately surrounding area. 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 by 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 St. Louis.

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 July 18, 1980.

Board of Governors of the Federal Reserve System, June 30, 1980.

**Cathy L. Petryshyn,**

*Assistant Secretary of the Board.*

[FR Doc. 80-20289 Filed 7-7-80; 8:45 am]

BILLING CODE 6210-01-M

### Toledo Trustcorp; Acquisition of Bank

Toledo Trustcorp, Toledo, Ohio, has applied for the Board's approval under 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 80 per cent or more of the voting shares of The Farmers & Merchants State & Savings Bank, Montpelier, Ohio. The factors that are considered in acting on the application are set forth in 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Cleveland. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than July 30, 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, June 30, 1980.

**Cathy L. Petryshyn,**

*Assistant Secretary of the Board.*

[FR Doc. 80-20286 Filed 7-7-80; 8:45 am]

BILLING CODE 6210-01-M

## GENERAL ACCOUNTING OFFICE

### Regulatory Reports Review; Receipt of Report Proposals

The following requests for clearance of reports intended for use in collecting information from the public were received by the Regulatory Reports Review Staff, GAO, on July 1, 1980. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the **Federal Register** is to inform the public of such receipts.

The notice includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed NRC requests are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed requests, comments (in triplicate) must be received on or before July 28, 1980, and should be addressed to Mr. John M. Lovelady, Senior Group Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW, Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

#### Nuclear Regulatory Commission

The NRC requests clearance for the recordkeeping requirements contained in new amendments of 10 CFR Part 30, Rules of General Applicability to Domestic Licensing of Byproduct Material, requiring molybdenum breakthrough testing. Section 30.34 requires NRC Medical Licensees to record results of tests as a result of a Commission requirement. The amendments were made to provide an updated reference document to be used by NRC inspectors to verify that such tests were conducted and that out-of-limit radiopharmaceuticals were not administered to humans. Out-of-limits radiopharmaceuticals will cause unnecessary radiation exposure to patients. The NRC estimates that respondents will number approximately 100 and that time to record the test results will average 0.5 minutes per test.

The NRC requests clearance for the recordkeeping requirements contained in new amendments of 10 CFR Part 35, Human Uses of Byproduct Material, requiring molybdenum breakthrough testing. Section 35.14(b)(4)(iv) requires NRC Medical Licensees to record results of tests as a result of a Commission requirement. The amendments were made to provide an updated reference document to be used by NRC inspectors to verify that such tests were conducted and that out-of-limit radiopharmaceuticals were not administered to humans. Out-of-limits radiopharmaceuticals will cause unnecessary radiation exposure to patients. The NRC estimates that respondents will number approximately 2,000 and that time to record the test results will average 0.5 minutes per test.

**Norman F. Heyl,**

*Regulatory Reports Review Officer.*

[FR Doc. 80-20288 Filed 7-7-80; 8:45 am]

BILLING CODE 1610-01-M

### Regulatory Reports Review; Receipt and Approval of Report Proposal

A request for emergency clearance of Form OP-1, Application for Motor or Water Carrier Certificate of Permit, Brokerage License, Freight Forwarder Permit or Water Carrier Exemption, was received from the Interstate Commerce Commission by the Regulatory Reports Review Staff, GAO, on June 5, 1980. the purpose of publishing this notice is to inform the public of such receipt and action taken by GAO.

#### Interstate Commerce Commission

The Interstate Commerce Commission requested clearance of Form OP-1, Application for Motor or Water Carrier Certificate of Permit, Brokerage License, Freight Forwarder Permit or Water Carrier Exemption. Form OP-1 will be the universal operating rights

application form. It will supersede five existing application forms: (1) OP–OR–9, Permit; (2) OP–OR–11, Application for Brokerage License; (3) OP–FF–10, Application for Freight Forwarder Permit; (4) Application for Exemption from Part III of the Interstate Commerce Act under Section 302(e) or Section 303(b); and (5) OP–WC–20, Application for Water Carrier Certificate or Permit under Section 309 of the Interstate Commerce Act.

The ICC requested emergency clearance of Form OP–1 because pending legislation which establishes new licensing procedures will become effective upon enactment. Form OP–1 is needed at that time for applicants to immediately apply under the new procedures. Lead time was needed for the printing and distribution of Form OP–1 to the field offices in time for use on the day of enactment.

The GAO agreed to accept ICC's emergency request for clearance due to this situation. The ICC estimates that 20,000–25,000 applicants will file Form OP–1 and the estimated response time will be 8 hours per applicant.

The GAO granted emergency clearance for Form OP–1 on June 12, 1980, under number B–180230 (R0683). The clearance expires on December 31, 1980, and is conditioned on (1) the Interstate Commerce Commission approval of the proposed interim procedures (draft rulemaking Ex Parte No. 55 (Sub No. 43)) which include the identical form submitted to GAO on June 5, 1980, and (2) at completion of the rulemaking or no later than November 15, 1980, sibmission of the form to GAO for a full clearance, including public comment to GAO.

Norman F. Heyl,

*Regulatory Reports Review Officer.*

[FR Doc. 80-29289 Filed 7-7-80; 8:45 am]

BILLING CODE 1610-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 80F-0211]

### Ciba-Geigy Corp., Filing of Food Additive Petition

*Correction*

In FR Doc. 80–19300, on page 43474, in the issue of Friday, June 27, 1980, in the third column, under the "SUPPLEMENTARY INFORMATION", the fifth line correct "(FAP 0B2514)" to read "(FAP 0B3514)".

BILLING CODE 1505-01-M

[Docket No. 80F-0112]

### Ciba-Giegy Corp.; Filing of Food Addition Petition

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Ciba-Giegy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the use of hydrolyzed polymaleic anhydride and its sodium salt as boiler water additives in the preparation of steam that will contact food.

**FOR FURTHER INFORMATION CONTACT:** Gerad L. McCowin, Bureau of Food (HFF–334), Food and Drug Administration, 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 8A3405) has been filed by the Ciba-Giegy Corp., Ardsley, NY 10502, proposing that § 173.310 boiler water additives (21 CFR 173.310) be amended to provide for the use of hydrolyzed polymaleic anhydride and its sodium salt as boiler water additives in the preparation of steam that will contact food.

The environmental impact analysis report and other relevant material have been reviewed, and it has been determined that the proposed use of the additive will not have a significant environmental impact. Copies of the environmental impact analysis report and the environmental assessment report may be seen in the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m, Monday through Friday.

Dated: June 27, 1980.

Sanford A. Miller,

*Director, Bureau of Foods.*

[FR Doc. 80-19974 Filed 7-7-80; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 80F-0220]

### Ciba-Geigy Corp.; Filing of Food Additive Petition

**AGENCY:** Food and Drug Administrative.

**ACTION:** Notice.

**SUMMARY:** Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide the for the safe use of tris (2,4-di-*tert*-butylphenyl) phosphite as an antioxidant and/or stabilizer for olefin polymers.

**FOR FURTHER INFORMATION CONTACT:** Garnett R. Higginbotham, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosemetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B3477) has been filed by Ciba-Geigy Corp., Ardsley, NY 10502, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provided for the safe use of tris (2,4-di-*tert*-butylphenyl)-phosphite as an antioxidant and/or stabilizer for olefin polymers.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that document will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (Proposed December 11, 1979; 44 FR 71742).

Dated: June 26, 1980.

Sanford A. Miller,

*Director, Bureau of Foods.*

[FR Doc. 80-19973 Filed 7-7-80; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 80D-0217]

### General Statistical Documentation Guide for Protocol Development and NDA Submissions; Availability of Draft Guideline

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) announces the availability of a draft guideline entitled "General Statistical Documentation Guide for Protocol Development and NDA Submissions," prepared by FDA's Bureau of Drugs, which sets forth the type of material needed to permit statistical review of protocols and completed clinical studies by the agency. The guideline is intended to be a companion document to the publication (HEW) (FDA 77–3040) entitled, "General Considerations for the Clinical Evaluation of Drugs." This draft guideline, "General Statistical Documentation Guide for Protocol Development and NDA Submissions," is being made available for public comment to provide the agency with views to be considered for incorporation into the final published guideline.

**DATE:** Comments on or before October 6, 1980.

**ADDRESS:** Written comments to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Satya D. Dubey, Bureau of Drugs (HFD–232), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4594.

**SUPPLEMENTARY INFORMATION:** The Food and Drug Administration (FDA) announces the availability of a draft guideline entitled "General Statistical Documentation Guide for Protocol Development and NDA Submissions," prepared by FDA's Bureau of Drugs, which describes the type of data and analysis that drug sponsors may use to explain statistically their protocols and completed clinical studies included in new drug application (NDA) submissions. If applicants comply with the guideline, as published in final form, the agency can more effectively review and evaluate the information about submitted studies and conduct a thorough and expeditious statistical review. The guideline is meant to instruct sponsors on presenting valid statistical evidence in the most effective way. It is intended to be a companion document to the publication (HEW) (FDA 77–3040) entitled, "General Considerations for the Clinical Evaluation of Drugs." Copies of the above-named guideline are available from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402. Copies and microfiche are also available from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161.

The draft guideline is being made available for public comment before being issued as the formal position of the Bureau. If, following the receipt of comments, the Bureau concludes that the guideline contains acceptable information for statistical documentation of protocols and completed studies included in NDA submissions, the guideline will be issued in final form and made available under § 10.90(b) of agency regulations (21 CFR 10.90(b)). That section provides for use of guidelines to establish procedures of general applicability that are not legal requirements but are acceptable to the agency. A person who follows a guideline is assured that his or her conduct will be acceptable to the agency. A person may also choose to use alternate procedures even though they are not provided for in the guideline. A person who chooses to do so may discuss the matter further with the agency to prevent expenditure of money and effort for work that the agency may later determine to be unacceptable. The draft guideline is available for public examination between 9 a.m. and 4 p.m., Monday through Friday, in the office of the Hearing Clerk (address below). Written requests for single copies may be submitted to Satya D. Dubey, Chief, Statistical Evaluation Branch (HFD–232), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Interested persons may, on or before October 6, 1980, submit written comments on the draft guideline to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Those comments will be considered in determining whether further amendments to or revisions of the guideline 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. The draft guideline and received comments may be seen in the Hearing Clerk's office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 24, 1980.

**William F. Randolph,**

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 80–19822 Filed 7–7–80; 8:45 am]

BILLING CODE 4110–03–M

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**[Docket No. 80N–0261]**

## Food Labeling Formats; Public Meeting and Request for Information

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA), the United States Department of Agriculture (USDA), and the Federal Trade Commission's Bureau of Consumer Protection (FTC) announce a series of four public meetings to discuss the implementation of a research program to develop and test alternative food label formats. In addition, the agencies take this opportunity to solicit design suggestions from the food industry, food and nutrition professionals, consumers, and other interested members of the public regarding the organization and display of information, including consideration of such elements as the use of graphic or pictorial formats, layout, type size, and the use of colors and symbols.

**DATES:** Comments by September 8, 1980. First public meeting will be held on October 6, 1980. Dates for the other three public meetings will be announced later in the **Federal Register.**

**ADDRESSES:** The first public meeting will be held in the Department of Health and Human Services (HHS) auditorium, 330 Independence Ave. SW., Washington, DC. The location of succeeding meetings will be announced at a future date.

Written comments and suggestions to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Although not required, since this is not a rulemaking proceeding, written notice of intention to participate in the public meeting will be useful to the agencies for planning and conducting the meeting and should be sent to the contact person whose name and telephone number appear in this notice.

**FOR FURTHER INFORMATION CONTACT:** Raymond C. Stokes, Bureau of Foods (HFF–240), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–245–1457.

**SUPPLEMENTARY INFORMATION:** FDA, USDA, and FTC have been cooperating in a review of current food labeling laws and regulations. In the **Federal Register** of December 21, 1979 (44 FR 75990), the published a notice reporting their progress. This notice called for further public comment on the tentative positions which the agencies have taken on a number of issues and on other food labeling issues on which the agencies have not yet reached tentative positions. Comments were made at a public hearing on March 4 and 5, 1980, and in written comments through April 21, 1980.

The issues on which the agencies have published tentative positions are focused primarily on "what" information should be communicated on food labels. Thus, a number of the positions would, if implemented, revise the content of ingredient and nutrition labeling.

The agencies also recognized the importance of "how" information is communicated. They did not, however, develop tentative positions on the possibilities for improvements on these format issues because they believe that additional research and evaluation are necessary before conclusions can be drawn about the types of changes that would make labeling more comprehensible and useful to consumers. In the December 21, 1979 notice, the agencies explained how they propose to obtain this information and called for futher public participation in the process.

This notice announces the formation of an interagency task group to coordinate efforts by the agencies and the public to develop, research, and evaluate alternative food label formats. As part of this program, the agencies are soliciting information from the public and planning a series of four public meetings at key junctures in the program. This notice also announces the initiation of a 2-year FDA research and development project on "how" to communicate label information. It is important to emphasize that this is not the beginning of a rulemaking proceeding.

FDA has signed a contract with the professional design firm of Robert P. Gersin Associates, Inc. (Robert P. Gersin) 11 E. 22d St., New York, NY 10010, to create a number of alternative food label formats for presenting nutrition and ingredient information. In developing alternatives, the design firm will incorporate information already submitted at the various public hearings and in written comments as well as any further information submitted in response to this notice. The agencies encourage the food industry, food and nutrition professionals, consumers, and other interested members of the public to submit data to FDA and comments on how to display or arrange label information more effectively so that they can be incorporated by Robert P. Gersin in sample label formats. Suggestions should include, but not be limited to, mechanisms, devices, or schemes for organizing and displaying nutrition and ingredient information (such as pie charts, bar graphs, nutrient density, and numerical or verbal scales) as well as considerations of layout, type size, and the use of colors and symbols. The agencies also are soliciting design suggestions through mailings to food industry associations, professional associations, and consumer groups. To facilitate public participation, interested members of the public may see the materials reviewed by Robert P. Gersin in the office of the Hearing Clerk, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

The label design project is expected to be completed early in 1981. Following completion of this phase, FDA intends to conduct consumer research to evaluate the communication effectiveness of the alternative formats. In view of the large amount of nutrition and ingredient information to be accommodated on the food label, the complexity of nutrition information, and the large number of alternative formats likely to be produced in the design phase, the agencies believe that consumer research is necessary to screen the formats and identify those that are more readily understood by consumers and useful to them in evaluating and selecting foods. The agencies also invite comment and suggestions from the public on the appropriate criteria by which the formats should be evaluated. Finally, the agencies encourage and will consider joint cooperative consumer studies on label formats with the food industry, consumer groups, or food and nutrition professionals.

To facilitate public discussion of, and participation in, this program and to keep the public informed about the progress of the label format design, research, and evaluation program, the agencies plan to hold a series of informal public meetings at appropriate review and decision points during the course of the project.

1. At the first public meeting, Robert P. Gersin will report on its progress in developing alternative label formats. As needed, the contractor will ask for audience clarification of design suggestions received from the public. The meeting is scheduled for October 6, 1980.

2. The second public meeting will be held at the end of the design phase of the project to present the array of alternative label formats developed by the contractor. Based on comments received during the comment period and on agency review and deliberations, FDA will present for audience discussion a tentative plan for consumer research to evaluate label formats. The criteria for measuring communication effectiveness will be a primary concern of this plan. This meeting will be scheduled for early in 1981.

3. The third public meeting will be held to present the final consumer research plan, the experimental design, and the specific criteria for evaluating label formats. The meeting will be scheduled for the spring of 1981.

4. The last public meeting will be held to present the results of the consumer research and to display the set of label formats identified as best meeting the criteria of effectiveness. Public discussion will be sought on these results and whether additional research should be conducted. The anticipated date of this meeting is late 1981.

The first public meeting will be held before representatives of FDA, USDA, and FTC on October 6, 1980, beginning at 9 a.m., in the main auditorium, Department of Health and Human Services, 330 Independence Ave. SW., Washington, D.C. It will be conducted in accordance with Title 21 of the Code of Federal Regulations, § 10.65 *Meetings and correspondence.* To assist the agencies in planning for the meeting, persons intending to participate are requested, but not required, to send the contact person named in this announcement a written outline of the views they intend to present. Other written submissions will also be accepted at the first public meeting from participants who want additional information included in the record.

Written comments should be submitted to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857 by September 8, 1980.

All submissions should be identified with the Hearing Clerk docket number found in brackets in the heading of this document. These and other submissions, including other materials considered by Robert P. Gersin, may be seen in the office of the Hearing Clerk, Food and Drug Administration, from 9 a.m. to 4 p.m., Monday through Friday.

Dated: July 2, 1980.

**Jere E. Goyan,**

*Commissioner of Food and Drugs.*

[FR Doc. 80-20428 Filed 7-7-80; 8:45 am]

BILLING CODE 4110-03-M

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## Public Health Service

### Loan Default Prevention and Protection of the Interest of the United States in the Event of Default; Delegation of Authority

Notice is hereby given that in furtherance of the delegation by the Secretary of Health and Human Services to the Assistant Secretary for Health on May 23, 1980 (45 FR 41221–41222), the Assistant Secretary for Health delegated to the Administrator, Health Resources Administration, the authority delegated to the Assistant Secretary for Health under Section 1602(f) of Title XVI of the Public Health Service Act (42 U.S.C. 300q–2(f)), as amended, concerning loan default prevention and protection of the interest of the United States in the event of default, with respect to loans made under Title VI and Title XVI of the Public Health Service Act. The authority delegated to the Administrator, Health Resources Administration, may be redelegated after regulations establishing the terms and conditions for making expenditures under Section 1602(f) have been effectuated.

The above delegation was effective on June 11, 1980.

Dated: June 11, 1980.

**Julius B. Richmond,**

*Assistant Secretary for Health.*

[FR Doc. 80-20295 Filed 7-7-80; 8:45 am]

BILLING CODE 4110-83-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[INT FEIS 80-19]

### Availability of the Final Environmental Impact Statement of MAPCO's Rocky Mountain Liquid Hydrocarbons Pipeline Project

**AGENCY:** Bureau of Land Management (BLM), Interior.

**ACTION:** Notice of Availability of the Final Environmental Impact Statement (FEIS).

**SUMMARY:** Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the BLM has prepared a FEIS on MAPCO's proposed Rocky Mountain Liquid Hydrocarbons Pipeline Project.

**SUPPLEMENTARY INFORMATION:** The BLM has prepared a FEIS on a pipeline proposal to construct 1,172 miles of common-carrier (pipeline and related facilities) from Hobbs Station, Texas through New Mexico, Colorado, and Utah to Southwestern Wyoming. The proposed project would ultimately transport 65,000 BPD of Liquid Hydrocarbons from the Overthrust Belt in Wyoming to Hobbs Station, Texas for distribution to the gulf coast and midwest. The FEIS analyzes the environmental, social, and economic impacts of the proposal in addition to various route agreement alternatives.

**FOR FURTHER INFORMATION CONTACT:** Robert Armstrong, New Mexico State Office, P.O. Box 1449, Sante Fe, New Mexico 87501.

Copies of the FEIS will be available for inspection at the following locations:

New Mexico State Office, P.O. Box 1449, Santa Fe, NM 87501;
Albuquerque District Office, 3550 Pan American Freeway, NE, Albuquerque, NM 87107;
Colorado State Office, Colorado State bank, 7th Floor, 1600 Broadway, Denver, CO 80202;
Grand Junction District Office, 746 Horizon Drive, Grand Junction, CO 81502;
Utah State Office, University Club Building, 136 East South Temple, Salt Lake City, UT 84111;
Vernal District Office, 170 S. 500 E., P.O. Box F, Vernal, UT 84078;
Wyoming State Office, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, WY 82001;
Rock Springs District Office, Highway 187 N., P.O. Box 1869, Rock Springs, WY 82901;
Roswell District Office, 1717 W. Second Street, P.O. Box 1397, Roswell, NM 88201;
Farmington Resource, Area Headquarters, 900 La Plata Highway, P.O. Box 568, Farmington, NM 87401;
Craig District Office, 455 Emerson Street, P.O. Box 248, Craig, CO 81625;
Montrose District Office, Highway 550 South, Montrose, CO 82901;
Moab District Office, 125 W. 2nd S. Main, P.O. Box 970, Moab, UT 84532;
Rawlins District Office, 1300 Third Street, P.O. Box 670, Rawlins, WY 82301;
Denver Service Center Library, Bldg. 50, Denver Federal Center, Denver, CO 80225;
Washington Office of Public Affairs, 18th and C Streets, NW, Washington, DC 20240.

Public reading copies are also available in public libraries in approximately 40 locations along the route.

A limited number of single copies of the FEIS can be obtained from the above listed offices.

Dated: June 25, 1980.

**Billy M. Brady,**

*Bureau of Land Management, Acting New Mexico State Director.*

[FR Doc. 80-20298 Filed 7-7-80; 8:45 am]

BILLING CODE 4310-10-M

[INT FES 80-20]

### Bannock-Oneida Grazing Final Environmental Impact Statement; Availability

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Bannock-Oneida Grazing FEIS Availability.

**SUMMARY:** Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a final environmental impact statement for a proposed grazing management program for the Bannock-Oneida Resource Area of the Burley District in southeastern Idaho. The proposal involves changes in initial stocking rates, implementing improved grazing systems and installation of certain range improvements. Approximately 430,000 acres of public lands are involved.

**SUPPLEMENTARY INFORMATION:** Copies of the final environmental impact statement are available for inspection at the following locations:

Burley District Office, Bureau of Land Management, Route 3, Box 1, Burley, Idaho 83318 Telephone: (202) 678-5514, Idaho State Office, Bureau of Land Management, Federal Building, 550 W. Fort Street, Boise, Idaho 83724, Telephone: (208) 384-1770.
Public Affairs, Bureau of Land Management, Interior Building, 18th and C Streets, NW., Washington, D.C. 20240.

A limited number of single copies may be obtained from the Idaho State Director or the Burley District Manager, Bureau of Land Management, at the above addresses.

**FOR FURTHER INFORMATION CONTACT:** Nick Cozakos, District Manager, BLM Burley District Office, Telephone: (208) 678-5514.

Dated: June 30, 1980.

**R. O. Buffington,**

*State Director.*

[FR Doc. 80-20260 Filed 7-3-80; 8:45 am]

BILLING CODE 4310-84-M

[INT NOI]

### Sun Valley; Grazing Environmental Impact Statement

**AGENCY:** Bureau of Land Management (BLM), Interior.

**ACTION:** Notice of Intent to Prepare and Consider an Environmental Impact Statement and Invitation for Public Participation.

**SUMMARY:** Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the BLM will prepare and consider an environmental impact statement (EIS) for proposed grazing management in the Sun Valley Planning Area in south-central Idaho. All affected Federal, State, and local agencies; affected organizations and individuals; and other interested parties are invited to participate in preparation of the EIS.

**DATE:** A public meeting will be held in the new Blaine County Courthouse in Hailey, Idaho at 7:30 p.m. on August 5, 1980. Written comments may be submitted at the public meeting or mailed to the Shoshone District Office no later than August 15, 1980.

**ADDRESS:** Comments should be sent to: BLM District Manager, Sun Valley EIS, Shoshone District Office, P.O. Box 2B, Shoshone, Idaho 83352.

**FOR FURTHER INFORMATION CONTACT:** Terry Costello, EIS Team Leader, Shoshone District Office, P.O. Box 2B, Shoshone, Idaho 83352. Phone: (208) 886-2208 or FTS 554-6576.

**SUPPLEMENTAL INFORMATION:** The Shoshone District will prepare an EIS on the allocation of available range forage on approximately 245,000 acres of public lands located in portions of Blaine, Camas, Butte, and Elmore Counties in south-central Idaho. The area includes 97 grazing allotments used by 84 permittees.

The proposed action will be based on multiple use recommendations that are currently being developed as part of a land use plan (Management Framework Plan) being developed for the involved area. The multiple use recommendations are subject to refinement and additional public input; however, their general direction will be to provide for maintaining and improving the vegetation, soils, and water resources by (1) increasing or decreasing livestock grazing levels to the inventoried carrying capacity of the ranges, (2) implementing changes in grazing systems where deemed necessary, and (3) constructing additional range management facilities and conducting land treatments on selected areas.

The forage allocation method used as a basis for the proposed action provides for plant requirements that must be met to sustain or increase forage production. Also, adjustments are included for unsuitable areas such as excessively steep slopes, and adequate forage is reserved for wildlife. When selecting grazing systems and allocating use between sheep and cattle, the desires of livestock operators were considered and accommodated to the extent consistent with management objectives.

Known alternatives to the proposed action which will be analyzed in the EIS are:

1. No change or continuation of the present grazing systems and levels of livestock use.

2. No grazing or complete removal of all livestock from public lands.

3. Lower stocking or grazing at a level less than the proposed action to decrease impacts on erosive soils and to maintain additional vegetation for wildlife and other use.

4. Greater production, including additional land treatment and other changes in management which would primarily benefit livestock grazing in the short term.

A scoping process will be conducted in order to select the significant issues to be analyzed in depth and to eliminate the less significant issues from detailed study. This scoping process will include a review of public comments and suggestions already received, a specific request by mail to interested parties for additional suggestions, and a public meeting. The agenda of the public meeting will include review of the Management Framework Plan Step 2 recommendations and alternatives. All participants will be encouraged to identify significant issues or additional issues or additional alternatives which should be addressed in the EIS.

Dated: June 27, 1980.

Charles J. Haszier,

*District Manager.*

[FR Doc. 80-20257 Filed 7-7-80; 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 June 27, 1980. Pursuant to § 1202.13 of 36 CFR Part 1202, 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 should be submitted by July 22, 1980.

**Ronald M. Greenberg,**

*Acting Chief, National Register of Historic Places.*

**ALABAMA**

*Jefferson County*

Birmingham, *Fox Building*, 19th St. and 4th Ave.

**COLORADO**

*Arapahoe County*

Littleton, *Littleton Town Hall*, 2450 W. Main St.

*Denver County*

Denver, *Bouvier-Lothrop House*, 1600 Emerson St.
Denver, *Flower, John S., House*, 1618 Ogden St.
Denver, *Foster, Ernest LeNeve, House*, 2105 Lafayette St.
Denver, *Keating, Jeffery and Mary, House*, 1207 Pennsylvania St.

**IDAHO**

*Ada County*

Eagle vicinity, *Eagle Adventist Schoolhouse*, NW of Eagle

*Canyon County*

Caldwell, *Little, Thomas K., House*, 703 E. Belmont St.

*Washington County*

Weiser vicinity, *Hilliard, Cartter, Barn*, N of Weiser on Jenkins Creek Rd.

**ILLINOIS**

*Macoupin County*

Virden vicinity, *Shriver Farmstead*, NW of Virden

**KENTUCKY**

*Bracken County*

Germantown vicinity, *Fee John Gregg, House*, NW of Germantown

*Campbell County*

Wilders, *St. John the Baptist Roman Catholic Church*, 641 Licking Pike

*Carroll County*

Carrollton, *Baker, Paschal, Todd, House*, 406 Highland Ave.

*Daviess County*

Owensboro, *Sweeney, James J., House*, 121 E. 5th St.

*Fayette County*

Lexington, *Clay's Henry, Building in Jordan's Row*, 110—112 N. Upper St.
Lexington, *Second Presbyterian Church*, 460 E. Main St.
Lexington, *Warfield, Dr. Walter, Building*, 122–124 N. Upper St. and 140–160 W. Short St.

*Graves County*

Mayfield, *Wooldridge Monuments*, Maplewood Cemetery

*Henderson County*

Henderson, *Douglas High School*, 300 S. Alvasia St.

*Kenton County*

Covington, *Odd Fellows Hall*, 5th and Madison Sts.
Covington, Riverside Drive Historic District (boundary increase)

*Madison County*

Round Hill, *Archeological Site 15 Ma 24*

*McCracken County*

Paducah, *People's First National Bank and Trust Company Building*, 300 Broadway

*Montgomery County*

Mt. Sterling, *Mount Sterling Commercial District*, U.S. 60 and KY 11

*Pulaski County*

Somerset, *Crawford, A. Jackson, Building*, 207 S. Main St.

*Woodford County*

Versailles, *Rose Hill Historic District*, Rose Hill Ave.

**MARYLAND**

*Allegany County*

Cumberland, *First Baptist Church*, 212 Bedford St.

**MINNESOTA**

*Crow Wing County*

Crosby, *Worker's Hall*, Off MN 210

*Ithasca County*

Coleraine, *Church of the Good Sheperd*, Off U.S. 169

*St. Louis County*

Chisholm, *Pyrinto's Boardinghouse*, 111 S. Central Ave.

Hibbing, *Galob-Sikich Log House*, 2416 E. 5th Aves.
Hibbing, *Hibbing High School*, 7th and 21st Sts.
Hibbing *Sons of Italy Hall*, 704 E. Howard St.
Tower, *Iron Range Brewery*, MN 169 and MN 135
Virginia, *Socialist Hall*, 307 N. 1st St.
Wintor, *Old City Jail*, Off MN 169

**MISSISSIPPI**

*Lawrence County Folk and Vernacular Thematic Resources.* Reference—see individual listings under Lawrence County.

*Lawrence County*

Jayess vicinity, *Boyd-Cothern House (Lawrence County Folk and Vernacular Thematic Resources)*
Jayess vicinity, *Gunnell House (Lawrence County Folk and Vernacular Thematic Resources)*
Jayess vicinity, *Robbins House (Lawrence County Folk and Vernacular Thematic Resources)*
Jayess vicinity, *Tynes House (Lawrence County Folk and Vernacular Thematic Resources)*

*Jefferson County*

Lorman vicinity, *Rodney Center Historic District*, NW of Lorman
Monticello vicinity, *Armstrong-Lee House (Lawrence County Folk and Vernacular Thematic Resources)*
Monticello vicinity, *Cannon House (Lawrence County Folk and Vernacular Thematic Resources)*
Monticello vicinity, *Crane-Mason House (Lawrence County Folk and Vernacular Thematic Resources)*
Monticello vicinity, *Smith, A. L., House (Lawrence County Folk and Vernacular Thematic Resources)*
Monticello vicinity, *Wilson House (Lawrence County Folk and Vernacular Thematic Resources)*
New Hebron vicinity, *Buckley House (Lawrence County Folk and Vernacular Thematic Resources)*
New Hebron, *Bush House (Lawrence County Folk and Vernacular Thematic Resources)*
New Hebron vicinity, *Knapp-Step hens House (Lawrence County Folk and Vernacular Thematic Resources)*
New Hebron vicinity, *Newsom-Lane House (Lawrence County Folk and Vernacular Thematic Resources) MS 43*
New Hebron vicinity, *Newsom-Smith House (Lawrence County Folk and Vernacular Thematic Resources)*
New Hebron vicinity, *Price-Stephens House (Lawrence County Folk and Vernacular Thematic Resources)*
New Hebron vicinity, *Stringer House (Lawrence County Folk and Vernacular Thematic Resources)*
Silver Creek vicinity, *Rogers House (Lawrence County Folk and Vernacular Thematic Resources)*
Sontag vicinity, *Douglas House (Lawrence County Folk and Vernacular Thematic Resources)*
Sontag vicinity, *Johnson-White House (Lawrence County Folk and Vernacular Thematic Resources)*
Wanilla vicinity, *Fox House (Lawrence County Folk and Vernacular Thematic Resources)*
Wanilla vicinity, *Hilliard House (Lawrence County Folk and Vernacular Thematic Resources)*

*Lowndes County*

Columbus, *Factory Hill-Frog Bottom-Burns Bottom Historic District*, Roughly bounded by 2nd and 6th Aves., 2nd and 5th Sts.

**MISSOURI**

*Social Institutions of Columbia's Black Community Thematic Resources (Partial Inventory).* Reference—see individual listings under Boone County.

*Boone County*

Columbia, *Boone, John W., House (Social Institutions of Columbia's Black Community Thematic Resources)*
Columbia, *Douglass, Fred, School (Social Institutions of Columbia's Black Community Thematic Resources)*
Columbia, *Missouri State Teachers Association*, 407 S. 6th St.
Columbia, *Missouri United Methodist Church*, 204 S. 9th St.
Columbia, *St. Paul A.M.E. Church (Social Institutions of Columbia's Black Community Thematic Resources)* 15th and Park Sts.
Columbia, *Second Baptist Church (Social Institutions of Columbia's Black Community Thematic Resources)* 4th St. and Broadway
Columbia, *Second Christian Church (Social Institutions of Columbia's Black Community Thematic Resources)*

*Buchanan County*

St. Joseph, *James, Jesse, House*, 12th St. and Mitchell Ave.

*Canden County*

Candenton vicinity, *HaHa Tonka*, SW of Camdenton

*Hickory County*

Hermitage, *Williams, John Siddle, House*, Off U.S. 54

*Howard County*

Fayette, *Central Methodist College Campus Historic District*, Roughly bounded by Mulberry, Elm, Church and MO 5
New Franklin, *Harris-Chilton-Ruble House*, 108 N. Missouri Ave.

*Jefferson County*

Imperial vicinity, *Kimmswick Bone Bed*

*Laclede County*

Lebanon vicinity, *Ball's Mill*, SE of Lebanon

*Lafayette County*

Higginsville vicinity, *Confederate Chapel, Cemetery and Cottage*, N of Higginsville

*Marion County*

Hannibal, *Eighth and Center Streets Baptist Church*, 722 Center St.

*Miller County*

Iberia, *Iberia Academy and Junior College*, SR 17 and SR 42

*Montgomery County*

Mineola vicinity, *Mount Horeb Baptist Church*, W of Mineola

*Worth County*

Sheridan vicinity, *Honey War Marker*, N of Sheridan

**OHIO**

*Cuyahoga County*

Cleveland, *Shaker Square, Shaker* and Moreland Blvds. (boundary increase)

*Medina County*

Sharon Center, *Sharon Center Public Square Historic District*, OH 94 and OH 162

**TENNESSEE**

*Hamilton County*

Chattanooga, *Bonny Oaks* 5114 Bonny Oaks Dr.
Chattonooga, *Park Hotel (Hunt, Reuben H., Buildings in Hamilton County Thematic Resources)* 117 E. 7th St.

*Maury County*

Spring Hill, *Doctor's Shoppe*, S. Main St.

**UTAH**

*Salt Lake County*

Draper, *Allen, J. R., House*, 1047 E. 13200 South St.

*San Juan County*

Gouldings, *Goulding's Trading Post*, Off UT 47

**WISCONSIN**

*Price County*

Phillips vicinity, *Smith's, Fred, Wisconsin Concrete Park*, S of Phillips on WI 13

[FR Doc. 80-20120 Filed 7-7-80; 8:45 am]
BILLING CODE 4310-03-M

## INTERSTATE COMMERCE COMMISSION

**[Finance Docket No. 29198 (Sub-1)]**

### Kyle Railways, Inc., and Willis B. Kyle—Control—Pend Oreille Valley Railroad, Inc.

Kyle Railways, Inc., (KRI) and Willis B. Kyle, represented by Fritz R. Kahn, Verner, Liipfert, Bernhard & McPherson, Suite 1100, 1660 L Street, NW., Washington, DC 20036, hereby gives notice that on the 5th day of June, 1980, it filed with the Interstate Commerce Commission at Washington, DC, an application pursuant to 49 U.S.C. 11343 for authority to exercise control of Pend Oreille Valley Railroad, Inc. (POV).

POV is wholly-owned subsidiary of KRI which owns all the stock of said corporation. Pursuant to the Commission's Service Order No. 1399, served September 26, 1979, POV is authorized to operate over tracks formerly owned and operated by the

bankrupt Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW). The line begins at milepost 43.6 at Newport, Pend Oreille County, WA, and extends in a northwesterly direction to milepost 104.7 at Metaline Falls, Pend Oreille County, WA for a total of 61.1 miles.

POV has filed a directly related application seeking permanent authority to operate as a common carrier over the line in Finance Docket No. 29197F.

In accordance with the Commission's regulations (49 C.F.R. 1108.8) in Ex Parte No. 55 (Sub-4), *Implementation—Nat'l Environmental Policy Act, 1969,* 352 I.C.C. 451 (1976), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall indicate with specific data the exact nature and degree of the anticipated impact. See *Implementation—Nat'l Environmental Policy Act, 1969, supra,* at p. 487.

Interested persons may participate formally in a proceeding by submitting written comments regarding the application. Such submissions shall indicate the proceeding designation Finance Docket No. 29198 (Sub-1) and the original and two copies thereof shall be filed with the Secretary, Interstate Commerce Commission, Washington, DC 20424, not later than 45 days after the date notice of the filing of the application is published in the **Federal Register.** Such written comments shall include the following: the person's position, e.g., party protestant or party in support, regarding the proposed transaction; specific reasons why approval would or would not be in the public interest; and a request for oral hearing if one is desired. Additionally, interested persons who do not intend to formally participate in a proceeding but who desire to comment thereon, may file such statements and information as they may desire, subject to the filing and service requirements specified herein. Persons submitting written comments to the Commission shall, at the same time, serve copies of such written comments upon the applicant, the Secretary of Transportation and the Attorney General.

**Agatha L. Mergenovich,**

*Secretary.*

[FR Doc. 80-20305 Filed 7-7-80; 8:45 am]

BILLING CODE 7035-01-M

**[Volume No. 20]**

## Petitions, Applications, Finance Matters (Including Temporary Authorities), Alternate Route Deviations Intrastate Applications, Gateways, and Pack & Crate.

### Petitions for Modification, Interpretation or Reinstatement of Motor Carrier Operating Rights Authority

**Notice**

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 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 52465 (Sub-30 M1F), notice of filing of petition to modify Certificate filed April 18, 1980. Petitioner: RICE TRUCK LINES, a Corporation, P.O. Box 399, Black Eagle, MT 59414. Representative: Ray F. Koby, P.O. Box 2567, Great Fallas, MT 59403. Petitioner holds a motor *common carrier* authority in MC–52465 Sub 30F, issued July 2, 1968, authorizing the transportation of *petroleum* and *petroleum products,* in bulk, in tank vehicles, between ports of entry on the United States-Canada Boundary line located in North Dakota, Montana, and Idaho, on the one hand, and, on the other, points in AZ, AR, CA, CO, ID, IL, IA, KS, KY, LA, MN, MS, MO, MT, NE, NV, NM, ND, OK, OR, SD, TN, TX, UT, WA, WI, and WY. By the instant petition, petitioner seeks to modify the territorial description by eliminating the designated ports of entry "located in ND, MT, and ID.

MC 110325 (Sub-75 M2F), filed March 17, 1980, notice of filing of petition to remove a restriction. Petitioner: TRANSCON LINES, P.O. Box 92220, Los Angeles, CA 90009. Representative: Frank W. Taylor, Jr., 1221 Baltimore Ave., Kansas City, MO 64105. Petitioner holds common carrier authority in MC–110325 Sub 75, served November 25, 1977. Part (A) of Certificate MC–110325 authorizes the transportation of 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), with specific restrictions, (1) between junction U.S. Hwy and NC State Road 1669 near Stanleyville, NC, and junction NC Hwy 66 and U.S. Hwy 421, near Kernerville, NC, serving no intermediate points and serving junction U.S. Hwy 52 and NC State Road 1669 for the purpose of joinder only, over specified routes, (2) between New York, NY and North Augusta, SC, serving specified intermediate and off-route points, with certain restrictions, over specified routes, (3) between Henderson, NC, and Durham, NC, serving no intermediate points, and serving Henderson for the purpose of joinder only, over specified routes, (4) between junction U.S. Hwy 1 and U.S. Hwy 130, near Milltown, NJ and Ensley, SD,

serving specified intermediate points and off-route points, over specified routes, with restrictions, (5) between Richmond, VA, and Danville, VA, serving no intermediate points and serving each terminal only for the purpose of joinder, over specified routes, (6) between Raleigh, NC, and Greensboro, NC, serving all intermediate points and the off-route points of Elon College, Gibsonville, and McLeansville, NC, over specified routes, (7) between Hanes, NC, and Siler City, NC, serving all intermediate points, over specified routes, (8) between Greensboro, NC, and Siler City, NC, serving all intermediate points, and specified off-route points, over specified routes, (9) between junction U.S. Hwy 29 and 29A, near China Grove, NC, and Charlotte, NC, serving all intermediate points, over specified routes, (10) between Shelby, NC, and Kings Mountain, NC, serving all intermediate points, and certain off-route points, with specified restriction, over specified routes, (11) between Charlotte, NC, and Monroe, NC, serving all intermediate points, over specified routes, (12) between Maiden, NC, and junction U.S. Hwy 74 and NC Hwy 45, near Shelby, NC, serving all intermediate points, and specified off-route points, with a specific restriction, over specific routes, (13) between Charlotte, NC, and Lincolnton, NC, serving all intermediate points, and certain off-route points, with a specific restriction, over specified routes, (14) between Charlotte, NC, and Clover, SC, serving all intermediate points, over specified routes, (15) between Charlotte, NC, and Statesville, NC, serving all intermediate points, over specific routes, (16) between Pineville, NC, and Lancaster, SC, serving all intermediate points, over U.S. Hwy 521, (17) between Monroe, NC, and Chester, SC, serving all intermediate points, and the off-route points of Waxhaw and Mineral Springs, NC, and Great Falls, SC, over specified routes, (18) between Cleveland, SD, and Simpsonville, SC, serving all intermediate points, and specific off-route points, subject to a restriction, over U.S. Hwy 276, (19) between Blacksburg, SC, and Gaffney, SC, serving all intermediate points, over specified routes, (20) between Clearwater, SC, and Augusta, GA, serving all intermediate points, subject to a restriction, over specified routes, (21) between Albermarle, NC, and Badin, NC, serving no intermediate points, over specified routes, (22) between Lincolnton, NC, and Gastonia, NC, serving all intermediate points, and specific off-route points, subject to a specific restriction, over U.S. Hwy 321, (23) between Maiden, NC, and Hickory, NC, serving all intermediate points, and specific off-route points, with restrictions, over U.S. Hwy 321, (24) between Hickory, NC, and Asheville, NC, serving all intermediate points, and specific off-route points, subject to a specific restriction, over specified routes, (25) between Asheville, NC, and Tuxedo, NC, serving all intermediate points, and specific off-route points, subject to a specific restriction, over U.S. Hwy 25, (26) between Hendersonville, NC, and Tryon, NC, serving all intermediate points, and specific off-route points, subject to a specific restriction, over U.S. Hwy 176, (27) between Hendersonville, NC, and Bat Cave, NC, serving all intermediate points, and specific off-route points, subject to a specific restriction, over U.S. Hwy 64, (28) between Bat Cave, NC, and Shelby, NC, serving all intermediate points, specific off-route points, subject to a specific restriction, over U.S. Hwy 74, (29) between Forest City, NC, and Henrietta, NC, serving all intermediate points, specific off-route points, subject to a specific restriction, over Alternate U.S. Hwy 221, (30) between Shelby, NC, and Lawndale, NC, serving all intermediate points, specific off-route points, subject to a specific restriction, over specified routes.

Part (B) authorizes over specified regular routes, 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 those requiring special equipment), (1) between Lancaster, SC, and Charleston, SC, serving no intermediate points, (2) between Rock Hill, SC, and Columbia, SC, serving no intermediate points, (3) between Pageland, SC, and Darlington, SC, serving no intermediate points, and serving Darlington for purposes of joinder only, (4) between Chester, SC, and North Augusta, SC, serving no intermediate points, and (5) between Wallace, SC, and Florence, SC, serving no intermediate points. Part (B) shall not be severable, by sale or otherwise, from the irregular route authority contained in Section (C).

Part (C) authorizes (1) over irregular routes, 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 points in SC, subject to a specific restriction, (2) over regular routes, (a) 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), serving the plant site of Vick Manufacturing Division of Richardson Merrell, Inc., in the borough of Hatboro, Montgomery County, PA, as an off-route point, (b) 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), serving the Central Distribution Center of Hanes Corp., Knitwear Division, in Davie County, NC, (approximately 12 miles southwest of Winston-Salem, NC) as an off-route point, (c) general commodities (except commodities in bulk, in tank vehicles), between Atlanta, GA, and Tournapul, GA, over specified routes, (d) 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), (i) between points in GA, over specified routes, serving all intermediate points (ii), between Gainesville, GA, and Commerce, GA, over specified routes, serving all intermediate points except Jefferson, GA, (iii) between Commerce, GA, and junction GA Hwy 52 and U.S. Hwy 23, serving all intermediate points, and the off-route point of Homer, GA, over specified routes, and (iv) between Dahlonega, GA and Gainesville, GA, serving all intermediate points, over specified routes, (e) 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), (i) serving the terminal site of Central Motor Lines, Incorporated, located at or near junction SC Hwy 14 and Interstate Hwy 85 in Greenville County, SC, as an off-route point, (ii) between Cornelia, GA and Dahlonega, GA, serving all intermediate points between Dahlonega and Clarkesville, GA (not including Clarkesville), and the off-route point of Helen, GA, over specified routes, (iii) between Toccoa, GA, and Greenville, SC, serving no intermediate points, over U.S. Hwy 123, (3) over irregular routes, 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), between Greenville, SC, on the one hand, and, on the other, points in GA lying on and east of U.S. Hwy 221, within 100 miles of Greenville, (4)

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, commodities in bulk, and those requiring special equipment), (a) between Conover, NC and Salisbury, NC, in connection with otherwise authorized regular route operations between Asheville and Greensboro, NC, and Hickory and Greensboro, NC, serving no intermediate points over specified routes, (b) between Asheboro, NC, and Wallace, SC, in connection with otherwise authorized regular route operations between Greensboro, NC, and Florence, SC, serving no intermediate points, over specified routes, and (c) between Monroe, NC and Pageland, SC, in connection with otherwise authorized regular route operations between Charlotte, NC, and Florence, SC, serving no intermediate points, over U.S. Hwy 601.

The operations authorized herein are restricted to the transportation of traffic received from or delivered to connecting carriers at the said off-route point. The authority granted herein to the extent that it duplicates any authority heretofore granted to or now held by carrier shall not be construed as conferring more than one operating right. The operations authorized herein are restricted to the transportation of traffic originating at or destined to points west of the Mississippi River and points west of the eastern boundary of the State of MN (except points in the St. Louis, MO-East St. Louis, IL, Commercial Zone, as defined by the Commission, and except points in the Davenport, IA-Moline and Rock Island, IL, Commercial Zone, as defined by the Commission.

By the instant petition, petitioner seeks to delete the following restriction: "The operations authorized herein are restricted to the transportation of traffic originating at or destined to points west of the Mississippi River and points west of the eastern boundary of the State of MN (except points in the St. Louis, MO-East St. Louis, IL, Commercial Zone, as defined by the Commission, and except points in the Davenport, IA-Moline and Rock Island, IL, Commercial Zone, as defined by the Commission."

MC 117940 (Sub-298F(MIF)) (notice of filing of petition to modify certificate) filed November 20, 1979. Petitioner: NATIONWIDE CARRIERS, INC., P.O. Box 104, Maple Plain MN 55359. Representative: Allan L. Timmerman, 5300 Highway 12, Maple Plain MN 55359. Petitioner holds a motor *common carrier* certificate in MC 117940, Sub 298F, issued July 19, 1979, authorizing transportation over irregular routes of: *such commodities* as are dealt in or used by retail department stores (except commodities in bulk, household goods as defined by the Commission, and foodstuffs) from Chicago IL and points in CT, MD, MA, NJ, NY, OH and PA, to the facilities of (1) Jafco, Inc. at points in OR and WA; (2) Great Western Distributing Company, Inc. at points in ID; and (3) LaBelle's Distributing at points in MT, restricted to the transportation of traffic originating at the indicated origins and destined to the named destinations. By the instant petition petitioner seeks the removal of the facilities restriction by deleting from the certificate the language "the facilities of (1) Jafco, Inc. at", "(2) Great Western Distributing Company, Inc. at points in", and "(3) LaBelle's Distributing at points in".

MC 117940 (Sub-300F (M2F)) (notice of filing of petition to modify certificate), filed November 20, 1979. Petitioner: NATIONWIDE CARRIERS, INC., P.O. Box 104, Maple Plain, MN 55359. Representative: Allan L. Timmerman, 5300 Highway 12, Maple Plain, MN 55359. Petitioner holds a motor *common carrier* certificate in MC–117940, Sub 300F, issued June 21, 1979, authorizing transportation over irregular routes of: *such merchandise* as is dealt in by discount and variety stores (except foodstuffs and commodities in bulk) from the facilities of F.W. Woolworth Company at or near Chicago IL to the facilities of F.W. Woolworth Company at or near Minneapolis MN restricted to the transportation of traffic originating at the named origin and destined to the indicated destination. By the instant petition petitioner seeks the removal of the facilities restriction by deleting from the certificate the language "the facilities of F.W. Woolworth Company."

MC 119555 (Sub-4 M1F), notice of filing of petition to modify the Certificate filed April 9, 1980. Petitioner: OIL AND INDUSTRY SUPPLIERS LTD., P.O. Box 3500, Calgary, Alberta, Canada T2P 2P9. Representative: Ray F. Koby, P.O. Box 2567, Great Falls, MT 59403. Petitioner holds motor *common carrier* authority in MC–119555 Sub 4, issued May 15, 1973, authorizing the transportation of *liquefied petroleum gas*, in bulk, in tank vehicles, from the ports of entry on the international boundary line between the U.S. and the Province of Manitoba, Canada, located in MN and ND, to points in MN and ND. By the instant petition, petitioner seeks to modify the above territorial description, "from the ports of entry on the international boundary line, between the U.S. and Canada, to points in MN and ND."

## Republications of Grants of Operating Rights Authority Prior to Certification

### Notice

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the Federal Register.

An original and one copy of a petition for leave to intervene in the proceeding must be filed with the Commission on or before August 7, 1980. Such pleading shall comply with Special Rule 247(e) of the Commission's *general rules of practice* (49 CFR 1100.247) addressing specifically the issue(s) indicated as the purpose for republication, and including copies of intervenor's conflicting authorities and a concise statement of intervenor's interest in the proceeding setting forth in detail the precise manner in which it has been prejudiced by lack of notice of the authority granted. A copy of the pleading shall be served concurrently upon the carrier's representative, or carrier if no representative is named.

MC 36517 (M1F), filed May 1, 1980. Petitioner: JAMES J. KEATING, INC., P.O. Box 830, Perth Amboy, NJ 08862. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904. Petitioner holds motor common carrier authority in certificate No. MC–36517, issued March 1, 1955, authorizing transportation, over irregular routes, as pertinent, of *electrical appliances, stoves, refrigerators, washing machines, chemicals, gums, waxes, linoleums, oils, paints, and radios*, from Newark, NJ, to points in NJ, and those in NY within 50 miles of Newark. By the instant petition, petitioner seeks to modify the territorial description so as to read: "between Newark, NJ, on the one hand, and, on the other, points in NJ, and those in NY, within 50 miles of Newark.

MC 93840 (Sub-43F) (Republication), filed January 28, 1979, previously noticed in the Federal Register issue of April 30, 1979. Applicant: GLESS BROS., INC., P.O. Box 219, Blue Grass, IA 52726. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. A Decision, by the Commission, Review Board Number 2, decided April 7, 1980, and served May 1, 1980, finds that the present and future public convenience and necessity require operation by applicant, as a *common carrier*, by motor vehicle, in interstate or foreign commerce, transporting *salt*, (1) from the facilities used by Motor Salt Division of

Morton-Norwich Products, Inc., at Clinton, Dubuque, and Keokuk, IA, to points in IL, MO, and WI, and (2) from the facilities of Morton Salt Division of Morton-Norwich Products, Inc., at Rock Island, IL, to points in MO and WI. Applicant is fit, willing, and able properly to perform the granted service and to conform to the requirements of Title 49, Subtitle IV, U.S. Code and the Commission's regulations. The purpose of this republication is to indicate the change of the facility in the origin.

MC 98327 (Sub-10) (M1F), filed May 1, 1980. Petitioner: SYSTEM 99, 8201 Edgewater Dr., Oakland, CA 94621. Representative: Ray V. Mitchell (same address as applicant). Petitioner holds motor common carrier authority in certificate MC 98327 (Sub-10), issued November 29, 1974, authorizing transportation, over regular routes, as pertinent, of (1) *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) between Portland, and Burns, OR, serving the intermediate points of Bend, Hampton, Brothers, Redmond, Terrebonne, Culver, and Medras, OR, and the off-route points of Millican and Prineville, OR, over specified routes; (b) between Lakeview, OR and junction OR Hwy 31 and U.S. Hwy 97, serving the intermediate points of Fort Rock Junction, Silver Lake, Summer Lake, Paisley, and Valley Falls, OR, over specified routes; (c) between Portland, OR and junction OR Hwy 58 and U.S. Hwy 97, serving no intermediate points, over specified routes; and (2) *general commodities* (except those of unusual value, household goods as defined by the Commission, liquids in bulk, and those requiring special equipment), between Lakeview, and Burns, OR, serving the intermediate points of Alkali Lake, Wagontire, Riley, and Hines, OR, or northbound movements, and the intermediate points of Alkali Lake, Wagontire, and Valley Falls, OR, or southbound movements, over a specified route. By the instant petition, petitioner seeks to modify the territorial description by deleting the restrictions to serve specific intermediate points, thereby allowing service to all intermediate points in the above-described authority.

MC 108587 (Sub-25) (M1F), filed April 21, 1980. Petitioner: SCHUSTER EXPRESS, INC., 48 Norwich Ave., Colchester, CT 06415. Representative: S. Harrison Kahn, Suite 733 Investment, 1511 K Street, N.W., Washington, DC 20005. Petitioner holds a certificate in MC 108587 (Sub-25), issued June 21, 1979, which authorizes the transportation of *general commodities*, with the usual exceptions, over regular routes, as pertinent, (1) between Hares Corner, DE and Camden, NJ with service at all intermediate points except those in DE, and (2) between Camden, NJ and Baltimore, MD with service at all intermediate points except those in DE. By this petition, petitioner seeks to amend its (Sub-25) certificate to authorize service at all points in DE as intermediate points along its regular routes and as off-route points.

MC 111956 (M1F), filed May 6, 1980. Petitioner: SUWAK TRUCKING COMPANY, 1105–15 Fayette Street, Washington, Pa. 15301. Representative: Mr. Michael Bosilovich (same address as applicant). Petitioner holds a motor *common carrier* certificate in MC 111956, issued September 25, 1950, authorizing transportation, as pertinent, over *irregular routes*, of *household goods*, as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M.C.C. 467, *iron and steel articles, molybdenum products, chemicals, glassware*, and *clay products*, between Washington, PA, and points in PA within five miles thereof, on the one hand, and, on the other points in NY. By the instant petition, petitioner seeks to modify the authority as follows: to authorize the transportation of *general commodities* (except those of unusual value and Classes A and B explosives), between points in Washington County, PA, on the one hand, and, on the other, points in NY.

MC 114569 (Sub-240F) (Republication), filed August 14, 1978, published in the **Federal Register** issue of September 14, 1978, and republished this issue. Applicant: SHAFFER TRUCKING, INC., P.O. Box 418, New Kingstown, PA 17072. Representative: N. L. Cummins, P.O. Box 418, New Kingstown, PA 17072. A Decision of the Commission, Division 2, decided June 2, 1980, and served June 11, 1980, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *foodstuffs* (except frozen foods and commodities in bulk), from Philadelphia, PA, Norfolk, VA, and points in MA, CT, RI, NY, NJ, MD, DE, and those in Virginia east of Chesapeake Bay, to points in AR, AZ, CO, IA, IL, IN, KS, KY, LA, MI, MN, MO, MS, NE, ND, NM, OH, OK, SD, TN, TX, WI and WY, and (2) *frozen foods* (a) from Wethersfield and Hartford, CT, to points in KS and TX, (b) from New York, NY, Jersey City, NJ, and Philadelphia, PA, to points in AR, CO, IA, KS, KY, LA, MI, MN, MO, MS, NE, ND, NM, NV, OK, SD, TN, TX, WI and WY, and (c) from Wilmington, DE, Mt. Airy, MD and Norfolk, VA, to points in IL, IA, KY, MI, MN, MO, OH, TN and WI, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to indicate applicant's actual grant of authority.

MC 121835 (Republication), filed October 5, 1979, published in the FR issue of October 31, 1979, as California Docket No. 59185, and republished this issue. A Decision of the Commission, Review Board Number 4, decided May 27, 1980, and served June 12, 1980, finds that the applicant may conduct operations in interstate or foreign commerce within limits which do not exceed the scope of the intrastate operations for which applicant holds Decision No. 91598 dated April 15, 1980, issued by the Public Utilities Commission of the State of California: transportation of general commodities as follows: 1. Between all points and places in the San Francisco Territory as described in Note A hereof. 2. Between all points and places in the Los Angeles Basin Territory as described in Note B hereof. 3. Between all points and places in the San Diego Territory as described in Note C hereof. 4. Between all points and places on and within 25 statute miles laterally of the following named highways: a. Interstate Highway 80 between Oakland and Colfax, inclusive. b. State Highway 4 between its intersection with Interstate Highway 80 near Pinole, and Stockton, inclusive. c. Interstate Highway 5 and U.S. Highway 101 between San Diego and Willits, inclusive, except that carrier, pursuant to this authority, shall not serve any point more than 5 statute miles laterally of this route between Healdsburg and Willits. d. State Highway 1 between its intersections with U.S. Highway 101 at Montalvo and Interstate Highway 5 at San Juan Capistrano. e. State Highway 118 between its intersection with State Highway 26 near Ventura, and Chatsworth, inclusive. f. State Highway 99 between Red Bluff and Wheeler Ridge and Interstate Highway 5 between Wheeler Ridge and San Fernando, inclusive, except that carrier, pursuant to this authority, shall not serve any point more than five statute miles easterly of this route between Bakersfield and San Fernando. g. State Highway 33 between Banta and its junction with State Highway 166 at

Maricopa, thence via State Highway 166 to its junction with State Highway 99 at Mettler, inclusive. h. Interstate Highway 15 between Temecula and San Diego, inclusive. i. State Highway 60 between the eastern boundary of the Los Angeles Basin Territory and Beaumont and Interstate Highway 10 between Beaumont and Blythe, inclusive, except that between Indio and Blythe, service on or within 25 statute miles laterally of Interstate Highway 10 is restricted to shipments weighing 20,000 pounds or more (truckload lots). j. Interstate Highway 10 between Redlands and Indio and State Highway 86 between Indio and Calexico, inclusive, except that no service is authorized to any point north of the northerly boundary of the Los Angeles Basin Territory. k. Interstate Highway 8 between Bostonia and Winterhaven, inclusive. l. Interstate Highway 40 between Barstow and Needles, inclusive (See restriction below).

m. San Bernardino County Road designated "National Trails Highway," from its junction with Interstate Highway 40 at Ludlow to its junction with Interstate Highway 40 at Fenner, via Amboy and Essex. n. U.S. Highway 395 between Independence and its junction with State Highway 14 north of Inyokern, inclusive, restricted to shipments weighing 20,000 pounds or more (truckload lots). (See restriction below.) Restriction: No service is authorized to, from or between Intermediate points on Interstate Highways 15 and 40 between San Bernardino and Newberry, nor on State Highway 14 between San Fernando and its junction with U.S. Highway 395 north of Inyokern, nor on any other highways not named herein. o. State Highways 33 and 119 between Ventura and Greenfield, inclusive, including the off-route points of Santa Paula and Fillmore. p. State Highway 140 between Merced and Mariposa, inclusive. q. State Highway 49 between Mariposa and Grass Valley, inclusive, except that carrier pursuant to this authority shall not serve any point more than five statute miles easterly of this route. r. State Highway 29 between its intersection with State Highway 99 at Yuba City and Grass Valley, inclusive. s. State Highway 20 between Vallejo and Upper Lake, inclusive. t. State Highway 20 between its intersection with Interstate Highway 5 near Williams and its intersection with U.S. Highway 101 near Calpella. u. Interstate Highway 5 between Sacremento and Project City, inclusive. In performing the service herein authorized, carrier may make use of any and all streets, roads, highways and bridges necessary or convenient for the performance of said service. Except that pursuant to the authority herein granted carrier shall not transport any shipments of: 1. Used household goods, personal effects and office, store and institution furniture, fixtures and equipment not packed in salesman's hand sample cases, suitcases, overnight or boston bags, briefcases, hat boxes, valises, traveling bags, trunks, lift vans, barrels, boxes, cartons, crates, cases, baskets, pails, kits, tubs, drums, bags (jute, cotton, burlap or gunny) or bundles (completely wrapped in jute, cotton, burlap, gunny, fibreboard, or straw matting). 2. Automobiles, trucks and buses, viz.: new and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses and taxis, freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses and bus chassis. 3. Livestock, viz.: barrows, boars, bulls, butcher hogs, calves, cattle, cows, dairy cattle, ewes, feeder pigs, gilts, goats, heifers, hogs, kids, lambs, oxen, pigs, rams (bucks), sheep, sheep camp outfits, sows, steers, stags, swine or wethers. 4. Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles. 5. Commodities when transported in bulk in dump-type trucks or trailers or in hopper-type trucks or trailers. 6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit. 7. Logs. 8. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment. 9. Telephone Directories.

**Note A**

*San Francisco Territory*

San Francisco Territory includes all the City of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County Line meets the Pacific Ocean; thence easterly along said County Line to a point one mile west of State Highway 82; southerly along an imaginary line one mile west of and paralleling State Highway 82 to its intersection with Southern Pacific Company right-of-way at Atrastradero Road; southeasterly along the Southern Pacific Company right-of-way to Pollard Road, including industries served by the Southern Pacific Company spur line extending approximately two miles southwest from Simla to Permanente; easterly along Pollard Road to W. Parr Avenue; easterly along W. Parr Avenue to Capri Drive; southerly along Capri Drive to Division Street; easterly along Division Street to the Southern Pacific Company right-of-way; southerly along the Southern Pacific Company right-of-way to the Campbell-Los Gatos City Limits; easterly along said limits and the prolongation thereof to South Bascom Avenue (formerly San Jose-Los Gatos Road); northeasterly along South Bascom Avenue to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to State Highway 82; northwesterly along State Highway 82 to Tully Road; northeasterly along Tully Road and the prolongation thereof

To White Road; northwesterly along White Road to McKee Road; southwesterly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 238 (Oakland Road); northerly along State Highway 238 to Warm Springs; northerly along State Highway 238 (Mission Blvd.) via Mission San Jose and Niles to Hayward; northerly along Foothill Blvd. and MacArthur Blvd. to Seminary Avenue; easterly along Seminary Avenue to Mountain Blvd.; northerly along Mountain Blvd. to Warren Blvd. (State Highway 13); northerly along Warren Blvd. to Broadway Terrace; westerly along Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland Boundary Line; northerly along said boundary line to the campus boundary of the University of California; westerly, northerly and easterly along the campus boundary to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to San Pablo Avenue (State Highway 123); northerly along San Pablo Avenue to and including the City of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco waterfront at the foot of Market Street; westerly along said waterfront and shoreline to the Pacific Ocean; southerly along the shoreline of the Pacific Ocean to point of beginning.

**Note B**

*Los Angeles Basin Territory*

Los Angeles Basin Territory includes that area embraced by the following boundary: Beginning at the point the Ventura County-Los Angeles County Boundary Line intersects the Pacific Ocean; thence northeasterly along said county line to the point it intersects

State Highway 118, approximately two miles west of Chatsworth; easterly along State Highway 118 to Sepulveda Boulevard; northerly along Sepulveda Boulevard to Chatsworth Drive; northeasterly along Chatsworth Drive to the corporate boundary of the City of San Fernando; westerly and northerly along said corporate boundary of the City of San Fernando to Maclay Avenue; northeasterly along Maclay Avenue and its prolongation to the Angeles National Forest Boundary; southeasterly and easterly along the Angeles National Forest and San Bernardino National Forest Boundary to Mill Creek Road (State Highway 38); westerly along Mill Creek Road to Bryant Street; southerly along Bryant Street to and including the unincorporated community of Yucaipa; westerly along Yucaipa Boulevard to Interstate Highway 10; northwesterly along Interstate Highway 10 to Redlands Boulevard; northwesterly along Redlands Boulevard to Barton Road; westerly along Barton Road to La Cadena Drive; southerly along La Cadena Drive to Iowa Avenue; southerly along Iowa Avenue to State Highway 60; southeasterly along State Highway 60 and U.S. Highway 395 to Nuevo Road; easterly along Nuevo Road via Nuevo and Lakeview to State Highway 79; southerly along State Highway 79 to State Highway 74; thence westerly to the corporate boundary of the City of Hemet; southerly, westerly and northerly along said corporate boundary to The Atchison Topeka & Santa Fe right-of-way; southerly along said right-of-way to Washington Road; southerly along Washington Road through and including the unincorporated community of Winchester to Benton Road; westerly along Benton Road to Winchester Road (State Highway 79) to Jefferson Avenue; southerly along Jefferson Avenue to U.S. Highway 395; southerly along U.S. Highway 395 to the Riverside County-San Diego County Boundary Line; westerly along said boundary line to the Orange County-San Diego County Boundary Line; southerly along said boundary line to the Pacific Ocean; northwesterly along the shoreline of the Pacific Ocean to point of beginning, including the point of March Air Force Base.

**Note C**

*San Diego Territory*

The San Diego Territory includes that area embraced by following an imaginary line starting at a point approximately four miles north of La Jolla on the Pacific Coast shoreline running east to Miramar on U.S. Highway 395; thence following an imaginary line running southeasterly to Lakeside on State Highway 67; thence southerly on County Road S–17 (San Diego County) and its prolongation to State Highway 94; easterly on State Highway 94 to Jamul; thence due south following an imaginary line to the California-Mexico Boundary Line; thence westerly along the boundary line to the Pacific Ocean and north along the shoreline to point of beginning.

Condition: Issuance of the certificate of registration authorized here shall be withheld for a period of 30 days from the date of publication in the **Federal Register** of a notice of the authority granted. During that 30-day period, any proper party in interest may file a petition for leave to intervene, setting forth in detail the precise manner in which it has been prejudiced.

**Motor Carrier Operating Rights Applications; Notice**

The following applications, 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 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). 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 148134F, filed August 20, 1979. Applicant: MAXI MUFFLER, INC., 5910 S. Two Mile, Bay City, MI 48706. Representative: John C. Scherbarth, 22375 Haggerty Rd., P.O. Box 400, Northville, MI 48167. Authority sought to operate as a *common carrier,* by motor vehicle, transporting *automotive parts* and *automotive supplies,* from the facilities of Midas International Corporation, at or near Chicago, IL, to points in MI. (Hearing site: Lansing, MI, or Washington, DC.)

**Permanent Authority Decisions Volume Decision-Notice**

Decided: June 24, 1980.

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 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 July 8, 1980.*

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 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 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, Fortier, and Hill.

MC 130856F, filed April 4, 1980. Applicant: DEL-RICH PLEASURE TOURS, INC., Main St., West Point, PA 19486. Representative: Robert E. Gabler, 826 North Broad St., Lansdale, PA 19446. To engage in operations, in interstate or foreign commerce, as a *broker* at Worcester, PA, in arranging for the transportation by motor vehicle, of *passengers and their baggage,* in special or charter operations, between points in Bucks and Montgomery Counties, PA, on the one hand, and, on the other, points in the U.S., including AK and HI. (Hearing site: Philadelphia, PA.)

MC 130857F, filed April 7, 1980. Applicant: SUPERIOR TRAVEL SYSTEMS, 218 N. 23rd Coeur d'Alene, ID 83814. Representative: Tandy R. Graff (same address as applicant). To engage in operations, in interstate or foreign commerce, as a *broker* at Coeur d'Alene, ID, in arranging for the transportation by motor vehicle, of *passengers and their baggage,* in special or charter operations, between points in the U.S. (except AK and HI). (Hearing site: Coeur d' Alene, ID.)

MC 130876F, filed May 1, 1980. Applicant: ALFREDO P. ALVES, d.b.a., ALVES TOURS, 772 Globe St., Fall River, MA 02724. Representative: Alfredo P. Alves (same address as applicant). To engage in operations, in interstate or foreign commerce, as a *broker,* at Fall River, MA, in arranging for the transportation by motor vehicle, of *passengers and their baggage,* in special or charter operations, beginning and ending in Fall River, MA and extending to New York, NY, Washington, DC, and points in FL, NH, and MA. (Hearing site: Fall River or New Bedford, MA.)

MC 130878F, filed May 1, 1980. Applicant: EMPIRE TOURS, INC., West 1125 Sprague Ave., P.O. Box 2205, Spokane, WA 99210. Representative: Jeremy Kahn, Suite 733 Investment Bldg., 1511 K St., NW., Washington, DC 20005. To engage in operations, in interstate or foreign commerce, as a *broker,* at Spokane, WA, in arranging for the transportation, by motor vehicle, of *passengers and their baggage,* in the same vehicle with passengers, in special and charter operations, between points in the U.S. (including AK and HI). (Hearing site: Spokane, WA.)

Note.—The person or persons which appear to be in common control of applicant and another regulated carrier must either file an application for approval of common control under 49 U.S.C. 11343, or submit an affidavit indicating why such approval is unnecessary.

MC 130881F, filed April 28, 1980. Applicant: RUBE YELVINGTON ENTERPRISES, LTD., 314 East Church St., Mascoutah, IL 62258. Representative: Ruben L. Yelvington (same address as applicant). To engage in operations, in interstate or foreign commerce, as a *broker,* at Mascoutah, IL, in arranging for the transportation, by motor vehicle, of *passengers and their baggage,* in the same vehicle with passengers, in round-trip special and charter operations, beginning and ending at points in St. Clair, Clinton and Washington Counties, IL, and extending to points in the U.S. (including AK and HI). (Hearing site: Mascoutah or Belleville, IL.)

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, N.Y.,* 54 M.C.C. 291 (1952).

MC 103886F, filed May 6, 1980. Applicant: BLAINE V. BROWER and ERVIN W. BUSWELL, d.b.a. YOU AND I TRAVEL SERVICE, a partnership, 133 West 3rd North, Rigby, ID 83442. Representative: Gregory P. Meacham, 485 "E" St., Idaho Falls, ID 83401. To engage in operations, in interstate or foreign commerce, as a *broker* at Rigby, ID, in arranging for the transportation of *passengers and their baggage,* by motor vehicle, in charter or special operations, in round-trip and one-way all expense tours, between points in Bannock, Bingham, Blaine, Bonneville, Butte, Cassia, Clark, Franklin, Fremont, Jefferson, Jerome, Lincoln, Madison, Minidoka, Oneida, Power, Teton and Twin Falls Counties ID, on the one hand, and, on the other, points in the U.S. (including AK, but excluding HI). (Hearing site: Salt Lake City, UT.)

MC 130888F, filed May 7, 1980. Appliant: CERTIFIED VAN SERVICE, INC., 195 Lauman Lane, Hicksville, Long Island, NY 11801. Representative: Robert J. Gallagher, Suite 1112, 1000 Connecticut Ave., NW, Washington, DC. 20036.

Following are the names and business addresses for all persons who are officers and directors, partners (including limited or "silent" partners), and first five principal shareholders, with their appropriate titles: William McNamara, President, Director, and shareholder, Joseph McNamara, Vice President, Director, and shareholder (same address as applicant).

The daily operations will be managed by Joseph McNamara, whose business address is 195 Lauman Lane, Hicksville, Long Island, NY 11801.

Applicant is affiliated with the following shipper or warehouse: None.

MC 130898F, filed May 13, 1980. Applicant's name and address are COASTAL TRANSPORTATION CO., 7777 State Rd., Philadelphia, PA 19136. The name under which operations will be performed is COASTAL TRANSPORTATION CO.

Applicant is represented by Joseph T. Bambrick, Jr., in this proceeding whose address is P.O. Box 2087, Sabastian, FL 32958.

Following are the names and business addresses for all persons who are officers and directors, partners (including limited or "silent" partners), and first five principal shareholders, with their appropriate titles: Northern Shipping Company (A Marine Stevedoring Company), Sole shareholder, and Mr. Jack Rose, President, (Same address as applicant).

The daily operations will be managed by Charles Fox whose business address is 7777 State Rd., Phildelphia, PA 19136.

Applicant is affiliated with the following shipper or warehouse: None.

MC 130891F, filed May 5, 1980. Applicant: ROYAL COACH TRANSPORTATION COMPANY, INC., 911 Conley Dr., Mechanicsburg, PA 17055. Representative: Linus E. Fenicle, 2931 North Front St., Harrisburg, PA 17110. To engage in operations, in interstate or foreign commerce, as a *broker*, at Mechanicsburg, PA, in arranging for the transportation of *passengers and their baggage*, in the same vehicle with passengers, in round-trip charter operations, beginning and ending at points in PA, and extending to points in the U.S. (including AK, but excluding HI). (Hearing site: Harrisburg, 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, N.Y.*, 54 M.C.C. 291 (1952).

MC 130896F, filed May 5, 1980. Applicant: ARLENE NOBLE, d.b.a. NOBLE GADABOUTS, 6364 Holton-Whitehall Rd., Holton, MI 49425. Representative: David E. Leigh, 400 Terrace Plaza, Muskegon, MI 49443. To engage in operations, in interstate or foreign commerce, as a *broker*, at Holton, MI, in arranging for the transportation by motor vehicle, of *passengers and their baggage*, in special or charter operations, between points in Muskegon, Ottawa, Kent, Oceana, Mason, and Newaygo Counties, MI, on the one hand, and, on the other, points in the US (including AK and HI). (Hearing site: Lansing, MI.)

MC 130900F, filed May 9, 1980. Applicant's name and address is AFI WORLDWIDE FORWARDERS, 335 Valencia St., San Francisco, CA 94103. The name under which operations will be performed is AFI WORLDWIDE FORWARDERS.

Applicant is represented by Edward J. Hegarty in this proceeding whose address is 100 Bush Street, 21st Floor, San Francisco, CA 94104.

Following are the names and business addresses for all persons who are officers and directors, partners (including limited or "silent" partners), and the first five principal shareholders, with their appropriate titles:

George W. Pasha III, President and Director, 1301 Canal Boulevard, Richmond, CA 94804.
Janet M. Pasha, Director, 1301 Canal Boulevard, Richmond, CA 94804.
Glenn Yamaguchi, Exec. Vice Pres., Sec. & Treas., 1301 Canal Boulevard, Richmond, CA 94804.
Jack L. Bailey, Senior Vice President, 335 Valencia Street, San Francisco, CA 94103.
Patrick M. Cronin, Vice President—Operations, 335 Valencia Street, San Francisco, CA 94103.
Shelly Tau, Financial Vice President, 335 Valencia Street, San Francisco, CA 94103.

One hundred percent of the shares in AFI WORLDWIDE FORWARDERS are held by PASHA INDUSTRIES, 1301 Canal Boulevard, Richmond, CA 94804.

The daily operations will be managed by Jack L. Bailey and Patrick M. Cronin, each of whom has a business address at 335 Valencia Street, San Francisco, CA 94103.

Applicant is affiliated with the following shipper or warehouse: None.

MC 130901F, filed May 9, 1980. Applicant: AAA CENTRAL PENN AUTOMOBILE CLUB, 2023 Market St., Harrisburg, PA 17103. Representative: Thomas G. Miller (same address as applicant). To engage in operations, in interstate or foreign commerce, as a *broker*, at Harrisburg, PA, in arranging for the transportation, by motor vehicle, of *passengers and their baggage*, in the same vehicle with passengers, in special and charter operations, beginning and ending at point in Adams, Cumberland, Dauphin, Lancaster, Lebanon, Perry, and York Counties, PA, and extending to points in the U.S. (including AK and HI). (Hearing site: Washington, DC, or Philadelphia, 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, N.Y.*, 54 M.C.C. 291 (1952).

MC 130903F filed May 14, 1980. Applicant: CHARTER TOURS, INC., d.b.a. CHARTER TRAVEL SERVICE, 402 East Dr., Princeton, WV 24740. Representative: John M. Friedman, 2930 Putnam Ave., Hurricane, WV 25526. To engage in operations, in interstate or foreign commerce, as a *broker*, at Princeton, WV, in arranging for the transportation of *passengers and their baggage*, in special or charter operations, between points in Bland, Buchanan, Giles, Tazewell, Wise, and Wythe Counties, VA, and Greenbrier, Logan, McDowell, Mercer, Mingo, Monroe, Raleigh, Summers, and Wyoming Counties, WV, on the one hand, and, on the other, points in the U.S. (except AK and HI). (Hearing site: Charleston, WV.)

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, N.Y.*, 54 M.C.C. 291 (1952).

MC 130907F filed May 12, 1980. Applicant: ADVENTURE TOURS, INC., Rt. 1 Box 236, Liberty, SC 29656. Representative: R. Murray Hughes, P.O. Box 396, Pickens, SC 29671. To engage in operations, in interstate or foreign commerce, as a *broker* at Liberty, SC, in arranging for the transportation by motor vehicle, of *passengers and their baggage*, in special or charter operations, between points in Pickens, Anderson, Oconee, Greenville Counties, SC, on the one hand, and, on the other, points in the U.S., including AK and HI. (Hearing site: Greenville, SC.)

MC 130909F, filed May 19, 1980. Applicant's name and address are VERTEX ASSOCIATES TRANSPORTATION, INC., 1413 East Henrietta Rd., Rochester, NY 14626. The name under which operations will be performed is VERTEX ASSOCIATES TRANSPORTATION, INC. Applicant is represented by Michael A. Wargula in this proceeding whose address is 128 Sherburn Dr., Hamburg, NY 14075. The following are the names and business addresses of all persons who are officers and directors, partners (including limited or "silent" partners), and first five principal shareholders, with their appropriate titles: Timothy Lepper, President, Director, and shareholder, Wayne Parry, Secretary, Treasurer, Director, and shareholder (Same address as applicant). The daily operations will be managed by Timothy Lepper and Wayne Parry, whose business address is same as applicant.

Applicant is affiliated with the following shipper or warehouse: None.

MC 130912F, filed May 19, 1980. Applicant: BEACON TOURS, INC., 158 South 2nd East, Rexburg, ID 83440. Representative: Glen R. Stubbs (same address as applicant). To engage in operations, in interstate or foreign commerce, as a *broker*, at Rexburg, ID, to arrange for the transportation of passengers and their baggage, between points in Madison County, ID, on the one hand, and, on the other, points in the U.S., including AK and HI. (Hearing site: Boise, ID.)

MC 130913F, filed May 19, 1980. Applicant's name and address are BOB's TRANSFER, INC., 111 E. Maricopa Freeway, Phoenix, AZ 85021. The name under which operations will be performed is Bob's Transfer, Inc. Applicant is represented by Phil B. Hammond in this proceeding whose address is Suite 2201, 3003 N. Central Avenue, Phoenix, AZ 85012. Following are the names and business addresses of all persons who are officers and directors, partners (including limited or "silent" partners), and principal shareholders, with their appropriate titles: W. L. Schultheis, President/Treasurer (same address as applicant). Eva E. Schultheis, Vice President/Secretary (same address as applicant). The daily operations will be managed by W. L. Schultheis (same address as applicant). Applicant is affiliated with the following shipper or warehouse: None.

MC 130916F, filed May 19, 1980. Applicant: PEMBROOK TOURS & TRAVEL, INC., 1650 Sycamore Ave., Bohemia, NY 11716. Representative: Sidney J. Leshin, 575 Madison Ave., New York, NY 10022. To engage in operations, in interstate or foreign commerce, as a *broker*, at Bohemia, NY, in arranging for the transportation by motor vehicle, of *passengers and their baggage*, in charter or special operations, beginning and ending at points in Nassau, Suffolk, Westchester, NY, and New York, NY, and Fairfield, Middlesex and New Haven, CT and extending to points in the U.S., except AK and HI. (Hearing site: New York or White Plains, NY.)

MC 130919F, filed May 22, 1980. Applicant: GOLDEN HOLIDAY TOURS, INC., d.b.a. GLOBUS-GATEWAY CORPORATION, 727 West 7th St., Suite 1040, Los Angeles, CA 90017. Representative: Ronald K. Kolins, 420 International Square, 1875 Eye St. NW., Washington, DC 20006. To engage in operations, in interstate or foreign commerce, as a *broker* at Los Angeles, CA, to arrange for the transportation by motor vehicle, of *passengers and their baggage*, in special or charter operations, between points in the U.S., including AK and HI. (Hearing site: Los Angeles, CA.)

MC 130920F, filed May 22, 1980. Applicant's name and address are B & B TRUCKING, INC., 7840 "F" St., Omaha, NE 68127. The name under which operations will be performed is B & B TRUCKING, INC. Applicant is represented by Arlyn L. Westergren, Suite 106, 7101 Mercy Rd., Omaha, NE 68106. Following are the names and business addresses for all persons who are officers and directors, partners (including limited or "silient" partners), and first five principal shareholders, with their appropriate titles: Earl D. Berkey, President, Treasurer, Director and Shareholder, and Rose M. Berkey, Vice President, Secretary, Director and Shareholder, (same address as applicant). The daily operations will be managed by Earl D. Berkey, whose business address is (same address as applicant). Applicant is affiliated with the following shipper or warehouse: None.

MC 130928F, filed June 2, 1980. Applicant: STANLEY DEZARN BLUEGRASS TOURS, 1190 Briarwood Dr., Hamilton, OH 45013. Representative: Stanley Dezarn (same address as applicant). To engage in operations, in interstate or foreign commerce, as a *broker*, at Hamilton, OH, in arranging for the transportation by motor vehicle, of *passengers and their baggage*, in special or charter operations, beginning and ending at points in Butler County, OH, and extending to points in the U.S., including AK and HI. (Hearing site: None.)

MC 130292F filed June 2, 1980. Applicant's name and address are TAYLOR WAREHOUSE & TRUCKING, INC., 14615 Anson Ave., Santa Fe Springs, CA 90670. The name under which operations will be performed is TAYLOR WAREHOUSE & TRUCKING INC. Applicant is represented by William J. Monheim in this proceeding whose address in P.O. 1756, Whittier, CA 90609. Following are the names and business addresses for all persons who are officers and directors, partners (including limited or "silient" partners), and first five principal shareholders with their appropriate titles: Reed Taylor, President, Treasurer, Director and shareholder, and Betty Taylor, Vice-President, Secretary, Director, and shareholder, (same address as applicant). The daily operations will be managed by Reed Taylor whose business address is 14615 Anson Ave., Santa Fe Springs, CA 90670. Applicant is affiliated with the following shipper or warehouse: None.

MC 130931F, filed June 3, 1980. Applicant's name and address are MURAL TRANSPORT, INC., Black Horse Lane, South Brunswick, NJ 08902, PO Box 1785, North Brunswick, NJ 08902. The name under which operations will be performed is MURAL TRANSPORT, INC. Applicant is represented by W. C. Mitchell in this proceeding whose address is 370 Lexington Avenue, New York, NY 10017. Following are the names and business addresses for all persons who are officers and directors, partners (including limited or "silent" partners), and the first five principal shareholders, with their appropriate titles: Robert Shapiro, President, Treasurer, Director, and shareholder, Philip A. Duffy, Vice President, Charles A. Pascale, Secretary and Vice President—National (same address as applicant); S. S. Eisen, Director, and W. C. Mitchell, Director, each of whom has a business address at 370 Lexington Ave., New York, NY 10017. The daily operations will be managed by Robert Shapiro whose business address is Black Horse Lane, South Brunswick, NJ 08902, PO Box 1785, North Brunswick, NJ 08902. Applicant is affiliated with the following shipper or warehouse: None.

MC 130938F filed June 9, 1980. Applicant's name and address are C & H TRUCKING BROKERS, INC., P.O. Box 236, Harrington, DE 19952. The name under which operations will be performed is C & H TRUCK BROKERS, INC. Applicant is represented by John A. Guernsey in this proceeding, whose address is 2001 The Fidelity Bldg., Philadelphia, PA 19109. Following are the names and business address for all persons who are officers and directors, partners (including limited or "silent" partners), and first five principal shareholders, with their appropriate titles: Norris W. Heymann, President, Director, and shareholder, Route 1, Box 19, Ridgely, MD 21660. J. Robert Cramer, Secretary/Treasurer, Director, and shareholder, R.D. #2, Box 339, Felton, DE 19943. Edward McNamara, shareholder, State & Reed Rd., Dover, DE 19901. The daily operations will be managed by J. Robert Cramer whose business address is P.O. Box 236, Harrington, DE 19952. Applicant is affiliated with the following shipper or warehouse: None.

MC 130939F, filed June 6, 1980. Applicant: WILLILAM C. Reiner., 618 A Lake Lane, Locust Lake Village, Pocono Lake, PA 18347. Representative: Daniel H. Cochrane, Camelot Dr. and Route 940, Blakeslee, PA 18610. To engage in

operations, in interstate or foreign commerce, as a *broker*, at Pocono Lake, PA, in arranging for the transportation by motor vehicle, of *passengers and their baggage*, in special or charter operations, beginning and ending at points in Carbon and Monroe Counties, PA, and extending to points in the U.S., (including AK and HI). (Hearing site: Scranton or Philadelphia, PA.)

MC 130940F, filed June 6, 1980. Applicant's name and adddress are SERVICE WAREHOUSE, INC., 20225 Goddard Road, Taylor, MI 48180. The name under which operations will be performed is SERVICE WAREHOUSE CORPORATION. Applicant is represented by Martin J. Leavitt in this proceeding whose address is 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167. Following are the names and business addresses for all persons who are officers, and directors, partners (including limited or "silent" partners), and first five principal shareholders, with their appropriate titles: Joseph F. Farhat, president and Director, William Hammond, Director and Executive Vice-President, Lawrence T. Okonski, Director, Secretary, and Treasurer, C. Russell Wagstaff, Director, R–W Service System, Inc., sole shareholder, (same addresses as applicant), Gene E. Gann, Director, 300 South Livernois, Detroit, MI 48209. The daily operations will be managed by John Leonard whose business address is 20225 Goddard Road, Taylor, MI 48180. Applicant is affiliated with the following shipper or warehouse: McLouth Steel Corporation.

MC 130943F, filed June 9, 1980. Applicant: ADVENTURE UNLIMITED, LTD., 1530 Chestnut St., Philadelphia, PA 19102. Representative: Alan R. Squires, 818 Widener Bldg., 1339 Chestnut St., Philadelphia, PA 19107. To engage in operations in interstate or foreign commerce, as a *broker*, at Philadelphia, PA, in arranging for the transportation of *passengers and their baggage*, between points in MD, NJ, PA, VA, and DC, on the one hand, and, on the other, points in the U.S. (except 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., Extension—New York, N.Y.*, 54 M.C.C. 291 (1952). (Hearing site: Philadelphia, PA, or Wilmington, DE.

**Permanent Ex-Water Authority Decision-Notices**

Decided: June 24, 1980

The following applications are governed by 49 CFR 1062.3. Applicants seek to obtain motor common carrier authority to perform service within the commercial zone of port cities where the shipment has a prior or subsequent movement by maritime carrier. The full text and explanation of the rules are contained at 44 FR 7965, as corrected at 44 FR 37230.

The sole issue upon which these applications can be protested is the applicant's fitness to perform the service. Protests (an original and one copy) must be filed with the Commission within 30 days of the **Federal Register** publication. The protest must contain the *specific facts* being relied upon to challenge fitness, and must contain a certification that it has been served concurrently upon applicant's representative, or, if none is listed, upon the applicant. Applicant may file a reply statement to any protest. The filing of these statements will complete the record, unless it is later determined that more evidence must be supplied.

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 July 8, 1980.*

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 common carrier 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 to properly 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 duel operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a protestant, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. 10101 subject to the right of the Commission, which is expressly reserved, to impose such 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 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 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 3, Members Parker, Fortier, and Hill.

MC 127060 (Sub-9F), filed May 27, 1980. Applicant: GLOBAL MOVING & STORAGE, 15 South Spokane St., Seattle, WA 98134. Representative: Jack R. Davis, 1100 IBM Bldg., Seattle, WA 98101. Transporting *general commodities* (except Classes A and B explosives), between (a) Seattle, Tacoma, Everett, Bellingham, Longview, and Vancouver, WA, and (b) Portland, OR, restricted to traffic having a prior or subsequent movement by water. (Hearing site: Seattle, WA.)

MC 150620F, filed April 14, 1980. Applicant: CONTAINER SERVICES INTERNATIONAL, INC., Bldg. 339, Michigan Ave. Ext. Brookley Industrial Complex, Mobile, AL 36605. Representative: Leslie H. Stuart, Jr., 150 North Royal St., Mobile, AL 36601. Transporting *general commodities* (except Classes A and B explosives), between points in the commercial zone of Mobile, AL, restricted to traffic having a prior or subsequent movement by water. (Hearing site: Mobile, AL.)

MC 138237 (Sub-10F), filed August 20, 1979, previously noticed in the **Federal Register** issue of March 7, 1980. Applicant: METRO HAULING, INC., 20848 77th Ave. S., Kent, WA 98031. Representative: Jack R. Davis, 1100 IBM Bldg., Seattle, WA 98101. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general*

*commodities* (except classes A and B explosives), between points in the commercial zone of (a) Seattle, WA, (b) Tacoma, WA, (c) Vancouver, WA, (d) Longview, WA and (e) Portland, OR, restricted to traffic having a prior or subsequent movement by water. (Hearing site: Seattle, WA.)

Note.—The purpose of this republication is to add Longview, WA, in the territorial description.

**Motor Carrier Alternate Route Deviations—Notice**

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 August 7, 1980.

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. 30), GATEWAY TRANSPORTATION CO., INC., 455 Park Plaza Dr., La Crosse, WI 54601, filed June 16, 1980. 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 Interstate Hwy 57, then over Interstate Hwy 57 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 Sellersburg, IN, then over US Hwy 31A to Seymour, IN, then over US Hwy 50 to St. Louis, MO and return over the same route.

MC 105407 (Deviation No. 3), HANNIBAL QUINCY TRUCK LINES, INC., 3820 Wisman Lane, Quincy, IL 62301, filed June 13, 1980. Carrier's representative: Herman W. Huber, 101 E. High St., Jefferson City, MO 65101. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Hannibal, MO over the Mississippi River, then over IL Hwy 79 to junction IL Hwy 57, then over IL Hwy 57 to Quincy, IL 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 Hannibal, MO over US Hwy 36 to junction IL Hwy 96, then over IL Hwy 96 to Quincy, IL and return over the same route.

MC 105407 (Deviation No. 4), HANNIBAL QUINCY TRUCK LINES, INC., 3820 Wisman Lane, Quincy, IL 62301, filed June 13, 1980. Carrier's representative: Herman W. Huber, 101 E. High St., Jefferson City, MO 65101. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Quincy, IL over IL Hwy 57 to junction US Hwy 36, then over US Hwy 36 to junction IL Hwy 96, then over IL Hwy 96 to junction US Hwy 54, then over US Hwy 54 to Louisiana, 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 Quincy, IL over US Hwy 24 to junction US Hwy 61, then over US Hwy 61 to junction US Hwy 54 at Bowling Green, MO, then over US Hwy 54 to Louisiana, MO and return over the same route.

**Motor Carrier Intrastate Application(s)—Notice**

The following application(s) for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to Section 10931 (formerly Section 206(a)(6)) of the Interstate Commerce Act. These applications are governed by Special Rule 245 of the Commission's *general rules of practice* (49 CFR 1100.245), which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, and any other related matters shall be directed to the State Commission with which the application is filed and shall *not* be addressed to or filed with the Interstate Commerce Commission.

California Docket 59379, filed January 15, 1980. Applicant: RAM TRUCKING, INC., P.O. Box D, (1 Mile West of Mace Boulevard), Davis, CA 95620. Representative: Daniel W. Baker, 100 Pine Street, Suite 2550, San Francisco, CA 94111. Certificate of Public Convenience and Necessity sought to operate a freight service, as follows: Transportation of: General commodities, except the following: (a) Used household goods and personal effects not packed in accordance with the crated property requirements; (b) Livestock; (c) Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids, in bulk, in tank trucks, tank trailers, tank semi-trailers or a combination of such highway vehicles; (d) Commodities when transported in bulk in dump trucks or in hopper-type trucks; (e) Commodities when transported in motor vehicles equipped for mechanical mixing in transit; (f) Logs; (g) Fresh fruits and vegetables; (h) Articles of extraordinary value; (i) Automobiles, trucks, buses, and trailer coaches and campers. Between all points on or within 20 miles of the points on the following routes: (1) U.S. Hwy 101, between San Francisco and Salinas, inclusive; (2) California Hwy 17, between San Jose and Santa Cruz, inclusive; (3) California Hwy 68, between Salinas and Monterey, inclusive; (4) California Hwy 1, between Santa Cruz and Monterey, inclusive; (5) Interstate Hwy 5, between Redding and California Hwy 198, inclusive; (6) Interstate Hwy 505, between Interstate Hwy 5 and Interstate Hwy 80, inclusive; (7) California Hwy 99, between Red Bluff and Kingsburg, inclusive; (8) California Hwy 20, between Williams and Marysville, inclusive; (9) Interstate Hwy 80, between San Francisco and Sacramento, inclusive; (10) Interstate Hwy 580, between Oakland and Interstate Hwy 5, inclusive; (11) U.S. Hwy 50, between Interstate Hwy 580 and Stockton, inclusive; (12) California Hwy 12, between Interstate Hwy 80, near Fairfield, and California Hwy 99, near Lodi, inclusive; (13) California Hwy 160, between California Hwy 4 and Sacramento, inclusive; (14) California Hwy 4, between Interstate Hwy 80, near Pinole, and Stockton, inclusive; (15) California Hwy 152, between Gilroy and California Hwy 99, near Califa, inclusive; (16) California Hwy 132, between Interstate Hwy 5 and Modesto, inclusive. In performing the service, applicant may make use of any and all streets, roads, highways and bridges necessary or convenient for the performance of such service. Intrastate, interstate and foreign commerce authority is sought. Hearing: Date, time and place not yet fixed. Requests for procedural information should be addressed to California Public Utilities Commission, State Building, Civic

Center, San Francisco, CA 94102, and should not be directed to the Interstate Commerce Commission.

California Docket 59714, filed June 9, 1980. Applicant: BAY-SAC EXPRESS, INC., 260 East Virginia Street, San Jose, CA 95126. Representative: Marshall G. Berol, Esq., Dunne, Phelps, Mills & Jackson, 601 California Street, Suite 1900, San Francisco, CA 94108. Certificate of Public Convenience and Necessity sought to operate a freight service, as follows: Transportation of: General commodities between the following points serving all intermediate points on said routes and all off-route points within 20 miles thereof: (1) the San Francisco Territory as set forth in Appendix A; (2) San Francisco Territory and Santa Rosa on U.S. Highway 101; (3) Santa Rosa and Napa on State Highway 12; (4) Santa Rosa and Calistoga on various unnumbered county roads; (5) Calistoga and Vallejo on State Highway 29; (6) San Francisco and Auburn on Interstate Highway 80; (7) Yuba City and Fresno on State Highway 99; (8) San Francisco Territory and Stockton on Interstate Highways 580, 205 and 5; (9) San Francisco Territory and Paso Robles on U.S. Highway 101; (10) Monterey and Salinas on State Highway 68; (11) San Francisco Territory and Santa Cruz on State Highway 17; (12) Richmond and Stockton on State Highway 4; (13) Sonol and Martinez on Interstate Highway 680; (14) Sacramento and Placerville on U.S. Highway 50; (15) Nevada City and Jackson on State Highway 49; (16) Gilroy and Junction U.S. Highway 99 on State Highway 152. Except that Applicant may not transport any shipments of the following: (1) Used household goods, personal effects and office, store and institution furniture, fixtures and equipment not packed in accordance with the crated property requirements set forth in Item 5 of Minimum Rate Tariff 4–B; (2) Automobiles, trucks and buses, viz.: new and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses and taxis; freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses and bus chassis; (3) Livestock, viz.: barrows, boars, bulls, butcher hogs, calves, cattle, cows, dairy cattle, ewes, beeder pigs, gilts, goats, heifers, hogs, kids, lambs, oxen, pigs, rams, (bucks), sheep, sheep campb outfits, sows, steers, stags, swine or ethers; (4) Liquids, compressed gases, commodities in semiplastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles; (5) Commodities when transported in bulk in dump trucks or in hopper-type trucks; (6) Commodities when transported in motor vehicles equipped for mechanical mixing transit; (7) Cement; (8) Logs; (9) Articles of unusual or extraordinary value. Applicant may use any and all highways and roads between the areas described for operating convenience.

**San Francisco Territory**

San Francisco Territory includes all the City of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County Line meets the Pacific Ocean; thence easterly along said County Line to a point one mile west of State Highway 82; southerly along an imaginary line one mile west of and paralleling State Highway 82 to its intersection with Southern Pacific Company right-of-way at Arastradero Road; southeasterly along the Southern Pacific Company right-of-way to Pollard Road, including industries served by the Southern Pacific Company spur line extending approzimately two miles southwest from Simla to Permanente; easterly long Pollard Road to W. Parr Avenue; easterly along W. Parr Avenue to Capri Drive; southerly along Capri Drive to Division Street; easterly along Division Street to the Southern Pacific Company right-of-way; southerly along the Southern Pacific right-of-way to the Campbell-Los Gatos City Limits; easterly along said limits and the prolongation thereof to South Bascom Avenue (formerly San Jose-Los Gatos Road), northeasterly along South Bascom Avenue to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to State Highway 82; northwesterly along State Highway 82 to Tully Road; northeasterly along Tully Road and the prolongation thereof to White Road; northwesterly along White Road to McKee Road; southwesterly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 238 (Oakland Road); northerly along State Highway 238 to Warm Springs; northerly along State Highway 238 (Mission Blvd.) via Mission San Jose and Niles to Hayward; northerly along Foothill Blvd. and MacArthur Blvd. to Seminary Avenue; easterly along Seminary Avenue to Mountain Blvd.; northerly along Mountain Blvd. to Warren Blvd. (State Highway 13); northerly along Warren Blvd. to Broadway Terrace; westerly along Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland Boundary Line; northerly along said boundary line to the Campus Boundary of the University of California; westerly, northerly and easterly along the campus boundary to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to San Pablo Avenue (State Highway 123); northerly along San Pablo Avenue to and including the City of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco waterfront at the foot of Market Street; westerly along said waterfront and shoreline to the Pacific Ocean; southerly along the shoreline of the Pacific Ocean to point of beginning. Intrastate, interstate and foreign commerce authority sought. Hearing: Date, time and place not yet fixed. Requests for procedural information should be addressed to California Public Utilities Commission, State Building, Civic Center, San Francisco, CA 94102, and should not be directed to the Interstate Commerce Commission.

Florida Docket 800465–CCT, filed May 23, 1980. Applicant: AUSTIN TUPLER TRUCKING, INC., 6570 SW 47th Court, Ft. Lauderdale, FL 33314. Representative: Richard B. Austin, 320 Rochester Building, 8390 NW 53d Street, Miami, FL 33166. Certificate of Public Convenience and Necessity sought to operate a freight service, as follows: Transportation of: Crude gypsum, in bulk, between all points in Florida. Intrastate, interstate and foreign commerce authority sought. Hearing: Date, time and place not yet fixed. Requests for procedural information should be addressed to Florida Public Service Commission, Fletcher Bldg., 101 East Gaines Street, Tallahassee, FL 32304, and should not be directed to the Interstate Commerce Commission.

Montana Docket T–5021, filed April 21, 1980. Applicant: ROBERT L. BELL, Skaar Route, Box 264, Sidney, MT 59270. Representative: David L. Jackson, Jackson, Oitziner & Murdo, 203 North Ewing Street, Helena, MT 59601. Certificate of Public Convenience and Necessity sought to operate a freight service, as follows: Transportation of: General commodities within the City of Sidney, MT, and between points and places within a seventy-five (75) mile radius thereof, all movements to be conducted wholly within the State of Montana. Class B, except that transportation of the following commodities is prohibited: A. Heavy equipment and oilfield equipment, materials and supplies (Mercer Description Commodities); B. Class A

and B explosives; C. (1) Money, currency, coin, bullion, precious metals, silverware, jewelry, precious stones, paintings, negotiable securities, negotiable bank checks and other valuables requiring special handling and security; (2) Mail between post office boxes and customers of Wells Fargo Armored Service Corporation between all points and places in the State of Montana; (3) Audit and accounting media, data processing media and business records; (4) Processed and unprocessed film and microfilm and incidental supplies relating to snapshots and microfilm; (Limitation: Film for commercial exhibition is excluded.); (5) Non-negotiable securities; (6) Non-negotiable bank checks and valuable papers, between all points and places in the State of Montana; D. Commodities in bulk, in tank vehicles; E. Household goods; and F. Ashes, trash, waste, refuse, rubbish and garbage. Intrastate, interstate and foreign commerce authority sought. Hearing: Date, time and place not yet fixed. Requests for procedural information should be addressed to Montana Public Service Commission, Transportation Division, 1227 11th Ave., Helena, MT 59601, and should not be directed to the Interstate Commerce Commission.

**Permanent Authority Decisions—Decision-Notice Substitution Applications: Single-Line Service for Existing Joint-Line Service**

Decided: June 18, 1980.

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 August 7, 1980.

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 occured within the one-year period immediately proceeding 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 July 8, 1980.*

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.gs., 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 August 7, 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 only a single operating right.

Applicants must comply with all specific conditions set forth in the grant or grants or 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 4, Members Fitzpatrick, Fisher, and Dowell.

MC 113974 (Sub-71F), filed February 26, 1980. Applicant: PITTSBURGH & NEW ENGLAND TRUCKING CO., 211 Washington Avenue, Dravosburg, PA 15034. Representative: James D. Porterfield, (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *commodities* which by reason of size or weight require the use of special equipment, and (2) *iron and steel articles,* from points in CT, DE, ME, MD, MA, NH, NJ, NY, OH, PA, RI, VT, DC, and those in MI on and south of Interstate Hwy 94, and those in WV within 125 miles of Wheeling, WV, including Wheeling, to points in AL, AR, LA, TX, and TN. (Hearing site: Pittsburgh, PA, or Washington, DC.)

Note.—The sole purpose of this application is to substitute single-line for joint-line operations.

**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 Part 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 July 18, 1980. 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 83539 (Sub-E6) (correction), filed May 5, 1974 published in the **Federal Register** June 17, 1975. Applicant: C & H TRANSPORTATION CO., INC., P.O. Box 270535, Dallas, Texas 75227. Representative: H. N. Cunningham, III (same as above.) (1) *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, not including the stringing and picking up of pipe in connection with pipelines; *Machinery, materials, equipment and supplies* used in, or in connection with the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, including the stringing and picking up thereof, except the stringing or picking up of pipe in connection with main or trunk pipelines; *Earth drilling machinery and equipment* and *machinery, materials, supplies and pipe* incidental to, used in, or in connection with the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, the completion of holes or wells drilled, the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and the injection or removal of commodities into or from holes or wells between points in CA, on the one hand, and, on the other, points in IN. (Restricted against traffic originating at or destined to points in the Southern California Counties of San Bernardino, except the City of San Bernardino's commercial zone, and points southwest of said zone to the County Line; Riverside, except the City of Riverside's commercial zone, and points west of said zone to the County Line; San Diego; and Imperial.) (WY and OK.)*; (2) *"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, not including the stringing and picking up of pipe in connection with pipelines; *Machinery, materials, equipment and supplies* used in, or in connection with the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, including the stringing and picking up thereof, except the stringing or picking up of pipe in connection with main or trunk pipelines; *Earth drilling machinery and equipment*, and *machinery, equipment, materials, supplies and pipe* incidental to, used in, or in connection with the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, the completion of holes or wells drilled, the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and the injection or removal of commodities into or from holes or wells" between points in CA, on the one hand, and, on the other, points in KY. (WY and OK.)*; (3) *"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 *Machinery, equipment, materials, and supplies* used in, or in connection with, the construction, operation, repair, servicing, maintenance and dismantling of pipelines, including the stringing and picking up thereof, except in connection with main pipelines; *Earth drilling machinery and equipment*, and *machinery, equipment, materials, supplies and pipe* incidental to, used in, or in connection with the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, the completion of holes or wells drilled, the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and the injection or removal of commodities into or from holes or wells" between points in CA, on the one hand, and, on the other, points in MI. (WY, CO and Coffeyville, KS.)*; (4) *"Machinery, equipment, materials (other than gilsonite), 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; *Earth drilling machinery and equipment*, and *machinery, equipment, materials, supplies and pipe* incidental to, used in, or in connection with the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, the completion of holes or wells drilled, the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and the injection or removal of commodities into or from holes or wells" between points in CA, on the one hand, and, on the other, points in MT. (WY.)*; (5) *"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; *Earth drilling machinery and equipment*, and *machinery, equipment, materials, supplies and pipe* incidental to, used in, or in connection with the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, the completion of holes or wells drilled, the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and the injection or removal of commodities into or from holes or wells" between points in CA, on the one hand, and, on the other, points in NE. (WY.*); (6) *"Machinery, equipment, materials, and supplies*, used in, or in connection with the operation, repair, servicing, and maintenance of pipelines used in the transmission of natural gas, petroleum, and petroluem products, but not including the stringing or picking up of pipe in connection with pipelines; *Earth drilling machinery and equipment*, and *machinery, equipment, materials, supplies and pipe* incidental to, used in, or in connection with the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, the completion of holes or wells drilled, the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and the injection or removal of commodities into or from holes or wells" between points in CA, on the one hand, and, on the other, points in NY. (WY, CO, KS and Braddock, PA.)*; (7) *"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, *machinery,*

*materials, equipment, and supplies,* used in, or in connection with, the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, including the stringing and picking up thereof; *Earth drilling machinery and equipment,* and *machinery,* equipment, materials, supplies and pipe incidental to, used in, or in connection with the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, the completion of holes or wells drilled, the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and the injection or removal of commodities into or from holes or wells" between points in CA, on the one hand, and, on the other, points in NC. (WY, CO and KS.)*; (8) *"Machinery, equipment, materials (other than gilsonite), and supplies* used in or in connection with the discovery, development, production, refining, manufacturing, processing, storage, transmission, and distribution of natural gas and petroleum, and their products and by-products; *Earth drilling machinery and equipment,* and *machinery, equipment, materials, supplies and pipe* incidental to, used in, or in connection with the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling

machinery and equipment, the completion of holes or wells drilled, the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and the injection or removal of commodities into or from holes or wells" between points in CA, on the one hand, and, on the other, points in ND. (WY.)*; (9) *"Machinery, equipment, materials, and supplies* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distrubtion of natural gas and petroleum and their products and by-products, except the stringing and picking up of pipe in connection with main or trunk pipelines; *Earth drilling machinery and equipment,* and *machinery, equipment, materials, supplies and pipe* incidental to, used in, or in connection with the transportation, installation, removal, operations, repair, servicing, maintenance and dismantling of drilling machinery and equipment, the completion of holes or wells drilled, the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and the injection or removal of commodities into or from holes or wells" between points in CA, on the one hand, and, on the other, points in OH. (Restricted against traffic originating at or destined to points in the Southern California Counties of San Bernardino, Riverside, San Diego and Imperial.) (WY and Tulsa, OK.)*; (10) *"Machinery, equipment, materials, and supplies,* used in, or in connection with the operation, repair, servicing, and maintenance of pipelines used in the transmission of natural gas, petroleum, and petroleum products, but not including the stringing or picking up of pipe in connection with pipelines; *Earth drilling machinery and equipment,* and *machinery, equipment, materials, supplies and pipe* incidental to, used in, or in connection with the transportation, installation, removal, operations, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, the completion of holes or wells drilled, the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and the injection or removal of commodities into or from holes or wells" between points in CA, on the one hand, and, on the other, points in PA. (WY, CO, KS and Braddock, PA.)*; (11) *"Machinery, equipment, materials (other than gilsonite), 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; *Earth drilling machinery and equipment,* and *machinery, equipment, materials, supplies and pipe* incidental to, used in, or in connection with the transportation, installation, removal, operations, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, the completion of holes or wells drilled, the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and the injection or removal of commodities into or from holes or wells" between points in CA, on the one hand, and, on the other, points in SD. (WY.)*; (12) *"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, *machinery, equipment, materials, and supplies,* used in, or in connection with, the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, including the stringing and picking up thereof; *Earth drilling machinery and equipment,* and *machinery, equipment, materials, supplies and pipe* incidental to, used in, or in connection with the transportation, installation, removal, operations, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, the completion of holes or wells drilled, the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and the injection or removal of commodities into or from holes or wells" between points in CA, on the one hand, and, on the other, points in TN. (WY, CO and KS.)*; (13) *"Machinery, equipment, materials, and supplies* used in, or in connection with operation, repair, servicing, and maintenance of pipelines used in the transmission of natural gas, petroleum, and petroleum products, but not including the stringing or picking up of pipe in connection with pipelines; *Earth drilling machinery and equipment,* and *machinery, equipment, materials, supplies and pipe* incidental to, used in, or in connection with the transportation, installation, removal, operations, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, the completion of holes or wells drilled, the production, storage, and transmission of commodities resulting from drilling, operations at well or hole sites, and the injection or removal of commodities into or from holes or wells" between points in CA, on the one hand, and, on the other, points in VA. (WY, CO, and AR.)*; (14) *"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 *Machinery, equipment, materials and supplies* used in, or in connection with, the construction, operation, repair, servicing, maintenance and dismantling of pipelines, including the stringing and picking up thereof, except in connection with main pipelines; *Earth drilling machinery and equipment,* and *machinery, equipment, materials, supplies and pipe* incidental to, used in, or in connection with the transportation, installation, removal, operations, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, the completion of holes or wells drilled, the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and the injection or removal of commodities into or from holes or wells" between points in CA, on the one hand, and, on the other, points in WV. (WY, CO and Coffeyville, KS.)*; (15) *"Machinery,*

*equipment, materials, and supplies* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distrubtion of natural gas and petroleum and their products and by-products, and *machinery, equipment, materials, and supplies,* used in, or in connection with the construction,

operation, repair, servicing, maintenance, and dismantling of pipeline, including the stringing and picking up thereof; except in connection with main or trunk pipelines; *Earth drilling machinery and equipment,* and *machinery, equipment, materials, supplies and pipe* incidental to, used in or in connection with the transportation, installation, removal, operation, repair, servicing, maintenance and dismantling of drilling machinery and equipment, the completion of holes or wells drilled, the production, storage, and transmission of commodities resulting from drilling, operations at well or holes sites, and the injection or removal of commodities into or from holes or wells" between points in CA, on the one hand, and, on the other, points in WI. (WY.)*; (16) *"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, *machinery, materials, equipment, and supplies,* used in, or in connection with, the construction, operation, repair, servicing, maintenance, and dismantling of pipeline, including the stringing and picking up thereof; *Earth drilling machinery and equipment,* and *machinery, equipment, materials, supplies and pipe* incidental to, used in or in connection with the transportation, installation, removal, operation, repair, servicing, maintenance and dismantling of drilling machinery and equipment, the completion of holes or wells drilled, the production, storage, and transmission of commodities resulting from drilling, operations at well or holes sites, and the injection or removal of commodities into or from holes or wells" between points in CO, on the one hand, and, on the other, points in FL. (KS or OK.)*; (17) *"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, *machinery, materials, equipment, and supplies,* used in, or in connection with, the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, including the stringing and picking up thereof; *Earth drilling machinery and equipment,* and *machinery, equipment, materials, supplies and pipe* incidental to, used in or in connection with the transportation, installation, removal, operation, repair, servicing, maintenance and dismantling of drilling machinery and equipment, the completion of holes or wells drilled, the production, storage, and transmission of commodities resulting from drilling, operations at well or hole sites, and the injection or removal of commodities into or from holes or wells" between points in CO, on the one hand, and, on the other, points in GA. (KS or OK.)*; (18) *"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, not including the stringing and picking up of pipe in connection with pipelines; *Machinery, materials, equipment, and supplies,* used in, or in connection with, the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, including the stringing and picking up thereof, except the stringing or picking up of pipe in connection with main or trunk pipelines; *Earth drilling machinery and equipment,* and *machinery, equipment, materials, supplies and pipe* incidental to, used in or in connection with the transportation, installation, removal, operation, repair, servicing, maintenance and dismantling of drilling machinery and equipment, the completion of holes or wells drilled, the production, storage, and transmission of commodities resulting from drilling, operations at well or hole sites, and the injection or removal of commodities into or from holes or wells" between points in CO, on the one hand, and, on the other, points in KY. (OK.)*; (19) *"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, *machinery, materials, equipment, and supplies,* used in, or in connection with, the construction, operation, repair, servicing, maintenance, and dismantling of pipeline, including the stringing and picking up thereof; *Earth drilling machinery and equipment,* and *machinery, equipment, materials, supplies and pipe* incidental to, used in, or in connection with the transportation, installation, removal, operation, repair, servicing, maintenance and dismantling of drilling machinery and equipment, the completion of holes or wells drilled, the production, storage, and transmission of commodities resulting from drilling, operations at well or hole sites, and the injection or removal of commodities into or from holes or wells" between points in CO, on the one hand, and, on the other, points in LA. (OK or KS.)*; (20) *"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, *machinery, materials, equipment, and supplies,* used in, or in connection with, the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, including the stringing and picking up thereof; *Earth drilling machinery and equipment,* and *machinery, equipment, materials, supplies and pipe* incidental to, used in, or in connection with the transportation, installation, removal, operation, repair, servicing, maintenance and dismantling of drilling machinery and equipment, the completion of holes or wells drilled, the production, storage, and transmission of commodities resulting from drilling, operations at well or hole sites, and the injection or removal of commodities into or from holes or wells" between points in CO, on the one hand, and, on the other, points in MS. (OK, KS or TX.)*; (21) *"Machinery, equipment, materials, and supplies* used in, or in connection with the operation, repair, servicing and maintenance of pipelines used in the transmission of natural gas, petroleum, and petroleum products, but not including the stringing or picking up of pipe in connection with pipelines; *Earth drilling machinery and equipment,* and *machinery, equipment, materials, supplies and pipe* incidental to, used in or in connection with the transportation, installation, removal, operation, repair, servicing, maintenance and dismantling of drilling machinery and equipment, the completion of holes or wells drilled, the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites,

and the injection or removal of commodities into or from holes or wells" between points in CO, on the one hand, and, on the other, points in NY. (Restricted against traffic originating at or destined to points in the Northeastern Colorado Counties of Sedgwick, Phillips and Logan.) (Coffeyville, KS and WV.)*; (22) *"Machinery, equipment, materials, and supplies,* used in, or in connection with the operation, repair, servicing, and

maintenance of pipelines used in the transmission of natural gas, petroleum, and petroleum products, but not including the stringing or picking up of pipe in connection with pipelines; Earth drilling machinery and equipment, and *machinery, equipment, materials, supplies and pipe* incidental to, used in, or in connection with the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, the completion of holes or wells drilled, the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and the injection or removal of commodities into or from holes or wells" between points in CO, on the one hand, and, on the other, points in PA. (Coffeyville, KS and WV.)*; (23) "*Machinery, equipment, materials, and supplies,* used in, or in connection with the operation, repair, servicing, and maintenance of pipelines used in the transmission of natural gas, petroleum, and petroleum products, but not including the stringing or picking up of pipe in connection with pipelines; *Earth drilling machinery and equipment,* and *machinery, equipment, materials, supplies and pipe* incidental to, used in, or in connection with the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, the completion of holes or wells drilled, the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and the injection or removal of commodities into or from holes or wells" between points in CO, on the one hand, and, on the other, points in SC. (KS and NC or GA.)*; (24) "*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, *machinery, materials, equipment, and supplies,* used in, or in connection with, the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, including the stringing and picking up thereof; *Earth drilling machinery and equipment,* and *machinery, equipment, materials, supplies and pipe* incidental to, used in, or in connection with the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, the completion of holes or wells drilled, the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and the injection or removal of commodities into or from holes or wells" between points in CO, on the one hand, and, on the other, points in TN. (KS or OK.)*; (25) "*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 *machinery, equipment, materials, and supplies* used in, or in connection with, the construction, operation, repair, servicing, maintenance and dismantling of pipelines, including the stringing and picking up thereof, except in connection with main pipelines; *Earth drilling machinery and equipment,* and *machinery, equipment, materials, supplies and pipe* incidental to, used in, or in connection with the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, the completion of holes or wells drilled, the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and the injection or removal of commodities into or from holes or wells" between points in CO, on the one hand, and, on the other, points in WV. (Coffeyville, KS.)*; (26) "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, not including the stringing and picking up of pipe in connection with pipelines; *machinery, materials, equipment and supplies* used in, or in connection with the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, including the stringing and picking up thereof, except the stringing or picking up of pipe in connection with main or trunk pipelines; *Earth drilling machinery and equipment,* and *machinery, equipment, materials, supplies and pipe* incidental to, used in, or in connection with the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, the completion of holes or wells drilled, the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and the injection or removal of commodities into or from holes or wells" between points in IL, on the one hand, and, on the other, points in LA. (AR or MS.)*; (27) "*Machinery, equipment, materials, and supplies,* used in, or in connection with the operation, repair, servicing, and maintenance of pipelines used in the transmission of natural gas, petroleum, and petroleum products, but not including the stringing or picking up of pipe in connection with pipelines; *Earth drilling machinery and equipment,* and *machinery, equipment, materials, supplies and pipe* incidental to, used in, or in connection with the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, the completion of holes or wells drilled, the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and the injection or removal of commodities into or from holes or wells" between points in IL, on the one hand, and, on the other, points in NY. (Braddock, PA.)*; (28) "*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, not including the stringing or picking up of pipe in connection with pipelines; *Earth drilling machinery and equipment,* and *machinery, equipment, materials, supplies and pipe* incidental to, used in, or in connection with the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, the completion of holes or wells drilled, the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and the injection or removal of commodities into or from holes or wells" between points in IL, on the one hand, and, on the other, points in NC. (TN.)*; (29) "*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, not including the stringing and picking up of pipe in connection with pipelines; *machinery, materials,* equipment and supplies used in, or in connection with the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, including the stringing and picking up thereof, except the stringing or picking up of pipe in connection with main or trunk pipelines; *Earth drilling machinery and equipment,* and *machinery, equipment, materials, supplies and pipe* incidental to, used in, or in connection with the transportation,

installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, the completion of holes or wells drilled, the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and the injection or removal of commodities into or from holes or wells" (A) between points in IL, on the one hand, and, on the other, points in OR. (Restricted against traffic originating at or destined to points in the Eastern Oregon Counties of Wallowa, Union, Baker, Grant, Harney and Malheur.) (B) between points in IL, on the one hand, and, on the other, points in OR. (Restricted against traffic originating at or destined to points in or north

of the Illinois Counties of Hancock, McDonough, Warren, Knox, Stark, Bureau, Lee, DeKalb, Kane, DuPage and Cook.) (OK.)*; (30) *"Machinery, equipment, materials, and supplies,* used in, or in connection with the operation, repair, servicing, and maintenance of pipelines used in the transmission of natural gas, petroleum, and petroleum products, but not including the stringing or picking up of pipe in connection with pipelines; *Earth drilling machinery and equipment,* and *machinery, equipment, materials, supplies and pipe* incidental to, used in, or in connection with the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, the completion of holes or wells drilled, the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and the injection or removal of commodities into or from holes or wells" between points in IL, on the one hand, and, on the other, points in SC. (KY.)*; (31) *"Machinery, equipment, materials, and supplies,* used in, or in connection with the operation, repair, servicing, and maintenance of pipelines used in the transmission of natural gas, petroleum, and petroleum products, but not including the stringing or picking up of pipe in connection with pipelines; *Earth drilling machinery and equipment,* and *machinery, equipment, materials, supplies and pipe* incidental to, used in, or in connection with the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, the completion of holes or wells drilled, the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and the injection or removal of commodities into or from holes or wells" between points in IL, on the one hand, and, on the other, points in VA. (KY.)*; (32) *"Machinery, equipment, materials and supplies,* used in, or in connection with the operation, repair, servicing, and maintenance of pipelines used in the transmission of natural gas, petroleum, and petroleum products, but not including the stringing or picking up of pipe in connection with pipelines; *Earth drilling machinery and equpment,* and *machinery, equipment, materials, supplies and pipe* incidental to, used in, or in connection with the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, the completion of holes or wells drilled, the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and the injection or removal of commodities into or from holes or wells" between points in IL, on the one hand, and, on the other, points in WV. (KY.)*; (33) *"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 *machinery, equipment, materials, and supplies* used in, or in connection with, the construction, operation, repair, servicing, maintenance and dismantling of pipelines, including the stringing and picking up thereof, except in connection with main pipelines; *Earth drilling machinery and equipment,* and *machinery, equipment, materials, supplies and pipe* incidental to, used in, or in connection with the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, the completion of holes or wells drilled, the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and the injection or removal of commodities into or from holes or wells" (A) between points in MI, on the one hand, and, on the other, points in NV. (Restricted against traffic originating at or destined to points in the upper MI peninsula and the northern lower MI peninsula Counties of Emmet, Sheboygan and Presque Isle.), (B) between points in MI, on the one hand, and, on the other, points in NV. (Restricted against traffic originating at or destined to points in Northern Nevada Counties of Humboldt and Elko.) (Coffeeville, KS.)*; (34) *"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, not including the stringing and picking up of pipe in connection with pipelines; *machinery, materials, equipment and supplies* used in, or in connection with construction, operation, repair, servicing, maintenance, and dismantling of pipelines, including the stringing and picking up thereof, except the stringing or picking up of pipe in connection with main or trunk pipelines; *Earth drilling machinery and equipment,* and *machinery, equipment, materials, supplies and pipe* incidental to, used in, or in connection with the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, the completion of holes or wells drilled, the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and the injection or removal of commodities into or from holes or wells" between points in MI, on the one hand, and, on the other, points in NM. (Tulsa, OK.)*; (35) *"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, not including the stringing and picking up of pipe in connection with pipelines; *machinery, materials, equipment and supplies* used in, or in connection with the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, including the stringing and picking up thereof, except the stringing or picking up of pipe in connection with main or trunk pipelines; *Earth drilling machinery and equipment,* and *machinery, equipment, materials, supplies and pipe* incidental to, used in, or in connection with the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, the completion of holes or wells drilled, the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and the injection or removal of commodities into or from holes or wells" between points in MI, on the one hand, and, on the other, points in OK. (Tulsa, OK.)*; and (36) *"Machinery, equipment, materials (other than gilsonite), 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; machinery, materials, equipment, and supplies used in, or in

connection with, the construction, operation, repair, servicing, maintenance and dismantling of pipelines, including the stringing and picking up thereof, except in connection with main pipelines; *Earth drilling machinery and equipment,* and *machinery, equipment, materials, supplies and pipe* incidental to, used in, or in connection with the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, the completion of holes or wells drilled, the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and the injection or removal of commodities into or from holes or wells" between points in MI, on the one hand, and, on the other, points in UT. (Coffeyville, KS and CO.)*

(Gateways eliminated: asterisked). Purpose of correction—clarify authority.

By the Commission.

**Agatha L. Mergenovich.**

*Secretary.*

[FR Doc. 80-20306 Filed 7-7-80; 8:45 am]

BILLING CODE 7035-01-M

## JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

### Advisory Committee on Actuarial Examinations; Invitation for Membership on Advisory Committee

The Joint Board for the Enrollment of Actuaries (Joint Board), established under the Employee Retirement Income Security Act of 1974 (ERISA), is responsible for the enrollment of individuals who wish to perform actuarial services under ERISA. The Joint Board has established an Advisory Committee on Actuarial Examination (Advisory Committee) to assist in its examination duties mandated by ERISA. The term of the current Advisory Committee will expire in 1980 and the Joint Board proposes to renew such Advisory Committee's charter for a further two year period. This notice describes the Advisory Committee and invites applications from those interested in serving on it.

1. *General.* To qualify for enrollment to perform actuarial services under ERISA, an applicant must have requisite pension actuarial experience and must satisfy knowledge requirements as provided in the Joint Board's regulations. The knowledge requirements may be met by successful completion of Joint Board examinations in basic actuarial mathematics and methodology and in actuarial mathematics and methodology relating to pension plans. An individual also may meet the examination requirements by successful completion of actuarial organization examinations which the Joint Board has determined cover the same subject areas, have at least a comparable level of difficulty, and require at least the same competence as its examinations.

The Joint Board, in cooperation with the Society of Actuaries, the American Society of Pension Actuaries, and the Casualty Actuarial Society, jointly sponsor examinations which are acceptable to the Joint Board for enrollment purposes, and which are acceptable to those actuarial examinations as part of their respective education and examination programs. The Joint Board and the participating actuarial organizations believe this program of joint sponsorship has produced and will continue to produce examinations which are mutually satisfactory and of at least the same quality as past Joint Board examinations.

2. *Purpose.* The Advisory Committee plays an integral role in assisting the Joint Board to meet its mandate to provide candidates for enrollment an examination program which will enable them to demonstrate the knowledge necessary to qualify for enrollment. The purpose of the Advisory Committee, as renewed, will remain that of assisting the Joint Board in fulfilling this responsibility. The Advisory Committee will discuss the philosophy of, and topics appropriately covered by, such examinations and will make recommendations relative thereto. It also will recommend to the Joint Board proposed examination questions. The Joint Board will maintain liaison with the Advisory Committee in this process to ensure that its views of examination content are understood.

3. *Function.* The manner in which the Advisory Committee functions in preparing examination questions is intertwined with the jointly sponsored examination program. Under that program, the participating actuarial organizations draft questions and submit them to the Advisory Committee for its consideration. After review of these draft questions, the Advisory Committee will select appropriate questions, modify them as seems desirable and then prepare one or more drafts of actuarial examinations to be recommended to the Joint Board. (In addition to revisions of the draft questions, it may be necessary for the Advisory Committee to originate questions of its own and include them in what is recommended.) The final examinations are then used by the Joint Board for enrollment purposes and by the participating actuarial organizations in their education and examination programs.

4. *Membership.* The Joint Board will take steps to ensure maximum practicable representation on the Advisory Committee of points of view regarding the Joint Board's actuarial examinations extant in the community of actuaries. In this regard, appointments will be made from the actuarial community at large and from nominees provided by the actuarial organizations. Since the members of the actuarial organizations are a large segment of the actuarial profession, this appointive process ensures expression of a broad spectrum of viewpoints. The appointment of actuaries, regardless of affiliation with an actuarial organization, will help assure independent views in the carrying out of the Advisory Committee's assignments. All members of the Advisory Committee will be expected to act in the public interest; that is, to produce examinations which will ensure a level of competence among those who will ultimately be accorded enrollment to perform actuarial services under ERISA.

Membership normally will be limited to actuaries previously enrolled by the Joint Board. The Advisory Committee will be comprised of no more than nine members.

The Advisory Committee will meet about six times a year. Advisory Committee members should be prepared to devote from 100 to 150 hours, including meeting time, to the work of the Advisory Committee over the course of a year. Members will be reimbursed for travel, meals and lodging expenses incurred, in accordance with applicable government regulations, to attend Advisory Committee meetings.

Actuaries interested in serving on the Advisory Committee should express their interest and fully state their qualifications in a letter addressed to: Joint Board for the Enrollment of Actuaries, c/o U.S. Department of the Treasury, Washington, D.C. 20220.

The deadline for accepting applications is August 18, 1980.

Dated: July 2, 1980.

**Leslie S. Shapiro,**

*Executive Director, Joint Board for the Enrollment of Actuaries.*

[FR Doc. 80-20287 Filed 7-7-80; 8:45 am]

BILLING CODE 4810-25-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Reallocation of Funds

Note.—This document originally appeared in the Federal Register for Thursday, July 3, 1980. It is reprinted in this issue to meet requirements for publication on an assigned day of the week. (See OPR notice 41 FR 32914, August 6, 1976.)

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Thirty-Day Notice of Intent to Reallocate Funds Under Title II–D of the Comprehensive Employment and Training Act (CETA).

**SUMMARY:** Pursuant to 20 CFR 676.47, the Department of Labor announces its intent to reallocate funds in the following amounts from the CETA prime sponsors indicated below. The purpose of this notice is to provide 30 days notice to all interested parties of the Department's intent to reallocate these funds.

**COMMENTS DUE:** August 4, 1980.

**FOR FURTHER INFORMATION CONTACT:** Robert Anderson, Administrator, Office of Comprehensive Employment Development, 601 D Street, N.W., Room 5010, Washington, D.C. 20213, Telephone: 202–376–6254.

**SUPPLEMENTARY INFORMATION:** A review of the following prime sponsors' actual Title II–D operations, compared to their Fiscal Year 1980 planned operations as of May 31, 1980, indicates that these prime sponsors are substantially below plan and are not effectively utilizing the funds available to them. Therefore, the Department is notifying these prime sponsors that it intends to reallocate excess funds which have accumulated due to the underperformance.

The estimated amount to be reallocated from each prime sponsor is indicated below. The prime sponsors are given 30 days to reply to the notice of intent to reallocate and to correct identified deficiencies. The Governor of the appropriate State and the general public are also given 30 days in which to comment on the proposed allocations.

**Region I**

| | |
|---|---|
| New Haven, Connecticut | 12,600 |
| BOS—Rhode Island | 26,300 |
| City of Cambridge, Massachusetts | 22,000 |
| York County, Maine | 56,000 |

**Region II**

| | |
|---|---|
| Albany City, New York | 27,852 |
| Rensselaer County, New York | 15,884 |
| Elizabeth City, New Jersey | 34,481 |

**Region III**

| | |
|---|---|
| Westmoreland County, Pennsylvania | 29,704 |
| Prince Georges County, Maryland | 44,176 |
| Northern Virginia Consortium | 31,447 |

**Region IV**

| | |
|---|---|
| BOS—Florida | 138,425 |
| Broward County | 193,795 |
| Pinellas/St. Petersburg Consortium | 54,579 |
| Seminole County | 71,190 |
| City of Tampa | 60,116 |
| Hillsborough County | 45,878 |
| South Carolina Statewide Consortium | 1,607,780 |
| BOS—Tennessee | 352,230 |

**Region V**

| | |
|---|---|
| Cook County, Illinois | 136,000 |
| Kane County, Illinois | 102,000 |
| DuPage County, Illinois | 116,000 |
| Southwestern Indiana Consortium | 47,000 |
| St. Clair County, Michigan | 150,000 |

**Region VI**

| | |
|---|---|
| BOS—Louisiana | 495,000 |
| El Paso Consortium | 600,000 |

**Region VII**

| | |
|---|---|
| CIRALG, Iowa | 47,200 |
| Woodbury County, Iowa | 37,800 |
| Iowa—BOS | 151,900 |
| Kansas City/Wyandotte Consortium, Kansas | 48,000 |

**Region VIII**

None

**Region IX**

| | |
|---|---|
| Ventura County, California | 98,870 |
| San Luis Obispo County, California | 27,190 |
| Stanislaus County, California | 189,200 |
| Shasta County, California | 15,960 |
| Trust Territories | 68,250 |
| Inland Manpower Consortium, California | 222,990 |
| Hawaii—BOS | 55,320 |
| Pima County, Arizona | 11,830 |
| BOS—Arizona | 150,000 |
| City of Tucson, Arizona | 215,790 |
| Guam | 10,040 |
| Washoe County, Nevada | 22,200 |

**Region X**

| | |
|---|---|
| BOS—Oregon | 241,600 |
| Thurston County, Washington | 28,032 |

Dated: June 30, 1980.

**Charles B. Knapp,**

*Deputy Assistant Secretary for Employment and Training.*

[FR Doc. 80-20053 Filed 7-2-80; 8:45 am]

BILLING CODE 4510-30-M

### Office of the Secretary

### Steel Tripartite Advisory Committee; Working Group on International Trade; Meeting

The Steel Tripartite Advisory Committee was established under the Federal Advisory Committee Act, 5 U.S.C. Appr. (1976), to advise the Secretary of Labor and the Secretary of Commerce on international and domestic issues affecting the U.S. steel industry, labor, and the public.

Notice is hereby given that the Steel Tripartite Advisory Committee's Working Group on International Trade will meet at 2:30 P.M. on July 16, 1980, in room 730, office of the U.S. Trade Representative, 1800 G. St. N.W., Washington, D.C.

Discussion will center around developing agreement on the key trade problems facing the domestic steel industry. Due to the scheduling conflicts of many participants, insufficient time was available to give 15 days advance notice to the Working Group meeting. The public is invited to attend. A limited number of seats will be available to the public on a first-come basis.

For additional information contact: Mr. Joseph S. Papovich, Executive Secretary, Steel Tripartite Advisory Committee, Bureau of International Labor Affairs, U.S. Department of Labor, Wahington, D.C. 20210, telephone (202) 523–6227.

Official records of the meeting will be available for public inspection at room S5315, U.S. Department of Labor, Washington, D.C. 20210.

Signed at Washington, D.C., this 28th day of June 1980.

**Herbert N. Blackman,**

*Acting Deputy Under Secretary for International Affairs, U.S. Department of Labor.*

[FR Doc. 80-20445 Filed 7-7-80; 8:45 am]

BILLING CODE 4510-28-M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 11236 (812-4696)]**

### The Capitol Life Insurance Co. and Capitol Life Separate Account A; Application for an Amended Order Pursuant to Section 11 of the Act for Approval of Certain Offers of Exchange and Pursuant to Section 6(c) of the Act for Exemptions From Sections 26(a) and 27(c)(2) of the Act

June 27, 1980.

Notice is hereby given that the Capitol Life Insurance Company, ("Capitol Life"), a stock life insurance company organized under the laws of the State of Colorado in 1905, and Capitol Life Separate Account A, ("Separate Account"), 1600 Sherman Street, Denver, CO 80203, established by Capitol Life on September 20, 1973 under the laws of the state of Colorado and registered as a unit investment trust (File No. 811–2479) under the Investment Company Act of 1940 ("Act") (hereinafter collectively referred to as "Applicants"), filed an

Application on June 3, 1980 for an amended order pursuant to Section 11 of the Act, approving certain offers of exchange, and, pursuant to section 6(c) of the Act, exempting the Applicants from the provisions of sections 26(a) and 27(c)(2) of the Act. The requested order would supplement the exemptive relief previously granted (i) to the extent necessary to include the newly-established Series P, which will be invested solely in shares of Rowe Price Prime Reserve Fund, Inc. (sometimes hereinafter referred to as "Additional Fund"), in the offer of exchange allowing Accumulation Units of one Series of the Separate Account to be exchanged for those of another Series; and (ii) to the extent necessary to include Series P in the exemptions underlying the current safekeeping arrangement of the Separate Account, previously granted pursuant to section 6(c).

All interested persons are referred to the Application on file with the Commission for a statement of the representations contained therein which are summarized below.

The Separate Account was established by Capitol Life to fund certain Variable Annuity Contracts ("Contracts") which are currently being offered and sold to the public pursuant to an effective registration statement under the Securities Act of 1933 (File No. 2-51169). The Separate Account presently consists of three Series, each of which invests solely in the shares of one of the following open-end diversified management investment companies: Security First Legal Reserve Fund, Inc., Security First Variable Life Fund, Inc. and T. Rowe Price Growth Stock Fund, Inc., (hereinafter collectively referred to as the "Funds"). Applicants have created a new Account Division or "Series" (Series P) to the Separate Account. Applicants propose that all amounts allocated to Series P will invest solely in the shares of the Additional Fund.

Applicants seek to amend and supplement the orders of September 13, 1974 (Release No. IC-8497) and November 30, 1978 (Release No. IC-10502), only to the extent necessary to include Series P in the offers of exchange approved by such orders pursuant to Section 11, and to include Series P in the exemptions from sections 26(a) and 27(c)(2) previously granted pursuant to section 6(c).

**Section 11**

Section 11(a) makes it unlawful for any registered open-end investment company or principal underwriter therefor to make an offer to the holder of a security of such company or of any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged unless the terms of the offer have first been submitted to, and approved by, the Commission. Section 11(c) of the Act provides that, irrespective of the basis of exchange, the provisions of subsection (a) shall be applicable to any type of offer of exchange of the securities of registered unit investment trusts for the securities of any other investment company.

The order contained in Release No. IC-10502 approved the conversion or transfer of Contract Accumulation Units from any one of the three Series of the Separate Account to any other Division of the Separate Account then in existence. Applicants propose that this conversion right be extended so as to encompass Series P, whose underlying investment medium will consist solely of shares of Rowe Price Prime Reserve Fund, Inc.

**Sections 27(c)(2) and 26(a)**

Section 27(c)(2), in relevant part, prohibits the issuer of a periodic payment plan certificate and any depositor or underwriter for such issuer from selling such periodic payment plan certificate unless the proceeds of all payments (other than any sales load) are deposited with a qualified bank acting as trustee or custodian, and held under an indenture or agreement containing specified provisions. Section 26(a) requires that such indenture or custodianship agreement must provide, *inter alia*, that the bank (i) shall have possession of all property of the unit investment trust and segregate and hold the same in trust subject only to the charges and collections specifically allowed under clauses (A), (B) and (C) of such Section until distribution to the security holders of the trust; (ii) shall not resign until the trust has been liquidated or a successor has been appointed; (iii) may collect from the income and, if necessary, from the corpus of the trust such fees for services provided for in the agreement; (iv) shall not allow as an expense any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services of a character normally performed by the bank itself. Section 6(c) authorizes the Commission to exempt any person, security or transaction, from the provisions of the Act and rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Pursuant to an exemption from the aforementioned provision of the Act granted in Release No. IC-10502, Capitol Life acts as custodian of the Separate Accounts; however, all such assets are held for safekeeping pursuant to an agreement between Capitol Life and the State Street Bank and Trust Company of Boston, Massachusetts ("Bank"). Insofar as the Contracts proposed to be funded in Series P are not included within the terms of the order issued in Release No. IC-10502, the Applicants request that the order of exemption from sections 26(a) and 27(c)(2) be amended to the extent necessary to make the requirement of a trust inapplicable to such newly-created Series.

Applicants have consented that the request for the foregoing exemptions may be made subject to the following conditions: (1) that the deductions for administrative services shall not exceed such reasonable amount as the Commission shall prescribe, and the Commission may reserve jurisdiction for such purpose, and (2) that the payment of sums and charges out of the assets of the Separate Account shall not be determined to be exempted from regulation by the Commission by reason of the requested amended order, provided that Applicants' consent to this condition shall not be determined to be a concession to the Commission of authority to regulate the payment of sums and charges out of such assets other than charges for administrative services, and Applicants reserve the right in any proceeding before the Commission, or in any suit or action in any court, to assert that the Commission has no authority to regulate the payment of such other sums and charges.

Notice is further given that any interested party may, not later than July 22, 1980 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed

contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following July 22, 1980 unless the Commission thereafter orders a hearing upon request or upon the Commission's motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing, if ordered, and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**George A. Fitzsimmons,**

*Secretary.*

**Shirley F. Hollis,**

*Assistant Secretary.*

[FR Doc. 80–20331 Filed 7–7–80; 8:45 am]

BILLING CODE 8010–01–M

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**[File No. 81–625]**

## CorTerra Corp.; Notice of Application and Opportunity for Hearing

June 19, 1980.

Notice is hereby given that CorTerra Corporation (the "Applicant"), has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), for an order exempting it from the periodic reporting requirements of Section 13 of that Act, other than reports on Form 8–K, and an abbreviated Annual Report on Form 10–K containing unaudited financial statements.

The Applicant states:

(1) On November 1, 1979, at a special meeting of shareholders, proxies for which were solicited in accordance with the requirements of Regulation 14A under the 1934 Act, the Applicant adopted a Plan of Complete Liquidation and Dissolution.

(2) Pursuant to the Plan on November 16, 1979 the sale of the Applicant's principal asset was consummated.

(3) There is virtually no trading in the Applicant's stock.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 1100 L Street NW., Washington, D.C. 20549.

Notice is further given that any interested person no later than July 14, 1980 may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

**George A. Fitzsimmons,**

*Secretary.*

[FR Doc. 80–20329 Filed 7–7–80; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 11235; (812–4048)]**

## G.T. Pacific Fund, Inc.; Filing of Application for an Order Amending a Prior Order Granting Exemption From the Provisions of Rule 22c–1 Under the Act Pursuant to Section 6(c) of the Act and Pursuant to Section 22(e)(3) of the Act Granting an Order Thereunder

June 27, 1980.

Notice is hereby given that G.T. Pacific Fund, Inc., 601 Montgomery Street, Suite 1400, San Francisco, California 94104, ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on March 20, 1980, and an amendment thereto on May 16, 1980, seeking an order of the Commission amending, in the manner described below, an earlier order of the Commission dated May 3, 1977 (Investment Company Act Release No. 9748). This earlier order ("Prior Order"), pursuant to sections 6(c) and 22(e)(3) of the Act, exempted Applicant from certain provisions of Rule 22c–1 under the Act, to permit Applicant to calculate the net asset value of its shares as of the close of trading on the Tokyo Stock Exchange ("TSE") next occurring after the close of the New York Stock Exchange ("NYSE") and permitted Applicant to suspend the right of redemption and postpone the date of payment or satisfaction upon redemption of any redeemable security for more than seven days after proper tender of such security during periods when (a) the TSE is closed, for other than customary weekend or holiday closings, or (b) trading thereon is restricted. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that until March 24, 1980, it was a fundamental policy of Applicant to invest, under normal circumstances, at least 80 percent of its total assets in a diversified portfolio of Japanese equity securities. To accommodate such policy, Applicant requested, and on May 3, 1977, was granted the Prior Order, pursuant to sections 6(c) and 22(e)(3) of the Act, permitting it to use the TSE as a benchmark for suspending the right of redemption and calculating the net asset value of its shares. On the basis of the above fundamental policy, Applicant made the following undertaking ("1977 Undertaking") in connection with the section 22(e)(3) portion of the Prior Order: that if at any time subsequent to three months after its initial offering less than 50 percent of the value of its portfolio securities consists of securities of Japanese issuers purchased in Japan, it would not utilize the order it had requested pursuant to section 22(e)(3) of the Act, and that it would promptly inform the Commission of this fact and thereafter comply with the provisions of section 22(e) as then in effect. Applicant also stated that so long as such order pursuant to section 22(e)(3) remains operative, it waives the applicability to it of section 22(e)(1) of the Act.

Applicant states that at its March 24, 1980, Annual Meeting of Stockholders an amendment was adopted to change Applicant's fundamental policy to require that Applicant invest, under normal circumstances, at least 80 percent of its total assets in a diversified portfolio of equity securities of issuers domiciled in the following jurisdictions: Japan, Hong Kong, Singapore, Malaysia, the Philippines, Australia and New Zealand. Applicant states that, pursuant to such an amendment, it obtained greater flexibility in its authority to invest in securities of issuers in Far Eastern countries in addition to Japan; however, Applicant states that it still expects that a substantial portion of its assets, if not a majority of its assets, will remain invested in securities of Japanese issuers.

Effective December 1, 1979, Rule 22c–1(b) under the Act was amended to provide, *inter alia*, that the board of directors of an investment company may choose the specific time during the day at which the investment company's net asset value shall be determined for pricing purposes. According to the application, Applicant's Board of Directors ("Board") believes that this revision of Rule 22c–1 affords it sufficient authority and flexibility to

determine when Applicant's shares should be priced and, therefore, the Board has determined that Applicant will operate directly pursuant to the provisions of Rule 22c–1 rather than pursuant to the Prior Order of the Commission dated May 3, 1977. Applicant states that pursuant to Rule 22c–1(b) its Board believes that the close of trading on the TSE is an appropriate time for determining the net asset value of Applicant's shares. In this regard, the application states that the TSE is the major stock exchange in the Far East, and organized securities trading in the countries other than Japan referred to above tends to operate on a daily basis at the same time as does the TSE.

Applicant seeks to retain, however, the use of that portion of the Prior Order which was granted pursuant to section 22(e)(3) of the Act. Applicant states that it believes that (1) its continued pricing of its shares based on the close of trading of the TSE, and (2) the preeminence of the TSE in Far Eastern Markets, make it necessary and appropriate for Applicant to retain the use of that portion of the Prior Order which authorized it to suspend the right of redemption and postpone the date of payment or satisfaction upon redemption of any redeemable security for more than seven days after proper tender of such security during periods when (a) the TSE is closed, for other than customary weekend or holiday closings or (b) trading thereon is restricted. Accordingly, Applicant requests that the Commission issue an order amending the Prior Order to approve the withdrawal by Applicant of the 1977 Undertaking and to permit the Prior Order to remain effective subject to the following undertaking: (1) that Applicant shall only utilize the Prior Order so long as 50 percent or more of the value of Applicant's portfolio securities consist of securities, (a) of issuers domiciled in Japan, Hong Kong, Singapore, Malaysia, the Philippines, Australia and New Zealand and (b) purchased on the TSE or exchanges in those countries, and (2) that in the event that Applicant's portfolio shall consist of less than 50 percent (in value) of securities of such Far Eastern issuers purchased on such Far Eastern exchanges, Applicant undertakes to promptly inform the Commission thereof and promptly thereafter comply with the provisions of section 22(e) of the Act as then in force and effect. In addition to the above undertaking Applicant states that so long as such order pursuant to section 22(e)(3) remains operative it will continue to waive the applicability to it of section 22(e)(1) of the Act. Applicant argues that, while it has no present expectation to utilize such portion of the Prior Order in the future, it believes that prudence and good business practice require that Applicant seek the continued availability of such portion of the Prior Order in connection with Applicant's operations.

Section 22(e)(1) of the Act provides, generally, that a registered investment company may not suspend the right of redemption or postpone the date of payment or satisfaction upon redemption of any redeemable security in accordance with its terms for more than seven days after proper tender of such security except for any period during which the NYSE is closed other than customary weekend and holiday closings, or during which trading on the NYSE is restricted. Section 22(e)(3) of the Act provides, generally, that redemptions may also be suspended by a registered investment company for such other periods as the Commission may by order permit for the protection of security holders of the company.

Notice is further given that any interested person may, not later than July 22, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

*Secretary.*

[FR Doc. 80–20333 Filed 7–7–80; 8:45 am]

BILLING CODE 8010–01–M

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[Release No. 16941; (SR–NASD–80–12]

## National Association of Securities Dealers, Inc.; Filing of Proposed Rule Change and Order Approving Proposed Rule Change

June 27, 1980.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C 78s(b)(1) (the "Act"), notice is hereby given that on June 19, 1980, the National Association of Securities Dealers, Inc. ("NASD") 1735 K Street N.W., Washington, D.C. 20006 filed with the Commission copies of a proposed rule change to revise the specifications for the Registered Options Principal examination.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of this publication. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR–NASD–80–12.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

The Commission finds that the proposed rule change is consistent with the requirements of the act and the rules and regulations thereunder applicable to national securities associations and in particular, the requirements of section 15A, and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the revised examination will incorporate questions on the new options rules which have been adopted by the options exchanges, the New York

Stock Exchange, and the NASD in response to the recommendations made by the Commission's Special Study of the Options Markets and thereby represents an improvement over the currently administered examination. Therefore, the revised examination's immediate implementation is in furtherance of the NASD's responsibility under section 15A of the Act to ensure minimum standards of competence on the part of its members.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

**George A. Fitzsimmons,**

*Secretary.*

**Shirley F. Hollis,**

*Assistant Secretary.*

[FR Doc. 80-20334 Filed 7-7-80; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 16940 (SR-NASD-80-2 and SR-NASD-80-4)]**

## National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Changes

June 27, 1980.

On January 29, 1980, the National Association of Securities Dealers, Inc. ("NASD") 1735 K Street, N.W., Washington, D.C. 20006 filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change to provide plans and specifications for its Investment Company Products/Variable Contracts Representative Examination (File No. SR-NASD-80-2).

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-16563, February 11, 1980) and by publication in the **Federal Register** (45 FR 10496, February 15, 1980).

On March 27, 1980, the NASD filed with the Commission, pursuant to Section 19(b)(1) of the Act and Rule 19b-4 thereunder, copies of a proposed rule change to provide plans and specifications for its Direct Participation Programs Representative Examination (File No. SR-NASD-80-4).

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-16711, March 31, 1980) and by publication in the **Federal Register** (45 FR 23841, April 8, 1980).

The two examinations would be taken by individuals seeking to qualify either as Limited Representatives—Investment Company/Variable Contracts Products or Limited Representatives—Direct Participation Programs, two categories of limited representative registration that would be authorized by a related proposed rule change (SR-NASD-80-1).[1]

All written statements with respect to the proposed rule changes which were filed with the Commission and all written communications relating to the proposed rule changes between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered national securities associations, and in particular, the requirements of sections 15A and 15(b), and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

**George A. Fitzsimmons,**

*Secretary.*

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 80-20335 Filed 7-7-80; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 6218; (18-74)]**

## The Profit-Sharing Plan of Kadison, Pfaelzer, Woodard, Quinn & Rossi; Filing of Application Pursuant to Section 3(a)(2) of the Securities Act of 1933 for an Order Exempting From the Provisions of Section 5 Participations or Interests Issued in Connection With the Profit-Sharing Plan of Kadison, Pfaelzer, Woodard, Quinn & Rossi

June 27, 1980.

Notice is hereby given that the law firm of Kadison, Pfaelzer, Woodard, Quinn & Rossi ("Applicant" or the "Firm"), 707 Wilshire Boulevard, Los Angeles, CA 90017, a California partnership, by letter dated March 31, 1980, has applied for an exemption from the registration requirements of the Securities Act of 1933 (the "Act") for participations or interests issued in connection with The Profit-Sharing Plan of Kadison, Pfaelzer, Woodard, Quinn & Rossi (the "Plan"). All interested persons are referred to that document which is on file with the Commission for the facts and representations contained therein, which are summarized below.

### I. Introduction

The Plan covers the Applicant's partners and full time employees, of whom approximately 22 partners and 31 employees were eligible to participate as of March 31, 1980. Full time employees or partners of the Firm who have completed three years of service (as defined) become participants of the Plan at intervals provided in the Plan.

The Plan covers persons (in this case, Applicant's partners) who are employees within the meaning of section 401(c)(1) of the Internal Revenue Code of 1954, as amended ("Code"). Such a plan is excepted from the exemption provided by section 3(a)(2) of the Act for interests or participations in employee benefit plans of corporate employers. Section 3(a)(2) of the Act provides, however, that the Commission may exempt from the provisions of Section 5 of the Act any interest or participation issued in connection with a pension or profit sharing plan which covers employees, some or all of whom are employees within the meaning of section 401(c)(1) of the Code, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

### II. Description and Administration of the Plan

Applicant states that the Plan has received a determination letter from the United States Internal Revenue Service that it is qualified under section 401(a) of the Code. The Plan is also an employee pension benefit plan which is subject to all of the fiduciary standards of the Employee Retirement Income Security Act of 1974 ("ERISA"), and to the rules, regulations and standards of the Department of Labor adopted thereunder. The Plan is funded through a single trust for which United California Bank currently acts as trustee under a trust agreement.

All required contributions to the Plan on behalf of employees or partners are

[1] Proposed NASD Rule SR-NASD-80-1 was approved by the Commission today. Securities Exchange Act Release No. 34-16936 (June 26, 1980).

made by the Firm, without contribution by the participant, in an amount equal to the lesser of $7,500 or 7½% of the participant's compensation in each Plan year. In addition, under the Plan each participant is permitted to make voluntary additional contributions to his account in the Plan, in a lump sum or through withholding, of up to an additional 10% of his annual compensation, currently limited by Plan rules to the first $100,000 of such compensation. All Firm and voluntary contributions are at all times fully vested and nonforfeitable, but withdrawal of Firm contributions and earnings on voluntary contributions by a participant is restricted in accordance with applicable tax laws.

Contributions are held in four funds, the first two of which are commingled and invested in real property, personal property, and a portfolio of equity and debt securities. Specified Firm contributions for the account of participating personnel and partners are invested in the first fund. The second fund consists of funds directed to it by contributions from the individual participants. These funds are managed by Everett Harris & Co., an independent investment counseling firm registered under the Investment Advisers Act of 1940. The third fund includes only contributions by the Firm directed to such fund by a participant, and the fourth fund includes only voluntary contributions by the individual participant. These funds are managed and invested by the Trustee at the direction of each participant in real property, personal property, a portfolio of equity and debt securities, and life insurance or annuity policies. All investment discretion with respect to the third and fourth funds is exercised by each participant as to his individual account within that fund subject to the approval of the administrator. Assets invested in the funds are held by United California Bank, as trustee and custodian.

Any participant may at any time withdraw all or any part of the aggregate of his voluntary contributions, but may not withdraw earnings thereon without certain penalties as required by applicable tax laws. Upon termination of a participant's employment for any reason, or in the event of permanent disability, the participant or his designated beneficiary is entitled to receive the entire amount of the Firm's and his personal contributions to his account under the Plan, adjusted for gains and losses thereon. The participant or his beneficiary may elect to receive such distribution in either a lump sum payment in cash or through payment of installments for a set term.

The Plan is administered by the Partnership of the Firm acting through its HR–10 Plan Committee (the "Committee"). The Committee has general authority to control the operation of the Plan and to supervise its administration, including interpreting the Plan, determining eligibility for participation under the Plan, adopting rules with respect to the Plan, and conducting claims procedures under the Plan. All costs of administration of the Plan are paid by the Firm.

III. *Discussion*

Applicant contends that the characteristics of the Plan are essentially typical of those maintained by many single corporate employers which are exempt under section 3(a)(2) of the Act, as well as those of many partnerships which have previously received exemptive orders under section 3(a)(2). Applicant maintains that there appears to be no sound policy basis for treating the Plan differently from such similar plans. Applicant points out that Congress did not exclude interests in Keogh-type plans from the exemption of section 3(a)(2) because of any perceived differences between corporate plans and partnership plans, but rather out of a concern for the marketing of interests or participations in commingled or collective investment funds by sponsoring financial institutions through offerings of prototype Keogh plans to unrelated self-employed persons unsophisticated in the securities field. Applicant represents that its Plan is not a master or prototype plan marketed to the public by a sponsoring financial institution, and that Plan assets are not invested in any such master or prototype plan or commingled with assets of any other plans or collective funds of any manager.

Applicant also maintains that the disclosure requirements of ERISA and other disclosures to be made to Plan participants provide additional grounds for granting the section 3(a)(2) exemption in this case.

Finally, Applicant states that it is engaged in furnishing legal services of a type which necessarily involve financially sophisticated and complex matters, and for that reason, as well as the extensive administrative control over the Plan maintained by the Firm, is able to present adequately its interests and the interests of its employees who are participants in the Plan.

Applicant concludes for the foregoing reasons that granting the request for the exemptive order would be appropriate in the public interest, consistent with the protection of investors and the purposes, policy and provisions of the Act.

Notice is further given that any interested person may, not later than July 22, 1980, submit to Commission in writing a request for a hearing on the application, accompanied by a statement of the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communications should be addressed to: George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of any attorney at law, by certificate) shall be filed contemporaneously with the request. An order disposing of the matter will be issued as of course following July 22, 1980 unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices or orders issued in this matter including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**George A. Fitzsimmons,**

*Secretary.*

**Shirley F. Hollis,**

*Assistant Secretary.*

[FR Doc. 80-20330 Filed 7-7-80; 8:45 am]

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**[Release No. 34-16945; File No. SR-CBOE-1980-18]**

## Self-Regulatory Organization; Proposed Rule Change by Chicago Board Options Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on June 23, 1980, the above-mentioned self-regulatory organization ["SRO"] filed with the Securities and Exchange Commission a proposed rule change as follows:

Text of Substance of the Proposed Rule Change (brackets indicate deletions; italics indicate new material). Securities accounts and orders of market-Makers.

Rule 8.9. No change.

. . . Interpretations and Policies:

.05 [Commencing on February 1, 1980 and continuing through July 31, 1980, p] *P*articipants in the joint account may execute transactions with one another but shall not execute transactions with the joint account either as Floor Broker or Market-Maker.

**SRO's Statement of Basis and Purpose**

The basis and purpose of the foregoing proposed rule change is as follows:

The proposed rule change would eliminate the time limitation which was added by amendment to a prior CBOE rules change (SR–CBOE–1979–10) at the request of the Commission staff. SR–CBOE–1979–10 sought to eliminate the absolute prohibition of Market-Maker participants in joint accounts from trading with one another. The Division of Market Regulation refused to unqualifiedly recommend approval of SR–CBOE–1979–10 because, as a result of its inspection of CBOE on July 9–12, 1979, certain questions had been raised respecting market-maker account relationships which has not been answered by the time the rules change was being considered. By letter of June 6, 1980, CBOE completed its response to the questions raised by the Commission's oversight inspection. Since the Commission staff's concerns respecting market-maker account relationships and the surveillance thereof have been formally addressed in the June 6 letter, no impediment now exists to unqualified approval of the rules change proposed in SR–CBOE–1979–10. Approval of the instant rules change will effect unqualified approval of that prior rules change.

The basis under the act for the proposed rule change is sections 6(b)(5) and 6(b)(8) because the rule change will remove impediments to a free and open market and will eliminate a burden on competition not necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934.

No comments on this proposed rule change have been solicited or received from members.

The Exchange does not believe that the proposed rule change will impose any burden on competition.

Within 35 days of the date of publication of this notice in the **Federal Register**, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, Securities and Exchange Commission, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before July 29, 1980.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

**George A. Fitzsimmons,**

*Secretary.*

July 1, 1980.

[FR Doc. 80–20340 Filed 7–7–80; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 34–16944; File No. SR–MCC–80–1]**

## Self-Regulatory Organizations; Proposed Rule Change by Midwest Clearing Corp.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94–29, 16 (June 4, 1975), notice is hereby given that on June 26, 1980, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Statement of Terms of Substance of the Proposed Rule Change.

Article 5, Sections 5.2, 5.4 and 5.6 of the Midwest Clearing Corporation By-Laws are hereby amended as follows:

*Additions Italicized*—[deletions bracketed].

**Article 5.—Officers**

**Salaries**

Sec. 5.2—The salary of the president shall be fixed by the *chairman of the* board of directors, and the salaries of all other officers and employees shall be fixed by the president. No officer or employee shall be prevented from receiving such salary by reason of the fact that he is also a director of the corporation.

**The Chairman of the Board**

Sec. 5.4—The chairman of the board shall be the *chief executive officer of the corporation and* an ex-officio member of the board of directors, with the right to vote. He shall preside at all meetings of stockholders and of the board of directors and shall perform such other duties as may from time to time be assigned to him by the board of directors.

**The President**

Sec. 5.6—The president shall be an ex-officio member of the board of directors, with the right to vote. He shall be the chief [executive] *operating* officer of the corporation and shall in general supervise and manage the business and affairs of the corporation. He may sign contracts and other documents within the ordinary scope of business and may sign, with the secretary or an assistant secretary or any other proper officer of the corporation thereunto authorized by the board of directors, certificates of stock of the corporation, and deeds, mortgage, bonds, contracts, or other instruments which the board of directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the board of directors or by these by-laws to some other officer or agent of the corporation, or shall be required by law to be otherwise signed or executed; or in general shall perform all duties usually incident to the office of president and such other duties as may be prescribed by the board of directors from time to time.

**Basis and Purpose of the Proposed Rule Change**

The basis and purpose of the proposed rule change is as follows:

The purpose of the proposed amendments is to make the By-Laws of the Midwest Clearing Corporation consistent with the Constitutional amendments of the Midwest Stock Exchange approved by the membership on December 11, 1979 (see SR–MSE–79–25).

The proposed amendments are consistent with Section 17A(c)(1) of the Securities Exchange Act, as amended in 1975, since they relate to the organization of the Midwest Clearing Corporation and the capacity of the Midwest Clearing Corporation to be able to carry out the purposes of the Securities Exchange Act as amended.

The Midwest Clearing Corporation has neither received nor solicited any comments on the proposed rule change.

The Midwest Clearing Corporation does not believe that the proposed rule change will impose any burdens on competition.

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of all such filings with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before July 29, 1980.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

*Secretary.*

June 30, 1980.

[FR Doc. 80-20339 Filed 7-7-80; 8:45 am]

BILLING CODE 8010-01-M

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[Release No. 11234 (812-4559)]

## Societe Generale de Banque S.A. and Societe Generale de Banque Inc.; Filing of Application for an Order of the Commission Pursuant to Section 6(c) of the Act Exempting Companies From All Provisions of the Act

June 27, 1980.

Notice is hereby given that Societe Generale de Banque S.A. (the "Bank") and Societe Generale de Banque, Inc. ("SGBI"), c/o Charles J. Hansen, Esq., Shearman & Sterling, 52 Wall Street, New York, New York 10005. a wholly-owned Delaware subsidiary of the Bank, filed an application on October 31, 1979, and amendments thereto on May 29, 1980, and June 20, 1980, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act") exempting the Bank and SGBI from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Bank states that its Registered Office is located at 1000 Brussels-Montagne du Parc 3, Belgium, and that it is the largest banking institution in Belgium and one of the 50 largest commercial banks in the world. It has 1,130 branches in Belgium and offices, branches, affiliates or subsidiaries in thirty countries. Bank is a public company with limited liability under Belgian law. Approximately 23% of its shares are held by Societe Generale de Belgique, a Belgian holding company, and the rest of the shares are held by the public. At December 31, 1979, Bank's total assets were $36,203 million, deposits were $17,411 million and shareholders equity was $619 million.

According to the application, Bank performs all of the typical functions of a Belgian deposit bank and its business is generally similar to that of major United States international commercial banks. Bank's principal business activity consists of receiving deposits and making loans. It receives most of its funds from private individuals, who at December 31, 1979, accounted for 49% of its deposits. Other major sources of the Bank's funds at December 31, 1979, included deposits by other banks which represented approximately 38% of total current liabilities, a percentage that is comparable to that for large United States and foreign banks actively engaged in the eurocurrency markets. The Bank also issues cash certificates of deposit (up to 5 years) which amounted to $2,109 million at December 31, 1979. Bank's assets consist of loans and advances to private sector customers ($15,987 million) and banks ($8,787 million), representing, respectively, 44% and 24% of the Bank's total assets at December 31, 1979.

The application also indicates that the Bank is engaged in underwriting and selling securities and investment advisory services. Bank states that such activities represent only a relatively small part of its business, accounting for only 3% of its revenues.

Bank represents that it is subject to extensive regulation by Belgian banking authorities pursuant to a regulatory framework that is comparable in many respects to the regulation of United States commercial banks. Overall Belgian bank regulation is primarily administered by the Belgian Ministry of Finance acting principally through la Banque Nationale de Belgique (the "National Bank") and the Commission Bancaire (the "Banking Commission"). Bank indicates that it is subject to the Decree No. 185 of June 9, 1935 (the "Decree"). The main purpose of the Decree is to separate commercial banking activities from investment banking activities.

The application indicates that the Banking Commission is primarily responsible for the observance of the Decree by Belgian banks and more generally for the prudent operation of the Belgian banking system. Bank is registered with the Banking Commission and files prescribed reports of financial condition. The Banking Commission has, in certain circumstances, the power to nominate a special commissioner to operate the Bank, and to suspend all or part of the Bank's operations or revoke its registration. Bank states that the Banking Commission has the authority to fix certain ratios between assets and liabilities, or between equity and liabilities or assets. The Banking Commission currently requires banks to maintain an "equity ratio", *i.e.*, a level of equity with respect to various categories of assets covering adequately the degree of risk involved in such categories so as to assure that Bank's depositors are properly protected against loss.

The application indicates that the National Bank oversees Belgian monetary policy and acts as the lender of last resort to the Banking System. The National Bank is empowered to recommend to the Bank the observance of specified balance sheet ratios, special deposit requirements, proportions of holdings of government paper and ceilings on credit facilities and rediscounting facilities. According to the application, exchange control regulations are exercised by the Institute Belgo-Luxembourgeois Change (the "Institute"). Belgian banks report to the Institute on a daily basis with respect to claims of and liabilities to non-residents and forward exchange contracts made. Banks also report to the Institute on a monthly basis with respect to advances in foreign currencies and forward exchange transactions exceeding 20% of their equity. Reports are also made to the National Bank and to the Banking Commission with respect to the maturity and currency denomination of assets and liabilities and forward contracts.

Bank states that it is subject to audit by three Commissaires (independent auditors) whose appointments must be approved by the Banking Commission. The main function of the Commissaires is to report to the Banking Commission with respect to the Bank's financial condition. According to the application, SGBI will not deal with or trade in securities, and will not be a bank for purposes of Belgian law. Accordingly, SGBI will not be subject as such to Belgian substantive banking regulations. SGBI will, however, be subject generally to examination by the Banking Commission pursuant to its authority to supervise the Bank. SGBI has been incorporated under the laws of the State of Delaware and all of the outstanding shares of capital stock of SGBI will be owned by the Bank.

The application states that SGBI was formed to serve as a financing vehicle for the Bank and will issue commercial paper guaranteed by the Bank, since it appears that, if the Bank were to issue the commercial paper directly, the payments on the commercial paper notes constituting interest could be subject to Belgian withholding tax. Bank represents that it has been informed that, if a Belgian withholding tax were so imposed, its commercial paper, in order to be marketable, would have to bear a higher interest rate than commercial paper of similar maturity with a similar credit rating, the interest payments on which are not subject to withholding tax. In addition, the Bank states that many potential investors would be reluctant to purchase commercial paper subject to withholding tax not only because of the uncertainties involved, but also because of the paperwork involved to claim a refund of the tax withheld. Unlike the Bank, certain other foreign bank commercial paper issuers may issue commercial paper not subject to withholding tax.

According to the application the only business to be conducted by SGBI will be the issuance of commercial paper notes the proceeds of which will be placed on short-term deposit with, or loaned to, the Bank. These deposits, or loans, with interest, would be withdrawn by, or repaid to, SGBI, as the case may be, as required to pay maturing commercial paper notes. Payment of principal and interest on these securities will be guaranteed by the Bank. Since the sole business of SGBI will be the issuance of commercial paper and the making of loans to the Bank or its subsidiaries, substantially all of its assets will consist of bank deposits with, or amounts receivable from, the Bank.

According to the application, SGBI proposes to offer, issue and sell in the United States guaranteed commercial paper (the "notes") in bearer form and denominated in United States dollars. It is intended that the notes will be sold without registration under section 5 of the Securities Act of 1933, as amended (the "Securities Act") in reliance upon an opinion of the Bank's United States counsel that the offering will qualify for the exemption from the registration requirements of the Securities Act provided for certain short-term commercial paper by section 3(a)(3) thereof. The notes will not be issued or sold until the Bank has received such an opinion letter. Bank does not request Commission review or approval of such opinion letter and the Commission expresses no opinion as to the availability of any such exemption. The notes will be in denominations of $100,000 or more, will mature not more than nine months from the date of issuance and will not be payable on demand or include any provisions for extensions, renewal or automatic "roll-over" at the option of either the holders, SGBI or the Bank. The notes will rank *pari passu* among themselves and equally with all other unsecured indebtedness of SGBI and superior to the rights of shareholders. The application indicates that the notes are intended to be of prime quality and of the type eligible for discounting by a Federal Reserve Bank. The presently proposed issue of securities and any future issue of debt securities by SGBI will be conditioned upon the receipt of, prior to issuance, one of three highest investment grade ratings from at least one of the nationally recognized statistical rating organizations, and the Bank's United States counsel will have certified that such a rating has been received.

According ot the application, these notes will have the unconditional guarantee of the Bank endorsed thereon. As a result, a holder of the notes of SGBI will be the holder of obligations of the Bank. The guarantee of the Bank will rank *pari passu* with all other unsecured indebtedness of the Bank, including liability to depositors, and ahead of its share capital. The application futher indicates that the proceeds of the sale of the notes (to the extent not applied to the repayment of maturing commercial paper notes or to the payment of current expenses) will be placed on short-term deposit with, or loaned to the Bank, and will thus be made available to the Bank to be used for "current transactions" within the meaning of Section 3(a)(3) of the Securities Act. These deposits or loans, with interest, would be withdrawn by, or repaid to, SGBI, as the case may be, as required to make timely payment on maturing notes.

The notes will be sold to a registered United States securities dealer which will reoffer the notes in the above minimum denominations to institutional investors and other entities and individuals in the United States who normally purchase commercial paper. The notes will not be advertised or otherwise offered for sale to the general public. Bank represents that the aggregate principal amount of the notes to be outstanding at any time is not expected to exceed $150 million. The Bank states that its purpose for making its proposed offering of the notes is to provide an alternative source of supply of United States dollars to supplement dollars currently obtained in the eurodollar market.

In the application the Bank agrees to secure and undertaking from the securities dealer that it will provide each offeree who has indicated an interest in the notes then offered, and prior to any sale of such notes to such offeree, with a memorandum describing the business of the Bank and SGBI, and containing the most recent publicly available annual audited financial statements of the Bank (audited in accordance with Belgian auditing practices) and the most recently publicly available unaudited quarterly financial statements of the Bank. Such memorandum will describe the material differences between Belgian accouting principles applicable to Belgian commercial banks and generally accepted accounting principles applicable to United States commercial banks. Bank represents that such memoranda will be at least as comprehensive as those customarily used in offering commercial paper in the United States and will be updated periodically to reflect material changes in the business or financial condition of the Bank or SGBI. Bank further represents that any future offerings of its debt securities in the United States will be done on the basis of disclosure documents at least as comprehensive in their description of the Bank and SGBI, and the business of the Bank and SGBI, as those used in the presently proposed offering. The Bank consents to any order granting, pursuant to section 6(c) of the Act, the relief requested being expressly conditioned upon the Bank's compliance with the above undertakings regarding disclosure documents.

Bank states that it will appoint, and will cause SGBI to appoint, a bank in the United States as authorized agent

for itself and SGBI to issue the notes from time to time on behalf of the Bank and SGBI. Bank will also appoint such bank or the Commission as agent to accept any process which may be served in any action based on the notes or the guaranty and instituted in any State or Federal court by the holder of any note. Applicant represents that it will expressly accept and cause SGBI to expressly accept the jurisdiction of any State or Federal court in the City and State of New York in respect of any such action. Such appointment of an authorized agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of notes have been paid by SGBI or the Bank.

The Bank represents that it will similarly consent, and will cause SGBI to consent, to jurisdiction and the Bank will appoint, and will cause SGBI to appoint, an agent for service of process in suits arising from any future offerings of securities that it or SGBI may make in the United States, which offerings the Bank states will be limited to debt or preferred securities guaranteed by the Bank.

Section 3(a)(3) of the Act defines investment company to mean "any issuer which is engaged or proposes to engage in the business of investment, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of government securities and cash items) on an unconsolidated basis." Bank states that, although it may be considered to be an investment company as defined under the Act, it believes that as a commercial bank it is not an investment company under the Act and is significantly different from the type of institution that Congress intended the Act to regulate.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision of the Act or of any rule or regulation under the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Bank requests an order pursuant to section 6(c) of the Act exempting it and SGBI from all provisions of the Act. Bank states, among other things, that compliance by foreign commercial banks with a number of substantive provisions of the Act would, as a practical matter, conflict with such banks' commercial banking practices, and that foreign banks would thus be effectively precluded from selling securities in the United States if they were required to register as investment companies and comply with the provisions of the Act. Bank notes that approval of its application would advance the policies underlying the International Banking Act of 1978 by permitting the Bank to offer securities in the United States. Bank asserts that its operations are extensively supervised and regulated by Belgian banking authorities and that application of the requirements of the Act to the Bank would be unnecessary. It asserts that the rationale for granting an exemptive order pursuant to section 6(c) of the Act to the Bank extends to SGBI as well because of the direct subsidiary relationship between the two companies. Bank states that the purchase of SGBI's notes will be the equivalent of the purchase of obligations of the Bank because of the Bank's unconditional guarantee. Furthermore, the Bank states that as a result of the disclosure memoranda that offerees of SGBI's commercial paper will receive, investors will be adequately protected, and it would therefore not be in the public interest to treat SGBI as an investment company under the Act. Finally, the Bank states that neither it nor SGBI will obtain any advantage under United States federal or state regulatory laws as a result of issuing the notes through SGBI. Bank asserts, based on all the facts and circumstances recited in its application, that granting an exemptive order pursuant to Section 6(c) of the Act would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than July 22, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to the controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Bank and SGBI at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**George A. Fitzsimmons,**

*Secretary.*

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 80-20332 Filed 7-7-80; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF THE TREASURY

### Debt Management Advisory Committees; Meetings

Notice is hereby given, pursuant to Section 10 of Pub. L. 92–463, that meetings will be held in Washington on July 29 and 30, 1980 of the following debt management advisory committees:

American Bankers Association, Government Borrowing Committee;

Public Securities Association, U.S. Government and Federal Agencies, Securities Committee.

The agenda for the American Bankers Association Government Borrowing Committee meetings provides for working sessions on July 29 and a report to the Secretary of the Treasury and Treasury staff on July 29.

The agenda for the Public Securities Association U.S. Government and Federal Agencies Securities Committee meetings provides for working sessions on July 29 and a report to the Secretary of the Treasury and the Treasury staff on July 30.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Pub. L. 92–463, and vested in me by Treasury Department Order 101–5 (May 16, 1979), I hereby determine that these meetings are concerned with information exempt from disclosure under section 552b(c)(4) and (9)(A) of Title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department

requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees are utilized by this Department at meetings called by representatives of the Office of the Secretary. When so utilitized they are recognized to be advisory committees under Pub. L. 92–463. The advice provided consists of commercial and financial information given and received in confidence. As such these debt management advisory committee activities concern matters which fall within the exemption covered by section 552b(c)(4) of Title 5 of the United States Code for matters which are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Although the Treasury's final announcement of financing plans may or may not reflect the advice provided in reports of these committees, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings also fall within the exemption covered by 552b(c)(9)(A) of Title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of the meetings of these committees and for providing annual reports setting forth a summary of their activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. of 552b.

Dated: July 1, 1980.

**Roger C. Altman,**

*Assistant Secretary (Domestic Finance).*

[FR Doc. 80-20263 Filed 7-7-80; 8:45 am]

BILLING CODE 4810-25-M

## COMMODITY FUTURES TRADING COMMISSION

### Notice of Proposed Alteration or Disapproval of Contract Market Rules; Public Hearing

**AGENCY:** Commodity Futures Trading Commission.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission") is announcing that, pursuant to section 8a(7) of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. 12a(7), (1976), it has requested that the Chicago Mercantile Exchange ("CME") alter or supplement CME Rule 3202(A), Rule 3602(A) and Resolution 80.374 and that the Chicago Board of Trade ("CBT") alter or supplement Rule 1805.01 and three resolutions adopted by its Financial Instruments Committee on July 2 and 3, 1980. The Commission's requests were set forth in separate letters sent to the CME and CBT on July 3, 1980. CME Rules 3202(A) and 3602(A) permit its Board of Governors to schedule trading in 13-week United States Treasury Bill futures contracts and One-Year United States Treasury Bill futures contract for delivery in such months as it may determine. CME Resolution 80.374 authorizes trading in 13-Week United States Treasury Bill futures contracts in the new months of January, April, July, and October in addition to the currently listed months of March, June, September, and December. Trading has commenced in these new months. CBT Rule 1805.01 permits its Financial Instruments Committee or Board of Directors to schedule trading in 20-Year United States Treasury Bond futures contracts for delivery in such months as either body may determine. The CBT Resolutions of July 2 and 3, 1980 authorize trading in 20-Year United States Treasury Bond futures contracts in the new months of August 1980, November 1980, February 1981, and May 1981 in addition to the currently listed months of September, December, March and June. Trading has not commenced in these new months. The Commission also is announcing that if the CME or CBT, respectively, does not alter or supplement these Rules and Resolutions it will hold separate public hearings at its headquarters in Washington, D.C. on July 10, 1980 to determine whether to disapprove these respective Rules and Resolutions pursuant to section 5a(12) of the Act, 7 U.S.C. 7a(12) (1976) as amended by the Futures Trading Act of 1978, Pub. L. No. 95–405, Sec. 12, 92 Stat. 871 (1978) and whether it will be necessary or appropriate to alter or supplement these respective Rules and Resolutions pursuant to section 8a(7) of the Act. The Commission believes that immediate public hearings to consider whether to disapprove or alter or supplement these Rules and Resolutions are appropriate in view of the substantial questions raised by these Rules and Resolutions and summarized below. Any submissions received either from the CME or CBT or any other interested persons will be made available at the office of the Commission where they are received and at any public hearing.

**DATE:** Public hearings are scheduled for July 10, 1980, at 10:00 A.M. for the CME and 2:00 P.M. for the CBT. Persons wishing to participate should contact the Commission by 4:45 P.M. EDT, July 9, 1980. Any written comments should be received by the Commission on or before July 10, 1980.

**ADDRESS:** Interested persons should communicate their requests to participate in either of the public hearings or submit any written comments to Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Attention: Office of the Secretariat [Telephone: (202) 254–6314].

**FOR FUTHER INFORMATION CONTACT:** William D. Grossman, Associate Director, Division of Trading and Markets, Commodity Futures Trading Commission, 2033, K Street, N.W., Washington, D.C. 20581, Telephone: (202) 254–8955.

**SUPPLEMENTARY INFORMATION:** On July 3, 1980 the Commission issued a letter to the CME requesting that it alter or supplement CME Rule 3202(A), Rule 3602(A) and Resolution 80.374. The Commission also issued a letter to the CBT requesting that it alter or supplement CBT Rule 1805.01 and three resolutions adopted by its Financial Instruments Committee on July 2 and 3, 1980. CME Rule 3202(A) and 3602(A) permit its Board of Governors to schedule trading in 13-Week United States Treasury Bill futures contracts and One-Year United States Treasury Bill futures contract for delivery in such months as it may determine. CME Resolution 80.374 authorizes trading in 13-Week United States Treasury Bills futures contracts in the new months of January, April, July, and October in addition to the currently listed months of March, June, September and December. Trading has commenced in these new months. CBT Rule 1805.01 permits its Financial Instruments Committee or Board of Directors to schedule trading in 20-Year United States Treasury Bond futures contracts for delivery in such months as either body may determine. The CBT Resolutions of July 2 and 3, 1980 authorize trading in 20-Year United States Treasury Bond futures contracts in the new months of August 1980, November 1980, February 1981, and May 1981 in addition to the currently listed months of September, December, March and June. Trading has not commenced in these new months.

The Commission's letter provided, further, that if the CME or CBT does not alter or supplement its respective Rules and Resolutions, the Commission will hold separate public hearings at its headquarters in Washington, D.C. on

July 10, 1980 to determine whether to disapprove these repective Rules and Resolutions pursuant to section 5a(12) of the Act, 7 U.S.C. 7a(12) (1976) as amended by the Futures Trading Act of 1978, Pub. L. No. 95–405, Sec. 12, 92 Stat. 871 (1978) and whether it will be necessary or appropriate to alter or supplement these respective Rules and Resolutions pursuant to section 8a(7) of the Act.

The reasons for the Commission's action are stated in its letters, which are set forth in their full text as follows:

July 3, 1980

Mr. Clayton Yeutter, President, Chicago, Mercantile Exchange, 444 West Jackson Boulevard, Chicago, Illinois 60606

Re: Establishment of delivery months for 13-Week and One-Year United States Treasury Bill Futures Contracts; Notice of intent to disapprove pursuant to Section 5a(12) of the Commodity Exchange Act and Request pursuant to Section 8a(7) of the Commodity Exchange Act.

Dear Mr. Yeutter: On November 26, 1975, the Chicago Mercantile Exchange ("CME") was designated a a contract market to trade 13-Week United States Treasury Bill futures contracts. The CME has historically traded these contracts for delivery in December, March, June, and September ("December Cycle"). The Commission understands that the Board of Governors of the Chicago Mercantile Exchange ("CME") adopted Resolution 80.374 on May 21, 1980, in which it determined to add 13-Week Treasury Bill futures contracts for delivery months in January, April, July and October ("January Cycle"). Pursuant to the Board's action, the CME's Executive Committee acted on July 1, 1980 to permit trading in the January Cycle commencing July 2, 1980.

To date, the CME has not submitted either Resolution 80.374 or the resolution memorializing the action of the Executive Committee to the Commission for approval pursuant to Section 5a(12) and Commission Rule 1.41(b). Nor has the CME furnished a copy of those resolutions to the Commission's Washington headquarters under Section 5a(1) of the Act, 7 U.S.C. § 5a(1) (1976) and Commission Rule 1.41(c) in order that the Commission might determine whether the purposes of the Act necessitate Commission review of the resolutions prior to their being placed into effect by the CME. The failure of the CME to do so appears to violate these statutory and regulatory provisions. Accordingly, any trading under these resolutions would appear to be contrary to the provisions of the Act.

As you are aware, Congress has specifically required the Commission to consider the impact of futures trading in government-issued securities on the efficient functioning of the financial markets generally and upon the ability of the federal government to manage the national debt. Thus, Section 2(a)(8)(B)(i) of the Act requires the Commission to maintain communication with the Department of the Treasury and the Board of Governors of the Federal Reserve System for the purpose of seeking the views of those agencies on the Commission's activities

"and for considering the relationships between the volume and nature of investment and trading in contracts of sale of a commodity for future delivery and in securities and financial instruments under the jurisdiction of such agencies." Pub. L. No. 95–405, Sec. 2(13), 92 Stat. 866–867 (1978).

As you are also aware, under Section 2(a)(8)(B)(ii), these issues must be considered by the Commission in designating any contract market for trading contracts based on these securities. As a result, the Commission, Treasury and the Federal Reserve Board have carefully considered the question of the impact of proliferation in futures contracts on government-issued securities drawing on the same, or essentially the same, deliverable supplies.

In this connection, the Treasury and the Federal Reserve Board prepared a detailed staff study, entitled *Treasury Futures Markets: A Study by the Staffs of the U.S. Treasury and the Federal Reserve System* (May 31, 1979), in which those agencies expressed significant concerns regarding proliferation of trading, particularly in the 90-day Treasury Bill futures contracts. In recognition of these concerns, prior to designation of the AMEX Commodities Exchange, Inc. ("ACE") and the Commodity Exchange, Inc. ("COMEX"), in 90-day Treasury Bills on June 19, 1979, the Commission required those exchanges to revise their proposed contracts in such a way as to ensure that neither contract would draw upon the same maturity of Treasury Bills as those deliverable under the CME's then-current 13-Week Treasury Bill contract.

As noted above, historically, the CME traded its 13-Week Treasury Bill contract for delivery in the December Cycle. On July 11, 1979, the Commission requested that the CME after Rule 3202 to limit the delivery months under the contract to the months then currently trading and to delete the existing language of the rule.[1] The CME did not make the requested changes.

Instead, by letter dated February 21, 1980, the CME submitted other changes to its 13-Week Treasury Bill contract. In that letter, however, the CME assured the Commission that it had no intention of listing another cycle for trading in 13-Week Treasury Bills.[2]

In listing the January Cycle, the CME apparently ignored the Commission's authority to determine whether Resolution 80.374 or the Resolution of the Executive Committee require approval under Section 5a(12) of the Act. Commission Rule 1.41(d) provides that a contract market must submit

[1] Letter to Clayton Yeutter from Donald L. Tendick, dated July 11, 1979.

[2] Letter to the Office of the Secretariat from James Kurt Dew, Senior Financial Economist, page 10.

two copies of any reviewable rule [3] which the contract market intends to place in effect without prior approval at least ten days prior to its proposed effective date. Under Commission Rule 1.41(c), the exemption from approval will not apply to any proposed reviewable rule if the Commission notifies the contract market "that the purposes of the Act appear to" require prior Commission review. The CME's attempt to bypass the review procedure is particularly critical in this instance since Congress has determined that the Commission, in conjunction with the Treasury and Federal Reserve Board, should "consider the relationships between the volume . . . in [futures] contracts . . . and financial instruments under the jurisdiction of such agencies." From the record before us, we believe that the purposes of the Act require Commission approval before these resolutions may be placed into effect.

Pursuant to Section 8a(7) of the Act, the Commission hereby requests that the CME alter or supplement its rules 3202(A), pertaining to 13-Week U.S. Treasury Bills and 3602(A), pertaining to One-Year U.S. Treasury Bills, expressly to denominate and limit to the specific delivery months which the CME has been authorized to trade and was trading prior to May 21, 1980 and to recite that any future deletions or additions to the specified delivery months would be made only under rules or resolutions approved by the Commission under Section 5a(12) of the Act.

In addition, the Commission also requests pursuant to Section 8a(7) of the Act that the CME alter or supplement its resolution 80.374, which was adopted by the CME's Board of Governors at a meeting on May 21, 1980, to alter the Board's resolution on that date with respect to its 13-Week U.S. Treasury Bill contract to require that further trading of contracts in the January Cycle be limited to trading for liquidation only. We have attached for your information proposed regulations and a proposed resolution that the Commission believes would accomplish the requested changes.

You are hereby notified that, if the CME fails to file such a submission by 5:30 p.m., July 7, 1980, the Commission will hold a public hearing on July 10, 1980, at 10:00 a.m., at its headquarters office at 2033 K Street, N.W., Washington, D.C. 20581, at which the Commission will, pursuant to Section 8a(7) of the Act, consider whether it would be necessary or appropriate to alter or supplement: 1) CME rule 3202A relating to delivery months on the 13-Week United States Treasury Bill contract to limit delivery to the March, June, September and December contract months, and such other months as the Commission has approved pursuant to Section 5a(12); 2) to limit similarly rule 3602A as it governs delivery months in the One-Year United States Treasury Bill contract; and 3) to consider whether the CME Resolution 80.374 should be altered in accordance with Exhibit A hereto. In addition, the Commission at the hearing will, pursuant to Section 5a(12) of the Act, consider whether to disapprove CME Resolution 80.374 and the implementing resolution of the Executive Committee.

Very truly yours,

Jean A. Webb, Deputy Secretary to the Commission

**Appendices**

3202. Futures Call—

A. Trading Months and Hours

Futures contracts shall be scheduled for trading during such hours [and delivery in such months] as may be determined by the Board of Governors. *Futures contracts shall be scheduled for trading during the months of December, March, June and September and such other months as may be determined by the Board of Governors and approved by the Commission, pursuant to section 5a(12) of the Commodity Exchange Act.*

Note.—Deletions are Bracketed [ ]; additions are italic.

3602. Futures Call—

A. Trading Months and Hours

Futures contracts shall be scheduled for trading during such hours [and delivery in such months] as may be determined by the Board of Governors. *Futures contracts shall be scheduled for trading during the months of December, March, June and September and such other months as may be determined by the Board of Governors and approved by the Commission, pursuant to section 5a(12) of the Commodity Exchange Act.*

Note.—Deletions are Bracketed [ ]; additions are italic.

Resolved, the Board of Governors hereby directs, that trading in all January, April, July and October contract months of the 13-Week U.S. Treasury Bill contract shall hereafter be limited to transactions which liquidate positions which previously have been acquired in those contract months. Trading for liquidation only shall continue until such time as the Exchange submits, and the Commodity Futures Trading Commission approves, under section 5a(12) of the Commodity Exchange Act, a Board resolution authorizing trading in the January, April, July and October contract months of the 13-Week U.S. Treasury Bill contract.

July 3, 1980

Mr. Robert K. Wilmouth, President, Chicago Board of Trade, 141 West Jackson Boulevard, Chicago, Illinois 60604

Re: Establishment of delivery months for 20-Year United States Treasury Bond Futures Contracts; Notice of intent to disapprove pursuant to Section 5a(12) of the Commodity Exchange Act and Request pursuant to Section 8a(7) of the Commodity Exchange Act.

[3] Commission Rule 1.41(a)(2) defines a reviewable rule as any rule which relates to terms and conditions in contracts of sale to be executed on or subject to the rules of such contract market or relates to other trading requirements. . . . 17 C.F.R. § 1.41(a)(2) (1979).

Commission Rule 1.41(a)(1) defines rules of a contract market as any constitutional provision, article of incorporation, bylaw, rule, regulation, resolution, interpretation, stated policy, or instrument corresponding thereto, in whatever form adopted, and any amendment or addition thereto or repeal thereof, made or issued by a contract market, or by the governing board thereof or any committee thereof. Rule 1.41(a)(1), 17 C.F.R. § 1.41(a)(1) (1979).

Dear Mr. Wilmouth: On September 14, 1976, the Chicago Board of Trade ("CBT") was designated as a contract market to trade 20-Year United States Treasury Bond futures contracts. The CBT has historically traded these contracts for delivery in September, December, March and June ("September Cycle"). The Commission understands that the Financial Instruments Committee of the Chicago Board of Trade adopted three resolutions on July 2 and 3, 1980 in which it determined to add 20-Year United States Treasury Bond futures contracts for delivery months in August 1980, November 1980, February 1981 and May 1981 ("August Cycle").

To date, the CBT has not submitted any of these resolutions to the Commission for approval pursuant to section 5a(12) and Commission rule 1.41(b). Nor has the CBT furnished a copy of those resolutions to the Commission's Washington headquarters under section 5a(1) of the Act, 7 U.S.C. 7a(1) (1976) and Commission rule 1.41(c) in order that the Commision might determine whether the purposes of the Act necessitate Commission review of the resolutions prior to their being placed into effect by the CBT. The failure of the CBT to do so appears to violate these statutory and regulatory provisions. Accordingly, any trading under these resolutions would appear to be contrary to the provisions of the Act.

As you are aware, Congress has specifically required the Commission to consider the impact of futures trading in government-issued securities on the efficient functioning of the financial markets generally and upon the ability of the federal government to manage the national debt. Thus, section 2(a)(8)(B)(i) of the Act requires the Commission to maintain communication with the Department of the Treasury and the Board of Governors of the Federal Reserve System for the purpose of seeking the views of those agencies on the Commission's activities

"and for considering the relationships between the volume and nature of investment and trading in contracts of sale of a commodity for future delivery and in securities and financial instruments under the jurisdiction of such agencies." Pub. L. No. 95–405, Sec. 2(13), 92 Stat. 866–867 (1978).

As you are also aware, under section 2(a)(8)(B)(ii), these issues must be considered by the Commission in designating any contract market for trading contracts based on these securities. As a result, the Commission, Treasury and the Federal Reserve Board have carefully considered the question of the impact of proliferation in futures contracts on government-issued securities drawing on the same, or essentially the same, deliverable supplies.

In this connection, the Treasury and the Federal Reserve Board prepared a detailed staff study, entitled *Treasury Futures Markets: A Study by the Staffs of the U.S. Treasury and the Federal Reserve System* (May 31, 1979), in which those agencies expressed significant concerns regarding proliferation of trading.

As noted above, historically, the CBT traded its 20-Year United States Treasury Bond contract for delivery in the September Cycle. In voting to list the August Cycle, the CBT apparently ignored the Commission's authority to determine whether these resolutions require approval under section 5a(12) of the Act. Commission rule 1.41(d) provides that a contract market must submit two copies of any reviewable rule [1] which the contract market intends to place in effect without prior approval at least ten days prior to its proposed effective date. Under Commission rule 1.41(c), the exemption from approval will not apply to any proposed reviewable rule if the Commission notifies the contract market "that the purposes of the Act appear to" require prior Commission review. The CBT's attempt to bypass the review procedure is particularly critical in this instance since Congress has determined that the Commission, in conjunction with the Treasury and Federal Reserve Board, should "consider the relationships between the volume . . . in [futures] contracts . . . and financial instruments under the jurisdiction of such agencies." From the record before us, we believe that the purposes of the Act require Commission approval before these resolutions may be placed into effect.

Pursuant to section 8a(7) of the Act, the Commission hereby requests that the CBT alter or supplement its resolutions of July 2 and 3, 1980, pertaining to 20-year United States Treasury Bonds expressly to denominate and limit to the specific delivery months which the CBT has been authorized to trade and was trading prior to July 2, 1980 and to recite that any future deletions or additions to the specified delivery months would be made only under rules or resolutions approved by the Commission under section 5a(12) of the Act. In addition, the Commission also requests that, pursuant to section 8a(7) of the Act, the CBT alter or supplement its rule 1805.01, pertaining to the United States Treasury Bond contract expressly to denominate and limit to the specific delivery months which the CBT has been authorized to trade and was trading prior to July 2, 1980 and to recite that any future deletions or additions to the specified delivery months would be made only under rules or resolutions approved by the Commission under section 5a(12) of the Act.

You are hereby notified that, if the CBT fails to file such a submission by 5:30 p.m., July 7, 1980, the Commission will hold a public hearing on July 10, 1980, at 2:00 p.m., at its headquarters office at 2033 K Street, N.W., Washington, D.C., 20581, at which the Commission will, pursuant to section 8a(7) of

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[1] Commission Rule 1.41(a)(2) defines a reviewable rule as any rule which relates to terms and conditions in contracts of sale to be executed on or subject to the rules of such contract market or relates to other trading requirements. . . . 17 CFR § 1.41(a)(2) (1979).

Commission Rule 1.41(a)(1) defines rule of a contract market as any constitutional provision, article of incorporation, bylaw, rule, regulation, resolution, interpretation, stated policy, or instrument corresponding thereto, in whatever form adopted, and any amendment or addition thereto or repeal thereof, made or issued by a contract market, or by governing board thereof or any committee thereof. Rule 1.41(a)(1), 17 CFR § 1.41(a)(1) (1979).

the Act, consider: (1) whether it would be necessary or appropriate to alter or supplement CBT resolutions of July 2 and 3, 1980 relating to delivery months on the 20-Year United States Treasury Bond contract to limit delivery to the September, December, March and June contract months, or such other months as the Commission has approved pursuant to section 5a(12); and (2) consider whether the CBT should alter or supplement its rule 1805.01, pertaining to the United States Treasury Bond contract expressly to denominate and limit to the specific delivery months which the CBT has been authorized to trade and was trading prior to July 2, 1980 and to recite that any future deletions or additions to the specified delivery months would be made only under rules or resolutions approved by the Commission under section 5a(12) of the Act in accordance with the attached Exhibit. In addition, the Commission at the hearing will, pursuant to section 5a(12) of the Act, consider whether to disapprove the CBT resolutions of July 2 and 3, 1980.

Very truly yours,

Jean A. Webb, Deputy Secretary to the Commission

**Exhibit**

*Proposed Resolution*

Resolved, the Board of Directors hereby directs, that trading in any month other than the December, March, June and September contract months of the 20-Year U.S. Treasury Bond contract shall not commence until such time as the Exchange submits, and the Commodity Futures Trading Commission approves, under section 5a(12) of the Commodity Exchange Act, a resolution of the Financial Instruments Committee or of the Board authorizing trading in any such contract month of the 20-Year U.S. Treasury Bond contract.

*Proposed New Regulation 1805.01—Months Traded in 20-Year U.S. Treasury Bonds*

Trading in 20-Year U.S. Treasury bonds may be conducted *in the months of March, June, September, December and* in such other months as determined by the Financial Instruments Committee or the Board *and approved by the Commodity Futures Trading Commission pursuant to section 5a(12) of the Commodity Exchange Act. [Additions are italic.]*

* * * * *

In view of the foregoing, the Commission hereby gives notice that it has scheduled public hearings on July 10, 1980 at its headquarters in Washington, D.C. to determine whether to disapprove, pursuant to section 5a(12) of the Act, CME Rule 3202(A), CME Rule 3602(A), CME Resolution 80.374, CBT Rule 1805.01 and three Resolutions adopted by the CBT Financial Instruments Committee on July 2 and 3, 1980, and whether it will be necessary or appropriate to alter or supplement these Rules and Resolutions, pursuant to section 8a(7) of the Act. The hearing to consider the CME Rules and Resolution will begin at 10:00 A.M. and the hearing to consider the CBT Rule and Resolutions will begin at 2:00 P.M. During and subsequent to any person's oral presentation, questions may be asked by members of the Commission or designated staff personnel. Any person interested in participating in either of the public hearings should contact Ms. Jane K. Stuckey, Secretariat, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581 (202) 254–6314 by 4:45 P.M. EDT July 9, 1980. Any person interested in submitting written data, views or arguments on these matters should submit such comments by July 10, 1980 at this same address.

Issued in Washington, D.C. on July 7, 1980, by the Commission.

**Jane K. Stuckey,**

*Secretary of the Commission.*

[FR Doc. 80–20529 Filed 7–7–80; 10:42 am]

BILLING CODE 6351–01–M

# Sunshine Act Meetings

Federal Register
Vol. 45, No. 132
Tuesday, July 8, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

## CONTENTS


| | Items |
|---|---|
| Civil Aeronautics Board | 1 |
| Federal Maritime Commission | 2 |
| Federal Reserve System (Board of Governors) | 3 |
| Institute of Museum Services | 4 |
| International Trade Commission | 5 |
| National Transportation Safety Board | 6 |
| Nuclear Regulatory Commission | 7 |
| Parole Commission | 8 |
| Securities and Exchange Commission | 9 |


### 1

**[M–284–Amdt. 1, July 3, 1980]**

**CIVIL AERONAUTICS BOARD.**

Notice of addition and deletion of items to the July 8, 1980 meeting.

**TIME AND DATE:** 9:30 a.m., July 8, 1980.

**PLACE:** Room 1027, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

**SUBJECT:**

*Deletion:* 16. Docket 37970, Part 315, Information submitted in section 408 applications (OGC).

*Addition:* 27. Docket 30789, *Translantic Cargo Service Case*—Draft opinion and order on discretionary review.

**STATUS:** Open.

**PERSON TO CONTACT:** Phyllis T. Kaylor, The Secretary (202) 673–5068.

[S–1302–80 Filed 7–3–80; 3:40 pm]

**BILLING CODE 6320–01–M**

### 2

**FEDERAL MARITIME COMMISSION.**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 45 FR 45051, July 2, 1980.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 10 a.m., July 9, 1980.

**CHANGES IN THE MEETING:** Time of meeting changed from 10 a.m. to 9 a.m. on July 9, 1980. Addition of the following item to the closed session: 2. Pacific Coast European Conference Amended Tariff Rule Providing for Equalization.

[S–1300–80 Filed 7–3–80; 11:45 am]

**BILLING CODE 6730–01–M**

### 3

**FEDERAL RESERVE SYSTEM.** (Board of Governors)

**TIME AND DATE:** 10 a.m., Monday, July 14, 1980.

**PLACE:** 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any agenda items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board (202) 452–3204.

Dated: July 3, 1980.

**Griffith L. Garwood,**

*Deputy Secretary of the Board.*

[S–1298–80 Filed 7–3–80; 11:25 am]

**BILLING CODE 6210–01–M**

### 4

**INSTITUTE OF MUSEUM SERVICES.**

The National Museum Services Board (NMSB) will hold an open meeting July 11–12 in Washington, D.C. to discuss the proposed slate of grants for Fiscal Year 1980. The NMSB will also consider future policy directions of the Institute of Museum Services (IMS), including the Institute's position within the Department of Education, Cornerstone Grants Program, budget request, and regulations pertaining to the FY 1981 grants program.

The Board will meet from 9:00 a.m. to 5:00 p.m., July 11, in the Conference Room of the Hubert H. Humphrey Building, Room 403A, 200 Independence Avenue, S.W. and from 9:00 a.m. to 12:30 p.m., July 12 in the Administration Building of the Washington National Zoological Park, 3001 Connecticut Avenue, N.W.

For further information, contact Loretta Ingraham, 202/426–4343.

Dated: July 1, 1980.

**Lee Kimche,**

*Director.*

[S–1296–80 Filed 7–2–80; 5:07 pm]

**BILLING CODE 4000–02–M**

### 5

**[USITC ERB–80–8]**

**INTERNATIONAL TRADE COMMISSION.** (Executive Resources Board (ERB))

**TIME AND DATE:** 10 a.m., Wednedsay, July 16, 1980.

**PLACE:** Room 117, 701 E Street NW., Washington, D.C. 20436.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERD:**

1. Old Business:
   a. SES Pay Management Procedures.
   b. Establishment of SES Position Qualifications.
2. New Business:
   a. Publication of the PRB in the Federal Register.
   b. Briefing by Mr. Fry on the Executive Development Training at Oak Ridge.

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth R. Mason, Secretary (202) 523–0161.

[S–1301–80 Filed 7–3–80; 2:00 am]

**BILLING CODE 7020–02–M**

### 6

**[NM–80–25]**

**NATIONAL TRANSPORTATION SAFETY BOARD.**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 45 FR 45051, July 2, 1980.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 9 a.m., Tuesday, July 8, 1980.

**CHANGE IN MEETING:** A majority of the Board has determined by recorded vote that the business of the Board requires revising the agenda of this meeting and that no earlier announcement was possible. The agenda as now revised is set forth below.

**STATUS:** The first two items will be open to the public; the third item will be closed under Exemption 9B of the Government in the Sunshine Act.

1. *Pipeline Accident Report*—Washington Gas Light Company, Natural Gas Explosion, 215 Third Street, SE, Washington, D.C., October 30, 1979, and *Recommendations* to the Research and Special Programs Administration of the U.S. Department of Transportation and to the Washington Gas Light Company.

2. *Briefing* by U.S. Coast Guard on vessel traffic control systems (VTS).

3. *Aircraft Incident Report*—Aeromexico DC-10-30, XA-DUH, over Luxembourg, Europe November 11, 1979.

**CONTACT PERSON FOR MORE INFORMATION:** Sharon Flemming, 202–462–6022.

July 3, 1980.

[S–1304–80 Filed 7–3–80; 3:59 am]

BILLING CODE 4910–58–M

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7

**NUCLEAR REGULATORY COMMISSION.**

**DATE:** Wednesday, July 9, 1980.

**PLACE:** Room 550, East West Highway, Bethesda, MD.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

*10 a.m.*

Briefing on Analysis of Alternatives for Conducting Independent Verification Testing of Environmentally Qualified Equipment (approximately 2 hours, public meeting).

**CONTACT PERSON FOR MORE INFORMATION:** Walter Magee (202) 634–1410.

**AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE:** (202) 634–1410.

Those planning to attend a meeting sould reverify the status on the day of the meeting.

Roger M. Tweed,

*Office of the Secretary.*

[S–1299–80 Filed 7–3–80; 11:40 am]

BILLING CODE 7590–01–M

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8

**PAROLE COMMISSION.**

National Commissioners (the Commissioners presently maintaining Offices at Washington, D.C. Headquarters).

**TIME AND DATE:** 9:30 a.m., Tuesday, July 15, 1980.

**PLACE:** Room 826A, 320 First Street, NW., Washington, D.C. 20537.

**STATUS:** Closed pursuant to a vote to be taken at the beginning of the meeting.

**MATTERS TO BE CONSIDERED:** Referrals from Regional Commissioners of approximately 10 cases in which inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

**CONTACT PERSONS FOR MORE INFORMATION:** Linda Wines Marble (202) 724–3094.

[S–1297–80 Filed 7–3–80; 10:46 am]

BILLING CODE 4410–01–M

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9

**SECURITIES AND EXCHANGE COMMISSION.**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 45 FR 43315, June 26, 1980.

**STATUS:** Closed meeting.

**PLACE:** Room 825, 500 North Capitol Street, Washington, D.C.

**DATE PREVIOUSLY ANNOUNCED:** Tuesday, June 24, 1980.

**CHANGES IN THE MEETING:** Additional items. The following additional items will be considered at a closed meeting scheduled on Thursday, July 3, 1980, following the 10 a.m. open meeting:

Institution of injunctive action.
Litigation matter.
Settlement of administrative proceeding of an enforcement nature.

Chairman Williams and Commissioners Loomis and Evans determined that Commission business required the above changes 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, plase contact: Nancy Wojtas at (202) 272–2178.

July 2, 1980.

[S–1303–80 Filed 7–3–80; 3:53 am]

BILLING CODE 8010–01–M

federal register

Tuesday
July 8, 1980

Part II

# Department of Housing and Urban Development

## Office of the Secretary

## Debarments, Suspensions, Temporary Denials of Participation, and Voluntary Exclusions

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Secretary**

**24 CFR Part 24**

**[Docket No. R-80-831]**

## Debarments, Suspensions, Temporary Denials of Participation, and Voluntary Exclusions

**AGENCY:** Department of Housing and Urban Development.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Housing and Urban Development has completely reviewed its administrative sanction procedures under Part 24. The proposed revision improves, clarifies, and strengthens the procedural safeguards afforded HUD participants under the present regulations. The revision provides uniformity and fairness in administering sanctions. A major concern underlying this revision was the Department's desire to balance the public interest and the due process rights of the participants subject to administrative action. The revised regulations are clear and concise yet flexible enough to encompass unforeseen types of conduct which may adversely affect Departmental programs.

**DATE:** Comments must be received on or before September 8, 1980.

**ADDRESS:** Interested persons are invited to submit written comments, suggestions or data regarding the proposed rule to the Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Communications should refer to the above docket number and title. All relevant material received on or before September 8, 1980, will be considered before adoption of a final rule. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Steven Horowitz, Department of Housing and Urban Development, Office of the General Counsel, Room 10254, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 755-7138 (not a toll free number).

**SUPPLEMENTARY INFORMATION:** The Department of Housing and Urban Development has completely reviewed its administrative sanction procedures under Part 24. The proposed revision improves, clarifies, and strengthens the procedural safeguards afforded HUD participants under the present regulations. The revision provides uniformity and fairness in administering sanctions. A major concern underlying this revision was the Department's desire to balance the public interest and the due process rights of the participants subject to administrative action. The revised regulations are clear and concise yet flexible enough to encompass unforeseen types of conduct which may adversely affect Departmental programs. The revision includes the following major changes:

1. The term "contractor or grantee", wherever found in the present regulations, would be replaced by the term "participant" in order to clarify the Department's intention to include fee inspectors and other individuals or entities with which the Department does business but which may not fall under the traditional categories of "contractor or grantee".

2. The terms "grants and contracts" and "awards", wherever found in the present regulations, would be replaced by the term "benefits" in order to clarify the Department's intention to include HUD insurance and guaranty program.

3. Section 24.5 would clarify that a person may be subject to sanctions under this part regardless of whether the individual or organization was a participant at the time of the failure or violation on which the sanction is based, or acted in a private or public capacity.

4. A new Subpart E would be added, entitled "Voluntary Exclusion", which would authorize the Department and participants to enter into voluntary agreements not to participate in HUD programs without the imposition of an administrative sanction and would also provide for settlements.

5. Section 24.5 would clarify that individuals and organizations who are prospective recipients of HUD assistance are covered under the regulations.

6. Section 24.6(c) defines "affiliates" in terms of the control or responsibility inherent in the relationship between individuals and businesses.

7. Section 24.28 would be revised to clarify that suspension may be limited to the program involved, and/or to a specific geographic area.

8. The Conditional Denial of Participation would be eliminated as a separate sanction and incorporated as part of revised standards for issuance of a Temporary Denial of Participation. In addition, an expedited suspension procedure would be added under § 24.25 to protect the public pending debarment action by an Assistant Secretary under specified circumstances. The Temporary Denial of Participation sanction is an extremely useful field sanction and would be expanded under the revised procedures.

9. Sections 24.28 and 24.38 would allow participation of a suspended or debarred party when such participation has been determined to be in the public interest.

10. Section 24.31(f) would authorize the Department to debar a participant who does business with an individual or organization on the Consolidated List if the participant knew or should have known of the listing.

11. Section 24.33 would administratively limit the time period during which the Department may impose a debarment sanction.

12. Section 24.34 would specify the debarment period which may be imposed.

13. Section 24.35 would require that the notice of proposed debarment apprise a participant of the duration of the proposed sanction.

14. Section 24.36 would clarify that for good cause shown, a party may be granted an oral hearing on sanctions based on convictions and indictments.

15. A new § 24.41 would provide for settlements of administrative sanctions imposed under this part.

16. The revision makes reference to hearing procedures under 24 CFR Part 26. This is a new Part which will be published in the **Federal Register** separately for comment, and will provide uniform hearing procedures for appeals from actions taken under Part 24, as well as from actions by the Department's Multifamily Participation Review Committee (24 CFR 200.210 *et seq.*) and the Mortgagee Review Board (24 CFR Part 25).

The Department has determined that an Environmental Impact Statement is not required with respect to this proposed rule. A copy of the Fining of No Significant Impact under the National Environmental Policy Act is available for inspection in the office of the Rules Docket Clerk at the above address. The Department has also determined that this proposal does not have an economic impact. A copy of the Economic Finding of Inapplicability is also available for inspection at the above address.

The public is invited to comment on the proposed Rule. In particular, the Department invites comment on what constitutes "the public interest" as that term is used throughout these regulations.

Interested persons are invited to participate in this rule making by filing data, comments and suggestions with the Rules Docket Clerk at the above

address, on or before the comment due date. Each comment should include the commentator's name and address, and must refer to the docket number indicated in the heading to this document. All relevant comments will be considered before adoption of a final rule and copies of all comments received will be available for copying and inspection in the Office of the Rules Docket Clerk at the above address.

**Repeal of Prior Regulations**

All sanctions not authorized by this part are hereby repealed. These include the following regualtions, which are hereby repealed:

(1) Unsatisfactory Risk Determination (24 CFR 200.200–200.203).

(2) Precautionary Measures (24 CFR 200.205–200.208).

(3) Suspension or Revocation of Eligibility (24 CFR 17.31).

(4) Refusal of Participation under Section 512 (24 CFR 200.190–200.195).

(5) Dealer Approval (24 CFR 201.615–201.620).

Accordingly, it is proposed to amend 24 CFR Part 24 to read as follows:

## PART 24—DEBARMENTS, SUSPENSIONS, TEMPORARY DENIALS OF PARTICIPATION, AND VOLUNTARY EXCLUSIONS

**Subpart A—Administrative Sanctions and Voluntary Exclusions; General Provisions and Definitions**

Sec.
24.0 Policy.
24.1 Purpose.
24.2 Authority.
24.3 Authorized sanctions.
24.4 Voluntary exclusion.
24.5 Applicability.
24.6 Definitions.

**Subpart B—Temporary Denial of Participation**

24.10 Authority to order temporary denial of participation.
24.11 Causes for an order of temporary denial of participation.
24.12 Period and scope.
24.13 Notice.
24.14 Informal hearing.
24.15 Appeal.
24.16 Determination upon appeal.
24.17 Reconsideraiton based on newly discovered evidence.

**Subpart C—Suspension**

24.20 Officials who may initiate suspensions.
24.21 Grounds for suspension.
24.22 Suspension of affiliates.
24.23 Period of suspension.
24.24 Procedures for suspension.
24.25 Expedited procedure; preliminary decisions by regional administrator or area manager.
24.26 Hearing.
24.27 Reconsideration based on newly discovered evidence.
24.28 Discretionary limitation on suspension.

**Subpart D—Debarment**

24.30 Officals who may initiate debarments.
24.31 Causes and conditions applicable to determination of debarment.
24.32 Debarment of affiliates.
24.33 Decision to debar.
24.34 Period of debarment.
24.35 Notice of proposed debarment; commencement of debarment period.
24.36 Hearing.
24.37 Reinstatement and reconsideration.
24.38 Participation in extraordinary situations.

**Subpart E—Voluntary Exclusion and Settlements**

24.40 Voluntary exclusion.
24.41 Settlements.

**Subpart F—Consolidated List**

24.50 Establishment and maintenance of consolidated list of parties subject to administrative sanctions and voluntary exclusions.
24.51 Maintaining the list.
24.52 Information on the list.
24.53 Distribution of the list.
24.54 Classification for entry on the consolidated list.

**Subpart G—Effect of These Rules on Other Sanctions**

24.60 Sanctions repealed.
24.61 Retroactivity.

**Authority:** Sec. 7(d), Department of HUD Act 79 Stat. 670; (42 U.S.C. 3535(d))

## PART 24—DEBARMENTS, SUSPENSIONS, TEMPORARY DENIALS OF PARTICIPATION AND VOLUNTARY EXCLUSIONS

### Subpart A—Administrative Sanctions and Voluntary Exclusions: General Provisions and Definitions

**§ 24.0 Policy.**

HUD's mission requires that the Department only do business with responsible participants. Accordingly, participation in Departmental programs shall be denied to those who have been determined not to be responsible under uniformly applied criteria.

**§ 24.1 Purpose.**

This Part sets forth rules for the imposition of debarment and other sanctions against individuals, corporations, partnerships or other entities who do not fulfill their responsibilities with respect to the Department. The sanctions shall be used to protect the public and not to punish anyone.

**§ 24.2 Authority.**

This Part is issued pursuant to Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d), which authorizes the Secretary to make such rules and regulations as may be necessary to carry out the Secretary's functions, powers and duties.

**§ 24.3 Authorized sanctions.**

This part sets forth rules for the imposition of the following sanctions:

(a) *Temporary denial of participation.* Temporary denial of participation is the immediate exclusion of a party from participation, or the immediate imposition of conditions for participation, in a specific program of the Department pending corrective action by the party against whom the sanction is issued.

(b) *Suspension.* Suspension is an immediate exclusion from participation in Department programs based upon adequate evidence of serious wrongdoing.

(c) *Department.* Debarment means exclusion from participation in Department programs for a period of time commensurate with the seriousness of the matter that is the cause of the debarment.

**§ 24.4 Voluntary exclusion.**

Voluntary Exclusion means exclusion from participation in HUD programs for a reasonable, specified period of time as a result of an agreement voluntarily entered into between the Department and the party to be excluded.

**§ 24.5 Applicability.**

(a) *General.* Any participant, prospective participant or affiliate is subject to the sanctions set forth in this part, if cause for imposing the sanction is shown and the procedures provided in this part are followed. A person may be subject to sanctions under this part whether or not that person was engaged in a HUD program at the time of the conduct on which the sanction is based and whether or not that person acted individually, on behalf of others, or in a private or public capacity. Where an office of the Department is required by statute, regulation, or Executive Order to follow administrative sanction procedures that may differ from the requirements of this part, the statutory, regulatory or Executive Order procedures shall take precedence.

(b) *Exceptions.* This part does not include (1) contracts or grants made in connection with the acquisition of any property interest under the power of eminent domain; (2) relocation payments to eligible displaced parties; (3) direct all-cash sales of Secretary-owned properties; (4) sale of the personal residence of a debarred

individual; (5) employment in a position which does not involve discretionary or budgetary control over matters involving HUD; or (6) any programs, actions of, or dealings with the Government National Mortgage Association.

**§ 24.6 Definitions.**

(a) *Participants.* Individuals and public and private organizations or their employees that directly or indirectly participate in HUD programs. Participation includes any receipt of HUD benefits, either directly or indirectly through non-Federal sources or other recipients. Participants include, but are not limited to, borrowers, builders, contractors, grantees, mortgagees, fee appraisers/inspectors, real estate agents and brokers, area management brokers, management and marketing agents, or persons in a business relationship with participants, such as consultants, architects, engineers and attorneys.

(b) *Prospective Participants.* Individuals and public and private organizations or their employees that are not participants as defined in paragraph (a) of this section are deemed to be prospective participants if they (1) are former Federal Government employees, or (2) directly or indirectly participate or have previously participated in Federal programs. Participation includes any receipt of benefits from the Federal Government, either directly or indirectly through non-Federal sources.

(c) *Affiliates.* A person is an affiliate if he directly or indirectly controls policy of an actual or prospective participant or has the power to do so. Persons whose conduct or policy is controlled by the same third party are also affiliates.

(d) *Benefits.* Money or any other thing of value provided by or realized because of the Department. "Things of value" include insurance or guarantees of any kind.

(e) *Person.* Includes both individuals and entities who are participants, prospective participants and affiliates.

## Subpart B—Temporary Denial of Participation

**§ 24.10 Authority to order temporary denial of participation.**

Area Managers or Regional Administrators may order a Temporary Denial of Participation as to any actual or prospective participants or affiliates except mortgagees.

**§ 24.11 Causes for an order of temporary denial of participation.**

An Order of Temporary Denial of Participation may be issued where there is evidence that the person:

(a) Did not comply with time limits, plans, specifications, warranties or other obligations;

(b) Is responsible for correctable construction deficiencies;

(c) Will not properly complete performance under a grant or contract; or

(d) Did not comply with the Department's Affirmative Fair Housing Marketing Regulations or with an Affirmative Fair Housing Marketing Plan.

**§ 24.12 Period and scope.**

(a) An Order of Temporary Denial of Participation is limited to the program(s) under which the cause(s) for the Order arose and is effective only within the jurisdiction of the office imposing the sanction. For purposes of this subpart, the term "program" may include any or all of the functions within the jurisdiction of an Assistant Secretary.

(b) An Order shall be effective immediately upon being signed by the authorized official and shall remain effective up to one year or until the cause(s) for the Order is resolved, whichever comes first. If the cause(s) has not been resolved at the end of a year, the Order may be renewed for an additional period up to one year. If the cause(s) is not resolved, the person may also be suspended or debarred under this part.

**§ 24.13 Notice.**

(a) An actual or prospective participant or affiliate shall be served with written notice including:

(1) The Order of Temporary Denial of Participation;

(2) The cause(s) for the Order;

(3) An explanation of the scope and effect of the Order;

(4) A statement that the person may obtain an informal hearing on the Order by writing within 20 days to the official issuing the Order;

(5) The regulatory basis for the Order.

(b) Notice shall be furnished by expeditious means, such as certified or registered mail. Notice shall be considered to have been received if properly sent to the person's last known address.

**§ 24.14 Informal hearing.**

(a) The official issuing the Order shall set the hearing within 30 days of receiving a timely written request.

(b) The person who requests the hearing or his lawyer may present all relevant materials to the official.

(c) If a party requests that the hearing be transcribed, he shall pay the cost.

(d) Within 30 days of the hearing, the official shall make a written decision to withdraw, modify or affirm the Order and shall immediately inform the other persons of his decision.

**§ 24.15 Appeal.**

(a) *Appeal to Department Official.* A person may appeal the official's decision by writing within 20 days of receipt of the decision to the appropriate HUD Assistant Secretary. Where the Order is based upon a violation of Fair Housing or Equal Opportunity requirements, the appeal shall be to the Assistant Secretary for Fair Housing and Equal Opportunity.

(b) *Referral to Hearing Officer.* The Assistant Secretary shall refer the appeal within twenty days of receipt to a Hearing Officer to consider documentary evidence and written briefs. It the Hearing Officer concludes that an oral hearing is necessary, it shall be held within 30 days of the referral according to procedures set forth at 24 CFR Part 26. The Hearing Officer may limit the oral hearing to particular issues.

**§ 24.16 Determination upon appeal.**

(a) The Hearing Officer shall sustain the order of Temporary Denial of Participation if he finds, based on a preponderance of evidence, that:

(1) The sanction imposed is reasonable and authorized under these regulations, and

(2) The cause(s) for the Order has not been resolved.

(b) The Hearing Officer shall expeditiously send copies of the Determination to all parties, including the appropriate Assistant Secretary and the field official who issued the Order, within five days of the date the Determination is issued.

(c) The Determination of the Hearing Officer shall be final unless review by the Secretary is requested as provided in Part 26 of this chapter.

**§ 24.17 Reconsideration based on newly discovered evidence.**

(a) Any party may seek reconsideration at any time based on newly discovered evidence not available at the hearing. The request must specifically describe the new evidence, its relevance, and the reasons why it was previously unavailable. The request shall be filed with the Hearing Officer within sixty days from the date the requesting party becomes aware of

the evidence. A copy of the request and all supporting documents shall be served on the opposing party by Certified or Registered mail, return receipt requested. The opposing party may file a response within 20 days of receipt.

(b) A Hearing Officer must decide whether to grant the request. It may only be granted if the Hearing Officer concludes that the new evidence was previously unavailable and that such evidence would probably materially affect the prior decision.

(c) If reconsideration is granted, the requesting party has the right to a hearing. The hearing shall be limited to the opportunity to submit the new documentary evidence and written briefs unless the Hearing Officer concludes that an oral hearing is necessary.

## Subpart C—Suspension

### § 24.20 Officials who may initiate suspensions.

Any Assistant Secretary of HUD or the New Communities Administrator may initiate suspensions for matters within his jurisdiction. The Assistant Secretary for Fair Housing and Equal Opportunity may initiate suspensions based upon a violation of fair housing or equal opportunity requirements. No suspension may be initiated against mortgagees, however, without approval of the Mortgagee Review Board. Officals who may initiate suspensions are referred to as Initiating Officials.

### § 24.21 Grounds for suspension.

(a) An actual or prospective participant may be suspended if there is adequate evidence that he:

(1) Committed fraud or a criminal offense as an incident to obtaining, seeking to obtain, or performing government business or a public contract;

(2) Committed any criminal offense indicating a lack of business integrity or business honesty which seriously and directly affects the question of present responsibility, including but not limited to embezzlement, theft, forgery, bribery, falsification or destruction of records, false statements, fraud, receiving stolen property, violation of the Organized Crime Control Act of 1970, or violation of the Federal Antitrust statutes;

(3) Violated any agreement for Voluntary Exclusion or any settlement made under this Part;

(4) Did not resolve a cause(s) for an Order of Temporary Denial of Participation;

(5) Was found to violate Title VIII of the Civil Rights Act of 1968 or Executive Order 11063;

(6) Did not comply with the Department's Affirmative Fair Housing Marketing Regulations or an Affirmative Fair Housing Plan;

(7) Violated Title VI of the Civil Rights Act of 1964, as found by the Secretary, after hearing and in accordance with procedural requirements of that Title's implementing regulations, contained in 24 CFR Parts 1 and 2; or

(8) Committed or omitted acts of such serious and compelling nature affecting responsibility or indicating inability to perform business with the Government as may be determined by the appropriate Initiating Official to warrant suspension. Such conduct and omissions include, but are not limited to:

(i) The violation of any law, regulation, or obligation relating to applications for financial assistance, insurance, or guarantees, or to the performance of obligations incurred pursuant to a grant of financial assistance or conditional or final commitment to insure or guarantee; or

(ii) Making or procuring to be made any false statement or using deceit for the purpose of influencing in any way any action of the government.

(b) An outstanding indictment or being named as an unindicted co-conspirator may be the basis for imposition of a suspension. A conviction may warrant imposition of a suspension pending debarment.

### § 24.22 Suspension of affiliates.

Suspension may include all known affiliates of a participant or prospective participant. A determination to include known affiliates in a particular suspension must be made on a case-by-case basis. Among the factors to be considered in making this determination are:

(a) The affiliate's knowledge of or participation in the conduct which is the basis for the suspension; and

(b) The impact of the affiliate's suspension on Department programs.

### § 24.23 Period of suspension.

(a) All suspensions shall be for a temporary period pending the completion of an investigation and such administrative or legal proceedings as may ensue.

(b) No suspension shall continue for more than thirty days unless the suspended party is afforded the right to a hearing.

(c) In cases involving suspected violations of Federal law where prosecutive action has not been initiated by the Department of Justice within 12 months from the date of the notice of suspension, the suspension shall be terminated unless an Assistant Attorney General or a United States Attorney requests continuance for an additional six months. Notice of the proposed removal of the suspension shall be given to the Department of Justice 30 days prior to the expiration of the 12 month period. In no event shall a suspension continue beyond 18 months unless prosecutive action has been initiated within that period.

(d) The time limitations for suspension contained in this section may be waived by the affected party.

### § 24.24 Procedures for suspension.

(a) *Decision to Suspend.* Suspension is a drastic action and, as such, shall not be based upon an unsupported accusation.

(1) In assessing whether adequate evidence exists for imposing a suspension, all available relevant facts should be considered including, but not limited to: (i) The amount of credible evidence which is available; (ii) the existence or absence of corroboration of important allegations; and (iii) inferences which may properly be drawn from the existence or absence of available facts.

(2) This assessment shall include an examination of basic documents, such as contracts, inspection reports, and correspondence.

(b) *Notice of Suspension.* The suspended party shall be furnished a written notice of suspension by expeditious means such as certified or registered mail. Notice shall be considered to have been received if properly sent to the person's last known address. The notice shall reference:

(1) The specific acts or omissions on which the suspension is based. These may be described in general terms without disclosing the Government's evidence if greater specificity would: (i) Interfere with enforcement proceedings; (ii) deprive a person of a right to a fair trial or an impartial adjudication; (iii) constitute an unwarranted invasion of personal privacy; (iv) disclose the identity of or information furnished solely by a confidential source; (v) disclose investigative techniques and procedures; or (vi) endanger the life or physical safety of law enforcement personnel.

(2) The provisions of §§ 24.23, 24.26 and 24.28 regarding duration of suspensions, right to a hearing, and restrictions on participants during the suspension period; and

(3) If applicable, the expedited procedure of § 24.25.

**§ 24.25 Expedited procedure; preliminary decisions by regional administrator or area manager.**

(a) When a Regional Administrator or Area Manager has adequate evidence: (1) Warranting a suspension under this Part, (2) that the person concerned may become a participant in a Department program within the next fifteen days, and (3) that significant harm to the public interest may result if the person participates in a Department program, the Administrator or Manager, simultaneous with the issuance of a recommendation to the appropriate Initiating Official that suspension action be taken, may suspend the party by issuing a notice as provided for in § 24.24(b).

(b) The recommendation for suspension shall be forwarded to the Initiating Official expeditiously. It shall include: (1) The reason(s) for taking action under this section; and (2) all evidence on which the action is based.

(c) The Initiating Official shall determine within ten days whether the suspension shall continue and shall advise the recommending official and the suspended party accordingly by written notice.

(d) No locally imposed suspension under this section may continue beyond fifteen days of issuance.

**§ 24.26 Hearing.**

(a) *Request for a Hearing.* A suspended party is entitled to request a hearing before a Hearing Officer on the suspension.

(1) The request shall be in writing, addressed to the Initiating Official.

(2) One request for a hearing may be made at any time during the period of suspension, and, unless waived, the party suspended may demand that the hearing be held within thirty days of receipt of the request by the Initiating Official.

(b) *Hearing Procedures.* (1) The hearing shall be before a Hearing Officer appointed by the Secretary or Undersecretary of the Department.

(2) The Hearing Procedures set forth at 24 CFR Part 26 shall apply except to the extent that such procedures conflict with the procedures set forth in this subpart.

(3) Where a suspension is based solely upon an indictment, the parties shall be limited to an opportunity to submit documentary evidence and written briefs except that where good cause is shown as to why an oral hearing should be held, the Hearing Officer may, in his discretion, grant a request for such a hearing.

(4) *In camera proceeding.* (i) When an official with appropriate authority in the Department of Justice, Office of Inspector General for HUD, the Federal Bureau of Investigation, or other investigative or law enforcement agency of the Federal or a State Government determines by affidavit or sworn testimony that disclosure of evidence which is the basis for a suspension would result in significant harm to other litigation or proceedings or to an investigation of allegations which, if proven, would result in a violation of criminal statutes, the evidence may be presented to the Hearing Officer *in camera.* (ii) In such circumstances, the Hearing Officer shall determine whether any disclosure to the suspended party would be in the public interest and whether an opportunity to respond may be granted to the suspended party. (iii) The Department shall retain the right to withdraw such evidence from the record after the Hearing Officer's *in camera* determination in order to avoid disclosure to the suspended party.

(5) *Discovery.* (i) In matters referred to the Department of Justice, HUD shall not give information to the affected party concerning the reasons for suspension beyond that stated in the notice of suspension until the Department of Justice has been advised of the inquiry and consents to any such disclosure. (ii) In no event shall discovery be granted which might in any way jeopardize an ongoing criminal proceeding or investigation of allegations which, if proven, would result in a violation of criminal statutes.

(6) *Consolidation.* Where appropriate, and if the parties agree, a suspension hearing may be consolidated with a debarment hearing involving the same issues.

(7) *Determination.* The Hearing Officer shall sustain the suspension if he finds: (i) Adequate evidence of cause under § 24.21; (ii) the suspension is authorized under § 24.23; and (iii) if an affiliate is involved, adequate evidence of knowledge of the improper conduct coupled with a failure to act to prevent its occurrence, or participation in the conduct which is the basis for the suspension.

(8) *Distribution.* The Hearing Officer shall expeditiously send copies of the Determination to all parties within five days of the date it is issued.

(9) *Review.* The Determination shall be final unless review by the Secretary is requested as provided in Part 26 of this chapter.

**§ 24.27 Reconsideration based on newly discovered evidence.**

(a) Any party may seek reconsideration at any time based on newly discovered evidence not available at the hearing. The request must specifically describe the new evidence, its relevance, and the reasons why it was previously unavailable. The request shall be filed with the Hearing Officer or Initiating Official within 60 days of the date the moving party becomes aware of the newly discovered evidence. A copy of the request and all supporting documents shall be served on the opposing party by Certified or Registered mail, return receipt requested. The opposing party may file a response within 20 days of receipt.

(b) A Hearing Officer must decide whether to grant the request. It may only be granted if the Hearing Officer concludes that the new evidence was previously unavailable and that the evidence would probably materially affect the prior decision.

(c) If reconsideration is granted under this section, the requesting party has the right to a hearing even though no hearing on the original matter was requested. The hearing shall be limited to the opportunity to submit the new documentary evidence and written briefs unless the Hearing Officer concludes that an oral hearing is necessary.

**§ 24.28 Discretionary limitation on suspension.**

(a) *Bids and proposals.* Bids and proposals for participation in HUD programs shall not be solicited from suspended parties. If received, such bids and proposals shall not be considered unless the Initiating Official determines in writing that consideration is clearly in the best interest of the Government, based upon factors such as the unique value of the bidder's services, the degree to which the suspected conduct reflects upon the bidder's capacity to serve the Department, and the overriding need for the bidder's services. The determination shall specify the factors on which it is based.

(b) *Subcontractors.* Suspended contractors shall not be permitted to act as subcontractors unless the Initiating Official determines in writing that such subcontracts are clearly in the best interest of the Government, based upon the factors identified in paragraph (a) of this section. The determination shall specify the factors on which it is based.

(c) *Program and Geographic Limitations.* The Initiating Official may limit the suspension to a particular programs or program and/or to a particular geographic area if the official determines that such limitation(s) is in the best interest of the Government.

(d) *Existing Contracts.* Where a contract, grant, or other benefit has been awarded to a subsequently suspended

party, the matter shall be reevaluated. If the instrument setting forth the relationship provides for termination and it is determined that termination would be in the best interest of the Government, the relationship shall be terminated.

## Subpart D—Debarment

### § 24.30 Officials who may initiate debarments.

Those officials who may initiate suspensions pursuant to 24 CFR 24.20 may also initiate debarments for matters within their jurisdiction. The Assistant Secretary for Fair Housing and Equal Opportunity may initiate debarments based upon a violation of fair housing or equal opportunity requirements. No debarment may be initiated against mortgagees, however, without approval of the Mortgagee Review Board. For the purpose of this subpart, officials who may initiate debarments are referred to as Initiating Officials.

### § 24.31 Causes and conditions applicable to determination of debarment.

Debarment may be imposed on any participant or prospective participant for any of the following causes:

(a) For any cause which is a ground for suspension as set forth in § 24.21(a)(1)–(8), regardless whether or not action to suspend the party has been taken.

(b) Violation of any law, regulation or obligation relating to conflict of interest.

(c) Violation of any nondiscrimination provision included in any agreement or contract.

(d) Violation of contract provisions, as set forth below, of a character which is regarded by the Department to be so detrimental to the Department's interests as to justify debarment action:

(1) Willfull failure to perform in accordance with the specifications or within the time limit provided in the contract.

(2) Failure to perform or unsatisfactory performance under one or more contracts except where it is shown that the failure or unsatisfactory performance resulted from events the person, or others for which he assumed responsibility, neither caused, contributed to, nor could foresee.

(3) Violation of any contractual provision against contingent fees.

(4) Violation of any contractual provision requiring compliance with Federal labor standards.

(5) Violation of any contractual provision requiring affirmative action to provide equal opportunity in employment practices.

(e) Failure to pay debts to the Department that have been finally adjudicated or that are not subject to a good faith defense by the debtor.

(f) Doing business with a person named on the Consolidated List so as to cause the listed person to become, directly or indirectly, a participant in HUD programs where it is known or should have been known that the person was on the List.

(g) Debarment by another Federal Government Agency.

(h) Any other cause of such serious or compelling nature as to affect responsibility.

### § 24.32 Debarment of affiliates.

(a) Debarment may include all known affiliates. A determination to include known affiliates in a particular debarment must be made on a case-by-case basis. Among the factors to be considered in making this determination are:

(1) Likelihood of the affiliate's knowledge of or participation in the improper conduct; and

(2) The impact of the affiliate's debarment on Department programs.

(b) In instances where debarment of an affiliate is proposed, the affiliate shall have a right to:

(1) Receive notice of the proposed debarment of the participant or prospective participant; and

(2) Intervene in any hearing held on the proposed debarment of any participant or prospective participant, or otherwise show that the affiliate had no actual or imputed knowledge of or involvement in the improper conduct.

(c) The affiliate must, in writing, advise the Initiating Official within ten days of receipt of notice of the proposed debarment of its intention to act under paragraph (b)(2) of this section, or waive its right so to act.

### § 24.33 Decision to debar.

(a) *Whether to Debar.* An Initiating Official, acting in the public interest, may debar a person for any cause set forth in § 24.31. However, the existence of any of these causes does not necessarily require that a party be excluded from Department programs. In each case, even if the offense or violation is of a criminal, fraudulent or other serious nature, the decision to debar shall be within the discretion of the Initiating Official and shall be in the best interest of the Government.

(b) *Seriousness of the Cause for Debarment.* All mitigating factors may be considered in determining the seriousness of an offense or the failure or inadequacy of performance. Among the factors to be considered are whether the cause for debarment is based on a criminal conviction and whether the acts or omissions to act were willful. For purposes of this part, willfulness includes conduct that the person knew was in violation of applicable rules, statutes, regulations, or contract provisions.

(c) *Imputed Knowledge.* A person's act may be imputed to another person if:

(1) The acts primarily benefit the other person; and,

(2) The other person does not show a diligent effort to prevent the acts or that the acts were unforeseen.

(d) *Time Limitations on Decision to Debar.* (1) The decision to debar shall be made within three years of (i) a criminal conviction, (ii) completion of an investigation or audit which is a basis for the debarment action, or (iii) discovery of the cause(s) on which the debarment action is based.

(2) A longer period shall be allowed when the Department can show a good faith inability to make the decision to debar within the three year period and the person would not be unfairly prejudiced by the delay.

### § 24.34 Period of debarment.

(a) *Generally.* Except where paragraph (b) or (c) of this section apply, the Department may impose the following periods of debarment:

(1) Up to six years where the debarment is based upon a criminal conviction, except where paragraph (a)(4) of this section applies.

(2) Up to three years where the violation or failure is solely based upon negligence.

(3) Up to six years where the violation or failure is willful, or involves negligence of such a degree as to imply willfulness.

(4) Up to an indefinite period where the violation or failure involves willful and egregious conduct provided that this sanction shall be reviewed by the Department after six years.

(5) A period pending payment of the debt to the Department where the debarment is for cause under § 24.31(e).

(6) Where the debarment is based on debarment by another Federal Government Agency, a period not to exceed the remainder of the original debarment period.

(b) *Correctable Causes.* If the cause(s) of the debarment is correctable and has not been corrected by the time the debarment period is to expire, debarment may be extended pending correction.

(c) *Repeated debarments.* If a person was previously debarred:

(1) For any cause and is again debarred, the second debarment may be up to six years except where paragraph (c)(2) of this section applies;

(2) Because of a criminal conviction or a willful violation and is again debarred because of a criminal conviction or willful violation, the second debarment may be for an indefinite period;

(3) Twice for any cause, any subsequent debarment may be for an indefinite period.

**§ 24.35 Notice of proposed debarment; commencement of debarment period.**

(a) When a decision to debar is made, the Initiating Official shall notify the person, in writing, of the proposed debarment by expeditious means, such as certified or registered mail. Notice shall be considered to have been received by the addressee if properly sent to the last known address. The notice shall state:

(1) The specific acts or omissions which form the basis of the action; and

(2) That the party may, on request, obtain a hearing as appropriate under § 24.36.

(b) The notice shall state the period of proposed debarment and shall specify that the debarment begins when: (1) A final determination is issued, after the time to request a hearing has expired and no hearing has been requested; or (2) where a hearing has been requested, when an order of debarment is issued by the Hearing Officer.

(c) If the person is under suspension, the notice of debarment shall specify that unless the order of suspension is overturned, the suspension continues until the debarment proceedings are resolved. If the suspension and debarment actions are taken simultaneously, the notice shall also include all of the information required by § 24.24(b).

(d) The matters of fact and law alleged in a notice may be amended by the Initiating Official at any stage of the proceedings, and such amended notice may be consolidated as part of a hearing on the proposed debarment.

**§ 24.36 Hearing.**

(a) *Request for Hearing.* A request for a hearing before a Hearing Officer shall be made in writing, addressed to the official proposing the action, within twenty days of receipt of the notice set forth in § 24.35. If no request has been received by the official within the twenty day period, it may be assumed that an opportunity to be heard is not desired, and the Initiating Official may make a final determination and so notify the person in writing. Notice of the final determination shall be considered to have been received if properly sent to the person's last known address.

(b) *General Procedures.* The rules of procedure set forth in Part 26 shall apply in debarment hearings, except as otherwise provided in this Subpart.

(c) *Hearing Before Hearing Officer.* A person who has received notice pursuant to § 24.35 has the right to be heard before a Hearing Officer and to be represented by counsel as follows:

(1) Where the proposed action is not based solely upon an indictment or conviction, or upon debarment by another Federal Government Agency, he may request an oral hearing before a Hearing Officer and/or the opportunity to submit documentary evidence and written briefs for consideration by a Hearing Officer;

(2) Where the proposed action is based solely upon an indictment or conviction, or upon debarment by another Federal Government Agency, he shall be limited to the opportunity to submit documentary evidence and written briefs for consideration by a Hearing Officer, except that where good cause is shown as to why an oral hearing should be held, the Hearing Officer may, in his discretion, grant a request for such a hearing.

(d) *Appointment of Hearing Officer.* Within twenty days of receipt of a request for an opportunity to be heard under this paragraph, a Hearing Officer shall be appointed to hear the matter by the Secretary or Undersecretary of the Department.

(e) *Oral Hearing.* (1) The Hearing Officer shall arrange as prompt a hearing as practicable.

(2) Notice of the time and place of the hearing shall be in writing, transmitted to all interested parties and shall include a statement indicating the nature of the proceedings and their purpose.

(3) The hearing place shall be determined by the Hearing Officer, in consideration of the convenience of the parties and the public interest.

(4) The General Counsel shall maintain a current schedule of all matters that have been set for hearing. This information shall be available to the public upon request.

(5) Hearings involving related parties or affiliates shall be consolidated wherever appropriate.

(6) Any member of the public having an interest in the matter being heard may request participation at the hearing. Such participation may be granted at the discretion of the Hearing Officer and shall be limited to the following:

(i) Receiving advance notice of hearings;

(ii) Filing written briefs on the issues presented; and

(iii) Testifying when requested by the Hearing Officer.

(f) *Determination.* The Hearing Officer shall sustain the debarment if he finds:

(1) The existence of cause under § 24.31 has been established by a preponderance of the evidence;

(2) The debarment was proposed within the time limitations of § 24.33(d);

(3) The proposed period of debarment is consistent with § 24.34; and

(4) If an affiliate is involved, knowledge of the improper conduct coupled with a failure to act to prevent its occurrence, or participation in the improper conduct has been established by a preponderance of the evidence.

(g) *Distribution.* The Hearing Officer shall expeditiously send copies of the Determination to all parties within five days of the date it is issued:

(h) *Review.* The Determination shall be final unless review by the Secretary is requested as provided in Part 26 of this chapter.

**§ 24.37 Reinstatement and reconsideration.**

(a) *Filing a Request for Reinstatement.* Requests for reinstatement shall be in writing, addressed to the Initiating Official, as follows:

(1) A party debarred because of a criminal conviction or a willful violation may file a request for reinstatement after half the debarment period has expired. However, if the conviction is reversed on appeal, the debarred party may immediately file a request for reinstatement.

(2) When debarment is for an indefinite period, a request for reinstatement may be submitted after six years of debarment have elapsed.

(3) In all other cases, a request for reinstatement may be filed six months after debarment.

(4) A decision to reinstate a debarred party shall be a matter within the discretion of the Initiating Official.

(b) *Procedures.* The determination whether to reinstate may ordinarily be based on written submissions of evidence, without a further hearing. However, in determining whether reinstatement is appropriate, the Initiating Official may require a hearing on the request for reinstatement. Where a hearing is held, the Hearing Officer shall make a recommendation to the Initiating Official as to whether reinstatement is warranted under the standards of subsection (c).

(c) *Basis for Reinstatement.* (1) Reinstatement shall only be granted where (i) the debarred person has shown, based upon a preponderance of the evidence, that he is now responsible; (ii) the Initiating Official has determined that reinstatement is in the public

interest; and (iii) the debarred person has certified that he understands the requirements of applicable statutes, administrative rules and regulations, and will comply with them in the future.

(2) In granting reinstatement, the Initiating Official may require (i) restitution by the debarred party for losses sustained by the Department as a result of the prior violations or failures, as a precondition to reinstatement; and (ii) compliance with any other conditions determined to be in the best interest of the Government.

(3) The Initiating Official may at any time reinstate the debarred party and/or may rescind the debarment upon a determination that the cause(s) upon which the debarment is based no longer exists. The determination shall be in writing and shall specify the factors on which it is based.

(d) *Reconsideration Based on Newly Discovered Evidence.* (1) Any party may seek reconsideration at any time based on newly discovered evidence not available at the hearing. The request must specifically describe the new evidence, its relevance, and the reasons why it was previously unavailable. The motion shall be filed with the Hearing Officer or the Initiating Official within 60 days from the date the requesting party becomes aware of the evidence. A copy of the request and all supporting documents shall be served on the opposing party by Certified or Registered mail, return receipt requested. The opposing party may file a response within 20 days of receipt.

(2) A Hearing Officer must decide whether to grant the request. It may be granted only if the Hearing Officer concludes that the new evidence was previously unavailable and that the evidence would probably materially affect the prior decision. A hearing on the motion may be held in the discretion of the Hearing Officer or Initiating Official.

(e) *Hearing.* If a request for reconsideration or reinstatement is filed under this section, the requesting party has the right to a hearing even though no hearing on the original matter was requested. The hearing shall be limited to the opportunity to submit documentary evidence and written briefs unless the Hearing Officer concludes that an oral hearing is necessary in order to make the findings required under § 24.37(c) or § 24.37(d). In no event shall the original determination of debarment by reopened at a reinstatement hearing.

**§ 24.38 Participation in extraordinary situations.**

(a) *Limited Participation.* In extraordinary situations of an emergency or similar nature, an Initiating Official may allow a debarred party to participate in HUD programs on a limited specified basis during the debarment period. In such extraordinary situations, the Initiating Official shall make a written determination that the public interest requires such participation. The determination shall specify the factors on which it is based.

(b) *Existing Contracts.* Where a contract, grant, or other benefit has been awarded to a subsequently debarred party, the matter shall be reevaluated. If the instrument setting forth the relationship provides for termination and it is determined that termination would be in the best interest of the Government, the relationship shall be terminated.

## Subpart E—Voluntary Exclusions and Settlements

**§ 24.40 Voluntary exclusion.**

(a) When in the best interest of the Government, and provided that allegations of fraud or criminal activity are not involved, an Initiating Official under this part, instead of taking administrative action, may enter into an agreement with a person providing for voluntary exclusion from Department programs for a specified period of time. Agreements for voluntary exclusion are entered into for the benefit of both parties and do not constitute administrative sanctions by the Department. However, violations of an agreement for voluntary exclusion may result in administrative action under this part.

(b) The name of the person entering into the agreement shall be included on the Consolidated List under a separate heading entitled "Voluntary Exclusions."

**§ 24.41 Settlements.**

The Initiating Official shall have authority to settle an administrative action under this part in the interest of the Government at any time prior to the determination of the Hearing Officer.

## Subpart F—Consolidated List

**§ 24.50 Establishment and maintenance of consolidated list of parties subject to administrative sanctions and voluntary exclusions.**

The Inspector General shall be responsible for maintenance and consolidation of Department lists relating to administrative sanctions and voluntary exclusions. The Inspector General shall further maintain a list of debarments by other Government agencies which this Department is required by law or Executive Order to observe.

**§ 24.51 Maintaining the list.**

(a) All lists shall be kept current. (b) Procedures for issuance of notices of additions and deletions shall be established by the Inspector General. (c) Each Initiating Official under this Part shall appoint a liaison officer responsible for providing the Office of Inspector General with current information. (d) The Office of Inspector General shall, in cooperation with the offices of the Department, establish procedures for assuring the timely receipt of information relevant to updating the Consolidated List.

**§ 24.52 Information on the list.**

(a) The Consolidated List shall show as a minimum the following information:

(1) The names of those persons against whom HUD has invoked administrative sanctions (in alphabetical order) with appropriate cross reference where more than one name is involved in a single transaction.

(2) The basis of authority for such action.

(3) The extent of the restrictions imposed, including their expiration date.

(4) The name of the office initiating the action, where appropriate.

(b) The Consolidated List shall show the above information with respect to persons voluntarily excluded from HUD programs under a separate heading entitled "Voluntary Exclusions."

**§ 24.53 Distribution of the list.**

(a) The Inspector General shall arrange for reproduction and distribution of the Consolidated List. The list shall be distributed among Department employees and others outside of the Department whose duties require access to the list, as authorized by the Assistant Secretaries, Area Managers, and Regional Administrators. Distribution shall also be made upon request.

(b) Procedures for submitting requests for information contained in the Consolidated List and distribution of such information shall be established by the Office of Inspector General. Names of entities in the Consolidated List shall be available upon request to that office.

**§ 24.54 Classification for entry on the Consolidated List.**

Persons may be listed in the Consolidated List in accordance with the following classifications:

(a) Those listed by the Comptroller General in accordance with the

provisions of section 3 of the Walsh-Healy Public Contracts Act (41 U.S.C. 37), which have been found by the Secretary of Labor to have violated any of the agreements or representations required by that Act.

(b) Those listed by the Comptroller General in accordance with the provisions of section 3 of the Davis-Bacon Act (40 U.S.C. 276a-2(a)), as found by the Comptroller General to have violated that Act.

(c) Those listed by the Comptroller General in accordance with the provisions of 29 CFR 5.6(b) of the regulations of the Secretary of Labor issued pursuant to authority granted under Reorganization Plan No. 14 of 1950, as found by the Secretary of Labor to be in aggravated or willful violation of the prevailing wage or overtime pay provisions of any statutes including the following:

(1) Davis-Bacon Act (40 U.S.C. 276a);

(2) Anti-Kickback Act (18 U.S.C. 874, 40 U.S.C. 276b);

(3) The Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330);

(4) National Housing Act (12 U.S.C. 1701);

(5) Hospital Survey and Construction Act (42 U.S.C. 291);

(6) Airport and Airway Development Act of 1970 (49 U.S.C. 1701);

(7) Housing Act of 1949 (42 U.S.C. 1401);

(8) School Survey and Construction Act of 1950 (20 U.S.C. 251);

(9) Defense Housing and Community Facilities and Services Act of 1951 (42 U.S.C. 1501, 1591);

(10) Federal Civil Defense Act of 1950 (50 App. U.S.C. 2281(i));

(11) Area Redevelopment Act of 1961 (42 U.S.C. 2518);

(12) Delaware River Basin Compact (sec. 15.1, 75 Stat. 714);

(13) Health Profession Educational Assistance Act of 1963 (sec. 721, 77 Stat. 167);

(14) Mental Retardation Facilities Construction Act (sec. 721, 77 Stat. 282, 284, 288);

(15) Community Mental Health Centers Act (sec. 205, 77 Stat. 292);

(16) Housing and Community Development Act of 1974 (42 U.S.C. 5301).

(d) Those listed by the Director of the Office of Federal Contract Compliance on the Contract Ineligibility List which gives the names of participants who have been declared ineligible to participate in Government contracting or subcontracting by reason of noncompliance with the Equal Opportunity clause.

(e) Those whom the Department has debarred or suspended in accordance with this part.

(f) Those determined by an executive agency in accordance with section 3(b) of the Buy American Act (41 U.S.C. 10b(b)) to have failed to comply with the provisions of section 3(a) of that Act under any contract containing the specific provisions required by said section 3(a) and made by the agency for construction, alteration, or repair of any public building or public work.

(g) Those with whom the Department has entered into an agreement for voluntary exclusion under this part.

## Subpart G—Effect of These Rules on Other Sanctions

### § 24.60 Sanctions repealed.

All sanctions not authorized by this part are hereby repealed. These include but are not limited to:

(a) Unsatisfactory Risk Determination (24 CFR 200.200–200.203).

(b) Precautionary Measures (24 CFR 200.205–200.208).

(c) Suspension or Revocation of Eligibility (24 CFR 17.31).

(d) Restrictions pending correction of Construction Deficiencies (HUD Handbook 4080.1, par. 2–3).

(e) Refusal of participation under Section 512, (24 CFR 200.190–200.195).

(f) Dealer Approval (24 CFR 201.615–201.620).

### § 24.61 Retroactivity.

Limitations on participation in HUD programs imposed prior to the effective date of these regulations under an ancillary procedure shall not be affected by this part.

Issued at Washington, D.C., June 27, 1980.

**Moon Landrieu,**

*Secretary, Department of Housing and Urban Development.*

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Part III

# Office of Management and Budget

## Circular A-122, "Cost Principles for Nonprofit Organizations"

## OFFICE OF MANAGEMENT AND BUDGET

### Circular A-122, "Cost Principles for Nonprofit Organizations"

**AGENCY:** Office of Management and Budget.

**ACTION:** Final Policy.

**SUMMARY:** This notice advises of a new OMB Circular dealing with principles for determining costs of grants, contracts, and other agreements with nonprofit organizations.

The Circular is the product of an interagency review conducted over a two-year period. Its purpose is to provide a set of cost principles to replace existing principles issued by individual agencies. These have often contained varying and conflicting requirements, and created confusion among agency administrators, auditors, and nonprofit officials. The new Circular will provide a uniform approach to the problem of determining costs, and promote efficiency and better understanding between recipients and the Federal Government.

**EFFECTIVE DATE:** The Circular becomes effective on issuance.

**FOR FURTHER INFORMATION CONTACT:** Palmer A. Marcantonio, Financial Management Branch, Office of Management and Budget, Washington, D.C. 20503, (202) 395-4773.

**SUPPLEMENTARY INFORMATION:** Before the Circular became final there was extensive coordination with the affected nonprofit organizations, professional associations, Federal agencies and others. All interested persons were given an opportunity to comment on the proposed Circular through informal consultations and a notice in the **Federal Register**. In response to our requests for comment, we received about 100 letters from Federal agencies, nonprofit organizations, associations, and other interested members of the public. These comments were considered in the final version of the Circular. There follows a summary of the major comments and the action taken on each.

In addition to the changes described, other changes have been made to improve the clarity and readability of the Circular. To the extent possible, we have tried to make the language of this Circular consistent with that of cost principles for educational institutions (Circular A-21), and State and local governments (Circular 74-4).

*Summary of Significant Changes:*

Set forth are changes that have been made in the final Circular as a result of public comments. The more significant changes to the basic Circular and Attachment A include:

1. Paragraph 2. "Supersession" was added to the basic Circular to make it clear that this Circular supersedes cost principles issued by individual agencies.

2. Paragraph 4 of the basic Circular has been amended to make it clear that the absence of an advance agreement on any element of cost will not in itself affect the reasonableness of allocability of that element. Also, this paragraph was amended to make it clear that where an item of cost requiring prior approval is specified in the budget, approval of the budget constitutes approval of the cost.

3. Paragraph 5 of the basic Circular has been changed to remove any doubt as to which nonprofit organizations would not be covered by the Circular. Now, Appendix C to the Circular lists all exclusions.

4. Paragraph 8 was added to the basic Circular to permit Federal agencies to request exceptions from the requirements of the Circular.

5. Paragraph E.2. was added to Attachment A to cover the negotiation and approval of indirect cost rates, and to provide for cognizance arrangements.

The more significant changes to Attachment B to the Circular include:

1. Paragraph 5, *Compensation for Personal Services*, was modified to:

a. Permit Federal agencies to accept a substitute system for documenting personnel costs through means other than personnel activity reports.

b. Clarify provisions covering the allowability of costs for unemployment compensation or workmen's compensation, and costs of insurance policies on the lives of trustees, officers, or other employees.

c. Make unallowable any increased costs of pension plans caused by delayed funding.

d. Delete a paragraph dealing with review and approval of compensation of individual employees.

2. Paragraph 6, *Contingencies*, was changed to make it clear that the term "contingency reserves" excludes self-insurance reserves or pension funds.

3. Paragraph 10 was modified to provide that the value of donated services used in the performance of a direct cost activity shall be allocated a share of indirect cost only when (a) the aggregate value of the service is material, (b) the services are supported by a significant amount of the indirect cost incurred by the organization, and (c) the direct cost activity is not pursued primarily for the benefit of the Federal Government. Provisions were also added to this paragraph for the cognizant agency and the recipient to negotiate when there is no basis for determining the fair market value of the services rendered, and to permit indirect costs allocated to donated services to be charged to an agreement or used to meet cost sharing or matching requirements.

4. Paragraph 31, *Equipment and Other Capital Expenditures*, was changed. Capital equipment is now defined as having an acquisition cost of $500 and a useful life of more than two years.

5. Paragraph 26, *Meetings, Conferences*. The prior approval requirement for charging meetings and conferences as a direct cost was deleted. A sentence was added to make it clear such costs were allowable provided they meet the criterion for the allowability of cost shown in Attachment A.

6. Paragraph 27, *Organization Costs*, was amended to provide that organization costs may be allowable when approved in writing by the awarding agency.

7. Paragraph 30, *Page Charges in Professional Journals*, was revised to provide that page charges may be allowable.

8. Paragraph 37, *Public Information Service Costs*, was modified to make public information costs allowable as direct costs with awarding agency approval.

9. Paragraph 43, *Rental Costs*, was rewritten to:

a. Make it clear that rental costs under leases which create a material equity on the leased property are allowable only to the amount that the organization would have been allowed had they purchased the property; e.g., depreciation or use allowances, maintenance, taxes, insurance, etc.

b. Clarify the criteria for material equity leases.

10. Paragraph 51, *Travel Costs*, was amended to delete the prior approval requirement for domestic travel. In addition to the above, a number of editorial changes were made to the original document.

*Suggested Changes Not Considered Necessary.*

*Comment.* Several respondents questioned the provision that, for "less than arm's length" leases, rental costs are allowable only up to the amount that would be allowed had title to the property been vested in the grantee organization. In their opinion this rule will result in unnecessary cost to the Federal Government, since it would encourage an organization to lease space on the commercial market at higher rate.

*Response.* The cost principles are designed to cover most situations; however, there are always exceptions that must be considered on a case-by-case basis. The Circular contains a provision for Federal agencies to request exceptions.

*Comment.* Several respondents questioned why interest is not an allowable cost, since it is an ordinary and necessary cost of doing business.

*Response.* It has been a longstanding policy not to recognize interest as a cost. However, this policy has recently been revised for State and local governments in Circular 74–4, with respect to the cost of office space. The revision provides that "rental" rates for publicly owned buildings may be based on actual costs, including depreciation, interest, operation and maintenace costs, and other allowable costs. This revision was under consideration for some time. It was studied extensively by OMB, the General Accounting Office and others, and considerable analysis went into its formulation. Suggestions for extending it to nonprofit organizations would have to be examined with equal care. This has not yet been done, and we were reluctant to further delay issuance of this Circular.

*Comment.* Several respondents questioned why public information costs were not allowable as an indirect cost.

*Response.* Public information costs are often direct services to an organization's other programs. They are allowable, however, as a direct charge when they are within the scope of work of a particular agreement.

*Comment.* One respondent suggested that smaller grantees be excluded from complying with the Circular.

*Response.* Similar rules for the 50 selected items of cost would be needed regardless of the size of the grantee. To the extent possible, the Circular provides simplified methods for smaller grantees.

*Comment.* One respondent said the requirements of the Cost Accounting Standards Board should be applied to cover contracts with nonprofit organizations.

*Response.* It is unlikely that the type of grantees covered by this Circular would have contracts large enough to be covered by the CASB. In the event that they do, however, the regulations of the CASB would apply.

*Comment.* One respondent said the allocation of indirect cost to donated services would pose a tremendous difficulty to the organization. The organization relies on a corps of approximately 8,000 committee members to carry out obligations in response to Government requests. There is no employer relationship in the arrangements for this assistance, nor are there committee members normally reimbursed for such services. Further, it was pointed out the committee members spend many thousands of hours outside the organization's premises conducting research.

*Response.* It would appear that this type of committee arrangement would not be considered in the determination of the organization's indirect cost rate provided that Federal agreements do not bear an unreasonable share of indirect cost. However, the cognizant agency will be responsible for evaluating the allocation of indirect cost where there are committee-type arrangements on a case-by-case basis.

*Comment.* One respondent suggested that wherever possible the language in the *Federal Procurement Regulations* be used for nonprofit organizations.

*Response.* The language in the *Federal Procurement Regulations* was designated primarily for commercial firms, and is not necessarily well suited to nonprofit organizations. At the suggestion of the General Accounting Office, the nonprofit cost principles were written to conform as closely as possible to those of educational institutions (Circular A–21), and State and local governments (Circular 74–4).

**John J. Lordan,**

*Chief, Financial Management Branch.*

**[Circular No. A–122]**

June 27, 1980

To The Heads of Executive Departments and Establishments

Subject: Cost principles for nonprofit organizations.

1. *Purpose.* This Circular establishes principles for determining costs of grants, contracts and other agreements with nonprofit organizations. It does not apply to colleges and universities which are covered by Circular A–21; State, local, and federally recognized Indian tribal governments which are covered by Circular 74–4; or hospitals. The principles are designed to provide that the Federal Government bear its fair share of costs except where restricted or prohibited by law. The principles do not attempt to prescribe the extent of cost sharing or matching on grants, contracts, or other agreements. However, such cost sharing or matching shall not be accomplished through arbitrary limitations on individual cost elements by Federal agencies. Provision for profit or other increment above cost is outside the scope of this Circular.

2. *Supersession.* This Circular supersedes cost principles issued by individual agencies for nonprofit organization.

3. *Applicability.* a. These principles shall be used by all Federal agencies in determining the costs of work performed by nonprofit organizations under grants, cooperative agreements, cost reimbursement contracts, and other contracts in which costs are used in pricing, administration, or settlement. All of these instruments are hereafter referred to as awards. The principles do not apply to awards under which an organization is not required to account to the Government for actual costs incurred.

b. All cost reimbursement subawards (subgrants, subcontracts, etc.) are subject to those Federal cost principles applicable to the particular organization concerned. Thus, if a subaward is to a nonprofit organization, this Circular shall apply; if a subaward is to a commercial organization, the cost principles applicable to commercial concerns shall apply; if a subaward is to a college or university, Circular A–21 shall apply; if a subaward is to a State, local, or federally recognized Indian tribal government, Circular 74–4 shall apply.

4. *Definitions.* a. *"Nonprofit organization"* means any corporation, trust, association, cooperative, or other organization which (1) is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; (2) is not organized primarily for profit; and (3) uses its net proceeds to maintain, improve, and/or expand its operations. For this purpose, the term "nonprofit organization" excludes (i) colleges and universities; (ii) hospitals; (iii) State, local, and federally recognized Indian tribal governments; and (iv) those nonprofit organizations which are excluded from coverage of this Circular in accordance with paragraph 5 below.

b. *"Prior approval"* means securing the awarding agency's permission in advance to incur cost for those items that are designated as requiring prior approval by the Circular. Generally this permission will be in writing. Where an item of cost requiring prior approval is specified in the budget of an award, approval of the budget constitutes approval of that cost.

5. *Exclusion of some nonprofit organizations.* Some nonprofit organizations, because of their size and nature of operations, can be considered to be similar to commercial concerns for purpose of applicability of cost principles. Such nonprofit organizations shall operate under Federal cost principles applicable to commercial concerns. A listing of these

organizations is contained in Attachment C. Other organizations may be added from time to time.

6. *Responsibilities.* Agencies responsible for administering programs that involve awards to nonprofit organizations shall implement the provisions of this Circular. Upon request, implementing instruction shall be furnished to the Office of Management and Budget. Agencies shall designate a liaison official to serve as the agency representative on matters relating to the implementation of this Circular. The name and title of such representative shall be furnished to the Office of Management and Budget within 30 days of the date of this Circular.

7. *Attachments.* The principles and related policy guides are set forth in the following Attachments:

Attachment A—General Principles
Attachment B—Selected Items of Cost
Attachment C—Nonprofit Organizations Not Subject to This Circular

8. *Requests for exceptions.* The Office of Management and Budget may grant exceptions to the requirements of this Circular when permissible under existing law. However, in the interest of achieving maximum uniformity, exceptions will be permitted only in highly unusual circumstances.

9. *Effective Date.* The provisions of this Circular are effective immediately. Implementation shall be phased in by incorporating the provisions into new awards made after the start of the organization's next fiscal year. For existing awards the new principles may be applied if an organization and the cognizant Federal agency agree. Earlier implementation, or a delay in implementation of individual provisions is also permitted by mutual agreement between an organization and the cognizant Federal agency.

10. *Inquiries.* Further information concerning this Circular may be obtained by contacting the Financial Management Branch, Budget Review Division, Office of Management and Budget, Washington, D.C. 20503, telephone (202) 395–4773.

James T. McIntyre, Jr.,
*Director.*

[Circular No. A–122]

**Attachment A**

**General Principles**

*Table of Contents*

A. Basic Considerations

1. Composition of total costs
2. Factors affecting allowability of costs
3. Reasonable costs
4. Allocable costs
5. Applicable credits
6. Advance understandings

B. Direct Costs

C. Indirect Costs

D. Allocation of Indirect Costs and Determination of Indirect Cost Rates

1. General
2. Simplified allocation method
3. Multiple allocation base method
4. Direct allocation method
5. Special indirect cost rates

E. Negotiation and Approval of Indirect Cost Rates

1. Definitions
2. Negotiations and approval of rates

[Circular No. A–122]

**Attachment A**

**General Principles**

*A. Basic Considerations.*

1. *Composition of total costs.* The total cost of an award is the sum of the allowable direct and allocable indirect costs less any applicable credits.

2. *Factors affecting allowability of costs.* To be allowable under an award, costs must meet the following general criteria:

a. Be reasonable for the performance of the award and be allocable thereto under these principles.

b. Conform to any limitations or exclusions set forth in these principles or in the award as to types or amount of cost items.

c. Be consistent with policies and procedures that apply uniformly to both federally financed and other activities of the organization.

d. Be accorded consistent treatment.

e. Be determined in accordance with generally accepted accounting principles.

f. Not be included as a cost or used to meet cost sharing or matching requirements of any other federally financed program in either the current or a prior period.

g. Be adequately documented.

3. *Reasonable costs.* A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the costs. The question of the reasonableness of specific costs must be scrutinized with particular care in connection with organizations or separate divisions thereof which receive the preponderance of their support from awards made by Federal agencies. In determining the reasonableness of a given cost, consideration shall be given to:

a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the organization or the performance of the award.

b. The restraints or requirements imposed by such factors as generally accepted sound business practices, arms length bargaining, Federal and State laws and regulations, and terms and conditions of the award.

c. Whether the individuals concerned acted with prudence in the circumstances, considering their responsibilities to the organization, its members, employees, and clients, the public at large, and the Government.

d. Significant deviations from the established practices of the organization which may unjustifiably increase the award costs.

4. *Allocable costs.*

a. A cost is allocable to a particular cost objective, such as a grant, project, service, or other activity, in accordance with the relative benefits received. A cost is allocable to a Government award if it is treated consistently with other costs incurred for the same purpose in like circumstances and if it:

(1) Is incurred specifically for the award.

(2) Benefits both the award and other work and can be distributed in reasonable proportion to the benefits received.

(3) Is necessary to the overall operation of the organization, although a direct relationship to any particular cost objective cannot be shown.

b. Any cost allocable to a particular award or other cost objective under these principles may not be shifted to other Federal awards to overcome funding deficiencies, or to avoid restrictions imposed by law or by the terms of the award.

5. *Applicable credits.*

a. The term applicable credits refers to those receipts, or reduction of expenditures which operate to offset or reduce expanses items that are allocable to awards as direct or indirect costs. Typical examples of such transactions are: purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing or received by the organization relate to allowable cost they shall be credited to the Government either as a cost reduction or cash refund as appropriate.

b. In some instances, the amounts received form the Federal Government to finance organizational activities or service operations should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures should be applied by the organizaton in determing the rates or amounts to be organization in determining the rates or amaounts to be charged to Federal awards for services rendered whenever the facilities or other resources used in providing such services have been financed directly, in whole or in part, by Federal funds.

a(c) For rules covering program income (i.e., gross income earned from federally supported activities) see Attachment D of OMB Circular A–110.

6. *Advance and understandings.* Under any given award the reasonableness and allocability of certain items of costs may be difficult to determine. This particularly true in connection with orgizations that receive a preponderance of their support from Federal agencies. In order to avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, it is often desirable to seek a written agreement with the cognizant or awarding agency in advance of the incurrence of special or unusal costs. The absence of an advance agreement on any element of cost will not, in itself, affect the reasonableness or allocability of that element.

*B. Direct Costs*

1. Direct costs are those that can be identified specifically with a particular final cost objective: i.e., a particular award, project, service, or other direct activity of an organization. However, a cost may not be assigned to an award as a direct cost if any other cost incurred for the same purpose, in like circumstance, has been allocated to an award as an indirect cost. Cost identified specifically with awards are direct cost of the awards and are to be assigned directly thereto. Cost identified specifically with other final cost objectives of the organization are direct costs of those cost objectives and are not to be assigned to other awards directly or indirectly.

2. Any direct cost of a minor amount may be treated as an indirect cost ofor reasons of practicality where the account treatment for such cost is consistently applied to all final cost objectives.

3. The cost of certain activities are not allowable as charges to Federal awards (see, for example, fund raising costs in paragraph 21 of Attachment B). However, even though these costs are unallowable for purposes of computing charges to Federal awards, they nonetheless must be treated as direct cost for purposes of determining indirect cost rates and be allocated their share of the organization's indirect costs if they represent activities which (1) include the salaries of personnel, (2) occupy space, and (3) benefit from the organization's indirect costs.

4. The costs of activities performed primarily as a service to members, clients, or the general public when significant and necessary to the organization's mission must be treated as direct costs when or not allowable and be allocated an equitable share of indirect costs. Some examples of these types of activities include:

a. Maintenance of membership rolls, subscriptions, publications, and related functions.

b. Providing services and information to members, legislative or administrative bodies, or the public.

c. Promotion, lobbying, and other forms of public relations.

d. Meetings and conferences except those held to conduct the general administration of the organization.

3. Maintenacne, protection, and investment of special funds not used in operation of the organization.

f. Administration of group benefits on behelf of members of clients including life and hospital insurance, annuity or retirement plans, financial aid, etc.

*C. Indirect Cost.*

1. Indirect costs are those that have been incurred for common or joint objectives and cannot be readily, identified with a particular final cost objective. Direct cost of minor amounts may be treated as indirect costs under the conditions described in paragraph B.2. above. After direct costs have been determined and assigned directly to awards or other work as appropriate, indirect costs are those remaining to be allocated to benefiting cost objectives. A cost may not be allocated to an award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to an award as a direct cost.

2. Because of the diverse characteristics and accounting practices of nonprofit organizations, it is not possible to specify the types of cost which may be classified as indirect cost in all situation. However, typical examples of indirect cost for many nonprofit organizations may include depreciation or use allowances on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.

*D. Allocation of Indirect Cost and Determination of Indirect Cost Rates.*

1. *General.*

a. Where a nonprofit organization has only one major function, or where all its major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures as described in paragraph 2 below.

b. Where an organization has several major functions which benefit from its indirect costs in varying degrees, allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefiting functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual awards and other activities included in that dunction by means of an indirect cost rate(s).

c. The determination of what constitutes an organization's major functions will depend on its purpose in being; the types of services it renders to the public, its clients, and its members; and the amount of effort it devotes to such activities as fund raising, public information and membership activities.

d. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in paragraphs 2 through 5 below.

e. The base period for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation wo work performed in that period. The base period normally should coincide with the organization's fiscal year, but in any evnt, shall be so selected as to avoid inequities in the allocation of the costs.

2. *Simplified allocation method.*

a. Where an organization's major functions benefit from its indirect costs to approximately the same degre, the allocation of indirect costs may be accomplished by (i) separating the organization's total costs for the base period as either direct or indirect, and (ii) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should alos be used where an organization has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to an organization is relatively small.

b. both the direct costs and the indirect costs shall exclude capital expenditures and unallowable costs. However, unallowable costs which represent activities must be included in the direct costs under the conditions described in paragraph B.3. above.

c. The distribution base may be total direct costs (excluding capital expenditures and other distorting items, such as major subcontracts or subgrants), direct salaries and wages, or other base which results in an equitable distribution. The distribution base shall generally exclude participant suport costs as defined in paragraph 29 of Attachment B.

d. Except where a special rate(s) is required in accordance with paragraph D.5 below, the indirect cost rate developed under the above principles is applicable to all awards at the organization. If a special rate(s) is required, appropriate modifications shall be made in order to develop the special rate(s).

3. *Multiple allocation base method.*

a. Where an organization's indirect costs benefit its major functions in varying degrees, such costs shall be accumulated into separate cost groupings. Each grouping shall then be allocated individually to benefiting functions by means of a base which best measures the relative benefits.

b. The groupings shall be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping should constitute a pool of expenses that are of like character in terms of the functions they benefit and in terms of the allocation base which best measurs the relative benefits providd to each function. The number of separate groupings should be held within practical limits, taking into consideration the materiality of the amounts involved and the degree of precision desired.

c. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefiting functions. When an allocation can be made by assignment of a cost grouping directly to the function benefited, the allocation shall be made in that manner. When the expenses in a grouping are more general in nature, the allocation should be made through the use of a selected base which produces results that are equitable to both the Government and the organization. In general, any cost element or cost related factor associated with the organization's work is potentially adaptable for use as an allocation base provided (i) it can readily be expressed in terms of dollars or other quantitative measures (total direct costs, direct salaries and wages, staff hours applied, square feet used, hours of usage, number of documents processed, population served, and the like) and (ii) it is common to the benefiting functions during the base period.

d. Except where a special indirect cost rate(s) is required in accordance with paragraph D.5. below, the separate groupings of indirect costs allocated to each major

function shall be agregated and treated as a common pool for that function. The costs in the common pool shall then be distributed to indivisual awars included in that function by use of a single indirect cost rate.

e. The distribution base used in computing the indirect cost rate for each function may be total direct costs (excluding capital expenditures and other distorting items such as major subcontracts and subgrants), direct salaries and wages, or other ase which results in an equitable distribution. The distribution base shall generally exclude participant support costs as defined in paragraph 29, Attachment B. An indirect cost rate should be developed fir each separate indirect cost pool developed. The rate in each case should be stated as the percentage which the amount of the particular indirect cost pool is of the distribution base identified with that pool.

4. *Direct allocation method.*

a. Some nonprofit organizations, treat all costs as direct costs expect general administration and general expenses. These organizations generally separate their costs into thre basic categories: (i) General administration and general expenses, (ii) fund raising, and (iii) other direct functions (including projects performed under Federal awards). Joint costs, such as depreciation, rental costs, operation and maintenance of facilities, telephone expenses, and the like are prorated indivisually as direct cost to each category and to each award, or other activity using a base most appropriate to the particular cost being prorated.

b. This method is acceptable provided each joint cost is prorated using a base which accurately measures the benefits provided to each award or other activity. The bases must be established in accordance with resonable criteria, and be supported by current data. This method is compatible with the Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations issued jointly by the National Health Council, Inc., the National Assembly of Voluntary Health and Social Welfare Organizations, and the United Way of America.

c. Under this method, indirect costs consist eclusively of general administration and general expenses. In all other respects, the organization's indirect cost ratess shal be computed in the same manner as that described in paragraph D.2 above.

5. *Special indirect cost rates.* In some instances, a single indirect cost rate for all activities of an organization or for each major function of the organization ay not be appropriate, since it would not take into account those different factors which may substantially affect the indirect costs applicable to a particular segment of work. For this purpose, a particular segment of work. For this purpose, a particular segment of work may be that performed under a single award or it may consist of work under a group of awards performed in a common environment. the factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or order resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. When a particular segment of work is performed in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to such work. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used provided it is determined that (i) the rate differs significantly from that which would have been obtained under paragraph D.2, 3, and 4 above, and (ii) the volume of work to which the rate would apply is material.

*E. Negotiation and Approval of Indirect Cost Rates.*

1. *Definitions.* As used in this section, the following terms have the meanings set forth below:

a. "Cognizant agency" means the Federal agency responsible for negotiating and approving indirect cost rates for a nonprofit organization on behalf of all Federal agencies.

b. "Predetermined rate" means an indirect cost rate, applicable to a specified current or future period, usually the organization's fiscal year. The rate is based on an estimate of the costs to be incurred during the period. A predetermined rate is not subject to adjustment.

c. "Fixed rate" means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

d. "Final rate" means an indirect cost rate applicable to a specified past period which is based on the actual costs of the period. A final rate is not subject to adjustment.

e. "Provisional rate" or billing rate means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on awards pending the establishment of a rate for the period.

f. "Indirect cost proposal" means the documentation prepared by an organization to substantiate its claim for the reimbursement of indirect costs. This proposal provides the basis for the review and negotiation leading to the establishment of an organization's indirect cost rate.

g. "Cost objective" means a function, organizational subdivision, contract, grant, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, projects, jobs and capitalized projects.

2. *Negotiation and approval of rates.*

a. Unless different arrangements are agreed to by the agencies concerned, the Federal agency with the largest dollar value of awards with an organization will be designated as the cognizant agency for the negotiation and approval of indirect cost rates and, where necessary, other rates such as fringe benefit and computer charge-out rates. Once an agency is assigned cognizance for a particular nonprofit organization, the assignment will not be changed unless there is a major long-term shift in the dollar volume of the Federal awards to the organization. All concerned Federal agencies shall be given the opportunity to participate in the negotiation process, but after a rate has been agreed upon it will be accepted by all Federal agencies. When a Federal agency has reason to believe that special operating factors affecting its awards necessitate special indirect cost rates in accordance with paragraph D.5 above, it will, prior to the time the rates are negotiated, notify the cognizant agency.

b. A nonprofit organization which has not previously established an indirect cost rate with a Federal agency shall after the organization is advised that an award will be made and, in no event, later than three months after the effective date of the award.

c. Organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency within six months after the close of each fiscal year.

d. A predetermined rate may be negotiated for use on awards where there is reasonable assurance, based on past experience and reliable projection of the organization's costs, that the rate is not likely to exceed a rate based on the organization's actual costs.

e. Fixed rates may be negotiated where predetermined rates are not considered appropriate. A fixed rate, however, shall not be negotiated if (i) all or a substantial portion of the organization's awards are expected to expire before the carry-forward adjustment can be made; (ii) the mix of Government and non-government work at the organization is too erratic to permit an equitable carry-forward adjustment; or (iii) the organization's operations fluctuate significantly from year to year.

f. Provisional and final rates shall be negotiated where neither predetermined nor fixed rates are appropriate.

g. The results of each negotiation shall be formalized in a written agreement between the cognizant agency and the nonprofit organization. The cognizant agency shall distribute copies of the agreement to all concerned Federal agencies.

h. If a dispute arises in a negotiation of an indirect cost rate between the cognizant agency and the nonprofit organization, the dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.

i. To the extent that problems are encountered among the Federal agencies in connection with the negotiation and approval process, the Office of Management and Budget will lead assistance as required to resolve such problems in a timely manner.

[Circular No. A–122]

**Attachment B**

**Selected Items of Cost**

*Table of Contents*

1. Advertising costs
2. Bad debts
3. Bid and proposal costs (reserved)
4. Bonding costs
5. Communication costs
6. Compensation for personal services
7. Contingency provisions

8. Contributions
9. Depreciation and use allowances
10. Donations
11. Employee morale, health and welfare costs and credits
12. Entertainment costs
13. Equipment and other capital expenditures
14. Fines and penalties
15. Fringe benefits
16. Idle facilities and idle capacity
17. Independent research and development (reserved)
18. Insurance and indemnification
19. Interest, fund raising, and investment management costs
20. Labor relations costs
21. Losses on other awards
22. Maintenance and repair costs
23. Materials and supplies
24. Meetings, conferences
25. Memberships, subscriptions, and professional activity costs
26. Organization costs
27. Overtime, extra-pay shift, and multishift premiums
28. Page charges in professional journals
29. Participant support costs
30. Patent costs
31. Pension plans
32. Plant security costs
33. Preaward costs
34. Professional service costs
35. Profits and losses on disposition of depreciable property or other capital assets
36. Public information service costs
37. Publication and printing costs
38. Rearrangement and alteration costs
39. Reconversion costs
40. Recruiting costs
41. Relocation costs
42. Rental costs
43. Royalties and other costs for use of patents and copyrights
44. Severance pay
45. Specialized service facilities
46. Taxes
47. Termination costs
48. Training and education costs
49. Transportation costs
50. Travel costs

[Circular No. A–122]

**Attachment B**

**Selected Items of Cost**

Paragraphs 1 through 50 provide principles to be applied in establishing the allowability of certain items of cost. These principles apply whether a cost is treated as direct or indirect. Failure to mention a particular item of cost is not intended to imply that it is unallowable; rather determination as to allowability in each case should be based on the treatment or principles provided for similar or related items of cost.

1. *Advertising costs.*

a. Advertising costs mean the costs of media services and associated costs. Media advertising includes magazines, newspapers, radio and television programs, direct mail, exhibits, and the like.

b. The only advertising costs allowable are those which are solely for (i) the recruitment of personnel when considered in conjunction with all other recruitment costs, as set forth in paragraph 40; (ii) the procurement of goods and services; (iii) the disposal of surplus materials acquired in the performance of the award except when organizations are reimbursed for disposals at a predetermined amount in accordance with Attachment N of OMB Circular A–110; or (iv) specific requirements of the award.

2. *Bad debts.* Bad debts, including losses (whether actual or estimated) arising from uncollectible accounts and other claims, related collection costs, and related legal costs, are unallowable.

3. *Bid and proposal costs.* (reserved)

4. *Bonding costs.*

a. Bonding costs arise when the Government requires assurance against financial loss to itself or others by reason of the act or default of the organization. They arise also in instances where the organization requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

b. Costs of bonding required pursuant to the terms of the award are allowable.

c. Costs of bonding required by the organization in the general conduct of its operations are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

5. *Communication costs.* Costs incurred for telephone services, local and long distance telephone calls, telegrams, radiograms, postage and the like, are allowable.

6. *Compensation for personal services.*

a. *Definition.* Compensation for personal services includes all compensation paid currently or accrued by the organization for services of employees rendered during the period of the award (except as otherwise provided in paragraph g. below). It includes, but is not limited to, salaries, wages, director's and executive committee member's fees, incentive awards, fringe benefits, pension plan costs, allowances for off-site pay, incentive pay, location allowances, hardship pay, and cost of living differentials.

b. *Allowability.* Except as otherwise specifically provided in this paragraph the costs of such compensation are allowable to the extent that:

(1) Total compensation to individual employees is reasonable for the services rendered and conforms to the established policy of the organization consistently applied to both Government and non-Government activities; and

(2) Charges to awards whether treated as direct or indirect costs are determined and supported as required in this paragraph.

c. *Reasonableness.*

(1) When the organization is predominantly engaged in activities other than those sponsored by the Government, compensation for employees on Government-sponsored work will be considered reasonable to the extent that it is consistent with that paid for similar work in the organization's other activities.

(2) When the organization is predominantly engaged in Government-sponsored activities and in cases where the kind of employees required for the Government activities are not found in the organization's other activities, compensation for employees on Government-sponsored work will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor markets in which the organization competes for the kind of employees involved.

d. *Special considerations in determining allowability.* Certain conditions require special consideration and possible limitations in determining costs under Federal awards where amounts or types of compensation appear unreasonable. Among such conditions are the following:

(1) Compensation to members of nonprofit organizations, trustees, directors, associates, officers, or the immediate families thereof. Determination should be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of earnings in excess of costs.

(2) Any change in an organization's compensation policy resulting in a substantial increase in the organization's level of compensation, particularly when it was concurrent with an increase in the ratio of Government awards to other activities of the organization or any change in the treatment of allowability of specific types of compensation due to changes in Government policy.

e. *Unallowable costs.* Costs which are unallowable under other paragraphs of this Attachment shall not be allowable under this paragraph solely on the basis that they constitute personal compensation.

f. *Fringe benefits.*

(1) Fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as vacation leave, sick leave, military leave, and the like, are allowable provided such costs are absorbed by all organization activities in proportion to the relative amount of time or effort actually devoted to each.

(2) Fringe benefits in the form of employer contributions or expenses for social security, employee insurance, workmen's compensation insurance, pension plan costs (see paragraph g. below), and the like, are allowable provided such benefits are granted in accordance with established written organization policies. Such benefits whether treated as indirect costs or as direct costs, shall be distributed to particular awards and other activities in a manner consistent with the pattern of benefits accruing to the individuals or group of employees whose salaries and wages are chargeable to such awards and other activities.

(3)(a) Provisions for a reserve under a self-insurance program for unemployment compensation or workmen's compensation are allowable to the extent that the provisions represent reasonable estimates of the liabilities for such compensation, and the types of coverage, extent of coverage, and rates and premiums would have been allowable had insurance been purchased to cover the risks. However, provisions for self-insured liabilities which do not become payable for more than one year after the provision is made shall not exceed the present value of the liability.

(b) Where an organization follows a consistent policy of expensing actual payments to, or on behalf of, employees or

former employees for unemployment compensation or workmen's compansation, such payments are allowable in the year of payment with the prior approval of the awarding agency provided they are allocated to all activities of the organization.

(4) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibility are allowable only to the extent that the insurance represents additional compensation. The costs of such insurance when the organization is named as beneficiary are unallowable.

g. *Pension plan costs.*

(1) Costs of the organization's pension plan which are incurred in accordance with the established policies of the organization are allowable, provided:

(a) Such policies meet the test of reasonableness;

(b) The methods of cost allocation are not discriminatory;

(c) The cost assigned to each fiscal year is determined in accordance with generally accepted accounting principles as prescribed in Accounting Principles Board Opinion No. 8 issued by the American Institute of Certified Public Accountants; and

(d) The costs assigned to a given fiscal year are funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 days after each quarter of the year to which such costs are assignable are unallowable.

(2) Pension plan termination insurance premiums paid pursuant to the Employee Retirement Income Security Act of 1974 (Pub. L. 93–406) are allowable. Late payment charges on such premiums are unallowable.

(3) Excise taxes on accumulated funding deficiencies and other penalties imposed under the Employee Retirement Income Security Act are unallowable.

h. *Incentive compensation.* Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc., are allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the organization and the employees before the services were rendered, or pursuant to an established plan followed by the organization so consistently as to imply, in effect, an agreement to make such payment.

i. *Overtime, extra pay shift, and multishift premiums.* See paragraph 27.

j. *Severance pay.* See paragraph 44.

k. *Training and education costs.* See paragraph 48.

l. *Support of salaries and wages.*

(1) Charges to awards for salaries and wages, whether treated as direct costs or indirect costs, will be based on documented payrolls approved by a responsible official(s) of the organization. The distribution of salaries and wages to awards must be supported by personnel activity reports as prescribed in subparagraph (2) below, except when a substitute system has been approved in writing by the the cognizant agency. (See paragraph E.2 of Attachment A)

(2) Reports reflecting the distribution of activity of each employee must be maintained for all staff members (professionals and nonprofessionals) whose compensation is charged, in whole or in part, directly to awards. In addition, in order to support the allocation of indirect costs, such reports must also be maintained for other employees whose work involves two or more funcitons or activities if a distribution of their compensation between such functions or activities is needed in the determination of the organization's indirect cost rate(s) (e.g., an employee engaged part-time in indirect cost activities and part-time in a direct function). Reports maintained by nonprofit organizations to satisfy these requirements must meet the following standards:

(a) The reports must reflect an *after-the-fact* determination of the actual activity of each employee. Budget estimates (i.e., estimates determined before the services are performed) do not qualify as support for charges to awards.

(b) Each report must account for the total activity for which employees are compensated and which is required in fulfillment of their obligations to the organization.

(c) The reports must be signed by the individual employee, or by a responsible supervisory official having first hand knowledge of the activities performed by the employee, that the distribution of activity represents a reasonable estimate of the actual work performed by the employee during the periods covered by the reports.

(d) The reports must be prepared at least monthly and must coincide with one or more pay periods.

(3) Charges for the salaries and wages of nonprofessional employees, in addition to the supporting documentation described in subparagraphs (1) and (2) above, must also be supported by records indicating the total number of hours worked each day maintained in conformance with Department of Labor regulations implementing the Fair Labor Standards Act (29 CFR Part 516). For this purpose, the term "nonprofessional employee" shall have the same meaning as "nonexempt employee," under the Fair Labor Standards Act.

(4) Salaries and wages of employees used in meeting cost sharing or matching requirements on awards must be supported in the same manner as salaries and wages claimed for reimbursement from awarding agencies.

7. *Contingency provisions.* Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable. The term "contingency reserve" excludes self-insurance reserves (see paragraph 6.f.(3) and 18.a.(2)(d)); pension funds (see paragraph 6.(g)); and reserves for normal severance pay (see paragraph 44.(b)(1).

8. *Contributions.* Contributions and donations by the organization to others are unallowable.

9. *Depreciation and use allowances.*

a. Compensation for the use of buildings, other capital improvements, and equipment on hand may be made through use allowances or depreciation. However, except as provided in paragraph f. below a combination of the two methods may not be used in connection with a single class of fixed assets (e.g., buildings, office equipment, computer equipment, etc.).

b. The computation of use allowances or depreciation shall be based on the acquisition cost of the assets involved. The acquisition cost of an asset donated to the organization by a third party shall be its fair market value at the time of the donation.

c. The computation of use allowances or depreciation will exclude.

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government irrespective of where title was originally vested or where it presently resides; and

(3) Any portion of the cost of buildings and equipment contributed by or for the organization in satisfaction of a statutory matching retirement.

d. Where the use allowance method is followed, the use allowance for buildings and improvement (including land improvements such as paved parking areas, fences, and sidewalks) will be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost. When the use allowance method is used for buildings, the entire building must be treated as a single asset; the building's components (e.g. plumbing system, heating and air conditioning, etc.) cannot be segregated from the building's shell. The two percent limitation, however, need not be applied to equipment which is merely attached or fastened to the building but not permanently fixed to it and which is used as furnishings or decorations or for specialized purposes (e.g., dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwashers, carpeting, etc.). Such equipment will be considered as not being permanently fixed to the building if it can be removed without the need for costly or extensive alterations or repairs to the building or the equipment. Equipment that meets these criteria will be subject to the six and two-thirds percent equipment use allowance limitation.

e. Where depreciation method is followed, the period of useful service (useful life) established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment used, technological developments in the particular program area, and the renewal and replacement policies followed for the the individual items or classes of assets involved. The methed of depreciation used to assign the cost of an asset (or group of assets) to accounting periods shall reflect the pattern of consumption of the asset during its useful life. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater or lesser in the early portions of its useful life than in the later portions, the straight-line method shall be presumed to be the appropriate method. Depreciation

methods once used shall not be changed unless approved in advance by the cognizant Federal agency. When the depreciation method is introduced for application to assets previously subject to a use allowance, the combination of use allowances and depreciation applicable to such assets must not exceed the total acquisition cost of the assets. When the depreciation method is used for buildings, a building's shell may be segregated from each building component (e.g., plumbing system, heating, and air conditioning system, etc.) and each item depreciated over its estimated useful life; or the entire building (i.e., the shell and all components) may be treated as a single asset and depreciated over a single useful life.

f. When the depreciation method is used for a particular class of assets, no depreciation may be allowed on any such assets that, under paragraph e. above, would be viewed as fully depreciated. However, a reasonable use allowance may be negotiated for such assets if warranted after taking into consideration the amount of depreciation previously charged to the Government, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the asset for the purpose contemplated.

g. Charges for use allowances or depreciation must be supported by adequate property records and physical inventories must be taken at least once every two years (a statistical sampling basis is acceptable) to ensure that assets exist and are usable and needed. When the depreciation method is followed, adequate depreciation records indicating the amount of depreciation taken each period must also be maintained.

10. *Donations*

a. *Services received.*

(1) Donated or volunteer services may be furnished to an organization by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect cost.

(2) The value of donated services utilized in the performance of a direct cost activity shall be considered in the determination of the organization's indirect cost rate(s) and, accordingly, shall be allocated a proportionate share of applicable indirect costs when the following circumstances exist:

(a) The aggregate value of the services is material;

(b) The services are supported by a significant amount of the indirect costs incurred by the organization;

(c) The direct cost activity is not pursued primarily for the benefit of the Federal Government.

(3) In those instances where there is no basis for determining the fair market value of the services rendered, the recipient and the cognizant agency shall negotiate an appropriate allocation of indirect cost to the services.

(4) Where donated services directly benefit a project supported by an award, the indirect costs allocated to the services will be considered as a part of the total costs of the project. Such indirect costs may be reimbursed under the award or used to meet cost sharing or matching requirements.

(5) The value of the donated services may be used to meet cost sharing or matching requirements under conditions described in Attachment E, OMB Circular No. A-110. Where donated services are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

(6) Fair market value of donated services shall be computed as follows:

(a) *Rates for volunteer services.* Rates for volunteers shall be consistent with those regular rates paid for similar work in other activities of the organization. In cases where the kinds of skills involved are not found in the other activities of the organization, the rates used shall be consistent with those paid for similar work in the labor market in which the organization competes for such skills.

(b) *Services donated by other organizations.* When an employer donates the services of an employee, these services shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and indirect costs) provided the services are in the same skill for which the employee is normally paid. If the services are not in the same skill for which the employee is normally paid, fair market value shall be computed in accordance with subparagraph (a) above.

b. *Goods and space.*

(1) Donated goods; i.e., expendable personal property/supplies, and donated use of space may be furnished to an organization. The value of the goods and space is not reimbursable either as a direct or indirect cost.

(2) The value of the donations may be used to meet cost sharing or matching share requirements under the conditions described in Attachment E, OMB Circular No. A-110. The value of the donations shall be determined in accordance with Attachment E. Where donations are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

11. *Employee morale, health, and welfare, costs and credits.* The costs of house publications, health or first-aid clinics, and/or infirmaries, recreational activities, employees' counseling services, and other expenses incurred in accordance with the organization's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance are allowable. Such costs will be equitably apportioned to all activities of the organization. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.

12. *Entertainment costs.* Costs of amusement, diversion, social activities, ceremonials, and costs relating thereto, such as meals, lodging, rentals, transportation, and gratuities are unallowable (but see paragraphs 11 and 25).

13. *Equipment and other capital expenditures.*

a. As used in this paragraph, the following terms have the meanings set forth below:

(1) "Equipment" means an article of nonexpendable tangible personal property having a useful life of more than two years and an acquisition cost of $500 or more per unit. An organization may use its own definition provided that it at least includes all nonexpendable tangible personal property as defined herein.

(2) "Acquisition cost" means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.

(3) "Special purpose equipment" means equipment which is usable only for research, medical, scientific, or technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers.

(4) "General purpose equipment" means equipment which is usable for other than research, medical, scientific, or technical activities, whether or not special modifications are needed to make them suitable for a particular purpose. Examples of general purpose equipment include office equipment and furnishings, air conditioning equipment, reproduction and printing equipment, motor vehicles, and automatic data processing equipment.

b. (1) Capital expenditures for general purpose equipment are unallowable as a direct cost except with the prior approval of the awarding agency.

(2) Capital expenditures for special purpose equipment are allowable as direct costs provided that items with a unit cost of $1000 or more have the prior approval of the awarding agency.

c. Capital expenditures for land or buildings are unallowable as a direct cost except with the prior approval of the awarding agency.

d. Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior approval of the awarding agency.

e. Equipment and other capital expenditures are unallowable as indirect costs. However, see paragraph 9 for allowability of use allowances or depreciation on buildings, capital improvements, and equipment. Also, see paragraph 42 for allowability of rental costs for land, buildings, and equipment.

14. *Fines and penalties.* Costs of fines and penalties resulting from violations of, or failure of the organization to comply with Federal, State, and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of an award or instructions in writing from the awarding agency.

15. *Fringe benefits.* See paragraph 6. f.

16. *Idle facilities and idle capacity.*

a. As used in this paragraph the following terms have the meanings set forth below:

(1) "Facilities" means land and buildings or any portion thereof, equipment individually

or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the organization.

(2) "Idle facilities" means completely unused facilities that are excess to the organization's current needs.

(3) "Idle capacity" means the unused capacity of partially used facilities. It is the difference between that which a facility could achieve under 100 per cent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays, and the extent to which the facility was actually used to meet demands during the accounting period. A multishift basis may be used if it can be shown that this amount of usage could normally be expected for the type of facility involved.

(4) "Costs of idle facilities or idle capacity" means costs such as maintenance, repair, housing, rent, and other related costs; e.g., property taxes, insurance, and depreciation or use allowances.

b. The costs of idle facilities are unallowable except to the extent that:

(1) They are unnecessary to meet fluctuations in workload; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subparagraph, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending upon the initiative taken to use, lease, or dispose of such facilities (but see paragraphs 47.b. and d.).

c. The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided the capacity is reasonably anticipated to be necessary or was originally reasonable and is subject to reduction or elimination by subletting, renting, or sale, in accordance with sound business, economics, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be idle facilities.

17. *Independent research and development* [Reserved].

18. *Insurance and indemnification.*

a. Insurance includes insurance which the organization is required to carry, or which is approved, under the terms of the award and any other insurance which the organization maintains in connection with the general conduct of its operations. This paragraph does not apply to insurance which represents fringe benefits for employees (see paragraph 6.f. and 6.g.(2)).

(1) Costs of insurance required or approved, and maintained, pursuant to the award are allowable.

(2) Costs of other insurance maintained by the organization in connection with the general conduct of its operations are allowable subject to the following limitations.

(a) Types and extent of coverage shall be in accordance with sound business practice and the rates and premiums shall be reasonable under the circumstances.

(b) Costs allowed for business interruption or other similar insurance shall be limited to exclude coverage of management fees.

(c) Costs of insurance or of any provisions for a reserve covering the risk of loss or damage to Government property are allowable only to the extent that the organization is liable for such loss or damage.

(d) Provisions for a reserve under a self-insurance program are allowable to the extent that types of coverage, extent of coverage, rates, and premiums would have been allowed had insurance been purchased to cover the risks. However, provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made shall not exceed the present value of the liability.

(e) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only to the extent that the insurance represents additional compensation (see paragraph 6). The cost of such insurance when the organization is identified as the beneficiary is unallowable.

(3) Actual losses which could have been covered by permissible insurance (through the purchase of insurance or a self-insurance program) are unallowable unless expressly provided for in the award, except:

(a) Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound business practice are allowable.

(b) Minor losses not covered by insurance, such as spoilage, breakage, and disappearance of supplies, which occur in the ordinary course of operations, are allowable.

b. Indemnification includes securing the organization against liabilities to third persons and any other loss or damage, not compensated by insurance or otherwise. The Government is obligated to indemnify the organization only to the extent expressly provided in the award.

19. *Interest, fund raising, and investment management costs.*

a. Costs incurred for interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable.

b. Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable.

c. Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are unallowable.

d. Fund raising and investment activities shall be allocated an appropriate share of indirect costs under the conditions described in paragraph B of Attachment A.

20. *Labor relations costs.* Costs incurred in maintaining satisfactory relations between the organization and its employees, including costs of labor management committees, employee publications, and other related activities are allowable.

21. *Losses on other awards.* Any excess of costs over income on any award is unallowable as a cost of any other award. This includes, but is not limited to, the organization's contributed portion by reason of cost sharing agreements or any underrecoveries through negotiation of lump sums for, or ceilings on, indirect costs.

22. *Maintenance and repair costs.* Costs incurred for necessary maintenance, repair, or upkeep of buildings and equipment (including Government property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements which add to the permanent value of the buildings and equipment or appreciably prolong their intended life shall be treated as capital expenditures (see paragraph 13).

23. *Materials and supplies.* The costs of materials and supplies necessary to carry out an award are allowable. Such costs should be charged at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the organization. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges may be a proper part of material cost. Materials and supplies charged as a direct cost should include only the materials and supplies actually used for the performance of the contract or grant, and due credit should be given for any excess materials or supplies retained, or returned to vendors.

24. *Meetings, conferences.*

a. Costs associated with the conduct of meetings, and conferences, and include the cost of renting facilities, meals, speakers' fees, and the like. But see paragraph 12, *Entertainment costs,* and paragraph 29, *Participant support costs.*

b. To the extent that these costs are identifiable with a particular cost objective, they should be charged to that objective. (See paragraph B. of Attachment A.) These costs are allowable provided that they meet the general tests of allowable, shown in Attachment A to this Circular.

c. Costs of meetings and conferences held to conduct the general administration of the organization are allowable.

25. *Memberships, subscriptions, and professional activity costs.*

a. Costs of the organization's membership in civic, business, technical and professional organizations are allowable.

b. Costs of the organization's subscriptions to civic, business, professional, and technical periodicals are allowable.

c. Costs of attendance at meetings and conferences, sponsored by others when the primary purpose is the dissemination of technical information, are allowable. This includes costs of meals, transportation, and other items incidental to such attendance.

26. *Organization costs.* Expenditures, such as incorporation fees, brokers' fees, fees to promoters, organizers or management consultants, attorneys, accountants, or investment counselors, whether or not employees of the organization, in connection

with establishment or reorganization of an organization, are unallowable except with prior approval of the awarding agency.

27. *Overtime, extra-pay shift, and multishift premiums.* Premiums for overtime, extra-pay shifts, and multishift work are allowable only with the prior approval of the awarding agency except:

a. When necessary to cope with emergencies, such as those resulting from accidents, natural disasters, breakdowns of equipment, or occasional operational bottlenecks of a sporadic nature.

b. When employees are performing indirect functions such as administration, maintenance, or accounting.

c. In the performance of tests, laboratory procedures, or other similar operations which are continuous in nature and cannot reasonably be interrupted or otherwise completed.

d. When lower overall cost to the Government will result.

28. *Page charges in professional journals.* Page charges for professional journal publications are allowable as a necessary part of research costs, where:

a. The research papers report work supported by the Government; and

b. The charges are levied impartially on all research papers published by the journal, whether or not by Government-sponsored authors.

29. *Participant support costs.* Participant support costs are direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with meetings, conferences, symposia, or training projects. These costs are allowable with the prior approval of the awarding agency.

30. *Patent costs.*

a. Costs of (i) preparing disclosures, reports, and other documents required by the award and of searching the art to the extend necessary to make such disclosures, (ii) preparing documents and any other patent costs in connection with the filing and prosecution of a United states patent application where title or royalty-free license is required by the Government to be conveyed to the Government, and (iii) general counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee agreements are allowable (but see paragraph 34).

b. Cost of preparing disclosures, reports, and other documents and of searching the art to the extent necessary to make disclosures, if not required by the award, are unallowable. Costs in connection with (i) filing and prosecuting any foreign patent application, or (ii) any United States patent application, where the award does not require conveying title or a royalty-free license to the Government, are unallowable (also see paragraph 43).

31. *Pension plans.* See paragraph 6. g.

32. *Plant security costs.* Necessary expenses incurred to comply with Government security requirements or for facilities protection, including wages, uniforms, and equipment of personnel are allowable.

33. *Preaward costs.* Preaward costs are those incurred prior to the effective date of the award directly pursuant to the negotiation and in anticipation of the award where such costs is necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the written approval of the awarding agency.

34. *Professional service costs.*

a. Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the organization, are allowable, subject to b, c, and d, of this paragraph when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government.

b. In determing the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the organization's capability in the particular area.

(3) The past pattern of such costs, particularly in the years prior to Government awards.

(4) The impact of Government awards on the organization's business (i.e., what new problems have arisen).

(5) Whether the proportion of Government work to the organization's total business is such as to influence the organization in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Government grants and contracts.

(6) Whether the service can be performed more economically by direct employment rather than contracting.

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-Government awards.

(8) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, and termination provisions).

c. In addition to the factors in paragraph b above, retainer fees to the allowable must be supported by evidence of bona fide services available or rendered.

d. Cost of legal, accounting, and consulting services, and related costs incurred in connection with defense of antitrust suits, and the prosecution of claims against the Government, are unallowable. Costs of legal, accounting and consulting services, and related costs, incurred in connection with patent infringement litigation, organization and reorganization, are unallowable unless otherwise provided for in the award (but see paragraph 47e).

35. *Profits and losses on disposition of depreciable property or other capital assets.*

a. (1) Gains and losses on sale, retirement, or other disposition of depreciable property shall be included in the year in which they occur as credits or charges to cost grouping(s) in which the depreciation applicable to such property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate cost grouping(s) shall be the difference between the amount realized on the property and the undepreciated basis of the property.

(2) Gains and losses on the disposition of depreciable property shall not be recognized as a separate credit or charge under the following conditions.

(a) The gain or loss is processed through a depreciation reserve account and is reflected in the depreciation allowable under paragraph 9.

(b) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(c) A loss results from the failure to maintain permissible insurance, except as otherwise provided in paragraph 18.a.(3).

(d) Compensation for the use of the property was provided through use allowances in lieu of depreciation in accordance with paragraph 9.

(e) Gains and losses arising from mass or extraordinary sales, retirements, or other dispositions shall be considered on a case-by-case basis.

b. Gains or losses of any nature arising from the sale or exchange of property other than the property covered in paragraph a. above shall be excluded in computing award costs.

36. *Public information service costs.*

a. Public information service costs include the cost associated with pamphlets, news releases, and other forms of information services. Such costs are normally incurred to:

(1) Inform or instruct individuals, groups, or the general public.

(2) Interest individuals or groups in participating in a service program of the organization.

(3) Disseminate the results of sponsored and nonsponsored activities.

b. Public information service costs are allowable as direct costs with the prior approval of the awarding agency. Such costs are unallowable as indirect costs.

37. *Publication and printing costs.*

a. Publication costs include the costs of printing (including the processes of composition, plate-making, press work, binding, and the end products produced by such processes), distribution, promotion, mailing, and general handling.

b. If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all benefiting activities of the organization.

c. Publication and printing costs are unallowable as direct costs except with the prior approval of the awarding agency.

d. The cost of page charges in journals is addressed paragraph 28.

38. *Rearrangement and alteration costs.* Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special arrangement and alteration costs incurred specifically for the project are allowable with the prior approval of the awarding agency.

39. *Reconversion costs.* Costs incurred in the restoration or rehabilitation of the

organization's facilities to approximately the same condition existing immediately prior to commencement of Government awards, fair wear and tear excepted, are allowable.

40. *Recruiting costs.* The following recruiting costs are allowable: cost of "help wanted" advertising, operating costs of an employment office, costs of operating an educational testing program, travel expenses including food and lodging of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees (see paragraph 41c). Where the organization uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

41. *Relocation costs.*

a. Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period of not less than 12 months) of an existing employee or upon recruitment of a new employee. Relocation costs are allowable, subject to the limitation described in paragraphs b, c, and d, below, provided that:

(1) The move is for the benefit of the employer.

(2) Reimbursement to the employee is in accordance with an established written policy consistently followed by the employer.

(3) The reimbursement does not exceed the employee's actual (or reasonably estimated ) expenses.

b. Allowable relocation costs for current employees are limited to the following:

(1) The costs of transportation of the employee, members of his immediate family and his household, and personal effects to the new location.

(2) The costs of finding a new home, such as advance trips by employees and spouses to locate living quarters and temporary lodging during the transition period, up to a maximum period of 30 days, including advance trip time.

(3) Closing costs, such as brokerage, legal, and appraisal fees, incident to the disposition of the employee's former home. These costs, together with those described in (4) below, are limited to 8 per cent of the sales price of the employee's former home.

(4) The continuing costs of ownership of the vacant former home after the settlement or lease date of the employee's new permanent home, such as maintenance of buildings and grounds (exclusive of fixing up expenses), utilities, taxes, and property insurance.

(5) Other necessary and reasonable expenses normally incident to relocation, such as the costs of cancelling an unexpired lease, disconnecting and reinstalling household appliances, and purchasing insurance against loss of or damages to personal property. The cost of cancelling an unexpired lease is limited to three times the monthly rental.

c. Allowable relocation costs for new employees are limited to those described in (1) and (2) of paragraph b. above. When relocation costs incurred incident to the recruitment of new employees have been allowed either as a direct or indirect cost and the employee resigns for reasons within his control within 12 months after hire, the organization shall refund or credit the Government for its share of the cost. However, the costs of travel to an overseas location shall be considered travel costs in accordance with paragraph 50 and not relocation costs for the purpose of this paragraph if dependents are not permitted at the location for any reason and the costs do not include costs of transporting household goods.

d. The following costs related to relocation are unallowable:

(1) Fees and other costs associated with acquiring a new home.

(2) A loss on the sale of a former home.

(3) Continuing mortgage principal and interest payments on a home being sold.

(4) Income taxes paid by an employee related to reimbursed relocation costs.

42. *Rental costs.*

a. Subject to the limitations described in paragraphs b. through d. of this paragraph, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased.

b. Rental costs under sale and leaseback arrangements are allowable only up to the amount that would be allowed had the organization continued to own the property.

c. Rental costs under less-than-length leases are allowable only up to the amount that would be allowed had title to the property vested in the organization. For this purpose, a less-than-arms-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between (i) divisions of an organization; (ii) organizations under common control through common officers, directors, or members; and (iii) an organization and a director, trustee, officer, or key employee of the organization or his immediate family either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest.

d. Rental costs under leases which create a material equity in the leased property are allowable only up to the amount that would be allowed had the organization purchased the property on the date the lease agreement was executed; e.g., depreciation or use allowances, maintenance, taxes, insurance but excluding interest expense and other unallowable costs. For this purpose, a material equity in the property exists if the lease in noncancelable or is cancelable only upon the occurrence of some remote contingency and has one or more of the following characteristics:

(1) The organization has the right to purchase the property for a price which at the beginning of the lease appears to be substantially less than the probable fair market value at the time it is permitted to purchase the property (commonly called a lease with a bargain purchase option);

(2) Title to the property passes to the organization at some time during or after the lease period;

(3) The term of the lease (initial term plus periods covered by bargain renewal options, if any) is equal to 75 per cent or more of the economic life of the leased property; i.e., the period the property is expected to be economically usable by one or more users.

43. *Royalties and other costs for use of patents and copyrights.*

a. Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the award are allowable unless:

(1) The Government has a license or the right to free use of the patent or copyright.

(2) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid.

(3) The patent or copyright is considered to be unenforceable.

(4) The patent or copyright is expired.

b. Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less then arm's length bargaining; e.g.:

(1) Royalties paid to persons, including corporations, affiliated with the organization.

(2) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Government award would be made.

(3) Royalties paid under an agreement entered into after an award is made to an organization.

c. In any case involving a patent or copyright formerly owned by the organization, the amount of royalty allowed should not exceed the cost which would have been allowed had the organization retained title thereto.

44. *Severance pay.*

a. Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by organizations to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that in each case, it is required by (i) law, (ii) employer-employee agreement, (iii) established policy that constitutes, in effect, an implied agreement on the organization's part, or (iv) circumstances of the particular employment.

b. Costs of severance payments are divided into two categories as follows:

(1) Actual normal trunover severance payments shall be allocated to all activities; or, where the organization provides for a reserve for normal severances such method will be acceptable if the charge to current operations is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts charged are allocated to all activities of the organization.

(2) Abnormal or mass severance pay is of such a conjectural nature that measurement of costs by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Government recognizes its obligation to participate to the extent of its fair share, in any specific payment. Thus, allowability will be considered on a case-by-case basis in the event of occurrence.

45. *Specialized service facilities.*

a. The costs of services provided by highly complex or specialized facilities operated by the organization, such as electronic

computers and wind tunnels, are allowable provided the charges for the services meet the conditions of either b. or c. of this paragraph and, in addition, take into account any items of income or Federal financing that qualify as applicable credits under paragraph A.5. of Attachment A.

b. The costs of such services, when material, must be charged directly to applicable awards based on actual usage of the services on the basis of a schedule of rates or established methodology that (i) does not discriminate against federally supported activities of the organization, including usage by the organization for internal purposes, and (ii) is designed to recover only the aggregate costs of the services. The costs of each service shall consist normally of both its direct costs and its allocable share of all indirect costs. Advance agreements pursuant to paragraph A.6. of Attachment A are particularly important in this situation.

c. Where the costs incurred for a service are not material, they may be allocated as indirect costs.

46. *Taxes.*

a. In general, taxes which the organization is required to pay and which are paid or accrued in accordance with generally accepted accounting principles, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for (i) taxes from which exemptions are available to the organization directly or which are available to the organization based on an exemption afforded the Government and in the latter case when the awarding agency makes available the necessary exemption certificates, (ii) special assessments on land which represent capital improvements, and (iii) Federal income taxes.

b. Any refund of taxes, and any payment to the organization of interest thereon, which were allowed as award costs, will be credited either as a cost reduction or cash refund, as appropriate, to the Government.

47. *Termination costs.* Termination of awards generally give rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the award not been terminated. Cost principles covering these items are set forth below. They are to be used in conjunction with the other provisions of this Circular in termination situations.

a. *Common items.* The cost of items reasonably usable on the organization's other work shall not be allowable unless the organization submits evidence that it would not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the organization, the awarding agency should consider the organization's plans and orders for current and scheduled activity. Contemporaneous purchases of common items by the organization shall be regarded as evidence that such items are reasonably usable on the organization's other work. Any acceptance of common items as allocable to the terminated portion of the award shall be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

b. *Costs continuing after termination.* If in a particular case, despite all reasonable efforts by the organization, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this Circular, except that any such costs continuing after termination due to the negligent or willful failure of the organization to discontinue such costs shall be unallowable.

c. *Loss of useful value.* Loss of useful value of special tooling, machinery and equipment which was not charged to the award as a capital expenditure is generally allowable if:

(1) Such special tooling, machinery, or equipment is not reasonably capable of use in the other work of the organization.

(2) The interest of the Government is protected by transfer of title or by other means deemed appropriate by the awarding agency;

d. *Rental costs.* Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated award less the residual value of such leases, if (i) the amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the award and such further period as may be reasonable, and (ii) the organization makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the award, and of reasonable restoration required by the provisions of the lease.

e. *Settlement expenses.* Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for:

(a) The preparation and presentation to awarding agency of settlement claims and supporting data with respect to the terminated portion of the award, unless the termination is for default. (See paragraph 4.a. of Attachment L, OMB Circular No. A–110; and

(b) The termination and settlement of subawards.

(2) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Government or acquired or produced for the award; except when grantees are reimbursed for disposals at a predetermined amount in accordance with Attachment N of OMB Circular A–110.

(3) Indirect costs related to salaries and wages incurred as settlement expenses in subparagraphs (1) and (2) of this paragraph. Normally, such indirect costs shall be limited to fringe benefits, occupancy cost, and immediate supervision.

f. *Claims under subawards.* Claims under subawards, including the allocable portion of claims which are common to the award, and to other work of the organization are generally allowable. An appropriate share of the organization's indirect expense may be allocated to the amount of settlements with subcontractor/subgrantees; provided that the amount allocated is otherwise consistent with the basic guidelines contained in Attachment A. The indirect expense so allocated shall exclude the same and similar costs claimed directly or indirectly as settlement expenses.

48. *Training and education costs.*

a. Costs of preparation and maintenance of a program of instruction including but not limited to on-the-job, classroom, and apprenticeship training, designed to increase the vocational effectiveness of employees, including training materials, textbooks, salaries or wages of trainees (excluding overtime compensation which might arise therefrom), and (i) salaries of the director of training and staff when the training program is conducted by the organization; or (ii) tuition and fees when the training is in an institution not operated by the organization, are allowable.

b. Costs of part-time education, at an undergraduate or postgraduate college level, including that provided at the organization's own facilities, are allowable only when the course or degree pursued is relative to the field in which the employee is now working or may reasonably be expected to work, and are limited to:

(1) Training materials.

(2) Textbooks.

(3) Fees charges by the educational institution.

(4) Tuition charged by the educational institution, or in lieu of tuition, instructors' salaries and the related share of indirect costs of the educational institution to the extent that the sum thereof is not in excess of the tuition which would have ben paid to the participating educational institution.

(5) Salaries and related costs of instructors who are employees of the organization.

(6) Straight-time compensation of each employee for time spent attending classes during working hours not in excess of 156 hours per year and only to the extent that circumstances do not permit the operation of classes or attendance at classes after regular working hours; otherwise such compensation is unallowable.

c. Costs of tuition, fees, training materials, and textbooks (but not subsistence, salary, or any other emoluments) in connection with full-time education, including that provided at the organization's own facilities, at a postgraduate (but not undergraduate) college level, are allowable only when the course or degree pursued is related to the field in which the employee is now working or may reasonably be expected to work, and only where the costs receive the prior approval of the awarding agency. Such costs are limited to the costs attributable to a total period not to exceed one school year for each employee so trained. In unusual cases the period may be extended.

d. Costs of attendance of up to 16 weeks per employee per year at specialized programs specifically designed to enhance the effectiveness of executives or managers or to prepare employees for such positions are allowable. Such costs include enrollment fees, training materials, textbooks and related charges, employees' salaries, subsistence, and travel. Costs allowable under this paragraph do not include those for courses that are part of a degree-oriented

curriculum, which are allowable only to the extent set forth in b. and c. above.

e. Maintenance expense, and normal depreciation or fair rental, on facilities owned or leased by the organization for training purposes are allowable to the extent set forth in paragraphs 9, 22, and 42.

f. Contributions or donations to educational or training institutions, including the donation of facilities or other properties, and scholarships or fellowships, are unallowable.

g. Training and education costs in excess of those otherwise allowable under paragraphs b. and c. of this paragraph may be allowed with prior approval of the awarding agency. To be considered for approval, the organization must demonstrate that such costs are consistently incurred pursuant to an established training and education program, and that the course or degree pursued is relative to the field in which the employee is now working or may reasonably be expected to work.

49. *Transportation costs.* Transportation costs include freight, express, cartage, and postage charges relating either to goods purchased, in process, or delivered. These costs are allowable. When such costs can readily be identified with the items involved, they may be directly charged as transportation costs or added to the cost of such items (see paragraph 23). Where identification with the materials received cannot readily be made, transportation costs may be charged to the appropriate indirect cost accounts if the organization follows a consistent, equitable procedure in this respect.

50. *Travel costs.*

a. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the organization. Travel costs are allowable subject to paragraphs b. through e. below, when they are directly attributable to specific work under an award or are incurred in the normal course of administration of the organization.

b. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used results in charges consistent with those normally allowed by the organization in its regular operations.

c. The difference in cost between first-class air accommodations and less than first-class air accommodations is unallowable except when less than first-class air accommodations are not reasonably available to meet necessary mission requirements, such as where less than first-class accommodations would (i) require circuitous routing, (ii) require travel during unreasonable hours, (iii) greatly increase the duration of the flight, (iv) result in additional costs which would offset the transportation savings, or (v) offer accommodations which are not reasonably adequate for the medical needs of the traveler.

d. Necessary and reasonable costs of family movements and personnel movements of a special or mass nature are allowable, pursuant to paragraphs 40 and 41, subject to allocation on the basis of work or time period benefited when appropriate. Advance agreements are particularly important.

e. Direct charges for foreign travel costs are allowable only when the travel has received prior approval of the awarding agency. Each separate foreign trip must be approved. For purposes of this provision, foreign travel is defined as any travel outside of Canada and the United States and its territories and possessions. However, for an organization located in foreign countries, the term "foreign travel" means travel outside that country.

[Circular No. A–122]

**Attachment C**

**Nonprofit Organizations not Subject to this Circular**

Aerospace Corporation, El Segundo, California
Argonne Universities Association, Chicago, Illinois
Associated Universities, Incorporated, Washington, D.C.
Associated Universities for Research and Astronomy, Tucson, Arizona
Atomic Casualty Commission, Washington, D.C.
Battelle Memorial Institute, Headquartered in Columbus, Ohio
Brookhaven National Laboratory, Upton, New York
Center for Energy and Environmental Research (CEER), (University of Puerto Rico)
Commonwealth of Puerto Rico, Charles Stark Draper Laboratory, Incorporated
Cambridge, Massachusetts, Comparative Animal Research Laboratory (CARL)
(University of Tennessee), Oakridge, Tennessee
Environmental Institute of Michigan, Ann Arbor, Michigan
Hanford Environmental Health Foundation, Richland, Washington
IIT Research Institute, Chicago, Illinois
Institute for Defense Analysis, Arlington, Virginia
Institute of Gas Technology, Chicago, Illinois
Midwest Research Institute, Headquartered in Kansas City, Missouri
Mitre Corporation, Bedford, Massachusetts
Montana Energy Research and Development Institute, Inc., (MERDI), Butte, Montana
National Radiological Astronomy Observatory, Green Bank, West Virginia
Oakridge Associated Universities, Oakridge, Tennessee
Project Management Corporation, Oakridge, Tennessee
Rand Corporation, Santa Monica, California
Research Triangle Institute, Research Triangle Park, North Carolina
Riverside Research Institute, New York, New York
Sandia Corporation, Albuquerque, New Mexico
Southern Research Institute, Birmingham, Alabama
Southwest Research Institute, San Antonio, Texas
SRI International, Menlo Park, California
Syracuse Research Corporation, Syracuse, New York
Universities Research Association, Incorporated (National Acceleration Lab), Argonne, Illinois
Universities Corporation for Atmospheric Research, Boulder, Colorado
Nonprofit Insurance Companies such as Blue Cross and Blue Shield Organizations
Other nonprofit organizations as negotiated with awarding agencies.

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Part IV

# Department of Agriculture

## Food and Nutrition Service

## 1980 Food Stamp Amendments; Eligibility Limits

**DEPARTMENT OF AGRICULTURE**

**Food and Nutrition Service**

**7 CFR Parts 272 and 273**

**[Amdt. Number 174]**

## 1980 Food Stamp Amendments; Eligibility Limits

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Interim final rule.

**SUMMARY:** This interim final rule amends the Food Stamp Program regulations to incorporate changes in the Food Stamp Act brought about by the enactment of the 1980 Amendments to the Food Stamp Act of 1977, as amended, Pub. L. 96–249, 94 Stat 357, May 26, 1980.

The rule implements those provisions of Pub. L. 96–249 restricting student eligibility, reducing the resource limit to $1,500, excluding from resources a vehicle necessary for the transportation of a physically disabled household member, and excluding from income Federal, State, and local energy assistance payments. Although this action has the effect of a final rule, comments are invited.

**EFFECTIVE DATES:** Effective September 1, 1980 for provisions related to student participation (Sections 273.1, 273.2, 273.5, 273.7 and 273.11); October 1, 1980 for all other provisions (Sections 273.8, 273.9 and 273.12).

**COMMENT PERIOD:** Comments must be received on or before September 8, 1980 to be assured of consideration.

**ADDRESS:** Comments should be submitted to: Claire Lipsman, Director, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, United States Department of Agriculture, Washington, D.C. 20250. All written comments will be open to public inspection at the office of the Food and Nutrition Service, USDA, during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 500 12th Street S.W., Room 678, Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** Larry R. Carnes, Chief, Regulations and Policy Section, Program Standards Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, United States Department of Agriculture, Washington, D.C. 20250; 202–447–8918. The Draft Impact Analysis describing the options considered in developing this interim final rule and the impact of implementing each option is available on request from the above named individual.

The Department believes that Congress intended certain provisions of the 1980 amendments to be effective for the whole of fiscal year 1981. This was specifically assumed by Congress in passage of the Congressional budget resolution for fiscal year 1981. The Congressional restrictions on student participation and limits on resources were also factors in establishing the 1981 budgetary cap for the program. In addition, the legislative history explicitly directs the Department to implement the energy assistance program provisions as soon as possible (see Senate Report No. 96–704, 96th Congress, 2d Session, p. 18), and to implement the student provision through interim final rules (Congressional Record, May 15, 1980, p. H3676). These 1980 amendments are mandatory. Consequently, Robert Greenstein, Administrator, Food and Nutrition Service, has determined that an emergency situation exists which warrants publication of this interim action without opportunity for public comment prior to its effective date in order to ensure that State agencies have ample time to implement the procedures set out herein in accord with the timeliness standards consistent with Congressional intent.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and public comment procedures with respect to the interim action are impracticable and contrary to the public interest. However, comments are being solicited for 60 days after publication of the document, and this interim action will be scheduled for review so that a final document discussing comments received and any amendments required can be published in the **Federal Register** as soon as possible.

**SUPPLEMENTARY INFORMATION:** This interim final rule has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified not significant.

### Introduction

The primary purpose of the 1980 Amendments to the Food Stamp Act of 1977, as amended, 7 USC 2011–2027, was to deal with increasing program costs. In 1977, Congress established spending limits for each fiscal year. In 1979, legislation was required to raise the spending limit to avoid benefit reductions. A similar crisis was faced in 1980 and was projected for fiscal year 1981. In May, 1980, Congress acted to raise the spending limit, preventing a program shut down in June.

At the same time, Congress amended the Act to address ways to control future program costs by reinforcing the Department of Agriculture's tools to deal with program fraud and abuse, and by tightening eligibility provisions to direct benefits to the most needy. By reducing fraud and error and retargeting benefits, limited program dollars could be better spent.

Major provisions restricting updates to net income limits, deductions, and levels of program benefits have already been implemented (45 FR 40093 et seq., June 13, 1980). This rulemaking deals with four other targeting provisions: restriction of student eligibility, reduction of the resource limit, exclusion from resources of a vehicle necessary to transport a physicially disabled household member, and exclusion from income of energy assistance payments.

### Students

In 1977, Congress attempted to tighten the rules on student eligibility [the Food Stamp Act of 1977, Section 6(e)]. The 1977 legislation denied participation to those students who were or who could have been claimed as tax dependents of persons outside the student household who were not themselves eligible for the Program. The tax dependency test is complex and often requires contact with a taxpayer located in another State. More importantly, the tax dependency test failed in practice to sufficiently limit eligibility to only those truly in need. The 1977 Act also limited participation to those students who were working 20 hours per week or its equivalent, or who were registered for work or were exempt from work registration. Work registration has proven ineffective as a targeting tool for students because of the great difficulty using that system to locate part-time jobs for students during the school year and full-time jobs for students during vacation periods.

The considerable administrative time and expense invested in student work registration probably did not provide an effective return.

In an effort to reduce Food Stamp costs, Congress has now sharply limited student access to the Program. The 1980 Amendments (Section 139 of P.L. 96–249) prohibit Program participation by any person who is physically and mentally fit, between the ages of 18 and 60, and who is enrolled at least half-time in an institution of higher education, with certain limited exceptions. Exceptions will be allowed to students who are: (a) employed at least 20 hours a week, (b) participating in a federally financed work study program, (c) the head of a

household (or spouse of such head) containing one or more other dependent persons, or (d) enrolled in school as a result of partipation in a work incentive program under Title IV of the Social Security Act, as amended (42 U.S.C. § 602) (AFDC). The 1980 Amendments remove the student tax dependency and special student work registration rules which are no longer needed in view of the general prohibition above. The effect of these new amendments is to confer the advantages of eligible "student" status on a very limited group, and to prohibit a much larger group of students from participating at all.

The Department considered several issues in promulgating these regulations. The first was how to define "support" in determining whether a person would qualify as a head of household. The 1980 Amendments permit continued food stamp participation by a student who is a head of household (or spouse of such head) with one or more other dependents for whom that individual provides more than one half of the total support. The determination of support status can at times be difficult. Nevertheless the Department has identified several general principles which apply in determining whether a person qualifies as a student head of household (or spouse of such head). The head of household must furnish over half of the dependent's total support during the calendar year. Total support includes expenditures for providing food, shelter, clothing, education, medical and dental care, recreation, transportation and similar necessities. Total support is the sum of: the fair rental value of lodging furnished; all items of expenses paid or incurred directly by or for the dependent, such as clothing and medical expenses; and a proportionate share of expenses that cannot be attributed directly to a particular individual, such as cost of food for the entire household. The person providing the support is the person to be evaluated for head of household status.

Need-based Federal, State, or local assistance payments on behalf of a household member are considered as being provided by the person receiving such payments in determining head of household status. For example, a mother in a household consisting of herself and a 5 year old child would qualify for the head of household exemption from the restriction on student eligibility even if the primary source of income was AFDC.

The only restriction on who may be claimed as a dependent is that the dependent must be a member of the same household. A person can claim a spouse as a dependent.

Circumstances not covered by these general principles are to be evaluated with reference to sections 151 and 152 of the Internal Revenue Code.

Another issue considered in light of the 1980 Amendment was how to treat students during periods of vacation or recess, in particular during the summer months. Currently, the Department requires such persons to register for full-time work during periods of recess in excess of thirty days (section 6(d)(2)(D) of the Food Stamp Act of 1977). Because most students remaining on the Program will already be working during the school year and through vacations or will be exempt from working, few students would be affected by continuing this requirement. Therefore, as previously noted, the 1980 Amendments eliminated the work registration requirement for students.

The Department considered two definitions of enrollment. The first option was to consider student enrollment as only encompassing periods of actual attendance for particular school terms. The second option was to define a student's enrollment to continue during periods of vacation or recess provided that the student intends to return to school.

In arriving at the estimate of a $60 million savings from implementation of the new restrictions on student eligibility, the Department did not consider the issue of student participation during the summer.

If the Department were to adopt the first option and define the enrollment period to end with the school year, students would be treated no differently than any other persons during non-enrollment periods such as summer vacations. Thus, student eligibility restrictions would apply only during the school year.

If the Department were to choose this option, it would be necessary to define what constituted a vacation or recess under different systems of school scheduling. It would be necessary to determine whether student restrictions would apply during spring break, winter vacation, summer vacation, or to intervals between semesters or quarters. Some schools with trimester or other innovative scheduling might not easily fit the model. For example, the Department would have to determine how to classify a student who elected to skip one of three trimesters in accordance with established school policy.

In addition, since many recess and vacation periods do not precisely match calendar months, the Department would have to determine how to treat students who were eligible for part of a month and ineligible for another part of the same month. The Department does not wish to allow students to circumvent the restrictions on student eligibility by applying for benefits during short periods of vacation or recess such as Thanksgiving vacation or Spring break.

Another factor the Department considered was the administrative costs which would be incurred were State agencies required to put college students on and off the Program during periods of vacation and recess. For example, students would be required to register for work during the summer (unless attending summer school) or during school breaks but would be unlikely to obtain a job during the relatively short time before they would return to school. The need for additional certifications would also inconvenience student households.

The main beneficiaries of this option would be those students who are not eligible during the school year, but who could participate in the Program were the student restrictions on eligibility not applied to them during periods of vacation and recess.

The second option the Department considered was to define enrollment to continue during periods of vacation or recess. This option would have the effect of maintaining student status over vacation and recess periods. Students eligible during the school year would continue to be eligible during summer months. Students not eligible during the school year would remain ineligible during vacation periods unless they actually obtain work or otherwise meet the criteria applied to determine student eligibility. Persons who switch between part-time and full-time enrollment status would be certified based on current student status. Students who fail to maintain continuous enrollment status, or who do not intend to register for the next normal school session (excluding summer school) would lose their student status and be treated as any other person.

This treatment of student enrollment would be consistent with current Department policy concerning the exclusion of the earned income of students under age 18. The earned income exclusion based on the child's student status continues to apply during temporary interruptions in school attendance due to semester or vacation breaks, provided that the child intends to return to school following the break. [See 7 CFR 273.9(b)(7)].

In addition this option has the benefit of reducing the administrative burden on State agencies by allowing a longer

certification period for student households and by avoiding the necessity to reimpose work registration during periods of vacation or recess. As was stated in the House floor debate by Representative Thomas S. Foley, who offered the amendment restricting student eligibility: "As a result of these student changes, it will no longer be necessary for the Department to superimpose the messy summer work requirement which secures work for no one but the local administrators who have to deal with two separate universes of students . . ." (Congressional Record, May 8, 1980, p. H3410). This option thus is consistent with the removal by Congress of the summer student work requirement.

These interim final regulations reflect the Department's choice of this second option, under which students will be denied participation in the program throughout the entire year unless one or more of the statutory exceptions are met. However, the Department is especially interested in comment on this issue. The Department expects to issue final rules before the end of the calendar year and well in advance of the principal impact of this provision next summer.

The Department has decided to require States to implement the student provisions on September 1, 1980 to coincide with the start of the school term. The Department expects that the majority of student households will be newly applying or will be due for recertification at that time. Households containing student members applying for participation or recertification between August 1 and September 1, 1980, shall be assigned a certification period not to exceed three months in order to facilitate a conversion to the new student provisions for these households no later than November 1, 1980. Student households who are presently certified beyond October 1, 1980 will be converted to the new standards at recertification or as the case is reviewed, whichever comes first.

The Department rejected the idea of requiring desk reviews for conversion purposes. There are currently about 200,000 students participating in the Food Stamp Program. To require desk reviews of over 7 million cases to locate these students would be an excessive burden on States, especially when most of these cases are likely to be due for recertification about September 1, 1980. Most State agencies time certification and recertification periods for students to coincide with the opening and closing of school terms. In this way, students will be subject to the new rules within a short period of time after implementation of the new rules.

In implementing the student provision, it should be noted that persons enrolled in an institution of higher education less than half-time are not considered students and are not excluded from the program. Also, persons enrolled at least half-time in schools or training programs which are not institutions of higher education remain eligible. Finally, students who wish to qualify for food stamps based on their employment status must be working at least 20 hours per week unless they are "work-study students". Unlike normal work registration, a student cannot substitute wages equivalent to 20 times the minimum hourly wage, but must actually work 20 hours regardless of the amount of wages.

**Resource Limit**

The Food Stamp Act Amendments of 1980 have not changed the $3,000 limit for households with two or more persons one of whom is age 60 or over (section 5(g) of the Food Stamp Act of 1977). However, the 1980 Amendments (section 138 of Pub. L. 96–249) mandate a reduction in the resource limit to $1,500 for all other households as part of a package designed to target program benefits to those most in need.

The Department has therefore amended part 273.8 to reflect the new resource limit. The new limit will be effective October 1, 1980 for all new applications and recertifications.

**Vehicles for the Physically Disabled**

The Food Stamp Act of 1977 included as a resource for eligibility purposes any licensed vehicle other than one used to produce earned income [section 5(g)]. For most vehicles that meant inclusion on an equity value basis, or to the extent that their fair market value exceeded $4,500, whichever was greater [7 CFR 273.8(h)]. A smaller class of cars, those used for household transportation or used to obtain or continue employment or the first licensed vehicle per household, regardless of use, were counted as assets only to the extent that their fair market value exceeded $4,500; their equity value was exempt as a resource. Regulations issued pursuant to section 5(g) of the 1977 Act provided that the value of special equipment on vehicles used by handicapped people be disregarded [7 CFR 273.8(g)].

The 1980 Amendments exempt from valuation as a resource a vehicle necessary to transport a physically disabled household member regardless of the purpose of such transportation. Thus, neither the equity value nor the fair market value of such vehicles in excess of $4,500 will be included as an asset. According to the House Report, ". . . It is not fair, for example to disqualify paraplegics under the resource test because the van they have to use in order to get around is valued, as most vans are, at more than $7,500. This kind of situation is unusual, but disqualification is certainly not a result that makes sense under the Food Stamp Act." (H.R. 96–788, 96th Cong., 2d Sess. p. 131).

The legislation limits the exclusion to those vehicles necessary for the transportation of a physically disabled household member. These rules provide that a person who is physically disabled is entitled to have one personal vehicle excluded from consideration as a resource. (The Department did not limit the exclusion to one per household because it would be unfair to households with more than one physically disabled member.) The personal vehicle does not need to be specially equipped or used for particular purposes. In addition, the vehicle need not be exclusively or primarily used by the physically disabled household member, since a vehicle may be necessary for a physically disabled person even if other household members also use it.

**Unlicensed Vehicles**

There has been some misunderstanding of regulations implementing the 1977 Act promulgated on October 17, 1978 (43 FR 47846) regarding how to classify vehicles on those Indian reservations which do not require licensing of automobiles, motorcycles, trucks and boats owned by tribal members. The Department has added a clarification in this rulemaking to the effect that vehicles driven by household members will be considered as though they are licensed and their value will be excluded or counted as a resource depending on its use. Vehicles which are not driven will be considered as a non-liquid resource as described in § 273.8(c).

**Energy Assistance**

On February 26, 1980, the Department issued regulations providing for the exclusion from income and resources of Federal energy assistance payments that were being disbursed in accordance with Pub. L. 96–126 for fiscal year 1980 (45 FR 12766).

On April 2, 1980, the President signed into law the Crude Oil Windfall Profit Tax Act of 1980 (Pub. L. 96–223). Title III of the Act provides authority and funds for the fiscal year 1981 energy assistance program. That Act also provides for the exclusion of energy

assistance payments issued pursuant to Title III from consideration as income and resources.

The 1980 Amendments to the Food Stamp Act of 1977 (Pub. L. 96–249), expands the exclusion of energy assistance payments from income and resources to encompass any State or local energy payment as well as federally-funded energy payments. The amendment would exclude any direct payments made to households by the Federal Government under any crisis intervention program (e.g., Community Services Administration's program) and any regular energy assistance program (e.g. Department of Health and Human Services' programs or payments from States by funds supplied through such Federal programs including vendor payments on behalf of households to fuel dealers or landlords). The exclusion would also include any State and local payments for such items as insulation or weatherization.

This rulemaking implements the intent of both Pub. L. 96–223 and Pub. L. 96–249 to exclude Federal, State and local energy assistance payments from consideration as income and resources for Food Stamp Program (FSP) purposes.

During deliberation on the 1980 Amendments to the Food Stamp Act, the House Agriculture Committee specified its intent ". . . that all energy assistance provided households through the use of Federal, State, or local funds flowing from Federal, State or local laws that focus on the problem of energy would be entirely excluded from food stamp income . . . and . . . food stamp resources . . . ." They further stated that "where energy assistance is provided through the use, in part or in total, of Federal, State, or local funds flowing from Federal, State, or local laws *not* specifically dealing with energy assistance, such as Aid to Families with Dependent Children or General Assistance, the Committee also intends excludability provided the Department is satisfied that the increase in benefits awarded by the State or local government (either on a matching basis with the Federal Government or on its own) is, in fact, an energy assistance-related increase and not simply a general welfare increase that would have occurred even were energy costs not a factor . . . ." (See House Report No. 96–788, page 123). The Department intends to limit the exclusion to those payments which are clearly identified as energy assistance by the legislative body authorizing the program and/or providing the funds.

To ensure that the income/resource disregard is applied to payments clearly identified as "energy assistance" payments that are distributed "through the use of Federal, State, or local funds flowing from Federal, State or local laws that focus on the problem of energy," States will be required to develop guidelines in their handbooks and/or instructions on which Federal/State energy payments are excludable. These guidelines should include local energy assistance payments to ensure that proper exclusions are made. Further, where energy assistance payments are commingled with other non-exempt money payments, such as payments for AFDC, GA assistance, SSI, or Social Security, these guidelines must provide instructions for caseworkers to arrive at a dollar amount for that part of the commingled payment that would be attributable to energy assistance. Such material will be subject to FNS review and approval. This review and approval process will enable States and FNS alike to clearly differentiate those payments that would constitute an energy assistance payment for exclusion purposes. Having this information readily accessible in State manuals, handbooks, or other forms of directives will provide caseworkers with a means for determining the nature and source of energy payments for possible exemption. As an exclusion, the amount of an energy assistance payment need not be verified. However, in questionable cases, the State agency may need to verify whether or not payments made are, in fact, energy assistance.

Final regulations on § 272.3 (which will be published shortly) will include a requirement for States to incorporate information on Federal, State, and local energy assistance programs in their Operating Guidelines.

In calculating the net income of a household, by which FSP eligibility is determined, certain deductions are subtracted from a household's gross income. One such deduction is for excess shelter costs. Only certain household expenses are allowed in calculating the amount of this income deduction. Section 273.10(d)(1)(i) of current regulations specifies that expenses, or portions thereof, met by vendor payments cannot be considered allowable expenses in the calculation process. Some energy assistance payments will be made in the form of a vendor payment (i.e., a direct payment to the energy supplier on behalf of the household). Therefore, expenses met by an energy assistance payment in the form of a vendor payment cannot be used in calculating the amount of the shelter cost deduction to be deducted from household income.

In the Conference Report to accompany Pub. L. 96–223, there could appear to be legislative intent to allow households to claim a deduction for an expense met by a vendor payment (House Report No. 96–817, p. 154). However, the House Agriculture Committee, one of the governing committees over the Food Stamp Program, supported the Department's current position excluding expenses met by vendor payments for shelter cost deduction purposes. (See House Report No. 96–788, pages 123–124).

Some energy assistance payments may be issued in the form of two-party checks which cannot be negotiated by the household alone. The energy assistance benefit does not represent money otherwise payable directly to the household. Under current policy this means of providing energy assistance is a payment to a third party on behalf of a household to pay a household expense and would be considered a vendor payment. Therefore, the expense met by this type of energy payment would also not be an allowable expense for the purpose of calculating the shelter cost deduction.

A major concern the Department had in developing this rulemaking was the establishment of an effective date for the income/resources disregard to be applied. The November 1, 1979, effective date for the disregard that appeared in the original bill for the 1980 amendments was removed in Conference. In doing so, the conferees did not mandate another date, but did express the desire that the exclusion provision be implemented before the onset of the 1980–81 heating season.

In order to be responsive to the public and ensure that the disregard is applied at the time the majority of these payments begin, the Department determined that October 1, 1980 would be the effective date of the disregard.

This is the date that the Federal energy assistance program established in accordance with Title III of Pub. L. 96–223 will be effective. Adoption of this date for implementation of the disregard of all energy payments will be administratively advantageous for those States electing to combine State payments with payments issued under Pub. L. 96–223.

Accordingly, Parts 272 and 273 of the regulations are amended as follows:

## PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. In § 272.1, a new paragraph (g)(16) of that section to read as follows:

**§ 272.1 General terms and conditions.**

* * * * *

(g) *Implementation.* * * *

* * * * *

(16) Amendment *174.* State agencies shall implement the program changes required by Amendment *174* as follows:

(i) State agencies shall implement the income/resource disregard provision for Federal, State, and local energy assistance payments (Sections 273.8 and 273.9) on October 1, 1980.

(ii) State agencies shall implement the new maximum resource limit and the exemption of vehicles for the physically disabled (Section 273.12) on October 1, 1980 for all new applicants. State agencies shall convert the current caseload to the new resource limit at time of recertification, or at any other time the casefile is reviewed prior to recertification.

(iii) State agencies shall implement the student participation provisions of this amendment (Sections 273.1, 273.2, 273.5, 273.7 and 273.11) on September 1, 1980 for all new applicants. Current caseload shall be converted at time of recertification or any time the casefile is reviewed prior to recertification. Households containing student members applying for participation or recertification between August 1 and September 1, 1980, shall be assigned a certification period not to exceed three months in order to facilitate a conversion to the new student provisions for these households no later than November 1, 1980.

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## PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

Changes are being made to the table of contents and §§ 273.1, 273.5, 273.7, 273.8, 273.9 and 273.11 as follows:

1. The table of contents is amended by deleting the title "Tax dependency." beside the 273.5 Section reference and inserting the title "Students" instead.

2. In § 273.1, paragraph (b)(6) is revised as follows:

**§ 273.1 Household concept.**

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(b) *Nonhousehold members.* * * *

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(6) *Students.* Persons enrolled in an institution of higher education who are ineligible because they fail to meet the eligibility criteria set forth in § 273.5.

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**§ 273.1 [Amended]**

3. In § 273.1, paragraph (b)(7), the comma after "§ 273.16" is replaced with a period and everything thereafter in that same subparagraph is deleted.

**§ 273.2 [Amended]**

4. In § 273.2, paragraph (f)(2)(iii) of that section is deleted and paragraph (f)(2)(iv) is renumbered (f)(2)(iii).

5. In § 273.5, the entire section is deleted and a new § 273.5 is added to read as follows:

**§ 273.5 Students.**

(a) *Applicability.* Any person who is (1) between the ages of 18 and 60; (2) physically and mentally fit; and (3) enrolled at least half time in an institution of higher education shall be ineligible to participate in the Food Stamp Program unless that person complies with the eligibility requirements of paragraph (b) below. This section does not apply to persons under 18 or over 60, persons physically or mentally disabled, persons attending high school, persons participating in on-the-job training programs, persons not attending school at least half time, or to persons enrolled full-time in schools and training programs which are not institutions of higher education.

(b) *Eligibility Requirements.* (1) In order to be eligible to participate in the Food Stamp Program, any student (as defined in paragraph (a) above) shall meet at least one of the following criteria:

(i) be employed for a minimum of 20 hours per week;

(ii) participate in a federally financed work study program during the regular school year;

(iii) be the head of a household (or spouse of such head) containing one or more other persons who are dependents of that individual because he or she supplies more than half of their support as discussed in (4) below; or

(iv) be enrolled in an institution of higher education as a result of participation in the Work Incentive Program under Title IV of the Social Security Act, as amended (42 U.S.C. § 602).

(2) Once a student enrolls in an institution of higher education, such enrollment shall be deemed to continue through normal periods of class attendance, vacation and recess unless the student graduates, is suspended or expelled, drops out, or does not intend to register for the next normal school term (excluding summer school).

(3) Enrollment as a result of participation in the Work Incentive Program under Title IV of the Social Security Act shall be deemed to continue as long as the student maintains continuous enrollment as specified in (2) above.

(4) In determining whether a head of household furnishes more than half of the support of a dependent the following general principles apply:

(i) The head of household must furnish over half of the dependent's total support during the calendar year. Total support is the sum of: the fair rental value of lodging furnished; all items of expenses paid or incurred directly by or for the dependent, such as clothing and medical expenses; and a proportionate share of expenses that cannot be attributed directly to a particular individual, such as cost of food for the entire household.

Total support includes expenditures for providing food, shelter, clothing, education, medical and dental care, recreation, transportation, and similar necessities.

(ii) The person providing the support is the person to be evaluated for head of household status. Need-based Federal, State, or local assistance payments on behalf of a household member are considered as being provided by the person receiving such payments in determining head of household status. For example, a mother with a 5 year old child would qualify for the head of household exemption even if the primary source of income were AFDC.

(iii) The only restriction on who may be claimed as a dependent is that the dependent must be a member of the same household. A person can claim a spouse as a dependent.

(iv) Circumstances not covered by these general principles are to be evaluated with reference to sections 151 and 152 of the Internal Revenue Code.

(5) The income and resources of an ineligible student living with a household shall not be considered in determining eligibility or level of benefits of the household, as specified in § 273.11(d).

* * * * *

6. In § 273.7 paragraph (b)(9) is revised to read as follows:

**§ 273.7 Work registration requirements.**

* * * * *

(b) *Exemptions from work registration.* * * *

* * * * *

(9) A student enrolled at least half time in any recognized school, training program, or institution of higher education; provided that students enrolled at least half time in an institution of higher education have met the eligibility conditions in § 273.5. Persons who are not enrolled at least half time or who experience a break in their enrollment status due to graduation, expulsion, suspension or who drop-out or otherwise do not intend to return to school, shall not be

considered students for the purpose of qualifying for this exemption.

* * * * *

**§ 273.7 [Amended]**

7. Paragraph (f)(1) is amended by deleting the number "(1)", by deleting the phrase "except any student as defined in paragraph (b)(9)(1) of this section," and by deleting the comma preceding that phrase.

8. Paragraph (f)(2), and paragraph (f)(i)(2)(vi) are deleted.

9. Paragraph (h) and paragraph (h)(1) are amended by deleting the words "or student" wherever they appear.

**§ 273.8 [Amended]**

10. Paragraph (b) is amended by replacing the figure of $1,750 with the figure $1,500.

11. Paragraphs (e)(11)(viii), (11)(ix) and (11)(x) are deleted.

12. Paragraph (i)(4) is amended by replacing the figures of $1,500 and $1,750 with the figures of $1,250 and $1,500, respectively.

13. Paragraph (e)(3) is revised, a new paragraph (e)(11)(viii) is added, paragraphs (h)(1) and (h)(3) are revised and paragraph (j) is revised. The amendments read as follows:

**§ 273.8 Resource eligibility standards.**

* * * * *

(e) *Exclusion from resources.* * * *

* * * * *

(3) Licensed vehicles shall be excluded as specified in paragraph (h) of this section. The exclusion also includes unlicensed vehicles on those Indian reservations that do not require vehicles driven by tribal members to be licensed.

* * * * *

(11) * * *

* * * * *

(viii) Payments or allowances made under any Federal, State, or local laws for the purpose of energy assistance. These payments or allowances must be clearly identified as energy assistance by the legislative body authorizing the program or providing the funds. Among the Federal payments that would be excluded are energy assistance payments provided through the Department of Health and Human Services' Low-Income Energy Assistance Program and the Community Services Administration's Energy Crisis Assistance and Crisis Intervention Programs.

* * * * *

(h) Handling of licensed vehicles. * * *

(1) The entire value of any licensed vehicle shall be excluded if the vehicle is: (i) Used primarily (over 50 percent of the time the vehicle is used) for income producing purposes such as, but not limited to, a taxi, truck, or fishing boat; (ii) annually producing income consistent with its fair market value, even if used only on a seasonal basis; (iii) necessary for long distance travel, other than daily commuting, that is essential to the employment of a household member, for example, the vehicle of a traveling sales person or of a migrant farmworker following the work stream; (iv) necessary for subsistence hunting or fishing; (v) used as the household's home and, therefore, excluded under paragraph (e)(1) of this section; or (vi) necessary to transport a physically disabled household member regardless of the purpose of such transportation (limited to one vehicle per physically disabled household member). A vehicle necessary to transport a physically disabled household member need not have special equipment or be used primarily by the physically disabled household member. The exclusion in parts (i) through (v) will apply when the vehicle is not in use because of temporary unemployment, such as when a taxi driver is ill and cannot work, or when a fishing boat is frozen in and cannot be used.

* * * * *

(3) Licensed vehicles shall also be evaluated for their equity value, except for: (i) vehicles excluded in paragraph (1) of this section; (ii) one licensed vehicle per household, regardless of the use of the vehicle; and (iii) any other licensed vehicles used to transport household members to and from employment or to and from training or education which is preparatory to employment, or to seek employment in compliance with the job search criteria. A vehicle customarily used to commute to and from employment shall be covered by this equity exclusion during temporary periods of unemployment. The equity value of licensed vehicles not covered by this exclusion, and of unlicensed vehicles not excluded by paragraphs (e) (3), (4) and (5) of this section, shall be attributed toward the household's resource level.

* * * * *

(j) *Resources of nonhousehold members.* The resources of nonhousehold members, as defined in § 273.1(b), shall not be counted as available to the household unless the member is disqualified from the program for fraud in accordance with § 273.16.

* * * * *

14. In § 273.9, paragraphs (c)(10)(ix) and (c)(10)(x) are deleted and paragraph (c)(10(v) is revised to read as follows:

**§ 273.9 Income and deductions.**

* * * * *

(c) *Income exclusions.* * * *

* * * * *

(10) * * *

* * * * *

(v) Payments or allowances made under any Federal, State or local laws for the purpose of energy assistance. These payments or allowances must be clearly identified as energy assistance by the legislative body authorizing the program or providing the funds. Among the Federal payments that would be excluded are energy assistance payments provided through the Department of Health and Human Services' Low-Income Energy Assistance Program and the Community Services Administration's Energy Crisis Assistance and Crisis Intervention Programs.

* * * * *

**§ 273.11 [Amended]**

15. Paragraph (c) is amended by deleting the words "or for failure to meet the student work registration requirements during the school year".

16. Paragraph (c)(5) is revised to read as follows:

**§ 273.11 Action on households with special circumstances.**

* * * * *

(c) *Treatment of income and resources of disqualified members.*

* * *

* * * * *

(5) *Reduction or termination of benefits within the certification period.* Whenever an individual is disqualified within the household's certification period, the State agency shall determine the eligibility or ineligibility of the remaining household members based, as much as possible, on information in the case file. If a household's benefits are reduced or terminated within the certification period because one of its

members has been disqualified for fraud, the State agency shall notify the remaining members of their eligibility and benefit level at the same time the disqualified member is notified of its disqualification. The household is not entitled to a notice of adverse action but may request a fair hearing to contest the reduction or termination of benefits.

* * * * *

**§ 273.12 [Amended]**

17. The reference to $1,750 in § 273.12(a)(1)(v) is changed to $1,500.

(91 Stat. 958 (7 U.S.C. 2011-2027)

(Catalog of Federal Domestic Assistance Program No. 10551 Food Stamp)

Dated: July 2, 1980.

**Carol Tucker Foreman,**

*Assistant Secretary.*

[FR Doc. 80-20343 Filed 7-7-80; 8:45 am]

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Part V

# Department of Energy

## Assistance Regulations; Final Rulemaking

**DEPARTMENT OF ENERGY**

**10 CFR Part 600**

**Assistance Regulations; Final Rulemaking**

**AGENCY:** Department of Energy.

**ACTION:** Cooperative agreements; final rule.

**SUMMARY:** This regulation implements the Department of Energy (DOE) authority to issue Cooperative Agreements as a type of Financial Assistance under the DOE Assistance Regulations. This issuance of Subpart C provides the administrative mechanisms necessary for DOE to enter into Cooperative Agreements.

**EFFECTIVE DATE:** October 6, 1980.

**FOR FURTHER INFORMATION CONTACT:**
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## I. Background Information

On March 8, 1979, the Department of Energy (DOE) established the Department of Energy Assistance Regulations (DOE/ARs), 10 CFR 600, through publication as a final regulation of Subpart A, containing information about the regulatory structure, definitions, and general policies applicable to financial assistance instruments and of Subpart B pertaining only to grants (44 FR 12920, March 8, 1979). This issuance of Subpart C provides the administrative mechanisms necessary for the Department of Energy (DOE) to enter into Cooperative Agreements.

On April 5, 1979, DOE published a notice of proposed rulemaking (44 FR 20594, April 5, 1979) to establish the DOE Cooperative Agreement Regulation as Subpart C to the DOE Assistance Regulations. On May 16, 1979, DOE published a correction notice (44 FR 28670, May 16, 1979) making editorial corrections to the April 5, 1979 publication. This later document extended the comment period from June 4, 1979, to June 15, 1979.

The purpose of this regulation is to make available to all persons and entities desiring to enter into Cooperative Agreements with DOE those policies and requirements that are necessary in order for DOE to enter into a Cooperative Agreement. The regulation is necessary since DOE presently has no existing generic regulations governing Cooperative Agreements and expects to make extensive use of Cooperative Agreements in the future.

Although this regulation will affect all persons and entities desiring to enter into a Cooperative Agreement with DOE, the Department of Energy has determined that this rule does not involve a substantial issue of fact or law, and that it is unlikely to have a substantial or major impact on the Nation's economy or large numbers of individuals or businesses. This determination is based on the fact that this Cooperative Agreement Regulation implements policies already published by the Office of Management and Budget (See final OMB Guidance on Implementation of Federal Grant and Cooperative Agreement Act of 1977 [43 FR 36860, August 18, 1978]). In addition, DOE Cooperative Agreements will be entered into pursuant to the authorities and restrictions in program statutes and DOE authorizations and appropriations acts.

## II. Discussion of Comments

Comments were received from one individual, two associations, and the Office of Management and Budget (OMB). The following responds to the major comments, criticisms, and alternatives offered during the comment period:

*Comment:* A general comment was received concerning the "assistance flavor" of both grants and cooperative agreements which stated that "it is wise to have the terms and conditions of the two forms of assistance resemble one another as much as possible and differ from one another only when necessary."

*Response:* Pub. L. 95–224 treats both Grants and Cooperative Agreements as "financial assistance" instruments, but distinguishes the two based on the degree of anticipated Federal involvement during performance.

DOE views the Cooperative Agreement as a financial assistance instrument which creates a separate and different relationship than that normally encountered in Grants. The nature of the DOE mission requires the availability of an assistance instrument with the broader spectrum envisioned in the legislative history of Pub. L. 95–224. The Cooperative Agreement, therefore, must reflect the cooperative nature of the endeavor and contain all those terms and conditions that are necessary to reflect and protect the substantial involvement and interest of the DOE.

*Comment:* Several comments were received on § 600.211(d) which outlines general criteria to assist in determining if substantial involvement is anticipated during performance. The specific comments were:

(a) Paragraphs (1), "DOE has the right to immediately halt an activity if detailed performance specifications were not met," (3),"DOE review and approval of substantive provisions of proposed subgrants or contracts," and (4), "DOE involvement in selection of key participant personnel," of this section are inconsistent with OMB Circulars A–102 and A–110 for participants covered by these Circulars.

*Response:* The provisions contained in § 600.211(d) contain examples to assist in determinations of whether substantial involvement is anticipated between the executive agency and the recipient during the performance of the contemplated activity. Substantially identical provisions are contained in paragraph C.1.c. of the OMB Guidance to Agencies for Implementing the Federal Grant and Cooperative Agreement Act of 1977 (44 FR 36860, August 18, 1978). The examples in C.1.c. of the OMB Guidance apply to all types of entities including some that are not governed by OMB Circulars A–102 and A–110.

(b) Paragraph (3) on agency review and approval of substantive provisions of proposed subgrants or contracts, and Paragraph (7) ("substantial direct DOE operational involvement or participation . . . to insure compliance with such statutory requirements as civil rights, environmental protection, and provision for the handicapped . . .") should not be examples of substantive DOE involvement calling for use of a Cooperative Agreement.

*Response:* The determination to use Cooperative Agreements will be based on the need for substantial Federal involvement in the assisted activity. DOE intends to use a Contract, Grant, or Cooperative Agreement as will best serve the requirements, goals, and legislated mandates of DOE programs and individual transactions. The decision for use of Contracts, Cooperative Agreements and Grants will be based on the principles set forth in Pub. L. 95–224.

*Comment:* One comment was received with regard to overlap between §§ 600.213 and 600.42 concerning access to records.

*Response:* DOE considers the comment valid and has eliminated § 600.213 which covered Access to Records.

*Comment:* Two comments were received on § 600.214(b)(1), DOE Criterion for Cost Participation, indicating that this paragraph fails to

appropriately distinguish between profit makers and other entities such as educational institutions and state and local governments.

*Response:* 600.214(b)(1), renumbered as 600.213(b)(1), states it is DOE policy to provide a portion of the costs for the required project where the principal purpose is ultimate commercialization or utilization of technology(s) by the private sector, or when present or future economic benefits are accruable to the participant beyond the instant award as a result of performance of the effort. Every transaction with any participant should be examined to determine if this test is met. Where appropriate, cost participation can be maximized under 600.213(c)(2). The phrase "are accruable to the participant" has been added to 600.213(b)(1) to insure that economic benefits must be accruable to the participant in order for mandatory cost sharing to be applicable if the principal purpose of the endeavor is not ultimate commercialization or utilization of technology(s) by the private sector.

*Comment:* A comment stated that § 600.230 led one to believe that competitive solicitations were the only areas open for Cooperative Agreement awards, whereas § 600.234 states that unsolicited proposals are also to be considered.

*Response:* Section 600.234 has been eliminated. Section 600.230 has been reworded to (i) outline the means by which awards may be made noncompetitively, and (ii) add references to program regulations, use of OMB Circular A–102 standard application forms, publication of announcements, and a requirement for Standard Form 424, Federal Assistance.

*Comment:* Comments were received on § 600.231, now renumbered as 600.232 to the effect that (i) there was no mention of the prescribed standard application forms of OMB Circular A–102, Attachment M, (ii) there was no need for Representatives and Certifications as an enclosure in the solicitation for Cooperative Agreements, and (iii) GSA Optional Form 60, a contract pricing form, is not appropriate for an assistance program.

*Response:* The rewording of § 600.230 as stated in the preceding response included a modified use of the standard application forms contained in OMB Circular A–102.

The nature and extent of Representations and Certifications will depend on the Cooperative Agreement under consideration. Section 232(b) has been revised to provide that any requirements for representations, certifications, and other statements of proposals, shall be identified in the second section of Part 1 of the solicitation.

Section 600.231, now renumbered as 600.232, has been revised, and those items that were strictly of an internal DOE nature, have been deleted. The reference to GSA Optional Form 60 was in one of the subsections deleted.

*Comment:* Three comments were received on Section 600.283(a)(3)(iii) stating that the proposed language was inconsistent with OMB Circulars in regard to the use of project generated revenue.

*Response:* Section 600.283(b)(3)(iii), formerly 600.283(a)(3)(iii), has been clarified to state that project generated revenue should generally inure to DOE, and the participants, in proportionate share to each participant's contributions, investment, and risk. For participants covered by OMB Circulars A–102 and A–110, Attachments E and D, respectively, will normally apply.

When Attachments E and D to OMB Circulars A–102 and A–110 are utilized, the agreement would normally specify that all other program income under paragraph 5 of these attachments would be deductible from the total project costs for the purpose of determining the net costs on which the Federal share of costs will be based.

*Comment:* Two comments were received on Section 600.283(a)(4) stating that the section is not consistent with OMB Circulars A–102 and A–110 with regard to method of payment to participants covered under these circulars.

*Response:* Section 600.283(b)(4), formerly 600.283(a)(4), has been revised to state that for participants covered by OMB Circulars A–102 and A–110, the payment arrangements of Attachment J of OMB Circular A–102 and Attachment I of OMB Circular A–110 will normally be utilized. For all participants, the method of providing financial support pursuant to a Cooperative Agreement will be established to optimally meet the needs of the contemplated project.

*Comment:* There were two comments made on Exhibit II, Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals and the related subcontracting plans.

*Response:* Exhibit II has been replaced by a reference to FPR Temporary Regulation 50, Supplement 2 (45 FR 35809 May 28, 1980) in 600.290(d)(11) and (e)(41).

*Comment:* A comment was received recommending that the proposed subpart be modified "to require a *procurement* relationship when goods or services are being provided by a contractor at the request of a Federal agency no matter what relationship may exist between the Federal Government and other parties involved in the same transaction."

*Response:* Paragraph 600.32 requires the determination of whether a program to be implemented through individual transactions, is principally one of acquisition or assistance, to be made at a DOE policy level. A determination that a program is principally one of procurement or assistance, does not preclude the use of any of the types of instruments when appropriate for a particular transaction. The decision to use a particular instrument to implement a particular transaction must be made deliberately. The total transaction, including all salient factors constituting the transaction, must be considered in determining the appropriate instrument to utilize. Although some goods and services may be provided by a participant at the request of a Federal agency, the principal purpose of the transaction, considering the total transaction, may still not be to acquire property or services for the direct benefit or use of the Federal Government. Accordingly, it would not be appropriate for DOE to require use of a procurement contract in all instances when goods or services are being provided by a contractor at the request of DOE.

### III. Other Changes

In addition to the above changes, the following additional material revisions were deemed appropriate after considering all comments:

Section 600.200(d) was revised to make it consistent with section 600.5, "Applicability."

Section 600.200(f) was added to provide examples of the range of functions to be considered prior to determining the need for substantial Federal involvement.

Section 600.214 was revised to clarify DOE's policy on cost participation and renumbered as 600.213.

Sections 600.231, 600.231–1, and 600.231–2 have been renumbered to accommodate the Federal Register requirements for publication. The three subparagraphs have been renumbered as subparagraphs 600.232 (a), (b), and (c).

A new § 600.231, "Treatment of Proposal Information," has been added to provide guidance on procedures for the protection of data which the proposer does not want disclosed to the public or used by the Government for any purposes other than proposal evaluation.

Section 600.233 has been revised and the paragraphs renumbered in order to more clearly express DOE policy on the use of the PON.

Section 600.234 has been revised and those items, strictly of an internal DOE nature, have been deleted.

The language of 600.250 has been slightly altered to insure that all statutory requirements and restrictions are met prior to DOE entering into the Cooperative Agreement.

Section 600.251 has been revised to delete subparagraph (b). Subparagraph (a) was revised to make eligible to receive support under a DOE Cooperative Agreement all "other entities not prohibited by statute or regulation."

A paragraph has been added to Section 600.252 to include information regarding the DOE Source Selection Official for Cooperative Agreements. This addition provides consistency with internal DOE directives. Subparagraphs 600.232(b)(7) and 600.233(a)(9)(iv) were reworded to cross-reference to 600.252 and renumbered as 600.233(h)(5) and 600.235(d)(4) respectively.

A new phrase has been added to paragraph 600.271(a)(1) cross-referencing a new subparagraph (c) to paragraph 600.271. Paragraph E of the OMB Guidance on Implementation of the Federal Grant and Cooperative Agreement Act of 1977, provided that the administrative requirements of OMB Circulars A–102 and A–110 apply to Cooperative Agreements. These Circulars were written for Grants but the new language in 600.271(a)(1) states that the administrative requirements in the Circulars must be followed except as set forth in 600.271(c).

Section 600.271(c) has been added to state DOE policy regarding competitions involving potential competitors who are subject to OMB Circulars A–102 and A–110 and profit making competitors and others not subject to the Circulars.

A new Article on Property Management and Disposition has been added to 600.283(b)(87).

The Articles contained in 600.283 have been revised to assure that the Cooperative Agreement clearly reflects the respective interest and investment of the parties, including their respective rights, obligations, and accountabilities.

In Section 600.290, references made to the Energy Research and Development Administration Procurement Regulations have been deleted and replaced with references to the Department of Energy Procurement Regulations, published as a final rule on June 14, 1979 (see 44 FR 34424). Also, in this section, (a) was revised to cross-reference 600.271(c).

Section 600.290(b) has been revised to more clearly indicate the background for and the appropriate use of the General and Special Provisions contained in subparagraphs (c), (d), and (e) of § 600.290.

The Assignment of Claims (600.290(c)(3)) and the Use of Interagency Motor Pool Vehicles and Related Services (600.290(e)(12)) provisions have been deleted. Similarly, the Organizational Conflict of Interest (OCI) provision in 600.290(e)(29) and the Avoidance of Conflicts of Interest provisions in 600.290(e)(33) have been deleted. If the Department obtains services of the type which require the 41 CFR 9–1.5408 OCI clauses (e.g., evaluation services or activities and technical consulting and management support services and professional services) it is expected that a procurement contract will be the appropriate vehicle. The OCI clauses are also required for research and development conducted pursuant to the authority of the Federal Energy Administration Act of 1974 (Pub. L. 93–275) but the Department does not anticipate entering into any Cooperative Agreement involving this authority. To the extent that any Organizational Conflict of Interest possibilities appear, the Department has the right to insert an appropriately tailored OCI provision in any Cooperative Agreement entered into by DOE.

Many of the provisions in 600.290(c) (d) and (e) have been rearranged and renumbered. Many of the citations have been revised.

A disputes clause has been added as 600.290(c)(24).

Section 600.290(d)(12) "Utilization of Women-Owned Business Concerns" and Section 600.290(e)(42) "Women-Owned Business Concerns Subcontracting Programs" have been added as new Special Provisions.

A Special Provision on Preservation of Individual Occupational Radiation Exposure Records has been added as 600.290(e)(37).

Waiver of Indemnity and Classified Invention provisions have been added as 600.290(e)(38) and (e)(39), respectively.

The Rights to Proposal Data provision in 600.231(c) has been cross-referenced in 600.290(e)(40).

## IV. Other Information

DOE presently has no existing generic regulations governing Cooperative Agreements. This regulation provides guidance for Cooperative Agreements entered into by the DOE, except as provided in § 600.5. Section 600.5 of Subpart A of the DOE–AR (See 44 FR 12920, March 8, 1979) which applies to this Subpart C and all other parts of the DOE–AR provides that:

> The DOE–AR govern the award and administration of all financial assistance matters, including regulations and guidelines issued by DOE except:
>
> (a) As otherwise required by statute;
>
> (b) For final regulations issued before the effective date of this part;
>
> (c) As otherwise provided by specific program regulations;
>
> (d) Assistance instruments awarded by any Federal department, agency, or official thereof in the performance of functions transferred to DOE under the Department of Energy Organization Act (Public Law 95–91), which are in effect according to their terms until renewed, continued, or otherwise extended. Such renewals, continuations, or extensions will then be subject to this part.

The Department has determined that the proposed regulation will not affect the quality of the environment and that the requirements of Section 7(c)(2) of the Federal Energy Administration Act of 1974, Pub. L. 93–275, do not apply. Further, the Cooperative Agreement Regulations do not involve substantial issues of fact or law and the regulations are unlikely to have a substantial or major impact on the Nation's economy or large numbers of individuals or businesses. Therefore, public hearings were not conducted.

This Subpart C of the DOE Assistance Regulations is effective October 6, 1980 except for (1) Solicitations, PONs and PRDAs issued prior to the effective date of this regulation and any Cooperative Agreement awards made as a result thereof, (2) any Cooperative Agreement awards made as a result thereof and (3) any Cooperative Agreements actually awarded prior to the effective date of this regulation including Cooperative Agreements entered into on a non-competitive basis under 600.230(c).

Many changes were made in Subpart C as the result of DOE's review after considering all comments. Since this is DOE's first comprehensive regulation covering Cooperative Agreements under the Federal Grant and Cooperative Agreement Act of 1977 (41 U.S.C. 501 et seq.) additional comments are invited on the regulation. All comments received by August 15, 1980, will be evaluated to determine if any revisions should be made to Subpart C in the near future.

Issued in Washington, D.C. on July 2, 1980.

For the Department of Energy.

**Berton J. Roth,**

*Director, Office of Policy, Procurement and Contracts Management Directorate.*

Subchapter H of 10 CFR Part 600 is amended by adding Subpart C as set forth below.

## PART 600—ASSISTANCE REGULATIONS

### Subpart C—Cooperative Agreement

Sec.
600.200 Scope of subpart.
600.201 Statutory authority to enter into Cooperative Agreements.
600.211 Selection of the Cooperative Agreement as award instrument.
600.212 Alternative uses of Cooperative Agreements.
600.213 DOE criteria for cost participation.
600.214 Decision level for selection of Cooperative Agreement award instrument.
600.230 Award of Cooperative Agreements.
600.231 Treatment of proposal information.
600.232 Solicitation for Cooperative Agreement proposals.
600.233 Program opportunity notices.
600.234 Program Research and Development Announcements.
600.250 Statutory requirements for Cooperative Agreements.
600.251 Eligible recipients for DOE Cooperative Agreement.
600.252 Source selection, approval, and execution of Cooperative Agreement instruments.
600.270 Cooperative Agreement structure.
600.271 Administrative requirements for Cooperative Agreements.
600.281 Contents of a Cooperative Agreement.
600.282 Face page.
600.283 Schedule.
600.290 General and special provisions.

**Authority:** Sec. 644 and 646 of the Department of Energy Organization Act, Pub. L. 95–91, 42 U.S.C. 7254 and 7256 and the Federal Grants and Cooperative Agreements Act of 1977, Pub. L. 95–224, 41 U.S.C. 501 et seq.

### Subpart C—Cooperative Agreements

#### § 600.200 Scope of subpart.

(a) This subpart establishes requirements for the award and administration of Cooperative Agreements by the Department of Energy (DOE). A Cooperative Agreement is a legal instrument reflecting a relationship between the DOE and a participant whenever the principal purpose of the relationship is the transfer of money, property, services or anything of value to the participant in order to accomplish a public purpose of support or stimulation authorized by Federal statute and substantial involvement is anticipated between the Department of Energy, acting for the Federal Government, and the participant during performance of the contemplated activity.

(b) Subpart A of the DOE Assistance Regulation (10 CFR 2–600.1 et seq.) contains information about the regulatory structure, definitions and general policies applicable to DOE financial assistance instruments including Cooperative Agreements.

(c) Except as otherwise provided under 600.5., when proposals for Cooperative Agreements are obtained by DOE via a program solicitation or program regulation, this subpart shall be incorporated into such program solicitation or program regulation by reference to establish applicable administrative provisions for DOE Cooperative Agreements. Program solicitations or program regulations may add administrative provisions only when such additional administrative provisions are required by applicable program legislation or program regulation.

(d) Except as otherwise provided under 600.5, this subpart applies to all DOE organizations, to all programs which will result in Cooperative Agreement awards, and to all participants eligible for Cooperation Agreement awards, such as state and local governments, institutions of higher education, hospitals, other non-profit organizations, profit-making organizations and individuals but not other Federal agencies.

#### § 600.201 Statutory authority to enter into Cooperative Agreements.

DOE is authorized to award Cooperative Agreements pursuant to Section 646 of the Department of Energy Organization Act (Pub. L. 95–91) 42 U.S.C. 7256 and the Federal Grant and Cooperative Agreement Act of 1977, (Pub. L. 95–224) 41 U.S.C. 501 et seq. In addition, numerous program statutes provide additional authority to enter into Cooperative Agreements.

#### § 600.211 Selection of the Cooperative Agreement as award instrument.

(a) The basic criterion set forth in the Federal Grant and Cooperative Agreement Act of 1977 for distinguishing between Grants and Cooperative Agreements is that for the latter, "*substantial* involvement is *anticipated* between the executive agency and the recipient *during performance* of the contemplated activity" (emphasis added). To insure consistent determinations, this criterion should be used when deciding to use either a Grant or a Cooperative Agreement.

(b) Anticipated substantial Federal involvement is a relative rather than an absolute concept. The examples that follow in subparagraphs "c" and "d" are not meant to be a checklist or to be considered as individual determinants. Rather, they are to illustrate the general policy that:

(1) When the terms of an assistance instrument indicate the participant can expect to run the project without DOE collaboration, participation, or intervention as long as it is run in accordance with the terms of the assistance instrument, substantial involvement is not anticipated; and

(2) When the instrument indicated the participant can expect DOE collaboration or participation in the management of the project, substantial Federal involvement is anticipated.

(c) As a guide to making these determinations, anticipated substantial involvement during performance does not include:

(1) DOE approval of recipient plans prior to award;

(2) Normal exercise of Federal stewardship responsibilities during the project period such as site visits, performance reporting, financial reporting, and audit to insure that the objectives, terms and conditions of the award are accomplished;

(3) Unanticipated DOE involvement to correct deficiencies in programmatic or financial performance by the participant;

(4) General statutory requirements understood in advance of the award such as civil rights, environmental protection, and provisions for the handicapped;

(5) DOE review of performance after completion; and

(6) General administrative requirements, such as those included in OMB Circulars A–21, A–95, A–102, A–110, and FMC 74–4.

(d) Conversely, anticipated involvement during performance would exist and, depending on the circumstances, could be substantial, where the relationship includes, for example:

(1) DOE has option to immediately halt an activity if detailed performance specifications (e.g., construction specifications) are not met. These would be provisions that go beyond the suspension remedies of the Federal Government for nonperformance as in OMB Circulars A–102 and A–110;

(2) DOE review and approval of one stage before work can begin on a subsequent stage during the period covered by the assistance instrument;

(3) DOE review and approval of substantive provisions of proposed subgrants or contracts. These would be provisions that go beyond existing policies on Federal review of participant procurement standards and sole source procurement;

(4) DOE involvement in the selection of key participant personnel. (This does not include assistance instrument provisions for the participation of a

named principal investigator for research projects);

(5) DOE and participant collaboration or participation in the performance of the assisted activity;

(6) DOE monitoring to permit specified kinds of direction or redirection of the work because of interrelationships with other projects;

(7) Substantial, direct DOE operational involvement or participation during the assisted activity is anticipated prior to award to insure compliance with such statutory requirements as civil rights, environmental protection, and provisions for the handicapped. Such participation would exceed that normally anticipated under subparagraph (c)(4) above; and

(8) Highly prescriptive DOE requirements prior to award limiting participant discretion with respect to scope of services offered, organizational structure, staffing, mode of operation, and other management processes, coupled with close DOE monitoring or operational involvement during performance over and above the normal exercise of Federal stewardship responsibilities to ensure compliance with these requirements.

(e) The practice of providing technical assistance, advice or guidance to participants in assistance awards does not constitute substantial involvement if:

(1) It is provided at the request of the participant; or

(2) The participant is not required to follow it; or

(3) The participant is required to follow it, but it is provided prior to the start of the assisted activity and the participant understood this prior to the assistance award.

(f) The decision to use a Cooperative Agreement will in all cases be based on the need for substantial Federal involvement in the assisted activity after considering a range of factors including the technology's stage of development; the technological, economic and market feasibility of the project; and management, financial, and technical needs and expertise of the organization.

(g) DOE should limit Federal involvement in Cooperative Agreements to the minimum consistent with program requirements. Nothing in this regulation should be construed as authorizing DOE to increase its involvement beyond that authorized by applicable legislation.

**§ 600.212 Alternative uses of Cooperative Agreements.**

(a) Some DOE programs now using Grants will in the future require the award of Cooperative Agreements exclusively for particular activities. This determination should be based on statutory requirements or policy level determinations of substantial Federal involvement in the performance of an assisted project.

(b) Other DOE programs may use Grants or Cooperative Agreements, depending on the nature of the project or the ability of the recipients. For example:

(1) Some projects may start out as Cooperative Agreements in the first year and may be converted to Grants after recipient capacity has been established; or

(2) Other projects, initially funded as Grants, may have to be renewed or continued for subsequent budget periods as Cooperative Agreements if there is a need to revise the project, upgrade recipient capacity, or protect the Federal interest.

**§ 600.213 DOE criteria for cost participation.**

(a) *Scope of section.* (1) This section sets forth the DOE policy on cost participation by the Government under DOE Cooperative Agreements except where cost participation is established by statute, in which case this section will not apply.

(2) Cost participation is a generic term denoting any situation where the Government does not fully provide the participant with funds for all allowable costs necessary to accomplish the defined project or effort. The term encompasses cost sharing, cost matching, cost limitation (direct or indirect), participation in kind, and similar concepts.

(b) *Policy.* (1) When DOE supports performance under a Cooperative Agreement, where the principal purpose is ultimate commercialization or utilization of technology by the private sector, or present or future economic benefits are accruable to the participant beyond the instant award, as a result of performance of the effort, it is DOE policy to provide only a portion of the costs for the required project.

(2) DOE will consider, on a case-by-case basis, the technical feasibility, projected economic viability, and societal acceptability of commercial application, as well as possible effects of other DOE supported projects in competing technologies in determining the nature and amount of its cost participation for a particular project.

(3) Cost participation is required for non-nuclear energy demonstration projects. Demonstration projects, pursuant to this section, include demonstrating technological advances and field demonstrations of new methods and procedures, and demonstrations of prototype commercial applications for the exploration, development, production, transportation, conversion and utilization of non-nuclear energy resources.

(c) *Application.* The DOE cost participation policy set forth herein is applicable to all Cooperative Agreements within the following limitations:

(1) Potential benefits to a participant are less likely where basic research is involved and extent or amount of cost participation by the Government is expected to be more than in circumstances where advanced or engineering development is being supported. As projects or proposed efforts reach stages approaching commercial viability, the extent of the Government's cost participation should be based on the overall project risk;

(2) In those instances where it is determined by the cognizant program Assistant Secretary that payment by DOE of a substantial part of or the full allowable cost of the contemplated effort is in the best interest of the DOE program mission, cost participation by the Government may be maximized (except as required under (b)(3) above); and

(3) Cost participation may be provided, all or in part, by third party entities (other companies or associations). Similarly, the Federal share of project costs may include funding from DOE and other Federal agency(s).

(d) *Cost participation requirements.* (1) The value of any non-cash cost contributions by the participants to the defined effort shall be considered by DOE after consultation with the participant in determining the amount of funding provided by such participant. The manner of cost participation and how it is to be accomplished shall be set forth in the award.

(2) Cost contributions may be to either direct or indirect costs provided such costs are otherwise allowable in accordance with the cost principles applicable to the award. Allowable costs which are absorbed by the participant as its share of costs may not be charged directly or indirectly or may not have been charged in the past to the Federal Government under other contracts, agreements, or grants.

(3) Federal funds provided under another Federal financial assistance award including loans (but not including loan guarantee agreements since these do not provide for disbursement of Federal funds) are not acceptable for calculating cost contributions of the

participants unless the terms of the other award instrument allow such use or written advice from the agency(s) providing such other funds is obtained which would permit such use. Any method used by the participant in providing the required funds which relies upon Federal funds, must be disclosed and identified in the DOE award instrument.

(4) Participants should provide a reasonable amount of the total project cost covered under the award. The ratio of funds provided by the participants and DOE should correlate to the apparent advantages available to the participants and DOE and the proximity of implementing commercialization where applicable. In setting the levels of funds required by the participant, all salient factors should be considered such as;

(i) The availability of the technology to the participant's competitors;

(ii) The risks involved in achieving commercial success;

(iii) The length of time before the project is likely to be commercially successful;

(iv) Improvements in the participants' future commercial competitive position;

(v) Disposition of property at project's end;

(vi) Whether the potential benefits will be lessened if the participant lacks production or other capabilities with which to capitalize the results of the project. However, if the results of the project are transferable to entities with production capabilities, and the performing participant would obtain patent or other property rights which could be sold or licensed, this should be considered;

(vii) Whether the performing organization lacks adequate non-Federal sources of funds from which to make cost participation; and

(viii) The relative degree of management control to be exercised by the participants and DOE.

(5) The solicitation document shall state whether there is a limit on the extent of the cost participation provided by DOE and may also set forth a target level of cost funding by the participant(s). The extent of cost participation requested in unsolicited proposals will be considered on a case-by-case basis.

(6) The extent to which a participant provides funds to a project will be taken into consideration in the allocation of patent rights under DOE's waiver policy.

(7) Fee or profit will not be paid the participant(s) under a Cooperative Agreement. Neither will foregone fee or profit be considered in establishing the degree of cost participation.

(e) *Records.* Participants in Cooperative Agreements shall be required to maintain records adequate to reflect the nature and extent of their costs and to insure that the required cost participation is achieved.

**§ 600.214 Decision level for selection of Cooperative Agreement as award instrument.**

The determination of whether a program, to be implemented through individual transactions, is principally one of procurement or assistance and whether substantial Federal involvement in performance will normally occur are basic agency policy decisions which will be either made or reviewed at a DOE policy level in accordance with 600.32(a).

**§ 600.230 Award of Cooperative Agreements.**

(a) It is DOE policy to encourage and maximize open and fair competition in the awarding of Cooperative Agreements. DOE may award Cooperative Agreements on a competitive basis as a result of:

(1) Solicitation for Cooperative Agreement Proposals (SCAPs)

(2) Program Opportunity Notices (PONs)

(3) Program Research and Development Announcements (PRDAs)

(b) Issuance of a Solicitation, PON and PRDA will be in accordance with 600.35.

(c) DOE may award Cooperative Agreements on a non-competitive basis as a result of:

(1) Unsolicited Proposals in accordance with criteria established in 600.34; "Unsolicited applications and proposals for financial assistance awards." The unsolicited proposal may have resulted from a DOE Notice of Program Interest (NPI) issued in accordance with 600.36; "Notice of Program Interest"; and

(2) Sole source awards in accordance with the requirements for restricted eligibility contained in 600.38, "Requirements for unrestricted solicitations for discretionary assistance awards."

(d) Program regulations issued by program offices to implement program legislation may be used to solicit competitive cooperative agreement proposals or to stimulate unsolicited proposals. Such program regulations will obtain concurrence from the Procurement and Contracts Management Directorate and the Office of General Counsel.

(e) Where a program is restricted to participants covered by OMB Circular A-102, the application forms prescribed in Attachment M, "Standard forms for applying for Federal Assistance" OMB Circular A-102, will be used, as modified, to meet specific program needs.

(f) SCAPs, PONs, and PRDAs that elicit proposals shall be given the widest possible dissemination to the public. A synopsis of these shall be published in the Commerce Business Daily and the Federal Register prior to or concurrent with release. The notice will be circulated directly to potentially interested individuals, private and public entities (excluding Federal agencies) and associations thereof to the maximum extent feasible. Special attention in this regard should be given to small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to insure that they are given every opportunity to participate in such Cooperative Agreements. Use may be made of professional and scientific journals, trade magazines, or other national, regional or local media outlets. Consideration should be given to furnishing copies to all eligible entities which, during the preceding two years, have expressed an interest in participating in, or entering into arrangements in the particular energy field.

(g) Solicitations, PONs, PRDAs, and Program Regulations issued pursuant to these regulations will require that Standard Form 424, "Federal Assistance," be completed by all proposers/applicants for Cooperative Agreements as it contains the body of information that DOE is required to report to the government wide Federal Assistance Award Data System (FAADS) and which DOE maintains in the DOE Integrated Procurement Management Information System (IPMIS).

**§ 600.231 Treatment of proposal information.**

(a) A proposal may include technical data and other data, including trade secrets and/or privileged or confidential commercial or financial information, which the proposer does not want disclosed to the public or used by the Government for any purpose other than proposal evaluation. To protect such data, the proposer should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the proposal with the notice set forth immediately below. Solicitation documents shall include instructions to proposers to mark their proposals in this manner:

**Notice**

The data contained in pages—— of this proposal have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if a cooperative agreement is awarded to this proposer as a result of or in connection with the submission of this proposal, the Government shall have the right to use or disclose the data herein to the extent provided in the Cooperative Agreement. This restriction does not limit the Government's right to use or disclose data obtained without restriction from, any source, including the proposer.

Reference to this notice on the cover sheet should be placed on each page to which the notice applies, along with the following statement: "Use or disclosure of the proposal data on lines or paragraphs specifically identified by an asterisk (*) is subject to the restriction on the cover page of this proposal."

Data, or abstracts of data marked with this notice will be retained in confidence and used by DOE or its designated representative(s), including Government contractors and consultants, as set forth in 41 CFR 9–3.150–4, solely for the purpose of evaluating the proposal. The data so marked will not otherwise be disclosed or used without the proposer's prior written permission except to the extent provided in any resulting Cooperative Agreement, or to the extent required by law. Proposers should be aware of the provisions of 41 CFR 9–3.150–4 if they desire to modify the above notice or otherwise seek to limit the evaluation to the Government only. The restriction contained in the notice does not limit the Government's right to use or disclose any data contained in the proposal if it is obtainable from any source, including the proposer without restriction. Although it is DOE's policy to treat all proposals as confidential, the Government assumes no liability for disclosure or use of unmarked data and may use or disclose such data for any purpose.

(b) Should a Cooperative Agreement be awarded based on a proposal, it is DOE policy, in consideration of the award, to obtain unlimited rights for the Government in the technical data contained in the proposal unless the prospective participant marks those portions of the technical information which he asserts as "proprietary data," or specifies those portions of such technical data which are not directly related to or will not be utilized in the effort to be funded under the Cooperative Agreement. "Propietary data" is defined as technical data which embody trade secrets developed at private expense, such as design procedures or techniques, chemical composition of materials, or manufacturing methods, processes, or treatments, including minor modifications thereof, provided that such data:

(1) Are not generally known or available from other sources without obligation concerning their confidentiality;

(2) Have not been made available by the owner to others without obligation concerning their confidentiality; and

(3) Are not already available to the Government without obligation concerning their confidentiality.

A proposer who receives an award of a Cooperative Agreement shall mark the data identified as proprietary by specifying the appropriate page numbers to be inserted in the Rights to Proposal Data clause of paragraph (c) below, which clause shall be inserted in the Cooperative Agreement. Subject to the concurrence of the Contracting Officer information unrelated to the Cooperative Agreement may be deleted from the proposal by the participant. The responsibility, however, of identifying technical data as proprietary or deleting it as unrelated rests with the prospective participant.

(c) The following clause shall be included in all Cooperative Agreements based on a proposal which contains the restrictive legend of paragraph (a) above. This clause is intended to apply only to technical data and not to other data such as privileged, confidential, commercial, or financial information.

**Rights to Proposal Data**

Except for technical data contained on pages —— of the participants proposal dated ——— which are asserted by the participant as being proprietary data, it is agreed that as a condition of the award of this Cooperative Agreement, and notwithstanding the provisions of any notice appearing on the proposal, the Government shall have the right to use, duplicate, disclose and have others do so for any purpose whatsoever the technical data contained in the proposal upon which this Cooperative Agreement is based.

(d) The treatment of information in unsolicited proposals is specified in 600.34(g)(3).

**§ 600.232 Solicitation for Cooperative Agreement Proposals (SCAP).**

(a) The Solicitations for Cooperative Agreement Proposals (SCAP) shall be prepared jointly by the cognizant procurement operations office and the program office with the assistance of counsel. The program office will be responsible for development of the proposed effort, specifications, project objectives, and schedule while the procurement office will be responsible for the business aspects of the SCAP.

(b) The general outline for a SCAP should be in the sequence below:

*Part I*

1. Section A. Cover Sheet
2. Section B. Cooperative Agreement Representations, Certifications, and other Statements of Proposer(s)
3. Section C. Instructions and Conditions, Notices to Proposer(s)
4. Section D. Evaluation Factors for Selection and Award

*Part II*

5. Section E. Description of Proposed Effort—Period of Performance and Project Management Plan
6. Section F. Cooperative Agreement Administration

*Part III*

7. Section G. Draft Cooperative Agreement

*Part IV*

8. Section H. List of Documents, Exhibits, and Other Attachments

(c) The evaluation and selection of proposals submitted in response to a SCAP shall be conducted as follows:

(1) When any individual proposal, together with later phases of the same project that may receive DOE support, is estimated to meet the Source Evaluation Board (SEB) Handbook (Procurement Regulation Handbook No. 1) dollar threshold, comprehensive evaluation shall be conducted by a specially constituted board which shall follow the procedures and documentation requirements of the SEB Handbook, modified as appropriate to the requirements of this regulation and the SCAP.

(2) When no individual proposal is expected to meet the SEB dollar threshold, proposals submitted in response to a SCAP will be evaluated by a panel which shall be appointed by the cognizant program office. The panel should utilize any of the procedures and documentation requirements of the SEB Handbook (modified as appropriate to conform to the requirements of this regulation and the SCAP) whenever necessary to insure the impartial, equitable and thorough evaluation of each proposal. The panel will be composed of program office and other personnel, including representatives of Procurement and Counsel, and, as deemed appropriate by the appointing official, supplemented by personnel from other Government agencies. The representative of Counsel will be a nonvoting member of the panel. Personnel from DOE prime management

or operating contractors may be used as advisors to the panel when their services are necessary and available. Care is to be taken in the selection of these personnel so as to avoid any actual or apparent conflict of interest. Moreover, such advisors are expressly forbidden to use privileged information contained in proposals for personal gain or other improper purposes.

(3) The selection official will be the individual as authorized in accordance with § 600.252.

**§ 600.233 Program Opportunity Notices (PON).**

(a) It is DOE's intent to encourage the submission of proposals to accelerate demonstration of the technical, operational, economic and commercial feasibility and environmental acceptability of particular energy technologies, systems, subsystems and components. DOE shall, from time to time, issue PONs for proposals for demonstration of various forms of nonnuclear energy and technology utilization.

(b) A PON is a unique form of solicitation used by DOE in accelerating the demonstration of the technical feasibility and commercial application of potentially beneficial nonnuclear energy sources and utilization technologies. The Federal Nonnuclear Energy Research and Development Act of 1974, Pub. L. 93–577 (as amended) Section 8, authorized the Department to accelerate commercial application of new energy technologies and to provide Federal assistance for participation in demonstration projects. Section 8d(1) of the Act required the Agency to promulgate regulations to provide a procedure for selection of proposals for projects authorized under this section of the Act and the PON implements a portion of this requirement. (See also 41 CFR 9-4.57)

(c) If the estimate of the Federal investment with respect to construction costs of any demonstration project proposed to be established under Section 8 exceeds $50,000,000 no amount may be appropriated for the project except as specifically authorized by legislation hereinafter enacted by Congress (See Sec. 8(e), Pub. L. 93–577). If the Federal contribution to the construction cost is estimated to exceed $25,000,000 a full and comprehensive report on the proposed demonstration project must be provided to the appropriate committees of the Congress and no funds may be expended prior to the expiration of sixty calendar days from the date the report is received by the Congress (See Sec. 8(f), Pub. L. 93–577).

(d) For purposes of this section, demonstration projects include demonstrating technological advances and field demonstrations of new methods and procedures and demonstrations of prototype commercial applications for the exploration, development, production, transportation, conversion and utilization of nonnuclear energy resources.

(e) Before the PON is selected by the program office as the appropriate solicitation procedure for the providing of federal assistance, a written program determination shall be made that the PON procedure is both necessary and appropriate. The determination must not be merely conclusory but shall be supported by specific facts and explanations and show that consideration has been given to the extent to which the proposed effort meets the Federal support criteria of section 8(b) of the Act and the criteria of priority of section 5(b)(2) of the Act including, but not limited to:

(1) The urgency of public need for the potential results of the research, development, or demonstration effort is high, and it is unlikely that similar results would be achieved in a timely manner in the absence of Federal assistance;

(2) The potential opportunities for non-Federal interests to recapture the investment in the undertaking through the normal commercial utilization of proprietary knowledge appear inadequate to encourage timely results;

(3) The extent of the problems treated and the objectives sought by the undertaking are national or widespread in their significance;

(4) The opportunities to induce non-Federal support of the undertaking through regulatory actions, end-use controls, tax and price incentives, public education, or other alternatives to direct Federal financial assistance are limited;

(5) The degree of risk of loss of investment inherent in the research is high, and the availability of risk capital to the non-Federal entities which might otherwise engage in the field of research is inadequate for the timely development of the technology;

(6) The magnitude of the investment appears to exceed the financial capabilities of potential non-Federal participants in the research to support effective efforts;

(7) The research, development, and application objectives anticipated by the activities or facilities proposed;

(8) The economic, environmental, and societal significance which a successful demonstration may have for the national fuels and energy system; and

(9) The availability of non-Federal participants to construct and operate the facilities or perform the activities associated with the proposal and to contribute to the financing of the proposal.

(e) The written determination of paragraph (d) above shall be submitted to the Senior Procurement Official, Headquarters, or designee for concurrence. The Senior Program Official or his designee may approve the determination and the approved determination shall accompany the PON file through the preparation, concurrence, approval and issuance phases.

(f) The content of the PON shall be originated, reviewed, approved and issued as follows:

(1) When the dollar amounts are less than SEB level, a PON may be originated at whatever level is consistent with the program objectives established by the Senior Program Official;

(2) When an SEB is not required, PONs may be approved by the Senior Program Official or designee after prior concurrence by the designee of the Senior Procurement Official, Headquarters, and Counsel;

(3) When an SEB is required, PONs shall be reviewed and approved by the SEB after prior concurrence by the designee of the Senior Procurement Official, Headquarters, Counsel, and the Senior Program Official or designee; and

(4) All PONs shall be issued by the cognizant head of the contracting activity or designee.

(g) The PON format is as follows:

1. Cover Sheet.
2. Executive Summary Letter.
3. Section I—Departmental Objectives.
4. Section II—Solicitation Considerations.
5. Section III—Evaluation Factors for Selection.
6. Section IV—Instructions, Conditions, and Notices to Proposer(s).
7. Section V—Representations, Certifications, and Other Statements of Proposer(s).
8. Section VI—List of Documents, Exhibits, and Other Attachments.

(h) The selection, evaluation and award of a PON will be in accordance with the procedures in the following paragraphs:

(1) *Selection Procedure.* (i) When any individual proposed project, together with later phases of the same project that may receive DOE support, is estimated to meet the Source Evaluation Board (SEB) dollar threshold, comprehensive evaluation shall be conducted by a specially constituted

board which shall follow the procedures and documentation requirements of the SEB Handbook, modified as appropriate to the requirements of this regulation and the PON.

(ii) When an individual proposed project, together with later phases of the same project that may receive DOE support, is not expected to meet the SEB dollar threshold, proposals submitted in response to a PON will be evaluated by a panel which shall be appointed by the cognizant program office. The panel should utilize any of the procedures and documentation requirements of the SEB Handbook (as modified as appropriate to the PON and the requirements of this regulation) and the PON whenever necessary to insure the impartial, equitable, and thorough evaluation of each proposal. The panel will be composed of program office and other personnel including representatives of Procurement and Counsel, and, as deemed appropriate by the appointing official, supplemented by personnel from other Government agencies. The representative of Counsel will be a non-voting member of the panel. Personnel from DOE prime management of operating contractors may be used as advisors to the panel when their services are necessary and available. Care is to be taken in the selection of these personnel so as to avoid any actual or apparent conflict of interest. Moreover, such advisors are expressly forbidden to use privileged information contained in proposals for personal gain or other improper purposes.

(2) *Evaluation Criteria.* The evaluation criteria shall be specified in the PON along with a narrative description of their relative importance. The criteria below, to the extent applicable, as well as any additional criteria stated in the PON, shall be considered in the evaluation of the submitted proposals:

(i) The overall technical feasibility of the proposed effort;

(ii) The contribution which the proposed effort is expected to make to DOE in carrying out its program responsibilities including, but not limited to, solving energy extraction and storage, transportation, conversion, waste utilization, and conservation problems;

(iii) The capabilities, related experience, facilities, instrumentation, or techniques which the proposer possesses and offers and which are considered to be integral factors for achieving the objectives of the proposal;

(iv) The qualifications, capabilities, experience, and availability of proposed key personnel;

(v) The probable time schedule for completion;

(vi) The project and financial plans for the management of the activities, including the adequacy of the proposed arrangement among all participants;

(vii) Plans for involvement of small, and socially and economically disadvantaged business concerns;

(viii) The importance of an accurate representation of cost; and

(ix) The total estimated cost including probable cost to the Government.

(3) *Program Policy Factors.* Program policy factors are those which, while not appropriate indicators of a proposal's individual merit (e.g., technical excellence, proposer's ability, cost), are relevant and essential to the process of choosing which of the proposals received will, taken together, best achieve the program objectives. All such factors, shall be predetermined and specified in the PON so as to notify proposers that factors which are essentially beyond their control will affect the selection process. The following are examples of possible program policy factors:

(i) The nature of the energy source, the type of projects envisioned, or limitations of past efforts make it desirable to select for support projects with a broad or specific geographic distribution;

(ii) The desirability of selecting for support (for reasons that must be stated in the PON) projects from diverse types and sizes of proposing organizations;

(iii) The desirability of selecting for support a group of projects which represent a diversity of methods, approaches, applications, or kinds of work; and

(iv) The desirability of selecting for support projects which are complementary to other DOE efforts or projects.

(4) *Proposal Information.* All proposals should be specific and as a minimum include the information set forth below:

(i) name and address of the entity(ies) submitting the proposal;

(ii) date of proposal submission;

(iii) identification of the notice (by number and title) to which the proposal responds;

(iv) type of entity(ies) submitting the proposal, whether public (including state and local governments), and/or private (including individuals, profit and non-profit organizations and educational insitutions);

(v) concise title and abstract of the proposed demonstration project for which assistance or participation is being sought;

(vi) an outline and discussion of the proposed demonstration which shall, to the extent possible, specifically address and reference the evaluation criteria and include:

(A) specification of the technology;

(B) proposed demonstration effort to be peformed;

(C) description of prior plant operating experience with the technology;

(D) preliminary design of the demonstration plant;

(E) time tables containing proposed construction or fabrication, and installation and operation plans;

(F) budget-type estimates of construction or fabrication and operating costs;

(G) description and proof of title to land for proposed site (as applicable), natural resources, electricity and water supply, and logistical information related to access to raw materials to construct and operate the plant and dispose of salable products from the plant;

(H) analysis of the environmental impact of the proposed plant and plans for disposal of wastes resulting from the operation of the plant;

(I) plans for commercial use of the technology if the demonstration is successful;

(J) plans for continued use of the plant if the demonstration is successful;

(K) plans for dismantling of the plant if the demonstration is unsuccessful or otherwise abandoned;

(L) form and amount of assistance or participation being sought;

(M) form and amount of funding, or other contribution to be provided by the proposer or others, including proposed disposition of revenues generated; and

(N) the extent to which the proposed expenditures would constitute permanent (non-severable) improvement to real property and proposed plans for the disposal of any such improvements. The information called for under this subsection relate primarily to a demonstration project involving the construction and operation of a "plant." In instances where the proposed concerns a demonstration that does not involve a project or plant (for example, the demonstration of a process, apparatus, or device), the program opportunity notice shall state what additional information is to be submitted with the proposal;

(vii) résumés of key personnel to be involved, which includes a description of relevant experience and associated data;

(viii) the participant(s)' current financial statement(s);

(ix) period for which proposal is valid;

(x) names and telephone numbers of proposer's primary business and technical personnel whom DOE may contact;

(xi) each proposal containing technical data and other data, including trade secrets, and/or privileged or confidential commercial, or financial information, which the proposer intends to be used by DOE for evaluation purposes only, should be marked as prescribed in 600.231;

(xii) representations, certifications and acknowlegements which may be required by law or regulation shall be submitted as specified in the PON; and

(xiii) signature and title of an official of the proposing organization authorized to obligate such organization.

(5) *Selection Official.* The selection official will be the individual as authorized in accordance with paragraph 600.252.

(6) *Intermediate Evaluation.* (i) Prior to making a comprehensive evaluation of a proposal, the SEB, or the panel, when an SEB is not required, shall determine if the proposal:

(A) contains sufficient technical, cost, and other required information to enable comprehensive evaluation;

(B) has been signed by a responsible official authorized to obligate such organization(s); and

(C) meets other requirements of the PON.

(ii) If the proposal does not meet these requirements, a comprehensive evaluation shall not be made. In such a case, a prompt reply shall be sent to the proposer, indicating the reason(s) for its proposal not being evaluated.

(7) *Comprehensive Evaluation.* The basic task in the evaluation and selection of proposals for support is to assess their relative merit in order to determine which offer the greatest likelihood for achieving the program objectives stated in the PON, considering technical quality, ability of the proposer, estimated cost, and other relevant factors. Proposals which survive intermediate review shall be evaluated by a SEB or panel, as applicable, in accordance with the stated criteria. The selection official will select proposals for support from the findings established by the SEB or panel. In this latter process, the selection official will take into account the relevant program policy factors in order to determine the mix of projects which will best further specific program goals. All findings and selections are to be documented, signed and retained to provide an adequate record of the proceedings.

(8) *Award or Support.* While only those proposals which best meet the needs of the program as specified in the PON will be considered for support, DOE may accept for support all, none, or any number or part of the proposals submitted.

(9) *Optional Two-Step Method.* Where a large number of proposals are anticipated, proposals may be evaluated in two steps. First, the evaluation may be limited to technical considerations. Second, the cost proposals may be subsequently requested from those proposers whose technical proposals are evaluated as technically acceptable.

**§ 600.234 Program Research and Development Announcement (PRDA).**

(a)(1) The Progam Research and Development Announcement (PRDA) is a unique form of solicitation used by DOE to provide information and solicit proposals concerning the Department's interest in entering into arrangements for research, development, and related projects in specified areas of interest in the energy field. The PRDA is different from a SCAP or a PON in that there is not a specific need or solution sufficiently definable or known to permit a narrowly defined competition. It can expected that proposals submitted in response to a PRDA may be totally dissimilar in concept and approach and multiple awards are normally anticipated to support a variety of concepts and approaches. The selection of one or more of these proposals to receive support must, of necessity, result from the application of broad discretion and judgment, since the selection will likely have to be made from among dissimilar concepts, ideas, or approaches offered.

(2) As a result of a PRDA, a procurement contract, grant, or cooperative agreement may be awarded. If the intended relationship is expected to be a procurement contract, 9–4.58 shall be followed. If the intended relationship is expected to be a financial assistance instrument, the DOE Assistance Regulations (DOE–AR) shall be followed. Specifically, this section will apply if the intended relationship is expected to be a Cooperative Agreement. In any event, any public notice, solicitation, request for applications or proposals, should indicate whether the intended relationship will be one of procurement or assistance and state that the applicable DOE–PR will govern if a procurement contract is entered into and that the DOE–AR will govern if a financial assistance instrument is utilized.

(b)(1) Except as otherwise provided under 600.5, this section governs the submission, evaluation and selection for award, or support of proposals offered in response to a specific PRDA issued by DOE, to conduct, support, participate, and/or otherwise cooperate in projects for research, development, and related activities in the energy field.

(2) PRDAs are not to be used where a requirement can be sufficiently defined for SCAP under 600.232. Similarly, PRDAs are not to be used to inhibit or curtail submission of unsolicited proposals in areas not covered by the PRDA. However, a proposal which is submitted as though it were unsolicited, but is in fact, germane to an extant PRDA, will be treated as though submitted in response to the announcement or returned without action to the proposer, at the proposer's option. Further, the PRDA is not to be used in a competitive situation where it is appropriate to complete a study contract to obtain analysis and recommendations to be incorporated in the subsequent issuance of a request for proposals.

(3) The PRDA is to be used only where:

(i) Research and development is required within broadly defined areas of interest to support program goals, but it is difficult, if not impossible, to describe in any reasonable degree of detail the nature of the work contemplated because of:

(A) the multiplicity of possible approaches within the current state of the art, available for solving the problems;

(B) the desirability of involving a broad spectrum of organizations in seeking out solutions to the problems posed;

(C) the expectation that many individual proposers will have unique qualifications or specialized capabilities which will enable them to perform portions of the research or development program (without necessarily possessing the qualifications to perform the entire program) so that the overall support may be broken into segments which cannot be ascertained in advance; and

(D) the desirability of fostering new and creative solutions.

(ii) Consistent with (i) above, it is anticipated that choices will have to be made among dissimilar concepts, ideas, or approaches; and

(iii) It is determined that a broad range of organizations exist that would be capable of contributing towards the overall research and development goals identified in (i) above.

(4) Prior to use of a PRDA, the procedures specified below shall be followed:

(i) Before the PRDA is selected by the program office as the appropriate

solicitation procedure, a written program determination shall be made to show that the conditions in 600.234(b)(3) exist to support the conclusion that the use of the PRDA procedure is both necessary and appropriate. The determination must not be merely conclusory but shall be supported by specific facts and explanations. If no individual award under the PRDA is anticipated to exceed $2 million, the senior program official or designee may approve the determination with the prior concurrence of the designee of the Senior Procurement Official, Headquarters.

(ii) If any individual award is anticipated to exceed $2 million, the program determination as required in (1) shall, in addition, explain why the PRDA procedure is more appropriate than existing Cooperative Agreement procedures for soliciting proposals. Determinations above $2 million require recommendations by the Senior Program Official or designee, concurrence by the designee of the Senior Procurement Official, Headquarters, and approval by the Senior Procurement Official, Headquarters; and

(iii) The approved program determination as required in (i) above, shall accompany the PRDA file through the preparation, concurrence, approval, and issuance phases.

(5) Origination, approval of contents, and issuance of a PRDA shall follow the procedures specified below:

(i) A PRDA may be originated at whatever level is consistent with the program objectives established by the Senior Program Official;

(ii) The PRDA content may be approved by the Senior Program Official or designee after prior concurrence by Counsel and the Senior Procurement Official, Headquarters or designee; and

(iii) All PRDAs will be issued by the cognizant head of the contracting activity or designee.

(c) The basic PRDA format consists of:

(1) Cover Sheet

(2) Executive Summary Letter

(3) Section I—Departmental Objectives

(4) Section II—Solicitation Considerations

(5) Section III—Evaluation Factors for Selection

(6) Section IV—Instructions, Conditions, and Notices to Proposer(s)

(7) Section V—Representations, Certifications, and Other Statements of Proposer(s)

(8) Section VI—List of Documents, Exhibits, and Other Attachments

(d) The method of evaluation, selection, and award shall be as specified below:

(1) *Selection*—A panel shall be appointed by the cognizant program office to evaluate proposals submitted in response to a PRDA. The panel will be composed of program office and other DOE personnel, including representatives from Procurement, Counsel, and, as deemed appropriate by the appointing official, supplemented by personnel from other Government Agencies. The representative of Counsel shall be a non-voting member of the panel. Personnel from DOE prime management, or operating contractors, may be used as advisors to the panel when their services are necessary and available. Care is to be taken in the selection of these personnel so as to avoid any actual or apparent conflict of interest. Moreover, such advisors are expressly forbidden to use privileged information contained in proposals for personal gain or other improper purposes.

(2) *Evaluation Criteria*—The evaluation criteria shall be specified in the PRDA along with a narrative description of their relative importance. The following items are illustrative of the elements which may be considered as evaluation criteria:

(i) Overall technical feasibility of the proposed effort;

(ii) Adequacy and relevance of the proposed plan, including validity tests as related to the proposed goals;

(iii) Availability, qualifications, and past performance of proposed staff and consultants;

(iv) Resources, experience, flexibility, and commitment of the proposing organization;

(v) The ability of the proposer to furnish necessary financial support;

(vi) Project and financial plans for management of the activities including the adequacy of proposed arrangements among all participants;

(vii) Cost realism and probable cost to the government; and

(viii) Plans for involvement of small, and socially and economically disadvantaged business concerns.

(3) *Program Policy Factors*—Program policy factors may be used in evaluating and selecting proposals submitted pursuant to PRDAs. Program policy factors are those factors which, while not appropriate indicators of a proposal's individual merit (e.g. technical excellence, proposer's ability, cost) are relevant and essential to the process of choosing which of the proposals received will, taken together, best achieve the program objectives. All such factors shall be predetermined and specified in the PRDA so as to notify proposers that factors which are essentially beyond their control, will affect the selection process. Subparagraph 600.233(f)(3) outlines examples of program policy factors.

(4) *Selection Official*—The selection official for PRDAs will be the individual as authorized in accordance with § 600.252.

(5) *Intermediate Evaluation*—Prior to making a comprehensive evaluation of a proposal, the evaluation panel shall determine if the proposal:

(i) contains sufficient technical, cost, and other required information to enable comprehensive evaluation; and

(ii) has been signed by a responsible official authorized to obligate such organization(s).

If the proposal does not meet these requirements, a comprehensive evaluation shall not be made. In such case, a prompt reply shall be sent to the proposer, indicating the reason(s) for its proposal(s) not being evaluated.

(6) *Comprehensive Evaluation*—The basic purpose of the comprehensive evaluation process is to assess the relative merits of proposals passing the intermediate evaluation to determine which of the proposals offer the greatest ikelihood of achieving the stated program objectives, considering technical quality, ability of the proposer, estimated cost, and other relevant factors. Proposal evaluations shall consist of two steps. First, each proposal will be evaluated by the panel in accordance with the stated criteria and ranked in order of excellence. Second, the selection official will take into account the relevant program policy factors in order to determine the mix of projects which will best further specific program goals. All findings and selections are to be documented, signed, and retained to provide an adequate record of the proceedings.

(7) *Award or Support*—While only those proposals which best further the needs of the program as specified in the PRDA will be considered for support, DOE may accept for support, all, none, or any number, or part of the proposals submitted.

**§ 600.250 Statutory requirements for Cooperative Agreements.**

Statutes applying to all or selected Federal agencies, program statutes and DOE authorization and appropriation acts may contain specific requirements applicable generally, or specifically, to projects utilizing Cooperative Agreements (e.g., Sections 5 and 8 of the Federal Non Nuclear Energy Research and Development Act of 1974, Pub. L. No. 93–577, as amended, and Section 105 of the Geothermal Energy Research, Development, and Demonstration Act of 1974, Pub. L. No. 93–410, as amended).

All pertinent statutory requirements and restrictions shall be stated in all solicitations, PONs, PRDAs, and NPIs, and made a part of any Cooperative Agreements entered into by DOE.

**§ 600.251 Eligible recipients for DOE Cooperative Agreements.**

DOE may enter into a Cooperative Agreement with:

(a) State or local governments or elements thereof;

(b) Federally recognized Indian tribal governments;

(c) Institutions of higher education, hospitals, and other quasi-public and private nonprofit organizations;

(d) Profit making organizations;

(e) Individuals;

(f) Any other entities not prohibited by statute or regulations; and

(g) A combination of (1) through (6) above.

**§ 600.252 Source selection, approval, and execution of Cooperative Agreement instruments.**

(a) The selection official for Cooperative Agreement awards, notwithstanding the competitive, non-competitive, unsolicited, or sole source nature of the award, shall be a Departmental Officer at the appropriate management level. The estimated value of the Cooperative Agreement, including DOE and participant share, and any later phases of the same project that may receive DOE support, will be used to determine the appropriate management level at which the selection decision will be made. The appropriate Departmental Officers having source selection decision authority will be determined in accordance with internal DOE Directives.

(b) The official authorized to approve and execute Cooperative Agreement instruments will be the Secretary, or designee.

**600.270 Cooperative Agreement Structure.**

The Cooperative Agreement is structured in a manner which:

(i) Describes the business arrangement based upon the respective interest and investment of the parties; and

(ii) defines and allocates respective responsibilities, obligations, rights, and accountability as appropriate to the particular project.

The Cooperative Agreement sets forth the respective rights, and obligations of the parties in such areas as project performance and management, partial or total termination of the work, changes in the scope of work, period of performance, application of funding and resources, title to property, insurance, liability, etc. Each Cooperative Agreement shall be clear and concise and shall include only those provisions necessary to implement terms agreed upon between the parties.

**600.271 Administrative requirements for Cooperative Agreements.**

(a) The basic administrative requirements applicable to individual Cooperative Agreements will be determined by class of participant of the Cooperative Agreement Award:

(1) For participants covered by OMB Circular A–102, Uniform Administrative Requirements for Grants-In-Aid to State and Local Governments, or OMB Circular A–110, Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-profit Organizations, the administrative requirements specified in these circulars will apply, except as set forth in paragraph (c) below. These classes of participants will also be subject to the requirements of 600.77 and 600.78 to the extent the contemplated project falls within the scope of OMB Circulars A–95 (Evaluation, Review, and Coordination of Federal and Federally Assisted Programs and Projects) and A–111 (Joint Funded Assistance to State and Local Governments and Nonprofit Organizations).

(2) For classes of participants not covered by OMB Circular A–102 or A–110 (e.g., international organizations such as agencies of the United Nations, Government-owned contractor operated facilities, or research centers providing continued support for mission oriented large scale programs that are government owned, or controlled, or are designed as federally funded research and development centers, profit making organizations, and individuals) § 600.290 will be followed in determining the provisions of the Cooperative Agreement.

(b) The administrative requirements will always reflect the cooperative effort and the respective interests, investments, rights, etc., of the participants to the agreement.

(c) Mixed competitions are those involving potential competitors who are subject to OMB Circulars A–102 and A–110 and profit-making competitors and others not subject to the Circulars. Mixed competitions should be avoided unless common administrative requirements are prescribed for all classes of competitors or no unfair competitive advantage accrues to a class of participant due to the application of different administrative standards. The Circulars provide that the administrative requirements set forth in the Circulars are to be used as normal practice for participants subject to the Circulars. The Circulars, however, also provide that they are not applicable if different administrative standards are needed because of policies or specific requirements contained in any statute. As an example, different administrative requirements may be utilized for demonstration projects conducted under the Federal Nonnuclear Energy Research and Development Act of 1974 (42 USC 5901 et seq.). Also, the Circulars do not apply to technical requirements nor to administrative standards in areas not covered by the Circulars.

Where common or equitable administrative requirements can not be designed which satisfy the Circulars, relevant statutes, and programmatic needs, separate parallel competitions should be conducted or a waiver of the requirements under the Circulars should be requested from the Office of Management and Budget through the Director of Procurement and Contracts Management.

**§ 600.281 Contents of a Cooperative Agreement.**

A Cooperative Agreement should include at a minimum the following: a Face Page, a Schedule, General Provisions, and Special Provisions.

**§ 600.282 Face page.**

The Face Page shall:

(a) Identify the Agreement by entering thereon a document number which will be compatible with the DOE Integrated Procurement Management Information system;

(b) Cite the appropriate statutory authority for the award;

(c) Provide the name and address of the participant in the Cooperative Agreement award: the names, titles, office address, and telephone numbers for the respective DOE and participant project managers should also be included;

(d) Identify the project by title, and provide a brief summary of the purpose and objectives of the project;

(e) Stipulate the funding sources, including accounting and appropriation data and the amount of funds to be provided pursuant to the Agreement by DOE and the participant: the estimated cost ceiling for the project, and include, where appropriate, the funding amounts to be obligated by work phase or time period, indicating, where applicable, the percentage of funds to be provided by each of the participants in the Agreement. Identify specifically the amount obligated by this action;

(f) Identify the class of participant, (e.g., State or local governments or elements thereof, institutions of higher

learning, hospitals, other nonprofit organizations, profit-making organizations, individuals) or any combination thereof;

(g) Specify the effective date of the Agreement and the agreed completion date;

(h) Identify the DOE assistance office which has been assigned responsibility for execution and administration of the Agreement; and

(i) Provide for signatures of the DOE officer awarding the Cooperative Agreement and the responsible official of the recipient who has authority to accept the award.

**§ 600.283 Schedule.**

(a) The Schedule of a Cooperative Agreement will contain Articles which clearly reflect the cooperative relationship intended and the respective interest and investment of the parties, including their respective rights, obligations, and accountabilities.

(b) The Articles will be negotiated and will, as a minimum, include:

(1) *Statement of Joint Objectives Article*—This Article identifies the purpose and objectives of the Agreement as well as the benefits to be derived by the Participants from the contemplated relationships which is to be established pursuant to the arrangement. The statement must be in sufficient detail to demonstrate:

(i) the Agreement is in fact an undertaking of a clearly defined objective;

(ii) the basis for the endeavor is founded on support or stimulation of a public purpose authorized by Federal Statute;

(iii) the activity to be undertaken is in furtherance of the DOE mission; and

(iv) the benefits to be derived from performance of the project.

(2) *Project Management Plan Article.*

(i) The Project Management Plan Article includes the following:

(A) Identification of the respective role, responsibility, obligation and accountability which each participant to the Agreement will assume in its effort to achieve the stated joint objective(s). In this regard, the Government's role will vary substantially, dependent on the degree of government/industry investment, risk, involvement, commercialization potentials, etc.;

(B) An explicit statement of the nature, character, and extent of anticipated DOE involvement. These statements must be developed with care to avoid unnecessarily increasing DOE liability under the Cooperative Agreement;

(C) A Statement of how project and performance will be measured to evaluate the meeting, and/or achievement of specific milestones or agreed objectives; and

(D) The details of the resources, such as services, facilities, equipment, materials, supplies, personnel, etc., that DOE and the participant(s) will provide, and when they will be provided.

(ii) Dependent upon the complexities of the project, the management plan may be a simple narrative included in the Schedule of the Cooperative Agreement, or it may be a detailed management plan that may be incorporated as an appendix to the Agreement and if so, should be referenced in the Schedule.

(3) *Financial Support Article.*

(i) Financial support arrangements for the project will be detailed in the Financial Support Article. The DOE and the participant's share contribution to the project will be outlined in the Article. Such financial support will identify the dollar costs assigned to each participant acceptable in-kind contributions (other than funds), and will specify when these contributions will be committed/delivered to support the proposed project. The details of the planned financial support of the project must be as clearly defined as possible with regard to financial support ceilings, minimum contributions, percentage ratios, whether funds are to be committed, or obligated at award, or will be incrementally obligated at specified time/performance intervals.

(ii) Details concerning alternative approaches and responsibilities as agreed to by DOE and the participant(s) will be shown in the Financial Support Article in the event of overruns or underruns of the project's budget, or in the event that changes in the scope of activity, or changes in the period of performance occur, which may increase or decrease the estimated cost. This Article will also provide for steps to be taken with respect to each participant's financial obligations in the event of termination of the Agreement.

(iii) The Article should include coverage in any revenue derived as a result of the Agreement. Whenever revenue is derived as a result of the Agreement, in general, such revenues should inure to DOE and the participants in proportionate share to each participant's contribution, investment, and risk. For participants subject to OMB Circulars A–102, attachments E and D, respectively, will normally apply. When Attachments E and D to OMB Circular A–102 and A–110 are utilized, the Agreement would normally specify that all other program income under paragraph 5 of Attachments E and D would be deducted from the total project costs for the purpose of determining the net costs on which the Federal share of costs will be based. In addition, the Cooperative Agreement shall specify whether any revenue from funded activities shall accrue to the Government after the conclusion of the Cooperative Agreement.

(iv) The guidelines governing allowability of costs shall be included in the project funding document. The Federal cost principles as stated in the regulations listed below will be used as guidelines to determine allowability of costs in performance of the project:

(A) FMC 74–4 (OMB Circular A–87) for State and local government participant and other participants covered by OMB Circular A–102;

(B) OMB Circular A–21 for Institutions of Higher Education participant and other participants covered by OMB Circular A–110;

(C) 41 CFR 1–15.2 as modified by 41 CFR 9–15.2 for participants that are profit making or non-profit organizations (which are not covered above), and individuals to the extent appropriate; and

(D) 41 CFR 1–15.4 as modified by 41 CFR 9–15.2 for participants performing Cooperative Agreements where the principal purpose is construction.

(4) *Payment Article.*

(i) For participants covered by OMB Circulars A–102 and A–110, Attachment J of OMB Circular A–102 and Attachment I of OMB Circular A–110 will normally be utilized. For all other participants, the method of providing financial support pursuant to a Cooperative Agreement will be established in order to optimally meet the needs of the contemplated project.

(ii) Financial support of the project will be so arranged that each participant to the Agreement will provide its prorata share in timely manner so as not to cause undue hardship to the other participant(s) and to avoid placing project performance in jeopardy.

(iii) Federal funds obligated under Cooperative Agreement awards may be disbursed under a Letter of Credit, or by US Treasury Check. Payments may be made as reimbursement for work performed and invoiced or as advance payments, or as a combination thereof. The Agreement shall require such adequate security for funds advanced as may be considered appropriate for the protection of the Government under the circumstance of each case, but in any event, the financial management system of the participant organization shall provide for effective control over and accountability for all Federal funds in accordance with governing regulations

of the Treasury Department. See 31 CFR Part 205 (1978).

(5) *Term of the Agreement Article*—This Article establishes the effective date of the Agreement and the date the Agreement will end. Where appropriate, provisions with resultant conditions and/or restrictions which might occur and which may be used to extend or otherwise change the completion date of the Agreement, may be included pursuant to this Article.

(6) *Project Information System Article*—This Article specifies the pertinent technical data requirements, administrative information, and/or reports to be generated in performance of the project, the manner and times in which this information will be submitted, the responsibilities of the participants in acting upon information generated, and the mutual support to be provided to the respective participant's management information systems. Appropriate standards for reports to be generated and submitted to DOE will be specified in this Article.

(7) *Property Management and Disposition Article.*

(i) Data in accordance with 600.271(a)(1), the Property Management Standards in Attachment N to OMB Circulars A–102 and A–110 shall normally apply to participants covered by the Circulars and be reflected in the Cooperative Agreement.

(ii) All other Cooperative Agreements not included under (a) above shall include a Schedule Article providing specific details on managing Government property and the disposition of any acquired property including property contributed by the participant. Personal property acquired by, or contributed by the participant to the project, may vest in participant(s) when not prohibited by statute. The Cooperative Agreement must specifically outline the method of allocating and disposing (other than patents and intellectual property) of real and personal property including any funds obtained therefrom and state the statutory authorities relied on for vesting of title in the participant(s).

(iii) When there is cost sharing by the participant(s) disposition of non-expendable property (other than patents and other intellectual property) acquired in the performance of an agreement shall usually be effected by an equitable distribution of the fair market value of such property based on factors such as the proportion of the costs contributed by the parties, the risks undertaken, and the benefits received by the parties, and the overall purpose of the Cooperative Agreement. Normally, the participant will be allowed to acquire the Government's interest in the fair market value of such property at time of disposal, or at the project's conclusion (whichever comes first). Alternatively, with the permission of DOE, the participant(s) may dispose of the property and reimburse the Department an agreed amount which considers the factors set forth above as to any of the proceeds obtained by the participant(s). However, the participant(s) shall be permitted to deduct and retain from any proceeds the allowable costs incurred in selling the property.

**§ 600.290 General and special provisions.**

(a) Introduction

This Section provides guidance on general and special terms and conditions to be used in Cooperative Agreements with participants other than those covered under OMB Circulars A–102 and A–110. Section 600.271(a)(1) contains the administrative requirements applicable to participants covered by OMB Circulars A–102 and A–110, except as provided in § 600.271(c).

(b) The General and Special Provisions

(1) In Federal procurement, the Government's need to acquire goods and services at fair value has led to highly developed procurement procedures. The operational rules for guiding DOE procurement transactions are contained in the Federal Procurement Regulations (FPR), 41 CFR Chapter 1, and the Department of Energy Procurement Regulations (DOE–PR), 41 CFR Chapter 9. These regulations contain a panoply of standard, optional, and special provisions which spell out rights and obligations of the parties in detail. Although these Regulations are not applicable per se to Cooperative Agreements, some of the provisions contained in these Regulations provide a reference point for negotiating Cooperative Agreement terms and conditions. Use of these provisions, modified as appropriate, should insure that the agreement reached by the parties is considered in the light of the experience gained in interpretation of these provisions based on established legal precedent in the procurement field. Hopefully, by avoiding many of the problems that have arisen in the procurement field, the parties will be able to negotiate an agreement that reflects the true nature of the Cooperative Agreement.

(2) Some FPR and DOE PR provisions which express basic federal policies that are equally applicable to procurement contracts and Cooperative Agreements. These provisions are contained in paragraph (c) of this section and constitute mandatory General Provisions for Cooperative Agreements under this regulation for certain classes of participants.

(3) Many other provisions in the FPR's and DOE PR's are normally suitable for Cooperative Agreements and should be utilized unless the context of the specific Agreement being negotiated calls for different provisions. These provisions are specified in paragraph (d) of this section. Finally, many of the provisions in the FPR and DOE PR might be appropriate and as a minimum, should be considered by DOE and the participant to insure the issues raised by the provisions have been considered. These provisions are contained in paragraph (e) of this section.

The provisions contained in paragraphs (d) and (e) constitute the Special Provisions of the Cooperative Agreement along with any provisions negotiated between the parties. When used, the Special Provisions in paragraphs (d) and (e) of this section should be modified to reflect the intent of the parties to the Cooperative Agreement. For example, the Government's rights of termination and change under paragraphs (d)(2) and (e)(20) of this section (which could constitute separate Article(s) in the Cooperative Agreement Schedule) are clearly appropriate where the Government bears all the costs but when there is an undertaking on a cooperative basis, the Participant who has a direct financial interest should have a voice regarding termination, and/or changes (recognizing DOE may need to retain final decision authority in these areas). Similarly, the Government property provision in paragraph (d)(3) of this section will usually have to be modified to recognize property rights where title is not vested in the Government. In the area of liability and indemnifications, provisions in the Cooperative Agreement should reflect the hazards, and risks, and respective responsibilities of the Government and the participant, especially in regard to liability to third parties.

(4) Cooperative Agreements entered into pursuant to this part are subject to patents, data, and copyrights regulations set forth in 41 CFR Part 9–9:

(i) The long form Patent Rights clause of 41 CFR 9–9.107–5(a) shall be used in all Cooperative Agreements having as a purpose the conduct of research, development, or demonstration work, except where a waiver of patent rights is granted or in agreements for which the short form patent rights clause of 41 CFR 9–9.107–6 is appropriate. Where waiver of patents rights is obtained, a special

clause will be provided by DOE Patent Counsel. The short form Patent Rights clause shall be used in Cooperative Agreement with nonprofit or educational institutions. As more fully described in the policy discussion in 41 CFR 9–9.107–5, modifications to the Patent Rights clause may include changes in the license and sublicense rights and to the background patents provisions of the clause. Waiver of patent rights shall be subject to the provisions of 41 CFR 9–9.109–6;

(ii) The Rights in Technical Data Clause (long form) of 41 CFR 9–9.202–3(e)(2) shall be used in all Cooperative Agreements having as a purpose the conduct of research, development, or demonstration work, or in any other agreement where technical data are expected to be first produced under the Agreement, where technical data are specified to be delivered in the Agreement, or where the Agreement contains the Additional Technical Data Requirements clause of 41 CFR 9–9.202–3(c). As more fully explained in the policy discussion contained in 41 CFR 9–9.202–3, optional paragraph (g) "Limited Rights in Proprietary Data" of the Rights in Technical Data (long form) clause shall be used where DOE may have a need for delivery of proprietary data under the Agreement; optional paragraph (h) "Contractor Licensing" shall be used where licensing of proprietary data is necessary for the achievement of DOE's objectives relating to the purpose of the Agreement;

(iii) The other clauses relating to patents and technical data for Cooperative Agreements listed in (c), (d), and (e) of this section are set forth in 41 CFR Part 9–9 together with policy discussions related to these clauses; and

(iv) Any modifications of the provisions of 41 CFR Part 9–9 shall be obtained from the DOE Assistant General Counsel for Patents.

(5) The citations in paragraphs (c), (d), and (e) of this section are all 41 CFR unless indicated otherwise.

(6) The provisions of paragraphs (c), (d), and (e) will be utilized under the conditions set forth in the cited FPR or DOE PR. For example, if for particular provisions there is a $100,000 threshold for applicability, the provisions should not be used below that threshold. [NOTE: Any applicable threshold means cost of the total project, including DOE and participant share and any later phases of the same project that may receive DOE support]. The provisions must always be revised to change "contract" to "Cooperative Agreement" or "agreement", and "contractor" to "participant." The use of the term "subcontractor" in any of the provisions means contractor to the Participant and all tiers of subcontractor thereunder unless the conditions for use of a provision as set forth in the FPR or DOE PR provides otherwise.

(c) *Mandatory General Provisions*

These provisions are mandatory as to text in all Cooperative Agreements with participants other that those covered under OMB Circulars A–102 and A–110. Deviations, exceptions, or waivers to this requirement may not be made unless approved in accordance with 600.9 except for non-substantive changes reflecting that a Cooperative Agreement rather than a procurement contract is being entered into.

(1) Order of Precedence, 9–7.102–50
(2) Definitions, 9–7.102–1
(3) Inspection, 1–7.402–5(c)
(4) Examination of Records sby Comptroller General, 9–7.103–3
(5) Convict Labor, 1–7.402–14
(6) Officials Not to Benefit, 1–7.102–17
(7) Convenant Against Contingent Fees, 1–1.503
(8) Notice and Assistance Regarding Patent and Copyrights Infringement, 9–9.104
(9) Competition in Subcontracting, 1–7.202–30
(10) Audit, 1–3.814–2(a)
(11) Clean Air and Water, 1–1.2302–2
(12) Preference for US Flag Air Carriers, 1–1.323–2
(13) Use of US Flag Commercial Vessels, 1–19.108–2(b)
(14) Permits and Licenses, 9–7.104–51
(15) Reporting of Royalties, 9–9.110
(16) Authorization and Consent, 9–9.102–2
(17) Nondiscrimination in Federally Assisted Programs, 10 CFR 600.39
(18) Rights in Technical Data, Long Form, 9–9.202–3(e)(2)
(19) Contract Work Hours and Safety Standards Act, 1–12.303
(20) Patent Rights, 9–9.107–5(a)
(21) Flood Insurance, See (f) below
(22) Utilization of Labor Surplus Concerns, 1–1.805–3(a)
(23) Labor Surplus Area Subcontracting Program, 1–1.805–3(b)
(24) Disputes, See (g) below

(d) *Mandatory Special Provisions and Deviation Requirements*

The special provisions listed below are to be included in all Cooperative Agreements with participants other than those covered by OMB Circulars A–102 and A–110. The specific required clauses may be waived, modified, or deviated from in whole, or in part by the Contracting Officer, however, a written justification must be placed in the file by the Contracting Officer. The justification for such waiver, modification, or deviation must contain the specific reasons the provision is not appropriate, and why a particular special provision must be waived or modified due to the circumstances of the Cooperative Agreement being negotiated.

(1) Subcontracts, 1–7.402–8 as modified by 9–7.402–8
(2) Termination for Convenience of the Government, 9–7.402–10
(3) Government Property, 9–7.402–25
(4) Patent Indemnity, 9–9.103–3(b)
(5) Limitation of Cost or Funds, 1–7.402–2
(6) Allowable Cost and Payment, 9–7.402–3
(7) Buy American Act, 1–6.104–5
(8) Price Reduction for Defective Cost or Pricing Data, 1–3.814–1(a)
(9) Subcontractor Cost or Pricing Data, 1–3.814–3
(10) Additional Technical Data Requirements, 9–9.202–3(c)
(11) Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals, FPR Temporary Regulations 50 Supplement 2, (45 FR 35809 May 28, 1980)
(12) Utilization of Women Owned Business Concerns, FPR Temporary Regulation 54 (45 FR 35814 May 28, 1980)

(e) *Optional Special Provisions*

The below listed clauses constitute special optional provisions which should be considered for use in Cooperative Agreements. They may be modified in any manner and no deviations procedure is required for such modification, or for a decision not to use any of these clauses. Contracting Officers should take special precautions to insure that the principles inherent in these clauses are considered for inclusion in any Agreement being prepared to the extent necessary to protect the Government's interest.

(1) Payment for Overtime Premiums, 1–7.402–28
(2) Disabled Veterans and Veterans of the Vietnam Era, 1–12.1102–2
(3) Clauses for Cost Reimbursement Type Research and Development Contracts Involving Construction, 1–7.403–1
(4) Excusable Delays, 1–8.708
(5) Negotiated Overhead Rates, 9–7.203–9
(6) Notice to the Government of Labor Disputes, 1–7.203–3
(7) Make or Buy Program, 1–3.902–3
(8) Advance Payments, 1–7.403–20
(9) Workmen's Compensation Insurance 1–10.402
(10) Required Source for Jewel Bearings, 1–1.319
(11) General Services Administration Supply Sources, 1–7.403–23

(12) Interest, 1–7.203–15
(13) United States Products and Services, 1–7.403–36
(14) Care of Laboratory Animals, 1–7.303–44
(15) Cost Accounting Standards, 1–7.403–50
(16) Alterations in Contract, 1–7.204–1
(17) Approval of Contract, 1–7.204–2
(18) Date of Incurrence of Cost, 1–7.204–3
(19) Notice Regarding Late Delivery, 1–7.204–4
(20) Changes, 1–7.404–5
(21) Key Personnel, 1–7.304–6
(22) Disposition of Material, 1–7.304–8
(23) Insurance—Liability to Third Parties, 9–7.204–5
(24) Printing, 9–7.302–57
(25) Federal Reports Act, 9–7.302–58
(26) Foreign Travel, 9–7.402–60
(27) Security, 9–7.403–51
(28) Privacy Act, 1–1.327–5
(29) Safety and Health, 9–7.403–53
(30) Priorities, Allocations and Allotments, 9–7.104–50
(31) Soviet-Bloc Controls, 9–7.304–52
(32) Nuclear Hazards Indemnity, 9–7.404–53
(33) Reports of Work, 1–7.304–9
(34) Stop Work Order, 9–7.402–59
(35) Standards of Work, 1–7.302–3
(36) Walsh-Healy Public Contracts Act, 1–12.605
(37) Preservation of Individual Occupational Radiation Exposure Records, 9–7.403–54
(38) Waiver of Indemnity, 9–9.103–4
(39) Classified Inventions, 9–9.106
(40) Rights to Proposal Data, 10 CFR 600.231(c)
(41) Small Business and Small Disadvantaged Business Subcontracting Plan (Negotiated), 9–1.710–3(c) [45 FR 24378, April 9, 1980]
(42) Women Owned Business Concerns Subcontracting Program, FPR Temporary Regulation 54 (45 FR 35814 May 28, 1980)

(f) *Flood Insurance Clause*

Participant shall comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93–234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards and provisions prescribed by the Federal Insurance Administration in 24 CFR Chapter X, Subchapter B., will be complied with.

(g) *Disputes*

DOE has established a Financial Assistance Appeals Board to handle disputes under Cooperative Agreements (45 FR 29764, May 5, 1980.) All Cooperative Agreements shall incorporate the following Disputes Clause:

(1) Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by Agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail, or otherwise furnish a copy thereof to the Participant. The decision of the Contracting Officer shall be final and conclusive unless within 60 days from date of receipt of such copy, the Participant mails, or delivers a written notice of appeal to the Department of Energy Financial Assistance Appeals Board in accordance with 10 CFR Part 1024 (See Rule 1). The decision of the Department of Energy Financial Assistance Appeals Board shall be final and conclusive unless determined by a court of competent jurisdiction to have been fradulent, or capricious, or arbitrary, or so grossly erroneous as necessary to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Participant shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Participant shall proceed diligently with the performance of the Agreement and in accordance with the Contracting Officer's decision.

(2) This "Disputes Clause" does not preclude consideration of law questions in connection with decisions provided for in paragraph (1) above: *provided,* that nothing in this Agreement shall be construed as making final the decision of any administrative official, representative, or board, based on a question of law.

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|---|---|
| **523-5233** | Executive Orders and Proclamations |
| **523-5235** | Public Papers of the Presidents, and Weekly Compilation of Presidential Documents |

**Public Laws:**

| | |
|---|---|
| **523-5266** | Public Law Numbers and Dates, Slip Laws, U.S. |
| **-5282** | Statutes at Large, and Index |
| **275-3030** | Slip Law Orders (GPO) |

**Other Publications and Services:**

| | |
|---|---|
| **523-5239** | TTY for the Deaf |
| **523-5230** | U.S. Government Manual |
| **523-3408** | Automation |
| **523-4534** | Special Projects |
| **523-3517** | Privacy Act Compilation |

## FEDERAL REGISTER PAGES AND DATES, JULY

44245-44916.....1
44917-45246.....2
45247-45564.....3
45565-45886.....7
45887-46060.....8

## CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Administrative Orders:**

**Presidential Determinations:**

No. 80-20 of June 10, 1980.....45567
E.O. 5327 (Amended by PLO 5732).....45911

**Executive Orders:**

10560 (Revoked by EO 12220).....44245
10685 (Revoked by EO 12220).....44245
10708 (Revoked by EO 12220).....44245
10746 (Revoked by EO 12220).....44245
10799 (Revoked by EO 12220).....44245
10827 (Revoked by EO 12220).....44245
10884 (Revoked by EO 12220).....44245
10893 (Revoked by EO 12220).....44245
10900 (Revoked by EO 12220).....44245
11846 (See Proc. 4768).....45135
11888 (Amended by EO 12222).....45233
12044 (Revoked by EO 12221).....44249
12196 (Amended by EO 12223).....45235
12220.....44245
12221.....44249
12222.....45233
12223.....45235
12224.....45243
12225.....45571

**Proclamations:**

4707 (Superseded in part by Proc. 4768).....45135
4768.....45135
4769.....45237
4770.....45245
4771.....45247
4772.....45249
4773.....45565
4774.....45569

**4 CFR**

**Proposed Rules:**

2.....44954
3.....44954
4.....44954
5.....44954
6.....44954
7.....44954
8.....44954
9.....44954

**5 CFR**

**Proposed Rules:**

351.....44304

**7 CFR**

29.....44292
68.....45868
272.....46036
273.....46036
905.....45251
908.....45252, 45573
910.....45301
911.....44302, 44303
916.....45252
917.....44917
930.....45573
945.....45574
958.....45574
1427.....44293
2900.....45887

**Proposed Rules:**

180.....45914
410.....44305
413.....44311
999.....44960
1097.....45302
1102.....45302
1108.....45302
2859.....44317

**8 CFR**

204.....44251
214.....44918
238.....45575
334.....45575

**9 CFR**

78.....44253
92.....45888
327.....45889

**Proposed Rules:**

308.....44317
381.....44317, 45915

**10 CFR**

Ch. I.....45595
2.....45253, 45890
25.....45256
95.....45256
436.....44558
600.....46044

**Proposed Rules:**

20.....45302
50.....45916
210.....44961
211.....44961
212.....44961
503.....45303
504.....45303
506.....45303
580.....45098

**11 CFR**

9033 ..... 45257

**12 CFR**

Ch. II ..... 44574
207 ..... 44256
225 ..... 45257
701 ..... 45576
1204 ..... 44919

**Proposed Rules:**

204 ..... 44962, 45303
225 ..... 44963
611 ..... 45595
612 ..... 45917
1204 ..... 45303

**13 CFR**

305 ..... 44257
309 ..... 44257
400 ..... 44258, 44919

**14 CFR**

39 ..... 45257–45264, 45576
71 ..... 45265–45268, 45577
75 ..... 45268
159 ..... 45578

**Proposed Rules:**

Ch. I ..... 45305
25 ..... 45595
71 ..... 45305–45310

**15 CFR**

Ch. III ..... 44574
370 ..... 45891
372 ..... 45891
373 ..... 45894
374 ..... 45897
375 ..... 45897
376 ..... 45898
386 ..... 45898
387 ..... 45897

**16 CFR**

3 ..... 45578
13 ..... 44259, 44260, 44920, 44921, 45901
300 ..... 44260
301 ..... 44260
303 ..... 44260

**Proposed Rules:**

13 ..... 44317, 44322, 44324

**17 CFR**

240 ..... 44922

**Proposed Rules:**

Ch. II ..... 45554

**18 CFR**

1 ..... 44965, 45902
272 ..... 45904
274 ..... 45905

**Proposed Rules:**

Ch. I ..... 45597
273 ..... 45598
282 ..... 44923

**19 CFR**

101 ..... 44263, 45578
148 ..... 45579

**20 CFR**

725 ..... 44264

**21 CFR**

146 ..... 45905
510 ..... 45905
520 ..... 44264
558 ..... 45905–45909
1220 ..... 44265
1304 ..... 44266
1306 ..... 44266

**Proposed Rules:**

109 ..... 44325
110 ..... 44325
225 ..... 44325
226 ..... 44325
500 ..... 44325
509 ..... 44325
589 ..... 44326
640 ..... 45924

**22 CFR**

214 ..... 45598

**24 CFR**

255 ..... 45116
841 ..... 44267
860 ..... 44267

**Proposed Rules:**

24 ..... 46012

**25 CFR**

161 ..... 45909

**26 CFR**

**Proposed Rules:**

1 ..... 45311, 45924
48 ..... 44965
301 ..... 45926

**28 CFR**

0 ..... 44267
2 ..... 44924
55 ..... 44268

**Proposed Rules:**

Ch. I ..... 45311
2 ..... 44966, 44967

**29 CFR**

102 ..... 44302
2700 ..... 44301

**30 CFR**

45 ..... 44494

**Proposed Rules:**

Ch. VII ..... 45313
722 ..... 44326
732 ..... 45313
918 ..... 45604
943 ..... 44967
950 ..... 45927

**31 CFR**

321 ..... 44590
322 ..... 44590
330 ..... 44600
535 ..... 45594

**Proposed Rules:**

535 ..... 45609

**32 CFR**

1–39 ..... 44604, 44758, 44818, 44902
208 ..... 45580

**32A CFR**

Ch. I ..... 44575
Ch. VI ..... 44574
Ch. VII ..... 44574, 45269
Ch. XV ..... 44574
Ch. XVIII ..... 44587
801 ..... 44574

**33 CFR**

165 ..... 45269
175 ..... 45269

**36 CFR**

1151 ..... 44925

**Proposed Rules:**

7 ..... 44969

**37 CFR**

201 ..... 45270

**39 CFR**

265 ..... 44270
266 ..... 44270
268 ..... 44270

**40 CFR**

52 ..... 44273, 45275, 45581
65 ..... 45277
406 ..... 45582
421 ..... 44926

**Proposed Rules:**

52 ..... 44970, 45080, 45314, 45318, 45927
58 ..... 44327
60 ..... 44329, 44970
81 ..... 45080
413 ..... 45322

**41 CFR**

Ch. 7 ..... 44275
Ch. 101 ..... 44951, 44953
7–6 ..... 44283
7–7 ..... 44283

**42 CFR**

405 ..... 44287

**43 CFR**

2800 ..... 44518

**Public Land Orders:**

693 (Amended by PLO 5731 ..... 45910
4522 (Amended by PLO 5732 ..... 45911
5731 ..... 45910
5732 ..... 45911

**Proposed Rules:**

35 ..... 44972

**44 CFR**

Ch. I ..... 44574
Ch. IV ..... 44574, 45269
205 ..... 45862

**45 CFR**

233 ..... 45911

**Proposed Rules:**

Ch. XII ..... 45598
177 ..... 45130

**46 CFR**

Ch. II ..... 44587
160 ..... 45278
502 ..... 45280

**Proposed Rules:**

151 ..... 45327
510 ..... 45599
536 ..... 45599

**47 CFR**

1 ..... 45582
73 ..... 45593
95 ..... 45594

**Proposed Rules:**

2 ..... 45600, 45601
21 ..... 45600, 45601
73 ..... 45601, 45602
74 ..... 45600, 45601
94 ..... 45600, 56601

**49 CFR**

23 ..... 45281
571 ..... 45287
1002 ..... 45526, 45534
1003 ..... 45534
1004 ..... 45528
1011 ..... 45525
1033 ..... 45288, 45289, 45912
1045A ..... 45534
1047 ..... 45524
1056 ..... 45534
1062 ..... 45534
1100 ..... 45529, 45534
1101 ..... 45525
1130 ..... 45534
1131 ..... 45525
1136 ..... 45526
1150 ..... 45534

**Proposed Rules:**

Ch. X ..... 44351, 45545, 45932
571 ..... 45334, 45336

**50 CFR**

17 ..... 44935, 44939
32 ..... 45289
296 ..... 44942
611 ..... 45291, 45296
655 ..... 45296
656 ..... 45291
674 ..... 44292

**Proposed Rules:**

Ch. II ..... 45604
20 ..... 44540
219 ..... 44352
651 ..... 45336
664 ..... 44972

## AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

| Monday | Tuesday | Wednesday | Thursday | Friday |
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Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

## REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

### Rules Going Into Effect Today

**Note:** There were no items eligible for inclusion in the list of **Rules Going Into Effect Today.**

### List of Public Laws

**Last Listing July 7, 1980**

This is a continuing listing of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202–275–3030).

**H.R. 5751 / Pub. L. 96–301** To more adequately protect archeological resources in southwestern Colorado. (July 2, 1980; 94 Stat. 832) Price $1.

**H.R. 5997 / Pub. L. 96–303** To provide for the display of the Code of Ethics for Goverment Service. (July 3, 1980; 94 Stat. 855) Price $1.

**S. 2698 / Pub. L. 96–302** To provide authorizations for the Small Business Administration, and for other purposes. (July 2, 1980; 94 Stat. 833) Price $1.50.

*Just Released*

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