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PART I

HIGHLIGHTS OF THIS ISSUE

This listing does not affect the legal status of any document published in this issue. Detailed table of contents appears inside.

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Advisory Committee on GNP Data Improvement; to be held in Washington, D.C. (open) 1–2–75..... 43594; 12–16–74

Advisory Committee on Social Indicators (open) 1–3–75..... 43426; 12–13–74

NATIONAL ENDOWMENT FOR THE HUMANITIES

Fellowships Panel; to be held at Washington, D.C. (closed) 1–3–75. 42428; 12–5–74

Fellowships Panel; to be held at Washington, D.C. (closed) 1–3, 1–13, and 1–17–75..... 41314; 11–26–74

STATE DEPARTMENT

Office of the Secretary—

Department of Defense Wage Committee; to be held at Washington, D.C. (closed) 12–31–74.... 39747; 11–11–74

VETERANS ADMINISTRATION

Veterans Administration Wage Committee; to be held in Washington, D.C. (closed) 1–2–75..... 41787; 12–2–74

Weekly List of Public Laws

This is a listing of public bills enacted by Congress and approved by the President, together with the law number, the date of approval, and the U.S. Statutes citation. Subsequent lists will appear every Wednesday in the FEDERAL REGISTER and copies of the laws may be obtained from the U.S. Government Printing Office.

S. 433..... Pub. Law 93–523
Safe Drinking Water Act
(Dec. 16, 1974; 88 Stat. 1660)

S. 1353..... Pub. Law 93–524
Vessels, net tonnage for waste materials
(Dec. 18, 1974; 88 Stat. 1694)

S. 3906..... Pub. Law 93–525
Flying units of the Air Force, aeronautical ratings for command
(Dec. 18, 1974; 88 Stat. 1695)

S. 4016..... Pub. Law 93–526
Presidential Recordings and Materials Preservation Act
(Dec. 19, 1974; 88 Stat. 1695)

The following bill was vetoed by the President: S3537, to modify section 204 of the Flood Control Act of 1965 (79 Stat. 1085); Weekly Compilation of Presidential Documents, Vol. 10, No. 51.

rules and regulations

Title 4—Accounts

CHAPTER III—COST ACCOUNTING STANDARDS BOARD

SUBCHAPTER C—PROCUREMENT PRACTICES

PART 331—CONTRACT CLAUSE

PART 351—BASIC REQUIREMENTS

Additional Exemption

The purpose of this publication by the Cost Accounting Standards Board is to adopt modifications to Part 331, Contract Coverage, and Part 351, Basic Requirements, of its rules and regulations. These modifications will provide an exemption from Cost Accounting Standards Board requirements for certain national defense contracts and subcontracts of $500,000 or less.

Public Law 91–379 requires that Cost Accounting Standards must be used in all negotiated prime contract and subcontract national defense procurements with the United States in excess of $100,000, with certain stated exceptions. From time to time the Board refers to contracts subject to its rules and regulations as "covered contracts". Section 719 (h) (2) of Pub. L. 91–379 authorizes the Cost Accounting Standard Board to prescribe rules exempting from its requirements such classes or categories of national defense contractors and subcontractors as it determines, on the basis of the size of the contracts involved or otherwise, are appropriate and consistent with the purposes sought to be achieved by Pub. L. 91–379. The Board has granted several exemptions to classes or categories of contractors and subcontractors and also has established a procedure under which waiver of the Board's requirements may be granted for individual contracts.

A proposed exemption increasing the minimum contract amount requiring compliance with Cost Accounting Standards Board rules, regulations and Standards from $100,000 to $500,000 was published by the Board on September 27, 1974 (39 FR 34669). The Board received 82 responses to the September 27 proposal. Comments were received from individual companies, government agencies, professional associations, industry associations, public accounting firms, and individuals. All of these comments have been carefully considered by the Board, and the Board takes this opportunity to express its appreciation for the helpful suggestions which have been furnished.

The comments below summarize the major issues discussed by respondents in connection with the initial publication and explain the Board's disposition of these issues.

Issuance of the exemption. Practically all the commentators expressed concurrence in the proposed exemption, giving either unqualified support or support with added comments that additional exemptions should also be considered. However, three commentators—a consulting firm, a major aerospace company and a Government agency—disagreed with the proposed exemption, stating that an increase in the threshold for compliance with CAS requirements was inconsistent with the Board's objective of establishing uniformity and consistency among contractors doing business with the Government.

The Board agrees that the adoption of the proposed regulation will exempt a substantial number of contractors and subcontractors who otherwise would be covered, and consequently will permit such companies to follow accounting practices other than those set out in Cost Accounting Standards. However, the Board is aware that compliance with its rules, regulations and standards may involve additional administrative effort, particularly on the part of small companies, which may not be commensurate with the benefit to the Government or the contractor resulting from such compliance. The Board, after considering the efforts required by both the Government and its contractors to assure compliance on all covered contracts in excess of $100,000, is persuaded that maximum benefit to the Government with minimum cost can be achieved by limiting the mandatory application of its standards to contractors who receive awards which constitute a substantial majority of the national defense procurement dollars. As was stated at the time the proposed exemption was issued for comment, some 70 percent of the prime contractors of the Department of Defense did not receive one or more negotiated awards in excess of $500,000 in Fiscal Year 1973. Thus, only 30 percent, or approximately 750 prime contractors, who received contract awards totaling $20 billion, would continue to be covered. The exemption would remove coverage from only about 10 percent of the dollar value of annual DOD awards.

In view of the foregoing, the Board considers the proposed exemption increasing the minimum contract amount requiring compliance with the Cost Accounting Standards Board rules, regulations, and standards to be in keeping with the purposes sought to be achieved by Pub. L. 91–379 and to be an appropriate exercise of the authority granted to the Board by section 719(h) (2) of that law.

Increase exemption on all contracts to $500,000. A number of commentators suggested that the $500,000 single contract threshold for compliance with Board rules, regulations, and standards be changed to exempt all contracts of $500,000 or less. Those giving reasons in support of this suggestion generally based their comments on simplification of administration. These commentators felt that it would be difficult for the Government or prime contractors, when awarding a prime contract or subcontract in excess of $100,000 to determine whether the contractor or subcontractor had in existence a prior $500,000 covered contract.

The Board, in proposing the $500,000 threshold, did so with the intent of exempting those companies which do not receive contracts in excess of $500,000 from the Government. However, it was decided in the interest of consistency in cost accounting practices that once a contractor had received a covered contract of that size, compliance with CASB rules, regulations and standards on contracts at the level established in Pub. L. 91–379 was appropriate. This is also consistent with the desire expressed by contractors to follow a single set of accounting practices. Further, the requirement for coverage of contracts in excess of $100,000 where the contractor already has received a covered contract in excess of $500,000 will permit the small contracts to be available for equitable adjustment if subsequently issued standards should become applicable. Moreover, once the administrative effort has been expended to comply with standards for contracts in excess of $500,000, compliance with standards on contracts above the statutory threshold of $100,000 requires little added effort.

With respect to the commentators' statements concerning the difficulties, when making an award exceeding $100,000, of determining whether a contractor or subcontractor had in existence a prior award exceeding $500,000, the Board feels that an administrative requirement can be established for obtaining this information. A similar requirement now exists concerning the disclosure statement, whereby contractors are required to submit a disclosure statement, state that they have previously filed a disclosure statement, or submit a certificate of monetary exemption. The Board feels that a similar requirement can be set concerning the $500,000 level. The Board is not persuaded that this matter would create problems of sufficient significance to eliminate coverage down to the $100,000 level.

In considering the advantages of the exemption as proposed compared to its assessment of the administrative difficulties foreseen by commentators, the Board is persuaded that its proposal relative to coverage of awards in excess of $100,000 should not be changed.

Exemption based on sales. A number of commentators urged that the Board establish an exemption based on sales, using either minimum annual dollar amount of sales to the Government, or Government sales as a percentage of total annual sales, or a combination of these two factors. The most frequently suggested amount was $10 million of sales to the Government or Government sales amounting to 10 percent of total annual sales. The objective sought by these commentators was an exemption of those companies or business units whose sales to the Government constituted a reasonably small portion of their total annual sales and whose business was essentially commercially oriented.

The Board has given lengthy consideration to the use of a sales basis for the establishment of a minimum threshold for compliance with its rules, regulations and standards. It did not use that basis at this time due to the nature of the problems involved in administering an exemption based on sales. In either of the situations suggested by commentators, the representation concerning the amount of sales must be made by the contractor and subsequently verified by the Government. This verification would impose very substantial and time-consuming efforts on both the Government and the contractor. Particularly in the case of Government sales as a percentage of total sales, Government representatives would be placed in the position of examining a contractor's total sales, including those made in its commercial business. Examination of a company's records concerning its total sales is not presently performed by Government procurement activities and would present new and unique problems to both parties as well as requiring substantial additional effort on the part of Government representatives.

An exemption based on sales would require a measurement period during which a contractor's status with respect to compliance with standards would be determined. Contracts under which sales were recorded during this period would not be subject to standards. If the volume of sales during the measurement period exceeded a stated threshold, a contractor would then be required to comply with standards under contracts received in subsequent periods. Thus, the contracts that brought the contractor under the Board's rules would not be subject to standards, while those received at a later time would be.

The Board has decided that the administrative problems involved with an exemption based on sales should be considered before establishing such a threshold. The Board will continue to study these problems and investigate whether exemptions based on criteria other than a minimum contract amount would be appropriate and consistent with the purposes of Pub. L. 91-379.

Retroactivity. Several commentators requested that the Board modify its proposal so as to provide retroactive exemption to existing contracts where the circumstances are such that these existing contracts would have been exempt if awarded after the effective date of the proposed regulation.

The Board has no authority to modify existing contractual agreements between the government procurement agencies and their contractors. However, the Board sees nothing inconsistent with its regulations or with Pub. L. 91-379 in modification by the procurement agencies of contracts in this category, assuming of course that the Government receives adequate consideration for deletion of the CAS requirements.

Increase minimum amount. A number of commentators recommended that the exemption proposed be increased to an amount greater than $500,000, the figure of $1,000,000 being frequently mentioned. The Board is not now prepared to raise further the minimum contract amount requiring compliance with its promulgations. The Board, in studying an exemption based on minimum contract amount, concluded that the $500,000 threshold was the most appropriate one for achieving its objectives, all factors considered. The Board will continue to examine various limitations but considers that the threshold established in the proposed exemption best meets its requirements and obligations at this time.

Effect of final payment under contracts subject to CAS clause. Several commentators urged that the exemption of contracts of $500,000 or less should not be dependent on the final payment on contracts which are subject to Board requirements, on the grounds that final payment can occur a substantial period of time after completion of work on a contract and that there are many technicalities in closing out a contract which do not involve cost accounting applications.

The Board considers this point to be well taken and has changed the requirement in § 331.30(b)(8) where it first appears to "notification of final acceptance of all items or work to be delivered." At that time it is considered that all direct costs will have been charged to the contract since all work will have been completed, and any further accounting transactions would be the result of adjustments not directly related to contract performance.

Reduction of contract price by exclusion of commercial items. Some commentators, in reading the introductory comments to the Board's initial publication of this exemption, interpreted the phrase "minimum contract amount requiring compliance" in a manner not at all intended by the Board. These commentators interpreted this phrase to permit the price of a contract subject to standards to be reduced by the value of those individual contract items or subassemblies of final contract items whose prices could be considered to be "catalog" or "market" prices, if sold separately. They requested that the regulation be clarified to reflect their interpretation of the Board's introductory comments.

Those requesting this clarification misunderstood the Board's intentions. The Board does not intend that the price of a contract be adjusted to exclude the price of items or subassemblies which, if purchased separately, might be exempt from the Board's promulgations. Consequently, the change in the regulation requested by commentators on this point would be completely inappropriate.

Definition of contractor. One commentator noted that the prefatory comments to the Board's September 27, 1974, publication specifically mentioned the fact that receipt of a contract in excess of $500,000 by one business unit of a multi-unit company would not in itself require other units of the same company to follow Board requirements. This commentator requested that the definitions of "defense contractor" and "defense subcontractor" contained in § 331.20 (b) and (c) be modified to reflect this intention by the Board.

As the Board stated in its September 27 publication, its contract requirements have been applied to business units, such as a profit center, division, subsidiary, or similar unit of a company, which perform the contract, even in those cases where the contract was entered into on behalf of the overall company rather than the business unit. This application of the Board's requirements to a performing business unit is well established and unchallenged, and clarification of the definitions of "contractor" and "subcontractor" does not appear necessary.

Effective date. Several commentators raised questions concerning the effective date of the eligibility for this exemption in relation to awards received prior to January 1, 1975. Contractors who have received a prime contract or subcontract in excess of $500,000 subject to cost accounting standards prior to January 1, 1975, and on which notification of final acceptance of all items or work to be delivered on that contract or subcontract has not been received, is a contractor who has "already received a contract or subcontract in excess of $500,000," as that phrase is used in § 331.30(b)(8). Therefore, today's publication requires that a contractor meeting this test will be required to comply with standards on all covered prime contracts or subcontracts in excess of $100,000 received after January 1, 1975, under the provisions of § 331.30.

(Sec. 103, 84 Stat. 796 (50 U.S.C. App. 2168))

In view of the foregoing, the following additions and changes to Part 331 and Part 351 of the Board's regulations are being made effective January 1, 1975.

1. Amend § 331.30(a), *Applicability, exemption, and waiver,* by adding after the words, "in excess of $100,000", the following, "except as provided in paragraph (b) of this section,".

2. Amend the same § 331.30 by adding the following new paragraph (b)(8).

These amendments would have the following effect:

§ 331.30 Applicability, exemption, and waiver.

(a) The head of each relevant Federal agency shall cause or require the clause set forth in § 331.50 captioned Cost Accounting Standards to be inserted in all negotiated defense contracts in excess of $100,000, except as provided in paragraph (b) below, other than contracts entered into by the agency where the price is based on: (1) Established catalog or market prices of commercial items sold in substantial quantities to the general public, or (2) prices set by law or regulation. Additionally, all solicitations, likely to result in a contract in which the clause set forth in § 331.50 must be inserted, shall include the notice set forth in § 331.40 captioned Disclosure Statement—Cost Accounting Practices and Certification.

* * * * *

(b) * * *

(8) Any contract or subcontract of $500,000 or less, unless it is awarded to a contractor who, on the date of such award, (i) has already received a contract or subcontract in excess of $500,000 and (ii) has not received notification of final acceptance of all items of work to be delivered on that contract or subcontract and on all other contracts or subcontracts awarded after January 1, 1975, which were subject to the cost accounting standards clause. For the purposes of this paragraph (b)(8), an intra-corporate transfer shall be considered to be a subcontract. Notwithstanding this exemption, any contractor entitled to an exemption under this paragraph (b)(8) may elect to comply with the cost accounting standards clause. The contractor may elect to comply in connection with the receipt of its first contract or subcontract awarded after January 1, 1975, which but for this paragraph (b)(8) would be subject to the clause. A contractor who does not elect to comply with the clause in connection with the receipt of the first contract or subcontract, may thereafter make such an election only if it receives a contract or subcontract of the type described, at a time when it has no other contract or subcontract of that type on which notificaion of final aceptance of all items or work to be delivered has not been received.

3. Amend § 331.40, *Solicitation notice*, by adding after the words in the first sentence of paragraph (a), "law or regulation," the following, "and except for contracts which may be exempt under the provisions of 4 CFR 331.30(b),".

This amendment would have the following effect:

§ 331.40 Solicitation notice.

DISCLOSURE STATEMENT—COST ACCOUNTING PRACTICES AND CERTIFICATION

(a) Any contract in excess of $100,000 resulting from this solicitation, except contracts where the price negotiated is based on: (1) Established catalog or market prices of commercial items sold in substantial quantities to the general public, or (2) prices set by law or regulation, and except for contracts which may be exempt under the provisions of 4 CFR 331.30(b), will be subject to the requirements of the Cost Accounting Standards Board. Any offeror submitting a proposal which, if accepted, will result in a contract subject to the requirements of the Cost Accounting Standards Board must, as a condition of contracting, submit a disclosure statement as required by regulations of the Board. The disclosure statement must be submitted as a part of the offeror's proposal under this solicitation unless, in compliance with agency procedures, the offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal, or unless post-award submission has been authorized by the contracting officer in accordance with regulations of the Cost Accounting Standards Board (see 4 CFR 331.60). If an applicable disclosure statement has already been submitted, the offeror may satisfy the requirement for submission by providing the following information: [1]

CERTIFICATION (APPLICABLE ONLY TO PROPOSALS RESULTING IN CONTRACTS SUBJECT TO COST ACCOUNTING STANDARDS BOARD REQUIREMENTS)

By submission of this offer, the offeror certifies that his practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the applicable disclosure statement.

4. Amend § 331.50, *Contract clause*, by adding after "law or regulation" in subsection (d)(2), the following: ", and except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to accept the cost accounting standards clause by reason of § 331.30(b) of Title 4, Code of Federal Regulations (4 CFR 331.30(b))."

This amendment would have the following effect:

§ 331.50 Contract clause.

* * * * *

(d) The contractor shall include in all negotiated subcontracts which he enters into the substance of this clause except paragraph (b) of this section, and shall require such inclusion in all other subcontracts of any tier, except that this requirement shall apply only to negotiated subcontracts in excess of $100,000 where the price negotiated is not based on:

(1) Established catalog or market prices of commercial items sold in substantial quantities to the general public, or

(2) Prices set by law or regulation, and except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to accept the cost accounting standards clause by reason of § 331.30(b) of Title 4, Code of Federal Regulations (4 CFR 331.30(b)).

* * * * *

5. Amend section 351.40, *Filing requirement*, by inserting in the first sentence of paragraph (a) after the figures "$100,000", the following, "except as provided in 4 CFR 331.30(b)," and by inserting in the second sentence of paragraph (a) after the figures, "$100,000", the following, "except as provided in 4 CFR 331.30(b),".

This amendment would have the following effect:

§ 351.40 Filing requirement.

(a) The requirements of this part are applicable to all defense contractors who enter into negotiated national defense contracts with the United States in excess of $100,000, except as provided in 4 CFR 331.30(b), other than contracts where the price negotiated is based on (1) established catalog or market prices of commercial items sold in substantial quantities to the general public, or (2) prices set by law or regulation. A separate disclosure statement must be submitted covering the practices of each of the contractor's profit centers, divisions, or similar organizational units whose costs included in the total price of any contract exceed $100,000, except as provided in 4 CFR 331.30(b), except where such costs are based on (i) established catalog or market prices of commercial items sold in substantial quantities to the general public or (ii) prices set by law or regulation. If the cost accounting practices under contracts are identical for more than one organizational unit, then only one statement need be submitted for those units, but each such organizational unit must be identified. A disclosure statement will also be required for each corporate or group office whose costs are allocated to one or more corporate segments performing contracts covered by Pub. L. 91-379.

* * * * *

6. Amend § 351.130, *Instructions and information*, by adding to paragraph (a) of the instructions set forth in this section at the end of the third sentence thereof, the following, "or contracts exempt under the provisions of 4 CFR 331.30(b)", and by adding to the fourth sentence of paragraph (a) of the instructions set forth in this section the words, "or contracts exempt under the provisions of 4 CFR 331.30(b)," at the end thereof.

This amendment would have the following effect:

§ 351.130 Instructions and information.

The following instructions and information shall be used by persons completing disclosure statements.

INSTRUCTIONS AND INFORMATION

(a) This disclosure statement has been designed to meet the requirements of Pub. L. 91-379, and persons completing it are to describe their contract cost accounting practices. For timing of requirement to file a disclosure statement, see § 351.40. A statement must be submitted by all defense contractors who enter into negotiated national defense contracts with the United States in excess of $100,000 other than contracts where the price negotiated is based on (1) established catalog or market prices of commercial items sold in substantial quantities to the general public, or (2) prices set by law

[1] (The agency issuing the solicitation should specify the data which it will accept if any in lieu of resubmission of a disclosure statement already submitted.)

or regulation, or contracts exempt under the provisions of 4 CFR 331.30(b). A separate disclosure statement must be submitted covering the practices of each of the contractor's profit centers, divisions, or similar organizational units, whose costs included in the total price of any contract exceed $100,000, except where such costs are based on (i) established catalog or market prices of commercial items sold in substantial quantities to the general public, or (ii) prices set by law or regulation, or contracts exempt under the provisions of 4 CFR 331.30(b). If the cost accounting practices under contracts are identical for more than one organizational unit, then only one statement need be submitted for those units, but each such organizational unit must be identified. A disclosure statement will also be required for each corporate or group office when costs are allocated to one or more corporate segments performing contracts covered by Pub. L. 91-379, but only Part VIII of the statement need be completed.

* * * * *

NOTE: Forms CASB-DS-1 and CASB-DS-2, referred to in 4 CFR, §§ 351.140 and 351.145, respectively, when revised, will be modified in accordance with the modifications to 4 CFR 351.130.

ARTHUR SCHOENHAUT,
Executive Secretary.

[FR Doc.74-29825 Filed 12-23-74;8:45 am]

Title 21—Food and Drugs

CHAPTER II—DRUG ENFORCEMENT ADMINISTRATION, DEPARTMENT OF JUSTICE

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

Removal of Naloxone and Its Salts From Control

A notice was published in the FEDERAL REGISTER, on July 10, 1974 (39 FR 25327) proposing the removal of naloxone and its salts from Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Pub. L. 91-513). All interested persons were given 30 days after publication to submit their objections, comments, or requests for hearing.

In view of the fact that no comments, objections, or requests for a hearing were received as to the proposed order, and based upon the investigation of the Drug Enforcement Administration and upon the scientific and medical evaluation and recommendation of the Secretary of Health, Education, and Welfare, received pursuant to section 201(b) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 811(b)), the Administrator of the Drug Enforcement Administration finds that naloxone and its salts have a currently accepted medical use in treatment in the United States and do not have at this time a potential for abuse or abuse liability to justify continued control in any schedule under the Act.

Therefore, under the authority vested in the Attorney General by section 201 (a) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 811(a)), and redelegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations, the Administrator hereby orders that § 1308.12(b)(1) of Title 21 of the Code of Federal Regulations be amended to read as follows:

§ 1308.12 Schedule II.

* * * * *

(b) * * *

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding naloxone and its salts, but including the following:

(i) Raw opium	9600
(ii) Opium extracts	9610
(iii) Opium fluid extracts	9620
(iv) Powdered opium	9639
(v) Granulated opium	9640
(vi) Tincture of opium	9630
(vii) Apomorphine	9030
(viii) Codeine	9050
(ix) Ethylmorphine	9190
(x) Etorphine hydrochloride	9059
(xi) Hyrocodone	9193
(xii) Hydromorphone	9150
(xiii) Metopon	9260
(xiv) Morphine	9300
(xv) Oxycodone	9143
(xvi) Oxymorphone	9652
(xvii) Thebaine	9333

This order is effective December 24, 1974.

Dated: December 18, 1974.

JOHN R. BARTELS, JR.,
Administrator,
Drug Enforcement Administration.

[FR Doc.74-29925 Filed 12-23-74;8:45 am]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Amdt. 1 To Sixth Rev. S.O. 1124]

PART 1033—CAR SERVICE

Demurrage and Free Time on Freight Cars

DECEMBER 19, 1974.

At a Session of the Interstate Commerce Commission, Division 3, held in Washington, D.C., on the 17th day of December 1974.

Upon further consideration of Sixth Revised Service Order No. 1124 (39 FR 40500), because of substantial reductions in carloadings during the Christmas-New Year period, and for other good cause appearing:

It is ordered, That:

§ 1033.1124 *Service Order No. 1124* be, and it is hereby, suspended until further order of the Commission.

Effective date. This amendment shall become effective at 7 a.m., December 21, 1974.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; (49 U.S.C. 1, 12, 15, and 17(2)). Interprets or applies Secs. 1(10-17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; (49 U.S.C. 1(10-17), 15(4), and 17(2)))

It is further ordered, That a copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that 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 it with the Director, Office of the FEDERAL REGISTER.

By the Commission, Division 3.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.74-29997 Filed 12-23-74;8:45 am]

[Amdt. 1 to S.O. 1201]

PART 1033—CAR SERVICE

Demurrage and Free Time at Ports

DECEMBER 19, 1974.

At a Session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 17th day of December 1974.

Upon further consideration of Service Order No. 1201 (39 FR 40501), because of substantial reductions in carloadings during the Christmas-New Year period, and for other good cause appearing:

It is ordered, That:

§ 1033.1201, *Service Order No. 1201* be, and it is hereby, suspended until further order of the Commission.

Effective date. This amendment shall become effective at 7 a.m., December 21, 1974.

Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; (49 U.S.C. 1, 12, 15, and 17(2)). Interprets or applies Secs. 1(10-17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; (49 U.S.C. 1(10-17), 15(4), and 17(2)).

It is further ordered, That a copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that 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 it with the Director, Office of the FEDERAL REGISTER.

By the Commission, Railroad Service Board.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.74-29998 Filed 12-23-74;8:45 am]

Title 24—Housing and Urban Development

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI-431]

PART 1915—IDENTIFICATION OF SPECIAL HAZARD AREAS

List of Communities With Special Hazard Areas

The Federal Insurance Administrator finds that comment and public procedure and the use of delayed effective dates in identifying the areas of communities which have special flood or mudslide hazards, in accordance with 24 CFR Part 1915, would be contrary to the public interest. The purpose of such identifications is to guide new development away from areas threatened by flooding. Since this publication is merely for the purpose of informing the public of the location of areas of special flood hazard and has no binding effect on the sale of flood insurance or the commencement of construction, notice and public procedure are impracticable, unnecessary, and contrary to the public interest. Inasmuch as this publication is not a substantive rule, the identification of special hazard areas shall be effective on the date shown. Accordingly, § 1915.3 is amended by adding in alphabetical sequence a new entry to the table, which entry reads as follows:

§ 1915.3 List of communities with special hazard areas.

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of identification of areas which have special flood hazards
*	*	*	*	*	*	*
Alabama	Chambers	Lafayette, town of.	H 010028 01 through H 010028 04	Alabama Development Office, Office of State Planning, State Office Bldg., 501 Dexter Ave., Montgomery, Ala. 36104. Alabama Insurance Department, Room 453, Administrative Bldg., Montgomery, Ala. 36104.	Mayor, City Hall, Town of Lafayette, Lafayette, Ala. 36862.	Dec. 6, 1974.
Do	Bullock	Union Springs, city of.	H 010016 01 through H 010016 04	do	Mayor, City Hall, City of Union Springs, Union Springs, Ala. 36089.	Do.
Do	Geneva	Malvern, town of.	H 010087 01 through H 010087 02	do	Mayor, Town of Malvern, Malvern, Ala. 36349.	Do.
Do	Crenshaw	Unincorporated areas.	H 010246 01 through H 010246 02	do	County Commissioner, Crenshaw Courthouse, County of Crenshaw, Crenshaw, Ala.	Do.
Do	Lamar	do	H 010271 01 through H 010271 04	do	County Commissioner, Lamar County Courthouse, County of Lamar, Lamar, Ala.	Do.
Arkansas	Greene	Paragould, city of.	H 050085A 01 through H 050085A 03	Division of Soil and Water, Resources, State Department of Commerce, 1920 West Capitol Ave., Little Rock, Ark. 72201. Arkansas Insurance Department, 400 University Tower Bldg., Little Rock, Ark. 72204.	City Clerk's Office, City Hall, 221 West Court St., Paragould, Ark. 72450.	Sept. 7, 1974; Dec. 6, 1974.
Do	Lee	Aubrey, town of.	H 050123 01	do	Mayor, P.O. Box 94, Aubrey, Ark. 72311.	Dec. 6, 1974.
Do	do	Rondo, town of.	H 050126 01	do	Mayor, Route 1, Box 19R, Lexa, Ark. 72355.	Do.
California	Monterey	Salinas, city of.	H 060202A 01 through H 060202A 08	Department of Water Resources, P.O. Box 388, Sacramento, Calif. 95802. California Insurance Department, 107 South Broadway, Los Angeles, Calif. 90012.	Mayor, City Hall, 200 Lincoln Ave., Salinas, Calif. 93901.	Mar. 15, 1974; Dec. 6, 1974.
Do	Fresno	Firebaugh, city of.	H 060046 01 through H 060046 02	do	Mayor, City Hall, 1575 11th St., Firebaugh, Calif. 93622.	Mar. 1, 1974; Dec. 6, 1974.
Connecticut	Litchfield	Bridgewater, town of.	H 090184 01 through H 090184 08	Department of Environmental Protection, Division of Water and Related Resources, Room 207, State Office Bldg., Hartford, Conn. 06115. Connecticut Insurance Department, State Capitol Bldg., 165 Capitol Ave., Hartford, Conn. 06115.	Mayor, Town of Bridgewater, Bridgewater, Conn. 06752.	Do.
Florida	Escambia	South Flomaton, city of.	H 120084 01	Department of Community Affairs, 2571 Executive Center Circle East Howard Bldg., Tallahassee, Fla. 32301. State of Florida Insurance Department, Treasurer's Office, the Capitol, Tallahassee, Fla. 32304.	Mayor, City of South Flomaton, City Hall, South Flomaton, Fla. 36441.	Do.
Do	Indian River	Vero Beach, city of.	H 120124 01 through H 120124 05	do	Chamber of Commerce, 1216 21st St., City of Vero Beach, Fla. 32960.	Do.
Do	Palm Beach	Atlantis, city of.	H 120193 01	do	Mayor, 260 Orange Tree Dr., City of Atlantis, Atlantis, Fla. 33462.	Do.
Do	do	Cloud Lake, town of.	H 120198 01	do	Mayor, Town of Cloud Lake, Land Rd., West Palm Beach, Fla. 33406.	Do.
Do	do	Glen Ridge, town of.	H 120200 01	do	Mayor, Town of Glen Ridge, 1340 Churchill Rd., West Palm Beach, Fla. 33406.	Do.
Do	do	North Palm Beach, village of.	H 120217 01 through H 120217 02	do	Department of Public Services, 645 Prosperity Farms Rd., Village of North Palm Beach, North Palm Beach, Fla. 33408.	Do.
Georgia	Coffee	Douglas, city of.	H 130216 01 through H 130216 07	Department of Natural Resources, Office of Planning and Research, 270 Washington St. SW., room 707, Atlanta, Ga. 30334. Georgia Insurance Department, State Capitol, Atlanta, Ga. 30334.	Building Inspector's Office, City Hall, P.O. Drawer 470, City of Douglas, Douglas, Ga. 31533.	Do.
Do	Toombs	Lyons, city of.	H 130223 01 through H 130223 06	do	Mayor, City Hall, City of Lyons, Lyons, Ga. 30436.	Do.

State	County	Location	Map No.	State map repository	Local map repository	Effective date of identification of areas which have special flood hazards
Do.	Meriwether and Talbot.	Manchester, city of.	H 130225 01 through H 130225 04	do.	Mayor, City Hall, City of Manchester, Manchester, Ga. 31816.	Do.
Illinois	Cook	Schaumburg, village of.	H 170158 01 through H 170158 09	Governor's Task Force on Flood Control, P.O. Box 475, Lisle, Ill. 60532. Illinois Insurance Department, 525 West Jefferson St., Springfield, Ill. 62702.	Office of the Village Engineer, 714 South Plum Grove Rd., Village of Schaumburg, Schaumburg, Ill. 60172.	Do.
Do.	Greene	Hillview, village of.	H 170253 01	do.	President, Town Hall, Village of Hillview, Hillview, Ill. 62050.	Do.
Do.	McLean	Anchor, village of.	H 170489 01	do.	Mayor, Village of Anchor, Anchor, Ill. 61720.	Do.
Do.	do.	Cooksville, village of.	H 170494 01	do.	Mayor, Village of Cooksville, Cooksville, Ill. 61730.	Do.
Do.	do.	Gridley, village of.	H 170496 01	do.	Mayor, Village of Gridley, Gridley, Ill. 61744.	Do.
Do.	do.	McLean, village of.	H 170501 01	do.	Mayor, Village of McLean, McLean, Ill. 61754.	Do.
Do.	White	Springerton, village of.	H 170686 01	do.	Mayor, Village of Springerton, Springerton, Ill. 62887.	Do.
Do.	Fulton	Bryant, village of.	H 170746 01	do.	Chairman, Village of Bryant, Lewistown, Ill. 61542.	Do.
Do.	do.	Norris, village of.	H 170770 01	do.	Chairman, Village of Norris, Lewistown, Ill. 61542.	Do.
Do.	do.	St. David, village of.	H 170775 01	do.	Chairman, Village of St. David, Lewistown, Ill. 61542.	Do.
Do.	do.	Smithfield, village of.	H 170776 01	do.	Chairman, Village of Smithfield, Lewistown, Ill. 61542.	Do.
Indiana	De Kalb	Unincorporated areas.	H 180044 01 through H 180044 02	Division of Water, Department of Natural Resources, 608 State Office Bldg., Indianapolis, Ind. 46204. Indiana Insurance Department, 509 State Office Bldg., Indianapolis, Ind. 46204.	County Commissioners, De Kalb County Courthouse, County of De Kalb, Dekalb, Ind.	Do.
Do.	Lake	do.	H 180126 01 through H 180126 02	do.	Lake County Plan Commission, 138 South Main St., Lake County, Crown Point, Ind. 45307.	Do.
Do.	Steuben	Clear Lake, town of.	H 180247 01	do.	Chairman, Town Board, Town Hall, Clear Lake, Ray, Ind. 46737.	Do.
Do.	Switzerland	Unincorporated areas.	H 180251 01 through H 180251 04	do.	Planning and Zoning Commission, Switzerland County Courthouse, County of Switzerland, Vevay, Ind. 47043	Do.
Do.	Wayne	do.	H 180280 01 through H 180280 02	do.	County Area Planning Commission, Wayne County Courthouse, County of Wayne, Wayne, Ind.	Do.
Do.	Miami	Macy, town of.	H 180307 01	do.	County Building Commissioner, Town of Macy, Peru, Ind. 46970.	Do.
Iowa	Harrison	Pisgah, town of.	H 190151 01	Iowa Natural Resources, Council James W. Grimes, Bldg., Des Moines, Iowa 50319. Iowa Insurance Department, Lucas State Office Bldg., Des Moines, Iowa 50319.	Mayor, Pisgah, Iowa 51564.	Do.
Do.	Webster	Harcourt, town of.	H 190280 01	do.	Mayor, Harcourt, Iowa 50544.	Do.
Do.	Black Hawk	La Porte City, city of.	H 190309 01 through H 190309 02	do.	Planning and Zoning Commission, City Hall, Waterloo, Iowa 58505.	Do.
Kansas	Pottawatomie	Louisville, city of.	H 200272 01	Division of Water Resources, State Board of Agriculture, Topeka, Kans. 66612. Kansas Insurance Department, 1st Floor, Statehouse, Topeka, Kans. 66612.	Mayor, Louisville, Kans 66450.	Do.
Do.	Republic	Republic, city of.	H 200288 01	do.	Mayor, City Hall, Republic, Kans. 66964.	Do.
Do.	Washington	Morrowville, city of.	H 200356 01	do.	Mayor, City Hall, Morrowville, Kans. 66958.	Do.
Kentucky	Bell	Unincorporated areas.	H 210010 01 through H 210010 08	Division of Water, Kentucky Department of Natural Resources, Capitol Plaza Office Tower, Frankfort, Ky. 40601. Kentucky Insurance Department, Old Capitol Annex, Frankfort, Ky. 40601.	County Commission, Bell County Courthouse, Bell County, Bell, Ky. 41011.	Do.
Do.	Davies	do.	H 210062 01 through H 210062 08	do.	Planning Director, Owensboro Metropolitan Planning Commission, Davies County, P.O. Box 327, Owensboro, Ky. 42301.	Do.
Do.	Jefferson	St. Matthews, city of.	H 210123 01 through H 210123 02	do.	Mayor, City of St. Matthews, St. Matthews, Ky. 40207.	Do.
Do.	Jessamine	Unincorporated areas.	H 210125 01 through H 210125 05	do.	Chairman, Jessamine County Courthouse, Jessamine County, Nicholasville, Ky. 40356.	Do.
Do.	McCracken	do.	H 210151 01 through H 210151 06	do.	County Commissioner, McCracken County Courthouse, County of McCracken, McCracken, Ky. 40508.	Do.
Do.	McLean	do.	H 210153 01 through H 210153 02	do.	County Commissioners, McLean County Courthouse, County of McLean, McLean, Ky.	Do.
Do.	Oldham	do.	H 210185 01 through H 210185 04	do.	Office of Planning and Zoning, Oldham County, Courthouse Annex, LaGrange, Ky. 40031.	Do.
Maine	Franklin	Temple, town of.	H 230062 01 through H 230062 11	Maine Soil and Water Conservation Commission, State House, Augusta, Maine 04330. Maine Insurance Department, Capitol Shopping Center, Augusta, Maine 04330.	Selectman, Town Office, Town of Temple, Temple, Maine 04984.	Do.

State	County	Location	Map No.	State map repository	Local map repository	Effective date of identification of areas which have special flood hazards
Do	York	Kennebunkport, town of.	H 230170 01 through H 230170 07	do	Chairman, Board of Selectmen, Town of Kennebunkport, Atlantic Ocean, Maine 04046.	Do.
Do	Somerset	Norridgewock, town of.	H 230178 01 through H 230178 10	do	Town Manager, Town Office, Town of Norridgewock, Norridgewock, Maine 04957.	Do.
Do	Cumberland	Raymond, town of.	H 230205 01 through H 230205 10	do	Planning Board, Town of Raymond, Raymond, Maine 04071.	Do.
Do	Kennebec	Manchester, town of.	H 230239 01 through H 230239 02	do	Mayor, Town Hall, Town of Manchester, Manchester, Maine 04351.	Do.
Do	Washington	Alexander, town of.	H 230303 01 through H 230303 12	do	Mayor, Town of Alexander, Alexander, Maine.	Do.
Do	Oxford	Byron, town of.	H 230330 01 through H 230330 04	do	Town Manager, Town of Byron, Byron, Maine.	Do.
Do	Somerset	Moscow, town of.	H 230364 01 through H 230364 12	do	Mayor, Town of Moscow, Moscow, Maine.	Do.
Maryland	Harford	Aberdeen, town of.	H 240041 01 through H 240041 02	Department of Water Resources, State Office Bldg., Annapolis, Md. 21401. Maryland Insurance Department, 301 West Preston St., Baltimore, Md. 21201.	Town of Aberdeen, Box 70, 3 West Bel Air Ave., Aberdeen, Md. 21001.	Do.
Do	Montgomery	Brookeville, town of.	H 240096 01	do	Town Commissioners Town of Brookeville, Brookeville, Md. 20729.	Do.
Do	Dorchester	Brookview, town of.	H 240097 01	do	Mayor, Town of Brookview, Brookview, Md.	Do.
Do	do	Eldorado, town of.	H 240105 01	do	Mayor, Town of Eldorado, Eldorado, Md.	Do.
Do	Frederick	Myersville, town of.	H 240116 01	do	Frederick County Planning and Zoning, Town of Myersville, Frederick, Md. 21701.	Do.
Massachusetts	Bristol	Taunton, city of	H 250066 01 through H 250066 14	Division of Water Resources, Water Resources Commission, State Office Bldg., 100 Cambridge St., Boston, Mass. 02202. Massachusetts Division of Insurance, 100 Cambridge St., Boston, Mass. 02202.	Mayor, City of Taunton, City Hall, 15 Summer St., Taunton, Mass. 02780.	Do.
Do	Dukes	Chilmark, town of.	H 250068 01 through H 250068 11	do	Chairman, Board of Selectmen, Town Office, Town of Chilmark, Chilmark, Mass. 02535.	Do.
Do	do	Gay Head, town of.	H 250070 01 through H 250070 03	do	Chairman, Board of Selectmen, Town of Gay Head, Gay Head, Mass. 02535.	Do.
Do	Essex	Middleton, town of.	H 250094 01 through H 250094 02	do	Planning Board, Town Hall, Town of Middleton, Middleton, Mass. 01949.	Do.
Do	Worcester	Rutland, town of.	H 250331 01 through H 250331 05	do	Chairman, Board of Selectmen, Town Hall, Town of Rutland, Rutland, Mass. 01543.	Do.
Michigan	Arenac	Standish, township of.	H 260017 01 through H 260017 10	Water Resources Commission, Bureau of Water Management, Stevens T. Mason Bldg., Lansing, Mich. 48926. Michigan Insurance Bureau, 111 North Homer St., Lansing, Mich. 48913.	Township Hall, State and Bordeau Roads, Township of Standish, Standish, Mich. 48658.	Do.
Do	Genesee	Burton, township of.	H 260073 01 through H 260073 09	do	Township of Burton, Genesee County Drain Commissioner, Division of Water and Waste Services, G-4610 Beecher Rd., Flint, Mich. 48504.	Do.
Do	Leelanau	Leelanau, township of.	H 260114 01 through H 260114 10	do	Leelanau Township Supervisors, Leelanau, Mich. 49654.	Do.
Minnesota	Meeker	Kingston, city of	H 270284 01	Division of Waters, Soils and Minerals, Department of Natural Resources, Centennial Office Bldg., St. Paul, Minn. 55101. Minnesota Division of Insurance, R-210 State Office Bldg., St. Paul, Minn. 55101.	Ray Maikkula, Village Clerk, City of Kingston, Kingston, Minn. 55326.	Do.
Do	Chippewa	Watson, city of	H 270610 01	do	Mayor, City Hall, City of Watson, Watson, Minn. 56295.	Do.
Mississippi	Hinds	Jackson, city of	H 280072 01 through H 280072 15	Mississippi Research and Development Center, P.O. Drawer 2470, Jackson, Miss. 39205. Mississippi Insurance Department, 910 Box 79, Jackson, Miss. 39205.	Office of the City Clerk and Building Inspection Department, City of Jackson, P.O. Box 22568, 218 South President St., Jackson, Miss. 39205.	Do.
Missouri	Audrain	Benton, city of	H 290015 01	Department of Natural Resources, Division of Program and Policy Development, State of Missouri, 308 East High St., Jefferson City, Mo. 65101. Division of Insurance, P.O. Box 690, Jefferson City, Mo. 65101.	Mayor, Benton City, Mo. 65232	Do.
Do	do	Rush Hill, village of.	H 290019 01	do	Mayor, City Hall, 300 North Coal, Mexico, Mo. 65265.	Do.
Do	Butler	Neelyville, village of.	H 290046 01	do	Mayor, Neelyville, Mo. 63954	Do.
Do	Cape Girardeau	Delta, city of	H 290055 01	do	City Council, Delta, Mo. 63744	Do.
Do	Holt	Craig, town of	H 290160 01	do	Mayor, City Hall, Craig, Mo. 64437	Do.
Do	Macon	Elmer, city of	H 290219 01	do	Mayor, City Hall, Elmer, Mo. 63538	Do.
Do	St. Charles	O'Fallon, city of	H 290316A 01 through H 290316A 03	do	Mayor, City Hall, O'Fallon, Mo. 63366	Feb. 1, 1974; Dec. 6, 1974.
Do	do	Augusta, village of.	H 290461 01	do	Presiding Judge, Village of Augusta, St. Charles County Court, Court House, St. Charles, Mo. 63301.	Do.

State	County	Location	Map No.	State map repository	Local map repository	Effective date of identification of areas which have special flood hazards
Do	Newton	Readings Mill, village of.	H 290484 01	do	Chairman, Board of Trustees, of Readings Mill, Toplin, Mo. 64801.	Do.
Nebraska	Hitchcock	Stratton, village of.	H 310112 01	Nebraska Natural Resources Commission, P.O. Box 94725, State House, Station, Lincoln, Nebr. 68509. Nebraska Insurance Department, 1335 "L" St., Lincoln, Nebr. 68509.	Chairman, Board of Trustees, c/o Village Clerk, Stratton, Nebr. 69043.	Do.
Do	Hamilton	Stockham, village of.	H 310106 01	do	Mayor, Stockham, Nebr. 68818	Do.
Do	Merrick	Clarks, village of	H 310149 01	do	Village Board, Clarks, Nebr. 68628	Do.
Do	Otoe	Burr, village of	H 310161 01	do	Mayor, Burr, Nebr. 68324	Do.
Do	Stanton	Pilger, village of	H 310216 01	do	Mayor, Village of Pilger, Pilger, Nebr. 68779.	Do.
New Hampshire	Grafton	Landaff, town of	H 330060 01 through H 330060 09	Office of State Planning Division of Community Planning, State House Annex, Concord, N.H. 03301. New Hampshire Insurance Department, 78 North Main St., Concord, N.H. 03301.	Chairman, Planning Board, Town of Landaff, Landaff, N.H.	Do.
Do	Rockingham	Hampton Falls, town of.	H 330133 01 through H 330133 07	do	Selectmen, Town Hall, Town of Hampton Falls, Hampton Falls, N.H. 03844.	Do.
New Jersey	Atlantic	Corbin City, city of.	H 340005 01 through H 340005 04	Bureau of Water Control, Department of Environmental Protection, P.O. Box 1390, Trenton, N.J. 08625. New Jersey Department of Insurance, State House Annex, Trenton, N.J. 08625.	Mayor, City of Corbin City, Maple St. rural free delivery, Woodbine, N.J. 08270.	Do.
Do	Cape May	Upper, township of.	H 340159 01 through H 340159 19	do	Township Clerk, Township of Upper, Upper, N.J. 08226.	Do.
Do	Morris	Chester, township of.	H 340555 01 through H 340555 11	do	Mayor, Township of Chester, Chester, N.J. 07930.	Do.
New York	Albany	Rensselaerville, town of.	H 360014 01 through H 360014 05	New York State Department of Environmental Conservation, Division of Resources Management Services, Bureau of Water Management, Albany, N.Y. 12201. New York State Insurance Department, 123 William St., New York, N.Y. 10038.	Supervisor, Town of Rensselaerville, Rensselaerville, N.Y. 12144.	Do.
Do	Delaware	Fleischmanns, village of.	H 360197 01	do	Mayor, Village of Fleischmanns, Fleischmanns, N.Y. 12430.	Do.
Do	Erie	Angola, village of	H 360892 01	do	Mayor, Village Hall, Village of Angola, Angola, N.Y. 14006.	Do.
Do	Jefferson	Brownville, town of.	H 361063 01 through H 361063 10	do	Mayor, Town of Brownville, Brownville, N.Y. 13615.	Do.
Do	Chautauqua	Ellicott, town of	H 361073 01 through H 361073 11	do	Mayor, Town of Ellicott, Ellicott, N.Y. 14205.	Do.
Do	Allegany	Angelica, town of	H 361095 01 through H 361095 05	do	Mayor, Town of Angelica, Angelica, N.Y. 14709.	Do.
Do	Greene	Coxsackie, town of.	H 361115 01 through H 361115 10	do	Mayor, Town of Coxsackie, Coxsackie, N.Y. 12051.	Do.
Do	Genesee	Byron, town of	H 361139 01 through H 361139 08	do	Mayor, Town of Byron, Byron, N.Y. 14422.	Do.
Do	Schuyler	Hector, town of	H 361204 01 through H 361204 12	do	Mayor, Town of Hector, Hector, N.Y. 14841.	Do.
Do	Ulster	Marlborough, town of.	H 361220 01 through H 361220 09	do	Mayor, Town of Marlborough, Marlborough, N.Y. 12542.	Do.
Do	do	Plattekill, town of.	H 361221 01 through H 361221 11	do	Mayor, Town of Plattekill, Plattekill, N.Y. 12568.	Do.
Do	Wayne	Galen, town of	H 361225 01 through H 361225 06	do	Mayor, Town of Galen, Galen, N.Y.	Do.
Do	Washington	Fort Ann, town of.	H 361231 01 through H 361231 08	do	Mayor, Town of Fort Ann, Fort Ann, N.Y. 12827.	Do.
Do	Dutchess	Dover, town of	H 361335 01 through H 361335 16	do	Mayor, Town of Dover, Dover, N.Y. 12522.	Do.
Do	Chenango	Lincklaen, town of.	H 361376 01 through H 361376 08	do	Mayor, Town of Lincklaen, Lincklaen, N.Y.	Do.
Do	Schoharie	Gilboa, town of	H 361433 01 through H 361433 20	do	Mayor, Town of Gilboa, Gilboa, N.Y. 12076.	Do.
Do	Cayuga	Meridian, village of.	H 361520 01 through H 361520 02	do	Mayor, Village of Meridian, Meridian, N.Y. 13113.	Do.
Do	Columbia	Chatham, village of.	H 361523 01 through H 361523 03	do	Mayor, Village of Chatham, Chatham, N.Y. 12037.	Do.
Do	Hamilton	Speculator, village of.	H 361527 01 through H 361527 07	do	Mayor, Village of Speculator, Speculator, N.Y. 12164.	Do.
North Carolina	Sampson	Clinton, city of	370263 01	North Carolina Office of Water and Air Resources, Department of Natural and Economic Resources, P.O. Box 27687, Raleigh, N.C. 27611. North Carolina Insurance Department, P.O. Box 26387, Raleigh, N.C. 27611.	Mayor, City Hall, City of Clinton, Clinton, N.C. 28328.	Do.

State	County	Location	Map No.	State map repository	Local map repository	Effective date of identification of areas which have special flood hazards
North Dakota	Bottineau	Newburg, city of	H 380009 01	State Water Commission, State Office Building, 900 East Blvd., Bismarck, N. Dak. 58501. North Dakota Insurance Department, State Capitol, Bismarck, N. Dak. 58501.	Mayor, Newburg, N. Dak. 58762	Do.
Do.	Kidder	Dawson, city of	H 380039 01	do.	Mayor, City Building, Dawson, N. Dak. 58428.	Do.
Do.	do.	Tappen, city of	H 380040 01	do.	Mayor, City Building, Tappen, N. Dak. 58487.	Do.
Do.	McHenry	Upham, city of	H 380050 01	do.	Mayor, Upham, N. Dak. 58789	Do.
Do.	Morton	Flasher, city of	H 380069 01	do.	Mayor, Fasher, N. Dak. 58535	Do.
Do.	Ramsey	Lawton, city of	H 380095 01	do.	Mayor, Lawton, N. Dak. 58345	Do.
Do.	do.	Starkweather, city of.	H 380096 01	do.	Mayor, Starkweather, N. Dak. 58377	Do.
Do.	Rolette	St. John, city of	H 380106 01	do.	Mayor, St. John, N. Dak. 58369	Do.
Ohio	Guernsey	Kimbolton, village of.	H 390201 01	Ohio Department of Natural Resources, Fountain Square, Columbus, Ohio 43224. Ohio Insurance Department, 447 East Broad St., Columbus, Ohio 43215.	President of Council, Village of Kimbolton, Kimbolton, Ohio 43749.	Do.
Do.	Hamilton	Milford, village of	H 390227A 01	do.	Mayor, 18 Main St., Village of Milford, Milford, Ohio 45150.	Feb. 8, 1974; Dec. 6, 1974.
Do.	Lorain	Elyra, city of	H 390350A 01 through H 390350A 08	do.	Mayor, City Hall, Court St., City of Elyra, Elyra, Ohio 44035.	May 3, 1974; Dec. 6, 1974.
Oklahoma	Adair	Watts, town of	H 400092 01	Oklahoma Water Resources Board, 2241 Northwest 40th St., Oklahoma City, Okla. 73112. Oklahoma Insurance Department, Room 408 Will Rogers Memorial Bldg., Oklahoma City, Okla. 73105.	City Council, City Hall, Watts, Okla. 74964.	Do.
Do.	Alfalfa	Jet, town of	H 400007 01	do.	Mayor, Town of Jet, Jet, Okla. 73749	Do.
Do.	Caddo	Gracemont, town of.	H 400023 01	do.	Mayor, Gracemont, Okla. 73042	Do.
Oregon	Baker	Haines, city of	H 410003 01	Executive Department, State of Oregon, Salem, Oreg. 97310. Oregon Insurance Division, Department of Commerce, 158 12th St. NE., Salem Oreg. 97310.	Mayor, City Hall, Haines, Oreg. 97833	Do.
Do.	Clackamus	Rivergrove, city of.	H 410022 01	do.	Mayor, City Hall, Rivergrove, Oreg.	Do.
Do.	Union	Cove, city of	H 410217 01	do.	Mayor, Cove, Oreg. 97824	Do.
Pennsylvania	Clearfield	Troutville	H 420315 01	Department of Community Affairs, Commonwealth of Pennsylvania, Harrisburg, Pa. 17120. Pennsylvania Insurance Department 108 Finance Bldg., Harrisburg, Pa. 17120.	Mayor, Troutville, Pa. 15866	Do.
Do.	Huntingdon	Birmingham, borough of.	H 420482 01	do.	Mayor, Borough of Birmingham, Birmingham Box 48x, Rural Delivery No. 1, Tyrone, Pa. 16686.	Do.
Do.	do.	Huntingdon, borough of.	H 420486 01	do.	Municipal Bldg., 508 Washington St., Borough of Huntingdon, Huntingdon, Pa. 16652.	Do.
Do.	Mifflin	McVeytown	H 420688 01	do.	Mayor, McVeytown, Pa. 17051	Do.
Do.	Philadelphia	Philadelphia, city of.	H 420757 01 through H 420757 39	do.	Water Department, 1160 Municipal Service Bldg., City of Philadelphia, Philadelphia, Pa. 19107.	Do.
Do.	Potter	Oswayne, borough of.	H 420763 01 through H 420763 02	do.	Mayor, Rural Delivery No. 2, Borough of Oswayne, Coudersport, Pa. 16915.	Do.
Do.	Westmoreland	Mount Pleasant, township of.	H 420888 01 through H 420888 08	do.	Office of the Township Secretary, Mount Pleasant Township Supervisors, Rural Delivery No. 4. Township of Mount Pleasant, Bloomsburg, Pa. 17815.	Do.
Do.	Berks	Bern, township of.	H 421050 01 through H 421050 09	do.	Bern Township Bldg., Rural Delivery No. 1, Township of Bern, Leesport, Pa. 19533.	Do.
Do.	do.	Heidelberg, township of.	H 421069 01 through H 421069 03	do.	Chairman, Board of Supervisors, Route 1, Robesonia, Pa. 19551.	Do.
Do.	do.	Penn, township of.	H 421091 01 through H 421091 03	do.	Chairman of Commissioners, Courthouse, Township of Penn, Reading, Pa. 19601.	Do.
Do.	Adams	Union, township of.	H 421261 01 through H 421261 06	do.	Chairman, Board of Supervisors, Township of Union, Rural Delivery No. 1, Hanover, Pa. 17331.	Do.
Do.	Armstrong	Cadogan, township of.	H 421304 01 through H 421304 02	do.	Supervisor, Township of Cadogan, Cadogan, Pa. 16212.	Do.
Do.	do.	East Franklin, township of.	H 421305 01 through H 421305 10	do.	Chairman, Board of Supervisors, 303 Oak Dr., Kittanning, Pa. 16201.	Do.
Do.	do.	Redbank, township of.	H 421315 01 through H 421315 10	do.	Chairman, Board of Supervisors, Township of Redbank, Oak Ridge, Pa. 16245.	Do.
Do.	Erie	Greenfield, township of.	H 421365 01 through H 421365 04	do.	Chairman, Board of Supervisors, Rural Delivery No. 3, Northeast, Pa. 16428.	Do.
Do.	Berks	Wernersville, borough of.	H 421374 01 through H 421374 02	do.	Mayor, 15 West Gaul St., Wernersville, Pa. 19565.	Do.
Do.	Bedford	Woodbury, borough of.	H 421330 01	do.	Mayor, Woodbury, Pa. 16695	Do.
Do.	Cambria	Cambria, township of.	H 421436 01 through H 421436 14	do.	Chairman, Board of Supervisors, Cambria Township Bldg., West High St., Edensburg, Pa. 15931.	Do.
Do.	do.	Reade, township of.	H 421445 01 through H 421445 09	do.	Chairman, Board of Supervisors, Township of Reade, Coalport, Pa. 16627.	Do.

State	County	Location	Map No.	State map repository	Local map repository	Effective date of identification of areas which have special flood hazards
Do	Clarion	Highland, township of.	H 421508 01 through H 421508 08	do	Chairman, Board of Supervisors, Rural Delivery No. 2, Clarion, Pa. 16214.	Do.
Do	Clearfield	Bigler, township of.	H 421514 01 through H 421514 10	do	Chairman, Board of Supervisors, Box 567, Township of Bigler, Madera, Pa. 16661.	Do.
Do	do	Bradford, township of.	H 421516 01 through H 421516 14	do	Chairman, Board of Supervisors, Township of Bradford, Woodland, Pa. 16881.	Do.
Do	do	Covington, township of.	H 421521 01 through H 421521 15	do	Chairman, Board of Supervisors, Frenchville, Pa. 16836.	Do.
Do	Clinton	West Keating, township of.	H 421542 01 through H 421542 11	do	Chairman, Board of Supervisors, Township of West Keating, Pottersdale, Pa. 16871.	Do.
Do	Delaware	Tinicum, township of.	H 421605 01 through H 421605 05	do	President of Commissioners, Township of Tinicum, Box 24, Essington, Pa. 19064.	Do.
Do	Elk	Spring Creek, township of.	H 421614 01 through H 421614 08	do	Chairman, Board of Supervisors, Township of Spring Creek, Hallton, Pa. 15842.	Do.
Do	Fayette	Franklin, township of.	H 421625 01 through H 421625 10	do	Chairman, Board of Supervisors, Sumock, Pa. 15480.	Do.
Do	do	Henryclay, town of.	H 421628 01 through H 421628 16	do	Chairman, Board of Supervisors, Rural Delivery No. 1, Markleysburg, Pa. 15459.	Do.
Do	do	Lower Tyrone, township of.	H 421630 01 through H 421630 04	do	Chairman, Board of Supervisors, Rural Delivery No. 1, Township of Lower Tyrone, Dawson, Pa. 15428.	Do.
Do	Franklin	Greene, township of.	H 421649 01 through H 421649 11	do	Township of Greene, Municipal Bldg., Scotland, Pa. 17254.	Do.
Do	Huntingdon	Barree, township of.	H 421683 01 through H 421683 07	do	Chairman, Board of Supervisors, Route, 1, Township of Barree, Petersburg, Pa. 16669.	Do.
Do	do	Hopewell, township of.	H 421690 01 through H 421690 05	do	Chairman, Board of Supervisors, Altch, Pa. 16610.	Do.
Do	do	Logan, township of.	H 421694 01 through H 421694 07	do	Chairman, Board of Supervisors, Rural Delivery, Township of Logan, Petersburg, Pa. 16669.	Do.
Do	do	Penn, township of.	H 421698 01 through H 421698 09	do	Chairman, Board of Supervisors, Township of Penn, Hesston, Pa. 16647.	Do.
Do	do	Porter, township of.	H 421699 01 through H 421699 11	do	Chairman, Board of Supervisors, Rural Delivery No. 1, Township of Poter, Alexandria, Pa. 16611.	Do.
Do	do	Union, township of.	H 421704 01	do	Chairman, Board of Supervisors, Rural Delivery No. 1, Township of Union, Mapleton Depot, Pa. 17052.	Do.
Do	Indiana	Armstrong, township of.	H 421708 01 through H 421708 12	do	Chairman, Board of Supervisors, Rural Delivery No. 3, Township of Armstrong, Shelocta, Pa. 15774.	Do.
Do	do	Conemaugh, township of.	H 421715 01 through H 421715 09	do	Chairman, Board of Supervisors, Rural Delivery No. 1, Saltsburg, Pa. 15681.	Do.
Do	Jefferson	Heath, township of.	H 421728 01 through H 421728 10	do	Chairman, Board of Supervisors, Rural Delivery No. 1, Hallton, Pa. 15842.	Do.
Do	do	Polk, township of.	H 421733 01 through H 421733 11	do	Chairman of Commissioners, Courthouse, Township of Polk, Brookville, Pa. 15825.	Do.
Do	Juniata	Beale, township of.	H 421738 01 through H 421738 09	do	Chairman, Board of Supervisors, Rural Delivery No. 2, Township of Beale, Port Royal, Pa. 17082.	Do.
Do	Monroe	Eldred, township of.	H 421887 01 through H 421887 07	do	Chairman, Board of Supervisors, Rural Delivery No. 2, Kunkletown, Pa. 18058.	Do.
Do	do	Middle Smithfield, township of.	H 421890 01 through H 421890 16	do	Chairman, Board of Supervisors, Rural Delivery No. 1, Township of Middle Smithfield, East Stroudsburg, Pa. 18301.	Do.
Do	do	Ponoco, township of.	H 421892 01 through H 421892 11	do	Chairman of Commissioners, Township of Ponoco, Monroe County Courthouse, Stroudsberg, Pa. 18360.	Do.
Do	Montgomery	Salford, township of.	H 421918 01 through H 421918 05	do	Chairman of Commissioners, Montgomery County Commissioners, Courthouse, Township of Salford, Norristown, Pa. 19404.	Do.
Do	Montour	Mayberry, township of.	H 421923 01	do	Chairman, Board of Supervisors, Rural Delivery No. 2, Township of Mayberry, Catawissa, Pa. 17820.	Do.
Do	Potter	Sylvania, township of.	H 421990 01 through H 421990 08	do	Chairman, Board of Supervisors, Rural Delivery No. 1, Township of Sylvania, Austin, Pa. 16720.	Do.
Do	do	West Branch, township of.	H 421992 01 through H 421992 04	do	Mayor, Township of West Branch, Rural Delivery No. 1, Galeton, Pa. 16922.	Do.
Do	Schuylkill	Butler, township of.	H 421999 01 through H 421999 12	do	Chairman, Board of Supervisors, Township of Butler, Fountain Springs, Ashland, Pa. 17921.	Do.
Do	Snyder	Centre, township of.	H 422033 01 through H 422033 06	do	Chairman, Board of Supervisors, Rural Delivery No. 2, Middleburg, Pa. 17842.	Do.
Do	Somerset	Rockwood, borough of.	H 422045 01	do	Mayor, 763 Grandview Ave., Rockwood, Pa. 15557.	Do.
Do	Sullivan	Davidson, township of.	H 422060 01 through H 422060 06	do	Chairman, Board of Supervisors, Rural Delivery No. 1, Muncy Valley, Pa. 17758.	Do.

State	County	Location	Map No.	State map repository	Local map repository	Effective date of identification of areas which have special flood hazards
Do	Venango	Canal, township of.	H 422108 01 through H 422108 08	do	Chairman, Board of Supervisors, Rural Delivery No. 4, Cochranton, Pa. 16314.	Do.
Do	Washington	Donegal, township of.	H 422146 01 through H 422146 13	do	Chairman, Board of Supervisors, Rural Delivery No. 2, Claysville, Pa. 15323.	Do.
Do	do	Mount Pleasant, township of.	H 422149 01 through H 422149 11	do	Chairman, Board of Supervisors, Box 1, Hickory, Pa. 15340.	Do.
Do	do	West Pike Run, township of.	H 422157 01 through H 422157 06	do	Chairman, Board of Supervisors, Rural Delivery No. 1, Township of West Pike Run, Daisytown, Pa. 15427.	Do.
Do	Wayne	Damascus, township of.	H 422163 01 through H 422163 25	do	Chairman, Board of Supervisors, Tyler Hill, Pa. 18469.	Do.
Do	Wyoming	Mehoopany, township of.	H 422201 01 through H 422201 03	do	Chairman, Board of Supervisors, Rural Delivery No. 2, Menoopany, Pa. 18629.	Do.
Do	do	Washington, township of.	H 422207 01 through H 422207 04	do	Chairman, Board of Supervisors, Rural Delivery No. 1, Township of Washington, Tunkhannock, Pa. 18657.	Do.
Do	do	Windham, township of.	H 422208 01 through H 422208 04	do	Chairman, Board of Supervisors, Township of Windham, Laceyville, Pa. 18623.	Do.
Do	Cambria	Gallitzin, township of.	H 422262 01 through H 422262 06	do	Chairman, Board of Supervisors, Rural Delivery No. 1, Gallitzin, Pa. 16641.	Do.
Do	Luzerne	Warrior Run, borough of.	H 422270 01	do	Mayor, 205 Chestnut St., Warrior Run, Pa. 18706.	Do.
Do	Chester	New Garden, township of.	H 422275 01 through H 422275 02	do	Chairman, Board of Supervisors, Township of New Garden, Avondale, Pa. 19311.	Do.
Do	do	Oxford township of.	H 422278 01 through H 422278 07	do	Chairman of Commissioners, Township of Oxford, Courthouse, West Chester, Pa. 19380.	Do.
Do	do	Honeybrook, township of.	H 422290 01 through H 422290 03	do	Chairman, Board of Supervisors, Rural Delivery No. 2, Honeybrook, Pa. 19344.	Do.
Do	Montgomery	Franconia, township of.	H 422494 01 through H 422494 05	do	Chairman, Board of Supervisors, Box 73, Franconia, Pa. 18924.	Do.
Do	do	Salford, township of.	H 422497 01 through H 422497 03	do	Chairman, Board of Supervisors, Rural Delivery No. 1, Township of Salford, Telford, Pa. 18969.	Do.
Do	Chester	Kennett, township of.	H 422586 01 through H 422586 06	do	Chairman, Board of Supervisors, Rural Delivery No. 3, Kennett Square, Pa. 19348.	Do.
South Carolina	Anderson	Unincorporated areas.	H 450013 01 through H 450013 03	South Carolina Water Resources Commission, P.O. Drawer 164, 700 Knox Abbott Dr., Cayce, S.C. 29033. South Carolina Insurance Department, 2711 Middleburg St., Columbia, S.C. 29204.	County Planning Commission, Anderson County Courthouse, County of Anderson, Anderson, S.C. 29621.	Do.
South Dakota	Brown	Columbia, town of.	H 460008 01	South Dakota Planning Agency, Office of Executive Management, State Capitol Building, Pierre, S. Dak. 57501. South Dakota Department of Insurance, Insurance Building, Pierre, S. Dak. 57501.	Mayor, Town of Columbia, Columbia, S. Dak. 57433.	Do.
Do	Minnehaha	Baltic, town of	H 460058 01 through H 460058 02	do	City Auditor, City of Baltic, Baltic, S. Dak. 57003.	Do.
Do	Moody	Trent, town of	H 460063 01	do	Mayor, Town of Trent, Trent, S. Dak. 57065.	Do.
Do	Spink	Ashton, city of	H 460077 01	do	Mayor, City of Ashton, Ashton, S. Dak. 57424.	Do.
Tennessee	Dickson	Unincorporated areas.	H 470046 01 through H 470046 04	Tennessee State Planning Office, 660 Capitol Hill Bldg., Nashville, Tenn. 37219. Tennessee Department of Insurance and Banking, 114 State Office Bldg., Nashville, Tenn. 37219.	County Planning Commission, Dickson County Courthouse, County of Dickson, Dickson, Tenn. 37055.	Do.
Do	Williamson	do	H 470204 01 through H 470204 03	do	County Planning Commission, Williamson County Courthouse, County of Williamson, Williamson, Tenn.	Do.
Texas	Bexar	Alamo Heights, city of.	H 480036A 01	Texas Water Development Board, P.O. Box 13087, Capitol Station, Austin, Tex. 78711. Texas Insurance Department, 1110 San Jocinto St., Austin, Tex. 78701.	City Engineer's Office, City Hall, City of Alamo Heights, 6116 Broadway, Alamo Heights, Tex. 78209.	May 10, 1974. Dec. 6, 1974.
Do	do	Selma, city of	H 480046 01	do	Mayor, Route 3, Box 181-B, City of Selma, San Antonio, Tex. 78218.	Do.
Do	Hall	Lakeview, town of.	H 480278 01	do	Mayor, City Hall, Lakeview, Tex. 79239.	Do.
Vermont	Windham	Grafton, town of	H 500129 01 through H 500129 04	Management and Engineering Division, Water Resources Department, State Office Bldg., Montpelier, Vt. 05602. Vermont Insurance Department, State Office Bldg., Montpelier, Vt. 05602.	Chairman, Grafton Board of Selectmen, Grafton, Vt. 05146.	Do.

State	County	Location	Map No.	State map repository	Local map repository	Effective date of identification of areas which have special flood hazards
Do	Grand Isle	Alburg, village of	H 500222 01 through H 500222 02	do	Mayor, Village of Alburg, Alburg, Vt. 05440.	Do.
Do	Lamoille	Belvidere, town of.	H 500227 01 through H 500227 03	do	Mayor, Town of Belvidere, Belvidere, Vt. 05442.	Do.
Do	do	Eden, town of	H 500229 01 through H 500229 03	do	Mayor, Town of Eden, Eden, Vt. 05652.	Do.
Do	do	Hyde Park, town of.	H 500230 01 through H 500230 04	do	Mayor, Town of Hyde Park, Hyde Park, Vt. 05655.	Do.
Do	Rutland	Ira, town of	H 500260 01 through H 500260 03	do	Mayor, Town of Ira, Ira, Vt.	Do.
Do	do	Middletown Springs, town of.	H 500261 01 through H 500261 02	do	Mayor, Town of Middletown Springs, Middletown Springs, Vt. 05757.	Do.
Do	do	Poultney, village of.	H 500266 01	do	Chairman, Poultney Board of Selectmen, Town Hall, Poultney, Vt. 05761.	Do.
Do	Windham	Athens, town of	H 500279 01 through H 500279 02	do	Mayor, Town of Athens, Athens, Vt.	Do.
Do	do	Brookline, town of.	H 500280 01 through H 500280 02	do	Mayor, Town of Brookline, Brookline, Vt.	Do.
Virginia	Independent City	Richmond, city of	H 510129 01 through H 510129 19	Bureau of Water Control Management, State Water Control Board, 2d Floor, Davenport Bldg., 11 South 10th St., Richmond, Va. 23219. Virginia Insurance Department, 200 Blanton Bldg., P.O. Box 1157, Richmond, Va. 23209.	Commissioner of Buildings, 501 North 9th St., City of Richmond, Richmond, Va. 23219.	Do.
Do	Surry	Unincorporated areas.	H 510157 01 through H 510157 24	do	County Administrator's Office, Surry County, Surry County Courthouse, Surry, Va. 23883.	Do.
Do	Halifax	do	H 515527 01 through H 515527 58	do	Office of the County Administrator, County Office Bldg., County of Halifax, Halifax, Va. 24558.	Do.
Washington	Lincoln	Almira, town of	H 530107 01	Department of Ecology, Olympia, Wash. 98501. Washington Insurance Department, Insurance Bldg., Olympia, Wash. 98501.	Mayor, City Hall, Almira, Wash. 99103.	Do.
Do	Spokane	Latah, town of	H 530178 01	do	County Commissioners, Spokane County Courthouse, Town of Latah, Spokane, Wash. 99201.	Do.
Do	do	Rockford, town of	H 530181 01	do	Mayor, City Hall, Rockford, Wash. 99030.	Do.
Do	Kitsap	Poulsbo, city of	H 530241 01	do	City Engineering, P.O. Box 995, City of Poulsbo, Poulsbo, Wash. 98370.	Do.
Wisconsin	Burnett	Unincorporated areas.	H 550032 01 through H 550032 02	Department of Natural Resources, P.O. Box 450, Madison, Wis. 53701. Wisconsin Insurance Department, 212 North Bassett St., Madison, Wis. 53703.	County Planning Commission, Burnett County Courthouse, County of Burnett, Burnett, Wis. 53922.	Do.
Do	Green	do	H 550157 01 through H 550157 03	do	County Planning and Zoning Commission, Green County Courthouse, County of Green, Green, Wis.	Do.
Do	Sauk	Troy, village of	H 550406 01 through H 550406 12	do	Chairman, County Board of Supervisors, Courthouse, Village of Troy, Baraboo, Wis. 53913.	Do.
Do	Sheboygan	Waldo, village of	H 550432 01	do	Village President, Village of Waldo, Waldo, Wis. 53093.	Do.
Wyoming	Goshen	Yoder, town of	H 560024 01	Wyoming Disaster and Civil Defense Agency, P.O. Box 1709, Cheyenne, Wyo. 82001. Department of Insurance, State of Wyoming, State Office Building, Cheyenne, Wyo. 82001.	City Building Inspector, Town of Yoder, Torrington, Wyo. 82240.	Do.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (secs. 408–410, Pub. L. 91–152, Dec. 24, 1969), 42 U.S.C. 4001–4127; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969)

Issued: December 11, 1974.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.74-29727 Filed 12-23-74;8:45 am]

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Miscellaneous Revocations

Supart C of Part 213 is amended to show that under the provisions of § 213.3101b, 95 positions are no longer excepted under Schedule C.

§ 213.3303 Executive Office of the President.

(a) *Office of Management and Budget.* * * *

(2) One Special Assistant to the Deputy Director.

* * * * *

(d) *Office of the Special Representative for Trade Negotiations.* * * *

(4) [Revoked]

(5) [Revoked]

* * * * *

(j) *Special Action Office for Drug Abuse Prevention.*

(1) [Revoked]

* * * * *

(3) [Revoked]

(4) [Revoked]

(5) [Revoked]

* * * * *

(k) *Office of Economic Opportunity.* * * *

(13) [Revoked]

(14) [Revoked]

§ 213.3304 Department of State.

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

(2) Four Private Secretaries to the Secretary.

* * * * *

(13) [Revoked]

* * * * *

(u) *Office of the Counselor.*

(1) [Revoked]

* * * * *

§ 213.3305 Treasury Department.

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

(37) [Revoked]

* * * * *

§ 213.3306 Department of Defense.

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

(2) One Private Secretary to the Deputy Secretary of Defense and one Private Secretary to each of the following: the Director of Defense Research and Engineering; the Principal Deputy Director of Defense Research and Engineering; the Deputy Directors of Defense Research and Engineering (Tactical Warfare Programs), (Strategic Systems), (Research and Technology), the Director Advanced Research Projects Agency; the Assistant Secretaries of Defense (Manpower and Reserve Affairs), (International Security Affairs), (Public Affairs), (Installations and Logistics), (Comptroller), (Systems Analysis), (Intelligence), and (Legislative Affairs); the General Counsel; the Assistant to the Secretary of Defense (Atomic Energy); and the Military Assistants to the Secretary of Defense.

* * * * *

§ 213.3307 Department of the Army.

* * * * *

(b) [Revoked]

* * * * *

§ 213.3310 Department of Justice.

* * * * *

(b) *Office of the Deputy Attorney General.*

(1) One Confidential Assistant (Private Secretary) to the Deputy Attorney General.

* * * * *

(k) *Board of Immigration Appeals.* * * *

(2) Three Members of the Board.

* * * * *

(o) *Office of the U.S. Attorney.*

(1) Secretary and Confidential Assistant to the U.S. Attorney (23 positions).

* * * * *

(s) *Law Enforcement Assistance Administration.*

(1) [Revoked]

* * * * *

(4) [Revoked]

* * * * *

§ 213.3312 Department of the Interior.

(a) *Office of the Secretary.*

(1) Eight Confidential Assistants to the Secretary.

(2) Four Special Assistants to the Secretary.

* * * * *

(29) [Revoked]

* * * * *

(31) One Confidential Assistant to the Assistant Secretary for Management.

* * * * *

§ 213.3313 Department of Agriculture.

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

(6) [Revoked]

* * * * *

(b) *Rural Electrification Administration.* * * *

(4) One Assistant to the Administrator.

* * * * *

(h) *Agricultural Stabilization and Conservation Service.* * * *

(4) Three Confidential Assistants to the Administrator.

* * * * *

§ 213.3314 Department of Commerce.

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

(16) One Confidential Assistant to the Director, Office of Foreign Direct Investments.

* * * * *

(18) [Revoked]

* * * * *

(b) [Revoked]

* * * * *

§ 213.3315 Department of Labor.

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

(5) [Revoked]

(6) One Assistant to each Assistant Secretary of Labor appointed by the President, except the Assistant Secretary for Manpower.

* * * * *

(11) [Revoked]

* * * * *

(18) [Revoked]

* * * * *

§ 213.3316 Department of Health, Education, and Welfare.

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

(4) [Revoked]

* * * * *

(6) Five Confidential Assistants to the Under Secretary.

* * * * *

(8) [Revoked]

(9) [Revoked]

* * * * *

(13) Four Assistants ot the Secretary.

* * * * *

(15) Two Private Secretaries to the Secretary.

* * * * *

(24) [Revoked]

* * * * *

(c) *Office of Education.*

(1) One Special Assistant to the Commissioner of Education.

* * * * *

(5) [Revoked]

(6) [Revoked]

* * * * *

(9) [Revoked]

* * * * *

(k) *Office of the Assistant Secretary for Planning and Evaluation.* * * *

(13) [Revoked]

* * * * *

(1) *Social Security Administration.* * * *

(2) [Revoked]

* * * * *

(n) *Office of the Assistant Secretary for Human Development.* * * *

(4) [Revoked]

* * * * *

(o) *Social and Rehabilitation Service.* * * *

(10) [Revoked]

* * * * *

(q) *Office of the Special Assistant to the Secretary for Civil Rights.*

(1) One Special Assistant to the Special Assistant.

* * * * *

§ 213.3337 General Services Administration.

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

(4) Three Confidential Assistants to the Assistant Administrator.

* * * * *

(6) Four Confidential Assistants to the Administrator.

* * * * *

(8) Two Special Assistants to the Assistant Administrator.

* * * * *

(16) One Confidential Assistant to the Associate Administrator for Federal Management Policy.

* * * * *

(b) *Public Buildings Service.* * * *

* * * * *

(2) Four Confidential Assistants to the Commissioner.

* * * * *

(c) *Federal Supply Service.* * * *

(2) Two Confidential Assistants to the Commissioner.

* * * * *

(d) *National Archives and Records Service.* * * *

(2) [Revoked]

* * * * *

(h) *Automated Data and Telecommunications Service.*

(1) [Revoked]

* * * * *

§ 213.3339 U.S. Tariff Commission.

* * * * *

(e) [Revoked]

* * * * *

§ 213.3342 Export-Import Bank of the United States.

* * * * *

(d) [Revoked]

* * * * *

(h) [Revoked]

* * * * *

§ 213.3348 National Aeronautics and Space Administration.

* * * * *

(c) One Secretary to each of the following: The Associate Adminstrator for Manned Space Flight, the Associate Administrator for Advanced Research and Technology.

* * * * *

§ 213.3359 Action.

* * * * *

(1) [Revoked]

* * * * *

§ 213.3360 Consumer Product Safety Commission.

(a) One Secretary (Stenography) to one Commissioner and one Staff Assistant to one Commissioner.

(b) One Special Assistant for External Affairs to each of three Commissioners.

* * * * *

§ 213.3384 Department of Housing and Urban Development.

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

(6) [Revoked]

* * * * *

(8) [Revoked]

* * * * *

(25) Two Staff Assistants to the Assistant to the Secretary (Public Affairs).

* * * * *

(29) [Revoked]

* * * * *

(32) [Revoked]

(33) [Revoked]

* * * * *

(47) Three Public Information Specialists, Office of the Assistant to the Secretary for Public Affairs.

* * * * *

(b) *Office of the Assistant Secretary for Housing Production and Mortgage Credit—Federal Housing Administration Commissioner.* * * *

(8) [Revoked]

* * * * *

§ 213.3388 Federal Energy Administration.

* * * * *

(c) *Office of Public Affairs.* * * *

(2) [Revoked]

* * * * *

(f) [Revoked]

* * * * *

§ 213.3394 Department of Transportation.

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

(14) [Revoked]

* * * * *

(16) [Revoked]

(17) Six Congressional Liaison Officers, Office of the Director of Congressional Affairs.

* * * * *

(32) [Revoked]

* * * * *

(g) *St. Lawrence Seaway Development Corporation.*

(1) One Special Assistant to the Administrator.

* * * * *

(h) *Federal Aviation Administration.* * * *

(6) [Revoked]

((5 U.S.C. secs. 3301), 3302; E.O. 10577, 3 CFR 1954–58 Comp. p. 218)

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

[FR Doc.74–29955 Filed 12–23–74;8:45 am]

PART 213—EXCEPTED SERVICE

Department of the Interior

Section 213.3312 is amended to show that an additional position of Confidential Assistant to the Secretary (Interdepartmental Activities) is excepted under Schedule C.

Effective on publication in the FEDERAL REGISTER, § 213.3312(a)(18) is amended as set out below.

§ 213.3312 Department of the Interior.

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

(18) Two Confidential Assistants to the Secretary (Interdepartmental Activities).

(5 U.S.C. secs. 3301, 3302; E.O. 10577, 3 CFR 1954–58 Comp. p. 218)

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

[FR Doc.74–29957 Filed 12–23–74;8:45 am]

PART 213—EXCEPTED SERVICE

Department of Transportation; Correction

In the FEDERAL REGISTER of August 10, 1973 (38 FR Doc. 73–16524), appearing on page 21621, § 213.3394(f)(1) was revoked in error. Section 213.3394(f)(1) reads as follows:

§ 213.3394 Department of Transportation.

* * * * *

(f) *Urban Mass Transportation Administration.*

(1) One Assistant Administrator for Public Affairs.

(5 U.S.C. secs. 3301, 3302; E.O. 10577, 3 CFR 1954–58 Comp. p. 218)

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

[FR Doc.74–29956 Filed 12–23–74;8:45 am]

Title 7—Agriculture

CHAPTER VII—AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE (AGRICULTURAL ADJUSTMENT), DEPARTMENT OF AGRICULTURE

SUBCHAPTER C—SPECIAL PROGRAMS

[Amdt. 2]

PART 775—FEED GRAINS

Subpart—Feed Grain Program for Crop Years 1974–1977

1975 NATIONAL FEED GRAIN ALLOTMENT

On July 17, 1974, a notice of proposed rule making was published in the FEDERAL REGISTER (39 FR 26159) stating that the Secretary of Agriculture proposed to make determinations and issue regulations relative to the 1975 national feed grain allotment. Interested persons were invited to submit written data, views, and recommendations regarding the determinations. The comments and recommendations received have been duly considered.

The regulations governing the Feed Grain Program for Crop Years 1974–1977 issued July 12, 1974 (39 FR 25663) are amended by adding a new § 775.4a. The purpose of this section is to determine and proclaim the 1975 national feed grain allotment.

Pursuant to section 105(b)(2) of the Agricultural Act of 1949, as amended by the Agriculture and Consumer Protection Act of 1973, Pub. L. 93–86, 57 Stat. 221, 231 (1973), the Secretary is required, prior to January 1 of each calendar year, to determine and proclaim for the crop produced in such calendar year a national acreage allotment for feed grains

which shall be the number of acres he determines, on the basis of the estimated national average yield of the feed grains included in the program for the crop for which the determination is being made, will produce the quantity (less imports) of such feed grains that he estimates will be utilized domestically and for export during the marketing year for such crop. If the Secretary determines that carryover stocks of any of the feed grains are excessive or an increase in stocks is needed to assure a desirable carryover, he may adjust the feed grain allotment by the amount he determines will accomplish the desired decrease or increase in carryover stocks.

The determination in § 775.4a of the 1975 national feed grain allotment is based on the acreages, yields, and usage set out therein. The determination has been made on the basis of the latest available statistics of the Federal Government. Compliance with the feed grain allotment is not a condition of eligibility for participation in the program, and feed grain acreage on the farm may vary widely from the farm feed grain allotment. Hence, in determining the national allotment, an adjustment for the purpose of increasing carryover stocks to a more desirable level was not considered necessary, and no such adjustment was made.

Part 775 is amended by adding a new § 775.4a to read as follows:

§ 775.4a 1975 national feed grain allotment.

Based on estimated utilization (less imports) for the 1975–1976 marketing year of 5,924 million bushels of corn, 875 million bushels of sorghum, and 445 million bushels of barley and estimated national yields of 93.0 bushels per acre for corn, 60.0 bushels per acre for sorghum, and 45.5 bushels per acre for barley, the combined acreage of corn, sorghum and barley needed to produce a quantity of feed grains equal to estimated utilization is determined to be 89.0 million acres and a 1975 national feed grain allotment of 89.0 million acres is hereby proclaimed.

(Sec. 105, 63 Stat. 1054, as amended; 87 Stat. 231; (7 U.S.C. 1441) note)

Effective date: December 24, 1974.

Signed at Washington, D.C. on December 18, 1974.

EARL L. BUTZ,
Secretary.

[FR Doc.74-29909 Filed 12-23-74;8:45 am]

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER A—GENERAL REGULATIONS

[FmHA Instruction 424.1]

PART 1804—PLANNING AND PERFORMING DEVELOPMENT WORK

Subpart A—Planning and Performing Development Work

In page 37992 of the FEDERAL REGISTER of October 25, 1974, there was published a notice of proposed rulemaking, amending § 1804.4 by adding a new paragraph (g)(5) concerning actions to be taken during the warranty period and redesignating the present paragraph (g)(5) to paragraph (g)(6). Also, under consideration was a program identified as Appendix B o fthis subpart entitled, "Notifying Borrowers of Expiration of 1-Year Warranty Period," which will notify borrowers of the expiration of the 1-year warranty period. If construction deficiencies exist, borrowers will request the County Supervisor to conduct an inspection.

Interested persons were given 30 days to submit written comments, suggestions, or objections regarding the proposed revised guidelines. No written comments, suggestions, or objections have been received and the proposed regulations are hereby adopted without change and are set forth below.

Effective date. This amendment is effective on December 24, 1974.

Dated: December 10, 1974.

F. W. NAYLOR, Jr.,
Acting Administrator.

1. As amended, § 1804.4(g)(5) reads as follows:

§ 1804.4 Performing development.

* * * * *

(g) *Inspection of development work.* * * *

(5) *Guarantee—warranty period.* In all cases where Form FmHA 424-19 has been executed, the following actions will be taken:

(i) The County Supervisor will assist borrowers as provided in Subpart C of this Part, "Handling Construction Complaints."

(ii) Borrowers will be notified of the warranty expiration date prior to the 11th month of the warranty period. Appendix B describes the action that will be taken.[1]

* * * * *

2. Appendix B, as added reads as follows:

APPENDIX B—NOTIFYING BORROWERS OF EXPIRATION OF 1-YEAR WARRANTY PERIOD

1. *Purpose.* This Appendix outlines the procedures for notifying borrowers of the expiration of the 1-year warranty period for defects in materials or workmanship when Form FmHA 424-19, "Builder's Warranty," has been signed by a warrantor.

2. *Policy.* Each borrower will be notified of the expiration date of Form FmHA 424-19 and the name and address of the warrantor with instructions for notifying the warrantor of any defects that must be corrected. Ordinarily, notification will be given by letter; however, if complaints have been received or known construction defects exist, an onsite inspection will be made by the County Supervisor or construction inspector to determine the nature and seriousness of the defects.

3. *Implementation, alternatives and action to be taken.* The County Supervisor will take the following action prior to the expiration of the 1-year Builder's Warranty:

a. A letter notifying the borrower of the expiration date of the Builder's Warranty will be mailed to the borrower early in the 10th month of the warranty period.

b. If the County Supervisor does not hear from the borrower within 30 days, he can reasonably assume that no complaint exists or that any complaint has been satisfied, unless he has information to the contrary.

c. If the borrower notifies the County Supervisor that any complaint has not been satisfied, an onsite construction inspection shall be made as early as possible but not later than the 11th month of the 1-year Builder's Warranty period. The results of the inspection visit will be recorded on Form FmHA 424-12, "Inspection Report." If the borrower complaints are justified, the case should be handled in accordance with Subpart C of this Part, "Handling Construction Complaints."

((7. U.S.C. 1989); (42 U.S.C. 1480); delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70.)

[FR Doc.74-30000 Filed 12-23-74;8:45 am]

[1] Appendix A reserved.

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—LOANS AND GRANTS PRIMARILY FOR REAL ESTATE PURPOSES

[FmHA Instruction 444.4]

PART 1822—RURAL HOUSING LOANS AND GRANTS

Subpart C—Farm Labor Housing Loan Policies, Procedures, and Authorizations

REVISION OF ELIGIBILITY REQUIREMENTS

On page 37648 of the FEDERAL REGISTER of October 23, 1974, there was published a notice of proposed rulemaking to revise § 1822.64 of Subpart C of Part 1822. The purpose of this revision is to clarify eligibility requirements an applicant must meet to obtain a Labor Housing loan, and provides that the financial condition of individual members of associations of farmers be considered in determining whether credit is available from other sources.

Interested persons were given 30 days in which to submit written comments, suggestions, or objections regarding the proposed revision. No comments, suggestions, or objections have been received and the proposed regulations are hereby adopted without change and are set forth below.

Effective date. This revision is effective on December 24, 1974.

Dated: December 10, 1974.

F. W. NAYLOR, Jr.,
Acting Administrator.

Section 1822.64 is revised to read as follows:

§ 1822.64 Eligibility requirements.

(a) *Eligibility of applicant.* To be eligible for an LH loan the applicant must:

(1) Be an individual farmowner or an organization, as those terms are defined

in § 1822.63, which will own the housing and operate it on a nonprofit basis.

(2) Concerning availability of other credit;

(i) Be unable to provide the necessary housing from the applicant's own resources, including any power to levy taxes, assessments, or charges, and be unable to obtain the necessary credit from any other source upon terms and conditions the applicant could reasonably be expected to fulfill; and

(ii) If an association of farmers, the individual members, individually and jointly must be unable to obtain the necessary housing by utilizing their own resources and be unable, by pledging their personal liability, to obtain the necessary credit from any other source upon terms and conditions the applicant could reasonably be expected to fulfill.

(3) Have sufficient operating capital to pay such costs as property and liability insurance premiums, premiums on any required fidelity bonds, utility hookup charges, maintenance, tools and equipment, and other initial expenses not included in the loan.

(4) After the loan is made, have income sufficient to pay operating expenses, make necessary capital replacements, make the payments on the loan and other authorized debts, and accumulate reasonable reserves as required.

(5) Possess the legal capacity, character, ability and experience to carry out the undertakings and obligations required for the loan including the obligation to maintain and operate the housing and related facilities for the purpose for which the loan is made.

(6) If an individual farmowner or an association of farmers, the housing must be for labor to be used in the farming operations of the applicant, the association members, or by a corporation owner by the applicant's members.

(b) *Authorized representative of applicant.* The FmHA will deal only with the applicant or its bonified representative and technical advisors. The authorized representative of the applicant must be a person who has no pecuniary interest in the award of the architectural or construction contracts, the purchase of equipment, or the purchase of land for the housing site.

((42 U.S.C. 1480); 7 CFR 2.23; 7 CFR 2.70)

[FR Doc.74-29910 Filed 12-23-74;8:45 am]

Title 9—Animals and Animal Products

CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS

PART 76—HOG CHOLERA AND OTHER COMMUNICABLE SWINE DISEASES

Definition of "State" Amended and the United States Virgin Islands Declared Hog Cholera Free

Notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. 553, that the Animal and Plant Health Inspection Service is amending §§ 76.1(l) and 76.2(g) of Chapter I of Title 9 of the Code of Federal Regulations to include the Virgin Islands of the United States as a hog cholera free State.

Statement of considerations. A systematic surveillance for the detection of hog cholera has been in effect in the United States Virgin Islands for many years. Hog cholera has not been known to exist in the United States Virgin Islands since it was introduced from the United States through vaccinated swine imported in 1941. That outbreak was promptly contained and vaccination has not been practiced since 1964. A continued surveillance for hog cholera in the Virgin Islands of the United States by diagnosticians from the Commonwealth of Puerto Rico for the investigation of suspected hog cholera remains in effect. In view of the fact that hog cholera has not occurred in the United States Virgin Islands since 1941, it is deemed appropriate to list that Territory as qualifying for hog cholera free status under § 76.2 (g) of the regulations contained in 9 CFR Part 76.

Accordingly, Part 76 is amended as follows:

1. § 76.1(l) is amended to read:

§ 76.1 Definitions.

* * * * *

(l) *State.* Any State, Puerto Rico, the United States Virgin Islands, or the District of Columbia.

§ 76.2 [Amended]

* * * * *

2. § 76.2(g) is amended by adding thereto the United States Virgin Islands.

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; sec. 1, 75 Stat. 481; secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111–113, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 37 FR 28464, 28477; 38 FR 19141)

Effective date. The foregoing amendments shall become effective December 18, 1974.

The amendments change the definition of "State" to include the United States Virgin Islands and declare that area to be hog cholera free under the regulations of this Part 76.

The amendments do not change the requirements under the regulations in 9 CFR Part 76 with respect to the interstate movement of swine or swine products. They have the effect of relieving restrictions on indemnity payments under the regulations in 9 CFR Part 56 and should be made effective promptly in order to be of maximum benefit to affected persons. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, under 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 the amendments are impracticable, unnecessary, and contrary to the public interest, and good cause is found for making them effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 18th day of December 1974.

J. M. HEJL,
Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc.74-29908 Filed 12-23-74;8:45 am]

PART 76—HOG CHOLERA AND OTHER COMMUNICABLE SWINE DISEASES

Hog Cholera Eradication and Free States

This amendment deletes the Commonwealth of Puerto Rico from the list of Hog Cholera Eradication States in 9 CFR 76.2(f), as amended, and adds said State to the list of Hog Cholera Free States in § 76.2(g) upon the basis of a determination that such State qualifies for hog cholera free status under § 76.2(g). The special provisions of 9 CFR Part 76, as amended, pertaining to the interstate movement of swine and swine products from such Eradication or Free States remain applicable to the Commonwealth of Puerto Rico.

The removal of the Commonwealth of Puerto Rico from the list of Hog Cholera Eradication States and the addition of this State to the list of Hog Cholera Free States affects the Federal indemnities payable under other regulations (9 CFR Part 56, as amended) for swine slaughtered because of hog cholera in the Commonwealth of Puerto Rico.

Accordingly, Part 76, Title 9, Code of Federal Regulations, as amended, restricting the interstate movement of swine and certain products because of hog cholera and other communicable swine diseases, is hereby amended in the following respects:

In § 76.2, the reference to the Commonwealth of Puerto Rico in paragraph (f) is deleted, and paragraph (g) is amended by adding thereto the name of said State.

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; sec. 1, 75 Stat. 481; secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111–113, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 37 FR 28464, 28477; 38 FR 19141)

Effective date. The foregoing amendment shall become effective December 18, 1974.

The amendment does not change the requirements under the regulations in 9 CFR Part 76 with respect to the interstate movement of swine or swine products. It has the effects of relieving restrictions on indemnity payments under the regulations in 9 CFR Part 56 and should be made effective promptly in order to be of maximum benefit to affected persons. It does not appear that public participation in this rulemaking

proceeding would make additional relevant information available to the Department.

Accordingly, under 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 the amendment are impracticable, unnecessary, and contrary to the public interest, and good cause is found for making it effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 18th day of December 1974.

J. M. HEJL,
Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc.74-29907 Filed 12-23-74;8:45 am]

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION

PART 210—GENERAL ALLOCATION AND PRICE RULES

PART 211—MANDATORY PETROLEUM ALLOCATION REGULATIONS

Limitation of Refinery Fuel Use of Propane and Butane, Clarification of Special Restriction of Propane and Butane for SNG Use, Gas Utility Use and Industrial Use

The Federal Energy Administration hereby amends, effective immediately, the Mandatory Petroleum Allocation Regulations concerning the allocation of propane and butane to limit their use as refinery fuel. In addition, the special restrictions on the use of propane and butane contained in § 211.10(g)(8) and former § 211.10(g)(9) have been clarified and expanded to include refinery fuel use.

The allocation and pricing of propane and butane has been a matter of continuing concern to the FEA. Recently, FEA has been advised that several refiners have anticipated allocation fractions for propane and butane during the first allocation quarter of 1975 which represent substantial reductions from the allocation fractions implemented by the same refiners during the last allocation quarter of 1974. FEA is concerned that these reductions are due, in part, to the fact that refiners are using these products directly and in mixtures of other allocated and non-allocated products in increasing amounts as refinery fuel, since they have become relatively inexpensive fuels for this use. This situation was not anticipated when 10 CFR 211.81(a)(2) was promulgated excluding from Subpart D of the Mandatory Petroleum Allocation Regulations "propane in mixtures of light hydrocarbons produced in a refinery and used in that refinery for use other than as feedstock."

The present diversion of propane or butane directly or indirectly in other mixtures for use as a refinery fuel threatens substantial disruption of traditional propane and butane supply patterns for other traditional uses. Accordingly, the propane and butane produced in a refinery for use in that refinery will be allocated in the same manner as propane and butane produced in a gas processing plant pursuant to Subparts D and E. In addition, a limitation has been placed upon the use of propane or butane from any source, without regard to whether it has been subject to refining or processing or is contained in other mixtures. In particular, the use of propane or butane for refinery fuel in excess of certain volumes has been prohibited.

The revised regulations add a new definition for "refinery fuel use" and exclude refinery fuel use from the definition of "energy production." A definition of "natural gas liquids" has also been added. The definitions of "butane," "propane" and "propane-butane mix" have been revised. An allocation level of one hundred percent of base period use subject to the allocation fraction for refinery fuel use of propane, butane and natural gasoline has also been added to Subparts D and E of Part 211.

Refiners which use allocated products (including propane and butane) for refinery fuel use or other uses do so in their capacity as either an end-user or wholesale purchaser-consumer. They must as suppliers, therefore, allocate these products to themselves in their capacities as wholesale purchaser-consumers or end-users. Other suppliers of these products to refiners for refinery fuel use will also allocate to refiners in accordance with the revised regulations.

FEA has also revised and combined §§ 211.10(g)(8) and 211.10(g)(9) making it clear that end-users and wholesale purchaser-consumers of propane or butane may not accept or use these fuels to exceed one hundred percent of their base period use for synthetic natural gas feedstock use, gas utility use or other industrial use. Refinery fuel use has been similarly restricted; therefore, refiners may not use propane or butane directly or indirectly from any source in a period which corresponds to a base period to exceed one hundred percent of their base period use for refinery fuel use.

Sections 211.81 and 211.91 have been revised to indicate that the propane and butane allocation subparts exclude the propane and butane content of natural gas liquids and refinery gas from direct allocation. However, the restriction placed upon the use of the propane and butane content of natural gas liquids and refinery gas under § 211.10(g)(8) is emphasized.

Finally, § 210.34 of Part 210 and § 211.1 of Part 211 have been revised to delete reference to the term "refinery gas" in those sections. In so doing, the FEA intends to avoid possible confusion as to FEA's position regarding the component elements of refinery gas. The exemption originally provided for refinery gas was intended to clarify FEA's position that the methane and ethane content of gas produced in the refining of crude oil for use as refinery fuel was not subject to either allocation or usage restrictions under the regulations. FEA intended, however, to restrict the use of the propane and butane content of refinery gas and other mixtures even though such mixtures contained ethane, methane, or other non-allocated products prior to processing. The possibility that §§ 210.34 and 211.1 as previously written were susceptible to contrary interpretation was inadvertent. Accordingly, the amendments to § 211.81 of Subpart D and § 211.91 of Subpart E make it clear that FEA allocates propane, butane, and propane-butane mixtures, as such, and that with respect to mixtures that contain non-allocated products, FEA restricts the use of the propane and butane contained in those mixtures.

FEA has concluded that these amendments and revisions must be made effective immediately and prior to opportunity for comment, because the increasing use of propane and butane as refinery fuels would be particularly injurious to the public welfare in view of the need for propane and butane to be available at the end-user and wholesale purchaser-consumer level during the current heating season and during the current period of substantial natural gas curtailments. Accordingly, the provisions of section 7(i)(1)(B) of the Federal Energy Administration Act of 1974 (Pub. L. 93-275), with respect to notice and opportunity for comment, are hereby waived upon a finding that strict compliance therewith would cause serious harm and injury to the public welfare.

The review provisions of section 7(c)(2) of the Federal Energy Administration Act of 1974 (Pub. L. 93-275) are hereby waived for a period of fourteen days, as provided for in that section, upon a finding that there is an emergency situation, which requires immediate action. FEA is submitting the text of this emergency amendment concurrently with its issuance to the Environmental Protection Agency for its review.

Because these amendments and revisions are being issued on an emergency basis, an opportunity for oral presentation of views is not possible prior to the implementation of these amendments and revisions. A public hearing, however, will be held beginning at 9:30 a.m., on January 9, 1975 at the Federal Building, Room 3000, 12th and Pennsylvania Avenue, NW., Washington, D.C., to receive comments from interested persons. The hearing will be continued through January 10, 1975, if necessary. Any person who has an interest in the subject of the hearing, or who is a representative of a group or class of persons which has an interest in the subject of the hearing, may make a written request for an opportunity to make oral presentation. Such a request should be directed to Executive Communications, FEA, and must be received before 4:30 p.m., e.s.t., December 31, 1974. Such a request may be hand delivered to Room 3309, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday

through Friday. The person making the request should be prepared to describe the interest concerned; if appropriate, to state why he or she is a proper representative of a group or class of persons which has such an interest; and to give a concise summary of the proposed oral presentation and a phone number where he or she may be contacted through January 3, 1975. Each person selected to be heard will be so notified by the FEA before 5:30 p.m., e.s.t., January 6, 1975 and must submit 100 copies of his or her statement to Executive Communications, FEA, Room 3315, Federal Building, Washington, D.C., 20461, before 9 a.m., e.s.t., January 8, 1975.

The FEA reserves the right to select the persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. Each presentation may be limited, based on the number of persons requesting to be heard.

An FEA official will be designated to preside at the hearing. It will not be a judicial or evidentiary-type hearing. Questions may be asked only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. Any decision made by the FEA with respect to the subject matter of the hearing will be based on all information available to the FEA. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any interested person may submit questions, to be asked of any person making a statement at the hearing, to Executive Communications, FEA, before 4:30 p.m., e.s.t., January 6, 1975. Any person who makes an oral statement and who wishes to ask a question at the hearing may submit the question, in writing, to the presiding officer. The FEA or the presiding officer, if the question is submitted at the hearing, will determine whether the question is relevant, and whether time limitations permit it to be presented for answers.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by the FEA and made available for inspection at the Administrator's Reception Area of the FEA, Room 3400, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Anyone may buy a copy of the transcript from the reporter.

Interested persons are invited to submit data, views, or arguments with respect to the emergency amendment to Executive Communications, Federal Energy Administration, Box BP, Washington, D.C. 20461.

Comments should be identified on the outside envelope and on documents submitted to Executive Communications, FEA, with the designation "Limitation on Refinery Fuel Use." Fifteen copies should be submitted. All comments received by January 6, 1975, and all relevant information, will be considered by the Federal Energy Administration.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, one copy only. The FEA reserves the right to determine the confidential status of the information or data and treated it according to its determination.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159; Federal Energy Administration Act of 1974, Pub. L. 93-275; E.O. 11790 (39 FR 23185)).

In consideration of the foregoing, Parts 210 and 211 of Chapter II, Title 10 of the Code of Federal Regulations, are amended as set forth below, effective immediately.

Issued in Washington, D.C., December 19, 1974.

ROBERT E. MONTGOMERY, Jr.,
General Counsel,
Federal Energy Administration.

1. Section 210.34 is amended to delete the definition of "refinery gas" from paragraph (b) and to revise paragraph (a) to read as follows:

§ 210.34 Petroleum refinery products.

(a) Petroleum refinery products such as petroleum wax, petroleum coke, asphalt and road oil which are not crude oil, refined petroleum products, or residual fuel oils are exempt from the provisions of Parts 211 and 212 of this chapter.

* * * * *

2. Section 211.1 is amended to revise paragraph (b)(3) to read as follows:

§ 211.1 Scope.

* * * * *

(b) *Exclusions.* * * *

(3) Petroleum refinery products such as petroleum wax, petroleum coke, asphalt and road oil which are not crude oil, refined petroleum products, or residual fuel oil are excluded from this part.

* * * * *

3. Section 211.10 is amended in paragraph (g) by deleting paragraph (g)(9) and revising paragraph (g)(8) to read as follows:

§ 211.10 Supplier's method of allocation.

* * * * *

(g) *Allocations fractions greater than one.* * * *

(8) *Limitation on purchaser's rights including special restrictions on propane and butane.*

Unless directed by FEA no supplier shall supply and no end-user or wholesale purchaser-consumer shall accept quantities of allocated product which exceed one hundred (100) percent of the end-user's or wholesale purchaser-consumer's current requirements, *provided,* That (i) no supplier shall supply and no end-used or wholesale purchaser-consumer shall accept or use quantities of propane or butane (including the propane and butane content of natural gas liquids and refinery gas) in excess of one hundred (100) percent of base period use for synthetic natural gas feedstock use, gas utility use, or any industrial use except for the purpose of increasing inventories for such uses to the levels allowed under § 211.86(g) or § 211.96(e) *and provided further,* That (ii) no supplier shall supply and no end-user or wholesale purchaser-consumer shall accept or use quantities of propane or butant (including the propane and butane content of natural gas liquids and refinery gas) in excess of one hundred (100) percent of base period use for refinery fuel use.

4. Section 211.51 is amended by revising the definition of "energy production" and by adding definitions of "butane," "natural gas liquids," 'natural gasoline," 'propane," "propane-butane mix" and "refinery fuel use" in the appropriate alphabetical order to read as follows:

§ 211.51 Definitions.

* * * * *

"Butane" means the chemical C_4H_{10} in its commercial forms, including both normal butane and iso-butane, their mixtures and mixtures of butane and propane containing ten (10) percent by weight or less of propane. Included within the definition of butane is the butane content of natural gas liquids and refinery gas when used for refinery fuel use.

* * * * *

"Energy production" means the exploration, drilling, mining, refining, processing, production and distribution of coal, natural gas, geothermal energy, petroleum or petroleum products, shale oil, nuclear fuels and electrical energy. It also includes the construction of facilities and equipment used in energy production, such as pipelines, mining equipment and similar capital goods. Excluded from this definition are synthetic natural gas manufacturing, electrical generation whose power source is petroleum based, gasoline blending and manufacturing and refinery fuel use.

* * * * *

"Natural gas liquids" means a mixed hydrocarbon stream containing, in whole or in substantial part, mixtures of ethane, butane (iso-butane and normal butane), propane or natural gasoline.

* * * * *

"Natural gasoline" means those liquid hydrocarbon mixtures containing substantial quantities of pentanes and heavier hydrocarbons, which have been extracted from natural gas.

* * * * *

"Propane" means the chemical C_3H_8 in its commercial forms including propane-butane mixes in which propane

constitutes greater than ten (10) percent of the mixture by weight. Included within the definition of propane is the propane content of natural gas liquids and refinery gas when used for refinery fuel use.

* * * * *

"Propane-butane mix" means any mixture consisting exclusively of propane and butane.

* * * * *

"Refinery fuel use" means the use of an allocated product as fuel in the refining of petroleum products.

* * * * *

5. Section 211.81 is revised to read as follows:

§ 211.81 Scope.

(a) This subpart is applicable to all suppliers, including producers, and purchasers of propane.

(b) This subpart provides for the mandatory allocation of all propane produced in or imported into the United States, except bottled propane, and the propane content of natural gas liquids and refinery gas. Restrictions on the use of the propane content of natural gas liquids and refinery gas are specified in § 211.10(g)(8) of this Part.

(c) This subpart provides for a state set-aside.

§ 211.82 [Amended]

6. Section 211.82 is amended by deleting the definitions of "propane" and "propane-butane mix."

7. Section 211.83 is amended in paragraph (c) by deleting the word "and" in subparagraph (2)(iv); by replacing the period [.] after subparagraph (2)(v) with a semicolon [;] and by adding the word "and" thereafter; and by adding a new paragraph (c)(2)(vi) to read as follows:

§ 211.83 Allocation levels.

* * * * *

(c) *Allocation levels subject to an allocation fraction.* * * *

(vi) Refinery fuel use.

* * * * *

(2) * * *

8. Section 211.91 is revised to read as follows:

§ 211.91 Scope.

(a) This subpart is applicable to all supliers and purchasers of butane and natural gasoline.

(b) This subpart provides for the mandatory allocation of all butane and natural gasoline produced in or imported into the United States, except bottled butane, and the butane content of natural gas liquids and refinery gas. Restrictions on the use of the butane content of natural gas liquids and refinery gas are specified in § 211.10(g)(8) of this Part.

(c) This subpart does not provide for a state set-aside.

§ 211.92 [Amended]

9. Section 211.92 is amended by deleting the definitions of "butane" and "natural gasoline."

10. Section 211.93 is amended in paragraph (c) by deleting the word "and" in subparagraph (2)(iii); by replacing the period [.] after subparagraph (2)(iv) with a semicolon [;] and by adding the word "and" thereafter; and by adding a new paragraph (c)(2)(v) to read as follows:

§ 211.93 Allocation levels.

* * * * *

(c) *Allocation levels subject to an allocation fraction.* * * *

(2) * * *

(v) Refinery fuel use.

* * * * *

[FR Doc.74-30022 Filed 12-20-74;9:43 am]

PART 212—MANDATORY PETROLEUM PRICE REGULATIONS

Changes in the Price Regulations for Natural Gas Liquids and Natural Gas Liquid Products

On September 6, 1974, the Federal Energy Administration issued a Notice proposing a number of significant changes in the Mandatory Petroleum Price Regulations (39 FR 32718, September 10, 1974). Comments were invited from interested persons by September 27, 1974, and more than 80 comments were received. A public hearing on the proposal was held September 30 and October 1, 1974, at which approximately 20 interested persons presented statements. The FEA has previously amended its regulations with respect to certain of the possible changes contained in the September 10 Notice. Amendments to the FEA regulations were issued on November 1, 1974 (39 FR 39259, November 6, 1974), and on November 29, 1974 (39 FR 42368, December 5, 1974), with action on the remaining proposals included in the September 10 Notice having been deferred, pending further study and analysis by the FEA.

The FEA has now completed its analysis of the comments and statements submitted in this proceeding on the proposal to promulgate new regulations designed specifically to cover the prices of natural gas liquids and products produced from natural gas liquids, including propane, and is today adopting new regulations on this subject, to be effective January 1, 1975.

Action on all other revisions to the price regulations proposed in the September 10 Notice is deferred until a later date. However, those possible revisions continue to be under active consideration by FEA for decision in this proceeding.

I. *Background.* In proposing to adopt new regulations designed specifically to cover natural gas liquids and natural gas liquid products, including propane, the FEA in its September 10 Notice outlined the basis for its statutory authority for such regulations and indicated that the refiners' price rules of the FEA are not well-suited for regulating prices of liquid products produced from natural gas because of the differences between the operations of a gas plant and a refinery.

The comments received in this proceeding have underscored those differences between gas processing and crude oil refining, and have made even more apparent the difficulty of formulating generally applicable regulations for a very complex sector of the petroleum industry. In the regulations adopted today, the FEA seeks to apply a set of rules to this sector of the industry which is as simple and understandable as possible. The FEA is fully aware, however, that these new regulations could have an unanticipated impact on various entities and interests. Accordingly, although the regulations issued today will provide the basic framework for FEA regulation of prices of natural gas liquids and natural gas liquid products, the FEA is aware that revisions to these regulations may well be called for.

A principal aspect of the regulations adopted today is that they serve to allocate costs of producing propane and other natural gas liquid products to the prices which may be charged for those products, consistent with the provisions concerning propane price regulations of § 5(b)(11) of the Federal Energy Administration Act of 1974 (Pub. L. 93-275). Although this approach has the advantages of permitting all natural gas royalty owners, producers and processors to be treated on an equivalent basis, and of avoiding the general non-cost justified price increases that were proposed in the September 10 Notice, it necessarily involves price disparities because of the differing costs of crude oil and natural gas.

The alternative to a cost-based price regulatory system would be a system of administered prices at various levels of distribution. Under such a system, prices could be established for natural gas liquid products that would approximate the prices of crude petroleum derived products, on a BTU equivalency basis. To the extent that demand for natural gas liquid products is exaggerated by their relatively low prices in comparison with similar products produced from crude oil, such a price system could be expected to return demand to more normal levels. Such a system would also minimize the price disparity problem, which is particularly acute in the marketing sector of the propane industry. Single prices at given levels of distribution would, however, necessarily involve inequities for producers and processors having different costs, and those with the lowest costs, might be in a position to reap "windfall" profits. Further, in order for any administered ceiling price system at various levels of distribution to stimulate additional supplies, the price level that was established would have to be at or near the level needed to provide sufficient incentive for additional production, which would be

a level not justified on the basis of costs for most existing production.

As the foregoing summary indicates, there is no single ideal solution to the regulation of natural gas liquid prices, and the regulations adopted by the FEA today are a necessary compromise among the conflicting considerations which must be taken into account. As stated in the September 10 Notice, the fundamental objective is to permit prices that will be as low as reasonably possible without adversely affecting the availability of the product. The adverse effects of price disparities stemming from the differing costs of crude oil and natural gas on the distribution sector of the industry, and the added demand for natural gas liquid products priced at less than the prices for BTU equivalent crude petroleum derived products, were also among the problems adverted to by the FEA in its September 10 Notice. A further important consideration in this proceeding is that the FEA must ensure, to the maximum extent practicable, that its regulations do not have an undue adverse impact on any particular segment of the industry, and that established relationships and operations in the industry are not unnecessarily disrupted.

The principal features of the revised cost-based system with respect to the pricing of natural gas liquids being adopted today are: (1) The continuation of May 15, 1973 as the reference point from which increased costs and lawful prices are to be determined, but with an adjustment of May 15, 1973 selling prices of natural gas liquid products at the first sale level to at least 8.5 cents per gallon for propane, 9 cents per gallon for butane, and 10 cents per gallon for natural gasoline; (2) provision for the addition of up to 0.5 cents per gallon to May 15, 1973 selling prices to reflect increased non-product costs incurred in processing natural gas liquids; (3) provision for the addition of an increment to May 15, 1973 selling prices to account for actual increased cost of natural gas shrinkage attributable to the production of natural gas liquids since that date; (4) provision for the increased costs attributable to propane to be applied selectively among classes of purchaser by refiners, gas processors, and resellers in determining propane prices for sales to different classes of purchaser; (5) a requirement that refiners who process natural gas liquids exclude revenues which represent recovery of increased costs of crude oil from the revenues received in the sale of natural gas liquid products, for the purpose of determining net-back payments to royalty owners or producers; and (6) a price rule for natural gas liquids extracted in gas processing facilities constructed after the effective date of these regulations which provides an incentive for the construction of such facilities by permitting somewhat higher prices to be charged for products produced in new plants. The FEA is also soliciting comments on an appropriate price incentive for the expansion of existing gas processing facilities. At the same time, the FEA is issuing an emergency amendment to its allocation regulations to govern the use of propane as a refinery fuel, to insure that undue volumes of propane are not consumed for this purpose.

II. *Definitions and applicability.* As indicated in the September 10 Notice, the application of price rules to natural gas liquids is complicated by the fact that a price for natural gas liquids is typically not determined until the natural gas liquid products are sold separately—with royalty owners, producers, and gas processors then receiving portions of the sales revenues as determined by contractual arrangement.

In order to clarify the applicability of FEA price regulations to these various transactions, two new definitions have been adopted. "First sale" is used to refer to the first transaction with respect to which a specified per unit (*e.g.*, cents-per-gallon) price is determined. "Net-back sale" is used to refer to transactions with respect to which a specified per unit price is not determined, but as to which the transferor of the product is entitled to receive a percentage of the ultimate sales revenues of the product or products involved. These new definitions are to make clear that FEA regulations apply to all transactions—both "first sales" and "net-back sales."

As to "net-back sales," entities such as royalty owners, producers, and gas processors may not receive greater "net-back" revenues per gallon than were received on May 15, 1973, unless the related "first sale" prices of the natural gas liquid products, upon which the amount of the net-back revenues are based, are increased above their May 15, 1973 levels pursuant to the regulations adopted today, or unless the contractual terms are revised to afford a larger percentage net-back. The FEA has determined that it would be administratively impracticable to seek to regulate, in effect, the various terms of the many contractual arrangements under which "net-backs" are determined. Accordingly, FEA regulations will not address the manner in which the net-back revenues are allocated between parties, except to provide specifically that the manner in which net-back revenues are allocated shall not constitute a basis upon which a first sale price may be increased.

The new Subpart K of Part 212 adopted today applies to all sales other than resales of natural gas liquids and natural gas liquid products by all entities, including producers, royalty owners, gas plant operators, and refiners. The definition of "refiner" set forth in § 212.31, which includes those entities which refine crude oil and which process natural gas to obtain natural gas liquids or natural gas liquid products, has not been changed. However, the applicability sections of Subpart E (Refiners) and Subpart K (Natural Gas Liquids) provide that where a refiner that refines crude oil and processes natural gas is involved, the provisions of Subpart K will be applied to the refiner's gas processing activities in order to calculate the increased product and nonproduct costs attributable to natural gas liquids and natural gas liquid products, which will then be used, together with increased costs determined under Subpart E for products refined derived from crude oil, to determine the lawful selling prices for the refiner's total volumes of propane, butane, and natural gasoline, and for any covered products which are produced from propane, butane or natural gasoline.

III. *Adjusted May 15, 1973 prices.* May 15, 1973 is the date to which reference is made under FEA regulations in determining lawful prices for the sale of all covered products. This is done, in general, by use of those product costs incurred on May 15, 1973, or during the month of May, 1973, as the costs against which current product costs are measured, for purposes of determining the amount of increased product costs. The amount of increased product costs may then be applied to May 15, 1973 prices, to determine current lawful selling prices. This method of price determination serves, in general, to preserve a seller's May 15, 1973 margin (*i.e.*, the difference between May 15, 1973 product costs and May 15, 1973 selling prices) and to provide for a dollar-for-dollar pass through of increased product costs.

Originally, this May 15, 1973 date was chosen by the Cost of Living Council ("Council") for use in that part of its Phase IV petroleum regulations which was applicable to refiners. The Phase IV regulations were implemented by the Council in August, 1973. Upon review of the period which preceded the initiation of the Phase IV controls, the Council determined that the month of May, 1973 represented the most recent relatively stable time period during which market forces appeared to have been operating relatively free of the effects of price controls, particularly with respect to crude oil prices. Accordingly, May was chosen as the most appropriate reference point to determine historical margins under a system of price controls designed to "freeze" prices at a time that approximated free market conditions, and to allow a dollar-for-dollar pass through of increased product costs, incurred since that time. Although another date, January 10, 1973, was initially selected as a basis for the historical margins under the price regulations applicable to resellers and retailers, May 15, 1973 was ultimately selected as the best single date on which to base the price controls applicable to all sectors of the petroleum industry.

In the case of natural gas liquids, however, the FEA has concluded that May 15, 1973 selling prices of individual firms do not in some cases reflect a stable price situation based on relatively free market conditions, nor do they necessarily reflect historical margins. Propane prices, for example, ranged between 4 and 22 cents per gallon on May 15, 1974. This 18 cent spread in prices represented

a substantial departure from more typical market conditions, and reflected the fact that some firms had changed their prices, while others had not. The price spread for propane in August, 1971, for example, was only 6.5 cents per gallon, and reflected a more normal market situation. In many cases the low May 15, 1973 prices of certain sellers were in large part the result of economic controls that began under the Council's Phase I freeze of August, 1971.

The FEA also recognizes that May 15, 1973 propane prices reflect a seasonal demand reduction for that product, in many instances. To date, the FEA has received several requests for exceptions to the price regulations, citing the inequity of determining current lawful prices on the basis of atypically low prices that were in effect on May 15, 1973, for some sellers, but not for others.

The FEA has determined that the arithmetic average of the prices for which some fifty firms were selling propane on May 15, 1973 represents a price level that is more representative for purposes of determining allowable prices, than are the individual prices of each firm. Therefore, those firms that were selling at lower prices than the arithmetic average price, which is more representative of the essentially free market prices upon which the regulations are intended to be based, will be permitted to use an adjusted "free market" May 15, 1973 price, for purposes of FEA price regulations.

The FEA has concluded that a conservative but appropriate adjusted May 15, 1973 price for propane, which may be used by any firm in lieu of its actual May 15, 1973 selling price for propane, is 8.5 cents per gallon. This figure is based in part on the arithmetic average of the prices of some fifty firms for propane on May 15, 1973, which was 9.03 cents per gallon. Also, the Cost of Living Council collected comprehensive data on the selling prices of propane in August, 1973. Since all prices were frozen on June 13, 1973, by the Council, and since propane prices typically do not increase in summer months, the arithmetic average August price of 8.91 cents per gallon should also be indicative of average May 15, 1973 prices. However, the price range by August had been reduced to 11.7 cents per gallon, which further indicates that prices were in a state of transition on May 15, 1973.

Permitting the use of this adjusted May 15, 1973 "free market" price for propane is analogous to the crude oil ceiling price regulation, which does not limit each producer of crude oil to a price based on the price actually charged by that producer in sales of its crude oil on May 15, 1973. Rather, producers' prices for domestic crude oil are based on "the highest posted price * * * [on] May 15, 1973, for that grade of crude petroleum at that field * * *" (10 CFR 212.73(b)).

Thus, in order to obviate the necessity of dealing with this problem through exceptions on a case-by-case basis, and in light of the fact that average prices for propane were at a level of somewhat more than 8.5 cents per gallon on May 15, 1973, the FEA has determined that, in calculating the weighted average price at which propane was lawfully priced in transactions on May 15, 1973, for use in the price rule, a seller of propane in a first sale transaction may use the higher of its actual weighted average selling price per gallon on that date, or 8.5 cents per gallon. This provision should help insure that all processors of natural gas will have margins comparable to historical levels—thus providing a continuing incentive to produce natural gas liquid products.

The FEA has further determined that, in view of the fact that prices for butane and natural gasoline have historically exceeded the price of propane by an average of 0.5 cents per gallon for butane and 1.5 cents per gallon for natural gasoline, the May 15, 1973 prices which may be used for these two products for purposes of the price regulations will be the higher of the actual price on that date for each product, or 9 cents per gallon for butane and 10 cents per gallon for natural gasoline.

These provisions with respect to adjusted May 15, 1973 prices are intended to remove inequities that have resulted from non-representative May 15, 1973 prices. Although not intended primarily as a measure to reduce current price disparities, this provision should also tend to alleviate the price disparity problem in the marketing sector of the propane industry.

IV. *Non-product cost allowance.* The FEA recognizes that processors of natural gas liquids may be incurring increased costs of operations, such as rent, labor, interest, etc., which cannot be accounted for as increased natural gas shrinkage costs. The FEA does not, however, have sufficient data to determine the extent of these cost increases, on an average industry-wide basis.

The FEA has concluded that the differences in gas plant operations from those of crude oil refinery operations justify a somewhat different treatment of non-product costs. Particularly in view of the large number of gas plants and the fact that many of them are not under the ownership of a single legal entity, the FEA has concluded that regulations to provide for the computation and the pass-through of increased non-product costs on a plant-by-plant, or even a firm-by-firm basis, in the manner of the recently amended non-product cost pass-through regulations which are generally applicable to refiners (§ 212.87), is impracticable and would present an unreasonable administrative burden if applied to all gas plants. In view of the foregoing, the FEA has determined that actual increased non-product costs of operating gas processing plants may be passed through in prices charged for natural gas liquids, provided that not more than 0.5 cents per gallon will be permitted to be added to the May 15, 1973 selling price of natural gas liquid products, in recognition of increased non-product costs incurred since that date. Gas plant operators will be required to maintain records to justify non-product cost increases, just as they will be required to do with respect to product cost increases, and the pass through of increased non-product costs by refiners that process natural gas and refine crude oil will be subject to the profit margin limitations of Subpart E.

Any firms that have increased non-product costs of gas processing that would justify a greater price increase than 0.5 cents per gallon may request permission to charge higher prices, on a case-by-case basis through the exceptions process.

V. *Increased cost of natural gas shrinkage.*—For natural gas processing, the equivalent of increased product cost is the increase in the cost of the "shrinkage" which occurs in the natural gas stream from which the liquids are extracted, as a result of the extraction of the liquids. The "cost" of such shrinkage is the reduction in sales revenues received from the natural gas because of the reduced gas volume or BTU content of the gas after processing. Where the price permitted to be charged for natural gas has increased since May 15, 1973, an increased cost of "shrinkage" resulting from extraction of the liquids has been the result. The FEA has determined that this cost increase is the equivalent of increased product cost, and shall therefore be permitted to be passed through in the prices charged for natural gas liquid products so that the economic incentive to remove the liquids from the natural gas stream will not be lost.

The cost of shrinkage shall be computed based upon the contractural terms in effect for the sale of natural gas during the time period for which shrinkage cost is being measured. Thus, in those cases where the natural gas processed is or was sold under contracts at prices based on BTU value, the cost of "shrinkage" is to be computed based on the reduction in sales revenues from natural gas because of reduced BTU value attributable to gas processing, and where the natural gas processed is or was sold under contracts at prices based on the volume of gas, the cost of "shrinkage" is to be computed based on the reduction in sales revenues from natural gas sales because of reduced volume attributable to gas processing.

Thus, any selling prices for natural gas liquid products which exceed the adjusted May 15, 1973 price for the product, plus the 0.5 cents per gallon allowed for increased nonproduct costs, must be justified by increased natural gas shrinkage costs. The pass-through of increased shrinkage costs will permit continuing price disparities, particularly as long as the wide disparity in prices being charged for interstate sales and for intrastate sales of natural gas persists. However, as was noted above, this type of regulation will permit the full cost of processing higher priced natural gas to be passed through and, to the extent that

the prices of natural gas begin to move closer to the prices of crude oil, on a BTU basis, the problem of price disparities between crude oil derived products and natural gas liquid products will be alleviated, without the need for any action by FEA.

Gas plant operators will be required to maintain records to establish the amount of increased shrinkage costs attributable to the gas they process. The total increased shrinkage cost attributable to the entire volume of natural gas processed to obtain a given volume of natural gas liquids may be attributed to the prices charged for those liquids in a first sale, without regard to which entity actually retains title to the natural gas, and therefore "incurs" an increased shrinkage cost by virtue of reduced natural gas sales revenues. This approach avoids the complexities inherent in attempting to allocate the shrinkage costs pursuant to the wide variety of contractual terms that are in existence, and is consistent with the application of a "first sale" price rule which leaves the parties to "net-back" sale arrangements free to allocate the revenues from first sales of natural gas liquid products as they see fit.

Because the amount of increased shrinkage costs and volumes of natural gas liquids to which those costs are attributable are relatively stable, such costs may be added to prices on a current basis. This will contribute to administrative simplicity. Gas processors will simply be required, for each month, to establish that the increased shrinkage costs for that month justify the prices charged in that month. Increased shrinkage costs not recovered in one month may be carried forward for recovery in a subsequent month.

Where different volumes of natural gas processed in the same gas plant are subject to separate contracts for sale, and have different increased shrinkage costs, the increased costs attributable to a particular volume of natural gas may be allocated directly to the prices charged for the liquids extracted from that volume of gas, or the total amount of increased shrinkage costs attributable to all natural gas processed in a plant may be allocated to the total volume of liquids extracted from that gas. Whichever method of cost allocation is used, no more than a volumetrically proportional share of the available increased costs may be allocated to prices charged for propane.

VI. *Unequal application among classes of purchaser of increased costs to determine prices for propane.* FEA price regulations require generally that the amount of increased product costs used in determining prices charged for a particular product be equally applied to the May 15, 1973 selling price to each class of purchaser of that product. In the September 10 Notice, the FEA proposed a relaxation of this requirement, for all products, in order to restore a measure of pricing flexibility that is not currently available under the price regulations. The September 10 Notice proposed to eliminate the equal application requirement, except to the extent that it is necessary to protect the independent sector of the market. The FEA has not yet completed its analysis of this proposal as to the pricing of covered products in general, but it has concluded that a revision to its regulations in this regard for propane prices is appropriate at this time, in light of the special considerations which affect the prices of this product.

In revising the equal application of increased cost requirement for propane prices, the FEA will, as proposed in its September 10 Notice, afford protection for independent marketers by requiring that the smallest increment of increased product cost be applied to prices charged to any class of purchaser that includes an independent marketer. In addition, that same restriction will be extended to include prices charged in sales to any class of purchaser that includes residential users.

Although no limitation was proposed on the extent of the difference in amounts of increased product costs that could be applied to the May 15, 1973 selling price to different classes of purchaser under this revision, the FEA has concluded that there should be such a limitation, at least initially. Accordingly, under the new regulation, the greatest amount of increased product cost added to the May 15, 1973 selling price of propane to a particular class of purchaser may not exceed the smallest amount of increased product cost added to the May 15, 1973 selling price of propane to any other class of purchaser by more than 100 percent. Thus, if a seller had May 15, 1973 weighted average selling prices of 9 cents per gallon to a class of purchaser that included an independent marketer, and of 11 cents per gallon to another class of purchaser, and that seller added increased costs of 5 cents per gallon to determine a current selling price of 14 cents per gallon to the class of purchaser that included an independent marketer, the highest amount of increased costs that it could add to its May 15, 1973 selling price to the other class of purchaser would be 10 cents per gallon, which would result in a selling price in this example to that class of purchaser of 21 cents per gallon.

These revisions to the price regulations for propane are intended to help preserve reasonable price levels for propane used by residential users, and at the same time to help forestall some of the excessive demand for this product from so-called "non-traditional" users, which could be intensified by the availability to such users of the product at prices which are based solely on natural gas prices, and which would therefore typically be less than prices for BTU equivalent crude petroleum derived fuels. This provision should also serve to make additional propane available through imports, by facilitating the pass through of the higher cost of imported product, especially to industrial and utility users of propane, which are in a better position to meet the higher cost of imported product than are residential users.

VII. *Separate calculation of revenues from natural gas liquid product sales by refiners that refine crude oil and process natural gas.* The FEA has become aware of the significant problem currently faced by independent natural gas processors that do not refine crude oil in obtaining new supplies of natural gas for processing. Since natural gas producers and royalty owners traditionally receive a percentage of the selling price of the liquid products, they seek to commit their natural gas to the processor that has the highest lawful selling price for those products, in order to maximize their return. And since those refiners that also refine crude oil are permitted to determine selling prices for products under a method that reflects the increased cost of crude oil, while independent natural gas processors do not have increased crude oil costs, the lawful selling prices of such refiners are generally higher than those of natural gas processors.

The FEA is therefore amending its regulations in order specifically to provide that the revenues received in sales of natural gas liquid products shall be reduced by the amount of increased crude oil costs that were recovered in such sales, for purposes of determining net-back revenues.

This provision necessarily overrides any contractual provisions that are inconsistent with it. It should be noted, also, that any contractual provisions that depend upon "posted" or "market" prices would be generally inoperative, since the operation of the FEA cost-based price regulations replaces "market prices" with maximum lawful prices, which depend upon the differing costs attributable to various sellers.

VIII. *Prices for natural gas liquid products from gas plants that have been placed in operation since May 15, 1973, and for new gas plants constructed after the effective date of this regulation.* Prices for natural gas liquids products produced in gas plants that were placed in operation after May 15, 1973, and therefore did not have a May 15, 1973 selling price, may be computed on the basis of the adjusted May 15, 1973 prices for natural gas liquid products specified by these regulations. In addition, increased natural gas shrinkage costs may be computed on the basis of a May 15, 1973 selling price for natural gas of 23 cents per thousand cubic feet (MCF) for gas with a BTU content of 1000 BTUs per cubic foot (CF), which represents the average price of natural gas sold in interstate sales on that date.

With respect to gas plants on which construction is begun after the effective date of this regulation, the same May 15, 1973 imputed price for natural gas shall be used for computing increased shrinkage cost. However, higher imputed May 15, 1973 prices of 12 cents per gallon for propane, 12.5 cents per gallon for

butane, and 13.5 cents per gallon for natural gasoline may be used. The additional 3.5 cents per gallon with respect to May 15, 1973 prices, to be used in computing lawful prices for natural gas liquid products produced in new gas plants is intended to provide an incentive for the construction of new plants, and thereby to maximize supply. Comments are requested with respect to this provision of the regulations, and if this incentive is not regarded as sufficient, data to support the need for any further incentive should be submitted.

The maximization of extraction of liquids from existing plants, through providing price incentives for plant modernization and expansion, is also an objective of the FEA. The FEA does not have on hand sufficient data to determine either the criteria by which increased extraction can be appropriately measured, or what the needed incentives to achieve further liquid extraction would be. It may be possible, for example, to provide by regulation that where the percentage of propane extracted from the natural gas stream by a particular gas plant is increased by a certain percentage, a special additional price per gallon of product produced in that plant could be charged. Comments are also requested on this issue.

IX. *Relationship to allocation regulations.* The cost-based regulations adopted today continue to relate the prices of natural gas liquid products to the prices of the natural gas from which they are extracted. To the extent that natural gas prices are regulated at less than the equivalent BTU prices of crude oil, natural gas liquid products will be priced at levels which represent generally a lower price per BTU than fuels derived from crude petroleum.

The argument that natural gas liquid prices must be priced on a BTU equivalence basis with crude oil derived products, in order to avoid additional price-stimulated, demand on a diminishing quantity of natural gas liquid products, is a forceful one. The FEA has concluded, however, that in the present circumstances the allocation regulations offer the most appropriate method of dealing with this problem.

One aspect of this problem that was repeatedly raised in this proceeding was the assertion that refiners would turn to propane for use as a refinery fuel, unless propane were permitted to be priced at the same level per BTU as fuels derived from crude petroleum.

The authority of the FEA to allocate petroleum products is fully adequate to limit this, however. Refiners, like other industrial users of fuel, are subject to limitations in their use of propane as a source of fuel. An appropriate regulatory changes is being issued, on an emergency basis, to prevent the possibly excessive use of propane as refinery fuel.

The regulations issued today are predicated in large part on the proposition that natural gas liquids and natural gas liquid products are being processed and distributed in a manner that reflects historical supplier-purchaser relationships. Should it appear that new relationships are being created with the intent to avoid the impact of the price regulations, revision to the allocation regulations, or other appropriate steps by FEA, will be taken.

WRITTEN COMMENT PROCEDURES

Interested persons are invited to submit data, views or arguments with respect to the specific matters concerning incentives for new and expanded gas processing facilities upon which comments have been solicited to Executive Communications, Federal Energy Administration, Box BO, Washington, D.C. 20461. Ten copies of each comment should be submitted, and should be identified on the outside envelope and on documents submitted to Executive Communications with the designation "Further Comments on Mandatory Petroleum Price Regulations." All comments received by January 15, 1975, and all relevant information will be considered by FEA in this connection.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159; Federal Energy Administration Act of 1974, Pub. L. 93-275; E.O. 11790, 39 FR 23185).

In consideration of the foregoing, Part 212 of Chapter II, Title 10 of the Code of Federal Regulations, is amended as set forth below, effective January 1, 1975.

Issued in Washington, D.C., December 19, 1974.

ROBERT E. MONTGOMERY, Jr.,
General Counsel,
Federal Energy Administration.

1. Section 212.31 is amended in the definition of "producer" to read as follows:

§ 212.31 Definitions.

* * * * *

"Producer" means a firm or that part of a firm which produces crude petroleum or natural gas, or any firm which owns crude petroleum or natural gas when it is produced.

* * * * *

2. Section 212.81 is revised to read as follows:

§ 212.81 Applicability.

This subpart applies to each sale of a covered product which is purchased or refined by a refiner, except as provided in Subparts F and K.

3. Section 212.83 is amended in paragraph (c) (1) (iii) and is further amended by adding paragraphs (c) (1) (v) to read as follows:

§ 212.83 Allocation of refiners' increased costs.

* * * * *

(c) *Allocation of increased product costs*—(1) *General rule.* * * *

(iii) *Special propane rule.* Notwithstanding the provisions of § 212.83(c) (1) (ii) and § 212.83(e), a refiner in computing base prices for propane for the twelve month period of August 1, 1974 through July 31, 1975:

(A) May not apportion to propane a greater percentage of increased cost of crude petroleum purchased or landed in the twelve month period July 1, 1974, through June 30, 1975, than the percentage that the volume of propane sold during the twelve month period August 1, 1974, through July 31, 1975, which was produced by that refiner from crude petroleum is to the total volume of all products (including other than covered products) sold by it during the same twelve month period, which were produced by that refiner from crude petroleum. Notwithstanding § 212.83(b), for purposes of this special propane rule, cost of crude petroleum shall not include the cost of natural gas liquids; and

(B) May apportion to propane the increased cost of propane purchased or landed in the twelve month period of July 1, 1974, through June 30, 1975; and

(C) May apportion to propane the increased product costs attributable to propane produced from natural gas as determined pursuant to the provisions of § 212.146 of Subpart K of this part; and

(D) May not apportion to propane any increased product costs incurred prior to July 1, 1974, and not recovered through July 31, 1974.

* * * * *

(v) *Exception to equal application rules for propane.* Notwithstanding the provisions of paragraphs (c) (1) (i) and (ii) of this section, a refiner may comply with the provisions of this paragraph by applying unequal amounts of increased costs to the weighted average May 15, 1973 selling price of propane to classes of purchaser of propane, *provided,* That the highest amount of increased cost applied to the weighted average May 15, 1973 selling price to any class of purchaser shall not exceed by more than 100 percent the amount of increased cost applied to the weighted average May 15, 1973 selling price to any other class of purchaser, and, *provided further,* That no greater amount of increased cost shall be applied to the weighted average May 15, 1973 selling price of propane in sales to any class of purchaser which includes either an independent marketer, as defined in § 211.51 of this Chapter, or a purchaser that uses the product for residential use, as defined in § 211.51 of this Chapter, than is applied to the weighted average May 15, 1973 selling price of propane in sales to any other class of purchaser.

5. Section 212.93 is amended by redesignating paragraphs (f) and (g) as (g) and (h), respectively, and by adding a new paragraph (f) to read as follows:

§ 212.93 Price rule.

* * * * *

(f) *Exception to equal application rules for propane.* Notwithstanding the provisions of paragraph (e) above, a seller may comply with the provisions of this section by applying unequal amounts of increased costs to the weighted average May 15, 1973 selling price of propane to classes of purchaser of propane, *provided,* That the highest amount of increased

cost applied to the weighted average May 15, 1973 selling price to any class of purchaser shall not exceed by more than 100 percent the amount of increased cost applied to the weighted average May 15, 1973 selling price to any other class of purchaser, and *provided further*, That no greater amount of increased cost shall be applied to the weighted average May 15, 1973 selling price of propane in sales to any class of purchaser which includes either an independent marketer, as defined in § 211.51 of this Chapter, or a purchaser that uses the product for residential use, as defined in § 211.51 of this Chapter, than is applied to the weighted average May 15, 1973 selling price of propane in sales to any other class of purchaser.

* * * * *

6. A new Subpart K is added to Part 212 to read as follows:

Subpart K—Natural Gas Liquids

Sec.

AUTHORITY: (Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159; Federal Energy Administration Act of 1974, Pub. L. 93-275; E.O. 11790, 39 FR 23185).

Subpart K—Natural Gas Liquids

§ 212.141 Applicability and relationship to other Subparts.

(a) *Scope.* This subpart applies to all sales of natural gas liquids and natural gas liquid products, including transfers between affiliated entities, by all firms, including gas plant operators, producers of natural gas, natural gas royalty owners, and refiners except sales by resellers or retailers, which are subject to Subpart F of this part.

(b) *Relationship to other Subparts—*(1) *Gas plant operators.* Refiners that only refine liquid hydrocarbons from oil and gas field gases and do not refine crude petroleum shall determine their maximum lawful prices pursuant to this Subpart K and are not also subject to Subpart E.

(2) *Crude oil refiners which are also gas plant operators—*(i) *General.* Refiners that refine liquid hydrocarbons from oil and gas field gases, and also refine crude petroleum, shall determine their May 15, 1973 selling prices and increased costs for natural gas liquids and for natural gas liquid products produced in gas plants pursuant to this subpart, but shall determine their maximum lawful selling prices pursuant to Subpart E.

(ii) *Calculation of increased product costs.* Such refiners shall calculate the increased product costs of all natural gas liquids (except natural gas liquids which are separated from natural gas at the well head of an oil well, and purchased as crude oil) and the increased product costs attributable to natural gas liquid products pursuant to §§ 212.146 and 212.147 of this subparrt, and shall add the amount of increased product costs so determined to the amount of increased product costs incurred in each month of measurement and determined to be allocable to other than special products under the refiner's cost allocation formulae of § 212.83(c)(1), provided that the amount of such increased product costs allocable to propane prices is limited pursuant to the provisions of § 212.147(c) and § 212.83(c)(1)(iii).

(iii) *Calculation of increased non-product costs.* Such refiners shall calculate increased non-product costs attributable to natural gas processing pursuant to § 212.145, and shall add the amount of increased non-product costs so determined to the amount of increased non-product costs incurred in each month of measurement and determined to be allocable to prices charged for covered products pursuant to § 212.87(b), provided that the inclusion of such increased non-product costs determined pursuant to § 212.145 in prices charged by such refiners shall constitute the charging of an allowable price in excess of base price which will make such refiners subject to the profit margin limitation of § 212.82(d).

(c) *Sales of ethane.* This subpart does not apply to sales of ethane.

§ 212.142 Definitions.

For purposes of this subpart—

"Cost of natural gas shrinkage" means the reduction in selling price per thousand cubic feet (MCF) of natural gas processed, which is attributable to the reduction in volume or BTU value of the natural gas resulting from the extraction of natural gas liquids, as determined pursuant to the contract in effect at the time for which cost of natural gas shrinkage is being measured, and under which the processed natural gas is sold.

"First sale" means, with respect to natural gas liquids or natural gas liquid products, the first transfer for value to a class of purchaser for which a fixed price per unit of volume is determined.

"Gas plant" means a facility in which natural gas liquids are separated from natural gas, or in which natural gas liquids are fractionated or otherwise separated into natural gas liquid products, or both.

"Gas plant operator" means any firm, including a gas plant owner, which operates a gas plant and keeps the gas plant records.

"Gas plant owner" means any firm with an ownership interest in a gas plant.

"Groundbreaking" means the date on which the actual physical construction of a gas plant is undertaken.

"Natural gas liquids" means a mixed hydrocarbon stream containing, in whole or in substantial part, mixtures of ethane, butane (iso-butane and normal butane), propane or natural gasoline.

"Natural gas liquid products" means the separate products derived from natural gas liquids, including butane (iso-butane and normal butane), propane, propane-butane mixtures, and natural gasoline, but not ethane.

"Net-back sale" means, with respect to natural gas liquids, any transfer for value to a class of purchaser for which a percentage of the revenues from the first sale of natural gas liquids or natural gas liquid products is received.

§ 212.143 General price rule.

(a) *First sale.* A royalty owner, producer, gas plant owner, gas plant operator or other entity may not charge to (or receive from) any class of purchaser a price in excess of the weighted average price at which natural gas liquids or natural gas liquid products were lawfully priced in transactions with the class of purchaser concerned on May 15, 1973, except to the extent permitted by this subpart.

(b) *Net-back sale.* A royalty owner, producer, gas plant owner, gas plant operator, or other entity that transferred natural gas liquids or natural gas liquid products to any class of purchaser on May 15, 1973, in a net-back sale shall not charge (or receive) per gallon revenues for such natural gas liquids or natural gas liquid products in excess of the per gallon revenues received in such net-back sales on May 15, 1973, except to the extent that the first sale price upon which the net-back amount is determined is permitted to increase above its May 15, 1973 level pursuant to this subpart, and except to the extent that the method for determining the amount of the net-back is changed, provided, however, that any change in the method of determining the amount of any net-back shall not constitute an increased product cost or an increased non-product cost.

§ 212.144 Adjusted May 15, 1973 first sale price.

(a) *Natural gas liquid products.* For purposes of determining lawful prices of natural gas liquid products in a first sale pursuant to this subpart, a firm may use, in lieu of the weighted average price at which natural gas liquid products were lawfully priced in first sale transactions with a class of purchaser on May 15, 1973, prices of not more than $.085 per gallon for propane, not more than $0.09 per gallon for butane, and not more than $.10 per gallon for natural gasoline.

(b) *Natural gas liquids.* For purposes of determining lawful prices of natural gas liquids in a first sale, if the first sale price was determined on May 15, 1973 by reference to first sale prices of natural gas liquid products, less a specified percentage or amount to take into account the costs of further processing needed before the natural gas liquids could be sold separately as natural gas liquid products, a firm may use, in lieu

of the actual May 15, 1973 selling prices for natural gas liquid products which were used to determine first sale prices of natural gas liquids on May 15, 1973, first sale prices of not more than $.085 per gallon for propane, not more than $.09 per gallon for butane and not more than $.10 per gallon for natural gasoline, provided that the first sale price of natural gas liquids shall be reduced by same percentage or amount from these adjusted first sale prices for natural gas liquid products as it was from the actual May 15, 1973 selling prices of natural gas liquid products, which served as the reference for determining the May 15, 1973 first sale price of natural gas liquids.

(c) *Imputed May 15, 1973 first sale prices for natural gas liquid products from new gas plants where groundbreaking did not occur until January 1, 1975, or thereafter.* For purposes of determining lawful prices of natural gas liquid products produced in a gas plant where groundbreaking did not occur until January 1, 1975, or thereafter, a firm may use as the weighted average price at which natural gas liquid products were lawfully priced in first sale transactions on May 15, 1973, prices of not more than $.12 per gallon for propane, not more than $.12.5 per gallon for butane, and not more than $.13.5 per gallon for natural gasoline.

§ 212.145 Increased non-product costs.

The first sale price of natural gas liquid products may be increased by an amount which is not in excess of $.005 per gallon in excess of the amount otherwise permitted to be charged pursuant to the provisions of this subpart, to reflect non-product cost increases which have been incurred since May 15, 1973; *provided,* That, records are maintained to show the increased non-product costs attributable to gas plant operations, under the customary accounting procedures generally accepted and historically and consistently applied by the firm concerned, are sufficient to justify the amount of the price increase on a dollar-for-dollar pass through basis.

§ 212.146 Increased product costs.

(a) The first sale price of natural gas liquids or natural gas liquid products may be increased in each month as provided in § 212.147 to reflect, on a dollar-for-dollar basis, increased product costs since May, 1973 attributable to the production of such natural gas liquids or natural gas liquid products.

(b) Increased product costs are (1) the difference between the weighted average cost per gallon of natural gas liquids purchased in a first sale in the month of May 1973, and the weighted average cost per gallon of natural gas liquids purchased in a first sale in the current month multiplied by the number of gallons of natural gas liquids purchased in the current month, plus (2) the difference between the weighted average cost of natural gas shrinkage per thousand cubic feet (MCF) of natural gas processed in the month of May 1973, and the weighted average cost of natural gas shrinkage per thousand cubic feet (MCF) of natural gas processed in the current month, multiplied by the number of thousand cubic feet (MCF's) of natural gas processed in the current month.

§ 212.147 Allocation of increased product costs.

(a) *Exclusion of increased product costs attributable to ethane.* The total amount of increased product costs attributable each month to a given volume of natural gas shall be reduced each month by an amount equal to the product of the increased product costs multiplied by

$$\left(\frac{V_e^u}{V^u}\right),$$

where:

V^u=The total volume of all natural gas liquid products and ethane derived from that volume of natural gas and sold in the current month, and

V_e^u=The total volume of all ethane derived from that volume of natural gas and sold in the current month.

(b) *Aggregation of increased product costs.* Where increased product costs measured with respect to particular volumes of natural gas or natural gas liquids processed in a gas plant in a month are different, (i) the increased product costs measured with respect to a particular volume of natural gas may be allocated to the particular sales volumes of natural gas liquid products which is produced therefrom; or, in the alternative, (ii) the total amount of increased product costs measured with respect to the total amount of natural gas and natural gas liquids processed in a gas plant in a month may be allocated to the total sales volume of natural gas liquid products produced from all volumes of natural gas and natural gas liquids processed in that gas plant.

(c) *Increased product costs allocable to propane.* The total amount of increased product costs allocable to the price of propane derived from a particular volume of natural gas shall not exceed the amount of increased product cost determined pursuant to paragraphs (a) and (b) of this section to be attributable to that volume of natural gas and allocable to the sales volume of natural gas liquid products derived therefrom, multiplied by

$$\left(\frac{V_p^u}{V_n^u}\right),$$

where:

V_n^u=The total volume of all natural gas liquid products derived from that volume of natural gas and sold in the current month, and

V_p^u=The total volume of propane derived from that volume of natural gas and sold in the current month.

(d) *Allocation of increased product costs among classes of purchaser.* In computing maximum lawful prices for sales of natural gas liquid products other than propane, the amount of increased product cost allocable to such products pursuant to this section shall be equally applied to each class of purchaser. The total amount of increased product costs allocable to natural gas liquid products may be apportioned among natural gas liquid products, other than propane, in whatever amounts are deemed appropriate. In computing maximum lawful prices for sales of propane, unequal amounts of increased product costs may be applied to different classes of purchaser, *provided,* That the highest amount of increased product cost applied to the weighted average May 15, 1973 selling price to any class of purchaser shall not exceed by more than 100 percent the amount of increased product cost applied to the weighted average May 15, 1973 selling price to any other class of purchaser, and, *provided further,* That no greater amount of increased product cost can be applied to the weighted average May 15, 1973 selling price of propane in sales to any class of purchaser which includes an independent marketer, as defined in § 211.51 of this Chapter, or a purchaser that uses the product for residential use, as defined in § 211.51 of this Chapter, than is applied to the weighted average May 15, 1973 selling price of propane to any other class of purchaser.

(e) *Carry-forward of unrecovered increased product costs.* Increased product costs calculated pursuant to this section and not recovered in sales revenues in the current month may be carried forward for recovery in a subsequent month, *provided,* That such unrecovered increased product costs shall be allocated to prices as provided in this section, and, *provided further,* That to the extent any sales revenues in any current month recover in excess of the amount of increased product costs calculated pursuant to this section, such amounts shall be subtracted from the amount of increased product costs otherwise available to be allocated to prices in the following month.

§ 212.148 Increased product costs for natural gas liquid products from gas plants that began operation after May 15, 1973.

For purposes of determining increased product costs attributable to natural gas liquid products produced in a gas plant that began operation after May 15, 1973, a firm shall use a May 15, 1973 price of natural gas of 23 cents per thousand cubic feet (MCF) for 1000 BTU per cubic foot natural gas.

§ 212.149 Net-back calculations.

For purposes of calculating net-back revenues, revenues from sales of natural gas liquid products shall exclude any amounts that represent recoupment of increased cost of crude oil, provided for pursuant to Subpart E.

§ 212.150 Records required to be maintained.

Prices otherwise permitted to be charged pursuant to this subpart to reflect increased product costs and increased non-product costs shall not be charged unless records adequate to demonstrate such increased product costs

and increased non-product costs are maintained. The FEA will treat gas plant operators as responsible in the first instance for maintaining such records, without, however, relieving gas plant owners and other entities subject to these regulations of the responsibility for compliance with these regulations. Where one or more gas plants are under common ownership, the records required by this section may be kept in the aggregate for all of the gas plants concerned.

[FR Doc.74-30006 Filed 12-19-74;4:41 pm]

Title 10—Energy

[Ruling 1974-28]

INAPPLICABILITY OF THE "STRIPPER WELL LEASE" EXEMPTION TO GAS WELLS

Facts. Firm P produces crude petroleum and petroleum condensates, including natural gas liquids from Property A (as defined in 10 CFR 210.32). From Property B, Firm P produces natural gas and condensates, including natural gas liquids. State X, where both properties are located, has classified the production of Property A as production of an oil well from an oil reservoir, and the production of Property B as production of a gas well from a gas reservoir. Firm P, during the preceding calendar year, produced less than ten barrels per well per day of crude petroleum and petroleum condensates, including natural gas liquids, from Property A, and less than ten barrels per well per day of petroleum condensates, including natural gas liquids, were extracted from the natural gas produced from Property B.

Issue. May Firm P apply the "stripper well lease" exemption of 10 CFR 210.32 to Property A and Property B?

Ruling. Firm P may apply this exemption to Property A, which qualifies as a "stripper well lease" under § 210.32. Firm P may not apply the "stripper well lease" exemption to the production of natural gas liquids obtained from Property B, since that property does not qualify as a "stripper well lease" under § 210.32.

A stripper well lease is defined in § 210.32(b) as "a 'property' whose average daily production of crude petroleum and petroleum condensates, including natural gas liquids, per well did not exceed 10 barrels per day during the preceding calendar year."

The provisions of 10 CFR 210.32 specifically apply, therefore, only to a property which has a "production of crude petroleum and petroleum condensates, including natural gas liquids." Firm P may, therefore, apply the provisions of the stripper well lease exemption to the production of the property where "oil wells" are producing (whether or not there is production of associated gas or of casinghead gas), but may not properly claim the exemption for the natural gas liquid production of "gas wells" on a property, since these wells do not produce crude petroleum.

This interpretation of a stripper well lease comports with industry usage and the congressional intent in providing for a stripper well lease exemption in the Emergency Petroleum Allocation Act of 1973. The phrase "stripper well" has long been understood in the petroleum industry to refer only to a well which produces oil, or oil with associated gas. The "stripper well" concept, commonly measured at ten barrels per day, has never extended to gas wells, whose production of liquids is always marginal by definition.

The purpose of the Congress, in extending exempt status for the first sale of "stripper well" production in the Emergency Petroleum Allocation Act of 1973 (Pub. L. 93-159), (EPAA) was to assure economic viability and continued production of crude oil from marginal oil wells. The legislative history of this exemption reveals that Congress understood the "stripper well" concept in the same way that the oil industry applies the phrase, namely with reference to oil wells with such low production levels of crude oil that the producer received only a marginal return over cost of production.

Neither the Congress nor the FEA regulations intended to extend the "stripper well" language to encompass any production of "crude petroleum and petroleum condensates, including natural gas liquids" of wells which do not produce crude petroleum, for which the phrase "stripper well" has no real significance. The profitability of production of natural gas from a gas well depends principally on the volumes of gas produced and the price for which it is sold. The amounts of liquids associated with that gas, whether or not they are separated from the gas, would not, therefore, be the only appropriate factor to take into account in determining whether a price incentive was necessary to insure the continuation of gas production from a gas well.

The fact that gas well liquid production is not to be regarded as in an exempt status pursuant to § 210.32 is further shown by the anomalous results such an exemption would yield in connection with the processing of liquids from natural gas. If the stripper well lease provisions of § 210.32 were applicable to Firm P's gas property, Firm P would have an incentive to keep the volume of liquids ultimately recovered from the gas below ten barrels per day per gas well. The processing and recovery of liquids (predominately propane, butanes and natural gasoline) from gas production is an important source of the supply of these liquids, and ought not be discouraged by the producer's desire to sell fewer barrels of liquids in order to obtain an exempt "first sale" of those liquids. This result was never intended by the stripper well lease exemption. Further, it would be clearly unreasonable if the stripper well lease exemption were to be regarded as depending upon the existence, location, or efficiency of individual extracting or processing plants.

Thus, the first sale exemption of § 210.32 applies only to the production of oil wells, which produce crude petroleum and petroleum condensates, including natural gas liquids, and does not apply to gas wells which produce condensates, including natural gas liquids, since neither the purpose nor the language of the "stripper well lease" exemption can be regarded as extending to such production.

ROBERT E. MONTGOMERY, Jr.,
General Counsel,
Federal Energy Administration.

DECEMBER 19, 1974.

[FR Doc.74-29979 Filed 12-20-74;3:21 pm]

[Ruling 1974-29]

PRODUCTION WELLS FOR PURPOSES OF THE "STRIPPER WELL LEASE" EXEMPTION

Facts. Firm P, a producer of petroleum, produced during the preceding calendar year 150,000 barrels of crude petroleum and petroleum condensates, including natural gas liquids from 40 production wells located on Property A, as defined in 10 CFR 210.32. In addition, there were five injection wells in operation on that property last year. An injection well is one which is used to inject water, air, gas, steam or other materials into the ground to assist in the recovery of crude petroleum through producing wells. Wells which formerly produced crude petroleum may be used for injection purposes, or new wells may be drilled solely for the purpose of injecting materials into oil-bearing formations and reservoirs.

The average daily production per well from Property A was 10.27 barrels, based on the 40 production wells, whereas the average daily production per well would be 9.13 barrels if 45 wells, including the 5 injection wells, were used to calculate the average daily production figure.

Issue. Is an "injection" well a "well" for the purpose of determining whether the average daily production of a property was 10 barrels or less per well in the preceding calendar year, for purposes of the stripper well lease exemption of 10 CFR 210.32?

Ruling. No. Under the FEA regulations, the first sale of domestic crude petroleum and petroleum condensates, including natural gas liquids, produced from any stripper well lease, is exempt from the mandatory price and allocation regulations. A stripper well lease is defined as a property whose average daily production did not exceed 10 barrels per day per well during the preceding calendar year. "Average daily production" is further defined in 10 CFR 210.32(b) as:

> The qualified maximum total production of domestic crude petroleum and petroleum condensates, including natural gas liquids, produced from a property during the preceding calendar year, divided by a number equal to the number of days in that year times the number of wells which produce crude petroleum and petroleum condensates, including natural gas liquids, from that property in that year.

Thus, the FEA regulations by their specific language provide that only wells "which produce crude petroleum" are to be counted in calculating average daily production for the purpose of determining whether the stripper well lease exemption applies. While injection techniques help to "produce" crude petroleum, they are not wells which themselves "produce" crude petroleum. Therefore, wells which did not actually yield or produce crude petroleum during the preceding calendar year are not production wells for this purpose. Whether the nonproducing well was an "injection" well, a disposal well, a dry well, a spent well or a shut-in well will not change this result.

ROBERT E. MONTGOMERY, Jr.,
General Counsel,
Federal Energy Administration.

DECEMBER 19, 1974.

[FR Doc.74-29980 Filed 12-20-74;3:22 pm]

[Ruling 1974-27]

ALLOCATION OF REFINER'S INCREASED PRODUCT COSTS TO SALES VOLUMES

Facts. Firm A, a refiner subject to the Federal Energy Administration (FEA) Mandatory Petroleum Price Regulations, sells most of its covered products to domestic purchasers in arm's-length sales. Some of the covered products refined by Firm A, however, are consumed by A as refinery fuel, as other plant operating fuels, or as delivery vehicle fuel, some are transferred to Firm A's affiliated entities for further processing and ultimate sale as petrochemicals or other products not subject to FEA price regulations, and some are sold for export to points outside the United States.

Issue. How should Firm A allocate increased product costs under 10 CFR 212.83(c) with respect to these transactions?

Ruling. Firm A must include in its volume of covered products to which it allocates increased product costs pursuant to § 212.83 the total volume of the covered products which it (a) sells in arm's-length transactions; (b) refines and consumes internally; (c) transfers to affiliated entities for further processing and ultimate sale as other than covered products; and (d) sells for export.

All of the foregoing transactions constitute transfers for value which must be treated as part of Firm A's sales volume of covered products for purposes of allocating increased product costs pursuant to § 212.83(c), and for purposes of calculating increased product cost recoupment pursuant to § 212.83(e), so that the dollar-for-dollar pass through provisions of the price regulations are effectively carried out.

If Firm A were to exclude from its sales measurement the internal product consumption, transfers to affiliates, and export sales, in the fact situation posed above, it would apply its increased product costs only to its arm's-length sales of these products. Such discriminatory application of increased costs only to arm's-length purchasers would violate the equal application of increased product cost provisions of § 212.83(c), and would be inconsistent with the purposes of the Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, since the dollar-for-dollar pass through of increased product costs provided for by the Act would not be realized on an equitable basis if Firm A and its affiliates were to be permitted to avoid the impact of the pass-through provisions.

The uses to which Firm A may put the fuels it produces constitute clear economic value to it. Examples of these uses include, but are not limited to, use as refinery fuels and use as operating fuels (such as diesel fuel to power generator engines or gasoline to operate delivery vehicles). All volumes of covered products produced by Firm A and used by Firm A must therefore have the same increment of increased product cost assigned to them as is assigned to each product by Firm A in determining its selling price for that product in arm's-length transactions, with that increment of increased product cost to be regarded as recouped by Firm A when it uses the product, and therefore no longer available for pass-through in prices charged by Firm A in arm's-length transactions. Of course, to the extent that this means of accounting for internal use of fuel by Firm A serves to increase Firm A's non-product costs, such increased costs may be passed through by Firm A, to the extent permitted pursuant to the regulations governing increased non-product cost pass-through. (The cost of crude oil and of purchased covered products which are used as refinery fuel or otherwise consumed by Firm A are excluded from Firm A's initial calculation of increased product costs, pursuant to § 212.83, as amended effective December 1, 1974.)

Similarly, transfers of covered products by Firm A to affiliated entities, for further processing and ultimate sale as products other than covered products, which are exempt from price regulation, must be treated as sales by Firm A. These volumes must bear the same increment of increased product costs as is applied to prices charged those classes of purchaser which purchase the same product at arm's-length. Just as the FEA permits "transactions between affiliated entities" to be used as a basis for determining costs (*e.g.*, § 212.83(b), and § 212.83(f)), FEA requires that the economic significance of transactions between affiliated entities be taken into account when determining recovery of increased costs in sales of covered products. "Increased product costs" are not to be attributed in every instance of an internal transfer or transfer to an affiliate of covered products, but must be provided for in each instance where there will be no ultimate sale in an arm's-length transaction of that covered product, or of equal volumes of other covered products derived from that covered product.

The rationale for this requirement is apparent, since it would obviously be unfair to permit Firm A to pass through its increased product costs only in arm's-length sales and not in transfers to its affiliates, particularly since its affiliates could well be competitors of its arm's-length purchasers in an unregulated sector of industry, such as the petrochemical sector.

The volumes of product sold in export sales by Firm A, which are exempt from the price limitations of the FEA pursuant to § 212.53, are nevertheless regarded as sales of covered products under Part 212 for purposes of determining cost recovery. Thus, although the FEA does not regulate the "prices charged for export sales of covered products," the revenues received in such sales must be regarded as resulting in the recoupment by Firm A of increased product costs, to the extent that the selling prices in such sales are higher than the weighted average prices at which the same products were sold to the same classes of purchaser on May 15, 1973.

The reason for this means of accounting for export sales is self-evident, since any failure to take into account sales revenues from such sales as recoupment of increased product costs would result in double recoupment of costs—once in the export sale and again in domestic sales. This requirement that recovery of increased product costs in export sales also be taken into account is also apparent by virtue of the fact that any other approach would provide a strong incentive for export of badly needed petroleum products, at the expense of domestic consumers.

It should also be noted that the "V" factor in the cost formulae of § 212.83 encompasses as sales volumes not only the volumes of petroleum products (covered products and products refined from crude petroleum other than covered products) which are disposed of by the refiner in arm's-length transactions, but also the volumes of these products which are accounted for in transactions of the types described above. In general, the "V" factor appearing in § 212.83(c) serves to establish a proportion of increased product costs which may be allocated to covered products.

The "total volume" of product, including volumes which are disposed of by internal consumption on affiliated entity transactions of a refiner or by export sales, must therefore be used when allocating increased product costs under the "V" factor of the § 212.83 formulae, so that no distortion in that cost allocation will result from the exclusion of such transactions.

This ruling defines the manner in which the foregoing transactions are to have been accounted for under the price regulations since their inception, except with respect to refinery fuel. The FEA is aware that there was a basis upon which refiners could have concluded that the increased cost of refinery fuel derived from crude oil was permitted to be treated as an increased product cost prior

to December 1, 1974. An amendment to the cost allocation formulae of § 212.83, effective December 1, 1974, now explicitly requires that the cost of crude oil and of purchased covered products which are used as refinery fuel be excluded from the increased product cost pass through provisions of the regulations. With respect, therefore, only to covered products consumed as refinery fuel, this ruling is interpretive of the regulations as amended December 1, 1974. In all other respects, it is interpretive of the price regulations since they were first promulgated.

ROBERT E. MONTGOMERY, Jr.,
General Counsel,
Federal Energy Administration.

DECEMBER 19, 1974.

[FR Doc.74-30086 Filed 12-20-74;2:35 pm]

[Ruling 1974-30]

MEASUREMENT OF THE NUMBER OF BARRELS OF PRODUCTION FROM AN OIL WELL FOR THE "STRIPPER WELL LEASE" EXEMPTION OF 10 CFR § 210.32

Facts. Firm P, a producer, produces crude petroleum, and petroleum condensates, including natural gas liquids, and casinghead gas from oil wells operated on a property, as defined in 10 CFR 210.32. Firm P transmits, to nearby storage and gathering facilities, the condensates and natural gas liquids obtained at the wellhead, along with the crude petroleum. These liquids are then eventually transmitted through a pipeline, and are all treated as crude petroleum. Firm P subsequently receives "run tickets" as evidence of the volumes of these liquids which were disposed of in this way. The casinghead gas, a natural gas which is "wet," or rich in natural gas liquids in their gaseous phase, is separately transmitted to a processor at a nearby natural gas processing plant, where the natural gas liquids (propane, butanes, and natural gasoline) are extracted from the gas.

The processor, pursuant to prior contractual agreements with Firm P, determines an amount of liquids, which it has extracted and sold, that is attributable to the gas transmitted to it by Firm P, and notifies Firm P of the volumes to which it is entitled under the processing agreement.

Issue. What volumes of liquid hydrocarbons are included in the measurement of production by Firm P, for purposes of the "stripper well lease" exemption of 10 CFR 210.32?

Ruling. For purposes of measuring the volumes of liquids produced by Firm P under § 210.32 of FEA regulations, Firm P should include only those volumes of unseparated liquids which were transmitted and sold as part of the "crude petroleum" liquid stream. It may exclude all those volumes of separated natural gas liquids, which were ultimately extracted from its casinghead gas, but were not sold as crude petroleum and petroleum condensates.

Thus, Firm P's average daily production of crude petroleum and petroleum condensates, including natural gas liquids, would not include any products produced in the processing plant (so-called "plant products") whether or not the plant keeps the accounts of these product volumes for Firm P.

The purpose of the stripper well lease exemption was to provide needed incentives to increase available supplies of crude petroleum by avoiding the shutdown of the traditional "stripper well" because of high costs of production in relation to the relatively small volumes of crude oil produced from such wells. The increase in crude oil supplies, which the exemption is intended to promote, does not, however, have any necessary relationship to whether or to what extent any "wet" gas obtained by an oil producer is processed to obtain separated natural gas liquids. Firm P therefore should determine its production for purposes of the stripper well lease exemption based upon the liquid hydrocarbons which it produces and sells as crude oil, without regard to the fact that its production also yields a "wet" gas, from which certain volumes of separated natural gas liquids can be extracted.

Although the stripper well concept is applicable only to the production of an oil well (See FEA Ruling 1974-28), the FEA nevertheless included the phrase "natural gas liquids" when it defined the production to be taken into account for purposes of the exemption provisions of § 210.32 as "crude petroleum and petroleum condensates, including natural gas liquids." The term "natural gas liquids" was included solely in the context of the "petroleum condensates," which often are produced at a well and which flow with the crude petroleum to storage, gathering and pipeline facilities. "Natural gas liquids" are among the petroleum condensates which may be separated at a well from the associated gas produced by an oil well (often by a simple series of baffles), and in order to include all of the liquid production of the well that is moved as crude petroleum, "natural gas liquids" are included as "petroleum condensates" whenever they are commingled with crude petroleum. Natural gas liquids are not included therefore, when they are transmitted separately from the crude petroleum, in gaseous state or liquid state, to a processing plant for separation into the component products.

The stripper well lease exemption was not intended by FEA to be applied to, or withheld from, particular properties simply because one may produce a substantial amount of "wet" gas, which yields large volumes of natural gas liquids, and another may not. Nor would the intent of the exemption be served were its applicability to depend upon whether a particular producer's processing contract calls for the attribution of the resulting liquid volumes back to the lease. The effects of applying "stripper well" concepts to processed volumes of liquids would be as varied as the many different arrangements between producers and processors, and would further depend on the existence or efficiency of particular gas plants.

Accordingly, Firm P's production for purposes of § 210.32 includes all liquid hydrocarbons which are treated as crude petroleum. Typically, Firm P may maintain records of the volumes of these liquids which are sent to a pipeline by means of "run tickets" or other similar evidence of sales volume. These will reflect the volumes of all liquids treated as "crude petroleum," including petroleum condensates and unseparated, mixed natural gas liquids, but will not include other natural gas liquids which are ultimately separated from the "wet" gas, and separately accounted for.

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Title 12—Banks and Banking

CHAPTER I—COMPTROLLER OF THE CURRENCY, DEPARTMENT OF THE TREASURY

PART 7—INTERPRETIVE RULINGS

Customer-Bank Communication Terminals

National bankers, associations of bankers, or bank regulatory officials from 14 different states have approached the Comptroller's Office concerning the use by national banks of mechanisms which allow bank customers electronically to initiate from locations remote from the bank certain limited banking transactions. The questions raised present difficult issues concerning the interpretation of Federal law, the interaction of Federal law with diverse state laws, the competitive balance both within the banking industry and between banks and other financial institutions, and the future development of electronic services which will benefit the banking public and alter traditional banking methods.

For the reasons set forth below, the Comptroller has determined both as a matter of law as a matter of sound public policy that such off premises customer-bank communication terminals (CBCT's may be operated by national banks without regard to the restrictions contained in Federal law regulating branch banks. An interpretive ruling is being issued herewith expressing that conclusion. The Comptroller also has determined, however, that certain monitoring procedures and cautions should be implemented concerning the use of CBCT's in an attempt to help assure the orderly development of the nation's banking system.

I. *Description of CBCT's.* A number of different types of CBCT's now are available or can be expected to develop in the near future. No attempt is made here to catalog every possible type of terminal. In general, these terminals permit an existing bank customer to initiate transactions resulting in a cash

withdrawal from his account, a crediting of funds to his account, a transfer between his checking and saving accounts, and payment transfers from his account into accounts maintained by other bank customers.

Both manned and unmanned CBCT's are now in use. The CBCT typically involves: (a) A card issued to and carried by the customer which is inserted into the machine; and (b) a keyboard by which the customer or operator of the CBCT can insert information as to the transaction the customer wishes to accomplish. The customer's card sometimes contains information as to what transactions are authorized for that particular customer, and some CBCT's are capable of updating that information at the completion of the transaction. The CBCT may be self-contained, or it may be connected by wire (on-line) to a bank's central computer at a remote location. Information which is not transmitted instantaneously to the central computer is recorded within the CBCT by tape or other means, and the tape periodically is removed and taken to the bank for processing. All transactions conducted at a CBCT are subject to verification either by on-line communication with the bank's computer or by later examination by the bank of the tape and funds collected from the CBCT.

Unmanned CBCT's may be under control either of the bank or of a third party. When a third party is involved, however, his functions usually are related to ownership, maintenance, and servicing of the CBCT's. He is not directly involved financially in the transaction between the customer and the bank.

Manned CBCT's now in use always involve a third party in addition to the bank and its customer. In a typical operation, the CBCT would be located in a supermarket and manned by an employee of the store. Transactions which involve receipt of funds or cash withdrawals are verified by the employee, and are debited or credited to an account maintained by the supermarket at the same bank. Thus the bank customer is giving funds to or receiving funds from the supermarket, and the supermarket is a financial, as well as an operational, intermediary between the customer and the bank.

Certain devices are permissible and may be used by national banks without regard to the interpretive ruling issued herewith, such as a device or teller's window which is a part of a bank's main office or of an authorized branch. See, e.g., Dunn v. First National Bank of Cartersville, 345 F. Supp. 853 (N.D. Ga. 1972); Driscoll v. Northwestern National Bank, 484 F. 2d 173 (8th Cir. 1963), reversing 349 F. Supp. 245 (D. Minn. 1972). This ruling also does not deal with the use of any device whose sole function is to verify a customer's credit standing for purposes of authorizing a credit card transaction or guaranteeing payment of a check.

II. *Historical and statutory background.* Branch banks were an uncommon phenomena when the National Currency Act of 1863 and its replacement and revision, the National Bank Act of 1864, were passed. These Acts thus contained no provision dealing with branch banks. Section 8 of the National Bank Act of 1864 required the "usual business" of a national bank to be transacted "* * * at an office or banking house located in the place specified in its organization certificate." 13 Stat. 102.[1] As early as 1871 the Supreme Court interpreted this statute to permit a national bank's cashier to certify checks elsewhere than at the banking house, explaining:

> The provision of the Act of Congress as to the place of business of the banks created under it must be construed reasonably. The business of every bank, away from its office—frequently large and important—is unavoidably done at the proper place by the cashier in person, or by correspondents or other agents.

Merchants Bank v. State Bank, 10 Wall. 604; 651 (1871); see also Bank of Augusta v. Earle, 13 Pet. 519 (1839).

In 1911 Attorney General Wickersham recognized a "wide difference" between "the right to establish branch banks at which a general banking business is carried on," and "the mere appointment of agents to receive and collect money and forward it to the bank." 29 Ops. Atty. Gen. 81, 90. The Attorney General further noted (Id. at 88):

> [A] branch bank requires, in effect, a division of the capital, the working force is organized, and the business conducted as if it were a separate organization, and it competes in all branches of the banking business with other banks in that locality the same as if it were an independent institution.

In the ensuing decade state laws permitting branch banking gave state banks such a competitive advantage that they threatened, in some states, to eclipse the national banking system altogether. In an attempt to meet this competitive threat, the Comptroller authorized national banks to establish so-called "teller windows," relying upon a 1923 opinion of Attorney General Dougherty that the absence of authority for national bank branching did not prevent national banks from opening additional offices "for the transaction of business of a routine character" such as "the receipt of deposits and the cashing of checks for their customers." 34 Ops. Atty. Gen. 1. A year later, the Supreme Court held that the 1923 opinion of the Attorney General authorizing teller windows had gone too far in seeking to expand the off-premises functions that national banks might perform in the absence of an express branching power, but the Court specifically endorsed the 1911 opinion of Attorney General Wickersham. First National Bank in St. Louis v. Missouri, 263 U.S. 640.

A month after the Supreme Court decision in the St. Louis case, Rep. McFadden introduced a bill to authorize branches for national banks. One of the principal purposes of the McFadden Act was to clarify the doubts cast upon the operation by national banks of tellers windows as a result of the Supreme Court opinion. Indeed, one opponent of the bill objected to the speed with which "the comptroller's office had the case on appeal ready for Congress." 67 Cong. Rec. 2842 (1926) (Rep. Nelson). It seems clear that Congress intended to define these tellers windows as branches, and to authorize them within the applicable branching limitations.

Rep. McFadden's bill became the McFadden Act of 1927, 44 Stat. 1228. The Act permitted a national bank, with the approval of the Comptroller, to establish and operate new branches within the limits of the city, town, or village in which the bank is situated, if such establishment and operation were permitted by state law to state banks. The Act further defined "branch" as follows:

> The term "branch" as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State or Territory of the United States or in the District of Columbia at which deposits are received, or checks paid, or money lent.

The McFadden Act also imposed for the first time a limit on the branching ability of some state chartered banks. State banks which were members of the Federal Reserve System were permitted to retain and operate existing branches, but were forbidden to establish any new branches "* * * beyond the limits of the city, town, or village in which the parent bank is situated." According to Rep. McFadden, this Act established competitive equality "among all member banks of the Federal Reserve System." 68 Cong. Rec. 5815 (1927).[2]

The branch definition of the McFadden Act never has been amended and is found at 12 U.S.C. 36(f). The only major change since the McFadden Act in the branching powers of national banks was accomplished by the Banking Act of 1933, 48 Stat. 189, which permitted a national bank to establish and operate branches at any point within the state in which the bank was situated, if such establishment and operation were authorized to state banks and subject to the restrictions as to location imposed by state law upon state banks. This statute also established minimum capital requirements for branches of national banks. The Banking Act of 1933 also permitted "outside" branches to be established by state member banks.

III. *The Exclusivity of the Federal Definition of "Branch".* The Supreme Court in First National Bank in Plant City v. Dickinson, 396 U.S. 122, 133 (1969), rejected the contention that "state law definitions of what constitute 'branch

[1] This provision of section 8 later became section 5190 of the Revised Statutes and, as amended, is now found at 12 U.S.C. § 81.

[2] Even the limited competitive equality spoken of by Rep. McFadden was not completely achieved because of the grandfather rights given to state member banks on branches outside their home town or city and because of minimum population restrictions applicable to branches of national banks but not to branches of state member banks.

banking' must control the content of the Federal definition of § 36(f)." Courts both before[3] and after[4] the Plant City decision have recognized that "what constitutes a branch of a national bank * * * is to be determined by application of the standards prescribed by 12 U.S.C. § 36(f)." North Davis Bank v. First National Bank of Layton, 457 F. 2d 820, 822 (10th Cir. 1972). The Comptroller agrees that state law cannot affect the definition of terms used in this federal statute, and that a resolution of whether a CBCT is a branch for purposes of federal law should be the same, for example, in California, which permits statewide branch banking, as in Texas, whose constitution prohibits branching.

The underlying structure of the National Bank Act shows the necessity of this result. The National Bank Act of 1864, 13 Stat. 99, substantially amended and replaced the National Currency Act of 1863, 12 Stat. 655. The paramount intention of both of these statutes was to "* * * give every possible support to the pubic credit * * *" by a uniform currency "* * * furnished by national associations, organized under a general act of Congress * * *" Abraham Lincoln, Special Message on Financing the War, Senate Journal, pp. 121–122 (37th Cong., 3rd Sess., Jan. 17, 1863). The first Comptroller of the Currency, Hugh McCulloch, in submitting his detailed recommendations for the amendment of the National Currency Act of 1863, pointed out that the national banking system was expected in the seaboard areas "* * * to supersede the system of banking in these states by attracting to it the capital of existing [i.e., state] banks." Annual Report of the Comptroller of the Currency, p. 10 (Nov. 28, 1863). Secretary of the Treasury Chase emphasized at page 19 of his 1863 Annual Report that the recommended changes in the national banking system would "* * * induce the conversion, at the earliest practicable period, of the bank corporations of the states into national banking associations * * *." Consistent with this intention Congress gave special competitive advantages to national banks over state banks in order to induce the state banks, either to convert into national associations or go out of business altogether. When the state banking system did not disappear as expected, Congress in 1865 enacted a 10 percent tax on state bank notes, 13 Stat. 469, which was expected to eliminate the state banking system. Sections 7 and 14 of the 1865 Act specifically provided for the conversion of state chartered banks into national banking associations. The 1865 statue largely achieved the desired result: in one year the number of state chartered banks dropped from 1,089 to 349 while the number of national banks rose from 467 to 1,294.

Thus there is no general purpose in the National Bank Act to defer to state statutes regulating state chartered banks, and it is against this background that Chief Justice Burger's admonition in Plant City, *supra*, 396 U.S. at 133–134 must be read:

> Admittedly, state law comes into play in deciding how, where, and when branch banks may be operated, Walker Bank, supra, for in section 36(c) Congress entrusted to the States the regulation of branching as Congress then conceived it. But to allow the States to define the content of the term "branch" would make them the sole judges of their own powers. Congress did not intend such an improbable result as appears from the inclusion in section 36 of a general definition of 'branch.'

In other words, the "branch" definition of section 36(f) cannot be varied by state law, but instead constitutes in itself the test to be applied in the first instance to determine the extent to which state law is to be permitted to operate upon national banks in controvention of the National Bank Act's general supremacy over state law. See, e.g., Tiffany v. National Bank of Missouri, 18 Wall. 409 (1874); Easton v. Iowa, 188 U.S. 220 (1903).

This construction of 12 U.S.C. § 36(f) accords with the settled principle that words in a federal statute should be given a federal and nation-wide meaning. New York v. Feiring, 313 U.S. 283, 285 (1941). This principle is particularly applicable where a federal statute delimits the extent to which a federal instrumentality is subject to state law. See, e.g., First Agricultural National Bank v. State Tax Commission, 392 U.S. 339, 347 (1968). The need to give a federal content to words used in a federal statute is not diminished because the statute might have been enacted to allow national banks to compete with the state banks on equal terms. Federal Deposit Insurance Corp. v. Tremaine, 133 F. 2d 827 (2d Cir. 1943).

Thus the Comptroller is called upon to construe the branch definition of the McFadden Act as a matter of federal law and to apply that construction in a consistent manner to CBCT's throughout the United States.

IV. *Construing and applying the "branch" definition.* The principal statutory question is whether a CBCT is a "branch bank, branch office, branch agency, additional office, or * * * branch place of business" within the meaning of the McFadden Act. A branch bank commonly is thought of as a building containing teller's windows, desks and chairs, customer counters, and bank personnel with whom the banking public may transact a full range of banking services. A CBCT obviously is not an "office", and only a very few of the kinds of transactions normally associated with a banking office or place of business can be initiated at a CBCT. A CBCT customer cannot, for example, open an account with the bank, apply for a loan, purchase savings bonds, obtain money orders, cashiers checks, or travellers checks, maintain a safe deposit box, cash travellers checks, exchange currency, or engage in any of a large number of other common retail banking transactions. Indeed, only an existing customer of the bank may use a CBCT.[5] The CBCT therefore is more closely analogous to a mail box or a telephone through which a customer may communicate with his bank to accomplish certain routine transactions. The Comptroller thus believes that a CBCT would not be a branch bank, branch office, branch agency, additional office, or branch place of business within the common understanding of those terms, and thus looks to the legislative history for guidance as to whether those terms should be given other than their ordinary meaning.

As already noted, one of the principal Congressional concerns was the tellers windows then being operated by national banks. There was no consistent Congressional understanding, however, of the exact nature of these tellers windows or of what other places of business should or should not be classified as branches. This confusion was summarized by Rep. Stevenson, who pointed out that many members of Congress objected to the McFadden Act because its authorization of only "inside" branches for national and state member banks effectively would prohibit the development of statewide branching. He noted an alliance of those who "do not want any limitation placed on the power of the states to grant branches anywhere and everywhere" with a "small but very respectable element who are so adverse to branch banking or branch offices or branch anything that they would protest against the national bank teller carrying change across the street to a one-legged widow selling peanuts to a paralyzed cripple on the corner." 67 Cong. Rec. 2837 (1926).

Some legislators viewed branches in functional rather than physical terms. See, e.g., 67 Cong. Rec. 3248 (1926) (Rep. Cannon), 67 Cong. Rec. 2855 (1926) (Rep. Kurtz), and 68 Cong. Rec. 5816 (1927) (Rep. McFadden). The strongest indication, however, is that legislators viewed both tellers windows and branches as having certain physical and personnel aspects. Rep. Celler described the tellers windows as, "large monumental establishments, large buildings costing fortunes to build" which were physically "separate establishments" and "in effect branches." 67 Cong. Rec. 2860 (1926). Rep. LaGuardia in comparing tellers windows to branches said, "year after year teller windows are increased in the cities. They are not teller windows in any sense of the word. They are complete banking establishments * * *, monumental buildings, with a vice president in charge, with complete banking departments which are instituted under the guise of teller windows." 67 Cong. Rec. 3230 (1926). CBCT's do not have these physical and personnel characteristics and apparently would not fall

[3] Camden Trust Co. v. Gidney, 301 F. 2d 521 (D.C. Cir.), cert. denied, 369 U.S. 886 (1962).

[4] See, e.g., The Ramapo Bank v. Camp, 425 F. 2d 333, 346 (8d Cir. 1970).

[5] See the discussion of this customer limitation in Independent Bankers of Oregon v. Camp, 357 F. Supp. 1352, 1355 (D. Ore. 1973), remanded 9th Cir. Nos. 73-2398 and 73-2399 (Dec. 4, 1973).

within the most widely accepted Congressional understanding of the terms "branch bank, branch office, branch agency, additional office, or * * * branch place of business." CBCT's would seem closer to the routine off-premises activities approved by the Supreme Court in Merchants Bank v. State Bank, supra, and by Attorney General Wickersham in 1911 than they would to the teller's windows which Congress intended by the McFadden Act to authorize.[6]

Additionally, the legislative history of the McFadden Act shows a Congressional intention to permit competition and to promote public service. Rep. McFadden stated that "the main purpose of the bill is to remove certain outstanding handicaps from national banks which now stated that "the main purpose of the bill fledged and efficient modern banking business." 66 Cong. Rec. 2830 (1926). He also stated that "there is another factor involved besides the question of meeting the competition of [state] banks and that is the question of service." 66 Cong. Rec. 1778 (1925). Rep. Watkins explained his vote in favor of the bill as follows (66 Cong. Rec. 1775 (1925)):

> I am persuaded to vote for this measure for the reason that crowded conditions, traffic regulations, lack of parking facilities in our cities necessitate some change in banking facilities to suit the convenience of the complex and crowded business world. Banks, bankers, and customers in large cities are in a situation similar to telephone, electric light and gas companies, or the post office, all of which have branches for the customers' convenience. Economy in time, energy, and many other factors demand that the old order give away to a modern and sensible plan. Party traditions and prejudices should not fetter or bind us to the detriment of our country or the service of our constituents.

The current CBCT's are merely the forerunner of an expected family of customer operated electronic terminals which will change the face of the banking industry. A few banks already offer a service which permits a customer to activate the bank's computer directly from the customer's telephone and thus to initiate various banking transactions. Technology already exists through which a terminal located in a retail establishment could be used to transfer automatically the retailer's account funds by which a customer would pay the retailer for goods and services. Defining such electronic communication devices as branches and applying to them the severe geographic and capital restrictions contained in the McFadden Act would stifle the development of modern banking and of a newly evolving payments system. This result would be an inappropriate use of a statute one of whose principal purposes was to expand banking powers to provide the public with better service.

[6] Other activities national banks routinely conduct off premises include new-business solicitation, loan closings, sale of money orders and travellers checks, banking by mail, credit card services, various correspondent services, and data processing. Some banks maintain their trust departments in buildings separate from the main bank.

The Comptroller believes, moreover, that a contrary interpretation of the McFadden Act would establish an undesirable competitive inequality in some states between national and state chartered banks. In the state of Washington, for example, traditional branches may be established only within the same county as the bank's main office, or elsewhere within the state by merger. CBCT's may be established by state banks, however, anywhere within the state. Thus, if a CBCT were a branch within the meaning of the McFadden Act, the result in the state of Washington would be that national banks could establish traditional branches statewide, although state chartered banks could not. This result seems out of harmony with the intention of the McFadden Act.

The Supreme Court in Plant City, *supra*, stated that "it is relevant in construing 'branch' to consider, not merely the contractual rights and liabilities created by the transaction, but all those aspects of the transaction that might give the [national] bank an advantage in its competition for customers." 396 U.S. at 136–137. This statement was made in the context of an opinion which had reviewed the legislative history of the McFadden Act, and determined that the Act dealt with competition between state chartered and national banks. 396 U.S. at 130–134; See also First National Bank of Logan v. Walker Bank & Trust Co., 385 U.S. 252 (1966). The Court in Plant City, after considering both the contractual rights and liabilities and the competitive aspects determined that "a systematic attempt to secure for national banks branching privileges which Florida denies to competing state banks" was involved in the operation of an armored car service and a receptacle which were advertised as a "mobile drive-in" providing "Full Service Banking at your doorstep," and that this operation constituted branch banking.

Consideration — as hereafter set forth—of the competitive aspects referred to by the Court in Plant City does not require CBCT's to be viewed as branches. Additionally, an analysis of the contractual rights and liabilities under which a CBCT is operated shows that—even if a CBCT is considered to be a branch office, branch agency, or branch place of business—it is not receiving deposits, paying checks, or making loans within the meaning of 12 U.S.C. 36(f). Such an analysis is made in an appendix hereto, which represents the views of the Comptroller should these questions be raised. The contractual rights and liabilities reviewed in this analysis arise from the usual operating procedures of a CBCT, and have significant purposes other than structuring the technical and legal aspects of the transaction to avoid the branch banking statutes. Compare Plant City, *supra*, 396 U.S. at 126, 136–137.

State reaction to CBCT's has been varied and conflicting. At least three states, Oregon, Washington, and Massachusetts, authorize some sort of CBCT by specific legislation which does not treat these facilities as branches. Indeed, the legislation in the State of Washington, which was signed on April 30, 1974, authorizes the establishment of "satellite facilities" anywhere within the state, and specifically provides "that such a facility shall not be construed to be the establishment of a branch." Branch banking in the State of Washington, as already noted, is limited for the most part to a bank's home county.

The Attorneys General of Texas, Kansas, and Florida have authorized the use of CBCT's in some circumstances, although branch banking is prohibited in each of these states. The Attorney General of Illinois, another state which prohibits branch banking, however, has determined that the same off-premises activities permitted in Texas and Florida would constitute illegal branch banking if performed in Illinois. The Attorney General in Nebraska—another non-branching state—has ruled that a CBCT is a branch, but his opinion has been reversed by a state court.

The competitive picture is greatly influenced by recent regulations of the Federal Home Loan Bank Board permitting the establishment by federally chartered savings and loan associations of remote service units. See 39 FR 23991 (June 28, 1974). Similar regulations have been issued for credit unions by the National Credit Union Administration. 39 FR 30107 (Aug. 21, 1974). In some states, such as Nebraska, savings and loan associations have been quick to take advantage of the regulations, and the banking industry should be permitted to meet this competition. While it sometimes is difficult for agencies acting under statutes passed by three different Congresses to fathom any clear overall Congressional intent, no reason suggests itself why Congress would desire the McFadden Act to be interpreted to impair the health of the national banking system through the loss of customers who are now discovering the convenience of remote CBCT's offered by credit unions and savings and loan associations.

It is expected that the interpretive ruling issued herewith may give national banks an advantage vis-a-vis state banks in some states, but not in other states. Where competitive differences do occur, they will be of the sort normally associated with the dual banking systems. State banks, for example, may elect not to join the Federal Reserve System and thereby frequently are permitted (depending upon state law) to keep reserves in interest bearing notes or in correspondent accounts at other banks, thus substantially reducing the costs of maintaining reserve accounts. State banks also sometimes are given higher lending limits or broader discretion in making loans. In other non-branching areas national banks enjoy competitive advantages. These differences are inherent in a dual banking system which is fundamentally inconsistent with complete equality between state chartered banks and national banks. *Cf.* First National Bank of Fairbanks. v. Camp, 465 F. 2d 586, 596 (D.C. Cir.), cert. denied, 409

U.S. 1124 (1972). As the Supreme Court noted in Walker Bank, *supra*, the principle of competitive equality applied only insofar as branch banking is concerned. 385 U.S. at 261. Nevertheless, the Comptroller will urge temporary limits, as explained below, in an attempt to minimize any competitive imbalances which might result from this ruling.

Thus consideration of the competitive aspects as required by Plant City shows that the use of CBCT's will not be part of a systematic attempt to gain a competitive advantage for national banks, but instead is a necessary step to enable national banks to meet existing and potential competition from federal savings and loan associations and from state chartered institutions. The use of CBCT's by national banks also is required to bring to banking customers the benefits of existing electronic communication technology.

The Comptroller is faced with a difficult task of applying a 50 year old statute to an industry undergoing a great change as a result of modern electronic technology. Persuasive legal arguments can be made in support of either interpretation of the statute.[7] The Comptroller believes, however, that the sound development of the country's banking system and the underlying legislative purpose of the McFadden Act are better served by concluding that CBCT's should not be defined as branches. He thus has stated that conclusion in an interpretive ruling which is published herewith.[8]

V. *Authority to operate CBCT's.* It should be noted that a national bank clearly is authorized to operate a CBCT, even though a CBCT is not a branch. Sections 17 and 18 of the National Bank Act contemplate that a national bank shall engage in "the business of banking" and Section 8 of that Act authorizes a national bank to exercise all such incidental powers as shall be necessary to carry on the business of banking. See 12 U.S.C. secs. 26, 27 and 24 Seventh.

The business of banking changes with the times. In an early case the Supreme Court upheld the authority of a national bank to certify a check because the practice of certifying checks had "grown out of the business needs of the country." Merchants Bank v. State Bank, 77 U.S. 604, 648 (1871). A more recent construction of these statutes by the Supreme Court upheld a national bank's power to advertise as being "one of the most usual and useful weapons" in "modern competition for business." Franklin National Bank v. New York, 347 U.S. 373, 377 (1954). A number of other Supreme Court cases during the last century have construed these statutes in a similar flexible and reasonable fashion.

A CBCT basically is a means of a bank customer transmitting his requests or instructions to a bank, and receiving responses thereto. Communications between a bank and its customer concerning disposition of the customer's account are a part of the banking business. So long as the conduct of this business does not constitute branching, it may be done away from the banking house (Merchants Bank v. State Bank, supra), and is not subject to regulation by state law (Franklin National Bank v. New York, supra).

VI. *Limitations.* Even though a CBCT is not a branch, the Comptroller possesses regulatory authority which can be exercised to limit CBCT's to insure the sound development of the banking system. This regulatory authority should be used sparingly, however, because

> * * * regulation has too often resulted in protection of the status quo. * * * Industries have been more progressive when the agencies have endeavored to confine regulation to a necessary minimum and have otherwise fostered competition.

Annual Report of the Council of Economic Advisors, 106–107 (1970). Particularly in this new area where technology and consumer response are changing rapidly, the Comptroller believes that sellers and users of these services should be given the widest latitude in determining how, when, and where CBCT's can be used efficiently.

Nevertheless, a change from traditional banking, in which geography is of supreme importance, to electronic banking in which time and distance become irrelevant, will involve competitive adjustments for many banks. The Comptroller thus is adopting the following policies:

First, any national bank wishing to establish a CBCT may not do so without giving 30 days prior written notice to the Comptroller containing the information specified in the interpretive ruling. This will enable the Comptroller to monitor the development of CBCT's and to halt or alter their establishment if such action appears appropriate. Authority for this reporting requirement is found in 12 U.S.C. 161.

Second, each national bank should consider the impact that operation of CBCT's will have upon competing financial institutions. The Comptroller urges national banks prior to July 1, 1975, not to establish a CBCT in any state in which state law would prohibit a state chartered bank from establishing a similar facility. This urging is at the request of the Conference of State Bank Supervisors and is designed to give the legislatures of such states an opportunity to consider whether they wish to place their state chartered banks on an equal competitive footing with national banks and with savings and loan associations. This urging also is consistent with the philosophy of the pending legislation arising from the report of the President's Commission on Financial Structure and Regulation that changes in the financial structure apply similarly to competing institutions. During May 1975 the Comptroller will examine the then existing situation to determine whether equitable considerations indicate further policy statements in this regard.

Third, some state laws concerning CBCT's require that these devices be shared by other financial institutions. The Comptroller is not adopting any similar requirement. In this regard, the antitrust laws of the United States are applicable to the operation of CBCT's. As the Department of Justice noted in a May 1974 statement to the Board of Governors of the Federal Reserve System:

> The question of compulsory access to any EFT [electronic funds transfer] system will turn on fact questions—and the terms of any access will have to be tailored to the particular facts. At the outset compulsory access would not be required unless the particular facility is found to be 'essential' in the sense that exclusion would impose a significant handicap.

Just as exclusion from a CBCT system sometimes might raise questions under the antitrust laws, the sharing by two or more competitors of a CBCT system also could raise legal difficulties if, for example, the result of that sharing was to discourage competition and innovation between two competitors each of whom independently was capable of establishing its own system. Thus the Comptroller's ruling permits, but does not require, banks to share CBCT's with other financial institutions, and national banks and their counsel are advised to consider the antitrust laws when questions arise concerning the sharing of these facilities.

VII. *Effective date.* The Administrative Procedure Act does not require notice and solicitation of comments in connection with interpretive rules. 5 U.S.C. § 553(b). Many interested persons have made their views informally known to the Comptroller even without a formal solicitation of comments, and these views have been considered. The Administrative Procedure Act also permits interpretive rules to become effective immediately. 5 U.S.C. 553(d). Since the interpretive ruling issued herewith will not restrict any activities now being carried out by any bank, and since the Comptroller believes that substantial public benefit will result from this ruling, no reason exists to delay its effectiveness. Therefore, effective immediately upon publication, the existing 12 CFR 7.7491, "Deposit Machines" is rescinded, and the new § 7.7491, "Customer-Bank Communication Terminals" accompanying this statement is adopted.

Part 7 of 12 CFR Chapter I is amended by revising § 7.7491 to read as follows:

§ 7.7491 Customer-Bank communication terminals.

(a) A national bank may make available for use by its customers one or more electronic devices or machines through which the customer may communicate to the bank a request to withdraw money either from his account or from a previously authorized line of credit, or an in-

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[7] Indeed a previous Comptroller apparently interpreted the statute differently in at least one instance where he was focusing primarily on the competitive aspects of a particular application. See Independent Bankers of Oregon, *supra*.

[8] For the reasons expressed herein the Comptroller believes that branch definition of 26 D.C. Code Section 26–103(b), which is identical to that of the McFadden Act, should be interpreted to exclude a CBCT.

struction to receive or transfer funds for the customer's benefit. The device may receive or dispense cash in accordance with such a request or instruction, subject to verification by the bank. Such devices may be unmanned or manned by a bona fide third party under contract to the bank. The bank for a reasonable period of time may provide one of its employees to instruct and assist customers in the operation of the device. Any transactions initiated by such a device shall be subject to verification by the bank either by direct wire transmission or otherwise.

(b) Use of such devices at locations other than the main office or a branch office of the bank does not constitute branch banking. A bank may provide insurance protection under its bonding program for transactions involving such devices.

(c) The establishment and use of these devices is subject to the following limitations:

(1) Written notice must be given to the Comptroller's Office and to the office of the appropriate regional administrator 30 days before any such device is put into operation. Such notice shall describe with regard to the device or machine:

(i) The location;

(ii) A general description of the area where located (e.g., shopping center, gasoline station, supermarket) and the manner of installation (e.g., free standing, exterior wall, separate interior booth);

(iii) The manner of operation, including whether the device is on-line;

(iv) The kinds of transactions which will be performed;

(v) Whether the device will be manned, and, if so, by whose employee;

(vi) Whether the device will be shared, and, if so, under what terms and with what other institutions and their location;

(vii) The manufacturer and, if owned, the purchase price or, if leased, the lease payments and the name of the lessor;

(viii) The distance from the nearest banking office and from the nearest similar device of the reporting bank; and

(ix) The distance from the nearest banking office and nearest similar device of another commercial bank, which will not share the facility, and the name of such other bank or banks.

(2) National banks are urged prior to July 1, 1975, not to establish a CBCT in any state in which state law would prohibit a state chartered bank from establishing a similar facility.

(3) To the extent consistent with the antitrust laws, national banks are permitted, but not required, to share such devices with one or more other financial institutions.

Effective date. This section becomes effective December 24, 1974.

Dated: December 11, 1974.

JAMES E. SMITH,
Comptroller of the Currency.

APPENDIX

Communications between customers and their banks through CBCT's involve instructions to consummate the following kinds of transactions: Cash withdrawals from demand accounts, savings accounts and credit card accounts; deposit to demand accounts or to savings accounts; transfers from demand to savings, or from savings to demand, or from credit card to demand; payment deduct from demand or from savings. Consummation of these transactions by the bank for the customer is contingent upon certain conditions being satisfied before contractual rights and obligations attach and "deposits are received, or checks paid, or money lent." These conditions arise in an electronic banking situation because the CBCT's involved are not sophisticated enough to carry out the procedures, such as authentication and verification, necessary to assure safe and sound banking and prevent losses to customers and banks.

UNMANNED AUTOMATED TERMINALS

When an unmanned automated terminal is operated off-line, i.e., not connected by wire to the bank's computer, a deposit transaction is not consummated until the bank actually is notified of the customer's instructions, and the amount of funds necessary to implement the instruction are received and verified. This notification, receipt, and verification takes place at the bank after collection from the CBCT of the funds left there and of a tape or other medium upon which all instructions have been recorded. The bank cannot give credit for these funds prior to receipt and verification any more than it could give credit for items sent by mail to the bank and not yet received. These funds do not become deposits for any purpose—including the application of 12 U.S.C. 36(f)—until received and accepted at the chartered banking premises. See, e.g., Bernstein v. Northwestern National Bank, 157 Pa. Super. 73, 41 A. 2d 440, In re Farmers State Bank of Amhearst, 67 S.D. 51, 58–59, 289 N.W. 75, 78–79.

Funds left at an unmanned CBCT which is connected by wire to the bank's computer and operated on-line similarly do not become deposits until received and verified at the bank. The customer's instructions to receive the deposit are instantaneously communicated to the bank, just as if the customer had called the bank by telephone to request that the bank receive funds for his account. No unmanned CBCT now in use, however, is able to verify the funds received, and it would be unsafe and unsound practice for the bank to give immediate unconditional credit to a customer based solely upon information supplied by the customer without verification. Thus the customer's offer to create a deposit relationship is not accepted, and the contractual debtor-creditor deposit relationship does not arise, until the funds are received, counted, and accepted at the bank.

Cash withdrawals from unmanned CBCT's are accomplished by the customer requesting the bank through the CBCT to deliver to the customer a pre-packaged bundle of currency in a standard amount, such as $25 or $50. A cash withdrawal from a deposit account using an unmanned CBCT does not constitute paying a check. First, if the withdrawal is from a savings account, no check can be involved because savings deposits by definition are not subject to withdrawals by check. Second, whatever the nature of the deposit account, the CBCT is activated by a card or similar device and no check is involved. The required form of a check is specified in section 3–104 of the Uniform Commercial Code. Nothing resembling a check is used in withdrawals using an unmanned CBCT. Third, all withdrawals are subject to verification. If the CBCT is on-line, the verification takes place instantaneously at the bank. See, e.g., Kan. Atty. Gen. Op. No. 74–196 (June 12, 1974). If the CBCT is offline, the transaction is verified at the bank when the tape or other record is retrieved from the CBCT. If the withdrawal was not in accordance with the agreement between the bank and its customer for any reason, such as a lack of sufficient funds in the customer's account, then no authorized withdrawal has taken place and the customer is liable to the bank for the funds he improperly obtained.

Similarly, a cash withdrawal from an open end credit account, such as a credit card or approved overdraft account, does not constitute making a loan at the CBCT. Such withdrawals are from an already approved line of credit, and are subject to verification that the withdrawal is within the approved line. With most unmanned CBCT's this verification takes place at the bank, either immediately with an on-line CBCT, or later with an off-line CBCT.[1] In these circumstances the revolving credit agreement may be viewed as an original contract which establishes the loan relationship between the customer and bank. Each request by the customer for a cash advance must be verified and accepted by the bank. The transaction thus is consummated, and the loan made, when the bank verifies at its office that the credit agreement conditions are satisfied. This conclusion of ordinary contract law is supported by the truth in lending regulations of the Federal Reserve Board, which provide with regard to consumer loans:

A transaction shall be considered consummated at the time a contractual relationship is created between the creditor and a customer irrespective of the time of performance of either party.

12 CFR 226.2(cc). The time of consummation of a cash withdrawal transaction under the revolving credit agreement here involved is when that transaction is verified at the bank. Thus no loan is made at the CBCT.

It should be noted again that the legal structure of these transactions is not tailored to fit the branch banking law, but arises from the nature of an unmanned CBCT. The bank by contract with its customers will treat all CBCT transactions in the manner here described, whether the CBCT is located in the bank lobby or in a shopping center miles away.

MANNED CBCT'S

A manned CBCT consists of a terminal connected by wire (on-line) to the bank's computer together with an operator. The operator is the employee of a third party, such as a supermarket, who also is financially involved in the transaction. A bank customer presents to the operator information necessary to implement the desired transaction. The transaction instructions and information are communicated electronically to the bank, which, through transfers between the customer's and the establishment's accounts at the bank, consummates the desired transaction.

As with on-line unmanned CBCT's, all transactions are verified instantaneously at the bank and, insofar as the bank is concerned, consummated at the bank. The reasoning stated above for unmanned CBCT's is equally applicable here. Additionally, the

[1] When the customer's card itself contains information about his borrowing limit which is updated at an off-line unmanned CBCT when cash is withdrawn, it might be argued that the verification takes place at the CBCT. Even in this situation, however, the transaction is subject to verification to prevent such occurrences as an unauthorized transaction resulting from an improperly altered authorization card.

bank customer is dealing directly not with the bank, but with a third party, as the following discussion illustrates.

A customer, for example, might give to an establishment which operates a CBCT a check of which the customer is a payee, such as a payroll check from the customer's employer, and request the establishment to return less in cash than the face amount of a check and transfer the remaining amount from the establishment's bank account to the customer's account, thereby effecting a deposit in the customer's account of a portion of the check. The establishment might be agreeable to doing this, not only because it accommodates the customer, but also because it reduces the amount of cash the establishment must keep on hand to cash customer's checks.

The bank's computer is used to assure the customer that the establishment has adequate funds to transfer to the customer's account and to assure the establishment that the customer is presenting a valid bank card for identification purposes. The computer, acting on the basis of bank records and instructions programmed by bank personnel, identifies the customer's card as a valid card, accepts information as to the amount of the transfer between accounts, effects the transaction immediately or prepares it for later posting in accordance with the bank's procedures, and confirms the transaction to the customer and the establishment. The cash received by the customer is from the establishment, not from the bank, and all transactions involving the bank occurred at the bank's own computer.

By arrangement between the parties, the bank also may assume certain risks, for example that the establishment may accept the check from the customer without fear of dishonor. This is a credit risk of the sort ordinarily taken by a bank. The assumption of this risk usually is subject to compliance with various procedures established by the bank, including the possibility of charging the face amount of a check so processed back to the customer's account. The establishment is not an agent of the bank because it is acting as it does for its own business purposes, and accordingly is a bona fide third party. Transactions involving cash withdrawals from a customer's account would follow essentially the same process, including a transfer between the customer's and the establishment's accounts.

With regard to such manned CBCT's it seems clear that the banking aspects of the transactions initiated by a customer are consummated at the bank, and not at the location of the CBCT. As with unmanned CBCT's these transactions are structured to fit the operational capabilities of the CBCT and the bank's computer and to comply with prudent banking practices. It could not be said that these contractural and operational arrangements have no significant purpose other than to remove the possibility that the monies received will bcome "deposits" within the meaning of the branch banking law. See Walker Bank, supra, 396 U.S. at 136. Additionally, the customer's direct transactions are not with the bank at all, but with a bona fide third party.

[FR Doc.74-29960 Filed 12-23-74;8:45 am]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS

Changes in Rates

Pursuant to section 14(d) of the Federal Reserve Act (12 U.S.C. 357), and for the purpose of adjusting discount rates with a view to accommodating commerce and business in accordance with other related rates and the general credit situation of the country, Part 201 is amended as set forth below:

1. Section 201.51 is amended to read as follows:

§ 201.51 Advances and discounts for member banks under sections 13 and 13a.

The rates for all advances and discounts under sections 13 and 13a of the Federal Reserve Act (except advances under the last paragraph of such section 13 to individuals, partnerships, or corporations other than member banks) are:

Federal Reserve bank of—	Rate	Effective
Boston	7¾	Dec. 10, 1974
New York	7¾	Dec. 9, 1974
Philadelphia	7¾	Do.
Cleveland	7¾	Dec. 13, 1974
Richmond	7¾	Dec. 10, 1974
Atlanta	7¾	Dec. 16, 1974
Chicago	7¾	Dec. 10, 1974
St. Louis	7¾	Dec. 13, 1974
Minneapolis	7¾	Do.
Kansas City	7¾	Do.
Dallas	7¾	Dec. 10, 1974
San Francisco	7¾	Dec. 11, 1974

2. Section 201.52 is amended to read as follows:

§ 201.52 Advances to member banks under section 10(b).

(a) The rates for advances to member banks under section 10(b) of the Federal Reserve Act are:

Federal Reserve bank of—	Rate	Effective
Boston	8¼	Dec. 10, 1974
New York	8¼	Dec. 9, 1974
Philadelphia	8¼	Do.
Cleveland	8¼	Dec. 13, 1974
Richmond	8¼	Dec. 10, 1974
Atlanta	8¼	Dec. 16, 1974
Chicago	8¼	Dec. 10, 1974
St. Louis	8¼	Dec. 13, 1974
Minneapolis	8¼	Do.
Kansas City	8¼	Do.
Dallas	8¼	Dec. 10, 1974
San Francisco	8¼	Dec. 11, 1974

(b) The rates for advances to member banks for prolonged periods and in significant amounts under section 10(b) of the Federal Reserve Act and § 201.2(e)(2) of Regulation A are:

Federal Reserve bank of—	Special rate	Effective
Boston	9½	Dec. 10, 1974
New York	9½	Dec. 9, 1974
Philadelphia	9½	Do.
Cleveland	9½	Dec. 13, 1974
Richmond	9½	Dec. 10, 1974
Atlanta	9½	Dec. 16, 1974
Chicago	9½	Dec. 10, 1974
St. Louis	9½	Dec. 13, 1974
Minneapolis	9½	Do.
Kansas City	9½	Do.
Dallas	9½	Dec. 10, 1974
San Francisco	9½	Dec. 11, 1974

3. Section 201.53 reads as follows:

§ 201.53 Advances to persons other than member banks.

The rates for advances under the last paragraph of section 13 of the Federal Reserve Act to individuals, partnerships, or corporations other than member banks secured by direct obligations of, or obligations fully guaranteed as to principal and interest by, the United States or any agency thereof are:

Federal Reserve bank of—	Rate	Effective
Boston	10	Dec. 10, 1974
New York	10	Dec. 9, 1974
Philadelphia	10	Do.
Cleveland	10	Dec. 13, 1974
Richmond	10	Dec. 10, 1974
Atlanta	10	Dec. 16, 1974
Chicago	10	Dec. 10, 1974
St. Louis	10	Dec. 13, 1974
Minneapolis	10	Do.
Kansas City	10	Do.
Dallas	10	Dec. 10, 1974
San Francisco	10	Dec. 11, 1974

(12 U.S.C. 248(1). Interprets or applies 12 U.S.C. 357)

By order of the Board of Governors, December 17, 1974.

[SEAL] THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.74-29916 Filed 12-23-74;8:45 am]

CHAPTER VII—NATIONAL CREDIT UNION ADMINISTRATION

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

Credit Union Service Center

On pages 32632-32633 of the September 10, 1974, edition of the FEDERAL REGISTER there were published proposed amendments to Part 701 (12 CFR Part 701) which would redesignate §§ 701.26 and 701.27 and add a new § 701.26.

After considering all comments submitted by interested parties, the proposed amendments, as set forth below, are hereby adopted without change.

Effective date: These amendments are effective immediately.

HERMAN NICKERSON, Jr.,
Administrator.

DECEMBER 17, 1974.

1. Section 701.26 is redesignated as § 701.27–1, and the heading revised to read:

§ 701.27–1 Purchase of accounting services.

2. Section 701.27 is redesignated as § 701.27–2, and the heading revised to read:

§ 701.27–2 Participation in accounting service center.

3. A new § 701.26 is added to read as follows:

§ 701.26 Credit union service center.

(a) For the purposes of this section. (1) "Service Center" means a credit union service center which provides services to include, but not necessarily limited to, physical facilities, centralized management, and accounting services.

(2) "Accounting Service" means the maintenance of bookkeeping, accounting, or other records related to the purposes and functions of a credit union by manual, mechanical or electronic methods, and the furnishing of reports and information derived from such records.

(3) "Individual Identity" means that the identity of each participating Federal credit union is easily distinguishable from other credit unions and organizations participating in the service center activities.

(4) "Centralized management" means the single authority responsible for supervising, controlling and directing the day-to-day operations of the service center.

(b) (1) One or more Federal credit unions may contract with a vendor other than a Federal credit union to provide a credit union service center. The contract shall be in writing, shall have the approval of the Administrator, and shall expressly provide for:

(i) Segregating the credit union's assets and records;

(ii) Maintaining the credit union's individual identity;

(iii) Establishing minimum security devices and procedures in accordance with Part 748 (12 CFR 748);

(iv) Complying with the mandatory requirements with regard to the advertisement of insured status in accordance with Part 740 (12 CFR 740);

(v) Describing the services to be provided by the vendor and establishing the costs of these services subject to periodic review and negotiation;

(vi) Complying with the provisions of section 701.14 of this Part concerning all services performed;

(vii) Immediate availability and possession of the Federal credit union's books and records for examination by the Administrator and audit by the supervisory committee;

(viii) Establishing centralized management in consonance with the board of directors of each credit union directing and controlling the affairs of the credit union;

(ix) Notifying the credit union's surety company and obtaining written assurance from surety that coverage extends to the service center and its employees;

(x) Appointing the service center and its employees as agents of the credit union for purposes of transacting contracted services; and

(xi) Terminating, assigning, and mediating the contract.

(2) The files of the Federal credit union shall contain specific information concerning the procedures to be used by the vendor in complying with the terms of the contract. Such information may be in the form of a standard operating or users manual.

(3) A Federal credit union, in addition to regular payments for services as provided under the contract, shall not pay in advance the actual or estimated charges for more than 3 months' services. Where such advance payment is made it shall be amortized over a period not in excess of the period of the written agreement.

(c) (1) Requests for approval shall be submitted to the Regional Director in writing with a copy of the contract and all pertinent facts in support of the proposal not later than 60 days prior to the proposed implementation of the contract. A Federal credit union shall notify the Regional Director in writing within 30 days of the termination of the contract.

(2) The Regional Director will investigate each request to participate in a credit union service center activity and will make a recommendation as to whether it should be approved or disapproved. The request, contract and the recommendation of the Regional Director shall be forwarded to the Administrator, who shall approve or disapprove the application. The Regional Director will be informed of the Administrator's action on the application and will promptly notify the Federal credit union concerned.

(3) Notwithstanding the provisions of paragraph (c) (2) of this section, the Regional Director may approve a Federal credit union's request supported by a standard contract of the same service center which has received prior approval by the Administrator in accordance with the provisions of paragraph (c) (2) of this section.

(d) No official or employee of a participating Federal credit union may have a pecuniary interest in the credit union service center pursuant to this section. No official of a participating Federal credit union may receive from the vendor of such services any salary or compensation other than the reimbursement of necessary expenses incurred in connection with the vendor's activities.

[FR Doc.74-29977 Filed 12-23-74;8:45 am]

Title 13—Business Credit and Assistance

CHAPTER I—SMALL BUSINESS ADMINISTRATION

[Revision 13]

PART 121—SMALL BUSINESS SIZE STANDARDS

This is revision 13 of Part 121 of Chapter I of Title 13 of the Code of Federal Regulations. Revision 13 of Part 121 rescinds revision 12, including amendments 1 through 16 thereto. In addition to incorporating the amendments to revision 12, this revision contains several clarifying and simplifying changes, the most significant of which are described below:

1. Section 121.3–2(a) has been revised by adding thereto material set forth in revision 12, § 121.3–16, *Interpretations*, which section has been deleted by this revision.

2. Section 121.3–2(b) has been revised by adding the procedure for computing a concern's average annual receipts for its preceding 3 fiscal years when the concern has been in business less than 3 years.

3. Section 121.3–2(i) has been reworded to clarify that a concern organized for profit can qualify as a small business even if it is owned by or subject to the control of a nonprofit entity.

4. Section 121.3–2(r) has been revised by adding thereto material appearing in § 121.3–16 of revision 12.

5. Section 121.3–6 has been revised by adding thereto material appearing in § 121.3–16 of revision 12.

6. Section 121.3–16(b) (3) (ii) has been revised to make it clear that an appeal may be taken not only from the industry classification which the contracting officer has designated in the solicitation, but also from his designation of the appropriate Small Business Administration size standard for such industry.

7. Section 121.3–8 has been revised by adding material appearing in § 121.3–16 of revision 12.

8. Section 121.3–9 has been revised by adding material appearing in § 121.3–16 of revision 12. Language has also been added to clarify procedures governing size self-certification and protest by the contracting officer.

9. Section 121.3–10 has been revised by adding material appearing in § 121.3–16 of revision 12. A clause has also been added to clarify what action shall be taken where no financial assistance size standard has been established for an industry, field of operation, or activity. Finally, § 121.3–10(b) has been revised to reflect the elimination from Schedule A of all industries with a 250-employee size standard.

10. Section 121.3–16, *Interpretations*, has been deleted and the interpretative material added to the appropriate sections of the regulation.

11. Schedule A has been revised by:

a. Eliminating all industries with a 250-employee size standard (see new

§ 121.3–10(b)(2) which establishes a 250-employee standard for any manufacturing industry not set forth in Schedule A), and

b. Arranging the industries in numerical rather than alphabetical order. (This conforms with arrangement of Schedule B.)

12. This revision also establishes a definition of a small cable television operator for the purpose of obtaining an SBA loan. The new definition was proposed in the FEDERAL REGISTER on September 6, 1974 (39 FR 32334).

Part 121 of Chapter I of Title 13 of the Code of Federal Regulations is hereby revised as follows:

Sec.

AUTHORITY: Pub. L. 85–536, sec. 5(b)6, 73 Stat. 385.

§ 121.3 Statutory provisions.

(a) Small Business Act, as amended.

SEC. 3. For the purpose of this Act, a small business concern shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation. In addition to the foregoing criteria, the Administrator, in making a detailed definition, may use these criteria, among others: Number of employees, and dollar volume of business. Where the number of employees is used as one of the criteria in making such definition for any of the purposes of this Act, the maximum number of employees that a small business concern may have under the definition shall vary from industry to industry to the extent necessary to reflect differing characteristics of such industries and to take proper account of other relevant factors.

* * * * *

SEC. 8(b) It shall also be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary—

* * * * *

(6) To determine within any industry the concerns, firms, persons, corporations, partnerships, cooperatives, or other business enterprises which are to be designated "small business concerns" for the purpose of effectuating the provisions of this Act. To carry out this purpose, the Administrator, when requested to do so, shall issue in response to each such request an appropriate certificate certifying an individual concern as a "small business concern" in accordance with the criteria expressed in this Act. Any such certificate shall be subject to revocation when the concern covered thereby ceases to be a "small business concern." Offices of the Government having procurement or lending powers, or engaged in the disposal of Federal property or allocating materials or supplies, or promulgating regulations affecting the distribution of materials or supplies, shall accept as conclusive the Administration's determination as to which enterprises are to be designated "small business concerns," as authorized and directed under this paragraph.

(b) Small Business Investment Act of 1958, as amended.

SEC. 103. As used in this Act—

* * * * *

RULES AND REGULATIONS

(5) The term "small business concern" shall have the same meaning as in the "Small Business Act."

* * * * *

§ 121.3–1 Purpose and method of establishing size standards.

(a) Purpose. This part defines "small business concerns" and establishes standards, criteria, and procedures to determine which concerns are "small business concerns" within the meaning of the Small Business Act, as amended (hereinafter referred to as the "Act") and the Small Business Investment Act of 1958, as amended (hereinafter referred to as the "Investment Act").

(b) Method of establishing size standards—(1) Use of Standard Industrial Classification Manual. The Standard Industrial Classification (SIC) Manual, as amended, prepared and published by the Bureau of the Budget (now Office of Management and Budget), Executive Office of the President, will be used by SBA as a guide in defining industries. Its use therefore is advisory and not mandatory.

(2) Size standards policy. (i) The fundamental purpose of Small Business Administration assistance is to preserve free competitive enterprise by strengthening the competitive position of small business concerns.

(ii) It is the Small Business Administration's view that, in the absence of proof to the contrary, there is a segment of each industry wherein concerns by reason of their small size are at a competitive disadvantage. Therefore, the definition of small business for each industry should be limited to that segment of the industry struggling to become or remain competitive.

(iii) Smaller concerns often are forced to compete with middle-sized as compared with very large concerns. In consideration of this fact, the standard for each industry should be established as low as reasonably possible. It should be lowered in any case where the SBA determines that a few concerns under the size standard umbrella have, because of their size, gained undue competitive strength as compared with other concerns under the umbrella.

(iv) It is the Small Business Administration's view that concerns which, with or without assistance under the Small Business Act, have grown to a size which exceeds the applicable small business size standard should compete for Government contracts not reserved for small business concerns or should seek commercial markets in the same or related fields. Under such circumstances small business concerns should not rely on continuing assistance under the Small Business Act from the cradle to the grave, but should plan for the day on which they become other than small business and should be able to compete without assistance.

(3) Factors in formulating size standards. The following factors shall be considered in formulating industry size standards:

(i) Concentration of output; that is, the portion of the total output of an industry which is accounted for by a limited number of companies.

(ii) Coverage ratio, that is, the ratio of the industry's shipments of its primary products, to the total shipments by all industries of the primary products of the industry in question.

(iii) Specialization ratio, that is, the ratio of the industry's shipments of its primary products to its total shipments of primary and secondary products.

(iv) The total number of concerns in the industry.

(v) The size of industry leaders.

(vi) The SBA programs for which the size standard is established. In formulating industry size standards for the purpose of Government procurement, the additional factor of Government procurement history shall be used. The use of this additional factor may cause the size standards for the purpose of Government procurement and the size standards for the purpose of financial assistance to differ for the same industry.

(4) Product classification. For size standard purposes, a product or service shall be classified into only one industry, even though, for other purposes, it could be classified into more than one industry. In determining the SIC Industry into which particular products shall be classified for size standard purposes, consideration shall be given to all appropriate factors including:

(i) Alphabetic indexes published by the Office of Management and Budget, Executive Office of the President; Bureau of the Census; and the Bureau of Domestic Commerce.

(ii) Description of the product under consideration.

(iii) Previous Government procurements for the same or similar products, and

(iv) Published information concerning the nature of companies which manufacture such products.

A product or service shall be classified in the industry whose definition best describes the principal nature of the product or service being procured. The end use of a product does not govern the

industry into which it is to be classified. In a borderline situation, the product or service shall be classified in the indutry whose size standard would best serve to accomplish the purposes of the Small Business Act. When a procurement is for two or more items with different size standards, a bidder must qualify as a small business under the definition of a small business applicable to any item on which it bids. If a multi-item procurement requires the successful bidder to deliver all items and/or perform all services being procured, the applicable size standard is that for the industry whose products or services account for the greatest proportion of the contract price.

(5) Product classification decision. The SBA Regional Director or his delegatee of the SBA Region in which the principal office of the applicant, not including its affiliates, is located, shall determine the appropriate SIC classification, except that for procurement purposes the determination shall be made by the official specified in Section 121.3-8, and for lease guarantee reinsurance purposes the determination shall be made by the Associate Administrator for Finance and Investment. Such determination shall be subject to appeal in the manner provided in § 121.3-6.

§ 121.3-2 Definition of terms used in this part.

(a) Affiliates: Concerns, other than investment companies licensed, or state development companies qualifying under the Small Business Investment Act of 1958 and the regulations issued pursuant thereto, or investment companies registered under the Investment Company Act of 1940, are affiliates of each other when either directly or indirectly (1) one concern controls or has the power to control the other, or (2) a third party or parties controls or has the power to control both. In determining whether concerns are independently owned and operated and whether or not affiliation exists, consideration shall be given to all appropriate factors, including common ownership, common management, and contractual relationships: *Provided, however,* That restraints imposed on a franchise by its franchise agreement shall not be considered in determining whether the franchisor controls or has the power to control and, therefore, is affiliated with the franchisee, if the franchisee has the right to profit from his effort, commensurate with ownership, and bears the risk of loss or failure. Where a concern is a subcontractor pursuant to section 8(a)(2) of the Small Business Act and, in connection therewith, is the subject of a divestiture agreement approved by SBA for the benefit of socially or economically disadvantaged individuals, the receipts, employment, and other factors of the concern attributable to the section 8(a)(2) subcontract shall not be included in determining the size of either concern during the term of such divestiture agreement. Other contracts and business of such subcontractor may also be excluded in determining the size if, in the judgment of SBA, substantial beneficiaries of such other contracts and business will be the socially or economically disadvantaged individuals in question.

(i) Nature of Control. Every business concern is considered as having one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

EXAMPLE. A party owning 50 percent of the voting stock of a concern would have negative power to control such concern since he can block any action of the other stockholders. Also, the bylaws of a corporation may be drawn up in such a manner which would permit a stockholder with less than 50 percent of the voting stock to block any actions taken by the other stockholders. Affiliation exists when one or more parties have the power to control a concern while at the same time another party, or other parties, may be in control of the concern at the will of the party or parties with the power to control.

(ii) Meaning of "party or parties." The term "party or parties" includes, but is not limited to, two or more persons with an identity of interest such as members of the same family or persons with common investments in more than one concern. In determining who controls or has the power to control a concern, persons with an identity of interest may be treated as though they were one person.

(iii) Control through stock ownership.

(*a*) A party is considered to control or have the power to control a concern if he controls or has the power to control 50 percent or more of its voting stock.

(*b*) A party is considered to control or have the power to control a concern even though he owns, controls, or has the power to control less than 50 percent of the concern's voting stock if the block of stock he owns, controls, or has the power to control is large as compared with any other outstanding block of stock. If two or more parties each owns, controls, or has the power to control less than 50 percent of the voting stock of a concern and such minority block is (*1*) equal or substantially equal in size, and (*2*) large as compared with any other block outstanding, there is a presumption that each of such parties controls or has the power to control such concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

(*c*) If a concern's voting stock is distributed other than as described above, its management (officers and directors) is deemed to be in control of such concern.

EXAMPLE. In a corporation where the officers and directors own various size blocks of stock totalling 40 percent of a concern's voting stock, but no officer or director has a block sufficient to give him control or the power to control and the remaining 60 percent is widely distributed with no individual stockholder having a stock interest greater than 10 percent, management has the power to control.

(iv) Stock options, convertible debentures, and agreements to merge. Stock options and convertible debentures exercisable at the time of or within a relatively short time after a size determination and agreements to merge in the future are considered as having a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements are treated as though the rights held thereunder had been exercised prior to the date of the determination.

EXAMPLE. If, on the date of the determination, company "A" holds an option to purchase a controlling interest in company "B" and such option can be exercised at any time by company "A," the situation is treated as though company "A" had exercised its rights and had become owner of a controlling interest in company "B" prior to the determination. Further, if, as of the date of a determination, company "A" has entered into an agreement to merge with company "B" in the future, the situation is treated as though the merger had taken place prior to the date of the determination.

(v) Voting trusts. If the purpose of a voting trust or similar agreement is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may qualify as a small business within the size regulation, such voting trust shall not be considered valid for this purpose, regardless of whether the trust is or is not valid within the appropriate jurisdiction. However, if a voting trust is entered into for a legitimate purpose other than that described above, and it is a valid trust within the appropriate jurisdiction, it may be considered valid for the purpose of a size determination, provided such consideration is determined to be in the best interest of the small business program.

(vi) Control through common management. A concern is considered as controlling or having the power to control another concern when one or more of the following circumstances are found to exist, and it is reasonable to conclude that under the circumstances, such concern is directing or influencing or has the power to direct or influence, the operation of such other concern.

(*a*) Interlocking management. Officers, directors, employees, or principal stockholders of one concern serve as a working majority of the board of directors or officers of another concern.

(*b*) Common facilities. One concern shares common office space and/or employees and/or other facilities with another concern particularly where such concerns are in the same or related industry or field of operation, or where such concerns were formerly affiliated.

(*c*) Newly organized concern. Former officers, directors, principal stockholders, and/or key employees of one concern organize a new concern in the same or a related industry or field of operation, and serve as its officers, directors, principal stockholders, and/or key employees, and one concern is furnishing or will furnish the other concern with subcontracts, financial or technical assistance, and/or other facilities, whether for a fee or otherwise.

(vii) Control through contractual relationships—(a) Definition of a joint venture for size determination purposes. A joint venture, for size determination purposes, is an association of persons or concerns with interest in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out a single business venture, such as a Government contract, for joint profit for which purpose they combine their efforts, property, money, skill, or knowledge, but without creating a corporation or partnership in the legal or technical sense of the term.

(b) Joint ventures—financial assistance. For the purpose of financial assistance to a joint venture, the parties thereto are considered as controlling or having the power to control each other and are considered as being affiliated. For the purpose of financial assistance to a concern which has requested assistance for its own use, but which is incidentally a party to a joint venture, such concern is not considered as being affiliated with its joint venturer.

(c) Joint venture—procurement assistance. Concerns bidding on a particular procurement as joint venturers are considered as controlling or having the power to control each other with regard to performance of the contract, and therefore are considered as being affiliated. However, a concern which is a party to one or more joint ventures, but which is bidding on a procurement as an individual concern, is not considered as being affiliated with its joint ventures since they have no power to control its performance of the contract being bid on.

(d) Where a concern is not considered as being an affiliate of a concern with which it is participating in a joint venture, it is necessary, nevertheless, in computing annual receipts, etc., for the purpose of applying size standards to include such concern's share of the joint venture receipts (as distinguished from its share of the profits of such venture).

(e) Franchise and license agreements. If a concern operates or is to operate under a franchise (or a license) agreement, the following policy is applicable: In determining whether the franchisor controls or has the power to control and, therefore, is affiliated with the franchisee, the restraints imposed on a franchisee by its franchise agreement shall not be considered provided that the franchisee has the right to profit from its effort and the risk of loss or failure, commensurate with ownership. Even though a franchisee may not be controlled by the franchisor by virtue of the contractual relationship between them, the franchisee may be controlled by the franchisor or others through common ownership or common management, in which case they would be considered as affiliated.

(b) "Annual receipts" means the gross income (less returns and allowances, sales of fixed assets, and interaffiliate transactions) of a concern (and its domestic and foreign affiliates) from sales of products and services, interest, rents, fees, commissions, and/or from whatever other source derived, as entered on its regular books of account for its most recently completed fiscal year (whether on a cash, accrual, completed contracts, percentage of completion, or other acceptable accounting basis) and, in the case of a concern subject to U.S. Federal income taxation, reported or to be reported to the U.S. Treasury Department, Internal Revenue Service for Federal income tax purposes: *Provided, however,* If, for the purpose of receiving financial assistance under a Small Business Administration program, it is determined that (1) the applicant has completed at least 3 months of its current fiscal year, (2) its gross for receipts for the completed months of its current fiscal year are at least 25 percent lower than its receipts during the corresponding months of its most recently completed fiscal year, and (3) the reduction in receipts was primarily due to the shortage of energy or materials, its "annual receipts" for size determination purposes shall be computed by reducing its annual receipts for its most recently completed fiscal year by the determined percentile.

If a concern has been in business less than a year, its annual receipts for the purpose of a size standard based on 1 year's receipts shall be computed by determining its average weekly receipts for the period in which it has been in business and multiplying such figure by 52. If a concern has been in business less than 3 years, its average annual receipts for the purpose of a size standard based on 3 years' receipts, shall be computed by determining its average weekly receipts for the period in which it has been in business, and multiplying such figure by 52. Except as set forth in § 121.3–10, if a concern has acquired an affiliate during the applicable accounting period, it is necessary in computing the applicant's annual receipts to include the affiliate's receipts during the entire applicable accounting period, rather than only its receipts during the period in which it has been an affiliate. The receipts of a former affiliate are not included even if such concern had been an affiliate during a portion of the applicable accounting period.

(c) "Appeal" means a written communication addressed to the SBA Size Appeals Board requesting it to review a determination relating to a size matter made by a district director or his delegatee, or by a contracting officer.

(d) "Area of substantial unemployment," for the purpose of small business size determination, means a geographical area within the United States which is classified by the Department of Labor either as an "Area of Substantial Unemployment," or an "Area of Substantial and Persistent Unemployment."

(e) "Base maintenance" means furnishing at an installation within the several States, Commonwealth of Puerto Rico, Virgin Islands, the Trust Territory of the Pacific Islands, or the District of Columbia, three or more services which may include but are not limited to such maintenance activities as janitorial and custodial services, protective guard services, commissary services, base housing maintenance, fire prevention services, safety engineering services, messenger services, grounds maintenance and landscaping services, and air-conditioning and refrigeration maintenance; *Provided, however,* That whenever the contracting officer determines prior to the issuance of bids that the estimated value of one of the foregoing services constitutes more than 50 percent of the estimated value of the entire contract, the contract shall not be classified as base maintenance but in the industry in which such service is classified.

(f) "Bona fide feed stocks" means crude and any other hydrocarbon material actually charged to refinery processing units, as distinguished from materials used as components in products to be delivered after merely filtering, settling, or blending.

(g) "Crude-oil capacity" means the maximum daily average crude throughput of a refinery in complete operation, with allowance for necessary shutdown time for routine maintenance, repairs, etc. It approximates the maximum daily average crude runs to stills that can be maintained for an extended period.

(h) "Certificate of Competency" means a certificate issued by SBA pursuant to the authority contained in section 8(b)(7) of the Act stating that the holder of the certificate is competent as to capacity and credit to perform a specific Government procurement or sales contract.

(i) "Concern" means any business entity organized for profit (even if its ownership is in the hands of a nonprofit entity) with a place of business located in the United States and which makes a significant contribution to the U.S. economy through payment of taxes and/or use of American products, material and/or labor, etc. "Concern" includes but is not limited to an individual, partnership, corporation, joint venture, association, or cooperative. For the purpose of making affiliation findings (see paragraph (a) of this section) any business entity, whether organized for profit or not, and any foreign business entity, i.e., any entity located outside the United States, shall be included.

(j) "Contracting officer" means the person executing a particular contract on behalf of the Government and any other employee who is a properly designated contracting officer; the term includes the authorized representative of a contracting officer acting within the limits of his authority.

(k) "Convalescent or nursing home" means those facilities for the accommodation of convalescents or other persons who are not acutely ill or not in need of hospital care but who may require nursing care and related medical services, which facility is privately owned and operated for the purpose of obtaining profits which shall inure to the benefit of its owners, stockholders, or members.

(l) "Department store" means a concern employing 25 or more persons engaged in the retail sale of some items in

each of the following merchandise lines: (1) Furniture, home furnishings, appliances, radio and television sets; (2) a general line of apparel for the family; and (3) household linens and dry goods; provided, however, that sales within any one of the preceding merchandise lines do not exceed 80 percent of the concern's total sales and the aggregate of such merchandise lines account for at least 50 percent of the concern's total sales.

(m) "Forest products industry" as used in Section 121.3-9(b) means logging, wood preserving, and the manufacture of lumber and wood related products such as veneer, plywood, hardboard, particle board, or wood pulp, and of products of which lumber or wood related products are the principal raw material.

(n) "Gross leasable area" means the total floor area designed for tenant occupancy and exclusive use, including basements, mezzanines, and upper floors, if any, expressed in square feet measured from the centerline of a joint partition and from outside wall faces.

(o) "Hospital" means a health facility duly licensed as a hospital providing inpatient medical or surgical care of the sick or injured, including obstetrics, which facility is privately owned and operated for the purpose of obtaining profits which shall inure to the benefits of its owner, stockholders or members.

(p) "Industry" means a grouping of establishments primarily engaged in similar lines of activity as listed and described in the Standard Industrial Classification Manual, as amended (SIC Manual), prepared and published by the Bureau of the Budget (now Office of Management and Budget), Executive Office of the President.

(q) "Medical and dental laboratory" means those facilities which provide services to doctors, dentists, hospitals, and similar health facilities, which facilities are privately owned and operated for the purpose of obtaining profits which shall inure to the benefit of its owners, stockholders, or members.

(r) "Nonmanufacturer" means any concern which, in connection with a specific Government procurement contract other than a construction or service contract, does not manufacture or produce the products required to be furnished by such procurement. Nonmanufacturer includes a concern which can manufacture or produce the products referred to in the specific procurement but does not do so in connection with that procurement. For size determination purposes there can only be one manufacturer of the end item being procured. The manufacturer of the end item being procured is the concern which, with its own forces, transforms inorganic or organic substances including raw materials and/or miscellaneous parts or components into such end item. Whether a bidder on a particular procurement is the manufacturer or a nonmanufacturer for the purpose of a size determination is not for determination by the contracting officer. The decision shall be made by the appropriate SBA regional director or his delegatee, and need not be consistent with the contracting officer's decision as to whether such concern is or is not a manufacturer for the purpose of the Walsh-Healey Act, etc.

(s) A concern is "not dominant in its field of operation" when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

(t) "Number of employees" means the average employment of any concern, including the employees of its domestic and foreign affiliates, based on the number of persons employed on a full-time, part-time, temporary, or other basis during the pay period ending nearest the last day of the third month in each calendar quarter for the preceding four quarters: *Provided, however*, If, for the purpose of determining a concern's eligibility for financial assistance under a Small Business Administration program, it is determined that a concern's employment in its most recently completed calendar quarter is at least 25 percent lower than its employment in the corresponding quarter in the preceding calendar year and that such reduction in employment was primarily due to the shortage of energy or materials, its "number of employees" for size determination purposes shall be determined by reducing its average employment for the preceding four calendar quarters by the determined percentile. If a concern has not been in existence for four full calendar quarters, "number of employees" means the average employment of such concern and its affiliates during the period such concern has been in existence based on the number of persons employed during the pay period ending nearest the last day of each month. If a concern has acquired an affiliate during the applicable accounting period, it is necessary, in computing the applicant's number of employees, to include the affiliate's number of employees during the entire applicable accounting period rather than only its employees during the period in which it has been an affiliate. The employees of a former affiliate are not included even if such concern had been an affiliate during a portion of the applicable accounting period.

(u) "Protest" means a statement in writing from any bidder or offeror on a particular procurement or disposal (or from any other party interested therein) alleging that another bidder or offeror on such procurement is not a small business concern. Such statement shall contain the basis for the protest, together with specific detailed evidence in support of the protestant's claim. A protest received after the time limits set forth in § 121.3-5(a) shall be acted on, but such determination shall not apply to the procurement in question.

(v) "Redevelopment area" for the purpose of small business size determinations means a geographical area within the United States which has been designated as a "redevelopment area" in accordance with the Public Works and Economic Development Act of 1965 (Pub. L. 89-136, sec. 401, 75 Stat. 48).

(w) "Shopping center" means a group of commercial establishments planned, developed, owned, and managed as a unit with off-street parking provided on the property.

(x) "Size determination" means an SBA ruling, in writing, that a concern is or is not, or was or was not, a small business within the meaning of this part. An opinion rendered by SBA to a contracting officer on the basis of published or commonly known information and without the benefit of a formal SBA inquiry, is not a "size determination" as that term is used in this part.

(y) "United States" as used in this regulation includes the several States, the territories and possessions of the United States, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia.

§ 121.3-3 Organization—size functions.

The Assistant Administrator for Advocacy, Planning and Research shall:

(a) Develop and recommend small business size standards to the Administrator of SBA for promulgation;

(b) Conduct industry hearings pertaining to size matters;

(c) In concert with the Office of General Counsel, issue interpretations of the Size Standards Regulation;

(d) Consider and take appropriate action on written petitions objecting to or requesting amendments or rescission of a published size standard;

(e) Establish procedures for the implementation of all size programs; and

(f) Perform such other related functions as may be appropriate to administer the SBA size program.

§ 121.3-4 Size determinations.

Original size determinations shall be made by the regional director, or his delegate, serving the region in which the principal office of the concern (not including its affiliates) whose size is in question is located, except that for lease guarantee reinsurance purposes such determinations shall be made by the Associate Administrator for Finance and Investment. The regional director, or his delegatee, or the Associate Administrator for Finance and Investment, promptly shall notify in writing, by certified mail, return receipt requested, the concern in question and other interested persons of his decision. Such determination shall become effective immediately and shall remain in full force and effect unless and until reversed by the Small Business Size Appeals Board pursuant to § 121.3-6. For the purpose of Government procurements or sales, a size determination shall be made only in the event of a protest pursuant to § 121.3-5, a request for a redetermination pursuant to § 121.3-15(e), a request for a Certificate of Competency, on request by the U.S. General Accounting Office, or if a regional direc-

tor or his delegatee has information which causes him to question the size status of a concern for the purpose of the Small Business Subcontracting Program or Source Search Program, or for any other purpose relating to Government procurement, and he concludes that a size determination is necessary; *provided, however,* That a regional director or his delegatee may, whenever he deems such action necessary, determine the size status of a concern for the purpose of the Government Timber Sales Program.

§ 121.3–5 Protest of small business status.

(a) How to protest: Any bidder or offeror or other interested party may challenge the small business status of any other bidder or offeror on a particular Government procurement or sale. Such challenge shall be made by delivering a protest to the contracting officer responsible for the particular procurement or sale involved. In order to apply to the procurement or sale in question, such protest must be filed prior to the close of business on the 5th day, exclusive of Saturdays, Sundays, and legal holidays, after bid or proposal opening, except that in the case of negotiated procurements, a protest may be filed within 5 days exclusive of Saturdays, Sundays, and legal holidays after receipt from the contracting officer of notification of the identity of the offeror being protested. Such filing must be delivered to the contracting officer by hand, telegram, or mail within the 5-day period allotted, *Provided however,* That a protest shall be considered timely if made by telephone to the contracting officer within the 5-day period allotted and the contracting officer thereafter receives a confirming letter (1) within such 5-day period or (2) postmarked no later than 1 day after the date of such telephone protest. Any contracting officer who receives a protest shall promptly forward such protest to the SBA district office serving the geographical area in which the principal office of the protested concern, not including its affiliates, is located. A contracting officer may at any time after bid opening question the small business status of any bidder or offeror for the purpose of a particular procurement or sale by filing a protest with the SBA district office serving the area in which the principal office of the protested concern, not including its affiliates, is located. A protest by a contracting officer shall be timely for the purpose of the procurement or sale in question whether filed before or after award.

(b) Notification of protest: Upon receipt of such protest, the SBA district director or his delegatee shall immediately notify the contracting officer and the protestant of the date such protest has been received and that the size of the concern being protested is being considered by SBA. The district director or his delegatee shall also advise the protested bidder or offeror of the receipt of the protest and shall forward to the protested bidder or offeror a copy of the protest and a blank SBA Form 355, *Application for Small Business Size Determination,* by certified mail, return receipt requested. Such bidder must, within 3 working days after receipt of the copy of the protest and SBA Form 355, file the completed form as directed by SBA, must attach thereto a statement in answer to the allegations of the letter of protest, together with evidence to support such position. If such bilder or offeror does not submit the completed SBA Form 355 within the bling period provided above, or within any additional period of time granted by SBA for cause, SBA will rule the protested concern is other than a small business.

(c) Notification of determination. After receipt of aprotest and responses thereto, SBA shall determine the small business status of the protested bidder or offeror and, by certified mail, return receipt requested, notify the contracting officer, the protestant, anl the protested bidder or offeror of its decision within 10 working days, if possible.

(d) If SBA has determined that a concern is ineligible as a small business for the purpose of aparticular procurement, it cannot thereafter become eligible for the purpose of such procurement by taking affirmative acts to constitute itself a small business.

§ 121.3–6 Appeals.

(a) Organization. The Size Appeals Board shall review appeals from size determinations made pursuant to §§ 121.3–4 and 121.3–5 and from product classifications made pursuant to §§ 121.3–8 and 121.3–10 and shall make final decisions as to whether such determinations or classifications should be affirmed, reversed or modified. The Size Appeals Board only has jurisdiction to consider appeals from formal determinations as to a concern's small business size status and appeals from product or service classification determinations made by contracting officers for the purpose of Government procurements. It has no jurisdiction to consider an appeal from an informal opinion or advice concerning a company's small business size status, an opinion as to a company's future small business size status based on proposed but unexecuted changes in its organization, management or contractual relations, or an appeal based on an allegation that the small business size standard established by SBA for a particular industry or field of operation is improper for the purpose intended. Size Appeals Board proceedings are essentially fact-finding and nonadversary in nature. The Size Appeals Board shall conduct such proceedings as it determines appropriate to enable it to discharge its duties.

(1) The Size Appeals Board shall consist of five members, to wit: the Deputy Administrator (Chairman), the Associate Administrator for Procurement Assistance (Vice Chairman), the Associate Administrator for Operations, the Associate Administrator for Finance and Investment, and the Assistant Administrator for Advocacy, Planning and Research.

(2) Each member of the size Appeals Board shall, in writing, designate one or more alternates to serve in his stead in the event of absence or disability. Each member or his alternate shall have one vote, except that the Chairman, or the Vice Chairman acting in his stead, shall vote only in the event of a tie.

(b) Method of appeal—(1) Who may appeal. An appeal may be filed by:

(i) Any concern or other interested party which has protested the small business status of another concern pursuant to § 121.3–5 and whose protest has been denied by a regional director or his delegatee;

(ii) Any concern or other interested party which has been adversely affected by a decision of a regional director or his delegatee or by the Associate Administrator for Finance and Investment pursuant to §§ 121.3–4 and 121.3–5;

(iii) Any concern or other interested party which has been adversely affected by a decision of a contracting officer regarding product classification pursuant to § 121.3–8; and

(iv) The Small Business Administration Associate Administrator for the Small Business Administration program involved.

(2) Where to appeal. Written notices of appeal shall be addressed to the Chairman, Size Appeals Board, Small Business Administration, Washington, D.C. 20416.

(3) Time for appeal. (i) An appeal from a size determination or product classification by a regional director, or his delegatee, may be taken at any time, except that because of the urgency of pending procurements, appeals concerning the small business status of a bidder or offeror in a pending procurement must be taken within 5 days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a decision by a regional director or his delegatee. Unless written notice of such appeal is received by the Size Appeals Board before the close of business on the 5th working day, the appellant will be deemed to have waived its rights of appeal insofar as the pending procurement is concerned.

(ii) An appeal from a contracting officer's designation of the Standard Industrial Classification industry into which the product or service being procured is classified, and/or the Small Business Administration size standard applicable thereto may be taken: (*a*) Not less than 10 days, exclusive of Saturdays, Sundays, and legal holidays, before bid opening day or deadline for submitting proposals or quotations, in cases wherein the bid opening date or last date to submit proposals or quotations is more than 30 days after the issuance of the invitation for bids or request for proposals or quotations, or (*b*) not less than 5 days, exclusive of Saturdays, Sundays, and legal holidays, before the bid opening day or deadline for submitting proposals or quotations, in cases wherein the bid opening date or last date to submit proposals or quotations is 30 or less days after the issuance of the invitation for bids or request for proposals or quotations, and

(iii) The timeliness of an appeal under paragraph (b)(3) (i) and (ii) of this section shall be determined by the time

of receipt of the appeal by the Size Appeals Board: *Provided, however,* That an appeal received after such time limit has expired shall be deemed to be timely and shall be considered if, in the case of mailed appeals, such appeal is sent by registered or certified mail and the postmark thereon indicates that the appeal would have been received within the requisite time limit but for delays beyond the control of the appellant, or in the case of telegraphed appeals, the telegram date and time line indicates that the appeal would have been received within the requisite time limit but for delays beyond the control of the appellant.

(4) Notice of appeal. No particular form is prescribed for the notice of appeal. However, the appellant shall submit to the Board an original and four legible copies of such notice and, to avoid time-consuming correspondence, the notice should include the following information:

(i) Name and address of concern on which the size determination was made;

(ii) The character of the determination from which appeal is taken and its date;

(iii) If applicable, the IFB or contract number and date, and the name and address of the contracting officer;

(iv) A concise and direct statement of the reasons why the decision of a regional director, or his delegatee, the contracting officer or the Associate Administrator for Finance and Investment is alleged to be erroneous;

(v) Documentary evidence in support of such allegations; and

(vi) Action sought by the appellant.

(c) Notice to interested parties. The Size Appeals Board shall promptly acknowledge receipt of the Notice of Appeal and shall send a copy of such Notice of Appeal to the appropriate regional director or his delegatee and to the contracting officer (if a pending procurement is involved). If the appellant is not the concern whose size status is in question, the Board shall also send a copy of the notice to such concern. The Board shall notify all known interested parties that the appeal has been filed. The Board in its discretion may also provide any of such interested parties with copies of applicant's Notice of Appeal, or parts thereof, when the Board determines that this would be in the interest of fairness or would assist it in the performance of its functions.

(d) Statement of interested parties. After an appeal has been filed, any other interested parties may file with the Board a signed statement, together with four legible copies thereof, as to why the appeal should or should not be denied. Such statement shall be accompanied by appropriate evidence. Such statements and supporting evidence shall be mailed or delivered to the Chairman, Size Appeals Board, Small Business Administration, Washington, D.C. 20416, within 5 calendar days of the receipt of appropriate notification of appeal or other action in the proceeding unless an extension is for cause granted by the Chairman of the Size Appeals Board. If the appellant is the concern whose size status is in question, the Board will provide copies of such statements and appropriate evidence submitted in connection with the appeal or a reconsideration thereof to such appellant.

(e) Consideration by the Size Appeals Board. (1) The Size Appeals Board shall consider the appeal on the written submission of the parties. The Board may also, in its discretion, conduct an oral inquiry. After consideration of all relevant information, the Board shall promptly render a decision which shall state the reason for such decision.

(2) Procedures in oral inquiries. In considering size appeals, and in reconsidering size appeals decisions, the Size Appeals Board may hold an oral inquiry to assist it in arriving at facts necessary in deciding the appeal. The following rules shall govern such oral inquiries:

(i) Oral inquiries may be held by the Size Appeals Board upon the request of any party to a size appeal or by the Board on its own motion. The Board will, in its discretion, determine whether an oral inquiry will be of assistance in its determination of a size appeal. The Board shall inform the party making a request for oral inquiry whether its request is granted. If the Board grants the request for an oral inquiry, it will so notify all other interested parties.

(ii) Oral inquiries held by the Board are investigative in nature and not adversary. Such inquires shall be conducted informally in a manner which will facilitate the Board's factfinding function and insure fairness to all participants.

(iii) Whenever the Board permits the appearance of two or more parties before it in an oral inquiry, cross-examination shall not be permitted between or among such parties; however, any party appearing in such oral inquiry may suggest questions for the Board to direct to other parties which may assist the Board in its determination of relevant facts.

(f) Decision of the Size Appeals Board. The decision of the Size Appeals Board shall be predicated upon the entire record, and it shall state in writing the basis for its findings and conclusions. The Chairman shall promptly notify, in writing, the appellant and the other interested parties of the Board's decision together with the reasons therefor.

(g) Reconsiderations. (1) Following any decision in a size appeals case, an interested party, within no more than 5 business days following the decision, may petition the Board for reconsideration upon presentation of appropriate justification therefor. The petition for reconsideration to the Board may be in any form, with an original and four copies. The Board will notify interested parties that a petition for reconsideration has been received.

(2) The Board shall consider the petition for reconsideration upon the statement and other evidence presented by the petitioners and any other evidence the Board, in its discretion, deems necessary.

(3) Grounds for reconsideration. Grounds for reconsideration shall be:

(i) A material error of fact in the original decision; or

(ii) Relevant information not previously considered by the Board or relevant information not previously available to any of the parties involved;

(iii) When a request for reconsideration is made by any of the interested parties, such requesting party must demonstrate to the Board that the grounds for reconsideration involve facts or information which were not previously presented to the Board through no fault or omission of such party.

(4) If the Board denies the request for reconsideration, it shall notify all parties. If the request for reconsideration is granted, the Board shall so notify all interested parties, setting forth a reasonable time within which the interested parties may, if appropriate, submit additional information. The Board may, in its discretion, provide interested parties with copies of appropriate information submitted by other parties where it determines that this is necessary in the interest of fairness or to better assist the Board in performing its factfinding functions.

(5) Following its reconsideration of the matter, the Board will promptly render a decision pursuant to paragraph (f) of this section. The decision of the Board shall constitute the final administrative remedy afforded by this Agency.

§ 121.3–7 Differentials.

(a) Alaska. If an applicant for a size determination is a concern which has 50 percent or more of its annual sales or receipts attributable to business activity within Alaska then, whenever "annual sales or annual receipts" are used in any size definition contained in this part, said dollar limitation is increased by 25 percent of the amount set forth therein.

(b) Substantial or persistent unemployment areas; areas of concentrated unemployment or underemployment; certified eligible concerns and redevelopment areas.

(1) Financial assistance programs of the Small Business Administration and financial assistance under the Small Business Investment Act of 1958, as amended. Notwithstanding any other provision of this part, the applicable size standards for the purpose of all financial assistance programs of the Small Business Administration, except the surety bond guarantee assistance program, and for the purpose of financial assistance under the Small Business Investment Act of 1958, as amended, are increased by 25 percent whenever the concern maintains or operates a plant, facility, or other business establishment within an area of substantial unemployment or underemployment or redevelopment area as defined in § 121.3–2 (d) and (v) or is designated as a "Certified Eligible" concern by the Department of Labor and agrees to use the assistance within such area, or, if it does not maintain a plant, facility, or other business establishment within such area, agrees to utilize the assistance for the establishment and/or

operation of a plant, facility, or other business establishment within such area.

(2) Government procurement assistance, sales of Government property, and Government subcontracting. Section 121.3–7(b) is not applicable to size determinations for the purpose of Government procurement assistance, sales of Government property, or Government subcontracting.

§ 121.3–8 Definition of small business for Government procurement.

A small business concern for the purpose of Government procurement is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts and can further qualify under the criteria set forth in this section. When computing the size status of a bidder or offeror, the number of employees, annual receipts, or other applicable standards of the bidder or offeror and all of its affiliates shall be included. In the submission of a bid or proposal on a Government procurement, a concern which meets the criteria provided in this section and which either has not been determined by SBA to be ineligible, or has been determined to be ineligible but subsequently has on the basis of a significant change in ownership, management or contractual relations, applied for recertification and had its application granted, may represent that it is a small business. In the absence of a written protest or other information which would cause him to question the veracity of the self-certification, the contracting officer shall accept the self-certification at face value for the particular procurement involved. If a concern has been determined by SBA to be ineligible as a small business under a particular size standard and it has already self-certified as a small business on a pending procurement subject to the same or lower number of employees or annual receipts size standard (whichever is applicable), it shall immediately notify the contracting officer of such adverse size determination and shall not thereafter self-certify on a procurement subject to the same or a lower employee or annual receipts size standard (whichever is applicable) until it has applied for recertification based on a significant change in its ownership, management, or contractual relations, and has been determined eligible as a small business under such size standard by either the regional office which issued the adverse determination or the Small Business Size Appeals Board. If the contracting officer has cause to question the veracity of a self-certification and elects to do so, he shall refer the eligibility issue to SBA by filing a formal protest pursuant to § 121.3–5. If a procurement calls for more than one item and the bidder can bid on any or all items, the bidder must meet the size standard for each item for which it submits a bid. If the procurement calls for more than one item and a bidder is required to bid on all or none of such items, the bidder can qualify as small business for such procurement if it meets the size standard for the item accounting for the greatest percentage of the total contract value. The determination of the appropriate classification of a product or service shall be made by the contracting officer. Both classification and the applicable size standard (number of employees, average annual receipts, etc.) shall be set forth in the solicitation and such determination of the contracting officer shall be final unless appealed in the manner provided in § 121.3–6. If no standard for an industry, field of operation or activity (e.g., animal speciality; fin fish; management-logistics support to be performed outside of the several States, Commonwealth of Puerto Rico, Virgin Islands, the Trust Territory of the Pacific Islands, or the District of Columbia) has been set forth in this section, a concern bidding on a Government contract is a small business if, including its affiliates, it is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts, and has 500 employees or less.

(a) Construction. Any concern bidding on a contract for work which is classified in Division C, Contract Construction, of the Standard Industrial Classification Manual, as amended, prepared and published by the Office of Management and Budget, Executive Office of the President, is:

(1) Small if its average annual receipts for its preceding 3 fiscal years do not exceed $7.5 million: *Provided, however,* That, if the requirements of the contracts are classified in an industry set forth in Schedule H of this part, it is small if it does not exceed the size standard established therein for such industry.

(2) Small if it is bidding on a contract for dredging and (i) its average annual receipts for its preceding 3 fiscal years do not exceed $5 million and (ii) it performs the dredging of at least 40 percent of the yardage advertised in the plans and specifications with dredging equipment owned by the bidder or obtained from another small business dredging concern.

(b) Manufacturing. Any concern bidding on a contract for a product it manufactured is classified:

(1) As small if it is bidding on a contract for food canning and preserving and its number of employees does not exceed 500 persons, exclusive of agricultural labor as defined in section (k) of the Federal Unemployment Tax Act, 68A Stat. 454, 26 U.S.C. (I.R.C. 1954) 3306.

(2) As small if it is bidding on a contract for a product classified within an industry set forth in Schedule B of this part and its number of employees does not exceed the size standard established for that industry.

(3) As small if it is bidding on a contract for a product classified within an industry not set forth in Schedule B of this part and its number of employees does not exceed 500 persons.

(4) As small if it is bidding on a contract for pneumatic tires within Census Classification Codes 30111 and 30112: *Provided,* That (i) the value of the pneumatic tires within Census Classification Codes 30111 and 30112 which it manufactured in the United States during the preceding calendar year is more than 50 percent of the value of its total worldwide manufacture, (ii) the value of the pneumatic tires within Census Classification Codes 30111 and 30112 which it manufactured worldwide during the preceding calendar year was less than 5 percent of the value of all such tires manufactured in the United States during said period, and (iii) the value of the principal products which it manufactured or otherwise produced or sold worldwide during the preceding calendar year is less than 10 percent of the total value of such products manufactured or otherwise produced or sold in the United States during said period.

(5) As small if it is bidding on a contract for passenger cars within Census Classification Code 37171: *Provided,* That (i) the value of the passenger cars within Census Classification Code 37171 which it manufactured or otherwise produced in the United States during the preceding calendar year is more than 50 percent of the value of its total worldwide manufacture or production of such passenger cars, (ii) the value of the passenger cars within Census Classification Code 37171, which it manufactured or otherwise produced during the preceding calendar year was less than 5 percent of the total value of all such manufactured or produced in the United States during the said period, and (iii) the value of the principal products which it manufactured or otherwise produced or sold during the preceding calendar year is less than 10 percent of the total value of such product manufactured or otherwise produced or sold in the United States during said period.

(6) Rebuilding on a factory basis or equivalent: As small if it is bidding on a contract for rebuilding machinery or equipment on a factory basis, the purpose of which is to restore such machinery or equipment to as serviceable and as like-new condition as possible and its number of employees does not exceed the number of employees specified for the classification code applicable to the manufacturer of the original item.

NOTE: The size standard contained herein is not limited to concerns who are manufacturers of the original item but it is applicable to all bidders or offerors. The term "rebuilding on a factory basis" as used in this subsection does not include ordinary repair services such as those involving minor repair and/or preservation operations.

(c) Nonmanufacturing. Any concern which submits a bid or offer in its own name, other than on a construction or service contract, but which proposes to furnish a product not manufactured by said bidder or offerer, is deemed to be a small business concern when:

(1) Its number of employees does not exceed 500 persons, and

(2) (i) In the case of Government procurement reserved for or involving the preferential treatment of small businesses, such nonmanufacturer furnishes in the performance of the contract the

products of a small business manufacturer or producer, which products are manufactured or produced in the United States; *Provided, however,* if the goods to be furnished are woolen, worsted, knitwear, duck, and webbing, dealers and converters shall furnish such products which have been manufactured or produced by a small weaver (small knitter for knitwear), and if finishing is required, by a small finisher. If the procurement is for thread, dealers and converters shall furnish such products which have been finished by a small finisher. (Finishing of thread is defined as all "dyeing, bleaching, glazing, mildew proofing, coating, waxing, and other applications required by the pertinent specifications but excluding mercerizing, spinning, throwing, or twisting operations.")

(ii) If the procurement is for a refined petroleum product, other than a product classified in Standard Industrial Classfication Industries No. 2951, Paving Mixtures and Blocks; No. 2952, Asphalt Felts and Coatings; No. 2992, Lubricating Oils and Greases; or No. 2999, Products of Petroleum and Coal, Not Elsewhere Classified; paragraph (g) of this section is for application. For size determination purposes there can only be one manufacturer of the end item being procured. The manufacturer of the end item being procured is the concern which with its own forces transforms inorganic or organic substances including raw materials and/or miscellaneous parts or components into such end item. Whether a bidder on a particular procurement is the manufacturer or a nonmanufacturer for the purpose of a size determination is not for determination by the contracting officer. The decision shall be made by the appropriate SBA regional director or his delegatee, and need not be consistent with the contracting officer's decision as to whether such concern is or is not a manufacturer for the purpose of the Walsh-Healey Act, etc. The Government often purchases items in the form of kits such as, but not limited to, tool kits and survival kits, which are not manufactured items but merely assemblages of separate manufactured items. Accordingly, a concern which purchases some or all of such items and packages them into kit form is considered to be a nonmanufacturer for size determination purposes. Such a concern can qualify as a small business only if it meets all other qualifications of a small nonmanufacturer set forth in this part and if more than 50 percent of the total value of the kit and its contents is accounted for by items manufactured by small business. For the purpose of a size determination, a sawmill is considered as the manufacturer of treated lumber, even if it contracts out the treatment of the lumber. Therefore, a small business sawmill can deliver in the performance of a set-aside procurement lumber which has been treated by a concern which does not qualify as a small business concern. For the purpose of a size determination, a concern which converts liquid oxygen to gaseous oxygen, with or without additives, is a nonmanufacturer of the gaseous oxygen and, therefore, must furnish gaseous oxygen converted from liquid oxygen manufactured by a small business concern.

(d) Research, development, and testing. Any concern bidding on a contract for research, development, and/or testing is classified:

(1) As small if it is bidding on a contract for research and/or development which requires delivery of a manufactured product and (i) it qualifies as a small business manufacturer within the meaning of paragraph (b) of this section for the industry into which the product is classified, or (ii) it qualifies as a small business nonmanufacturer within the meaning of paragraph (c) of this section.

(2) As small if it is bidding on a contract for research and/or development which does not require delivery of a manufactured product or on a contract for testing and its number of employees does not exceed 500 persons.

(e) Services. Any concern bidding on a contract for services (including but not limited to services set forth in Division I, Services, of the Standard Industrial Classification Manual), not elsewhere defined in this section, is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $1 million.

(1) Any concern bidding on a contract for engineering services other than marine engineering service is classified as small if its average annual receipts for its peceding 3 fiscal years do not exceed $5 million.

(2) Any concern bidding on a contract for motion picture production or motion picture services is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $5 million.

(3) Any concern bidding on a contract for janitorial and custodial services is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $3 million.

(4) Any concern bidding on a contract for base maintenance is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $5 million.

(5) Any concern bidding on a contract for marine cargo handling services is classified as small if its annual receipts do not exceed $5 million for its preceding 3 fiscal years.

(6) Any concern bidding on a con tract for naval architectural and marine engineerig services is classified as small if its average anual receipts for its preceding 3 fiscal years do not exceed $6 million.

(7) Any concern bidding on a con tract for food services is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $4 million.

(8) (i) Any concern bidding on a contract for laundry services including linen supply, diaper services, ad industrial laundering is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $3 million.

(ii) Any concern bidding on a contract for cleaning and dyeing includig rug cleaig services, is classified as small if its average anual receipts for the preceding 3 fiscal years do not exceed $1 million.

(9) Any concern bidding on a contrac for computer programming services is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $3 million.

(10) Any concern bidding on a contract for flight training services is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $5 million.

(11) Any concern bidding on a contract for motorcar rental and leasing services or truck rental and leasing services is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $5 million.

(12) Any concern bidding on a contract for tire recapping services is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $3 million. This section applies only to procurements requiring the services of tire retreading and repair shops (Standard Industrial Classification Industry No. 7534, Tire Retreading and Repair Shops) and not to procurements for the repairing and/or retreading of pneumatic aircraft tires which, by reason of the extent and nature of the equipment and operations required, are considered for size standards purposes to be manufactured within the meaning of Standard Industrial Classification Industry No. 3011, Tires and Inner Tubes.

(13) Any concern bidding on a contract for data processing services is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $3 million.

(14) Any concern bidding on a contract for computer maintenance services is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $5 million.

(15) Any concern bidding on a contract for services requiring the use of one or more helicopters or fixed-wing aircraft is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $3 million.

(f) Transportation. Any concern bidding on a contract for passenger or freight transportation, not elsewhere defined in this section, is classified:

(1) As small if its number of employees does not exceed 500 persons.

(2) As small if it is bidding on a contract for air transportation and its number of employees does not exceed 1,500 persons.

(3) As small if it is bidding on a contract for either trucking (local and/or long-distance), and/or warehousing and/or packing and crating and/or freight forwarding, and its annual receipts do not exceed $5 million.

(g) Refined petroleum products. Any concern bidding on a contract for a refined petroleum product other than a product classified in Standard Industrial Classification Industries No. 2951, Paving Mixtures and Blocks; No. 2952, As-

phalt Felts and Coatings; No. 2992, Lubricating Oils and Grease; or No. 2999, Products of Petroleum and Coal, Not Elsewhere Classified; is classified as small if (1) (i) its number of employees does not exceed 1,000 persons; (ii) it does not have more than 30,000 barrels-per-day crude oil or bona fide feed stock capacity from owned or leased facilities or from facilities made available to such concern under an arrangement such as, but not limited to, an exchange agreement (except one on a refined-product-for-refined-product basis), or a throughput or other form of processing agreement, with the same effect as though such facilities had been leased; and (iii) the product to be delivered in the performance of the contract will contain at lea t 90 percent components refined by the bidder from either crude oil or bona fide feed stocks; *provided, however,* That a petroleum refining concern which meets the requirements in subparagraph (1) (i) and (ii) of this paragraph may furnish the product of a refinery not qualified as small business if such product is obtained pursuant to a bona fide exchange agreement, in effect on the date of the bid or offer, between the bidder or offeror and the refiner of the product to be delivered to the Government which requires exchanges in a stated ratio on a refined-petroleum-product-for-a-refined-petroleum-product basis, and precludes a monetary settlement, and that the products exchanged for the products offered and to be delivered to the Government meet the requirement in subparagraph (1) (iii) of this paragraph; and, *provided further,* That the exchange of products for products to be delivered to the Government will be completed within 90 days after the expiration of the delivery period under the Government contract; and that any product furnished pursuant to a bona fide exchange agreement must be for delivery in the same Petroleum Administration for Defense (PAD) District pursuant to Schedule C of Part 121, as that in which the small refinery is located; or

(2) Its number of employees does not exceed 500 persons and the product to be delivered to the Government has been refined by a concern which qualifies under subparagraph (1) of this paragraph. The proviso that the product to be delivered in the performance of the contract will contain at least 90 percent components refined by the bidder from either crude oil or bona fide feed stocks contemplates that, in accomplishing such refining, the bidder will utilize its own employees and facilities which it owns or obtains under a bona fide lease as distinguished from any other arrangement having the same effect as a lease. The proviso permitting a concern which meets the requirements in paragraph (g) (1) (i) and (ii) of this section to furnish the product of a refinery not qualified as small business if such product is obtained pursuant to a bona fide exchange agreement which meets prescribed requirements, contemplates that the product exchanged by the bidder for the product to be furnished, shall have been refined by the bidder utilizing only its own employees and its own facilities or facilities obtained through a bona fide lease.

§ 121.3–9 Definition of small business for sales of Government property.

In the submission of a bid or proposal for the purchase of Government-owned property, a concern which meets the criteria provided in this section and which either has not been determined by SBA to be ineligible, or has been determined to be ineligible but subsequently has, on the basis of a significant change in ownership, management or contractual relations, applied for recertification and had its application granted, may represent that it is a small business. In the absence of a written protest or other information which would cause him to question the veracity of the self-certification, the contracting officer shall accept the self-certification at face value for the particular sale involved. If the contracting officer has cause to question the veracity of a self-certification and elects to do so, he shall refer the eligibility issue to SBA by filing a formal protest pursuant to § 121.3–5. If a concern has been determined by SBA to be ineligible as a small business under a particular size standard and it has already self-certified as a small business on a pending sale subject to the same or lower number of employees or annual receipts size standard (whichever is applicable), it shall immediately notify the contracting officer of such adverse size determination and shall not thereafter self-certify on a sale subject to the same or a lower employee or annual receipts size standard (whichever is applicable) until it has applied for recertification based on a significant change in its ownership, management, or contractual relations, and has been determined eligible as a small business under such size standard by either the regional office which issued the adverse determination or the Small Business Size Appeals Board.

(a) Sales of Government-owned property other than timber. A small business concern for the purpose of the sale of Government-owned property other than timber is a concern, including its affiliates, which is independently owned and operated, is not dominant in its field of operation, and can further qualify under the following criteria:

(1) Manufacturers. Any concern which is primarily engaged in manufacturing is small if its number of employees does not exceed 500 persons: *Provided, however,* That a concern primarily engaged in SIC Industry 2911, Petroleum Refining, is small if its number of employees does not exceed 1,000 persons and it does not have more than 30,000 barrels-per-day crude oil or bona fide stock capacity from owned and/or leased facilities, or from facilities made available to such concern under an arrangement such as, but not limited to, an exchange agreement (except one on a refined-product-for-refined-product basis) or a throughput or other form of processing agreement, with the same effect as though such facilities had been leased.

(2) Other than manufacturers. Any concern which is primarily not a manufacturer (except as specified in subparagraph (3) of this paragraph) is small if its average annual receipts for its preceding 3 fiscal years do not exceed $1 million.

(3) Stockpile purchasers. Any concern primarily engaged in the purchase of materials which are not domestic products is small if its annual sales or annual receipts for its preceding 3 fiscal years do not exceed $25 million.

(b) Sales of Government-owned timber. (1) In connection with sale of Government-owned timber, a small business is a concern that:

(i) Is primarily engaged in the logging or forest products industry;

(ii) Is independently owned and operated;

(iii) Is not dominant in its field of operation; and

(iv) Together with its affiliates, its number of employees does not exceed 500 persons.

(2) In the case of Government sales of timber reserved for or involving preferential treatment of small businesses, when the Government timber being purchased is to be resold, a concern is a small business when:

(i) It is a small business within the meaning of subparagraph (1) of this paragraph, and

(ii) It agrees that it will not sell to a concern which is not a small business within the meaning of this paragraph more than 30 percent of such timber or, in the case of timber from certain geographical areas set forth in Schedule E of this part, more than the percentage established therein for such area. The term "sell" includes but is not limited to the exchange of sawlogs for sawlogs on a product-for-product basis with or without monetary adjustment, and an indirect transfer such as the sale of the assets of (or a controlling interest in) a concern after it has been awarded one or more set-aside sales of timber. Under the latter circumstances, if, after being awarded a set-aside sale of timber a small business concern merges with or becomes subject to the control of a large business, so much of such timber (or sawlogs therefrom) shall be sold to one or more small businesses as is necessary for compliance with the 30 percent (50 percent in Alaska) restriction.

(3) In the case of Government sales reserved for or involving preferential treatment of small businesses, when the Government timber purchased is not to be resold in the form of sawlogs to be manufactured into lumber and timbers, a concern is a small business when:

(i) It meets the criteria contained in subparagraph (1) of this paragraph, and

(ii) It agrees that in manufacturing lumber or timbers from such sawlogs cut from the Government timber, it will do so only with its own facilities or those of concerns that qualify under subparagraph (1) of this paragraph as a small business. This provision assumes that the successful bidder will remain a small

business until the products have been manufactured. Accordingly, if, after acquiring the set-aside sale the bidder is purchased by, becomes controlled by, or merged with a large business, so much of such timber (or sawlogs therefrom) as is necessary shall be sold to one or more small businesses for compliance with the 30 percent (50 percent in Alaska) restriction. Any concern which self-certifies as a small business concern for the purpose of award under a small business set-aside sale of Government timber is expected to maintain evidence that it did so in good faith. Accordingly, such a concern will have to maintain for a period of 3 years the names, address, and size status of each concern to whom the timber or sawlogs were sold or disposed, and the log species, grades, and volumes involved. Such concern, and any subsequent small business concern that acquires the sawlogs, also shall require its small business purchasers to maintain similar records for a period of 3 years. Further, if the timber purchased is not to be resold in the form of sawlogs, but is to be manufactured into lumber or timbers by a concern other than the bidder, the bidder must maintain records to show the name, address, and size status of the concern manufacturing the sawlogs into lumber or timbers.

§ 121.3–10 Definition of small business for SBA loans.

A small business concern for the purpose of receiving an SBA loan is a concern, including its affiliates, which, on the date of receipt of the loan application accepted by the SBA, is independently owned and operated, is not dominant in its field of operation, and can further qualify under the criteria set forth below, *provided however*, That a concern which applies for an SBA loan to refinance an existing SBA loan but which, since the date of the original financing, has by natural growth, as distinguished from merger, etc., grown to a size which exceeds the applicable size standard, is considered as small for the purpose of refinancing if SBA administratively determines that refinancing is necessary to protect the Government's financial interest. A concern which is a small business under § 121.3–8 and which has applied for or received a Certificate of Competency is a small business eligible for an SBA loan to finance the contract covered by the Certificate of Competency. It no standard for an industry, field of operation, or activity has been set forth in this section, a concern seeking a size determination shall submit SBA Form 355 to the Assistant Administrator for Advocacy, Planning and Research, Washington, D.C. 20416, who shall determine what size standard shall be used on an ad hoc basis until a size standard is established for such industry or field of activity. If an applicant for an SBA loan has external operating affiliates (i.e., affiliates which are primarily engaged in selling to the general public or to concerns other than the applicant concern or an affiliate thereof) and such external operating affiliates are engaged in industries subject to size standards different than that of the applicant concern the applicant concern's size status shall be determined by computing the percentage that the size of the applicant concern, including any internal operating affiliates (i.e., affiliates primarily engaged in selling to the applicant or an affiliate thereof) is of the size standard for the industry in which the applicant, together with its internal operating affiliates, is of the size standard for the industry in which each external operating affiliate is primarily engaged; and adding to it the percentage that the size of each of its external operating affiliate is primarily engaged. In order for the applicant to be eligible under this revision, the total of such percentages must not exceed 100 percent. If a concern, including its internal operating affiliates, if any, is engaged in more than one industry, the applicable size standard shall be that for its primary industry. In determining which of the industries is the primary industry, consideration shall be given to these criteria among others: Distribution among such industries of receipts, employment, and costs of doing business.

(a) Construction. Any construction concern is small if its average annual receipts do not exceed $5 million for its preceding 3 fiscal years; *provided, however*, That, if it is primarily engaged in an industry set forth in Schedule I of this part, it is small if its annual receipts do not exceed the size standard established therein for that industry.

(b) Manufacturing. Any manufacturing concern is classified:

(1) As small if it is primarily engaged in an industry set forth in Schedule A of this part and its number of empolyees does not exceed the size standard established therein for that industry.

(2) As small if it is primarily engaged in an industry not set forth in Schedule A of this part and its number of employees does not exceed 250 persons.

(3) As small if it is primarily engaged in the food canning and preserving industry and its number of employees does not exceed 500 persons exclusive of agricultural labor as defined in subsection (k) of the Federal Employment Tax Act, 68A Stat. 454, 25 U.S.C. (I.R.C. 1954) 3306.

(c) Retail. Any retailing concern is classified:

(1) As small if it is primarily engaged in an industry or subindustry set forth in Schedule D of this part and its annual receipts do not exceed the size standard established therein for that industry or subindustry.

(2) As small if it is primarily engaged in an industry or subindustry not set forth in Schedule D of this part and its annual receipts do not exceed $1 million.

(d) Services. Any concern primarily engaged in a service industry (including but not limited to service industries set forth in Division I, Services, of the Standard Industrial Classification Manual) is classified:

(1) As small if its annual receipts do not exceed $1 million;

(2) As small if it is primarily engaged in the hotel and motel industry and its annual receipts do not exceed $2 million;

(3) As small if it is primarily engaged in the power laundry industry and its annual receipts do not exceed $2 million;

(4) As small if it is primarily engaged in the trailer court and parks industry and its annual receipts do not exceed $1 million: provided, that a minimum of 50 percent of the annual receipts is derived from the rental of space to tourist trailers for periods not in excess of 30 days;

(5) As small if it is primarily engaged in owning and operating a hospital and its capacity does not exceed 150 beds (excluding cribs and bassinets);

(6) As small if it is primarily engaged in owning and operating a convalescent or nursing home and its annual receipts do not exceed $1 million;

(7) As small if it is primarily engaged in owning and operating a medical or dental laboratory and (i) it is operated in connection with an eligible proprietary hospital or (ii) it is not operated in connection with an eligible proprietary hospital and its annual receipts do not exceed $1 million;

(8) As small if it is primarily engaged in the motion picture production industry and its annual receipts do not exceed $5 million;

(9) As small if it is primarily engaged in the motion picture services industry and its annual receipts do not exceed $5 million;

(10) As small if it is primarily engaged in rendering engineering services and its annual receipts do not exceed $2.5 million;

(11) As small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours;

(12) As small if it is primarily engaged in providing cable television service rental to homes, and its annual receipts do not exceed $2.5 million. (See 13 CFR 120.2(d) (4) for SBA policy which bars concerns that originate programs from receiving financial assistance. This policy limitation is not applicable to small business investment company assistance.)

(e) Shopping centers. (1) Any concern primarily engaged in operating shopping centers is small if (i) it does not have assets exceeding $5 million, (ii) it does not have net worth in excess of $2.5 million, (iii) it does not have an average net income, after Federal income taxes, for the preceding 2 fiscal years in excess of $250,000 (average net income to be computed without benefit of any carryover loss), and (iv) it does not lease more than 25 percent of the gross leasable area to concerns which do not meet the small business definitions contained in this section.

(2) For the purpose of size determinations, shopping center operators will not be considered affiliated with their tenants merely because of lease agreements.

(f) Transportation and warehousing. Any concern primarily engaged in passenger and freight transportation or warehousing is classified:

(1) As small if its annual receipts do not exceed $1 million;

(2) As small if it is primarily engaged in the air transportation industry and its number of employees does not exceed 1,000 persons;

(3) As small if it is primarily engaged in the storage of grain and it does not have more than 1 million bushels capacity in owned and leased facilities, and its annual receipts do not exceed $1 million;

(4) As small if it is primarily engaged in trucking (local and/or long distance) and/or warehousing and/or packing and crating and/or freight forwarding and its annual receipts do not exceed $5 million.

(g) Wholesale. (1) Any wholesaling concern is classified:

(i) As small if it is primarily engaged in an industry or subindustry set forth in Schedule C of this part and its annual receipts do not exceed the size standard established therein for that industry or subindustry.

(ii) As small if it is primarily engaged in an industry or subindustry not set forth in Schedule C of this part and its annual receipts do not exceed $5 million.

(2) Any concern primarily engaged in wholesaling, but also engaged in manufacturing, is not a "small business concern" unless it qualifies under both the manufacturing and wholesaling standards.

(h) Mining and mining services. Any mining or mining services concern primarily engaged in an industry set forth in Schedule F of this part is classified as small if its number of employees does not exceed the size standard established therein for that industry.

(i) Custom livestock feeding. Any concern primarily engaged in custom livestock feeding is classified as small if its annual receipts do not exceed $2 million.

(j) Agriculture production (crops), fish farms and fish hatcheries, etc. Any concern primarily engaged: (1) In an industry set forth in Major Group 01—Agriculture Production—Crops, of the Standard Industrial Classification Manual, (2) in the operation of a fish farm (part of Standard Industrial Classification Industry No. 0279, Animal Specialties, Not Elsewhere Classified), (3) in the operation of a fish hatchery (part of Standard Industrial Classification Industry No. 0921, Fish Hatcheries and Preserves), (4) in the propagation of fur-bearing animals (part of Standard Industrial Classification Industry No. 0271, Fur-Bearing Animals and Rabbits), (5) in the planting of oysters (part of Standard Industrial Classification Industry No. 0913, Shellfish), or (6) in the operation of hatcheries for chicks and poults (Standard Industrial Classification Industry No. 0254, Poultry Hatcheries), where such hatchery operators produce more than 50 percent of the chicks or 50 percent of the poults hatched are retained by the operators for the production of broilers or turkeys for market, is classified as small if its annual receipts do not exceed $250,000.

§ 121.3–11 Definition of small business for assistance by small business investment companies or by development companies.

A small business concern for the purpose of receiving financial or other assistance from small business investment companies or development companies is one which:

(a) Together with its affiliates, is independently owned and operated, is not dominant in its field of operation, does not have assets exceeding $2.5 million, and does not have an average net income, after Federal income taxes, for the preceding 2 years in excess of $250,000 (average net income to be computed without benefit of any carryover loss); or

(b) Qualifies as a small business concern under § 121.3–10.

§ 121.3–12 Definition of small business Government subcontractors.

(a) Any concern in connection with subcontracts of $2,500 or less which relate to Government procurements will be considered a small business concern if, including its affiliates, its number of employees does not exceed 500 persons.

(b) Any concern in connection with subcontracts exceeding $2,500 which relate to Government procurements will be considered a small business concern if it qualifies as such under § 121.3–8: *Provided, however*, That a nonmanufacturer is considered as small business for the purpose of Government subcontracting if, including its affiliates, its number of employees does not exceed 500 persons.

§ 121.3–13 Definition of small business for the purpose of lease guarantee.

A small business concern for the purpose of lease guarantee is a concern that qualifies as a small business under Section 121.3–11.

§ 121.3–14 Definition of small business for the purpose of Government leases of uranium prospecting or mining rights.

In the submission of a bid or proposal for a Government lease of uranium prospecting or mining rights, a concern whose number of employees does not exceed 100 persons may represent that it is a small business in the absence of a written protest or other information which would cause him to question the veracity of the self-certification at face value for the particular lease involved.

§ 121.3–15 Definition of small business for the purpose of surety bond guarantee assistance.

A small business concern for the purpose of surety bond guarantee assistance is a concern that qualifies as a small business under § 121.3–10, with the following exception:

(a) Construction. Any construction concern is small if its annual receipts for its preceding fiscal year or its average annual receipts for its preceding 3 fiscal years do not exceed $2 million: *Provided, however*, That, if the concern is primarily engaged in an industry set forth in Schedule I of this part, it is small if its annual receipts for its preceding fiscal year or its average annual receipts for its preceding 3 fiscal years do not exceed the maximum established therein for that industry.

Effective date: This revision shall become effective on December 24, 1974.

(All SBA programs listed in the Catalog of Federal Domestic Assistance Programs under Nos. 59.001–59.018.)

Dated: December 11, 1974.

THOMAS S. KLEPPE,
Administrator.

SCHEDULE A—EMPLOYMENT SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN MANUFACTURING

(The following size standards are to be used when determining the size status of applicants for SBA business loans, displaced business loans, economic opportunity loans, surety bond guarantee assistance, and as alternate standards for Sections 501 and 502 loans and SBIC assistance.)

Census classification code	Industry or class of products	Employment size standard (number of employees)[1]
	MAJOR GROUP 20—FOOD AND KINDRED PRODUCTS	
2011	Meat packing plants	500
2013	Sausages and other prepared meat products	500
2023	Condensed and evaporated milk	500
2024	Ice cream and frozen desserts	500
2026	Fluid milk	500
2032	Canned specialties	1,000
2033	Canned fruits, vegetables, preserves, jams, and jellies	500
2034	Dried and dehydrated fruits, vegetables, and soup mixes	500
2037	Frozen fruits, fruit juices, and vegetables	500
2038	Frozen specialties	500
2041	Flour and other grain mill products	500
2043	Cereal breakfast foods	1,000
2045	Blended and prepared flour	500
2046	Wet corn milling	750
2047	Dog, cat and other pet foods	500
2053	Cookies and crackers	750
2062	Cane sugra refining	750
2063	Beet sugar	750
2066	Chocolate and cocoa products	500
2067	Chewing gum	500
2075	Soybean oil mills	500
2076	Vegetable oil mills, except corn, cottonseed and soybean	1,000
2079	Shortening, table oils, margarine and other edible fats and oils, n.e.c.	750
2082	Malt beverages	500
2085	Distilled, rectified and blended liquors	750
2087	Flavoring extracts and flavoring sirups, n.e.c.	500
20991	Desserts (ready to mix)	500
20994	Baking powder and yeast	500
	MAJOR GROUP 21—TOBACCO MANUFACTURES	
2111	Cigarettes	1,000
2121	Cigars	500
2131	Tobacco (chewing and smoking) and snuff.	500
2141	Tobacco stemming and redrying.	500
	MAJOR GROUP 22—TEXTILE MILL PRODUCTS	
2211	Broad-woven fabric mills, cotton.	1,000
2221	Broad-woven fabric mills, manmade fiber and silk.	500
2261	Finishers of broad-woven fabrics of cotton.	500
2262	Finishers of broad-woven fabrics of manmade fiber and silk.	500

Census classification code	Industry or class of products	Employment size standard (number of employees)[1]
2271	Woven carpets and rugs	750
2272	Tufted carpets and rugs	500
2279	Carpets and rugs, n.e.c.	500
2281	Yarn spinning mills: cotton, manmade fibers and silk.	500
2284	Thread mills	500
2296	Tire cord and fabric	1,000
	MAJOR GROUP 23—APPAREL AND OTHER FINISHED PRODUCTS MADE FROM FABRICS AND SIMILAR MATERIALS	
2321	Men's, youths', and boys' shirts (except work shirts) and nightwear.	500
	MAJOR GROUP 25—FURNITURE AND FIXTURES	
2522	Metal office furniture	500
	MAJOR GROUP 26—PAPER AND ALLIED PRODUCTS	
2611	Pulp mills	750
2621	Paper mills, except building paper mills	750
2631	Paperboard mills	750
2641	Paper coating and glazing	500
2643	Bags, except textile bags	500
2646	Pressed and molded pulp goods	750
2647	Sanitary paper products	500
2648	Stationery, tablets and related products	500
2649	Converted paper and paperboard products, n.e.c.	500
2654	Sanitary food containers	750
2661	Building paper and building board mills	750
	MAJOR GROUP 28—CHEMICALS AND ALLIED PRODUCTS	
2812	Alkalies and chlorine	1,000
2813	Industrial gases	1,000
2816	Inorganic pigments	1,000
2819	Industrial inorganic chemicals, n.e.c.	1,000
2821	Plastic materials, synthetic resins and nonvulcanizable elastomers	750
2822	Synthetic rubber (vulcanizable elastomers)	1,000
2823	Cellulosic manmade fibers	1,000
2824	Synthetic organic fibers, except cellulosic	1,000
2834	Pharmaceutical preparations	750
2841	Soap and other detergents, except specialty cleaners	750
2842	Specialty cleaning, polishing, and sanitation preparations	500
2844	Perfumes, cosmetics, and other toilet preparations	500
2861	Gum and wood chemicals	500
2865	Cyclic (coal tar) crudes, and cyclic intermediates, dyes, and organic pigments (lakes and toners)	750
28651	Cyclic (coal tar) crudes	500
2869	Industrial organic chemicals, n.e.c.	1,000
2873	Nitrogenous fertilizers	1,000
2874	Phosphatic fertilizers	500
2875	Fertilizers, mixing only	500
2879	Pesticides and agricultural chemicals, n.e.c.	500
2892	Explosives	750
2895	Carbon black	500
28992	Fatty acids	500
	MAJOR GROUP 29—PETROLEUM REFINING AND RELATED PRODUCTS	
2911	Petroleum refining [2]	1,000
2952	Asphalt felts and coatings	750
2992	Lubricating oils and greases	500
	MAJOR GROUP 30—RUBBER AND MISCELLANEOUS PLASTICS PRODUCTS	
3011	Tires and innertubes	1,000
3021	Rubber and plastics footwear	1,000
3031	Reclaimed rubber	750
3041	Rubber and plastics hose and belting.	500
3069	Fabricated rubber products, n.e.c.	500
	MAJOR GROUP 31—LEATHER AND LEATHER PRODUCTS	
3143	Men's footwear, except athletic	500
3144	Women's footwear, except athletic.	500
3149	Footwear, except rubber, n.e.c.	500
	MAJOR GROUP 32—STONE, GLASS AND CONCRETE PRODUCTS	
3211	Flat glass	1,000
3221	Glass containers	750
3229	Pressed and blown glass and glasswear, n.e.c.	750
3241	Cement, hydraulic	750
3253	Ceramic wall and floor tile	500
3261	Vitreous china plumbing fixtures and china and earthenware fittings and bathroom accessories	500
3262	Vitreous china table and kitchen articles	500
3263	Fine earthenware (whitewear) table and kitchen articles	500
3264	Porcelain electrical supplies	500
3274	Lime	500
3275	Gypsum products	1,000
3292	Asbestos products	750
3293	Gaskets, packing and sealing devices	500
3296	Mineral wool	750
3297	Nonclay refractories	750
	MAJOR GROUP 33—PRIMARY METAL INDUSTRIES	
3312	Blast furnaces (including coke ovens), steel works and rolling mills	1,000
3313	Electrometallurgical products	750
3315	Steel wire drawing and steel nails and spikes	1,000
3316	Cold rolled steel sheet, strip and bars	1,000
3317	Steel pipe and tubes	1,000
3321	Gray iron foundries	500
3322	Malleable iron foundries	500
3324	Steel investment foundries	500
3325	Steel foundries, n.e.c.	500
3331	Primary smelting and refining of copper	1,000
3332	Primary smelting and refining of lead	1,000
3333	Primary smelting and refining of zinc	750
3334	Primary production of aluminum	1,000
3339	Primary smelting and refining of nonferrous metals, n.e.c.	750
3351	Rolling, drawing and extruding of copper	750
3353	Aluminum sheet, plate and foil	750
3354	Aluminum extruded products	750
3355	Aluminum rolling and drawing, n.e.c.	750
3356	Rolling, drawing and extruding of nonferrous metals, except copper and aluminum	750
3357	Drawing and insulating of nonferrous wire	1,000
3398	Metal heat treating	750
3399	Primary metal products, n.e.c.	750
	MAJOR GROUP 34—FABRICATED METAL PRODUCTS, EXCEPT MACHINERY AND TRANSPORTATION EQUIPMENT	
3411	Metal cans	1,000
3412	Metal shipping barrels, drums, kegs and pails	500
3421	Cutlery	
3431	Enameled iron and metal sanitary ware	750
3432	Plumbing fixture fittings and trim (brass goods)	500
3433	Heating equipment, except electric and warm air furnaces	500
3452	Bolts, nuts, screws, rivets and washers	500
3462	Metal forging and stamping	500
3482	Small arms ammunition	1,000
3483	Ammunition, except for small arms, n.e.c.	1,000
3484	Small arms	1,000
3493	Steel springs, except wire	500
3494	Valves and pipe fittings, except plumbers' brass goods	500
3497	Metal foil and leaf	500
3499	Fabricated metal products, n.e.c.	500
	MAJOR GROUP 35—MACHINERY, EXCEPT ELECTRICAL	
3511	Steam, gas, and hydraulic turbines and turbine generator set units	1,000
3519	Internal combustion engines, n.e.c.	1,000
3523	Farm machinery and equipment	500
3524	Garden tractors and lawn and garden equipment	500
3531	Construction machinery and equipment	750
3532	Mining machinery and equipment, except oil field machinery and equipment	500
3533	Oil field machinery and equipment	500
3534	Elevators and moving stairways	500
3536	Hoists, industrial cranes, and monorail systems	500
3537	Industrial trucks, tractors, trailers and stackers	750
3541	Machine tools, metal cutting types	500
3542	Machine tools, metal forming types	500
35452	Precision measuring tools	500
3546	Power-driven hand tools	500
3547	Rolling mill machinery and equipment	500
3549	Metalworking machinery, n.e.c.	500
3555	Printing trades machinery and equipment	500
3561	Pumps and pumping equipment.	500
3562	Ball and roller bearings	750
3563	Air and gas compressors	500
3566	Speed changers, industrial-high-speed drives and gears	500
3568	Mechanical power transmission equipment, n.e.c.	500
3572	Typewriters	1,000
3573	Electronic computing equipment	1,000
3574	Calculating and accounting machines, except electronic computing equipment	1,000
3579	Office machines, n.e.c.	500
3585	Air-conditioning and warm-air heating equipment and commercial and industrial refrigeration equipment	750
3586	Measuring and dispensing pumps	500

Census classification code	Industry or class of products	Employment size standard (number of employees)[1]
	MAJOR GROUP 36—ELECTRICAL AND ELECTRONIC MACHINERY, EQUIPMENT AND SUPPLIES	
3612	Power, distribution and specialty transformers	750
3613	Switchgear and switchboard apparatus	750
3621	Motors and generators	1,000
3622	Industrial controls	750
3624	Carbon and graphite products	750
3629	Electrical industrial apparatus, n.e.c.	500
3631	Household cooking equipment	750
3632	Household refrigerators and home and farm freezers	1,000
3633	Household laundry equipment	1,000
3634	Electric housewares and fans	750
3635	Household vacuum cleaners	750
3636	Sewing machines	750
3639	Household appliances, n.e.c.	500
3641	Electric lamps	1,000
3643	Current-carrying wiring devices	500
3644	Noncurrent-carrying wiring devices	500
3651	Radio and television receiving sets, except communication types	750
3652	Phonograph records and prerecorded magnetic tape	750
3661	Telephone and telegraph apparatus	1,000
3662	Radio and television transmitting, signaling and detection equipment and apparatus	750
3671	Radio and television receiving-type electron tubes, except cathode ray	1,000
3672	Cathode ray television picture tubes	750
3673	Transmitting, industrial and special purpose electron tubes	750
3674	Semiconductors and related devices	500
3675	Electronic capacitors	500
3676	Resistors for electronic applications	500
3677	Electronic coils, transformers and other inductors	500
3678	Connectors, for electronic applications	500
3679	Electronic components, n.e.c.	500
3691	Storage batteries	750
3692	Primary batteries, dry and wet	1,000
3693	Radiographic X-ray, fluoroscopic X-ray, therapeutic X-ray, and other X-ray apparatus and tubes; electromedical and electrotherapeutic apparatus	500
3694	Electrical equipment for internal combustion engines	750
3699	Electrical machinery, equipment and supplies, n.e.c.	500
	MAJOR GROUP 37—TRANSPORTATION EQUIPMENT	
3711	Motor vehicle and passenger car bodies	1,000
3714	Motor vehicle parts and accessories	500
3715	Truck trailers	500
3721	Aircraft [2]	1,500
3724	Aircraft engines and engine parts	1,000
3728	Aircraft parts and auxiliary equipment, n.e.c.	1,000
3731	Shipbuilding and repairing	1,000
3743	Railroad equipment	750
3751	Motorcycles, bicycles and parts	500
3764	Guided missile and space vehicle propulsion units and propulsion unit parts	1,000
69	Guided missile and space vehicle parts and auxiliary equipment, n.e.c.	1,000
3795	Tanks and tank components	1,000
	MAJOR GROUP 38—MEASURING, ANALYZING AND CONTROLLING INSTRUMENTS, PHOTOGRAPHIC, MEDICAL AND OPTICAL GOODS; CLOCKS AND WATCHES	
3811	Engineering, laboratory, scientific and research instruments and associated equipment	500
3822	Automatic controls for regulating residential and commercial environments and appliances	500
823	Industrial instruments for measurement, display and control of process variables and related products	500
24	Totalizing fluid meters and counting devices	500
3825	Instruments for measuring and testing of electricity and electrical signals	500
3829	Measuring and controlling devices, n.e.c.	500
3861	Photographic equipment and supplies	500
3873	Watches, clocks, clockwork operated devices, and parts	500
	MAJOR GROUP 39—MISCELLANEOUS MANUFACTURING INDUSTRIES	
3914	Silverware, plated ware and stainless steel ware	500
3951	Pens, mechanical pencils and parts	500
3996	Linoleum, asphalted-felt-base, and other hard surface floor coverings, n.e.c.	750
39993	Matches	500

[1] The "number of employees" means the average employment of any concern and its affiliates based on the number of persons employed during the pay period ending nearest the last day of the third month in each calendar quarter for the preceding four quarters.

[2] Together with its affiliates does not employ more than 1,000 persons and does not have more than 30,000 barrels per day crude oil or bona fide feed stock capacity from owned and/or leased facilities or from facilities made available to such concerns under an arrangement such as, but not limited to, an exchange agreement (except one on a refined-product-for-a-refined-product basis) or a throughput or other form of processing agreement with the same effect as though such facilities had been leased.

[3] Includes maintenance as defined in the Federal Aviation Regulations (14 CFR 1.1) but excludes contracts solely for preventive maintenance as defined in 14 CFR 1.1. As defined in the Federal Aviation Regulations, "Maintenance means inspection, overhaul, repair, preservation, and the replacement of parts, but excludes preventive maintenance. 'Preventive maintenance' means simple or minor preservation operations and the replacement of small standard parts not involving complex assembly operations."

SCHEDULE B—INDUSTRY EMPLOYMENT SIZE STANDARDS FOR THE PURPOSE OF GOVERNMENT PROCUREMENT (MANUFACTURING)

Census classification code	Industry or class of products	Employment size standard (number of employees)[1]
	MAJOR GROUP 20—FOOD AND KINDRED PRODUCTS	
2026	Fluid milk [2]	750
2032	Canned specialties	1,000
2043	Cereal breakfast foods	1,000
2046	Wet corn milling	750
2052	Cookies and crackers	750
2062	Cane sugar refining	750
2063	Beet sugar	750
2076	Vegetable oil mills, except corn, cottonseed and soybean	1,000
2079	Shortening, table oils, margarine and other edible fats and oils, n.e.c.	750
2085	Distilled, rectified, and blended liquors	750
	MAJOR GROUP 21—TOBACCO MANUFACTURES	
2111	Cigarettes	1,000
	MAJOR GROUP 22—TEXTILE MILL PRODUCTS	
2211	Broad-woven fabric mills, cotton	1,0
2261	Finishers of broad-woven fabrics of cotton	1,000
2271	Woven carpets and rugs	750
2295	Fabrics, not rubberized	1,000
2296	Tire cord and fabric	1,000
	MAJOR GROUP 26—PAPER AND ALLIED PRODUCTS	
2611	Pulpmills	750
2621	Papermills, except building papermills	750
2631	Paperboard mills	750
2646	Pressed and molded pulp goods	750
2654	Sanitary food containers	750
2661	Building paper and building board mills	750
	MAJOR GROUP 28—CHEMICALS AND ALLIED PRODUCTS	
2812	Alkalies and chlorine	1,000
2813	Industrial gases	1,000
2816	Inorganic pigments	1,000
2819	Industrial inorganic chemicals, n.e.c.	1,000
2821	Plastics materials, synthetic resins, and nonvulcanizable elastomers	750
2822	Synthetic rubber (vulcanizable elastomers)	1,000
2823	Cellulosic manmade fibers	1,000
2824	Synthetic organic fibers, except cellulosic	1,000
2833	Medicinal chemicals and botanical products	750
2834	Pharmaceutical preparations	750
2841	Soap and other detergents, except specialty cleaners	750
2865	Cyclic (coal tar) crudes, and cyclic intermediates, dyes, and organic pigments (lakes and toners)	750
2869	Industrial organic chemicals, n.e.c.	1,000
2873	Nitrogenous fertilizers	1,000
2892	Explosives	750
	MAJOR GROUP 29—PETROLEUM REFINING AND RELATED INDUSTRIES [2]	
2952	Asphalt felts and coatings	750
	MAJOR GROUP 30—RUBBER AND MISCELLANEOUS PLASTICS PRODUCTS	
3011	Tires and innertubes	1,000
30111	Passenger car and motorcycle pneumatic tires (casings) [4]	
30112	Truck and bus (and off-the-road) pneumatic tires [4]	
3021	Rubber and plastics footwear	1,000
3031	Reclaimed rubber	750
	MAJOR GROUP 32—STONE, CLAY, GLASS, AND CONCRETE PRODUCTS	
3211	Flat glass	1,000
3221	Glass containers	750
3229	Pressed and blown glass and glassware, n.e.c.	750
3241	Cement, hydraulic	750
3261	Vitreous china plumbing fixtures and china and earthenware fittings and bathroom accessories	750
3275	Gypsum products	1,000
3292	Asbestos products	750
3296	Mineral wool	750
3297	Nonclay refractories	750

Census classification code	Industry or class of products	Employment size Standard (number of employees)[1]
	MAJOR GROUP 33—PRIMARY METAL INDUSTRIES	
3312	Blast furnaces (including coke ovens), steel works, and rolling mills	1,000
3313	Electrometallurgical products	750
3315	Steel wire drawing and steel nails and spikes	1,000
3316	Cold-rolled sheet, strip and bars	1,000
3317	Steel pipe and tubes	1,000
3331	Primary smelting and refining of copper	1,000
3332	Primary smelting and refining of lead	1,000
3333	Primary smelting and refining of zinc	750
3334	Primary production of aluminum	1,000
3339	Primary smelting and refining of nonferrous metals, n.e.c.	750
3351	Rolling, drawing, and extruding of copper	750
3353	Aluminum sheet, plate, and foil	750
3354	Aluminum extruded products	750
3355	Aluminum rolling and drawing, n.e.c.	750
3356	Rolling, drawing, and extruding of nonferrous metals, except copper and aluminum	750
3357	Drawing and insulating of nonferrous wire	1,000
3398	Metal heat treating	750
3399	Primary metal products, n.e.c.	750
	MAJOR GROUP 34—FABRICATED METAL PRODUCTS, EXCEPT MACHINERY AND TRANSPORTATION EQUIPMENT	
3411	Metal cans	1,000
3431	Enameled iron and metal sanitary ware	750
3482	Small arms ammunition	1,000
3483	Ammunition, except for small arms, n.e.c.	1,500
3484	Small arms	1,000
	MAJOR GROUP 35—MACHINERY, EXCEPT ELECTRICAL	
3511	Steam, gas, and hydraulic turbines and turbine-generator set units	1,000
3519	Internal combustion engines, n.e.c.	1,000
3531	Construction machinery and equipment	750
3537	Industrial trucks, tractors, trailers and stackers	750
3562	Ball and roller bearings	750
3572	Typewriters	1,000
3573	Electronic computing equipment	1,000
3574	Calculating and accounting machines, except electronic computing equipment	1,000
3585	Air conditioning and warm air heating equipment and commercial and industrial refrigeration equipment	750
	MAJOR GROUP 36—ELECTRICAL AND ELECTRONIC MACHINERY, EQUIPMENT, AND SUPPLIES	
3612	Power, distribution, and specialty transformers	750
3613	Switchgear and switchboard apparatus	750
3621	Motors and generators	1,000
3622	Industrial controls	750
3624	Carbon and graphite products	750
3631	Household cooking equipment	750
3632	Household refrigerators and home and farm freezers	1,000
3633	Household laundry equipment	1,000
3634	Electric housewares and fans	750
3635	Household vacuum cleaners	750
3636	Sewing machines	750
3641	Electric lamps	1,000
3651	Radio and television receiving sets, except communication types	750
3652	Phonograph records and prerecorded magnetic tapes	750
3661	Telephone and telegraph apparatus	1,000
3662	Radio and television transmitting, signaling, and detection equipment, and apparatus [2]	750
3671	Radio and television receiving type electron tubes, except cathode ray	1,000
3672	Cathode ray television picture tubes	750
3673	Transmitting, industrial, and special purpose electron tubes	750
3692	Primary batteries, dry and wet	1,000
3694	Electrical equipment for internal combustion engines	750
	MAJOR GROUP 37—TRANSPORTATION EQUIPMENT	
3711	Motor vehicles and passenger car bodies	1,000
37111	Passenger cars (knocked down or assembled) [4]	
3721	Aircraft [5]	1,500
3724	Aircraft engines and engine parts [5]	1,000
3728	Aircraft parts and auxiliary equipment, n.e.c.	1,000
3731	Shipbuilding and repairing	1,000
3743	Railroad equipment	1,000
3761	Guided missiles and space vehicles	1,000
3764	Guided missiles and space vehicle propulsion units and propulsion unit parts	1,000
3769	Guided missile and space vehicle parts and auxiliary equipment, n.e.c.	1,000
3795	Tanks and tank components	1,000
	MAJOR GROUP 39—MISCELLANEOUS MANUFACTURING INDUSTRIES	
3996	Linoleum, asphalted-felt-base, and other hard surface floor coverings, n.e.c.	750

[1] The "number of employees" means the average employment of any concern and its affiliates based on the number of persons employed during the pay period ending nearest the last day of the third month in each calendar quarter for the preceding four quarters.

[2] The size standard for Census Classification Code 2026, *Fluid Milk*, was reduced to 625 employees effective May 1, 1973, and further reduced to 500 employees, effective May 1, 1974.

[3] The size standard for SIC 2911 is set forth in § 121.3-8(g).

[4] The size standards for SIC 30111, 30112, and 37111 are set forth in §§ 121.3-8(b)(4) and 121.3-8(b)(5), respectively, of this part.

[5] Guided missile engines and engine parts are classified in SIC 3764 and 3724. Missile control systems are classified in SIC 3662.

[6] Includes maintenance as defined in the Federal Aviation Regulations (14 CFR 1.1) but excludes contracts solely for preventive maintenance as defined in 14 CFR 1.1. As defined in the Federal Aviation Regulations: "Maintenance" means inspection, overhaul, repair, preservation, and the replacement of parts, but excludes preventive maintenance. "Preventive maintenance" means simple or minor preservation operations and the replacement of small standard parts not involving complex assembly operations.

SCHEDULE C—ANNUAL RECEIPTS SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN WHOLESALING

(The following size standards are to be used when determining the size status of wholesaling concerns for the purpose of SBA business loans, displaced business loans, economic opportunity loans, and as alternate standards for Sections 501 and 502 loans and SBIC assistance. Where a code is followed by a letter, the size standard applies only to the class of product designated.)

Industry or sub-industry code	Industry, subindustry, or class of products	Annual sales size standard (maximum, in millions)
5012	Automobile and motor vehicles	$15
5014	Tires and tubes	15
5023(a)	Home furnishings, floor coverings	10
5039	Construction materials, n.e.c.	10
5041	Sporting and recreational goods and supplies	10
5042	Toys and hobby goods and supplies	10
5051(a)	Metal service centers	10
5051(b)	Metals sales offices	15
5052(a)	Coal	10
5063	Electrical apparatus and equipment, wiring supplies, and construction materials	15
5064	Electrical appliances, television, and radio sets	10
5081	Commercial machines and equipment	15
5082	Construction and mining machinery and equipment	10
5083	Farm and garden machinery and equipment	15
5084	Industrial machinery and equipment	10
5085	Industrial supplies	10
5111	Printing and writing paper	10
5113	Industrial and personal service paper	15
5122	Drugs, drug proprietaries, and druggists' sundries	10
5138	Piece goods (woven fabrics)	10
5134	Notions and other dry goods	10
5139	Footwear	10
5141	Groceries, general line	15
5142	Frozen foods	15
5143	Dairy products	10
5147	Meats and meat products	10
5149	Groceries and related products, n.e.c.	10
5152	Cotton	15
5153	Grain	10
5154	Livestock	10
5161	Chemicals and allied products	15
5171	Petroleum bulk stations and terminals	15
5172	Petroleum and petroleum products wholesalers, except bulk stations and terminals	15
5182	Wines and distilled alcoholic beverages	15
5194	Tobacco and tobacco products	10
5198	Paints, varnishes, and supplies	15

SCHEDULE D—ANNUAL RECEIPTS SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN RETAILING

(The following size standards are to be used when determining the size status of retailing concerns for the purpose of SBA loans, displaced business loans, economic opportunity loans, and as alternate standards for sections 501 and 502 loans and SBIC assistance. Where a code is followed by a letter, the size standard applies only to the class of product designated.)

Industry or sub-industry code	Industry, subindustry, or class of products	Annual sales size standard (maximum, in millions)
	MAJOR GROUP 52—BUILDING MATERIALS, HARDWARE, GARDEN SUPPLY, AND MOBILE HOME DEALERS	
5271	Mobile home dealers	$3
	MAJOR GROUP 53—GENERAL MERCHANDISE	
5311	Department stores	$5
5331	Variety stores	2
5411	Grocery stores	5
5423(a)	Meat markets (a part of meat and fish (seafood) markets)	5
	MAJOR GROUP 55—AUTOMOTIVE DEALERS AND GASOLINE SERVICE STATIONS	
5511	Motor vehicle dealers (new and used)	5
5521	Motor vehicle dealers (used only)	5
5599(a)	Aircraft (a part of automotive dealers, n.e.c.)	3
	MAJOR GROUP 56—APPAREL AND ACCESSORY STORES	
5611	Men's and boys' clothing and furnishings stores	1.5
5621	Women's ready-to-wear stores	1.5
5651	Family clothing stores	1.5
5661	Shoe stores	1.5

Census classification code	Industry or class of products	Employment size standard (number of employees)[1]
MAJOR GROUP 57—FURNITURE, HOME FURNISHINGS, AND EQUIPMENT STORES		
5722	Household appliance stores	1.5
5732	Radio and television stores	1.5
MAJOR GROUP 59—MISCELLANEOUS RETAIL		
5961	Mail-order houses	5

SCHEDULE E—GOVERNMENT-OWNED TIMBER RESALE STANDARDS FOR SPECIFIC GEOGRAPHICAL AREAS

Area from which timber is cut	Percentage of timber purchased that may be sold to other than small business
Alaska	50 percent.

SCHEDULE F—EMPLOYMENT SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN MINING AND MINING SERVICES

(The following size standards are to be used when determining the size status of mining and mining services concerns for the purpose of SBA business loans, displaced business loans, economic opportunity loans, and as alternate standards for Section 501 and 502 loans and small business investment company assistance.)

Census classification code	Industry or class of products	Employment size standard (number of employees)
1111	Anthracite	250
1112	Anthracite mining services	250
1211	Bituminous coal and lignite	500
1213	Bituminous coal and lignite mining services	250

SCHEDULE G—PETROLEUM ADMINISTRATION FOR DEFENSE (PAD) DISTRICTS AS UTILIZED BY THE DEFENSE FUEL SUPPLY CENTER IN THE PROCUREMENT OF REFINED PETROLEUM PRODUCTS

PAD Districts and States included in PAD District

1. Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, Virginia, West Virginia, North Carolina, South Carolina, Georgia, and Florida.

2. North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Minnesota, Iowa, Missouri, Wisconsin, Illinois, Michigan, Indiana, Ohio, Kentucky, and Tennessee.

3. New Mexico, Texas, Arkansas, Louisiana, Mississippi, and Alabama.

4. Montana, Idaho, Wyoming, Utah, and Colorado.

5. Alaska, Hawaii, Washington, Oregon, Nevada, California, and Arizona.

Industry or sub-industry code	Industry, subindustry, or class of products	Annual sales size standard (maximum, in millions)
1711	Plumbing, heating (except electric), and air-conditioning	$2
1721	Painting, paper hanging, and decorating	1
1731	Electrical work	2
1741	Masonry, stone setting, and other stonework	1

SCHEDULE H—ANNUAL RECEIPTS SIZE STANDARDS FOR PURPOSE OF BIDDING ON PROCUREMENTS FOR CONSTRUCTION—SPECIAL TRADE CONTRACTORS

Industry or sub-industry code	Industry, subindustry, or class of products	Annual sales size standard (maximum, in millions)
1742	Plastering, drywall, acoustical and insulation work	$1
1743	Terrazzo, tile, marble, and mosaic work	1
1751	Carpentering and flooring	1
1752	Floor laying and other floorwork, not elsewhere classified	1
1761	Roofing and sheet metal work	1
1771	Concrete work	1
1781	Water well drilling	1
1791	Structural steel erection	2
1793	Glass and glazing work	1
1794	Excavating and foundation work	1
1795	Wrecking and demolition work	1
1796	Installation or erection of building equipment, not elsewhere classified	1
1799	Special trade contractors, not elsewhere classified	1

SCHEDULE I—ANNUAL RECEIPTS SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN CONSTRUCTION (SPECIAL TRADE CONTRACTORS)

Industry or sub-industry code	Industry, subindustry, or class of products	Annual sales size standard (maximum, in millions)
1711	Plumbing, heating (except electric), and air-conditioning	$2
1721	Painting, paperhanging, and decorating	1
1731	Electrical work	2
1741	Masonry, stone setting, and other stonework	1
1742	Plastering, drywall, acoustical, and insulation work	1
1743	Terrazzo, tile, marble, and mosaic work	1
1751	Carpentering and flooring	1
1752	Floor laying and other floorwork, not elsewhere classified	1
1761	Roofing and sheet-metal work	1
1771	Concrete work	1
1781	Water well drilling	1
1791	Structural steel erection	1
1793	Glass and glazing work	1
1794	Excavating and foundation work	1
1795	Wrecking and demolition work	1
1796	Installation or erection of building equipment, not elsewhere classified	1
1799	Special trade contractors, not elsewhere classified	1

[FR Doc. 74-29625 Filed 12-23-74;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION

[Docket No. 74-NW-19-AD; Amdt. 39-2056]

PART 39—AIRWORTHINESS DIRECTIVES

Boeing 707/720 Series Airplanes

Amendment 39-646 33 FR 12303, AD 68-18-3 requires inspection of the wing center section upper forward skin panels for cracks and repair as necessary, on Boeing model 707/720 series airplanes. Recently, the FAA has been requested to provide compliance times in terms of flights as an option to the original compliance times which were stated in the amendment in terms of hours of total-time-in-service.

The skin cracks have been shown to be a fatigue problem caused by flight cycles. Therefore, the AD is being amended to provide compliance times in terms of number of flights, as well as hours of time-in-service. Further, the transfer of administrative responsibility for the AD to the Northwest Region of the FAA as a result of agency organizational changes is recognized in the amendment.

Since this amendment imposes no additional burden on any person, notice and public procedure hereon are unnecessary and the amendment may be made effective in less than thirty days.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 FR 13697) § 39.13 of Part 39 of the Federal Aviation regulations, Amendment 39-646 33 FR 12303, AD 68-18-3 is amended as follows:

The reference to "Chief, Aircraft Engineering Division, FAA Western Region" is hereby changed to "Chief, Engineering and Manufacturing Branch, FAA Northwest Region." The following new paragraphs (m) and (n) are added:

* * * * *

(m) Where the following hours of time-in-service appear herein, an operator may use the following tabulation of equivalency to flights as an alternative to determine inspection requirements:

500 hours or 300 flights; 1000 hours or 600 flights; 2000 hours or 1200 flights; 3000 hours or 1800 flights; 3500 hours or 2200 flights; 4000 hours or 3300 flights; 7500 hours or 4000 flights; 8000 hours or 5300 flights; 8500 hours or 5600 flights; 10000 hours or 4000 flights; 12000 hours or 6400 flights; 12500 hours or 6600 flights; 14000 hours or 6400 flights; 14500 hours or 6600 flights.

For purposes of this paragraph, one flight is defined as one takeoff and landing.

(n) For the purpose of complying with this AD, subject to acceptance by the assigned FAA maintenance inspector, the number of flights may be determined by dividing each airplane's hours' time in service by the operator's fleet average time from takeoff to landing for the airplane type.

This amendment becomes effective December 30, 1974.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Issued in Seattle, Washington, December 16, 1974.

C. B. WALK, Jr.,
Director, Northwest Region.

[FR Doc.74-29881 Filed 12-23-74;8:45 am]

[Airworthiness Docket No. 74-WE-52-AD; Amdt. 39-2054]

PART 39—AIRWORTHINESS DIRECTIVES

Certain AiResearch Engines

There have been failures of the high speed pinion (HSP) gear bearing assembly and decoupling of the propeller reduction gear on the AiResearch Model TPE331-1, -2, -3, -5 and -6 series engines as a result of oil starvation caused by loosening of the HSP gear bearing carrier attachment bolts and/or failure of the oil transfer tube support bracket. Since this condition is likely to exist or develop in other engines of the same type design, an airworthiness directive is being issued to require a modification of the HSP gear bearing carrier bolts and recurring inspection of the oil transfer tube bracket on certain AiResearch Model TPE331-1, -2, -3, -5 and -6 series.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 FR 13697), § 39.13 of Part 39 of the Federal Aviation regulations is amended by adding the following new airworthiness directive.

AiResearch Manufacturing Company of Arizona.—Applies to certain Model TPE331 series engines:

Compliance required as indicated.

To detect, correct and prevent loosening of the high speed pinion (HSP) gear carrier bolts and to detect fatigue failure of the HSP gear oil transfer tube accomplish the following:

(1) TPE331-1-101B, S/N 93058 through 93061; TPE331-1-151A, S/N 92249 and 92336 through 92354; TPE331-1-151K, S/N 26001 through 26014; TPE331-1-151G, S/N 91193 through 91198; TPE331-2-201A, S/N 90218 through 90278; TPE331-3U-303G, S/N 03108, 03109 and 03112 through 03180; TPE331-3UW-303G, S/N 05031 through 05042; TPE 331-3U-307G, S/N 03001, 05016; TPE331-5-251C, S/N 22006 through 22057; TPE331-5-251K, S/N 06113, 06190 through 06442 and 06444 through 06454; TPE331-6-251M, S/N 20144 and 20182 through 20533; and, TPE331-6-251B, S/N 27001, 27002. Within the next 100 hours time in service after the effective date of this AD, unless previously accomplished, replace the two high speed pinion gear carrier bolts, P/N MS21279-07, with two bolts, P/N MS9489-07, and lockplate, P/N 3101483-1, and inspect to insure proper torque on bolt, P/N MS21297-07, securing lube adapter, P/N 3101210, and bolt, P/N MS21279-10, securing lube nozzle, P/N 3101209, as described in paragraph 2.D. of AiResearch Service Bulletin TPE331-72-0092, dated December 9, 1974, or later FAA approved revisions.

(2) Engines listed in (1) above as well as the following: TPE331-1-101B, S/N 93062 and subsequent; TPE331-1-151A, S/N 92355 and subsequent; TPE331-1-151K, S/N 26015 and subsequent; TPE331-1-151G, S/N 91199 and subsequent; TPE331-2-201A, S/N 90279 and subsequent; TPE331-3U-303G, S/N 03181 and subsequent; TPE331-3UW-303G, S/N 05043 and subsequent; TPE331-5-251C, S/N 22058 and subsequent; TPE331-5-251K, S/N 06443 and 06455 and subsequent; TPE331-6-251M, S/N 20534 and subsequent; and, TPE331-6-251B, S/N 27003 and subsequent. Within the next 100 hours time in service, unless accomplished within the last 100 hours time in service prior to the effective date of this AD, and thereafter, at intervals not to exceed 200 hours time in service, inspect the oil transfer tube. P/N 3101187-1, per the instructions contained in paragraph 2.C. of the above referenced service bulletin. If the oil transfer tube bracket is cracked or separated, either:

(a) Replace with a serviceable P/N 3101187-1; or

(b) Accomplish the installation of a tube, P/N 3101187-2, clamp, P/N 3101484-1, and washer, P/N AN960C416L, using the existing clamp bolt, per the instructions of paragraph 2.E. of the above referenced service bulletin.

(3) Equivalent procedures may be approved by the Chief, Aircraft Engineering Division, FAA Western Region, upon submission of adequate substantiation data.

(4) Aircraft may be flown to a base for performance of maintenance required by paragraph (1) and the inspection required by paragraph (2) of this AD per FAR's 21.197 and 21.199.

This amendment becomes effective December 30, 1974.

(Sec. 313(a), 601 and 603, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 and 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Issued in Los Angeles, California on December 16, 1974.

Arvin O. Basnight,
Director, FAA Western Region.

[FR Doc.74-29882 Filed 12-23-74;8:45 am]

[Docket No. 12762; Amdt. No. 121-114]

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

Ground Proximity Warning Systems

The purpose of this amendment to Part 121 of the Federal Aviation Regulations is to require installation of an approved ground proximity warning system on each large turbine-powered airplane (turbojet and turboprop) used in operations under Part 121. These amendments also apply to air travel clubs certificated under Part 123 and to air taxi operators certificated under Part 135, when conducting operations governed by those parts with large turbine-powered airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment by a Notice of Proposed Rule Making (Notice 74-32) issued on September 12, 1974 (published in the Federal Register on September 16, 1974; 39 FR 33234), as amended by Notice 74-32A, issued October 1, 1974 (published in the Federal Register on October 7, 1974; 39 FR 36017). Due consideration has been given to all comments presented in response to the notice. Except for editorial changes, and except as specifically discussed hereinafter, these amendments and the reasons therefor are the same as those in Notice 74-32.

Of the 31 public comments received in response to Notice 74-32, 18 favored the adoption of the proposed rule. Some commentators recommended changes that are discussed hereinafter. Several commentators made suggestions that were not within the scope of the notice, and, accordingly, those comments are not discussed, but will be retained by the FAA for future study.

In light of recent air carrier accidents involving large turbine-powered airplanes caused by inadvertent contact with the ground, the FAA believes that public interest requires the installation of ground proximity warning systems on these aircraft as soon as possible. Based on comments received and on further investigations, the FAA has determined that these systems can be developed, manufactured, and installed on all large turbine-powered airplanes operated under Part 121 by December 1, 1975. Accordingly, § 121.360, as adopted, prohibits the operation of a large turbine-powered airplane under Part 121 after December 1, 1975, unless it is equipped with a ground proximity warning system that meets the requirements of that section.

Several commentators asserted that flight crewmembers now have adequate warning of ground proximity through the use of present instrumentation, including altitude alerting systems, and appropriate inflight procedures. The FAA believes that present instrumentation and inflight procedures provide for safe and adequate terrain clearance as long as proper flight crewmember discipline is maintained and appropriate flight operations procedures are followed. However, notwithstanding those instruments and procedures, as stated in Notice 74-32, a number of air carrier accidents involving large turbine-powered airplanes have been caused by inadvertent contact with the ground, and might have been avoided if a ground proximity warning system had been installed to give warning of the impending disaster to the flight crew.

Several commentators pointed out that the warning system should operate during non-precision approaches. The FAA agrees, and any system for which approval is sought under new § 121.360 must be capable of providing warnings during non-precision approaches.

A number of comments were received with respect to the kind of warnings to be given. One commentator suggested that a visual warning should not be required, since it could distract the pilot from taking corrective action. For the same reason, another commentator stated that the warning should not operate continuously until the hazardous condition no longer exists and should be capable of being muted or cancelled.

The FAA believes that a ground proxmity warning system should provide automatic and distinct aural and visual warnings with no required input from the flight crew, and that it should operate continuously as long as a terrain

hazard exists, since the cessation of the warning might lead to a mistaken belief that the hazard no longer exists. The FAA does not agree that the continuous operation of either the visual or the aural warning will distract the pilot from taking corrective action.

With respect to comments concerning the capability of the equipment that would be required under the proposed rule, it should be noted that the equipment must be capable of providing not only a warning based on the rate of descent of the aircraft and the height of the aircraft above the terrain directly beneath the aircraft, but also a warning based on the computed height of the aircraft above the terrain along the aircraft's projected flight path. The rule, as adopted, has been clarified so that it clearly states this requirement and the other requirements for approval discussed in the preamble to Notice 74–32.

One commentator contended that turbopropeller-powered airplanes should not be required to have the proposed warning system because they do not have "sink rates" as high as those of turbojet-powered airplanes, they are more responsive to the application of power, and they are less subject to an insidious loss of altitude after takeoff. In addition, the commentator indicated that the proposed warning system requirement would cause engineering and installation problems for older aircraft. The FAA does not agree that turbopropeller-powered airplanes should be excepted from this requirement, since a review of air carrier accidents involving inadvertent contact with the ground does not support such an exception.

One commentator questioned whether the rule as proposed would require a ground proximity warning system separate from all other aircraft systems. It was not the intent of the FAA to preclude the integration of such a warning system with other aircraft systems when compatability exists.

Certain commentators pointed out that the requirement in proposed § 121.360 (a), that the ground proximity warning system provide a warning at any height less than 3,000 feet above the ground, is not appropriated in the light of the capability of radio altimeters presently in use in large turbine-powered airplanes. The FAA agrees, and § 121.360(a), as adopted, requires only that the system provide a warning at any height less than 2,500 feet.

A number of commentators urged the FAA to expedite the development of standards for ground proximity warning systems. As stated in Notice 74–32, the FAA has initiated a study to develop either a Technical Standard Order or an amendment to Part 25 establishing specific standards. The FAA expects to issue those standards in the very near future. However, pending the development of such standards the FAA intends to continue to approve the installation of ground proximity warning systems through the issuance of supplemental type certificates after compliance has been shown with the general equipment requirements of Part 25.

The phrase "impending terrain hazard" in proposed § 121.360(a) has been changed to "imminent inadvertent contact with the ground," so as to more clearly describe the hazard for which the system must provide a warning.

Proposed § 121.360(c) would have prohibited the operation of a large turbine-powered airplane under Part 121 6 months after the effective date of the amendment unless it had been equipped with a radio altimeter that automatically provides a discrete aural warning when the airplane descends below a predetermined height between 1,000 and 500 feet above the ground. In view of the shortening of the period for compliance with § 121.360(a) to require the installation of ground proximity warning systems by December 1, 1975, proposed § 121.360(c) has not been adopted.

In lieu of proposed § 121.360(d), a reference to new § 121.260 has been added to § 121.303(d)(2). This will prohibit the takeoff of any large turbine-powered airplane being operated under Part 121 unless the ground proximity warning system required by § 121.360 is in operable condition. However, § 121.627(c) will allow the continuation of a flight beyond a terminal point with the equipment inoperative if the minimum equipment list and procedures for the continuation of flight are included in the certificate holder's manual.

(Secs. 313(a), 601, 603, and 604 of the Federal Aviation Act of 1958; 49 U.S.C. 1354(a), 1421, 1423, and 1424. Sec. 6(c) of the Department of Transportation Act; 49 U.S.C. 1655(c))

In consideration of the foregoing, and for the reasons stated in Notice No. 74–32, Part 121 of the Federal Aviation Regulations is amended, effective January 23, 1975, as follows:

§ 121.303 [Amended]

1. By amending paragraph (d)(2) of § 121.303 by deleting the phrase "and 121.359" and substituting therefor the phrase ", 121.359, and 121.360".

2. By adding a new § 121.360 immediately after § 121.359 to read as follows:

§ 121.360 Ground proximity warning systems.

(a) After December 1, 1975, no person may operate a large turbine-powered airplane unless it is equipped with an approved ground proximity warning system that is designed, constructed, and installed to provide a warning of imminent inadvertent contact with the ground.

(b) The ground proximity warning system required by paragraph (a) of this section must:

(1) Operate at any height less than 2,500 feet above the ground;

(2) Provide both visual and aural warnings that—

(i) Initiate simultaneously and are distinct from each warning provided by any other aircraft warning device;

(ii) Initiate automatically without any crewmember action; and

(iii) Operate continuously until the hazardous condition no longer exists; and

(3) Provide warnings based on the—

(i) Rate of descent of the aircraft (including any negative rate of climb after takeoff) in relation to the height of the aircraft above the terrain directly beneath the aircraft;

(ii) Computed height of the aircraft above the terrain along the aircraft's projected flight path;

(iii) Landing gear and flap positions of the aircraft; and

(iv) Performance capability of the aircraft.

Issued in Washington, D.C., on December 18, 1974.

ALEXANDER P. BUTTERFIELD,
Administrator.

[FR Doc.74-29952 Filed 12-23-74;8:45 am]

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER A—ECONOMIC REGULATIONS

[Reg. ER-891, Amdt. 27]

PART 298—CLASSIFICATION AND EXEMPTION OF AIR TAXI OPERATORS

Revising Form 298–A and Related Instructions for Its Use

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., October 31, 1974; effective January 23, 1975.

Subpart E of Part 298 of the Economic Regulations requires air taxi operators to register with the Board, to reregister biennially, and to notify the Board of any change in operations. The within amendment to § 298.50 will require the air taxi operator, at the time of registration or reregistration, to list on Form 298–A [1] the address and telephone number of the operator's local FAA office. The amendment to § 298.52 will require the operator to use this same Form 298–A in reporting to the Board any change in his name, address or type of operations.

We are also taking this opportunity to effect certain technical changes in § 298.50, including deletion of obsolete provisions relating to the reporting of aircraft with maximum payload capacities between 5,000 and 7,500 pounds,[2] and to revise Form 298–A so as to reflect such changes and otherwise simplifying it.

Since the amendments provided for herein are rules of agency procedure and practice, and impose no significant burden on any person, the Board finds that notice and public procedure are unnecessary.

In consideration of the foregoing, the Board hereby amends Part 298 of the

[1] Which is no longer required, see ER–864, dated June 24, 1974, 39 FR 23994, June 28, 1974.

[2] CAB Form 298–A is filed as part of the original document hereto and can be obtained from the Publications Services Section, Civil Aeronautics Board, Washington, D.C. 20428.

Economic Regulations (14 CFR Part 298) effective January 23, 1975, to read as follows:

1. Amend § 298.50(c) to read as follows:

§ 298.50 Filing for registration by air taxi operators.

* * * * *

(c) Registration and reregistration shall be accomplished by filing with the Board's Bureau of Operating Rights:

(1) CAB Form 298–A, "Registration, Reregistration and Amendments under Part 293 of the Economic Regulations of the Civil Aeronautics Board," [2] executed in duplicate. This form shall be certified by a responsible official and shall include the following information:

(i) The name of the carrier and its mailing address;

(ii) The carrier's principal place of business, if different from its mailing address, and its area code and telephone number;

(iii) The carrier's FAA certificate number, if any, and the address and telephone number of the carrier's local FAA office;

(iv) Whether the carrier proposes to perform (or, for reregistration, whether the carrier is currently performing) scheduled passenger or cargo, on-demand passenger or cargo, and/or mail service;

(v) A list of the aircraft which the carrier proposes to operate (or, for reregistration, the aircraft which the carrier is currently operating) in air taxi operations, and the aircraft type, FAA registration number and passenger capacity of each such aircraft;

(vi) For initial registration, the proposed date of commencement of air taxi operations;

(vii) For reregistration, whether the carrier has carried passengers in air transportation between any point in the United States and any point outside thereof during the past 12 months;

(2) A certificate of insurance which is currently effective (or, in case of initial registration, is to become effective), as defined in § 298.41(b);

(3) A $15 registration or reregistration fee, as the case may be. This shall be in the form of a check, draft, or postal money order, payable to the Civil Aeronautics Board.

2. Amend § 298.52 to read as follows:

§ 298.52 Notification to the Board of change in operations.

Each air taxi operator (whether or not he has on file with the Board a currently effective registration under § 298.50) shall notify the Board's Bureau of Operating Rights, Washington, D.C. 20428, on CAB Form 298–A, of any change in his name or address, or of any change in his type of operations (passenger, cargo, mail, scheduled, etc.) or of his temporary or permanent cessation of operations. Such notification shall be mailed, or otherwise delivered, so as to be received by the Board no later than 30 days after the reported event has occurred.

(Sec. 204(a), 407 and 416 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 766 and 771; 49 U.S.C. 1324, 1377, and 1386)

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND, *Secretary.*

[FR Doc.74–29982 Filed 12–23–74;8:45 am]

Title 15—Commerce and Foreign Trade

CHAPTER VIII—BUREAU OF ECONOMIC ANALYSIS, DEPARTMENT OF COMMERCE

Name Change From Office of Business Economics to Bureau of Economic Analysis

Pursuant to Department of Commerce Organization Order 35–4A, effective January 1, 1972, which established the Social and Economic Statistics Administration and changed the name of the Office of Business Economics to the Bureau of Economic Analysis (37 FR 3461), Title 15 of the Code of Federal Regulations is amended as follows:

The title of Chapter VIII of Title 15 of the Code of Federal Regulations is revised to read as set forth above. All references to the "Office of Business Economics" in Chapter VIII are correspondingly changed.

In accordance with Administrative Procedure 5 U.S.C. 553, notice and hearing on this amendment and postponement of the effective date thereof is unnecessary since this amendment is entirely administrative in nature. Therefore, this amendment will become effective on December 24, 1974.

Dated: December 17, 1974.

GEORGE JASZI, *Director, Bureau of Economic Analysis.*

[FR Doc.74–30005 Filed 12–23–74;8:45 am]

Title 23—Highways

CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER H—RIGHT-OF-WAY AND ENVIRONMENT

PART 770—AIR QUALITY GUIDELINES FOR USE IN FEDERAL-AID HIGHWAY PROGRAMS

Air Quality Guidelines

By notice in the FEDERAL REGISTER of September 5, 1973 (38 FR 23969) the Federal Highway Administration (FHWA) published a notice of proposed rulemaking containing air quality guidelines. These guidelines were required to implement section 136(b) of the Federal-aid Highway Act of 1970 (23 U.S.C. 109(j)), which requires that guidelines be promulgated to assure that highways constructed pursuant to Title 23, U.S.C. are consistent with any approved plan for the implementation of any ambient air quality standard for any air quality control region designated pursuant to the Clean Air Act, as amended (42 U.S.C. 1857 et seq.).

Because it was necessary to have guidelines for the assessment of highway plans, interim regulations were promulgated on November 16, 1973 (38 FR 31677) as Part 770 of Title 23 CFR. Since that time FHWA has considered all comments received. These are set forth and discussed in the final environmental impact statement prepared for the issuance of these guidelines which was transmitted to the Council on Environmental Quality on September 17, 1974.

In consideration of the foregoing, Part 770 of Title 23 of the Code of Federal Regulations is amended to read as follows:

Subpart B—Air Quality Guidelines

Sec.

AUTHORITY: 23 U.S.C. 109(h), 23 U.S.C. 109(j), 42 U.S.C. 4332, 23 U.S.C. 315, 49 CFR 1.48(b).

§ 770.200 Purpose.

To issue policy and procedures covering air quality guidelines for use in planning, location, and construction of highway improvements pursuant to 23 U.S.C.

§ 770.201 Definitions.

(a) *Action.* The construction or reconstruction, including associated activities, of a highway section.

(b) *Air quality control region.* An Interstate or intrastate area designated by the Administrator of the Environmental Protection Agency pursuant to 42 U.S.C. 1857. (Section 107 of the Clean Air Act of 1970.)

(c) *Air pollution control agency.* The State, local, or multistate agency as defined by 42 U.S.C. 1857. (Section 302(b) of the Clean Air Act of 1970.)

(d) *Environmental impact statement (EIS).* A detailed statement prepared in response to 42 U.S.C. 4332. (Section 102(2)(c) of the National Environmental Policy Act of 1969.)

(e) *Highway agency.* The agency with the primary responsibility for initiating and carrying forward the action. For highway sections financed with Federal-aid highway funds, the highway agency will normally be the appropriate State, county, or city highway agency. For highways financed with other funds, such as forest highways, park roads, etc., the highway agency will be the appropriate Federal or State agency with the primary responsibility for initiating and carrying forward the action.

(f) *Highway section.* A highway development proposal between logical termini (population centers, major traffic generators, major crossroads, etc.) as normally included in a location study or multiyear highway improvement program.

(g) *Indirect source review agency.* The agency designated in an applicable State implementation plan to meet the requirements of 40 CFR 51.18 (38 FR 15834, June 18, 1973).

(h) *National Ambient Air Quality Standards.* The National Ambient Air

Quality Standards established pursuant to 42 U.S.C. 1857 (Section 109 of the Clean Air Act of 1970).

(i) *Negative declaration.* A document supporting a determination that a proposed major action will not have a significant impact upon the quality of the human environment of a magnitude to require the processing of an EIS.

(j) *Policy Board (Policy Committee, Coordinating Committee, etc.).* That group of local officials, individuals or representatives of agencies or organizations which has been designated by the State to provide policy guidance and direction in the conduct of the urban transportation planning process in an urbanized area.

(k) *Urban transportation planning process (3C planning process).* The continuing, comprehensive, and cooperative planning process established pursuant to 23 U.S.C. 134.

(l) *State implementation plan (SIP).* The plan required by 42 U.S.C. 1857 (Section 110 of the Clean Air Act of 1970) to attain and maintain a national ambient air quality standard. For the purpose of this directive, an approved SIP is the implementation plan, or most recent revision thereof, which has been approved or promulgated by the Environmental Protection Agency under section 110 of the Clean Air Act.

(m) *Urban transportation plans and programs.* Proposed area-wide plans and proposed capital improvement programs developed through the urban transportation planning process.

§ 770.202 Policy.

It is the policy of the Federal Highway Administration (FHWA) that highway agencies responsible for the planning, location, and construction of highways pursuant to 23 U.S.C. consult with the local, State, and Federal air pollution control agencies, as appropriate, and assure that decisions on highways are consistent with approved State implementation plans and that adequate consideration is given to preservation and enhancement of air quality.

§ 770.203 Application.

Land use, air quality, and transportation planning are interdependent. It is, therefore, essential that planning activities be closely coordinated in the conceptual stages and throughout the highway development process. The highway agency shall follow the appropriate procedures outlined in § 770.204 through § 770.206 in order to assure that the planning, location, and construction of highways are consistent with the approved State implementation plan for attainment and maintenance of air quality standards.

(a) The continuing review procedure described in § 770.204 shall be a requirement for each transportation planning process established pursuant to 23 U.S.C. 134.

(b) The procedures for consideration of air quality described in § 770.205 shall apply to the processing of Federal-aid highway proposals.

(c) The procedures described in § 770.206 shall apply to the consideration of construction specifications as related to air quality.

§ 770.204 Urban Transportation Plans and Programs.

(a) To assure that land use and transportation planning conducted pursuant to 23 U.S.C. 134 and air quality planning conducted pursuant to 42 U.S.C. 1857 and the transportation plans resulting therefrom are coordinated, the responsible highway agency in cooperation with each 3C planning agency shall establish a continuing review procedure with the air pollution control agency to:

(1) Assess the consistency of the transportation plan and program with the approved State implementation plan;

(2) Solicit comments annually from the air pollution control agency including its assessment of the consistency of the transportation plan and program with the approved State implementation plan prior to transportation plain approval by the policy board; and

(3) Identify and attempt to resolve differences with the air pollution control agency.

(b) The highway agency shall request the policy board to annually determine the consistency of the current transportation plan and program with the approved State implementation plan. The highway agency shall furnish FHWA a record of this determination along with any written comments received from the air pollution control agency and the policy board's disposition of these comments.

(c) The Regional Federal Highway Administrator, in consultation with the Regional Administrator of the Environmental Protection Agency, shall annually:

(1) Assess the degree of coordination in the planning process between planning for transportation and air quality planning; and

(2) Review the determination on consistency between the transportation plan and program and the approved State implementation plan.

(d) Any deficiencies shall be cited to the highway agency. Significant deficiencies (including major instances of inconsistency) shall be considered by the Regional Federal Highway Administrator as grounds for withholding planning certification.

§ 770.205 Highway Sections.

(a) The following procedures shall apply to highway sections for which both the draft and the final environmental impact statement are submitted to FHWA or for which a negative declaration is considered by FHWA after the effective date of this directive:

(1) The studies and coordination activities related to the construction or reconstruction of a highway section shall include an appropriate consideration of air quality. The level of this consideration and/or the air quality analysis is to be determined on the basis of the nature and location of the highway section, anticipated traffic volume, existing air quality problems, sensitivity of nearby receptors to air pollution, and meteorological conditions. It is anticipated that lower volume facilities in areas without critical air quality problems can be satisfactorily analyzed using simplified analysis techniques and that on-site measurements will not be required. High volume facilities in areas with critical air quality problems will usually require on-site data gathering and a high level of analysis.

(2) For highway sections where a negative declaration rather than an EIS is to be prepared, the negative declaration shall briefly outline the air quality considerations involved in the development of the highway proposal. For highway sections subject to the requirements of 40 CFR 51.18, "Review of New Sources and Modifications," the negative declaration shall also include a record of required coordination with the indirect source review agency. The FHWA Division Engineer shall review the air quality information in the negative declaration for adequacy. FHWA adoption of the negative declaration shall constitute the FHWA determination that the highway is considered to be consistent with the approved State implementation plan.

(3) For highway sections on which a draft EIS is prepared, the draft shall contain:

(i) An identification of the air quality impact of the highway section;

(ii) An identification of the analysis methodology utilized;

(iii) A brief summary of the early consultation with the air pollution control agency and, where applicable, a brief summary of consultation with the indirect source review agency;

(iv) Any comments received from the air pollution control agency and, where applicable, any comments received from the indirect source review agency; and

(v) The highway agency's determination on the consistency of each alternative under consideration with the approved State implementation plan.

(4) Where required by 40 CFR 51.18, the preferred alternative shall be submitted to the indirect source review agency for review. The proposed final EIS shall not be submitted to the FHWA Regional Administrator for adoption if the indirect source review agency has found as a part of the procedures established pursuant to 40 CFR 51.18 that the highway section will result in a violation of applicable portions of the control strategy or will interfere with the attainment or maintenance of the National Ambient Air Quality Standards.

(5) The final EIS may be adopted by the FHWA only after FHWA has determined that the proposed highway section is consistent with the approved State implementation plan. The determination on consistency shall be made by the Regional Federal Highway Administrator.

(6) In making his determination, the Regional Federal Highway Administrator shall consider the following:

(i) The adequacy and the conclusions of the air quality analysis;

(ii) The comments received from the air pollution control agency resulting from the requirements of § 770.204(a)(2) and § 770.205(a)(3) (where issues raised by the air pollution control agency have not been resolved by the highway agency or the FHWA Division Engineer prior to submission of the proposed final EIS to the FHWA, the Regional Administrator shall not make a positive determination on consistency without first consulting with the EPA Regional Administrator); and

(iii) Comments received from other agencies as part of the EIS procedure and the disposition of these comments.

(7) The Regional Federal Highway Administrator shall furnish the results of any consultation with the EPA Regional Administrator on the final EIS and the FHWA determination on consistency in the transmitted information for those final environmental impact statements which require review by FHWA Headquarters.

(b) The following procedures shall apply to highway sections for which the draft environmental impact statement was submitted to the FHWA prior to the effective date of this directive and for which the final environmental impact statement is submitted to FHWA after the effective date of this directive:

(1) Prior to the processing of the final EIS, the highway agency, in consultation with the FHWA Division Engineer, shall review available material on the development of the highway section, including the draft EIS, and shall make a written determination on the adequacy of the consideration of air quality for the highway section.

(2) If the determination concludes that the consideration of air quality is adequate, the final EIS may be processed following established EIS processing procedures.

(3) If the determination concludes that additional information and/or analysis are necessary, a revised draft or supplement shall then be furnished to appropriate local, State, and Federal agencies with expertise in air quality. At least forty-five days shall be allowed for comment by interested agencies.

(4) Comments received shall be incorporated and addressed in the final EIS as required in Volume 7, Chapter 7, section 2 of the Federal-Aid Highway Program Manual,[1] "Environmental Impact and Related Statements."

(5) Where required by 40 CFR 51.18 the preferred alternative shall be submitted to the indirect source review agency for review. The proposed final EIS shall not be submitted to the FHWA Regional Administrator for adoption if the indirect source review agency has found as part of the procedures established pursuant to 40 CFR 51.18 that the highway section will result in a violation of applicable portions of the control strategy or will interfere with the attainment or maintenance of the National Ambient Air Quality Standards.

(6) Where issues raised by the air pollution control agency have not been resolved by the highway agency or the FHWA Division Engineer prior to submission of the proposed final EIS to the FHWA, the FHWA Regional Administrator shall not make a positive determination on consistency without first consulting with the EPA Regional Administrator.

(7) Adoption of the final EIS by the FHWA shall constitute the FHWA determination that the highway section is considered to be consistent with the approved State implementation plan.

(c) The following procedures shall apply to highway sections for which the final environmental impact statement is submitted to FHWA not later than the effective date of this directive, for which a substantial amount of the grade and drain work remains to be advertised for bids, and for which a decision on the consistency of the highway section with the approved State implementation plan has not been made by the Regional Federal Highway Administrator.

(1) The highway agency shall review the information available on the development of the highway section, including the final EIS, and shall prepare a report for the FHWA on the consistency of the proposed action with the approved State implementation plan.

(i) If the highway agency or the FHWA Division Engineer concludes that additional information and/or analysis are necessary to make a determination on consistency, the highway agency shall develop such information or perform such analysis before making the report.

(ii) If the information on the development of the highway section or the air quality analysis indicates that implementation of the proposed action will result in a significant air quality impact, the highway agency shall solicit comments from and consult with the air pollution control agency. In such cases, the report shall set forth the anticipated air quality effects of the proposal, a brief summary of coordination with the air pollution control agency, including comments received and a discussion of substantial unresolved air quality issues, if any.

(2) The FHWA Division Engineer may concur in such reports, except those which include an inconsistency finding by the air pollution control agency. Concurrence in the report by the FHWA Division Engineer shall constitute the FHWA determination that the highway section is considered to be consistent with the approved State implementation plan.

(3) Reports containing an inconsistency finding shall be forwarded to the FHWA Regional Administrator. Before concurring in proposed highway section approvals, the FHWA Regional Administrator shall consult with the EPA Regional Administrator for the purpose of reviewing the air quality information and consistency determination presented in the report.

(4) Concurrence in proposed highway section approvals by the FHWA Regional Administrator shall constitute the FHWA determination that the highway section is considered to be consistent with the approved State implementation plan.

(5) The FHWA Regional Administrator may request preparation and processing of a revised or supplemental EIS for the highway section where, in his judgement, the air quality issues raised are of such magnitude as to make the processing in this form necessary. The revised or supplemental EIS shall be processed in accordance with procedures contained in Volume 7, Chapter 7, Section 2 of the Federal-Aid Highway Program Manual, "Environmental Impact and Related Statements."

(d) Advancement of highway sections may continue under the provisions of 23 U.S.C. where the Regional Federal Highway Administrator has made a consistency determination in accordance with the interim regulations (23 CFR 770, 38 FR 31677) or where a substantial amount of the grade and drain work has been authorized prior to the effective date of this directive.

§ 770.206 Construction of Highways.

(a) The highway agency shall take steps to assure that its current specifications, and any revisions thereof and the use of specific equipment and/or materials associated with construction are consistent with the approved State implementation plan. This shall be accomplished in coordination with the air pollution control agency.

(b) The highway agency shall establish procedures in order that any changes in the State implementation plan will be reviewed to determine if revisions to the construction specifications will be necessary.

(c) Revisions to the construction specifications resulting from the above requirements shall be made in consultation with FHWA.

Effective Date. This amendment is effective December 26, 1974.

Issued on December 16, 1974.

NORBERT T. TIEMANN,
Federal Highway Administrator.

[FR Doc.74-29901 Filed 12-23-74;8:45 am]

[1] The Federal-Aid Highway Program Manual is available for inspection and copying as prescribed in 49 CFR Part 7, App. D.

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

[T.D. 7333]

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

Rates and Earnings Base of Certain Self-Employment Tax [1]

By a notice of proposed rule making appearing in the FEDERAL REGISTER for July 3, 1973 (38 FR 17727), amendments to the Income Tax Regulations (26 CFR Part 1) were proposed in order to conform such regulations to the provisions of sections 115(b)(2), 118(a), 122 (b) and (c), and 502(b) of the Social Security Amendments of 1967 (81 Stat. 839, 841, 843, 844, 934), section 203(b)(1) of the Act of March 17, 1971 (Pub. L. 92–5, 85 Stat. 10), sections 203(b)(1) and 204 (a)(1) and (b)(1) of the Act of July 1, 1972 (Pub. L. 92–336, 86 Stat. 418, 420, 421), and section 135 (a)(1) and (b)(1) of the Social Security Amendments of 1972 (86 Stat. 1362, 1363), relating to the rates and earnings base of the self-employment tax and to self-employment coverage of retired partners, certain employees of States and political subdivisions, and ministers, members of religious orders, and Christian Science practitioners. After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, certain changes were made. The proposed amendments of the regulations, as revised, including an amendment to the Income Tax Regulations in order to conform such regulations to the provisions of section 203(b)(1) of the Act of July 9, 1973 (Pub. L. 93–66, 87 Stat. 153) and section 5(b)(1) and (f) of the Act of December 31, 1973 (Pub. L. 93–233, 87 Stat. 954), relating to the earnings base of the self-employment tax, and section 6(b)(1) of the Act of December 31, 1973 (Pub. L. 93–233, 87 Stat. 955), relating to the rate of tax on self-employment income for purposes of hospital insurance, are adopted by this document.

Several of the above statutory amendments revised the rates and earnings base of the tax on self-employment income. For taxable years beginning after 1974, the taxable earnings base may be increased by the Secretary of the Department of Health, Education, and Welfare under section 230 of the Social Security Act if he provides a cost-of-living increase in benefits under section 215(i) of that Act.

Under prior law, the term "trade or business", for self-employment tax purposes, did not include the performance of services by a minister, a member of a religious order, or a Christian Science practitioner in his capacity as such unless such individual (other than a member of a religious order under a vow of poverty) elected to have the social security program extended to him in respect of such services. Under present law such service constitutes a trade or business (except in the case of a member of a religious order under a vow of poverty) unless the individual is granted an exemption from the tax on self-employment income in respect of such service. To qualify for the exemption an individual must be conscientiously opposed to, or because of religious principles be opposed to, the acceptance (with respect to service performed by him in his capacity as a minister, member, or Christian Science practitioner) of any public insurance which makes payments in the event of death, disability, old age, or retirement or makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance established by the Social Security Act). Based on the legislative history of section 115(b)(2) of the Social Security Amendments of 1967, the regulations require that this conscientious opposition be based on religious grounds.

Applications for exemption must be made by the later of (1) the due date of the return (including any extension thereof) for the second taxable year for which the clergyman has at least $400 of net earnings from self-employment, or (2) the due date of the return (including any extension thereof) for his second taxable year ending after 1967. For this purpose, if a clergyman's last original return filed before the expiration of the application period shows no liability for tax on self-employment income, that return will be treated as an application for exemption, provided that, before February 18, 1975, he files a Form 4361, the form specified for use as an application for exemption.

Under prior law, the term "trade or business", for self-employment tax purposes, did not include the performance of the functions of a public office or service performed by an individual as an employee of a State or a political subdivision. The amendment placed a minor limitation on the scope of these exclusions thereby providing coverage to certain individuals performing service for a State or a political subdivision thereof in a position compensated solely on a fee basis. In general, the rules of the proposed regulations on this subject are finalized without substantive change, except that section 1.1402(c)–2(a)(2), describing certain covered officials, has been reserved and is the subject of a new notice of proposed rulemaking.

Retirement payments made by a partnership to a retired partner are excluded from net earnings from self-employment provided certain conditions (designed to assure that the payments are bona fide retirement income) are met. Generally speaking, the treatment accorded such payments is similar to that accorded retirement income under the Federal Insurance Contributions Act.

A credit or refund is provided, under certain circumstances, in respect of the hospital insurance tax in the case of a railroad employee or employee representative subject to tax under the Railroad Retirement Tax Act who is also subject to tax under the Federal Insurance Contributions Act. If such an employee or employee representative has net earnings from self-employment, his taxable railroad compensation is taken into account in computing self-employment income. The purpose of these changes was to prevent the imposition of a double tax burden on an individual with respect to hospital insurance. Adoption of amendments to the regulations.

On July 3, 1973, a notice of proposed rule making with respect to the Income Tax Regulations (26 CFR Part 1) under sections 1401 and 1402 of the Internal Revenue Code of 1954 to conform such regulations to sections 115(b)(2), 118(a), 122 (b) and (c), and 502(b) of the Social Security Amendments of 1967 (81 Stat. 839, 841, 843, 844, 934), section 203 (b)(1) of the Act of March 17, 1971 (Pub. L. 92–5, 85 Stat. 10), sections 203(b)(1) and 204 (a)(1) and (b)(1) of the Act of July 1, 1972 (Pub. L. 92–336, 86 Stat. 418, 420, 421), and section 135 (a)(1) and (b)(1) of the Social Security Amendments of 1972 (86 Stat. 1362, 1363) was published in the Federal Register (38 FR 17727). After consideration of all relevant matter presented by interested persons regarding the proposed rules, the amendment of the Income Tax Regulations under sections 1401 and 1402 is hereby adopted, subject to the following changes (including changes conforming such regulations to the provisions of section 203(b)(1) of the Act of July 9, 1973 (Pub. L. 93–66, 87 Stat. 153), section 5(b)(1) and (f) of the Act of December 31, 1973 (Pub. L. 93–233, 87 Stat. 954), and section 6(b)(1) of the Act of December 31, 1973 (Pub. L. 93–233, 87 Stat. 955)):

PARAGRAPH 1. Section 1.1401 is amended as set forth in paragraph 1 below.

PAR. 2. Section 1.1401–1, as set forth in paragraph 2 below, is amended by revising paragraph (b)(2).

PAR. 3. Section 1.1402 (b), as set forth in paragraph 8 below, is amended by revising subparagraph (H) and the historical note.

PAR. 4. Section 1.1402(b)–1, as set forth in paragraph 9 below, is amended by revising paragraph (b)(1)(ii) and (2)(ii) and the examples in paragraphs (b)(2)(iii) and (c).

PAR. 5. Section 1.1402(c)–2, as set forth in paragraph 11 below, is amended by revising paragraph (a).

PAR. 6. Section 1.1402(c)–3, as set forth in paragraph 12 below, is amended by revising paragraph (f)(1).

(This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

[SEAL] DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: December 16, 1974.

FREDERIC W. HICKMAN,
Assistant Secretary of the Treasury.

[FR Doc.74-29748 Filed 12-19-74;8:45 am]

[1] See proposed rule on subject (74–29749) published elsewhere in this issue.

PARAGRAPH 1. Section 1.1401 is amended by revising paragraph (3) of section 1401(a), by revising paragraphs (2), (3), (4), and (5) of section 1401(b), and by revising the historical note to read as follows:

§ 1.1401 Statutory provisions; rate of tax on self-employment income.

Sec. 1401. *Rate of tax*—(a) *Old-age, survivors, and disability insurance.* * * *

(3) In the case of any taxable year beginning after December 31, 1970, and before January 1, 1973, the tax shall be equal to 6.9 percent of the amount of the self-employment income for such taxable year;

* * * * *

(b) *Hospital insurance.* * * *

(2) In the case of any taxable year beginning after December 31, 1972, and before January 1, 1974, the tax shall be equal to 1.0 percent of the amount of the self-employment income for such taxable year;

(3) In the case of any taxable year beginning after December 31, 1973, and before January 1, 1978, the tax shall be equal to 0.90 percent of the amount of the self-employment income for such taxable year;

(4) In the case of any taxable year beginning after December 31, 1977, and before January 1, 1981, the tax shall be equal to 1.10 percent of the amount of the self-employment income for such taxable year;

(5) In the case of any taxable year beginning after December 31, 1980, and before January 1, 1986, the tax shall be equal to 1.35 percent of the amount of the self-employment income for such taxable year; and

(6) In the case of any taxable year beginning after December 31, 1985, the tax shall be equal to 1.50 percent of the self-employment income for such taxable year.

[Sec. 1401 as amended by sec. 208(a), Social Security Amendments of 1954 (68 Stat. 1093); sec. 202(a), Social Security Amendments 1956 (70 Stat. 845); sec. 401(a), Social Security Amendments 1958 (72 Stat. 1041); sec. 201(a), Social Security Amendments 1961 (75 Stat. 140); secs. 111(c)(4) and 321(a), Social Security Amendments 1965 (79 Stat. 342, 394); sec. 109(a)(1) and (b)(1), Social Security Amendments 1967 (81 Stat. 835); sec. 204(a)(1) and (b)(1), Act of July 1, 1972 (Pub. Law 92-336, 86 Stat. 420, 421); sec. 135(a)(1) and (b)(1), Social Security Amendments 1972 (86 Stat. 1362, 1363); sec. 6(b)(1), Act of December 31, 1973 (Pub. Law 93-233, 87 Stat. 955)]

PAR. 2. Section 1.1401-1 is amended by revising subparagraph (2) of paragraph (b), to read as follows:

§ 1.1401-1 Tax on self-employment income.

(b) The rates of tax on self-employment income are as follows:

* * * * *

(2) For hospital insurance:

Taxable year	*Percent*
Beginning after December 31, 1965 and before January 1, 1967	0.35
Beginning after December 31, 1966 and before January 1, 1968	.50
Beginning after December 31, 1967 and before January 1, 1973	.60
Beginning after December 31, 1972 and before January 1, 1974	1.0
Beginning after December 31, 1973 and before January 1, 1978	.90
Beginning after December 31, 1977 and before January 1, 1981	1.10
Beginning after December 31, 1980 and before January 1, 1986	1.35
Beginning after December 31, 1985	1.50

* * * * *

PAR. 3. Section 1.1402(a) is amended by revising paragraphs (8) and (9) of section 1402(a), by adding a new paragraph (10) immediately after such paragraph (9), and by revising the historical note. These amended and added provisions read as follows:

§ 1.1402(a) Statutory provisions; definitions; net earnings from self-employment.

Sec. 1402. *Definitions*—(a) *Net earnings from self-employment.* * * *

(8) An individual who is a duly ordained, commissioned, or licensed minister of a church or a member of a religious order shall compute his net earnings from self-employment derived from the performance of service described in subsection (c)(4) without regard to section 107 (relating to rental value of parsonages) and section 119 (relating to meals and lodging furnished for the convenience of the employer) and, in addition, if he is a citizen of the United States performing such service as an employee of an American employer (as defined in section 3121(h)) or as a minister in a foreign country who has a congregation which is composed predominantly of citizens of the United States, without regard to section 911 (relating to earned income from sources without the United States) and section 931 (relating to income from sources within possessions of the United States);

(9) The term "possession of the United States" as used in sections 931 (relating to income from sources within possessions of the United States) and 932 (relating to citizens of possessions of the United States) shall be deemed not to include the Virgin Islands, Guam, or American Samoa; and

(10) There shall be excluded amounts received by a partner pursuant to a written plan of the partnership, which meets such requirements as are prescribed by the Secretary or his delegate, and which provides for payments on account of retirement, on a periodic basis, to partners generally or to a class or classes of partners, such payments to continue at least until such partner's death, if—

(A) Such partner rendered no services with respect to any trade or business carried on by such partnership (or its successors) during the taxable year of such partnership (or its successors), ending within or with his taxable year, in which such amounts were received, and

(B) No obligation exists (as of the close of the partnership's taxable year referred to in subparagraph (A)) from the other partners to such partner except with respect to retirement payments under such plan, and

(C) Such partner's share, if any, of the capital of the partnership has been paid to him in full before the close of the partnership's taxable year referred to in subparagraph (A).

[Sec. 1402 (a) as amended by sec. 201 (a) and (c) (4), Social Security Amendments 1954 (68 Stat. 1087, 1089); sec. 201 (e) (2), (g), and (1), Social Security Amendments 1956 (70 Stat. 840-842); sec. 5 (b), Act of Aug. 30, 1957 (Pub. Law 85-239, 71 Stat. 523); sec. 103 (k), Social Security Amendments 1960 (74 Stat. 938); sec. 227, Rev. Act 1964 (78 Stat. 97); sec. 312 (b), Social Security Amendments 1965 (79 Stat. 381); sec. 118 (a), Social Security Amendments 1967]

PAR. 4. The portion of paragraph (a) of § 1.1402 (a)-1 which precedes subparagraph (1) of such paragraph is amended to read as follows:

§ 1.1402 (a)-1 Definition of net earnings from self-employment.

(a) Subject to the special rules set forth in §§ 1.1402 (a)-3 to 1.1402 (a)-17, inclusive, and to the exclusions set forth in §§ 1.1402 (c)-2 to 1.1402 (c)-7, inclusive, the term "net earnings from self-employment" means—

* * * * *

PAR. 5. Paragraphs (c) and (d) of § 1.1402(a)-2 are amended to read as follows:

§ 1.1402(a)-2 Computation of net earnings from self-employment.

* * * * *

(c) *Aggregate net earnings.* Where an individual is engaged in more than one trade or business within the meaning of section 1402(c) and § 1.1402(c)-1, his net earnings from self-employment consist of the aggregate of the net income and losses (computed subject to the special rules provided in §§ 1.1402(a)-1 to 1.1402(a)-17 inclusive) of all such trades or businesses carried on by him. Thus, a loss sustained in one trade or business carried on by an individual will operate to offset the income derived by him from another trade or business.

(d) *Partnerships.* The net earnings from self-employment of an individual include, in addition to the earnings from a trade or business carried on by him, his distributive share of the income or loss, described in section 702(a)(9), from any trade or business carried on by each partnership of which he is a member. An individual's distributive share of such income or loss of a partnership shall be determined as provided in section 704, subject to the special rules set forth in section 1402(a) and in §§ 1.1402(a)-1 to 1.1402(a)-17, inclusive, and to the exclusions provided in section 1402(c) and §§ 1.1402(c)-2 to 1.1402(c)-7, inclusive. For provisions relating to the computation of the taxable income of a partnership, see section 703.

* * * * *

PAR. 6. Section 1.1402 (a)-3 is amended to read as follows:

§ 1.1402 (a)-3 Special rules for computing net earnings from self-employment.

For the purpose of computing net earnings from self-employment, the gross income derived by an individual from a trade or business carried on by him, the allowable deductions attributable to such trade or business, and the individual's distributive share of the income or loss, described in section 702 (a) (9), from any trade or business carrier on by a partnership of which he is a member shall be computed in accordance with the special rules set forth in §§ 1.1402 (a)-4 to 1.1402 (a)-17, inclusive.

PAR. 7. The following section is added immediately after § 1.1402 (a)–16.

§ 1.1402 (a)–17 Retirement payments to retired partners.

(a) *In general.* There shall be excluded, in computing net earnings from self-employment for taxable years ending on or after December 31, 1967, certain payments made on a periodic basis by a partnership, pursuant to a written plan of the partnership, to a retired partner on account of his retirement. The exclusion applies only if the payments are made pursuant to a plan which meets the requirements prescribed in paragraph (b) of this section, and, in addition, the conditions set forth in paragraph (c) of this section are met.

(b) *Retirement plan of partnership.* (1) To meet the requirements of section 1402(a)(10), the written plan of the partnership must set forth the terms and conditions of the program or system established by the partnership for the purpose of making payments to retired partners on account of their retirement. To qualify as payments on account of retirement, the payments must constitute bona fide retirement income. Thus, payments of benefits not customarily included in a pension or retirement plan such as layoff benefits are not payments on account of retirement. Eligibility for retirement generally is established on the basis of age, physical condition, or a combination of age or physical condition and years of service. Generally, retirement benefits are measured by, and based on, such factors as years of service and compensation received. In determining whether the plan of the partnership provides for payments on account of retirement, factors, formulas, etc., reflected in public, and in broad based private, pension or retirement plans in prescribing eligibility requirements and in computing benefits may be taken into account.

(2) The plan of the partnership must provide for payments on account of retirement—

(i) To partners generally or to a class or classes of partners,

(ii) On a periodic basis, and

(iii) Which continue at least until the partner's death.

For purposes of subdivision (i) of this subparagraph, a class of partners may, in an appropriate case, contain only one member. Payments are made on a periodic basis if made at regularly recurring intervals (usually monthly) not exceeding one year.

(c) *Conditions relating to exclusion.*—(1) *In general.* A payment made pursuant to a written plan of a partnership which meets the requirements of paragraph (b) of this section shall be excluded, in computing net earnings from self-employment, only if—

(i) The retired partner to whom the payment is made rendered no service with respect to any trade or business carried on by the partnership (or its successors) during the taxable year of the partnership (or its successors), which ends within or with the taxable year of the retired partner and in which the payment was received by him;

(ii) No obligation (whether certain in amount or contingent on a subsequent event) exists (as of the close of the partnership's taxable year referred to in subdivision (i) of this subparagraph) from the other partners to the retired partner except with respect to retirement payments under the plan or rights such as benefits payable on account of sickness, accident, hospitalization, medical expenses, or death; and

(iii) The retired partner's share (if any) of the capital of the partnership has been paid to him in full before the close of the partnership's taxable year referred to in subdivision (i) of this subparagraph.

By application of the conditions set forth in this subparagraph, either all payments on account of retirement received by a retired partner during the taxable year of the partnership ending within or with his taxable year are excluded or none of the payments are excluded. Subdivision (ii) of this subparagraph has application only to obligations from other partners in their capacity as partners as distinguished from an obligation which arose and exists from a transaction unrelated to the partnership or to a trade or business carried on by the partnership. The effect of the conditions set forth in subdivisions (ii) and (iii) of this subparagraph is that the exclusion may apply with respect to payments received by a retired partner during the taxable year of the partnership ending within or with his taxable year only if at the close of the partnership's taxable year the retired partner had no financial interest in the partnership except for the right to retirement payments.

(2) *Examples*—The application of subparagraph (1) of this paragraph may be illustrated by the following examples. Each example assumes that the partnership plan pursuant to which the payments are made meets the requirements of paragraph (b) of this section.

Example (1). A, who files his income tax returns on a calendar year basis, is a partner in the ABC partnership. The taxable year of the partnership is the period July 1 to June 30, inclusive. A retired from the partnership on January 1, 1973, and receives monthly payments on account of his retirement. As of June 30, 1973, no obligation existed from the other partners to A (except with respect to retirement payments under the plan) and A's share of the capital of the partnership had been paid to him in full. The monthly retirement payments received by A from the partnership in his taxable year ending on December 31, 1973, are not excluded from net earnings from self-employment since A rendered service to the partnership during a portion of the partnership's taxable year (July 1, 1972, through June 30, 1973) which ends within A's taxable year ending on December 31, 1973.

Example (2). D, a partner in the DEF partnership, retired from the partnership as of the close of December 31, 1972. The taxable year of both D and the partnership is the calendar year. During the partnership's taxable year ending December 31, 1973, D rendered no service with respect to any trade or business carried on by the partnership. On or before December 31, 1973, all obligations (other than with respect to retirement payments under the plan) from the other partners to D have been liquidated, and D's share of the capital of the partnership has been paid to him. Retirement payments received by D pursuant to the partnership's plan in his taxable year ending December 31, 1973, are excluded in determining his net earnings from self-employment (if any) for that taxable year.

Example (3). Assume the same facts as in example (2) except that as of the close of December 31, 1973, D has a right to a fixed percentage of any amounts collected by the partnership after that date which are attributable to services rendered by him prior to his retirement for clients of the partnership. The monthly payments received by D in his taxable year ending December 31, 1973, are not excluded from net earnings from self-employment since as of the close of the partnership's taxable year which ends with D's taxable year, an obligation (other than an obligation with respect to retirement payments) exists from the other partners to D.

PAR. 8. Section 1.1402(b) is amended by revising subparagraph (E) and adding subparagraphs (F), (G), (H) and (I) of paragraph (1), and by revising the flush material following paragraph (2) of section 1402(b) and the historical note to read as follows:

§ 1.1402 (b) Statutory provisions; definitions; self-employment income.

Sec. 1402. *Definitions.* • • •

(b) *Self-employment income.* • • •

(1) • • •

(E) For any taxable year ending after 1967 and beginning before 1972, (i) $7,800, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(F) For any taxable year beginning after 1971 and before 1973, (i) $9,000, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(G) For any taxable year beginning after 1972 and before 1974, (i) $10,800, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(H) For any taxable year beginning after 1973 and before 1975, (i) $13,200, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(I) For any taxable year beginning in any calendar year after 1974, (i) an amount equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) which is effective for such calendar year, minus (ii) the amount of the wages paid to such individual during such taxable year; or

(2) The net earnings from self-employment, if such net earnings for the taxable year are less than $400.

For purposes of clause (1), the term "wages" (A) includes such remuneration paid to an employee for services included under an agreement entered into pursuant to the provisions of section 218 of the Social Security Act (relating to coverage of State employees), or under an agreement entered into pursuant to the provisions of section 3121(l) (relating to coverage of citizens of the United States who are employees of foreign subsidiaries of domestic corporations), as would be wages under section 3121(a) if such services constituted employment under section 3121(b), and (B) includes, but solely with respect to the tax imposed by section 1401 (b), compensation which is subject to the tax imposed by section 3201 or 3211. An individual who is not a citizen of the United

States but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa shall not, for purposes of this chapter, be considered to be a nonresident alien individual.

[Sec. 1402(b) as amended by sec. 201(b), Social Security Amendments 1954 (68 Stat. 1088); sec. 402(a), Social Security Amendments 1958 (72 Stat. 1042); sec. 103(1), Social Security Amendments 1960 (74 Stat. 938); sec. 320(b)(1), Social Security Amendments 1965 (79 Stat. 393); secs. 108(b)(1) and 502(b), Social Security Amendments 1967 (81 Stat. 835, 934); sec. 203(b)(1), Act of March 17, 1971 (Pub. Law 92-5, 85 Stat. 10); sec. 203(b)(1), Act of July 1, 1972 (Pub. Law 92-336, 86 Stat. 418); sec. 203(b)(1), Act of July 9, 1973 (Pub. Law 93-66, 87 Stat. 153); sec. 5(b)(1) and (f), Act of December 31, 1973 (Pub. Law 93-233, 87 Stat. 954)]

PAR. 9. Paragraphs (b) and (c) of § 1.1402(b)-1 are amended to read as follows:

§ 1.1402(b)-1 Self-employment income.

* * * * *

(b) *Maximum self-employment income*—(1) *General rule.* Subject to the special rules described in subparagraph (2) of this paragraph, the maximum self-employment income of an individual for a taxable year (whether a period of 12 months or less) is—

(i) For any taxable year beginning in a calendar year after 1974, an amount equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) which is effective for such calendar year; and

(ii) For any taxable year—

Ending before 1955	$3,600
Ending after 1954 and before 1959	4,200
Ending after 1958 and before 1966	4,800
Ending after 1965 and before 1968	6,600
Ending after 1967 and beginning before 1972	7,800
Beginning after 1971 and before 1973	9,000
Beginning after 1972 and before 1974	10,800
Beginning after 1973 and before 1975	13,200

(2) *Special rules.* (i) If an individual is paid wages as defined in subparagraph (3) of this paragraph in a taxable year, the maximum self-employment income for such taxable year is computed as provided in subdivision (ii) or (iii) of this subparagraph.

(ii) If an individual is paid wages as defined in subparagraph (3) (i) or (ii) of this paragraph in a taxable year, the maximum self-employment income of such individual for such taxable year is the excess of the amounts indicated in subparagraph (1) of this paragraph over the amount of the wages, as defined in subparagraph (3) (i) and (ii) of this paragraph, paid to him during the taxable year. For example, if for his taxable year beginning in 1974, an individual has $15,000 of net earnings from self-employment and during such taxable year is paid $1,000 of wages as defined in section 3121(a) (see subparagraph (3)(i) of this paragraph), he has $12,200 ($13,200 −$1,000) of self-employment income for the taxable year.

(iii) For taxable years ending on or after December 31, 1968, wages, as defined in subparagraph (3)(iii) of this paragraph, are taken into account in determining the maximum self-employment income of an individual for purposes of the tax imposed under section 1401 (b) (hospital insurance), but not for purposes of the tax imposed under section 1401 (a) (old-age, survivors, and disability insurance). If an individual is paid wages as defined in subparagraph (3) (iii) of this paragraph in a taxable year, his maximum self-employment income for such taxable year for purposes of the tax imposed under section 1401 (a) is computed under subparagraph (1) of this paragraph or subdivision (ii) of this subparagraph (whichever is applicable), and his maximum self-employment income for such taxable year for purposes of the tax imposed under section 1401 (b) is the excess of his section 1401 (a) maximum self-employment income over the amount of wages, as defined in subparagraph (3) (iii) of this paragraph, paid to him during the taxable year. For purposes of this subdivision, wages as defined in subparagraph (3) (iii) of this paragraph are deemed paid to an individual in the period with respect to which the payment is made, that is, the period in which the compensation was earned or deemed earned within the meaning of section 3231 (e). For an explanation of the term "compensation" and for provisions relating to when compensation is earned, see the regulations under section 3231 (e) in Part 31 of this chapter (Employment Tax Regulations). The application of the rules set forth in this subdivision may be illustrated by the following example:

Example. M, a calendar-year taxpayer, has $15,000 of net earnings from self-employment for 1974 and during the taxable year is paid $1,000 of wages as defined in section 3121 (a) (see subparagraph (3)(i) of this paragraph) and $1,600 of compensation subject to tax under section 3201 (see subparagraph (3)(iii) of this paragraph). Of the $1,600 of taxable compensation, $1,200 represents compensation for services rendered in 1974 and the balance ($400) represents compensation which pursuant to the provisions of section 3231(e) is earned or deemed earned in 1973. M's maximum self-employment income for 1974 for purposes of the tax imposed under section 1401(a), computed as provided in subdivision (ii) of this subparagraph, is $12,200 ($13,200−$1,000), and for purposes of the tax imposed under section 1401(b) is $11,000 ($12,200−$1,200). However, M may recompute his maximum self-employment income for 1973 for purposes of the tax imposed under section 1401(b) by taking into account the $400 of compensation which is deemed paid in 1973.

(3) *Meaning of term "wages".* For the purpose of the computation described in subparagraph (2) of this paragraph, the term "wages" includes:

(i) Wages as defined in section 3121 (a);

(ii) Such remuneration paid to an employee for services covered by—

(*a*) An agreement entered into pursuant to section 218 of the Social Security Act (42 U.S.C. 418), which section provides for extension of the Federal old-age, survivors and disability insurance system to State and local government employees under voluntary agreements between the States and the Secretary of Health, Education, and Welfare (Federal Security Administrator before April 11, 1953), or

(*b*) An agreement entered into pursuant to the provisions of section 3121 (l), relating to coverage of citizens of the United States who are employees of foreign subsidiaries of domestic corportations,

as would be wages under section 3121 (a) if such services constituted employment under section 3121 (b). For an explanation of the term "wages", see the regulations under section 3121 (a) in Part 31 of this chapter (Employment Tax Regulations); and

(iii) Compensation, as defined in section 3231 (e), which is subject to the employee tax imposed by section 3201 or the employee representative tax imposed by section 3211.

(c) *Minimum net earnings from self-employment.* Self-employment income does not include the net earnings from self-employment of an individual when the amount of such earnings for the taxable year is less than $400. Thus, an individual having only $300 of net earnings from self-employment for the taxable year would not have any self-employment income. However, an individual having net earnings from self-employment of $400 or more for the taxable year may, by application of paragraph (b)(2) of this section, have less than $400 of self-employment income for purposes of the tax imposed under section 1401 (a) and the tax imposed under section 1401 (b) or may have self-employment income of $400 or more for purposes of the tax imposed under section 1401 (a) and of less than $400 for purposes of the tax imposed under section 1401 (b). This could occur in a case in which the amount of the individual's net earnings from self-employment is $400 or more for a taxable year and the amount of such net earnings from self-employment plus the amount of wages, as defined in paragraph (b) (3) of this section, paid to him during the taxable year exceed the maximum self-employment income, as set forth in paragraph (b) (1) of this section, for the taxable year. However, the result occurs only if such maximum self-employment income exceeds the amount of such wages. The application of this paragraph may be illustrated by the following example:

Example. For 1974 M, a calendar-year taxpayer, has net earnings from self-employment of $2,000 and wages (as defined in paragraph (b)(3) (i) and (ii) of this section) of $12,500. Since M's net earnings from self-employment plus his wages exceed the maximum self-employment income for 1974 ($13,200), his self-employment income for 1974 is $700 ($13,200−$12,500). If M also had wages, as defined in paragraph (b)(3) (iii) of this section, of $200, his self-employment income would be $700 for purposes of the tax imposed under section 1401(a) and $500 ($13,200−$12,700 ($12,500+$200)) for

purposes of the tax imposed under section 1401(b).

For provisions relating to when wages as defined in paragraph (b)(3)(iii) of this section are treated as paid, see paragraph (b)(2)(iii) of this section.

* * * * *

PAR. 10. Section 1.1402(c) is amended by revising paragraphs (1) and (2) of section 1402(c), by revising the historical note, and by adding material following the historical note. These amended and added provisions read as follows:

§ 1.1402 (c) Statutory provisions; definitions; trade or business.

Sec. 1402. *Definitions.* * * *

(c) *Trade or business.* * * *

(1) The performance of the functions of a public office, other than the functions of a public office of a State or a political subdivision thereof with respect to fees received in any period in which the functions are performed in a position compensated solely on a fee basis and in which such functions are not covered under an agreement entered into by such State and the Secretary of Health, Education, and Welfare pursuant to section 218 of the Social Security Act;

(2) The performance of service by an individual as an employee, other than—

(A) Service described in section 3121(b)(14)(B) performed by an individual who has attained the age of 18,

(B) Service described in section 3121(b)(16),

(C) Service described in section 3121(b)(11), (12), or (15) performed in the United States (as defined in section 3121(e)(2)) by a citizen of the United States,

(D) Service described in paragraph (4) of this subsection, and

(E) Service performed by an individual as an employee of a State or a political subdivision thereof in a position compensated solely on a fee basis with respect to fees received in any period in which such service is not covered under an agreement entered into by such State and the Secretary of Health, Education, and Welfare pursuant to section 218 of the Social Security Act;

[Sec. 1402(c) as amended by secs. 201(c)(1), (2), and (5), and 205(e), Social Security Amendments 1954 (68 Stat. 1088, 1089, 1092); sec. 201(e)(3) and (f), Social Security Amendments 1956 (70 Stat. 841); sec. 106(b), Social Security Amendments 1960 (74 Stat. 945); secs. 311(b)(1) and (2) and 319(a), Social Security Amendments 1965 (79 Stat. 381, 390); secs. 115(b)(1) and 122(b), Social Security Amendments 1967 (81 Stat. 839, 843)]

Sec. 122. [Social Security Amendments of 1967]. * * *

(c) [Effective dates] * * *.

(2) Notwithstanding the provisions of subsections (a) and (b) of this section, any individual who in 1968 is in a position to which the amendments made by such subsections apply may make an irrevocable election not to have such amendments apply to the fees he receives in 1968 and every year thereafter, if on or before the due date of his income tax return for 1968 (including any extensions thereof) he files with the Secretary of the Treasury or his delegate, in such manner as the Secretary of the Treasury or his delegate shall by regulations prescribe, a certificate of election of exemption from such amendments.

[Sec. 122(c)(2), Social Security Amendments 1967 (81 Stat. 844)]

PAR. 11. Section 1.1402(c)-2 is amended to read as follows:

§ 1.1402(c)-2 Public office.

(a) *In general*—(1) *General rule.* Except as otherwise provided in subparagraph (2) of this paragraph, the performance of the functions of a public office does not constitute a trade or business.

(2) *Fee basis public officials.* [Reserved]

(b) *Meaning of public office.* The term "public office" includes any elective or appointive office of the United States or any possession thereof, of the District of Columbia, of a State or its political subdivisions, or of a wholly-owned instrumentality of any one or more of the foregoing. For example, the President, the Vice President, a governor, a mayor, the Secretary of State, a member of Congress, a State representative, a county commissioner, a judge, a justice of the peace, a county or city attorney, a marshal, a sheriff, a constable, a registrar of deeds, or a notary public performs the functions of a public office.

PAR. 12. Section 1.1402(c)-3 is amended by revising paragraph (a) and by adding a new paragraph (f) immediately after paragraph (e). These amended and added provisions read as follows:

§ 1.1402 (c)-3 Employees.

(a) *General rule.* Generally, the performance of service by an individual as an employee, as defined in the Federal Insurance Contributions Act (chapter 21 of the Internal Revenue Code) does not constitute a trade or business within the meaning of section 1402(c) and § 1.1402(c)-1. However, in five cases set forth in paragraphs (b) to (f), inclusive, of this section, the performance of service by an individual is considered to constitute a trade or business within the meaning of section 1402(c) and § 1.1402(c)-1. (As to when an individual is an employee, see section 3121(d) and (o) and the regulations thereunder in Part 31 of this chapter (Employment Tax Regulations).)

* * * * *

(f) *State and local government employees compensated on fee basis*—(1) *In general.* (i) Section 1402(c)(2)(E) and this paragraph are applicable only with respect to fees received by an individual after 1967 for service performed by him as an employee of a State or a political subdivision thereof in a position compensated solely on a fee basis. If an individual performs service for a State or a political subdivision thereof in more than one position, each position is treated separately for purposes of determining whether the service performed in such position is performed by an employee and whether compensation for service performed in the position is solely on a fee basis.

(ii) If an individual receives fees after 1967 for service performed by him as an employee of a State or a political subdivision thereof in a position compensated solely on a fee basis, the service for which such fees are received constitutes a trade or business within the meaning of section 1402(c) and § 1.1402(c)-1 except that if service performed in such position is covered under an agreement entered into by the State and the Secretary of Health, Education, and Welfare pursuant to section 218 of the Social Security Act at the time a fee is received, the service to which such fee relates does not constitute a trade or business. See also paragraph (a) of § 1.1402(c)-2, relating, in part, to the performance of the functions of a public office of a State or a political subdivision thereof by an individual.

(2) *Election with respect to fees received in 1968.* (i) Any individual who in 1968 receives fees for service as an employee of a State or a political subdivision thereof in a position compensated solely on a fee basis may elect, if the performance of the service for which such fees are received constitutes a trade or business pursuant to the provisions of subparagraph (1) of this paragraph, to have such performance of service treated as excluded from the term "trade or business" for the purpose of the tax on self-employment income, pursuant to the provisions of section 122(c)(2) of the Social Security Amendments of 1967 (as quoted in § 1.1402(c)). Such election shall not be limited to service to which the fees received in 1968 are attributable but must also be applicable to service (if any) in subsequent years which, except for the election, would constitute a trade or business pursuant to the provisions of subparagraph (1) of this paragraph. An election made pursuant to the provisions of this subparagraph is irrevocable.

(ii) The election referred to in subdivision (i) of this subparagraph shall be made by filing a certificate of election of exemption (Form 4415) on or before the due date of the income tax return (see section 6072), including any extension thereof (see section 6081), for the taxable year of the individual making the election which begins in 1968. The certificate of election of exemption shall be filed with an internal revenue office in accordance with the instructions on the certificate.

PAR. 13. The following sections are inserted immediately after § 1.1402(e)-1A.

§ 1.1402 (e)-2A Ministers, members of religious orders and Christian Science practitioners; application for exemption from self-employment tax.

(a) *In general.* (1) Subject to the limitations set forth in subparagraphs (2) and (3) of this paragraph, any individual who is (i) a duly ordained, commissioned, or licensed minister of a church or a member of a religious order (other than a member of a religious order who has taken a vow of poverty as a member of such order) or (ii) a Christian Science practitioner may request an exemption from the tax on self-employment income (see §§ 1.1401 and 1.1401-1) with respect to services performed by him in his capacity as a minister or member, or as a Christian Science practitioner, as the case may be. Such a request shall be made by filing an application for exemption on Form 4361 in the manner provided in paragraph (b) of this section and within the time specified

in § 1.1402(e)–3A. For provisions relating to the taxable year or years for which an exemption from the tax on self-employment income with respect to service performed by a minister or member or a Christian Science practitioner in his capacity as such is effective, see § 1.1402 (e)–4A. For additional provisions applicable to services performed by individuals referred to in this subparagraph, see paragraph (e) of § 1.1402(c)–3 and § 1.1402(c)–5 relating to ministers and members of religious orders, and paragraphs (a)(3)(ii) and (b) of § 1.1402 (c)–6 relating to Christian Science practitioners.

(2) The application for exemption shall contain, or there shall be filed with such application, a statement to the effect that the individual making application for exemption is conscientiously opposed to, or because of religious principles is opposed to, the acceptance (with respect to services performed by him in his capacity as a minister, member, or Christian Science practitioner) of any public insurance which makes payments in the event of death, disability, old age, or retirement or makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Social Security Act). Thus, ministers, members of religious orders, and Christian Science Practitioners requesting exemption from social security coverage must meet either of two alternative tests: (1) A religious principles test which refers to the institutional principles and discipline of the particular religious denomination to which he belongs, or (2) a conscientious opposition test which refers to the opposition because of religious considerations of individual ministers, members of religious orders, and Christian Science Practitioners (rather than opposition based upon the general conscience of any such individual or individuals). The term "public insurance", as used in section 1402(e) and this paragraph, refers to governmental, as distinguished from private, insurance and does not include insurance carried with a commercial insurance carrier. To be eligible to file an application for exemption on Form 4361, a minister, member, or Christian Science practitioners need not be opposed to the acceptance of all public insurance making payments of this specified type; he must, however, be opposed on religious grounds to the acceptance of any such payment which, in whole or in part, is based on, or measured by earnings from, services performed by him in his capacity as a minister or member (see § 1.1402(c)–5) or in his capacity as a Christian Science practitioner (see paragraph (b)(2) of § 1.1402(c)–6). For example, a minister performing service in the exercise of his ministry may be eligible to file an application for exemption on Form 4361 even though he is not opposed to the acceptance of benefits under the Social Security Act with respect to service performed by him which is not in the exercise of his ministry.

(3) An exemption from the tax imposed on self-employment income with respect to service performed by a minister, member, or Christian Science practitioner in his capacity as such may not be granted to a minister, member, or practitioner who (in accordance with the provisions of section 1402(e) as in effect prior to amendment by section 115(b)(2) of the Social Security Amendments of 1967 (81 Stat. 839)) filed a valid waiver certificate on Form 2031 electing to have the Federal old-age, survivors, and disability insurance system establish by title II of the Social Security Act extended to service performed by him in the exercise of his ministry or in the exercise of duties required by the order of which he is a member, or in the exercise of his profession as a Christian Science practitioner. For provisions relating to waiver certificates on Form 2031, see §§ 1.1402 (e)(1)–1 through 1.1402(e)(6)–1.

(b) *Application for exemption.* An application for exemption on Form 4361 shall be filed in triplicate with the internal revenue officer or the internal revenue office, as the case may be, designated in the instructions relating to the application for exemption. The application for exemption must be filed within the time prescribed in § 1.1402(e)–3A. If the last original Federal income tax return of an individual to whom paragraph (a) of this section applies which was filed before the expiration of such time limitation for filing an application for exemption shows no liability for tax on self-employment income, such return will be treated as an application for exemption, provided that before February 18, 1975 such individual also files a properly executed Form 4361.

(c) *Approval of application for exemption.* The filing of an application for exemption on Form 4361 by a minister, a member of a religious order, or a Christian Science practitioner does not constitute an exemption from the tax on self-employment income with respect to services performed by him in his capacity as a minister, member, or practitioner. The exemption is granted only if the application is approved by an appropriate internal revenue officer. See § 1.1402(e)–4A relating to the period for which an exemption is effective.

§ 1.1402 (e)–3A Time limitation for filing application for exemption.

(a) *General rule.* (1) Any individual referred to in paragraph (a) of § 1.1402 (e)–2A who desires an exemption from the tax on self-employment income with respect to service performed by him in his capacity as a minister or member of a religious order or as a Christian Science practitioner must file the application for exemption (Form 4361) prescribed by § 1.1402(e)–2A on or before whichever of the following dates is later:

(i) The due date of the income tax return (see section 6072), including any extension thereof (see section 6081), for his second taxable year ending after 1967, or

(ii) The due date of the income tax return, including any extension thereof, for his second taxable year beginning after 1953 for which he has net earnings from self-employment of $400 or more, any part of which—

(*a*) In the case of a duly ordained, commissioned, or licensed minister of a church, consists of remuneration for service performed in the exercise of his ministry,

(*b*) In the case of a member of a religious order who has not taken a vow of poverty as a member of such order, consists of remuneration for service performed in the exercise of duties required by such order, or

(*c*) In the case of a Christian Science practitioner, consists of remuneration for service performed in the exercise of his profession as a Christian Science practitioner.

See paragraph (c) of this section for provisions relating to the computation of net earnings from self-employment.

(2) If a minister, a member of a religious order, or a Christian Science practitioner derives gross income in a taxable year both from service performed in such capacity and from the conduct of another trade or business, and the deductions allowed by chapter 1 of the Internal Revenue Code which are attributable to the gross income derived from service performed in such capacity equal or exceed the gross income derived from service performed in such capacity, no part of the net earnings from self-employment (computed as prescribed in paragraph (c) of this section) for the taxable year shall be considered as derived from service performed in such capacity.

(3) The application of the rules set forth in subparagraphs (1) and (2) of this paragraph may be illustrated by the following examples:

Example (1). M, who makes his income tax returns on a calendar year basis, was ordained as a minister in January 1960. During each of two or more taxable years ending before 1968 M has net earnings from self-employment in excess of $400 some part of which is from service performed in the exercise of his ministry. M has not filed an effective waiver certificate on Form 2031 (see paragraph (a)(3) of § 1.1402(e)–2A). If M desires an exemption from the tax on self-employment income with respect to service performed in the exercise of his ministry, he must file an application for exemption on or before the due date of his income tax return for 1969 (his second taxable year ending after 1967), or any extension thereof.

Example (2). M, who makes his income tax returns on a calendar year basis, was ordained as a minister in January 1966. M has net earnings of $350 for the taxable year 1966 and has net earnings in excess of $400 for each of his taxable years 1967 and 1968 (some part or all of which is derived from service performed in the exercise of his ministry). M has not filed an effective waiver certificate on Form 2031 (see paragraph (a)(3) of § 1.1402(e)–2A). If M desires an exemption from the tax on self-employment income with respect to service performed in the exercise of his ministry, he must file an application for exemption on or before the due date of his income tax return for 1969 (his second taxable year ending after 1967), or any extension thereof.

Example (3). Assume the same facts as in example (2) except that M has net earnings in excess of $400 for each of his taxable years 1967 and 1969 (but less than $400 in 1968). The application for exemption must be filed on or before the due date of his income tax return for 1969, or any extension thereof.

Example (4). M was ordained as a minister in May 1973. During each of the taxable years 1973 and 1975, M, who makes his income tax returns on a calendar year basis, derives net earnings in excess of $400 from his activities as a minister. M has net earnings of $350 for the taxable year 1974, $200 of which is derived from service performed by him in the exercise of his ministry. If M desires an exemption from the tax on self-employment income with respect to service performed in the exercise of his ministry, he must file an application for exemption on or before the due date of his income tax return for 1975, or any extension thereof.

Example (5). M, who was ordained a minister in January 1973, is employed as a toolmaker by the XYZ Corporation for the taxable years 1973 and 1974 and also engages in activities as a minister on weekends. M makes his income tax returns on the basis of a calendar year. During each of the taxable years 1973 and 1974 M receives wages of $14,000 from the XYZ Corporation and derives net earnings of $400 from his activities as a minister. If M desires an exemption from the tax on self-employment income with respect to service performed in the exercise of his ministry, he must file an application for exemption on or before the due date of his income tax return for 1974, or any extension thereof. It should be noted that although by reason of section 1402 (b) (1) (G) and (H) no part of the $400 represents "self-employment income", nevertheless the entire $400 constitutes "net earnings from self-employment" for purposes of fulfilling the requirements of section 1402 (e) (2).

Example (6). M, who files his income tax returns on a calendar year basis, was ordained as a minister in March 1973. During 1973 he receives $410 for service performed in the exercise of his ministry. In addition to his ministerial services, M is engaged during the year 1973 in a mercantile venture from which he derives net earnings from self-employment in the amount of $4,000. The expenses incurred by him in connection with his ministerial services during 1973 and which are allowable deductions under chapter 1 of the Internal Revenue Code amount to $410. During 1974 and 1975, M has net earnings from self-employment in amounts of $4,600 and $4,800, respectively, and some part of each of these amounts is from the exercise of his ministry. The deductions allowed in each of the years 1974 and 1975 by chapter 1 which are attributable to the gross income derived by M from the exercise of his ministry in each of such years, respectively, do not equal or exceed such gross income in such year. If M desires an exemption from the tax on self-employment income with respect to service performed in the exercise of his ministry, he must file an application for exemption on or before the due date of his income tax return for 1975, or an extension thereof.

(b) *Effect of death.* The right of an individual to file an application for exemption shall cease upon his death. Thus, the surviving spouse, administrator, or executor of a decedent shall not be permitted to file an application for exemption for such decedent.

(c) *Computation of net earnings*—(1) *Taxable years ending before 1968.* For purposes of this section net earnings from self-employment for taxable years ending before 1968 shall be determined without regard to the fact that, without an election under section 1402(e) (as in effect prior to amendment by section 115 (b)(2) of the Social Security Amendments of 1967, see § 1.1402(e)–1A), the performance of services by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry, or by a member of a religious order in the exercise of duties required by such order, or the performance of service by an individual in the exercise of his profession as a Christian Science practitioner, does not constitute a trade or business for purposes of the tax on self-employment income.

(2) *Taxable years ending after 1967.* For purposes of this section and § 1.1402(e)–4A net earnings from self-employment for taxable years ending after 1967 shall be determined without regard to section 1402(c) (4) and (5). See § 1.1402(c)–3(e)(2) and § 1.1402(c)–5 relating to ministers and members of religious orders, and paragraphs (a)(3)(ii) and (b) of § 1.1402(c)–6 relating to Christian Science practitioners.

§ 1.1402(e)–4A Period for which exemption is effective.

(a) *In general.* If an application for exemption on Form 4361—

(1) Is filed by a minister, a member of a religious order, or a Christian Science practitioner eligible to file such an application (see particularly paragraph (a)(2) and (3) of § 1.1402(e)–2A), and

(2) Is approved (see paragraph (c) of § 1.1402(e)–2A),

the exemption from the tax on self-employment income shall be effective for the first taxable year ending after 1967 for which such minister, member, or practitioner has net earnings from self-employment of $400 or more any part of which was derived from the performance of service in his capacity as a minister, member, or practitioner, and for all succeeding taxable years. See, however, paragraphs (b)(1)(ii) and (d)(2) of § 1.1402(c)–5 relating to ministers and members of religious orders and paragraph (b)(2) of § 1.1402(c)–6 relating to Christian Science practitioners.

(b) *Exemption irrevocable.* An exemption granted to a minister, a member of a religious order, or a Christian Science practitioner pursuant to the provisions of section 1402(e) is irrevocable.

[FR Doc.73-13260 Filed 7-2-73;8:45 am]

Title 32—National Defense

CHAPTER XIV—THE RENEGOTIATION BOARD

PART 1459—COSTS ALLOCABLE TO AND ALLOWABLE AGAINST RENEGOTIABLE BUSINESS

PART 1470—INFORMATION REQUIRED OF CONTRACTORS

Miscellaneous Amendments

The Renegotiation Board hereby adopts the proposed amendments to Parts 1459 and 1470 of its regulations which were published on October 9, 1974 (39 FR 36352–36354), certain significant changes having been made therein.

Under the proposed amendments as published on October 9, 1974, the Renegotiation Board sought in a two-phase program to require that all financial statements filed with the Renegotiation Board be in conformance with cost accounting standards promulgated by the Cost Accounting Standards Board. The proposed amendments provided that for the first phase (fiscal years beginning after December 31, 1974 but before January 1, 1976), contractors with any renegotiable contracts or subcontracts subject to one or more cost accounting standards would have been required to report all their renegotiable business in conformance with the standards in effect with respect to such renegotiable contracts and subcontracts. For the second phase (fiscal years beginning on or after January 1, 1976), all contractors subject to renegotiation would have been required to file financial statements with the Renegotiation Board in conformance with all cost accounting standards in effect, even though none of the renegotiable business reported in the financial statements was subject to such standards.

Significant changes in the proposed amendments are reflected in the within regulations adopted by the Board. The second phase of the proposed program has been eliminated and conformance with cost accounting standards has been limited only to that portion of a contractor's renegotiable business which is derived from contracts or subcontracts subject to such standards. The remaining portion of the contractor's renegotiable business will be reported in accordance with the contractor's usual method of accounting, except that, under certain circumstances, extended application of cost accounting standards is permissible.

The new regulations, as adopted, read as set forth below.

Dated: December 19, 1974.

REX M. MATTINGLY,
Acting Chairman.

Section 1459.1 is amended as follows:

1. Paragraphs (b) (1) through (7) inclusive are deleted in their entirety and the following inserted in lieu thereof.

2. Paragraph (b) (8) is redesignated as (b) (9) and a new paragraph (b) (8) is added as follows.

§ 1459.1 Statutory provisions and general regulations.

* * * * *

(b) *Profits, cost allocation and allowance; general*—(1) *Accounting methods.* In connection with renegotiation on an over-all fiscal year basis, except as otherwise provided in these regulations, income received or accrued and costs paid or incurred will be considered as having been received or accrued or paid or incurred in the fiscal year to which such items are to be attributed in accordance with the method of accounting

employed by the contractor in determining net income for Federal income tax purposes or in accordance with such other method of accounting as the contractor and the Board may agree upon pursuant to the provisions of paragraph (b)(3) of this section: *Provided*, That, the method of accounting to be employed is not in conflict with the contractor's obligations under paragraph (b)(2) of this. Except with respect to allocations made pursuant to such paragraph (b)(2), nothing in the preceding sentence shall affect the authority of the Board under section 103 (f) and (i) of the Act to determine the income received or accrued or the costs paid or incurred by the contractor with respect to renegotiable business in a fiscal year in accordance with such method of accounting as, in the opinion of the Board, properly reflects such income or costs, if the method of accounting employed by the contractor in determining net income for Federal income tax purposes does not, in the opinion of the Board, properly reflect such income or costs, and the contractor and the Board are unable to agree upon a method which does properly reflect such income or costs.

(2) *Cost accounting standards.* The Board was designated a "relevant Federal agency" by Cost Accounting Standards Board regulation, § 331.2, 4 CFR 331.2, issued under Pub. L. 91-379 (84 Stat. 796, approved August 15, 1970), 50 U.S.C. App. 2168. Accordingly, the Board extends recognition to cost accounting standards promulgated by the Cost Accounting Standards Board, and in filing financial statements with the Renegotiation Board, contractors are required to comply with such standards as provided herein.

(i) *Fiscal years beginning after December 31, 1974.* For fiscal years beginning after December 31, 1974, contractors with any renegotiable contracts or subcontracts subject to one or more cost accounting standards are required to file financial statements with the Renegotiation Board in conformance with these standards for that portion of their renegotiable business subject to such standards, with the remaining portion of their renegotiable business to be reported in such financial statements in accordance with the provisions of paragraph (b)(1) of this section, except as provided in paragraphs (b)(2)(ii) (*a*), (*b*) and (*c*) of this section.

(ii) *Extended application of cost accounting standards.* For fiscal years beginning after December 31, 1974, contractors subject to cost accounting standards for a portion of their renegotiable business who file financial statements with the Renegotiation Board as provided in subsection paragraph (b)(2)(i) of this section, may extend the application of such cost accounting standards in the following manner:

(*a*) In addition to that portion of the renegotiable business that is subject to one or more cost accounting standards and required to be reported for renegotiation purposes in accordance with such standards, contractors may report all other renegotiable business within the same profit center (as defined in § 351.30 of the Cost Accounting Standards Board regulations, 4 CFR 351.30) in accordance with such cost accounting standards.

(*b*) In addition to that portion of the renegotiable business that is subject to one or more cost accounting standards and required to be reported for renegotiation purposes in accordance with such standards, or any renegotiable business reported as provided in paragraph (b)(2)(ii)(*a*) of this section, contractors, with Board approval, may report any other renegotiable business in accordance with such standards.

(*c*) Financial statements filed with the Renegotiation Board pursuant to paragraphs (b)(2)(ii)(*a*) or (ii)(*b*) of this section shall conform with all other requirements of this part of the regulations, including the requirement that no item will be allowed as a cost of renegotiable business to the extent that such item has, in a previous renegotiation under the act, been allowed as a cost of renegotiable business (see RBR § 1459.1(c)(8)); and the requirement that any reporting practice followed pursuant to (b)(2)(ii) (*a*) or (*b*) must be followed in subsequent fiscal years (see, for example, RBR § 1459.1(c)(1)).

(iii) *Accounting period.* The Renegotiation Board has been excepted from certain provisions of Cost Accounting Standard No. 406, "Cost Accounting Period." Thus, where the contractor's cost accounting period is different from its fiscal year under the Act, the latter shall be used.

(3) *Differing accounting methods.* (i) The Board will permit a contractor to adopt for renegotiation purposes a method of accounting other than that used by the contractor for Federal income tax purposes, *provided* That:

(*a*) The method of accounting to be adopted is not in conflict with the contractor's obligation under 50 U.S.C. App. 2168 or paragraph (b)(2) of this section to comply with the cost accounting standards.

(*b*) The Board finds that the method of accounting employed by the contractor for Federal income tax purposes is manifestly unsuitable for the purpose of renegotiation because it does not clearly reflect the profits attributable to the contractor's performance of renegotiable contracts for the fiscal year under review, and the method of accounting to be adopted does clearly reflect such profits; and

(*c*) The contractor enters into a written agreement with the Board before the conclusion of the renegotiation proceedings for the year under review, providing among other things substantially as follows:

(*1*) That the contractor will employ such different method of accounting for the purposes of the renegotiation proceedings for the year under review and all subsequent years, whether such proceedings are concluded by agreement or order;

(*2*) That no cost or expense recognized in the renegotiation proceedings for the first year covered by the agreement will be recognized in any subsequent renegotiation proceeding; and

(*3*) That the computation of losses, if any, in preceding fiscal years (see § 1457.9 of this chapter) will be made on the basis of such different method of accounting.

(ii) Under this section, a contractor may adopt a different method of accounting for the purpose of determining all amounts received or accrued and costs paid or incurred in a fiscal year, as in the case of a change from a cash receipts and disbursements method of accounting to an accrual method of accounting; or it may adopt a different method of accounting for a particular item of cost or for a particular class of items of cost which would result in recognizing such item or items in one fiscal year rather than another.

(iii) Subject to the foregoing conditions, the Board will also permit a contractor to adopt for renegotiation purposes the completed contract method of accounting for contracts to be performed over a period of more than one fiscal year, which, because of circumstances of performance, would require estimates of performance and allocation of income and cost that could result in material distortion in accounting on an interim basis prior to completion. Such contracts may include contracts for construction of major facilities or major units (such as a vessel or group of vessels) when the profits can best be determined upon completion.

(iv) If a contractor employs, for the purposes of a renegotiation proceeding relating to the year under review, a method of accounting different from that which it employed for the purposes of a renegotiation proceeding relating to the preceding fiscal year, whether pursuant to this section or otherwise, it will be required to employ such different method of accounting for the purposes of all subsequent renegotiation proceedings, and the amounts received or accrued and costs paid or incurred which have been recognized in prior renegotiation proceedings will not be recognized in the proceedings relating to the year under review.

(4) *Allocation of costs.* In general, except as provided in paragraph (b)(2) of this section, the costs paid or incurred with respect to renegotiable business in the fiscal year under review will be the costs allocated to such business and such year by the contractor's established cost accounting method if that method reflects recognized accounting principles and practices. If in the opinion of the Board there is no adequate or effective cost accounting method in use, or if the method employed does not properly reflect such costs because there are unjustified or improper allocations of items of cost in the accounting records or in the

reports or statements filed for the purpose of renegotiation, costs will be allocated in accordance with such method as in the opinion of the Board does properly reflect such costs. The fact that all receipts and accruals during a fiscal year are classifiable as renegotiable does not necessarily mean that all items of cost estimated to be deductible in that year are allocable to renegotiable business.

(5) *Tax deductions.* When an item of cost is allocable in whole or in part to renegotiable business, the Board will estimate the amount allowable as a deduction or exclusion under chapter 1 of the Internal Revenue Code, and such estimated amount will be allowed as a cost of renegotiable business in the fiscal year under review to the extent that it is allocable to such business and such year in accordance with the principles set forth in this paragraph (b). No such item of cost will be allowed in an amount less than or in excess of that estimated to be in the determination of taxable income under the Internal Revenue Code, and all items of cost will be allocated to the fiscal year in which they are allowable in the determinatoin of taxable income under said Code, except as otherwise provided in this paragraph (b). When it is clear that a contractor's deductions and exclusions under the Internal Revenue Code result in allowable costs of renegotiable business which are in the aggregate either high or low on a comparative basis, this circumstance will be considered in connection with the factor of the "reasonableness of costs" of the contractor and the determination of the amount of any profit adjustment to be required of the contractor. In estimating amounts allowable as deductions or exclusions under chapter 1 of the Internal Revenue Code, due consideration will be given to any pertinent action by the Internal Revenue Service. Published rulings of the Internal Revenue Service on matters of general application will be adhered to in making such estimates. However, the allowance of items as costs is not required merely because they have been or are expected to be allowed for tax purposes by particular revenue agents or other field representatives of the Internal Revenue Service. Occasionally cases may be encountered in which revenue agents will have allowed salaries or other items as deductions for tax purposes which the Board concludes are not properly allowable under the Internal Revenue Code or are properly allowable in a different amount or for a different year. In such cases the action of the revenue agents is not regarded as conclusive. Similarly, disallowances by such officials are not conclusive. The Board will exercise independent judgment on whether and to what extent and for what year items are allowable as deductions or exclusions under the Internal Revenue Code. Such judgment will be based upon an estimate of what the courts would do if the deductibility or excludability of the items were the subject of litigation.

(6) *Effect of cost principles promulgated by other agencies.* Agreements for the allowance or disallowance of costs entered into by a contractor with another agency of the Government, either by specific contractual provision or by acceptance (expressed or implied) of Government regulations or policies, are not controlling with respect to recognition of Thus, a cost properly disallowed in acsuch costs for renegotiation purposes. cordance with the Armed Services procurement regulation, in connection with a contract to which such regulation is applicable, will nevertheless be recognized for renegotiation purposes if such cost is a proper Federal income tax deduction. Similarly, an item allowable as a "cost" by such regulation or by specific contractual agreement will not be allowed unless it is a proper Federal income tax deduction. Furthermore, a specific agreement that additional proper costs incurred in performing a contract will not be claimed as an addition to the contract price will not result in the non-recognition of such cost for renegotiation purposes.

(7) *Conditional allowance of cost.* If an occasion should arise in which the Board is unable to make a reasonable estimate of whether or the extent to which a particular item is allowable as a deduction or exclusion under the Internal Revenue Code for the year under review and the item is material in relation to the excessive profits to be eliminated, the Board may allow the item as a cost in renegotiation, *provided,* That the contractor agrees to refund as additional excessive profits the amount so allowed to the extent that such amount may finally be determined to be not allowable as a deduction or exclusion under the Internal Revenue Code for the year under review.

(8) *Costs previously allowed in renegotiation.* No item will be allowed as a cost of renegotiable business to the extent that such item has, in a previous renegotiation under the act or under any other renegotiation law, been allowed as a cost in determining excessive profits, notwithstanding that such item may be a deduction or exclusion under chapter 1 of the Internal Revenue Code in computing taxable net income for the taxable period corresponding to the fiscal period covered by the current renegotiation.

(9) *Replacement of inventory involuntarily liquidated.* * * *

* * * * *

Section 1470.3 *Filing of financial statement* is amended as follows:

1. Paragraph (c) is amended by designating the existing material as (c)(1), *General,* and by inserting immediately following paragraph (c)(1) the following new paragraph (c)(2) as follows:

§ 1470.3 Filing of financial statement.

* * * * *

(c) *Sufficiency of contents.* (1) *General.* * * *

(2) *Cost accounting standards.* The Board recognizes the cost accounting standards promulgated by the Cost Accounting Standards Board. To the extent one or more such standards are applicable to a fiscal year, under the provisions of 50 U.S.C. App. 2168 and § 1459.1(b)(2) of this chapter, the Standard Form of Contractor's Report shall be prepared in accordance therewith. Upon request there shall be filed with the Board copies of disclosure statements, if any, and other explanatory documents and information filed with the Cost Accounting Standards Board and procurement agencies.

* * * * *

(Sec. 109, 65 Stat. 22; 50 U.S.C.A., App. Sec. 1219)

[FR Doc.74-30009 Filed 12-23-74;8:45 am]

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 74 295]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

GIWW, Mile 57.6 Through Mile 59.8, West of Harvey Lock, Houma, La.

This amendment changes the regulations for the drawbridges located across the GIWW at mile 57.6 through mile 59.8, west of Harvey Lock, Houma, Louisiana to allow closed periods during the morning and evening rush hour vehicular traffic. This amendment is required while extensive repairs are completed on the drawbridge located at mile 57.7. Marine interests have agreed to this temporary restriction. The Coast Guard has found that good cause exists for granting this change without notice of proposed rule making on the basis that it would be contrary to the public interest to delay this work.

Accordingly, Part 117 of Title 33 of the Code of Federal Regulations is amended by adding a new § 117.241 immediately after § 117.240 to read as follows:

§ 117.241 GIWW, Houma, Louisiana, bridges.

(a) The drawbridges located at mile 57.6 through mile 59.8, west of Harvey Lock, Houma, Louisiana need not open for the passage of vessels from 7:30 to 8:30 a.m. and 4:30 to 5:30 p.m., Monday through Friday, except holidays.

(b) These regulations shall be revoked as of January 31, 1975.

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; (33 U.S.C. 499), (49 U.S.C. 1655(g)(2)); 49 CFR 1.46(c)(5), 33 CFR 1.05-1(c)(4))

Effective date. This revision shall become effective on December 24, 1974.

Dated: December 16, 1974.

R. I. PRICE,
Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc.74-29963 Filed 12-23-74;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 1—FEDERAL PROCUREMENT REGULATIONS

[FPR Amdt. 138]

PART 1–3—PROCUREMENT BY NEGOTIATION

PART 1–5—SPECIAL AND DIRECTED SOURCES OF SUPPLY

Negotiated Cost Contracts

This amendment of the Federal Procurement Regulations makes two changes in Subpart 1–3.8. The changes concern the elimination of exemptions from the requirements for obtaining cost or pricing data where negotiated cost contracts involve construction or basic research with educational institutions. In addition, the amendment changes Subpart 1–5.9 to eliminate a reference regarding the use of GSA sources of supply by grantees and to eliminate a requirement that agencies submit copies of authorizations to the General Services Administration, Federal Supply Service, for cost reimbursement contractors to use GSA sources of supply.

Subpart 1–3.8—Price Negotiation Policies and Techniques

Section 1–3.807–3 is amended to modify paragraph (b) as follows:

§ 1–3.807–3 Requirements for cost or pricing data.

* * * * *

(b) The requirements of paragraph (a) of this section need not be applied (1) where the contracting officer determines, in writing, that the price negotiated is based on (i) adequate price competition, (ii) established catalog or market prices of commercial items sold in substantial quantities to the general public, or (iii) prices set by law or regulation, or (2) where, in exceptional cases, the head of the agency or his authorized designee authorizes the waiver of those requirements and states in writing his reasons for such determination (see § 1–3.302(e)).

* * * * *

Subpart 1–5.9—Use of GSA Supply Sources by Contractors Performing Cost-Reimbursement Type Contracts

Section 1–5.900 is amended as follows:

§ 1–5.900 Scope of subpart.

This subpart prescribes policies and procedures for Federal agencies regarding the use of General Services Administration (GSA) supply sources (i.e., items available through Federal Supply Schedule contracts and from GSA stores stock) by contractors in performing certain Government contracts. The term "contractor" as used in this subpart, unless the context otherwise requires, includes subcontractors who qualify in accordance with the provisions of § 1–5.902(b). (The use of GSA sources by grantees is not authorized.)

Section 1–5.902 is amended to modify paragraph (f), as follows:

§ 1–5.902 Authorization to contractors.

* * * * *

(f) Copies of each authorization shall be forwarded to the Federal Supply Service of the General Services Administration regional office serving the geographical area in which the facilities of the authorized contractor are located.

* * * * *

(Sec. 205(c), 63 Stat. 390; (40 U.S.C. 486(c))

Effective date. This amendment is effective January 27, 1975, but may be observed earlier.

Dated: December 17, 1974.

ARTHUR F. SAMPSON,
Administrator of General Services.

[FR Doc.74–29917 Filed 12–23–74;8:45 am]

AEC

SPECIAL AND DIRECTED SOURCES OF SUPPLY, ILLUSTRATION OF FORMS, OFFICE SYMBOLS

Miscellaneous Amendments

The revision to AECPR 9–5.5206–5 is being made in order to cancel the moratorium imposed by FPMR 101–25.104–2 on the purchase of steel filing cabinets by either AEC or cost-type contractors, and to delete the requirement for obtaining GSA approval of such direct AEC procurements. These changes are being made to bring AECPR into accord with FPMR Amendment E–144 dated June 19, 1974. The revision to AECPR 9–16.9 is intended to bring AECPR 9–16.951–2 (AEC 103a) Purchase Order Terms, in line with the latest organizational changes, as well as with AEC and Federal Procurement Regulation requirements. The remaining change is being made for the purpose of updating AECPR 9–53.202 to reflect the assignment of the symbol "DR" to identify purchase orders issued by the Director of Regulation in accordance with the recent delegation to him of contractual authority.

PART 9–5—SPECIAL AND DIRECTED SOURCES OF SUPPLY

1. Paragraphs (a) and (b) of § 9–5.5206–5 are revised as follows:

§ 9–5.5206–5 Steel filing cabinets.

(a) Procurement of steel filing cabinets, by either AEC or cost-type contractors, is subject to AEC utilization requirements.

(b) Direct AEC procurements of steel filing cabinets are subject to the requirements of FPMR 101–26.308. These requirements do not apply to grantees or contractors authorized to use GSA supply sources. However, such filing cabinets shall not be procured by AEC cost-type contractors unless approved by the Manager of the cognizant Field Office, on the bases that AEC utilization requirements have been met and the actions prescribed by FPMR 101–25.302–2 have been taken. A copy of the Field Office approval shall be retained in the appropriate purchasing office files.

PART 9–16—PROCUREMENT OF FORMS

* * * * *

2. In § 9–16.951–2, paragraph 10 is revised as follows:

§ 9–16.951–2 (AEC 103a) Purchase Order Terms.

* * * * *

10. *Contract Work Hours and Safety Standards Act—Overtime Compensation.* See the clause set forth in FPR 1–12.303, including the revision to paragraph (c) thereof as required by AECPR 9–12.302.

* * * * *

3. In § 9–16.951–2, paragraph 13 is revised as follows:

§ 9–16.951–2 (AEC 103a) Purchase Order Terms.

* * * * *

13. *Priorities, Allocations, and Allotments.* The contractor shall follow the provisions of DMS Regulation 1 and all other applicable regulations and orders of the Domestic and International Business Administration, Department of Commerce in obtaining controlled materials and other products and materials needed to fill this order.

PART 9–53—NUMBERING AND DISTRIBUTION OF CONTRACTS AND ORDERS

4. Section 9–53.202, is revised as follows:

§ 9–53.202 Procurement office symbols.

The symbols assigned for the purpose of identifying AEC procurement offices on purchase orders issued by them are set forth as follows:

Procurement office:	*Order prefix*
Albuquerque	AL–
Brookhaven	BH–
Chicago	CH–
Dayton	DA–
Grand Junction	GJ–
Idaho Falls	ID–
Kansas City	KC–
Los Alamos	LS–
New Brunswick	NB–
Nevada	NV–
Oak Ridge	OR–
Paducah	PD–
Portsmouth	PM–
Pittsburgh	PN–
Puerto Rico	PR–
Richland	RL–
San Francisco	SF–
Savannah River	SR–
Headquarters Services	WA–
Director of Regulation	DR–

(Sec. 161 of the Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; Sec. 205 of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, (40 U.S.C. 486))

Effective date: This amendment is effective December 24, 1974.

Dated at Germantown, Maryland this 19th day of December, 1974.

For the Atomic Energy Commission.

JOSEPH L. SMITH,
Director, Division of Contracts.

[FR Doc.74–30090 Filed 12–23–74;8:45 am]

CHAPTER 101—FEDERAL PROPERTY MANAGEMENT REGULATIONS

SUBCHAPTER E—SUPPLY AND PROCUREMENT

[FPMR Amdt. E–156]

PART 101–25—GENERAL

Subpart 101–25.3—Use Standards

USE OF UNLEADED GASOLINE IN 1975 MODEL YEAR GOVERNMENT-OPERATED MOTOR VEHICLES

This regulation provides revised policy requiring that only unleaded gasoline be used in all 1975 or later model year Government-operated motor vehicles designed to operate on such fuel.

Section 101–25.303 is revised to read as follows:

§ 101–25.303 Gasoline for use in motor vehicles.

Pursuant to the regulations of the Environmental Protection Agency (EPA), codified in 40 CFR Part 80, unleaded (0.05 gm./gal.) gasoline shall be used in 1975 or later model year Government-operated motor vehicles designed to operate on such fuel (passenger carrying vehicles and trucks up to and including 6000 lbs. GVWR) within the 50 States. For 1974 or earlier model year Government-operated motor vehicles within the 50 States, unleaded or low-lead content (0.5 gm./gal.) gasoline shall be used unless it is clearly impractical or unfeasible to do so.

(a) Government-operated motor vehicles used overseas shall be fueled in accordance with this § 101–25.303 unless (1) such use would be in conflict with country-to-country or multinational logistics agreements or (2) such gasolines are not available locally.

(b) The cost of gasoline shall not be used as a factor in determining the feasibility of using unleaded or low-lead content gasoline in 1974 or earlier model year Government-operated motor vehicles; however, manufacturers' recommendations for octane requirements and minimum lead content shall be generally followed.

(Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)))

Effective date. This regulation is effective December 24, 1974.

Dated: December 12, 1974.

ARTHUR F. SAMPSON,
Administrator of General Services.

[FR Doc.74–22918 Filed 12–23–74;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[FCC 74–1285]

PART 73—RADIO BROADCAST SERVICES

Two-Tone Attention Signal System

Correction

In FR Doc. 74–28960 appearing at page 43301 in the issue for Thursday, December 12, 1974 make the following change:

In the center column, in § 73.906(a), the third line should read "quencies of 583 and 960 hertz and shall".

[Docket No. 19988 FCC 74–1279]

PART 76—CABLE TELEVISION SERVICES

Cable Television Systems, Development of Services

Correction

In FR Doc. 74–28962 appearing at page 43310 in the issue for Thursday, December 12, 1974 make the following change:

In the third column, in § 76.305(c), the third line from the bottom should read "(a)(7) shall be retained for the periods".

proposed rules

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

[7 CFR Part 726]

BURLEY TOBACCO

Determinations on Marketing Quotas for the 1975–76 Marketing Year

Pursuant to the Agricultural Adjustment Act of 1938, as amended, (7 U.S.C. 1281 et seq., hereinafter referred to as the "Act"), the Secretary is preparing to determine and announce the amount of the national marketing quota, the national reserve and the national factor for burley tobacco for the 1975–76 marketing year.

Section 319(b) of the Act provides that the national marketing quota for the 1975–76 marketing year shall be determined and announced not later than February 1, 1975. Burley tobacco farmers approved marketing quotas on a poundage basis for the 1974–75, 1975–76, and 1976–77 marketing years (39 FR 23985).

Section 319(c) provides that the national marketing quota shall be the amount produced in the United States which the Secretary estimates will be utilized in the United States and will be exported during such marketing year, adjusted upward or downward in such amount as the Secretary, in his discretion, determines is desirable for the purpose of maintaining an adequate supply or for effecting an orderly reduction of supplies to the reserve supply level. Any such downward adjustment shall not exceed 5 per centum of such estimated utilization and exports. For each marketing year for which marketing quotas are in effect under this section, the Secretary in his discretion may establish a reserve (hereinafter referred to as the "national reserve") from the national marketing quota in an amount not in excess of 1 per centum of the national marketing quota to be available for making corrections and adjusting inequities in farm marketing quotas, and for establishing marketing quotas for new farms (that is, farms for which farm marketing quotas are not otherwise established.) A reserve of 3,000,000 pounds was established for the 1974–75 marketing year (39 FR 4565).

The Act (7 U.S.C. 1301(b)) defines "Total supply" as the carry-over at the beginning of the marketing year (October 1) plus the estimated production in the United States during the calendar year in which the marketing year begins. The total supply for the 1974–75 marketing year is 1,643 million pounds, composed of carry-over of 1,071 million pounds and estimated production of 572 million pounds.

The Act (7 U.S.C. 1301(b)) defines "Reserve supply level" as normal supply plus 5 percent. "Normal supply" is defined as a normal year's domestic consumption and exports, plus 175 percent of a normal year's domestic consumption and 65 percent of a normal year's exports as an allowance for a normal carry-over. A "Normal year's domestic consumption" is defined as the yearly average quantity produced in the United States and consumed in the United States during the ten marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption. A "Normal year's exports" is defined as the yearly average quantity produced in the United States which was exported from the United States during the ten marketing years immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports. The reserve supply level for the 1974–75 marketing year was determined to be 1,635 million pounds, calculated from a normal year's domestic consumption of 530 million pounds and a normal year's exports of 60 million pounds (39 FR 4565). The proposed reserve supply level for the 1975–76 marketing year is 1,701 million pounds, calculated from a normal year's domestic consumption of 538 million pounds and a normal year's exports of 85 million pounds.

The amount of burley tobacco produced in the United States and estimated to have been utilized in the United States during the 1973–74 marketing year was 533 million pounds, and the amount exported was 87 million pounds, farm-sales weight basis. The amount of the national marketing quota for the 1974–75 marketing year is 608 million pounds based upon estimated utilization in the United States of 565 million and estimated exports of 75 million pounds, with a downward adjustment of 32 million pounds (39 FR 4565). For the 1975–76 marketing year, utilization in the United States is estimated to be about 555 million pounds and exports are estimated to be about 95 million pounds. The total supply for the 1974–75 marketing year is 58 million pounds less than the proposed reserve supply level, but the amount of the upward adjustment, if any, desirable for maintaining an adequate supply is still being considered.

Section 319(e) provides, in part, that the farm marketing quota shall be determined by multiplying the previous year's farm marketing quota by a national factor obtained by dividing the national marketing quota determined under subsection (c) (less the national reserve) by the sum of the farm marketing quotas for the immediately preceding year for all farms for which burley tobacco marketing quotas will be determined: *Provided,* That such national factor shall not be less than 95 per centum.

Section 319(i) provides, in part, that if the Secretary, in his discretion, determined it is desirable to encourage additional marketings of any grades of burley tobacco during any marketing year to insure traditional market patterns to meet the normal demands of export and domestic markets, he may authorize the marketing of such grades without the payment of penalty or deduction from subsequent quotas to the extent of 5 per centum of the farm marketing quota for the farm on which the tobacco was produced, and such marketings shall be eligible for price support.

Section 319(h) provides that effective with the marketing year beginning October 1, 1976, no marketing quota, other than a new farm marketing quota, shall be established for a farm on which no burley tobacco was planted or considered planted in any of the five years immediately preceding the year for which farm marketing quotas are being established.

The subjects and issues involved in the proposed determinations with respect to burley tobacco for the 1975–76 marketing year are:

1. The amount of the national marketing quota.
2. The amount of the reserve supply level.
3. The amount of the national reserve.
4. Whether the Secretary should implement the provision in section 319(i) to encourage additional marketings of any grades to insure traditional market patterns.

The national factor is not considered an issue in these determinations because it results from a mathematical computation under section 319(e).

Consideration will be given to data, views and recommendations pertaining to the proposed determinations, rules and regulations covered by this notice which are submitted in writing to the Director, Tobacco and Peanut Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, Washington, D.C. 20250. All written submissions will be made available for public inspection from 8:15 a.m. to 4:45 p.m., Monday through Friday, in room 6741-South Building, 14th and Independence Avenue SW., Washington, D.C. All submissions must, in order to be sure of consideration, be postmarked not later than January 14, 1975.

Signed at Washington, D.C. on: December 20, 1974.

GLENN A. WEIR,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.74-30061 Filed 12-23-74;8:45 am]

DEPARTMENT OF LABOR

Office of Employee Benefits Security

[29 CFR Part 2552]

FIDUCIARY RESPONSIBILITY

Regulations Under the Employee Retirement Income Security Act of 1974

Section 403(a) of the Employee Retirement Income Security Act of 1974 (the Act) requires generally that assets of employee benefit plans be held in trust by one or more trustees. Section 403(b)(4) of the Act provides that this requirement shall not apply to a plan which the Secretary of Labor (the Secretary) exempts from such requirement and which is not subject to any of the following provisions of the Act: Part 2 of Title I (participation and vesting), Part 3 of Title I (funding), or Title IV (plan termination insurance).

The proposed regulation would exempt any unfunded welfare benefit plan from the requirements of section 403(a) of the Act. For the purposes of this regulation, any welfare benefit plan under which benefits are paid or to be paid directly to plan participants and beneficiaries only from the general assets of the person establishing or maintaining the plan is to be considered an unfunded welfare benefit plan. A plan is not an unfunded welfare benefit plan if plan participants and beneficiaries make contributions to the plan through withholding or otherwise, or if there is a separately maintained bank account or other evidence of the existence of a segregated or separately maintained or administered fund out of which plan benefits are to be provided. All funded employee benefit plans, welfare or pension, would still be subject to the requirements of section 403(a).

Unfunded welfare benefit plans do not have assets. In such plans, benefits are paid directly from the general assets of the person establishing or maintaining the plan. Therefore, the underlying rationale for the Act's requirement that a trust be utilized—to prevent commingling of plan assets with assets belonging to the person managing the plan assets—is not applicable to such unfunded plans.

It should be noted that the exemption proposed by this regulation for unfunded welfare benefit plans applies only to the requirement that the assets of employee benefit plans generally be held in trust by one or more trustees. A plan exempted under this regulation must still comply with the other requirements set forth in Parts 1 and 4 of Title I of the Act, except to the extent to which it may be exempted therefrom under the provisions of other regulations issued under the Act. Furthermore, any person who is a fiduciary with respect to an unfunded welfare benefit plan must still comply with the other fiduciary responsibility provisions of the Act.

Interested persons are invited to submit comments to "Comments—Section 2552.1," Office of Employee Benefits Security, Labor-Management Services Administration, P.O. Box 176, Washington, D.C. 20044. All comments received before January 24, 1975, will be considered before final action is taken on this proposal. The proposal may be changed in light of the comments received.

Accordingly, it is proposed to amend Chapter XXV of Title 29 of the Code of Federal Regulations by adding a new Part 2552 to read as follows:

PART 2552—CONTROL AND MANAGEMENT OF FUNDS

Sec.
2552.1 Exemption from trust requirements for unfunded welfare benefit plans.

AUTHORITY: (Sec. 505, Pub. L. 93-406, 88 Stat. 894 (29 U.S.C. 1135), and also as specifically noted).

§ 2552.1 Exemption from trust requirements for unfunded welfare benefit plans.

(a) Under the authority of section 403(b)(4) of the Employee Retirement Income Security Act of 1974 (the Act), any employee welfare benefit plan under which benefits are paid or to be paid directly to plan participants and beneficiaries only from the general assets of the person who established the plan is hereby exempted from the requirements of section 403(a) of the Act, which generally requires that assets of employee benefit plans be held in trust by one or more trustees.

(b) The exemption set forth in paragraph (a) above does not exempt an unfunded employee welfare benefit plan from any other provisions of Parts 1 and 4 of Title I of the Act. Any person who is a fiduciary with respect to an unfunded welfare benefit plan must still comply with the other fiduciary responsibility provisions of the Act.

Signed at Washington, D.C., this 19th day of December, 1974.

PAUL J. FASSER, Jr.,
Assistant Secretary of Labor, for Labor-Management Relations.

[FR Doc.74-30007 Filed 12-23-74;8:45 am]

Occupational Safety and Health Administration

[29 CFR Part 1910]

[Docket No. OSH-38]

EMPLOYMENT RELATED HOUSING (TEMPORARY LABOR CAMPS)

Notice of Hearing

On September 23, 1974, pursuant to section 6(b) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 12-71 (36 FR 8754) and 29 CFR Part 1911, a proposal was published in the FEDERAL REGISTER (39 FR 34057) to revise § 1910.142 of Title 29, Code of Federal Regulations, which concerns employment related housing.

In accordance with the provisions of the proposal, and with the notice which appeared in the FEDERAL REGISTER (39 FR 40505, November 18, 1974) extending the period for submitting written comments, numerous comments and requests for informal hearings were received.

There were numerous objections to the proposal by employees, employers and their respective representatives. Objections by or on behalf of employees asserted that the proposed regulations would not provide a safe and healthful place of employment, while objections by or on behalf of employers alleged that in many instances the regulations would be too stringent. Some of the major issues raised in the comments dealt with bathing facilities, electricity, windows, screening, shelter structures, spacing requirements for beds and living areas, toilet facilities, cooking facilities, and adequacy of the water supply.

Some commenters asserted that the scope of the proposed regulations exceeded the authority of the Occupational Safety and Health Administration because some regulations would be neither necessary nor appropriate for the protection of employees. It was also suggested that the regulations should not apply to marine housing or to housing provided by an employer which is used by an employee as a permanent residence. Others commented that the protection which would be afforded by the proposed regulations would not extend to non-employee occupants and, in addition, would place the burden upon the employee to prove that occupancy of the housing facility was a condition of employment.

In view of the interest shown during the written comment period and pursuant to section 6(b)(3) of the Act (84 Stat. 1594, 29 U.S.C. 655) and 29 CFR Part 1911, I have directed that an informal hearing be held in four locations concerning the proposed standard. Oral data, views and arguments with respect to any of the provisions of the proposed housing standard will be heard before an administrative law judge or judges to be designated for this purpose.

A prehearing conference commencing at 9:30 a.m. local time will be held at each location, in order to establish the order and time for the presentation of statements and to settle any other procedural matters relating to the proceeding. The hearings will begin immediately thereafter and will be held as follows:

Jan. 20, 1975	Departmental Auditorium. Conference Room B, Constitution Ave. between 12th & 14th Sts.
Jan. 23, 1975	Federal Office Building, room 418, 234 Summit St., Toledo, Ohio.
Jan. 28, 1975	Galt Ocean Mile Hotel, Board Rooms A and B, 3200 Galt Ocean Dr., Fort Lauderdale, Fla.
Feb. 4, 1975	U.S. Department of Interior, Bonneville Power, Administration Auditorium, 1002 Northeast Holladay St., Portland, Oreg.

Interested persons wishing to appear at any one of the listed hearings must file a written notice of intention to appear, together with two copies, postmarked no later than January 15, 1975. Such requests should be addressed to Mrs. Jeanne Ferrone, Attn: Docket OSH–38, Occupational Safety and Health Administration, Room 200, 1726 M Street, NW Washington, D.C. 20210. The notice must state the name and address of the person wishing to appear, the capacity in which he will appear, and the approximate amount of time required for his presentation. The notice must also include or be accompanied by, a statement of the position to be taken in regard to the specific issues to be raised, and the evidence to be adduced in support to this position. For persons wishing to appear at the hearings but unable to attend, written statements postmarked no later than January 20, 1975 may be submitted to the above address. The written statements should be submitted in triplicate.

The hearing shall be conducted in accordance with the rules of procedure in 29 CFR Part 1911. The oral proceedings shall be reported verbatim. The use of prepared statements by witnesses is encouraged. An original and two copies of all documents should be submitted at the time of the presentation.

The administrative law judge shall have all the powers necessary or appropriate to conduct a fair and full informal hearing, including the powers:

(a) To regulate the course of the proceeding;

(b) To dispose of procedural requests, objections, and comparable matters;

(c) To confine the presentations to pertinent issues;

(d) To regulate the conduct of those present at the hearing by appropriate means;

(e) In his discretion, to permit cross-examination of any witness; and

(f) In his discretion, to keep the record open for a reasonable, stated time to receive written recommendations, supporting reasons, and additional data, views, and arguments from any person who has participated in the oral proceeding.

Following the close of the hearings, the presiding administrative law judge shall certify the entire record of the hearings to the Assistant Secretary of Labor for Occupational Safety and Health.

Upon consideration of the record of the hearing, and any written data, views, or arguments received in response to the notice of proposed rulemaking, a determination may be made to adopt the proposal with or without changes or to withdraw the proposal.

Signed at Washington, D.C. this 20th day of December, 1974.

JOHN STENDER,
Assistant Secretary of Labor.

[FR Doc.74–30108 Filed 12-23-74;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Urban Mass Transportation Administration

[Dockets Nos. 74–10, 74–11 and 74–14]

[23 CFR Parts 450 and 470]

[49 CFR Part 613]

URBAN TRANSPORTATION PLANNING

Extension of Comment Period

This notice extends the period for comments to the notice published October 9, 1974 (39 FR 36350) proposing urban area boundary regulations, and the notices published on November 8, 1974 (39 FR 39660, 39665), proposing urban transportation planning regulations and transportation improvement program regulations.

A number of requests for extensions of time were submitted including one from the American Public Transit Association (APTA). Among other matters, APTA felt the need for additional time to consider the impact on the proposed procedures of the recently enacted National Mass Transportation Assistance Act of 1974 (Pub. L. 93–503). The Maryland Department of Transportation also requested an extension in view of the substantial implication to existing State laws and procedures. A number of other States and organizations informally requested an extension for reasons similar to those formally expressed by APTA and the Maryland Department of Transportation. Accordingly, UMTA and FHWA grant these requests and extend the comment period until January 15, 1975. If further analysis of the National Mass Transportation Assistance Act of 1974 indicates that substantive amendments should be made to these proposed regulations, they will be published at a later time; however, at this time it is not anticipated that these proposed regulations will require any major amendment necessitating republication for formal comment.

Dated: December 18, 1974.

NORBERT T. TIEMANN,
Federal Highway Administrator.

FRANK C. HERRINGER,
Urban Mass Transportation Administrator.

[FR Doc.74–29880 Filed 12–23–74;8:45 am]

ACTION

[48 CFR Part 1213]

ACTION COOPERATIVE VOLUNTEER PROGRAM

Terms and Conditions of Volunteer Service

The ACTION Cooperative Volunteer Program (ACV) is authorized under section 122(a), Part C, Title I, of the Domestic Volunteer Act of 1973, Pub. L. 93–113. It provides full-time volunteer service opportunities for individuals on projects involving a broad range of human, social, and environmental needs. Full-time service involves the enrollment of individuals in the program for a period of at least a year. In keeping with 402(12) of Pub. L. 93–113, volunteer sponsors enter into an agreement with ACTION to reimburse ACTION for the direct costs of volunteer support, i.e. allowances, stipend and other direct benefits. Ths feature distinguishes ACV from other Title I full-time volunteer programs such as VISTA and the Program for Local Service.

Section 122(b) requires that the assignment of volunteers under Part C, Ttle I of Pub. L. 93–113 be on such terms and conditions as the Director of ACTION shall determine. Also, section 122 (c) provides that the Director may provide to persons serving as full-time volunteers in a program of at least one year's donation such allowances and stipends as he determines are necessary. The kinds and amount of such allowanaces and stipends may not exceed those authorized to be provided to VISTA volunteers (Part A, Title I, Pub. L. 93–113).

Notice is hereby given that the Director of ACTION proposes to amend Chapter XII of Title 45, Code of Federal Regulations to add a new Part 1213. This amendment wil lprovide regulations concerning two areas: (1) The terms and conditions for volunteer service in ACV, and (2) the amount of allowances and stipends that ACV volunteers receive.

Inquiries may be addressed and comments and views concerning the proposed new part may be submitted to ACTION, 806 Connecticut Avenue NW., Washington, D.C. 20525, Attention: Associate Director for Domestic and Operations. All comments received on or before January 21, 1975 will be considered. All comments in response to this proposal will be available for public inspection during normal business hours at the foregoing address.

It is therefore proposed to add a new Part 1213 to Chapter XII of Title 45 of the Code of Federal Regulations as follows:

PART 1213—ACTION COOPERATIVE VOLUNTEER PROGRAM

Subpart A—General

Sec.

Subpart B—Description of Volunteer Service

AUTHORITY: Secs. 121, 122, 402 (12) and (14) and 420 of Pub. L. 93–113, 87 Stat. 395, 400, 401, 407 and 414.

Subpart A—General

§ 1213.1–1 Introduction.

(a) Section 122(a), Part C, of the Domestic Volunteer Service Act of 1973 (the Act), Pub. L. 93–113, 87 Stat. 401, authorizes the Director of ACTION to conduct and to make contracts for special volunteer programs to encourage wider volunteer participation on a full-time basis to strengthen and supplement efforts to meet a broad range of human, social, and environmental needs, particularly those related to poverty. The ACTION Cooperative Volunteer Program (ACV) is one of these special volunteer programs. It provides full-time volunteer service opportunities for individuals in assignments with nonprofit and public agency sponsors involving a broad range of human, social, and environmental needs, particularly those related to poverty.

Organizations wishing to become sponsors enter into an agreement with ACTION to share expenses associated with ACV volunteer assignments. The sponsor's share consists of reimbursing ACTION for the direct costs of volunteer support, i.e. allowances, stipend and other direct benefits.

(b) Section 122(b) requires that the assignment of ACV volunteers be on such terms and conditions as the Director shall determine.

(c) Section 122(c) provides that the Director may provide to persons serving as full-time volunteers in a program of at least one year's duration such allowances and stipends as he determines are necessary. The kinds and amount of such allowances and stipends may not exceed those authorized to be provided to VISTA volunteers (Part A, Title I, Pub. L. 93–113).

Subpart B—Description of Volunteer Service

§ 1213.2–1 Enrollment and duration of service.

ACTION enrolls an individual in ACV during the preservice processing it provides. Such enrollment is for a period comprising the time of such processing, ACTION preservice orientation, and a on-year assignment to a project.

§ 1213.2–2 Provisional volunteers.

Individuals are considered to be provisional volunteers during the period of pre-service processing and ACTION preservice orientation. They have all the rights and benefits and are subject to all the duties of volunteers, except as expressly provided in these regulations or where it would appear from the language of a section of the regulations to be inappropriate.

§ 1213.2–3 Extension of service and reenrollment.

In certain situations, a volunteer may have his period of volunteer service extended for not more than one year, at the request of a sponsor and the concurrence of the appropriate ACTION Regional Director.

A volunteer may only be reenrolled for a period of at least one year. A sponsor must request the reenrollment and it must be approved by the appropriate ACTION Regional Director. No volunteer may serve for more than a total of five years in full-time volunteer programs under Title I of Pub. L. 93–113.

Such extensions and reenrollments may be for the same or different projects and may include interregional and intraregional transfers.

§ 1213.2–4 Living conditions.

To the extent practicable volunteers are expected to make a personal commitment to live among and at the economic level of the people served by the project in which the volunteer works. The sponsor will insure that this commitment is observed.

§ 1213.2–5 Role of the volunteer.

The volunteer's assignments are carried out under the auspices of the sponsor. The volunteer assumes a "live-in" obligation carrying his work into all facets of community life and social activity. He is available for service without regard to regular working hours seven days a week, except for periods of approved leave.

Subpart C—ACTION Provided Volunteer Support

§ 1213.3–1 Financial support.

(a) *Food and lodging.* Each ACV volunteer receives from ACTION a food and lodging allowance approximately commensurate with the actual standard of living of the residents of the community to which he is assigned. The amount of this allowance is determined by the Regional Office after consultation with the sponsor.

(b) *Personal living allowance.* ACTION also provides each volunteer a personal living allowance of $75 per month. It is intended to cover incidental expenses and local travel.

(c) *Adjustment allowance.* At the beginning of service, a volunteer may receive from ACTION an adjustment allowance when necessary to cover the initial cost of securing and setting up living quarters. Such an allowance is usually provided only to volunteers who serve outside their home area. It is not usually available to volunteers recruited locally for an assignment in their home or nearby communities.

(d) *Stipend.* At the conclusion of the term of service, each volunteer receives a stipend of $50 for each month of service on an ACV project. Volunteers may be authorized to make bi-weekly allotments from the stipend, not in excess of $12.50, in extraordinary circumstances. These may include allotments for obligations incurred prior to service for family support, insurance or loan payments and income taxes.

(e) *Provisional volunteers.* Provisional volunteers do not receive any allowances nor do they accrue stipends. During the period they are provisional volunteers their food and lodging is provided by ACTION and they receive a nominal amount of money for living expenses.

(f) *Emergencies.* In case of emergencies, ACTION may provide the volunteer with assistance and support to prevent injury or hardship to him, including a $500 advance against allowances and stipends due the volunteer or to be paid subsequently to him during his volunteer service.

(g) *No dependent support.* ACTION assumes no financial responsibility for a non-volunteer spouse, a volunteer's children or other dependents.

§ 1213.3–2 Transportation.

ACTION will be responsible for providing the volunteer with needed transportation for the following purposes:

(a) To, and when appropriate, from volunteer/sponsor staging;

(b) To the pre-service processing site, whether it is the ACTION Regional Office or any other designated facility;

(c) To the project site following completion of pre-service processing, and at the beginning of the volunteer's terms of service;

(d) For the return trip from the projects site to the volunteer's home of record following completion of service;

(e) Whenever necessary to enable the volunteer to travel outside the geographic

area to which he has been assigned when he does so at the request of the Government;

(f) When approved in cases of emergency.

For the purpose of (d) of this section, the term "home of record" shall be either:

(1) The legal residence of the volunteer's parent or legal guardian if the volunteer had been residing with the parent or legal guardian immediately prior to entering ACTION service, or if the volunteer was a full-time student whose permanent residency was with the parent or legal guardian.

(2) The residence established by the volunteer while attending college immediately prior to entering ACTION.

(3) The residence established by the volunteer while employed immediately prior to entering ACTION.

(4) The legal residence established by the volunteer for purposes of voting and/or payment of state tax.

Each volunteer must specify a home of record at the time he is enrolled. Subsequent modification of the home of record may be authorized in certain circumstances at the discretion of the Regional Director.

§ 1213.3–3 Health support.

ACTION provides ACV volunteers with a health benefits program at no cost to the volunteers.

Coverage includes most medical and surgical costs, hospitalization, prescription drugs, and emergency dental care. ACTION reserves the right to alter the extent, or the method of providing health care for volunteers. In nonemergency situations, the Regional Office must clear hospitalization or other serious (in excess of $150) treatments.

§ 1213.3–4 Legal support.

ACTION will pay certain legal expenses where volunteers are involved in criminal or civil judicial or administrative proceedings to the extent provided in Part 1220.

§ 1213.3–5 Insurance.

(a) ACV volunteers are covered by the Federal Employees Compensation Act. This provides a broad-based workmen's compensation-type coverage for volunteer job-related accidents and occupational sickness.

(b) ACV volunteers are also Federal employees for the purpose of the Federal Tort Claims Act. Any third-party claims for injury or damage to property arising out of the volunteer's job-related activities will be treated as claims against the United States.

§ 1213.3–6 Leave.

(a) *Vacation leave.* Once on the job for four months, an ACV volunteer earns one day of leave for each full month of service up to a maximum of seven days, including one weekend. No leave is to be granted during the last month of service, except for emergencies. During leave, the volunteer's regular support allowances are continued. No leave may be taken without the approval of the sponsor.

(b) *Emergency leave.* Should a member of a volunteer's immediate family—spouse, mother, father, sister, brother, child or guardian—become critically ill or die, emergency leave may be granted by the sponsor for a period of up to one week. Any additional time requires the approval of the ACTION Regional Office. It does not count against vacation leave. The volunteer will be paid for transportation by the fastest scheduled carrier to and from the emergency site and for actual travel expenses incurred, but not in excess of those authorized in standard government travel regulations.

§ 1213.3–7 Federal service.

Section 415(c) of the Act provides that should an ACV volunteer subsequently enter Federal service, his period of volunteer service counts as a like period of Federal service for certain purposes, including job security and retirement benefits.

§ 1213.3–8 Lost property.

(a) The Regional Director may at his discretion reimburse volunteers or trainees for or replace lost, damaged, or stolen property; cash representing certain allowances; and equipment and supplies if, (1) reimbursement is essential to the volunteer's capacity to serve effectively in his particular assignment for the duration of his service, and (2) the loss, damage, or theft did not result from the volunteer's negligence.

(b) Lost or stolen cash may be reimbursed only if it represents the volunteer's food and lodging or living allowance or other payments essential to the volunteer's service. Lost or stolen cash representing payment of stipend or vacation allowances will not be reimbursed.

(c) No reimbursement will be made for luxury items, such as photographic or phonographic equipment or jewelry.

Subpart D—Sponsor Provided Volunteer Support

§ 1213.4–1 Training.

(a) The sponsor is fully responsible for designing and implementing a program of in-service training which will completely equip the volunteer to perform the tasks to which he has been assigned.

(b) In-service training will be conducted by the sponsor in accordance with plans agreed upon during the program development process, and submitted to ACTION as part of the agreement. Those plans must be tailored to the volunteer's needs for additional skills and information in the performance of assigned tasks.

§ 1213.4–2 Supervision.

The sponsor has the sole responsibility for providing appropriate supervision, leadership, and direction to the volunteers in conformance with the plan prepared in cooperation with ACTION and submitted with the project proposal. The plan is to be executed in such a manner that the volunteers can attain project goals within the proposed time frame.

§ 1213.4–3 Job-related transportation.

The sponsor is responsible for determining the job-related transportation needs of the volunteer. The volunteers are expected to use public transportation in connection with their work whenever it is available and adequate. When it is not, the sponsor shall provide suitable private transportation, including obtaining and maintaining motor vehicles for the job-related use of the volunteers as appropriate. Whether the sponsor purchases vehicles or obtains them through a leasing arrangement, he is responsible for monitoring the use of those vehicles and restricting the use of transportation provided to volunteers to work on the project. The volunteer and the sponsor are jointly responsible for compliance with all state and local laws concerning vehicle registration, operator licensing, and financial responsibility on any private vehicles used by the volunteer, either as part of his work assignment or for personal convenience.

§ 1213.4–4 Supplies and equipment and office facilities.

The sponsor is responsible for providing most job-related support involving facilities, equipment, and consumable supplies needed by the volunteer, including telephone and secretarial support.

§ 1213.4–5 Emergencies.

In case of emergencies in which it is not possible for ACTION to provide a volunteer with the necessary assistance and support in time to prevent injury or hardship to him, the sponsor may furnish the needed assistance, including an advance of up to $500 from its own funds to the volunteer. Such advances, however, should be cleared in advance by telephone with the ACTION Regional Director or designee.

Subpart E—Administrative Hold, Grievances, Removal, Resignation, Suspension and Termination

§ 1213.5–1 Administrative hold.

(a) Volunteers will be placed in Administrative Hold Status under the following circumstances:

(1) No placement after training.

(2) Pending transfer to a new project.

(3) Leave taken for personal reasons in excess of the seven days for vacation leave, seven days for emergency leave, seven days for extension beyond three months, and fourteen days for reenrollment.

(4) Absence from project site without authority of the sponsoring organization.

(5) During termination action.

(6) Arrest and placement in jail without bail, depending on nature of charges.

(7) Removal from site at request of sponsoring organization, pending decision on transfer to new assignment.

(b) Exceptions to these guidelines must be authorized by the Regional Director. Volunteers may be placed in Administrative Hold status for up to 30 days. In exceptional circumstances, the

Regional Director may extend this period of time as appropriate. The Regional Director may modify any and all allowances, including stipend, when a volunteer is placed in Administrative Hold status.

§ 1213.5–2 Volunteer grievances.

(a) At times, a volunteer will consider that he has been adversely affected in some matter arising out of his work situation or the terms and conditions of his service. The Volunteer Grievance Procedure, Part 1211, furnished to each volunteer, applies to certain of these matters. This procedure is applicable to situations in which the volunteer believes there has been a deviation from, misinterpretation or misapplication of laws, regulations, policies or procedures governing his service.

(b) The Grievance Procedure establishes a formal and informal mechanism to resolve such problems. The informal mechanism aims to resolve disputes at the level of the sponsor and the state program officer. The formal part of the Grievance Procedure provides a hearing in certain cases and includes appeals to ACTION's national office in Washington.

(c) The procedure that the sponsor employs at the informal stage of the ACTION Grievance Procedure will also be used for any disputes between the sponsor and a volunteer not involving a law or regulation or an ACTION policy and procedure.

§ 1213.5–3 Resignation.

A volunteer may resign at any time, by notifying the sponsoring organization and the Regional Office. When practicable, thirty days advance notice should be given to insure that the departure will be only minimally disruptive to the project. In case of resignation, all outstanding advances, including unearned vacation allowances, are deducted from the volunteer's stipend. The volunteer receives his final stipend check three to five weeks after regional submission of the termination papers to ACTION/Washington.

§ 1213.5–4 Sponsor request for removal of volunteer.

The sponsoring organization may request ACTION to remove a volunteer whose performance in its view is unsatisfactory at any time. Before resorting to a formal request for removal the sponsor should contact the appropriate ACTION state official to seek help in trying to resolve any problem with a volunteer. The sponsor may then prepare a written request for removal and submit it to the Regional Office. ACTION may, depending on the circumstances, follow one of three courses of action: (a) suspend the volunteer, (b) terminate him, or (c) transfer him to another project.

§ 1213.5–5 Suspension and termination.

(a) *Causes.* ACTION may suspend or terminate a volunteer for any of the following reasons:

(1) Conviction of any criminal offense under Federal, state, or local statute or ordinance;

(2) Violation of any provision of the Domestic Volunteer Service Act of 1973, or any ACTION policy, regulation or instruction;

(3) Failure, refusal or inability to perform prescribed project duties as outlined in the project proposal and directed by the sponsoring organization to which the volunteer is assigned;

(4) Involvement in activities which substantially interfere with the volunteer's performance of his/her duties on the project;

(5) Intentional false statement, omission, fraud, or deception in obtaining selection as a volunteer;

(6) Any conduct on the part of the volunteer which substantially diminishes his/her effectiveness as a volunteer;

(7) Inability to perform the project duties because of serious illness, medical disability, or pregnancy, as determined by the attending physician, in accordance with ACTION policy;

(8) Lack of a viable job for which the volunteer is qualified if the initial job assignment ends or is terminated prior to completion of a period of service;

(9) Unsatisfactory job performance. Procedures for the suspension and termination of volunteers are contained in Part 1212.

(b) *Suspension.* Volunteers may be suspended for up to 30 days to enable ACTION to determine whether termination proceedings should be started against the volunteer. Suspension is not warranted if sufficient evidence exists to start termination proceedings.

(c) *Termination of or refusal to renew ACTION/sponsoring organization agreement.* If the Memorandum of Agreement between ACTION and a sponsoring organization is terminated or not renewed, a volunteer who is removed from the project and whose removal was not caused by conduct which would otherwise be grounds for termination is entitled to the following administrative considerations:

(1) Reassignment to another project where possible.

(2) If reassignment is not possible at the time of project close-out, and if the volunteer wishes to resume service (provided that his/her job performance has been satisfactory), he/she may, at the discretion of the Regional Director, receive special consideration for reinstatement as soon as an appropriate slot is open.

If a volunteer wishes, he/she my terminate without prejudice in the event that a Memorandum of Agreement between ACTION and the sponsor is terminated.

(d) *Deselection of a provisional volunteer.* The Regional Director may deselect a provisional volunteer on the grounds listed in paragraph (a) of this section or for a failure to meet training or selection standards during pre-service orientation. Procedures for such deselection are contained in Part 1212.

Subpart F—Special Conditions Affecting Volunteer Service

§ 1213.6–1 Sponsor's employment of volunteer.

ACV volunteers make a commitment to one full year of ACTION service. Similarly, ACTION asks that the sponsor on his part must honor the spirit of that commitment and refrain from offering fully paid employment to volunteers during their first year of service. Volunteers may not perform services or duties or engage in activities for which the sponsor receives or requests any compensation. Volunteers may not receive any other compensation, directly or indirectly, from a sponsor while serving as a volunteer.

§ 1213.6–2 Nondisplacement of employees and impairment of contracts of service.

An ACV volunteer's assignment is limited to activities that would not otherwise be performed by employed workers and which will not supplant the hiring of or result in the displacement of employed workers, or impair existing contracts for service. (Part 1216 implements this provision.)

§ 1213.6–3 Nonappropriate assignments.

(a) An assignment is not appropriate for a volunteer if:

(1) The service, duty, or activity is principally administrative or clerical, or

(2) The volunteer is not directly in contact with groups or individuals who are to be served by the project or is not performing services, duties, or engaged in activities which are authorized under section 122(a) of the Act.

§ 1213.6–4 Political activities and limitation of unlawful activities.

(a) ACV volunteers are covered by the Hatch Act to the same extent as Federal employees. This Act prohibits volunteers from engaging in partisan political activities of any sort at any and all times during their terms of service, including periods of official leave.

(b) Section 403 of Pub. L. 93–113 requires that a sponsor's project be operated in such a manner as to avoid involvement of ACV volunteers in any partisan or nonpartisan political activity in an election for public or party office, voter transportation during elections, and voter registration drives.

(c) While engaged in carrying out their duties volunteers may, as a part of the project, participate in lawful and nonpolitical demonstrations and protest activities which are approved by the sponsor as a part of its project activity and which are not in violation of any ACTION policies.

§ 1213.6–5 Nondiscrimination.

Part 1203 provides regulations concerning nondiscrimination in ACTION programs and activities.

(a) No person with responsibilities in the operation of an ACV project shall discriminate with respect to such program because of race, creed, belief, color,

national origin, sex, age, or political affiliation.

§ 1213.6–6 Religious activities.

Volunteers will not give religious instruction, conduct worship services, or engage in any other religious activity as part of their duties. Volunteers who serve in an institution that gives religious instruction or engages in other religious activities will not be used as replacements for regular personnel of the institution. For example, volunteers assigned to serve in a program conducted under the auspices of a church-related school may not be used as substitutes for regular teachers in the school. They may, however, work in new programs which are carried on in addition to the school's regular programs and which are conducted in conformance with the above restrictions.

§ 1213.6–7 Evaluation.

(a) On a quarterly basis and two months prior to the termination of a volunteer's year of service, and at any other time which circumstances may dictate, ACTION may inspect that portion of a project with which the volunteer is involved. The purpose of the inspection will be to independently observe and judge the extent to which the volunteer's work has contributed to the objectives of the program described in the project proposal.

(b) The sponsor is expected to cooperate fully with ACTION representatives, and ACTION will in turn review results of the evaluation with the sponsor.

§ 1213.6–8 Limitation on labor and anti-labor activities.

Volunteers may not engage in any activities, services, or duties which assist any labor or anti-labor organizing activity, or related activity.

§ 1213.6–9 Loans and debts.

(a) ACVs have the same legal and financial responsibilities as do all other persons. Volunteers are encouraged to pay all legal debts promptly to avoid creating a situation which would impair the volunteer's ability to function. In cases of continued financial irresponsibility by a volunteer to the extent of embarrassment or adverse reflection upon the sponsor organization's project or ACTION, administrative or disciplinary action may be taken by the Regional Office, up to and including termination, where appropriate.

(b) Volunteers are not authorized to obtain extension of credit by representing themselves as a Federal Government employee.

Subpart G—Miscellaneous

§ 1213.7–1 Student loan deferrals.

(a) The Higher Education Act of 1965, as amended, exempts full-time domestic volunteers from repayment of National Defense Education Act loans for a period of service not to exceed three years. Volunteers wishing to defer repayment of NDEA loans must obtain the necessary forms from their universities. Regional Offices are authorized to certify these forms, but if the university or volunteer should submit the form to Headquarters for certification, it will be sent to the appropriate Regional Office for completion.

(b) If the volunteer is still in service at the time of ACTION's certification, his anticipated termination date will be furnished to the lender.

(c) Repayment of other college loans may also be deferred. These repayments, however, are deferred at the discretion of the lender. If the lender is willing to defer payment, volunteers must obtain the necessary forms from the lender and forward them to the Regional Office for certification. If forms are not available from the lender, a letter to the university or lender may be prepared certifying the dates of the volunteer's service.

§ 1213.7–2 Death benefits.

In case of the death of a volunteer away from his home of record, certain costs associated with transportation of the body are reimbursable either under the Federal Employees Compensation Act or ACTION policy. Volunteers whose death results from personal injury or illness sustained in the performance of his project duties are eligible for reimbursement of certain funeral expenses. Monthly benefits for eligible dependents of deceased volunteers may be available under the Federal Employees Compensation Act. In certain other unusual circumstances, payment of certain funeral expenses for volunteers not meeting the above requirements may be authorized.

§ 1213.7–3 Firearms.

ACTION volunteers may not normally possess, use, or carry firearms. If a volunteer wishes to keep firearms for hunting, approval must be obtained from the sponsor, State Program Director and the ACTION Regional Director in the region where the volunteer is assigned. The volunteer must request approval for possession or use of firearms from his sponsor and his State Program Director. If he receives their approval, his request may then be considered by his ACTION Regional Director. If approval is granted by the ACTION Regional Director, the volunteer must adhere to all state and local regulations relating to the possession and use of firearms.

Issued in Washington, D.C. on December 19, 1974.

JOHN L. GANLEY,
Deputy Director, ACTION.

[FR Doc.74-29919 Filed 12-23-74;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 310-6]

WEST VIRGINIA IMPLEMENTATION PLAN

Miscellaneous Amendments

On May 31, 1972 (37 FR 10842), the Administrator of the Environmental Protection Agency published his initial approvals and disapprovals of state implementation plans submitted pursuant to section 110 of the Clean Air Act, as amended in 1970. At that time, the Administrator approved the state implementation plan submitted by the State of West Virginia (40 CFR 52.2522).

On November 8, 1974, the State of West Virginia submitted to the Administrator proposed revisions to the state implementation plan for the attainment and maintenance of air quality standards. The proposed changes include:

1. An amendment to Regulation II, "To Prevent and Control Particulate Air Pollution from Combustion of Fuel in Indirect Heat Exchangers." The amendment, in effect, would allow sulfur oxides to be added to a combustion unit exit gas stream for the purpose of improving control equipment efficiency on existing fuel burning units.

2. Amendments to Regulation VII, "To Prevent and Control Particulate Air Pollution from Manufacturing Process Operations." The essential change would allow the primary aluminum reduction potlines which are equipped with fluidized bed reactors or other similar gas cleaning devices to be exempt from the provisions presently governing process weight operations, provided that at least 99 percent of the gaseous fluoride is removed from the exit gas stream, and that the particulate loading not be greater than 0.01 grains per standard cubic foot (gr/scf). Other changes are merely updates of the present regulation.

3. Amendments to Regulation XIII, "Permits for Construction, Modification, or Relocation of Stationary Sources of Air Pollutants, and Procedures for Registration and Evaluation." The amendments would require permits for certain indirect sources and would closely parallel those requirements provided in the Administrator's existing regulations. This particular proposal was previously submitted by the State of West Virginia on June 17, 1974. Accordingly, the Administrator announced receipt of the submission and provided for a public comment period (39 FR 39584).

4. Amendments to the state implementation plan's control strategies for particulate matter. The essential change would allow compliance schedules for particulate sources to extend beyond June 30, 1975, but no later than June 30, 1977, provided that ambient air quality standards are met by June 30, 1975.

On October 24, 1974 and December 6, 1974, the State of West Virginia submitted proof that public hearings regarding these proposed changes, with the appropriate 30 day notice took place at the following times:

1. Proposed changes to Regulation II—June 5, 1974.

2. Proposed changes to Regulation VII—July 23, 1974.

3. Proposed changes to Regulation XIII—January 11, 1974.

4. Proposed changes to the SIP—July 23, 1974.

This notice is to advise the public of the receipt of these proposed amendments, and to request public comment on them. Only those comments received before January 23, 1975, will be considered.

The Administrator's decision to approve or disapprove these proposed revisions will be based on whether or not they meet the requirements of section 110 of the Clean Air Act and EPA regulations in 40 CFR part 51.

Copies of the proposed revisions are available for public inspection during normal business hours at the Offices of EPA, Region III, Curtis Building, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106; at the Office of the West Virginia Air Pollution Control Commission, 1558 Washington Street, East, Charleston, West Virginia 25311; and at the Freedom of Information Center, EPA, 401 M Street SW., Washington, D.C. 20460. All comments should be addressed to the Director, Air and Hazardous Materials Division, EPA, Region III, Curtis Building, Sixth and Walnut Streets, Philadelphia, Pennsylvania, 19106.

(42 U.S.C. 1857c-5)

Dated: December 13, 1974.

R. W. FORM,
Regional Administrator.

[FR Doc.74-29878 Filed 12-23-74;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 20223; RM-2205, 2239, 2350]

FM BROADCAST STATIONS

Table of Assignments; Order Extending Time for Filing Comments and Reply Comments

In the matter of amendment of § 73.202(b), table of assignments, FM broadcast stations. (Southold, Center Moriches, and Westhampton Beach, New York).

1. On November 5, 1974, the Commission adopted a Notice of Proposed Rule Making in the above-entitled proceeding. Publication was given in the FEDERAL REGISTER on November 11, 1974, 38 F.R. 40170. The dates for filing comments and reply comments are December 19, 1974, and January 7, 1975, respectively.

2. On December 11, 1974, East Coast Broadcasting Corporation, by its counsel requested that the time for filing comments and reply comments be extended to January 27 and February 14, 1975, respectively. Counsel states that intervening holidays and vacation schedules of various individuals preclude the completion of engineering and demographic studies being made by East Coast Broadcasting Corporation to be made in this proceeding.

3. It appears that the requested extension is warranted. *Accordingly, it is ordered,* That the dates for filing comments and reply comments is extended to and including January 27 and February 14, 1974, respectively.

4. This action is taken pursuant to authority found in sections 4(i), 5(d)(1), and 303(r) of the Communications Act of 1934, as amended, and Section 0.281 of the Commission's rules.

Adopted: December 16, 1974.

Released: December 18, 1974.

[SEAL] PAUL WM. PUTNEY,
Acting Chief,
Broadcast Bureau.

[FR Doc.74-30079 Filed 12-23-74;8:45 am]

[47 CFR Part 73]

[Docket No. 20065, RM-2224]

TELEVISION BROADCAST STATIONS

Table of Assignments; Order Extending Time for Filing Reply Comments

In the matter of amendment of § 73.606(b), table of assignments, television broadcast stations. (Alliance, Hay Springs, and Scottsbluff, Nebraska).

1. On May 23, 1974, the Commission adopted a Notice of Proposed Rule Making in the above-entitled proceeding. Publication was given in the FEDERAL REGISTER on May 31, 1974, 39 F.R. 19230. The date for filing comments has expired and the present date for filing reply comments is presently December 16, 1974.

2. On October 24, 1974, Counsel for Wyneco Communications, Inc. (Wyneco), licensee of Station KSTF-(TV), Scottsbluff, Nebraska, requested authorization to inspect certain Annual Financial Reports for Station KDUH-TV, Hay Springs, its parent Station KOTA-TV, Rapid City, South Dakota, and its sister satellite Station KHSD-TV, Lead, South Dakota on the grounds that it was otherwise available and was essential in order that Wyneco can undertake a meaningful evaluation of the contentions in Duhamel's comments with respect to the viability of KDUH-TV in their reply comments. Wyneco's request has not yet been acted on by the Commission and in view of this Wyneco on December 11, 1974, requested a further extension of time to and including January 10, 1975, in which to file its reply comments.

3. We are of the view that the requested extension is warranted. *Accordingly, it is ordered,* That the date for filing reply comments is extended to and including January 10, 1975.

4. This action is taken pursuant to authority found in Sections 4(i), 5(d)(1) and 303(r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules.

Adopted: December 17, 1974.

Released: December 18, 1974.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] PAUL WM. PUTNEY,
Acting Chief,
Broadcast Bureau.

[FR Doc.74-30080 Filed 12-23-74;8:45 am]

NATIONAL CREDIT UNION ADMINISTRATION

[12 CFR Part 701]

SUPERVISORY COMMITTEE AUDITS

Notice is hereby given that the Administrator of the National Credit Union Administration, pursuant to the authority conferred by section 120, 73 Stat. 635, 12 U.S.C. 1766, and section 209, 84 Stat. 1014, 12 U.S.C. 1789, proposes to amend Part 701 (12 CFR Part 701) by revising § 701.12 as set forth below.

The proposed revision is necessitated by the recent amendment to § 115 of the Federal Credit Union Act (12 U.S.C. 1761(d)).

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed amendment to the Administrator, National Credit Union Administration, 2025 M St., NW., Washington, D.C. 20456. Comments received prior to January 15, 1975 will be considered before final action is taken on this proposal. Copies of all written comments received will be available for public inspection during normal business hours at the foregoing address.

(Sec. 120, 73 Stat. 635 (12 U.S.C. 1766) and Sec. 209, 84 Stat. 1014 (12 U.S.C. 1789))

HERMAN NICKERSON, JR.,
Administrator.

DECEMBER 17, 1974.

§ 701.12 Supervisory Committee Audits.

(a) The supervisory committee of each Federal credit union shall make or cause to be made an annual audit covering the period elapsed since the last annual audit. The annual audit shall be made in accordance with the requirements and standards set forth in the Supervisory Committee Manual for Federal Credit Unions (NCUA 8023). Upon completion a report of the audit shall be promptly made to the board of directors of the Federal credit union, and, upon request, to the Regional Director. A summary of the report shall be submitted to the members at the next annual meeting.

(b) The supervisory committee shall be responsible for the preparation and maintenance of work papers used to support each audit. As a minimum, each audit report shall be supported by work paper forms prescribed by the Supervisory Committee Manual for Federal Credit Unions, or their equivalent. Such work papers shall be available for review by any employee or employees of the National Credit Union Administration designated by the Administrator.

(c) The supervisory committee shall conduct supplementary audits upon request of the Administrator, and also may conduct additional audits on its own initiative.

[FR Doc.74-29976 Filed 12-23-74;8:45 am]

RENEGOTIATION BOARD

[32 CFR Part 1452]

PRIME CONTRACTS AND SUBCONTRACTS

Definition of Subcontracts To Perform Work or Furnish Materials

The Renegotiation Board proposes to amend its regulation interpreting the

definition of the term "subcontract" contained in section 103(g)(1) of the Renegotiation Act of 1951, 50 U.S.C. App. 1213(g)(1).

Certain prime contracts and "related subcontracts" are made subject to renegotiation by 50 U.S.C. App. 1212(a). In section 103(g)(1), cited above, the term "subcontract" is defined to include any purchase order or agreement to perform work or furnish materials "required for the performance of" a renegotiable prime contract or subcontract. The present regulation, 32 CFR 1452.4(b), interprets such statutory definition.

Paragraph (b)(1) of the present regulation, 32 CFR 1452.4, describes various transactions within the statutory definition of a subcontract. The proposed amendment of paragraph (b)(1) makes the regulation fully consistent with the scope of the statutory definition of a subcontract. The five illustrations of subcontracts in the present regulation have been retained and a new illustration of a subcontract to perform work or furnish materials under a prime contract or subcontract for work or services has been added. The definition of materials used in processing other materials has been eliminated from the proposed regulation because such definition merely explains the illustrations of subcontracts and does not form a necessary part of the definition of such subcontracts.

Paragraph (b)(2) of the present regulation, 32 CFR 1452.4, has been eliminated entirely from the proposed regulation. Paragraph (b)(3) of the present regulation, 32 CFR 1452.4, has been modified to exclude from the definition of a subcontract only purchase orders or agreements for "office supplies."

The Board believes that the proposed amendments conform fully with the legislative intent that all arrangements to perform work or furnish materials required for the performance of a renegotiable prime contract or subcontract be subject to renegotiation. Many subcontracts for the sale of items excluded from renegotiation under paragraphs (b)(2) and (3) of the present regulation but not so excluded under the proposed regulation may be eligible for one of the exemptions found in section 106 of the Renegotiation Act of 1951, as amended, 50 U.S.C. App. 1216, and the regulations promulgated thereunder.

The Board proposes to issue the proposed amendments not earlier than February 13, 1975. Interested persons are hereby notified that any changes, to be considered, must be presented in writing, to the Renegotiation Board, 2000 M Street NW., Washington, D.C. 20446, not later than February 7, 1975.

Written material or suggestions submitted will be available for public inspection during regular business hours in the library at the principal office of the Board, 2000 M Street NW., Washington, D.C.

Dated: December 19, 1974.

REX M. MATTINGLY,
Acting Chairman.

PART 1452—PRIME CONTRACTS AND SUBCONTRACTS WITHIN THE SCOPE OF THE ACT

Section 1452.4 *Subcontracts to perform work or furnish materials* is amended by deleting paragraph (b) in its entirety and inserting in lieu thereof the following:

§ 1452.4 Subcontracts to perform work or furnish materials.

* * * * *

(b) *Interpretation of statutory provision.*—(1) *In general.* Except as provided in subsections 103(g)(2) and (3) of the act, the term "subcontract" means any purchase order or agreement to perform all or any part of the work or to make or furnish any materials required for the performance of a renegotiable prime contract or subcontract. For example, without limiting the foregoing, the term "subcontract" includes any purchase order or agreement for any of the following: (i) The sale or processing of an end product which is to be delivered under a renegotiable prime contract; or (ii) the sale or processing of materials to be physically incorporated in such end product; or (iii) the sale, furnishing or installation of machinery, equipment or other materials used in the processing of such end product or materials incorporated therein; or (iv) the sale, furnishing or installation of materials incorprated in machinery, equipment or other materials used in the processing of such end product or materials incorporated therein; or (v) the sale, processing, furnishing or installation of materials, or the performance of work, required for the performance of a renegotiable prime contract or subcontract for work or services; or (vi) the performance of work or services required for the performance of a renegotiable prime contract or subcontract included in paragraphs (b)(1) (i), (ii), (iii), (iv), or (v) of this section.

(2) *Office supplies.* Subcontracts to furnish office supplies are specifically excluded from the statutory definition of a subcontract. Therefore, subcontracts for office supplies, even though such office supplies are ultimately sold to a Department, are not subject to renegotiation. The term "office supplies" includes paper, ink, typewriter ribbons, binders, covers, blotters, paper clips, staples, and other items of a consumable character, as well as related items of a relatively short life and minor cost, such as pens, penholders, pencils, blotter pads, and calendars; the term "office supplies" does not include office furniture, machinery and equipment, such as desks, chairs, lamps, rugs, wastebaskets, filing cases, typewriters, and calculating, recording, reproducing, and dictating machines.

(Sec. 109, 65 Stat. 22; 50 U.S.C.A., App. Sec. 1219)

[FP. Doc.74-30008 Filed 12-23-74;8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF THE TREASURY

Office of the Secretary

PRESIDENT'S LABOR MANAGEMENT COMMITTEE

Continuation of Closed Meeting

Notice is hereby given that the closed meeting of the President's Labor Management Committee, which took place on December 18, 1974 (39 FR 43411, 39 FR 41387), will be continued on December 30, 1974, at 11:00 a.m. in the Secretary's Conference Room in the Treasury Department, Washington, D.C. 20220.

Dated: December 20, 1974.

[SEAL] WARREN F. BRECHT,
Assistant Secretary for Administration.

[FR Doc.74-30112 Filed 12-23-74;8:45 am]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 74-3]

ALEXANDER ROBBINS, M.D.

Suspension of Certificate of Registration

On February 5, 1974, the Drug Enforcement Administration issued an Order to Show Cause to Alexander Robbins, M.D., 1100 Drexel Avenue, Miami Beach, Florida 33139, as to why his Certificate of Registration (DEA Registration No. AR0148406) should not be revoked "* * * for the reason that, on October 26, 1973, in the United States District Court [for] the Southern District of Florida, [he was] * * * found guilty [of] the unlawful dispensing of controlled substances listed in Schedule III, a drug related felony violation of the Controlled Substances Act of 1970."

Thereafter, by letters of February 27, 1974 and March 11, 1974, the respondent requested a hearing in the matter, and on April 8, 174, a hearing was held before John F. Cook, Administrative Law Judge, in Miami, Florida. Following that hearing, Proposed Findings of Fact and Conclusions of Law were submitted to Judge Cook by counsel for the Government and the Respondent.

On August 30, 1974, Judge Cook filed recommended findings of fact and conclusions of law and his recommended decision with the Drug Enforcement Administration. In his exhaustive opinion, Judge Cook found that the judgment of conviction at the District Court level is adequate grounds for suspension under section 304(a)(2) of the Act, even though an appeal is pending. Judge Cook cited two previous final orders of the Director of the Bureau of Narcotics and Dangerous Drugs supporting the proposition that section 304(a)(2) does not require the concluding of appeals before the particular registration in question may be suspended or revoked. Leonard S. Cohen and Senate Drug Store, 38 FR 9522 (April 17, 1973) and Dr. Carl Oslin Ramzy, 36 FR 24077 (December 18, 1971). In addition, Judge Cook relied upon U.S. v. Rosenstengel, 323 F. Supp. 499 (E.D. Mo. 1971) and U.S. v. Liles, 432 F. 2d 18 (9th Cir. 1970), two cases wherein the conviction of a felony at the trial level resulted in the revocation of a federal license or registration under a similar statute.

The Administrator adopts the finding of the Administrative Law Judge that the language of the Act,

> * * * particularly indicated by the use of the term "convicted" in section 304(a) as opposed to the term "convictions * * *, have become final" in section 401(b)(1)(A) * * * shows a clear intent by Congress that for purposes of the Controlled Substances Act, the conviction of the respondent in the District Court is a "conviction" within the meaning of section 304(a)(2) of the Act. * * *

The provisions of section 304 are discretionary in nature upon a finding by the Administrator that the registrant (1) has materially falsified an application for registration, submitted pursuant to the Controlled Substances Act; (2) has been convicted of a felony violation of state or federal law relative to controlled substances; or (3) has had his state license or registration suspended, revoked, or denied by the jurisdiction in which he conducts his registered activity.

Since the Administrative Law Judge found that Dr. Robbins has been convicted of a felony violation of federal law relative to controlled substances, specifically 21 U.S.C. section 841(a)(1), the only other issue during this administrative proceeding was:

> * * * (assuming that the Respondent has been convicted of a felony) should the Attorney General suspend or revoke his registration? (Tr., page 6, line 8-11).[1]

In his evaluation of the evidence, the Administrative Law Judge found that the evidence did not "show behavior which would warrant the extreme step of revocation of registration." Also, the Administrative Law Judge noted a lack of evidence of any other criminal violations by respondent, and no "other evidence that respondent is totally unfit to be registered."

Accordingly, the Administrative Law Judge chose to recommend suspension of respondent's registration for a period of nine months. The Administrator finds, with reference to this particular respondent, and only in light of the nature of the facts and circumstances in this particular case, that suspension is the appropriate sanction to be applied. However, due to the seriousness of the charge underlying Dr. Robbins' conviction, the Administrator, in exercise of his discretion, finds that a suspension of respondent's registration for a period of only nine months would be clearly inadequate in duration to ensure protection of the public health and safety. After evaluating the entire record, it is the opinion of the Administrator that the suspension of respondent's registration should be for a period of two years from the date of this opinion.

In reaching this conclusion, the Administrator finds it especially significant to note that the Administrative Law Judge's opinion adopted, in substance, the bulk of the Government's proposed findings of fact and conclusions of law. Specifically, the Administrative Law Judge came to the "inescapable" conclusion that Dr. Robbins "was acting outside the scope of his legitimate professional practice" while he engaged in this illegal dispensing of controlled substances.

In summary, due to the seriousness of the nature of Dr. Robbins' conviction for the unlawful dispensing of a controlled substance, and after reviewing the transcript of testimony of the hearing, the findings of fact and conclusions of law recommended by the Administrative Law Judge, the Administrator hereby adopts the recommended decision of the Administrative Law Judge, provided that the suspension of the subject Certificate of Registration be for a period of two years from the date of this order.

Therefore, in accordance with the provisions of § 1316.66, Title 21, Code of Federal Regulations, and in view of the foregoing, it is the Administrator's opinion that Alexander Robbins, M.D. was convicted of a felony violation of the Controlled Substances Act, to wit, the unlawful dispensing of controlled substances.

Therefore, under the authority vested in the Attorney General by section 304 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 824), and redelegated to the Administrator of the Drug Enforcement Administration, by § 0.100, as amended, Title 28, Code of Federal Regulations, the Administrator hereby orders that the Certificate of Registration of Alexander Robbins, M.D. (DEA Registration No. AR0148406), be, and hereby is suspended

[1] See Government's Reply Brief, p. 1.

for a period of two years from the date of this order.

Dated: December 18, 1974.

JOHN R. BARTELS, Jr.,
Administrator.

[FR Doc.74-29921 Filed 12-23-74;8:45 am]

IMPORTER OF CONTROLLED SUBSTANCE

Notice of Application

By Notice dated October 21, 1974, and published in the FEDERAL REGISTER on October 25, 1974; (39 FR 38005) Cord Laboratories, Inc., 19191 Filer, Detroit, Michigan 48234, made application to the Drug Enforcement Administration to be registered as an Importer of Amobarbital, a basic class controlled substance listed in schedule II.

No comments or objections having been received, and pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970, and in accordance with 21 CFR 1311.42, the above firm is granted registration as an Importer of Amobarbital.

Dated: December 18, 1974.

JOHN R. BARTELS, Jr.,
Administrator.

[FR Doc.74-29924 Filed 12-23-74;8:45 am]

IMPORTATION OF CONTROLLED SUBSTANCES

Notice of Application

Pursuant to section 1008 of the Controlled Substance Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in schedules I or II, and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore in accordance with § 1311.42 of Title 21, Code of Federal Regulations, notice is hereby given that on December 2, 1974, McNeil Laboratories, Inc., Camp Hill Road, Fort Washington, Pennsylvania 19034, made application to the Drug Enforcement Administration to be registered as Importer of Codeine, a basic class controlled substance listed in schedule II.

Any person registered to manufacture Codeine in bulk may, on or before January 23, 1975 file written comments on or objection to the issuance of the proposed registration and may, at the same time, file written request for a hearing on the application (stating with particularity the objections or issues, if any, concerning which the person desires to be heard and a brief summary of his position on those objections or issues).

Comments and objections may be addressed to the Hearing Clerk, Office of Administrative Law Judge, Drug Enforcement Administration, Room 1130, 1405 Eye Street, NW, Washington, D.C. 20537.

Dated: December 18, 1974.

JOHN R. BARTELS, Jr.,
Administrator.

[FR Doc.74-29922 Filed 12-23-74;8:45 am]

IMPORTER OF CONTROLLED SUBSTANCE

Notice of Applications

By Notices dated October 16, 1974, and published in the FEDERAL REGISTER on October 21, 1974; (39 FR 37402) Smith Kline & French Laboratories, 1500 Spring Garden Street, Philadelphia, Pennsylvania 19101, and Elkin-Sinn Inc., Subsidiary of Medical Electroscience & Pharmaceuticals, 2 Esterbrook Lane, Cherry Hill, New Jersey 08002, made application to the Drug Enforcement Administration to be registered as Importers of Amobarbital, a basic class controlled substance listed in schedule II.

No comments or objections having been received, and, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970, and in accordance with 21 CFR 1311.42, the above firms are granted registration as Importers of Amobarbital.

Dated: December 18, 1974.

JOHN R. BARTELS, Jr.,
Administrator.

[FR Doc.74-29923 Filed 12-23-74;8:45 am]

MANUFACTURE OF CONTROLLED SUBSTANCES

Notice of Application

By Notice dated September 17, 1974, and published in the FEDERAL REGISTER on September 30, 1974; (39 FR 35188-9) Fher Corporation Ltd., Carretera 132, Km 25.3, P.O. Box 4108, Ponce, Puerto Rico 00731, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Phenmetrazine, a basic class controlled substance listed in schedule II.

No comments or objections having been received, and pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970, and in accordance with 21 CFR 1301.43, the above firm is granted registration as a bulk manufacturer of Phenmetrazine.

Dated: December 18, 1974.

JOHN R. BARTELS, Jr.,
Administrator.

[FR Doc.74-29920 Filed 12-23-74;8:45 am]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

ANCEL JOHNSON

Issuance of Permit Marine Mammals

On September 16, 1974, a notice was published in the FEDERAL REGISTER (39 FR 33246-47) that an application had been filed with the Fish and Wildlife Service by Ancel Johnson, Marine Mammal Substation, Naval Support Activity, Seattle, Washington, for a permit to engage in sea otter research.

Notice is hereby given that on December 13, 1974, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Fish and Wildlife Service issued a permit to Ancel Johnson, subject to certain conditions set forth therein. The permit is available for public inspection during normal business hours at the Fish and Wildlife Service's office in Suite 600, 1612 K Street NW., Washington, D.C.

Dated: DECEMBER 19, 1974.

C. R. BAVIN,
Chief, Division of Law Enforcement, Fish and Wildlife Service.

[FR Doc.74-29993 Filed 12-23-74;8:45 am]

National Park Service

CHESAPEAKE AND OHIO CANAL NATIONAL HISTORICAL PARK COMMISSION

Notice of Meeting

Notice is hereby given in accordance with Federal Advisory Committee Act that a meeting of the Chesapeake and Ohio Canal National Historical Park Commission will be held on Saturday, January 11, 1975, at 9 a.m., at the Stephen Mather Training Center, Harpers Ferry, West Virginia.

The Commission was established by Public Law 91-664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Miss Nancy Long (Chairman), Glen Echo, Maryland.
Mrs. Caroline Freeland, Bethesda, Maryland.
Mr. Donald Frush, Hagerstown, Maryland.
Hon. Vladimir A. Wahbe, Baltimore, Maryland.
Mr. Anthony Abar, Annapolis, Maryland.
Mr. John C. Lewis, Hamilton, Virginia.
Mrs. Dorothy Grotos, Arlington, Virginia.
Mr. Burton C. English, Berkeley Springs, West Virginia.
Mr. Henry W. Miller, Jr., Paw Paw, West Virginia.
Mr. Lorenzo W. Jacobs, Jr., Washington, D.C.
Mr. Joseph H. Cole, Washington, D.C.
Mr. Ronald A. Clites, LaVale, Maryland.
Mrs. Mary Miltenberger, Cumberland, Maryland.
Dr. James H. Gilford, Frederick, Maryland.
Dr. Kenneth R. Bromfield, Frederick, Maryland.
Mr. Grant Conway, Brookmont, Maryland.
Mr. Edwin F. Wesely, Chevy Chase, Maryland.
Mr. John C. Frye, Gapland, Maryland.
Mr. Rome F. Schwagel, Keedysville, Maryland.
Mr. Justice Douglas (Special Consultant).

The matters to be discussed at this meeting include:

(1) Potomac River Reports.
(2) County Reports.
(3) Status of General Plan.
(4) Superintendent's Report.

(5) Film of 1974 C&O Canal Association Reunion Hike.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited and it is expected that not more than 30 persons will be able to attend the sessions. Any number of the public may file with the committee a written statement concerning the matters to be discussed.

Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Richard L. Stanton, Associate Director, Cooperative Activities, National Capital Parks, at Area Code 202–426–6715. Minutes of the meeting will be available for public inspection two weeks after the meeting, at the Office of National Capital Parks, Room 208, 1100 Ohio Drive SW., Washington, D.C.

Dated: December 16, 1974.

JOHN A. TOWNSLEY,
Acting Director,
National Capital Parks.

[FR Doc.74–30084 Filed 12–23–74;8:45 am]

Office of the Secretary

[Order No. 2968]

ALASKA NATIVE VILLAGES

Land Selections by Unapproved Native Villages

Sec. 1 Timely Filing. Departmental Order No. 2965 of June 10, 1974, provided additional time for the final determination to be made of the eligibility of Alaska Native Villages for benefits under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601–1624. In order to permit the timely filing of land selection applications by villages not yet determined to be eligible for such benefits, I hereby waive the regulations, 43 CFR 2651.2 (a) (2) and 2651.2(a) (9), requiring certification of eligibility before the filing of land selection applications.

a. Any proposed village whose eligibility is not yet determined may file its land selection application prior to the final eligibility determination and certification of its eligibility.

b. Action on these filings and on any conflicting Native selections will be held in abeyance until the village's eligibility is determined and the certification thereof issued.

Sec. 2 *Effective Date.* This order is effective immediately.

Dated: December 16, 1974.

JOHN C. WHITAKER,
Acting Secretary of the Interior.

[FR Doc.74–29975 Filed 12–23–74;8:45 am]

DEPARTMENT OF AGRICULTURE

Forest Service

TIMBER MANAGEMENT PLAN REVISIONS FOR THE ARAPAHO NATIONAL FOREST

Draft Environmental Statement, Notice of Availability

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a draft environmental statement for the Timber Management Plan Revisions for the Arapaho National Forest. The Forest Service report number is USDA–FS–R2–DES (Adm) FY–75–04.

The environmental statement concerns a proposal to revise the Timber Management Plan for the Arapaho National Forest and to apply timber management activities at a level compatible with other resources and uses that could be affected by timber harvest.

This draft environmental statement was transmitted to CEQ on December 18, 1974.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service,
So. Agriculture Bldg., Room 3230,
12th St. and Independence Ave. SW.,
Washington, D.C. 20250.

USDA, Forest Service,
11177 West 8th Avenue,
P.O. Box 25127,
Denver, Colorado 80225.

USDA, Forest Service,
Arapaho National Forest,
Federal Building,
301 S. Howes,
Fort Collins, Colorado 80521.

A limited number of single copies are available upon request to W. J. Lucas, Regional Forester, USDA Forest Service, 11177 West 8th Avenue, P.O. Box 25127, Denver, Colorado 80225.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the CEQ Guidelines.

Comments are invited from the public, and from State and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Comments concerning the proposed action and requests for additional information should be addressed to W. J. Lucas, Regional Forester, USDA Forest Service, 11177 West 8th Avenue, P.O. Box 25127, Denver, Colorado 80225. Comments must be received by February 16, 1975, in order to be considered in the preparation of the final environmental statement.

CLAYTON B. PIERCE,
Director, Multiple Use and
Environmental Quality Coordination.

DECEMBER 18, 1974.

[FR Doc.74–30043 Filed 12–23–74;8:45 am]

TIMBER MANAGEMENT PLAN, MODOC NATIONAL FOREST

Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a draft environmental statement for the Timber Management Plan, Modoc National Forest, California USDA–FS–R5–DES(Adm) 75–6.

The environmental statement concerns a proposed timber management plan for the management of the timber resources on the forest.

This draft environmental statement was transmitted to CEQ on December 17, 1974.

Copies are available for inspection during regular working hours on the following locations:

USDA, Forest Service,
South Agriculture Bldg., Room 3230,
12th St. and Independence Ave. SW.,
Washington, D.C. 20250.

USDA, Forest Service,
630 Sansome Street, Rm. 531,
San Francisco, California 94111.

Modoc National Forest,
441 North Main Street,
Alturas, California 96101.

A limited number of single copies are available upon request to Regional Forester, Douglas R. Leisz, California Region, U.S. Forest Service, 630 Sansome Street, San Francisco, California 94111.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the CEQ guidelines.

Comments are invited from the public, and from state and local agencies which are authorized to develop and enforce environmental standards, and from Federal Agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Comments concerning the proposed action and requests for additional information should be addressed to Douglas R. Leisz, Regional Forester, 630 Sansome Street, San Francisco, California 94111. Comments must be received by February 17, 1975, in order to be considered

in the preparation of the final environmental statement.

GLENN P. HANEY,
Deputy Regional Forester.

DECEMBER 17, 1974.

[FR Doc.74-29988 Filed 12-23-74;8:45 am]

Soil Conservation Service

CHOCOLATE, LITTLE CHOCOLATE, AND LYNN BAYOU WATERSHED, TEXAS

Notice of Negative Declaration

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; § 1500.6(e) of the Council on Environmental Quality guidelines (38 FR 20550) August 1, 1973; and § 650.8(b)(3) of the Soil Conservation Service Guidelines (39 FR 19651) June 3, 1974; the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Little Chocolate Channel Work, Chocolate, Little Chocolate, and Lynn Bayou Watershed Project, Calhoun County, Texas.

The environmental assessment of this federal action indicates that the project will not create significant adverse local, regional, or national impacts on the environment and that no significant controversy is associated with the project. As a result of these findings, Mr. Edward E. Thomas, State Conservationist, Soil Conservation Service, USDA, First National Bank Building, Temple, Texas 76501, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The proposal concerns an independent portion of the remaining works of improvement consisting of 16 miles of multiple-purpose channel work for flood prevention and drainage on intermittent and ephemeral streams and about 112 pipe drop structures.

The environmental assessment file is available for inspection during regular working hours at the following location:

Soil Conservation Service, USDA, First National Bank Building, Temple, Texas 76501.

No administrative action on implementation of the proposal will be taken until 15 days after the date of this notice.

(Catalog of Federal Domestic Assistance Program No. 10.904, National Archives Reference Services.)

Dated: December 17, 1974.

WILLIAM B. DAVEY,
Deputy Administrator for Water Resources, Soil Conservation Service.

[FR Doc.74-30002 Filed 12-23-74;8:45 am]

UPPER ELK RIVER WATERSHED PROJECT, KANSAS

Notice of Negative Declaration

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; part 1500 of the Council on Environmental Quality guidelines (38 FR 20550, August 1, 1973); and § 650.8(b)(3) of the Soil Conservation Service Guidelines (39 FR 19651, June 3, 1974); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental statement is not being prepared for the Upper Elk River Watershed Project, Elk, Butler, and Greenwood Counties, Kansas.

The environmental assessment of this federal action indicates that the project will not create significant adverse local, regional, or national impacts on the environment and that no significant controversy is associated with the project. As a result of these findings, Mr. Robert K. Griffin, State Conservationist, Soil Conservation Service, USDA, 760 S. Broadway, Salina, Kansas 67401, has determined that the preparation and review of an environmental statement is not needed for this project.

The project concerns a plan for watershed protection and flood prevention. The planned works of improvement remaining to be built include conservation land treatment supplemented by 22 floodwater retarding structures.

The environmental assessment file is available for inspection during regular working hours at the following location:

Soil Conservation Service, USDA, 760 S. Broadway, Salina, Kansas 67401.

No administrative action on implementation of the proposal will be taken until 15 days after the date of this notice.

(Catalog of Federal Domestic Assistance Program No. 10.904, National Archives Reference Services.)

Dated: December 18, 1974.

WILLIAM B. DAVEY,
Deputy Administrator for Water Resources.

[FR Doc.74-30001 Filed 12-23-74;8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

NEW YORK UNIVERSITY MEDICAL CENTER, ET AL.

Notice of 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 (Public Law 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, Special Import Programs Division, Office of Import Programs, Washington, D.C. 20230, within 20 calendar days after the date on which this notice of application is published in the Federal Register.

Amended regulations issued under cited Act, as published in the February 24, 1972 issue of the FEDERAL REGISTER, prescribe the requirements applicable to comments.

A copy of each application is on file, and may be examined during ordinary Commerce Department business hours at the Special Import Programs Division, Department of Commerce, Washington, D.C. 20230.

Docket Number: 75-00211-33-90000. Applicant: New York University Medical Center, 550 First Avenue, New York, N.Y. 10016. Article: EMI Scanner System. Manufacturer: EMI Limited, United Kingdom. Intended use of article: The article is intended to be used for the investigation of cerebral diseases such as tumors, cysts and hemorrhages which overcome the limitations of conventional X-ray techniques in brain tissue investigations. The article will provide the diagnostician with accurate information on the nature and location of diseased or damage tissue and eliminate the principal physical and psychological discomforts to patients which have been unavoidable with some other techniques. Application received by Commissioner of Customs: November 19, 1974.

Docket Number: 75-00212-33-90000. Applicant: University of Wisconsin Center for Health Sciences, Dept. of Radiology, 1300 University Avenue, Madison, Wisconsin 53706. Article: EMI Scanner System. Manufacturer: EMI Limited, United Kingdom. Intended use of article: The article is intended to be used for studies of patients with neurologic disease such as brain atrophy, brain tumor, brain death, and various congenital brain disorders through computerized transaxial tomographs. The article will also be used to train diagnostic radiology physicians. Application received by Commissioner of Customs: November 19, 1974.

Docket Number: 75-00213-65-46070. Applicant: State University of New York at Buffalo, 3435 Main Street, Buffalo, New York 14214. Article: Scanning Electron Microscope, Model JSM U-3. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used to carry out sophisticated and detailed studies of metallic, nonmetallic, and biological materials. Specific projects will include:

1. Large strain rate deformation of materials.
2. Surface integrity studies of high strength alloys.
3. Stress corrosion sensitivity of engineering surfaces of commercial alloys.
4. Friction and wear behavior of cast irons.
5. Studies in Process Metallurgy; Gas-solid reactions and solidification of two component alloys.
6. Effect of topography and heterogeneity on wetting of solids by liquids.
7. Calcified tissue research.
8. Drug release rates on spansules.

The article will also be used for educational purposes in graduate and undergraduate level courses, including nontechnical people in health services.

Application received by Commissioner of Customs: November 20, 1974.

Docket Number: 75-00214-01-11000. Applicant: Yale University, Purchasing

Dept., 260 Whitney Avenue, New Haven, Connecticut 06520. Article: Gas Chromatograph-Mass Spectrometer, Model MAT 111. Manufacturer: Varian MAT, West Germany. Intended use of article: The article is intended to be used for the study of metabolites in the blood and urine from patients with metabolic disease and from control subjects. The materials analyzed will be complex mixtures of compounds extracted from blood or urine. The objectives of the investigations that will require use of the article are threefold; 1) to detect and characterize metabolic disorders which have not yet been described; 2) to establish the diagnosis of known diseases in new patients; 3) to study such disorders, both known and newly discovered, in greater detail in order to gain insight into their biochemical origins and implications. Application received by Commissioner of Customs: November 20, 1974.

Docket Number: 75-00215-33-46500. Applicant: West Virginia University Medical Center, Medical Center Campus, Morgantown, West Virginia 26506. Article: Ultramicrotome, Model Om U3. Manufacturer: C. Reichert Optische Werke, Austria. Intended use of article: The article is intended to be used primarily for studies of materials involved in electron microscopic studies of blood platelets, platelet aggregates, and other tissue of varying density. Aggregates will vary in size and compactness from one specimen to another. Other samples to be studied will include formed tissues of several types (spleen, lung, alimentary system, skin), with thrombi or with areas of necrosis and/or inflammation or neoplasm. Application received by Commissioner of Customs: November 20, 1974.

Docket Number: 75-00216-33-46040. Applicant: University of Iowa, Purchasing Department, Jefferson Building, Iowa City, Iowa 52242. Article: Electron Microscope, Model JEM 100C with Side Entry Goniometer & Scanning Device. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used to quantitate synaptic contacts in the central nervous system by an automated system which detects density due to staining of the structures under study. Application received by Commissioner of Customs: November 20, 1974.

Docket Number: 75-00217-33-46500. Applicant: Biomedical Laboratory, Edgewood Arsenal, Aberdeen Proving Ground, Md. 21010. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for studies of biological, mainly mammalian tisseus derived from experimental animals, exhibiting both normal and induced pathologic structure. The experiments to be conducted include experiments on the normal, physiological behavior of cells and tissues in regard to antigen recognition and antibody response. Application received by Commissioner of Customs: November 20, 1974.

Docket Number: 75-00218-33-46500. Applicant: University of California at Los Angeles, 405 Hilgard Avenue, Los Angeles, California 90024. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for studies of biological tissues and products as a result of experimental programs designed to investigate disease processes in man and animals. The experiments to be conducted include both normal and abnormal development of synapses in the young developing nervous system. Application received by commissioner of Customs: November 20, 1974.

Docket Number: 75-00219-33-46500. Applicant: Yale University, Purchasing Dept., 20 Ashmun Street, New Haven, Conn. 06520. Article Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used to section materials for high resolution light and electron microscope examination of kidney tubules from rats and kidney tubules and urinary bladders of several species of amphibians and several species of fish. Application received by Commissioner of Customs: November 20, 1974.

Docket Number: 75-00220-33-46500. Applicant: County of Los Angeles, John Wesley Hospital, 2825 S. Hope Street, Los Angeles, California 90007. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used to section specimens of human blood and bone marrow for investigation aimed at understanding the normal maturation process of human bone marrow cells and aberrations of this process which occur in neoplastic diseases. The article will also be used to train physicians in techniques for electron microscopy. Application received by Commissioner of Customs: November 20, 1974.

Docket Number: 75-00221-33-90000. Applicant: Delaware Valley Neurosurgical Association—Episcopal Hospital, C-111 Episcopal Hospital, Front Street and Lehigh Avenue, Philadelphia, Pa. 19125. Article: EMI Scanner System. Manufacturer: EMI Limited, United Kingdom. Intended use of article: The article will be used to study the brain by computerized transaxial tomography (CTT). Examples of planned projects are the study of traumatic and/or spontaneous intracranial hemorrhage, management of cerebral edema, the effect of immunotherapy on the growth of brain tumors, dementia, isotope brain scan versus CTT and ultrasound versus CTT. The article will also be used to train neurological, neurosurgical and radiological residents, as well as medical students and physicians in the use of CTT. Application received by Commissioner of Customs: November 20, 1974.

Docket Number: 75-00224-33-46040. Applicant: Philadelphia College of Osteopathic Medicine, 4150 City Avenue, Philadelphia, Pa. 19131. Article: Electron Microscope, Model JEM 100C. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used for research in the following areas:

(1) Study of the female reproductive tract in the fertilization process and sperm physiology, an investigation concerned with the effect of the oviductal constituents of various hormones on the capacitation of spermatozoa.

(2) The structural organization of skeletal and cardiac muscle in normal and pathological material from man and animals.

(3) Experiments in the important process of genetic activity and genetic replication that occur in normal and viral infected cells, including protein-nuclear acid interactions during adeno-2 virus infection. The article will also be used to familiarize medical students with electron microscopy and to make the transition from light microscopy to electron microscopy. Application received by Commissioner of Customs: November 22, 1974.

Docket Number: 75-00226-33-46040. Applicant: Trenton State College, Trenton, New Jersey 08625. Article: Electron Microscope, Model HS-9. Manufacturer: Hitachi, Ltd. Japan. Intended use of article: The article is intended to be used in the following research projects:

(1) The effects of drugs and ionic imbalance on mitochondrial ultrastructure of Purkinje fibers of canine heart.

(2) The origin and development of C-body endosymbiont inclusions in mutant and normal oocytes of *Drosophila melanogaster* and *Drosophila virilis*.

(3) An ultrastructural analysis of green and blue-green algae of New Jersey: Taxonomic differentiation.

(4) The ultrastructure of amoebocytes and lymphocytes isolated from hard clam, Mercenaria mercenari in polluted and non-polluted environments.

(5) Electron microscopic visualization of DNA isolated from *E. Coli* during ϕX174 infection.

The article will also be used to introduce the undergraduate Biology major to the theory and practical operation of the electron microscope. Application received by Commissioner of Customs: November 22, 1974.

Docket Number: 75-00227-33-90000. Applicant: University of Michigan, 1405 East Ann Street, Ann Arbor, Michigan 48104. Article: EMI Scanner System with Magnetic Tape Storage System. Manufacturer: EMI Limited, United Kingdom. Intended use of article: The article is intended to be used for scanner evaluation of patients with signs or symptoms of intracranial disease to define more precisely the modern role of all methods of intracranial diagnosis in light of the contribution made by the article. In addition, the article will be used to present the modern aspects of neuroradiology to residents, neuroradiology fellows, medical students and x-ray technology students. Application received by Commissioner of Customs: November 22, 1974.

Docket Number: 75-00228-99-46040. Ohio 45701. Article: Electron Microscope, Model HS-8, Mark II. Manufacturer: Hitachi, Ltd., Japan. Intended use of article: The article is intended to be used for training graduate students in its

use in the course Botany 725E, "Electron Microscopy." Students will be taught (1) basic procedures for preparing plant material for examination by transmission electron microscope, and (4) photoelectron optics and related alignment procedures for standard transmission electron microscopy, (3) examination and evaluation of specimen image in the electron microscope, and (4) photographic recording and duplication. Application received by Commissioner of Customs: November 22, 1974.

Docket Number: 75-00229-33-46500. Applicant: Veterans Administration Hospital, Laboratory Service, 1400 V.F.W. Parkway, West Roxbury, Mass. 02132. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for studies of cardiac muscle from animals (cats, dogs, rats) and from human tissues removed at surgery. The article will also be used to train pathologists to use the electron microscope for examination of normal and diseased tissues, in order to provide new information about diseases. Application received by Commissioner of Customs: November 22, 1974.

Docket Number: 75-00230-33-46040. Applicant: The Pennsylvania State University College of Medicine, Department of Microbiology, 500 University Drive, Hershey, Pa. 17033. Article: Electron Microscope, Model EM 201. Manufacturer: Philips Electronic Instruments, NVD, The Netherlands. Intended use of article: The article is intended to be used in the graduate course "Electron Microscope Techniques" to teach the basic techniques in specimen preparation, use of the electron microscope and photographic competence in developing and printing of electron micrographs, to graduate students, medical students and post-doctoral fellows, who intend to examine DNA or to use the ultrastructural approach in some phase of their research. Application received by Commissioner of Customs: November 22, 1974.

Docket Number: 75-00231-75-68495. Applicant: University of California, Los Alamos Scientific Laboratory, P.O. Box 990, Los Alamos, New Mexico 87544. Article: Pump: Electric Drive. Manufacturer: Stansted Eng. Co. Ltd., United Kingdom. Intended use of article: The article is intended to be used to extend P-V-T data on the molecular hydrogens up to 40 kbar to better understand the processes leading to laser fusion and the creation of metallic hydrogen. Application received by Commissioner of Customs: November 22, 1974.

Docket Number: 75-00232-33-46500. Applicant: Children's Hospital Research Foundation, Elland and Bethesda Avenues, Cincinnati, Ohio 45229. Article: Ultramicrotome, Model Om U3. Manufacturer: C. Reichert Optische Werke, Austria. Intended use of article: The article is intended to be used to cut sections of mouse palate one-millionth of an inch thin. The section is then to be viewed and photographed with an electron microscope to determine whether contracticle proteins are found in the fetal palate and whether these proteins are responsible for palatal shelf elevation during development. Application received by Commissioner of Customs: November 22, 1974.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

RICHARD M. SEPPA,
Acting Director, Special Import Programs Division.

[FR Doc.74-29971 Filed 12-23-74;8:45 am]

UNIVERSITY OF CALIFORNIA, ET AL.

Notice of Consolidated Decision on Applications for Duty-Free Entry of EMI Scanner Systems

The following is a consolidated decision on applications for duty-free entry of EMI Scanner Systems. Pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et seq.). (See especially § 701.11(e).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review during ordinary business hours of the Department of Commerce, at the Special Import Programs Division, Office of Import Programs, Department of Commerce, Washington, D.C.

Docket Number: 75-00058-33-90000. Applicant: University of California, Los Angeles, Center for the Health Sciences, Los Angeles, California 90024. Article: EMI Scanner with Magnetic Tape System. Manufacturer: EMI Limited, United Kingdom. Intended use of article: The article is intended to be used to explore the possibilities of transverse tomography using holographic image reconstruction. The article will provide data for comparison with the holographic method as well as for digital methods. Experiments will also be conducted on other forms of display (topographic, density, etc.) and reproduction. Studies will also be conducted to determine the feasibility of reconstructing the images in planes other than the transverse axis in which they are obtained. The article will also be used in the following courses in which student participants will be introduced to the modalities of the EMI Scanner techniques:

Basic Principles in Radiology
Radiology Clerkship
Advanced Senior Clerkship—Diagnostic Division
Special Senior Clerkship—Diagnostic Division
Applications of Medical Physics
Physics of Diagnostic Radiology
Neurology Depth Elective

Application received by Commissioner of Customs: August 16, 1974. Advice submitted by the Department of Health, Education, and Welfare on: November 5, 1974.

Docket Number: 75-00076-33-90000. Applicant: Allegheny General Hospital, 320 East North Avenue, Pittsburgh, Pa. 15212. ARTICLE: EMI Scanner and Magnetic Tape System. Manufacturer: EMI Limited, United Kingdom. Intended use of article: The article is intended to be used in an investigation carried out both on humans and on animals in the attempt to learn more about the density of tissues, to evaluate the density of tissues as they refer to the various types of pathology effecting the tissue involved, in this case the brain of a patient, and to attempt to correlate this information with known diagnostic studies previously used and subsequently found operative information. The article will be used to screen large numbers of patients, the results of which will be compared with the conventional carotid angiography and pneumoencephalography. This maposes in lecture courses within the hospital and within the medical school complex in demonstrating its usefulness and in obtaining the information and instructing others in its efficiency and diagnostic facilities. Application received by Commissioner of Customs: August 28, 1974. Advice submitted by the Department of Health, Education, and Welfare on: November 21, 1974.

Docket Number: 75-00092-33-90000. Applicant: Montefiore Hospital and Medical Center, 111 E. 210th Street, Bronx, New York 10467. Article: EMI Scanner, 160x160 Matrix Option and Magnetic Tape System. Manufacturer: EMI Limited, United Kingdom. Intended use of article: The article is intended to be used for computerized assisted tomographic axial examination of the brain in studies of neurological diseases (i.e., brain tumors, brain atrophy) degenerative disease of children and adults (i.e., multiple sclerosis, Parkinson's disease) for the development of techniques which have been unavailable for the diagnosis of diseases affecting the brain. The article will also be used in the training of individuals in neuroradiology, neurology, pediatric neurology and neurosurgery. Application received by Commissioner of Customs: September 4, 1974. Advice submitted by the Department of Health, Education, and Welfare on: November 21, 1974.

Comments: No comments have been received with respect to any of the foregoing applications. Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign articles, for such purposes as these articles are intended to be used, is being manufactured in the United States. Reasons: Each foreign article is a newly developed system which is designed to provide precise transverse axial X-ray tomography. The Department of Health, Education, and Welfare (HEW) advised in its respectively cited memoranda that the sensitivity and the non-invasive methodology of each article are pertinent to the purposes for which each foreign article is intended to be used. HEW also advised that it knows of no domestic instrument of equivalent scientific value to any of the articles to which the foregoing applications relate for such purposes as these articles are intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to any of the foreign articles to which the foregoing applications relate, for such purposes as these articles are intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

RICHARD M. SEPPA,
Acting Director, Special Import Programs Division.

[FR Doc.74-29972 Filed 12-23-74;8:45 am]

MOREHOUSE COLLEGE

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 74-00180-33-46040. Applicant: Morehouse College, 223 Chestnut Street SW., Atlanta, Ga. 30314. Article: Electron Microscope, Model EM 9S-2. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used for study of the unsolved problem of the linearity of all axial structures during the regeneration of the tadpole tail and the notochord is especially puzzling in this regard. The article will also be used in the course Biology 487; 488. Techniques in Electron Microscopy to develop some proficiency in the use of the electron microscope by a large number of students.

Comments: No comments have been received with respect to this application. A letter was received from Adam David Company dated December 20, 1973, and is being treated as an offer to supply additional information under Section 701.9 of the regulations.

Decision: Application denied. An instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

In reply to Question 8 the applicant alleges the foreign article provides the following pertinent characteristics which are not possessed by the most closely comparable domestic instrument or apparatus, which the applicant assumes to be the EMU-4C, supplied by the Adam David Company:

1. The design concept of the EM 9S-2 differs considerably from the domestically manufactured instrument. The EMU-4C was designed as an extremely versatile instrument for high resolution work with biological and non-biological applications. A much greater number of controls, push buttons and read-out meters were built into this microscope, thus requiring a much higher degree of sophistication in its operation. By comparison, the EM 9S-2 was designed for biological applications, overall ease of foolproof operation and safer performance for students with little, or even without, previous experience;

2. Extra low magnifications, down to 30X, without change of pole piece. By switch action alone an entire grid can be imaged and focused at 140X without distortion;

3. A semi-automatic "beam finder" enabling rapid beam location even when the condenser aperture and the gun are completely disaligned;

4. All apertures can be removed for cleaning purposes without disassembling or removing parts of the microscope column;

5. Thin metal film objective apertures (three discs with seven holes each);

6. It is possible to obtain stereo tilt, plus or minus 6°, by using the normal specimen holder, thus obviating the necessity of a tilting stage;

7. Photomagazines for 60 and 75 sheet films or glass plates 7 cm. x 7 cm. are available, permitting the uninterrupted taking of micrographs over prolonged periods of time;

8. A fully automatic photographic system. The operation of a single lever activates a spot-reading timing system; there is five-digit sequential numbering of negatives; negatives are transported automatically with double exposure excluded; provision for manual override is included and an "empty magazine" indicator is present;

9. Unique specimen airlock system in which the specimen holder and the handling rod are one unit. Thus, accidental separation and loss of the specimen holder during transfer operation is impossible;

10. The 10x binocular viewing microscope has high-eyepoint eyepieces;

11. Automatic vacuum system with safeguards against water and electrical power failure;

12. Low number of controls at the column and console of the EM 9S-2; and

13. Highly stable column alingment.

The Department of Health, Education, and Welfare (HEW) advises in its memorandum dated October 24, 1974 that the description of research and teaching does not establish a pertinent specification, within the meaning of subsection 701.2(n), for the article that upholds duty-free entry. HEW advises that the work intended by the applicant requires an instrument with high resolution capability, such as the EMU-4C, which, according to HEW, possesses the technical capabilities necesary to carry it out. With respect to the specific capabilities listed by the applicant in reply to Question 8 of the application, HEW advises as follows: a. Items (1) and (2) are not pertinent specifications for the purposes intended within the meaning of subsection 701.2(n) of the regulations; b. Items (3), (4), (5), (12) and (13) are conveniences which are not necessary for accomplishing the applicant's intended purposes, and, therefore, are not pertinent specifications within the meaning of subsection 701.2(n) of the regulations; and c. Items (6) (7) (8) (9) (10) and (11) are matched by similar features provided by the EMU-4C.

For these reasons, we find that the Model EMU-4C is of equivalent scientific value to the foreign article for such purposes as this article is intended to be used.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

RICHARD M. SEPPA,
Acting Director, Special Import Programs Division.

[FR Doc.74-29964 Filed 12-23-74;8:45 am]

NATIONAL ACCELERATOR LABORATORY

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 73-00410-98-42800. Applicant: National Accelerator Laboratory, Universities Research Association, Inc., 2100 Pennsylvania Avenue NW., room 828, Washington, D.C. 20006. Article: 75 Dipole Magnets. Manufacturer: Thomson Electric, Ltd., Canada. Intended use of article: The articles are to be used in the construction of a 200 BeV accelerator which is to be used in a large variety of scientific exploratory experiments with protons accelerated by the article to 200 BeV energy.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The application is a resubmission of Docket Number 72-00194-98-42800, previously denied without prejudice to resubmission by the Department's letter dated October 31, 1972, because of certain informational deficiencies. The applicant issued a request for proposal for fabricating the foreign article to 13 firms, including eight domestic manufacturers. It is noted that three domestic firms offered proposals to the applicant's request. In its memorandum dated August 21, 1972, with respect to Docket Number 72-00194-98-42800, the National Bureau of Standards (NBS)

advised that it knows of no additional domestic manufacturers of magnets considered comparable to the foreign article. In response to Question 8(c) of the present submission, the applicant claims inter alia that delivery of the article by July 1, 1971 is necessary for the accomplishment of the research purposes and that the domestic manufacturers who were willing and able to produce the article (those which offered proposals, i.e., National Electric Coil, Westinghouse Electric Corporation and Airco Temescal) could not meet the specified delivery date because of prior contractual obligations with the applicant which absorbed their current production capacity. In this connection, it is noted that § 701.11(c) of the Department's regulations specifies that duty-free entry of the article shall be considered justified, without regard to whether there is being manufactured in the United States an instrument, apparatus, or accessory of equivalent scientific value for the purposes intended, if the delay in obtaining such domestic article will seriously impair the accomplishment of the applicant's intended purposes.

NBS evaluated the present application and advised in its memorandum dated February 19, 1974, that delivery by July 1, 1971 is pertinent to the commencement of useful operation of the accelerator at the scheduled time and hence to the applicant's research purposes. NBS further advised that the applicant has supplied evidence that the domestic manufacturers who were willing and able to produce the article had their capacity absorbed with current contracts and, therefore, were not able to meet the pertinent delivery date.

Accordingly, we find that the delivery times for domestic instruments of equivalent scientific value to the article for the purposes described in response to Question 7 of the application were excessive within the meaning of § 701.11(c).

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

RICHARD M. SEPPA,
Acting Director, Special Import Programs Division.

[FR Doc.74-29966 Filed 12-23-74;8:45 am]

UNIVERSITY OF MINNESOTA MEDICAL SCHOOL

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 75-00061-33-46500. Applicant: University of Minnesota Medical School, 2630 University Avenue Southeast, Minneapolis, Minnesota 55414. Article: LKB Ultrotome III Ultramicrotome 88001-NM with Microscope Holder. Manufacturer: LKB Produkter AB, Sweden. Intended use of Article: The article is intended to be used in experiments involving the determination of the normal structure of nerve endings in human muscle spindles compared to similar endings in muscle spindles from cat, rat, and other mammals, and in the study of the responses of muscle spindles to physiological stimulation and to a variety of pharmaceutical agents to which they will be exposed.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: Examination of the applicant's thin sections under the electron microscope will provide optimal information when such sections are uniform in thickness and have smoothly cut surfaces. Conditions for obtaining high quality sections depend to a large extent on the properties of the specimen being sectioned (e.g., hardness, consistency, toughness, etc.), the properties of the embedding media and the geometry of the block. In connection with prior case (Docket No. 69-00665-33-46500) which relates to the duty-free entry of an identical foreign article, the Department of Health, Education, and Welfare (HEW) advised that "Smooth cuts are obtained when the speed of cutting (among such [other] factors as knife edge condition and angle), is adjusted to the characteristics of the material being sectioned. The range of cutting speeds and a capability for the higher cutting speeds is, therefore, a pertinent characteristic of the ultramicrotome to be used for sectioning materials that experience has shown difficult to section." In connection with another prior case (Docket No. 70-00077-33-46500) relating to the duty-free entry of an identical foreign article, HEW advised that "ultrathin sectioning of a variety of tissues having a wide range in density, hardness etc." requires a maximum range in cutting speed and, further, that "The production of ultrathin serial sections of specimens that have great variation in physical properties is very difficult." The foreign article has a cutting speed range of 0.1 to 20 millimeters/second (mm/sec). The most closely comparable domestic instrument is the Model MT-2B ultramicrotome manufactured by Ivan Sorvall, Inc. (Sorvall). The Sorvall Model MT-2B ultramicrotome has a cutting speed range of 0.09 to 3.2 mm/sec. We are advised by HEW in its memorandum of November 21, 1974 that cutting speeds in the excess of 4 mm/sec are pertinent to the applicant's research studies.

We therefore, find that the Model MT-2B ultramicrotome is not of equivalent scientific value to the foreign article for such purposes as this article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

RICHARD M. SEPPA,
Acting Director, Special Import Programs Division.

[FR Doc.74-29965 Filed 12-23-74;8:45 am]

BEAUMONT HOSPITAL

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C.

Docket number: 74-00197-33-46040. Applicant: William Beaumont Hospital, 3601 W. 13 Mile Road, Royal Oak, Michigan 48072. Article: Electron Microscope, Model EM 201. Manufacturer: Philips Electronic Instruments NVD, The Netherlands. Intended use of article: The article is intended to be used to study the ultrastructure of glomerular and cellular abnormalities in the kidney, both as a means of identifying the disease process and as a method of conducting research. Similarly, cellular alterations in patients suffering from hepatic disease will be studied ultrastructurally to identify and investigate the disease process. The article will also be used as an adjunct to the research into the identifying characteristics of embryonal malignancies; as a means of characterizing the cellular types involved in thyroid tumors and of studying their response to different therapeutic and pharmacologic modalities; as a means of studying lymphoid and lymphocytic reactions in disease states and in malignancies of the hematopoietic systems.

Comments: Comments dated December 19, 1974, have been received from the Adam David Company which allege, inter alia, that the Model EMU-4C and accessories are of equivalent scientific value to the article.

Decision: Application denied. An instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: In the reply to Questions 8 and 9 the applicant alleges that the foreign article provides the following specifications which are pertinent to the in-

tended purposes and that are not possessed by the most closely comparable domestic instrument or apparatus:

(1) A microscope, simple in operation, that will be used by many people, some of them in training;

(2) A range of magnification from very low to medium high, while not disturbing the specimen or losing the field of viewing;

(3) Adequate resolution at higher magnification for differential of small particles and cellular organelles;

(4) Capability of using 70 mm. camera for large numbers of spatially oriented, sequential pictures in quantitative studies;

(5) Ready availability of contracted manufacturer's service and maintenance; and

(6) Single condenser system.

At the time the article was ordered, two domestically manufactured electron microscopes were available. The Model ETEM 101 (a relatively simple low resolution instrument designed for use by beginners with a minimum of supervision), manufactured by Elektros Incorporated, and the Model EMU-4C, supplied by Adam David Company. HEW advise in its memorandum dated August 7, 1974, that "The most nearly comparable domestic instrument for the work described is the EMU-4C. This instrument has equivalent guaranteed resolution and magnification range without pole piece change [Characteristics 3 and 2, above, respectively]. It also provides a selection in cameras or condenser [characteristics 4 and 6, respectively]. Projected service needs [characteristic 5] and other conveniences cited [such as simplicity in operation characteristic 6] are not relevant." Accordingly, HEW recommends that this application be denied since the intended purposes do not establish a pertinent specification of the article, within the meaning of § 701.2(n) of the regulations that justifies duty-free entry.

Therefore, we find that the Model EMU-4C is of equivalent scientific value to the foreign article for such purposes as this article is intended to be used.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

RICHARD M. SEPPA,
Acting Director,
Special Import Programs Division.

[FR Doc.74-29968 Filed 12-23-74;8:45 am]

INDIANA UNIVERSITY

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket number: 74-00543-33-00530. Applicant: The Trustees of Indiana University, Bloomington, Indiana 47401. Article: Sagittare 40—MEV Linear Accelerator. Manufacturer: Thomson-CSF, France. Intended use of article: The article is intended to be used in both an electron as well as a photon mode for the treatment of cancer. The article will also be used in biological research which will include the effects of high dose rates on in vitro cell survival and also the effects of various energy relations on cell survivals. Physics research projects will center on the measurement of neutron fluxes in and around the 40 meV linear accelerator as well as electron dosimetry and photon dosimetry as it relates to the treatment of cancer. In addition the article will serve for the training of residents in the use of accelerators.

Comments: Comments dated August 7, 1974, were received from Varian Associates (Varian) which allege, inter alia, that the Varian Radiation Division Clinac 35 radiotherapy linear accelerator with accessories is equivalent in all clinical respects, except maximum electron energy, to the foreign article.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, could have been made available to the applicant without excessive delay within the meaning of § 701.11(c) of the regulations. Reasons: Excessive delivery time is described in § 701.11(c) of the regulations as follows:

Excessive delivery time. Duty-free entry of the article shall be considered justified without regard to whether there is being manufactured in the United States an instrument, apparatus, or accessory of equivalent scientific value for the purposes described in response to question 7 of the application form, if the delay in obtaining such domestic instrument, apparatus, or accessory (as indicated by the difference between the delivery times quoted by domestic manufacturer and foreign manufacturer) will seriously impair the accomplishment of the purposes. In determining whether the difference in delivery times is excessive, the Deputy Assistant Secretary shall take into account the relevancy of the applicant's program to other research programs with respect to timing, the applicant's need to have such instrument, apparatus, or accessory available at the scheduled time for the course(s) in which the article is intended to be used, and other relevant circumstances.

The foreign article was ordered December 7, 1973, with a quoted delivery time of six months. The quoted delivery time of the Varian Model Clinac 35 was 700 days (approximately 23 months). We are advised by the Department of Health, Education, and Welfare (HEW) in its memorandum dated September 10, 1974, that the delivery time for the Clinac 35 is excessive. The Department notes the applicant's intended research and educational programs would be delayed by approximately one year if the domestic article was to be utilized. Accordingly, we find that the difference between the delivery time for the article and the delivery time quoted for the domestic instrument is excessive within the meaning of § 701.11(c) since the longer delivery time of the domestic instrument would seriously impair the accomplishment of the applicant's purposes.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Acting Director,
Special Import Programs Division.

[FR Doc.74-29970 Filed 12-23-74;8:45 am]

UNIVERSITY OF WASHINGTON

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket number: 75-00057-55-17500. Applicant: University of Washington, Department of Oceanography WB-10, Seattle, Washington 98195. Article: Two Recording Current Meters, Model #4. Manufacturer: Ivar Aanderaa, Norway. Intended use of article: The article is intended to be used in experiments involving continuous detailed monitoring of currents and thermal structure of the Arctic Ocean in pursuit of the following objectives:

(a) Definition of special velocity components of tidal origin (semi-diurnal, diurnal, fortnightly bands, etc.) and differentiation of these from inertial events.

(b) Determination of seasonal and long-term variability of velocity and thermal fields in the Arctic Ocean.

(c) Assessment of the role of planetary waves.

(d) Mapping of the climatologically mean velocity field.

(e) Measurement of short-term aperiodic accelerations.

Comments: No comments have been received with respect to this application.

Decision: Application denied. An instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The applicant alleges that the article provides measurements of current speed, current direction, water temperature (as low as −1.9° C.) at a data sampling interval of 10 minutes for a duration of 70 days. The National Oceanic and Atmospheric Administration (NOAA) advises in its memorandum dated November 11, 1974, that the specifications described above are pertinent

to the applicant's purposes within the meaning of § 701.2(n) of the regulations. The most closely comparable domestic instrument is the Model VACM vector averaging current meter manufactured by AMF Sea-Link Systems. The VACM provides measurement of current speed, current direction, and water temperature (−2 to 30° C.) with internal data recording. It utilizes the vector averaging technique which continuously samples current velocity every ⅛ rotor turn minimizing the possibility of data aliasing. In addition, the VACM, has a 11.5 x 10" bit data storage capacity which is equivalent to or better than that of the article and, which permits sampling frequency of the same order and duration required of the article. NOAA further advises that the VACM satisfies all the specifications of the article found pertinent.

For these reasons, we find that the domestically-manufactured VACM is of equivalent scientific value to the foreign article for such purposes as the article is intended to be used.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Acting Director,
Special Import Programs Division.

[FR Doc.74-29969 Filed 12-23-74;8:45 am]

YALE UNIVERSITY, ET AL.

Consolidated Decision on Application for Duty-Free Entry of Scientific Articles; Correction

In the notice of consolidated decision on applications for duty-free entry of scientific articles appearing at page 42934 in the FEDERAL REGISTER of Monday, December 9, 1974, the following docket should be deleted:

Docket number: 74-00437-90-42600. Applicant: National Aeronautics and Space Administration, Langley Research Center (MS 146), Hampton, Virginia 23665. Article: Alpha-numeric Display Device Made from a Two-Color-Monolithic Array of Light-Emitting Diodes. Manufacturer: Bowmar Canada Limited, Canada. Date of denial without prejudice to resubmission: July 2, 1974.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Acting Director,
Special Import Programs Division.

[FR Doc.74-29967 Filed 12-23-74;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

SACCHARIN AND ITS SALTS

Beverage and Other Food Manufacturers

The Food and Drug Administration has learned of a seizure made by the State of New York of nondiet beverages that contain a mixture of sugar and saccharin as sweetening agents. The Food and Drug Administration has also received information, as yet unconfirmed, that other food manufacturers may be using mixtures of saccharin and nutritive sweeteners in food formulations which are not labeled as special dietary foods offered for calorie control.

The use of saccharin or admixtures of saccharin as a sweetening agent in such products is illegal. Saccharin and its salts are food additives within the meaning of sections 201(s), 402(a)(2)(C) and 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(s), 342(a)(2)(C), 348) and may not be used in food except under the conditions of use set forth in 21 CFR 121.4001, which restricts use to valid special dietary foods (i.e., foods specifically offered for calorie control) and to certain limited technological uses other than calorie reduction, as specified in that regulation. Combinations of nutritive sweeteners and saccharin or its salts in "diet beverages" or diet beverage bases are also subject to additional requirements set forth in 21 CFR 3.72. Both regulations set forth restrictions upon use and require special labeling to distinguish the valid special dietary food products from other foods. Furthermore, all special dietary foods are subject to applicable labeling requirements of 21 CFR Part 125.

The purpose of this notice is to emphasize the existence of the above-referenced regulations and to inform all beverage and other food manufacturers that the Commissioner of Food and Drugs is notifying the public, all Food and Drug Administration field units, and all State food and drug officials to be alert to this type of adulteration. Illegal use of saccharin or its salts subjects the products involved and the responsible companies and individuals to potential regulatory action, including seizure, injunction, and criminal prosecution.

Dated: December 18, 1974.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner
for Compliance.

[FR Doc.74-29926 Filed 12-23-74;8:45 am]

ADVISORY COMMITTEES

Notice of Renewal

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776; 5 U.S.C. App.), the Food and Drug Administration announces the renewal by the Secretary, Department of Health, Education, and Welfare, of the Panel on Review of Dentifrices and Dental Care Agents for an additional period of 2 years beyond December 27, 1974.

Authority for this committee will expire December 27, 1976, unless the Secretary formally determines that continuance is in the public interest.

Dated: December 19, 1974.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner
for Compliance.

[FR Doc.74-30046 Filed 12-23-74;8:45 am]

NATIONAL ADVISORY FOOD AND DRUG COMMITTEE

Notice of Establishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776; 5 U.S.C. App.), the Food and Drug Administration announces the establishment by the Secretary, Department of Health, Education, and Welfare, on November 15, 1974, of the following advisory committee:

Designation. National Advisory Food and Drug Committee.

Purpose. The committee will review and evaluate agency programs and provide advice and guidance to the Secretary, Assistant Secretary for Health, and the Commissioner of Food and Drugs on policy matters of national significance as they relate to FDA's statutory mission in the following areas: Food, drugs, cosmetics, medical devices, biological products, and electronic products.

Authority for this committee will expire November 15, 1976, unless the Secretary formally determines that continuance is in the public interest.

Concurrent with this action, the Secretary also abolished the National Advisory Drug Committee, National Advisory Food Committee, and the National Advisory Veterinary Medicine Committee.

Dated: December 19, 1974.

WILLIAM F. RANDOLPH,
Acting Associate Comissioner
for Compliance.

[FR Doc.74-30048 Filed 12-23-74;8:45 am]

TOXICOLOGY ADVISORY COMMITTEE

Notice of Establishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776; 5 U.S.C. App.), the Food and Drug Administration announces the establishment by the Secretary, Department of Health, Education, and Welfare, on December 9, 1974, of the following advisory committee:

Designation. Toxicology Advisory Committee.

Purpose. The committee will (1) review and evaluate all available data relating to evaluation of the safety of chemicals present in foods, drugs, cosmetics, and medical devices; (2) advise the Secretary, Assistant Secretary for Health, and the Commissioner of Food and Drugs on matters concerning the safety of specific human drugs, animal drugs, color and food additives, cosmetic components, and components of devices; and (3) recommend the development of standardized methodologies for the toxicity testing of such materials.

Authority for this committee will expire December 9, 1976, unless the Secretary formally determines that continuance is in the public interest.

Dated: December 19, 1974.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner
for Compliance.

[FR Doc.74-30047 Filed 12-23-74;8:45 am]

National Institute of Education

NATIONAL COUNCIL ON EDUCATIONAL RESEARCH

Notice of Meeting

Notice is hereby given that the next meeting of the National Council on Educational Research will be held on January 9 and 10, 1975, at the National Institute of Education, 1200 19th Street NW, Washington, D.C. in Room 823.

The National Council on Educational Research is established under section 405 (b) of the General Education Provisions Act (20 U.S.C. 1221e(b)). Its statutory duties include:

(a) Establishing general policies for, and reviewing the conduct of the Institute;

(b) Advising the Assistant Secretary for Education and the Director of the Institute on development of programs to be carried out by the Institute;

(c) Recommending to the Assistant Secretary and the Director ways to strengthen educational research, to improve the collection and dissemination of research findings, and to insure the implementation of educational renewal and reform based upon the findings of educational research.

This meeting will be open to the public except for the closed sessions. The tentative agenda includes:

JANUARY 9, 1975.

10 a.m. to 12 noon	Open Session, Routine Business, Review of FY 1975 Budget and Programs.
12 noon to 1 p.m.	Lunch.
1 p.m. to 5:30 p.m.	Closed Session, Discussion of FY 1976 Budget and Program Planning.

JANUARY 10, 1975.

9:15 a.m. to 3:30 p.m.	Closed Session, Discussion of FY 1976 Budget and Program Planning.

Members of the public are invited to attend the open session. Written statements relevant to an agenda item (or to any other item considered of interest to the Institute) may be submitted at any time and should be sent to the Chairman and the Executive Secretary of the Council at the address shown below. Requests to address the Council meeting should be submitted in writing to the Chairman and the Executive Secretary by the close of business January 3, 1975. The Chairman will determine whether a presentation should be scheduled.

In accordance with Council policy (NCER Resolution No. 013074–8) copies of Council resolutions and minutes of Council meetings can be obtained by contacting the Executive Secretary. Resolutions are available shortly after the particular meeting at which adopted. Because minutes require approval by the Council at a subsequent meeting, they are usually available approximately four to six weeks after the date of the meeting to which they refer.

In order to verify the tentative agenda, assure adequate seating arrangements, or to obtain summaries of this meeting and copies of any resolutions adopted by the Council at this meeting, interested persons are requested to contact Ms. Caroline Phillips, Executive Secretary, National Council on Educational Research, whose address and telephone number are listed below:

National Council on Educational Research, Office of Planning and Management, National Institute of Education, Washington, D.C. 20208, 202–254–7900.

Dated: December 20, 1974.

EMERSON ELLIOTT,
Acting Director,
National Institute of Education.

[FR Doc.74–30060 Filed 12–23–74;8:45 am]

ADULT DEVELOPMENT AND AGING RESEARCH COMMITTEE

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Adult Development and Aging Research Committee, National Institute of Child Health and Human Development, February 6–7, 1975, Building 31, Conference Room 8, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on February 6 from 9 a.m. to 9:30 a.m. to discuss administrative and current status reports. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552(b)(4) and 552(b)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on February 6 from 9:30 to adjournment on February 7 for the review, discussion and evaluation of individual grant applications. The applications contain information of a proprietary or confidential nature, including detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with the applications and proposals.

Mrs. Majorie Neff, Committee Management Officer, NICHD, Landow Building, Room C–603, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–1756, will provide summaries of meetings and rosters of committee members. Dr. Walter Spieth, Executive Secretary, Adult Development and Aging Research Committee, NICHD, Landow Building, Room A–710, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–1033, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.317, National Institutes of Health)

SUZANNE L. FREMEAU,
COMMITTEE MANAGEMENT OFFICER,
National Institutes of Health.

DECEMBER 12, 1974.

[FR Doc.74–29947 Filed 12–23–74;8:45 am]

ALLERGY AND IMMUNOLOGY RESEARCH COMMITTEE

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Allergy and Immunology Research Committee, National Institute of Allergy and Infectious Diseases, February 13–14, 1975, at the La Valencia Hotel in La Jolla, California.

This meeting will be open to the public on February 13, 1975, from 9 a.m. to 10:30 a.m. for the discussion of general policy matters. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552(b)(4) and 552(b)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on February 13, 1975, from 10:30 a.m. to adjournment on February 14, 1975, for the review, discussion, and evaluation of individual grant applications. The applications contain information of a proprietary or confidential nature, including detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with the applications and proposals.

Mr. Robert L. Schreiber, Chief, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, Bethesda, Maryland, telephone (301) 496–5717, will provide summaries of meetings and rosters of committee members.

Dr. Luz A. Froehlich, Executive Secretary, Allergy and Immunology Research Committee, Extramural Programs, National Institute of Allergy and Infectious Diseases, Westwood Building, Room 703, Bethesda, Maryland, telephone (301) 496–7131, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.855, National Institutes of Health)

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

DECEMBER 12, 1974.

[FR Doc.74–29938 Filed 12–23–74;8:45 am]

AUTOMATION IN THE MEDICAL LABORATORY SCIENCES REVIEW COMMITTEE

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Automation in the Medical Laboratory Sciences Review Committee, January 29–30, 1975, 9 a.m., Dulles Marriott Hotel, Washington, D.C. This meeting will be open to the public on January 29 from 9 a.m. to 12 noon for opening remarks and general discussion. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552(b)(4) and 552(b)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on January 29 from 12 noon to 5 p.m., and January 30 from

9 a.m. to 5 p.m., for the review, discussion, evaluation, and ranking of individual contract proposals. The proposals contain information of a proprietary or confidential nature, including detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals.

Mr. Paul Deming, Research Reports Officer, NIGMS, Building 31, Room 4A46, Bethesda, Maryland 20014, Telephone: 301–496–5676, will provide a summary of the meeting and a roster of committee members.

Dr. Robert S. Melville, Executive Secretary, Automation in the Medical Laboratory Sciences Review Committee, boratory Sciences Review Committee, Westwood Building, Room 954, Bethesda, Maryland 20014, Telephone: 301–496–7081, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13–860, National Institute of General Medical Sciences, National Institutes of Health)

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

DECEMBER 12, 1974.

[FR Doc.74–29942 Filed 12–23–74;8:45 am]

BEHAVIORAL SCIENCE CONFERENCE

Notice of Meeting

A notice is hereby given of the Behavioral Science Conference of the Division of Cancer Control and Rehabilitation, National Cancer Institute, to be held January 20, 21, 22, 1975, at the El Tropicano Motor Hotel, River Room, San Antonio, Texas.

The entire meeting will be open to the public from 8 a.m., January 20, 1975 to adjournment on January 22, 1975 to discuss the behavioral sciences as they relate to cancer control and rehabilitation. Attendance by the public will be limited to space available.

For additional information please contact: Dr. Joseph Cullen, Blair Building, Room 716A, National Cancer Institute, National Institutes of Health, Bethesda, Maryland 20014, (301) 427–7478.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

DECEMBER 17, 1974.

[FR Doc.74–29932 Filed 12–23–74;8:45 am]

BIOMEDICAL LIBRARY REVIEW COMMITTEE

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Biomedical Library Review Committee, National Library of Medicine, on February 5–6, 1975, from 8:30 a.m. to 5:00 p.m. each day, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland.

This meeting will be open to the public from 8:30 a.m. to 10:30 a.m. and from 2 p.m. to 5 p.m. on February 5 to discuss administrative reports and program developments. Attendance by the public will be limited to space available. In accordance with provisions set forth in sections 552(b)(4) and 552(b)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on February 5 from 10:30 a.m. to 1 p.m. and from 8:30 a.m. to adjournment on February 6, for the review, discussion, and evaluation of individual grant applications. The applications contain information of a proprietary nature—including detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with the applications in the field of biomedical communications.

Dr. Roger W. Dahlen, Executive Secretary of the Committee, and Chief, Division of Biomedical Information Support, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20014, Telephone Number: 301–496–4191, will furnish summaries of the meeting, rosters of committee members, and substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.348, 13.349, 13.351, 13.352, 13.353—National Institutes of Health)

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

DECEMBER 12, 1974.

[FR Doc.74–29946 Filed 12–23–74;8:45 am]

BREAST CANCER EPIDEMIOLOGY COMMITTEE

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Breast Cancer Epidemiology Committee, National Cancer Institute, February 11, 1975, Tropicana Hotel, Central American Room, San Antonio, Texas. This meeting will be open to the public on February 11, 1975 from 12:30 p.m. to 1 p.m. to discuss miscellaneous committee matters. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552(b)(4) and 552(b)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on February 11, 1975 from 1 p.m. until adjournment at 2 p.m. for review of contract proposals. The contracts contain information of a proprietary or confidential nature, including detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with the contracts.

Mrs. Marjorie F. Early, Committee Management Officer, NCI, Building 31, Room 3A16, National Institutes of Health, Bethesda, Maryland 20014 (301/496–5708) will furnish summaries of the meeting and rosters of committee members.

Dr. Bernice T. Radovich, Executive Secretary, Landow Building, Room B–404, National Institutes of Health, Bethesda, Maryland 20014 (301/496–6773) will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.825, National Institutes of Health)

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

DECEMBER 17, 1974.

[FR Doc.74–29950 Filed 12–23–74;8:45 am]

BREAST CANCER NETWORK MEETING

Notice of Meeting

Notice is hereby given of the meeting of the Breast Cancer Network Meeting, National Cancer Institute, January 15, 1975, Building 31, Conference Room 8.

This meeting will be open to the public from 8:30 a.m. to adjournment on January 15, 1975 to discuss the details of management plans for the operation of the Breast Cancer Networks. Attendance by the public will be limited to space available.

For additional information please contact: Dr. Roger Halterman, Blair Building, Room 6A09, National Cancer Institute, National Institutes of Health, Bethesda, Maryland, (301) 427–7477.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

DECEMBER 17, 1974.

[FR Doc.74–29929 Filed 12–23–74;8:45 am]

CANCER CONTROL AND REHABILITATION ADVISORY COMMITTEE

Notice of Establishment

The Director, National Institutes of Health, announces the establishment on November 22, 1974, of the advisory committee indicated below by the Director, National Cancer Institute, under the authority of section 410(a)(3) of the Public Health Service Act (42 U.S.C. 286d). Such advisory committee shall be governed by the provisions of the Federal Advisory Committee Act (Pub. L. 92–463) setting forth standards governing the establishment and use of advisory committees.

Name: Cancer Control and Rehabilitation Advisory Committee.

Purpose: The Committee provides to the Director, NCI and the Director, Division of Cancer Control and Rehabilitation, advice on all matters relating to NCI activities in the field of cancer control and rehabilitation and on coordination of the entire national effort to control cancer. The Committee will termi-

nate November 22, 1976, unless renewed by appropriate action as authorized by law.

R. W. LAMONT-HAVERS,
Acting Director,
National Institutes of Health.

DECEMBER 16, 1974.

[FR Doc.74-29930 Filed 12-23-74;8:45 am]

CANCER RESEARCH CENTER REVIEW COMMITTEE

Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Cancer Research Center Review Committee, National Cancer Institute on February 7 and 8, 1975, to be held in Building 31, C-Wing, Conference Room 7.

This meeting will be open to the public on February 7, 1975, from 8:30 a.m. to 10 a.m. to discuss procedures to be followed in review of applications, assignment of applications to the Cancer Research Center Review Committee and to the Cancer Special Program Advisory Committee. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552(b)(4) and 552(b)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on February 7, 1975, from 10 a.m. to 5 p.m. and on February 8, 1975, from 8:30 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. The applications contain information of a proprietary or confidential nature, including detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with the applications.

Mrs. Marjorie F. Early, Committee Management Officer, NCI, Building 31, Room 3A16, National Institutes of Health, Bethesda, Maryland 20014 (301/496-5708) will furnish summaries of meetings and rosters of committee members.

Robert L. Manning, Ph.D., Executive Secretary, Westwood Building, Room 803, National Institutes of Health, Bethesda, Maryland 20014 (301/496-7721) will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.312, National Institutes of Health)

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

DECEMBER 12, 1974.

[FR Doc.74-29948 Filed 12-23-74;8:45 am]

DENTAL RESEARCH INSTITUTES AND SPECIAL PROGRAMS ADVISORY COMMITTEE

Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Dental Research Institutes and Special Programs Advisory Committee, National Institute of Dental Research, January 31, 1975, National Institutes of Health, Building 31-C, Conference Room 7.

This meeting will be open to the public on January 31, 1975, from 9 a.m. to 10:15 a.m. for a report on the evaluation of dental research institutes and centers. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552(b)(4) and 552(b)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on January 31, 1975 from 10:30 a.m. to adjournment, for the review, discussion and evaluation of the progress of the individual programs and projects of the dental research institutes and centers. These progress reports contain information of a proprietary or confidential nature, including detailed research protocols, designs, and other technical information, financial data such as salaries, and personal information concerning individuals associated with the dental research institutes and centers.

Dr. Emil L. Rigg, Special Assistant for Institutes and Centers, National Institute of Dental Research, National Institutes of Health, Westwood Building, Room 507, Bethesda, Maryland 20014 (telephone 301-496-7748) will provide summaries of meetings, rosters of committee members, and will furnish substantive program information.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

DECEMBER 16, 1974.

[FR Doc.74-29935 Filed 12-23-74;8:45 am]

DIVISION OF BLOOD DISEASES AND RESOURCES

Notice of Meeting

The Division of Blood Diseases and Resources, National Heart and Lung Institute, National Institutes of Health and the Division of Blood and Blood Products, Bureau of Biologics, Food and Drug Administration are co-sponsoring an Albumin Workshop on February 12-14, 1975. The workshop will be held on the NIH campus in Building 1, Wilson Hall auditorium, Bethesda, Maryland from 9 a.m. to 5 p.m. each day.

The purpose of the workshop is to review the state-of-the-art in clinical use of albumin and PPF and to identify needs for further research in this area. The third day of the meeting will include the establishment of preliminary guidelines for the clinical use of albumin and the formulation of recommendations for further research in the subject area.

Attendance by the public will be limited to space available.

For additional information please contact: Dr. Anthony René, Building 31, Room 5A-11, National Heart and Lung Institute, National Institutes of Health, Bethesda, Maryland 20014, (301) 496-1537.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

DECEMBER 17, 1974.

[FR Doc. 74-29949 Filed 12-23-74;8:45 am]

EXPERIMENTAL THERAPEUTICS STUDY SECTION

Amended Notice of Meeting

Notice is hereby given of a change in the meeting place of the Experimental Therapeutics Study Section, Division of Research Grants, which was published in the FEDERAL REGISTER on November 29, 1974 (39 FR 41571).

The Experimental Therapeutics Study Section meeting was to have convened at Building 31, Rm. 6, Bethesda, Md., but has been changed to the United Inn, Bethesda, Md., at 8:30 a.m., January 9-11, 1975.

This meeting will be open to the public for approximately one hour at the beginning of the first session of the first day of the meeting.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

DECEMBER 18, 1974.

[FR Doc.74-29927 Filed 12-23-74;8:45 am]

GENERAL CLINICAL RESEARCH CENTERS COMMITTEE

Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the General Clinical Research Center Committee, Division of Research Resources, February 10, 1975, National Institutes of Health, Bldg. 31-C, Conference Room 8, Bethesda, Maryland.

This meeting will be open to the public on February 10 from 9:00 a.m. to 9:30 a.m. to discuss future plans of the Committee and general announcements. Attendance by the public will be limited to space available. In accordance with the provisions set forth in section 552(b)4 and section 552(b)6, of Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on February 10 from 9:30 a.m. to recess on that day for the review, discussion and evaluation of individual grant applications. The applications contain information of a proprietary or confidential nature, including detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with the applications.

Mr. James Augustine, Information Officer, Division of Research Resources, National Institutes of Health, Building 31, Room 5B-39, Bethesda, Maryland 20014, phone 301-496-6595, will provide summaries of meetings and rosters of Committee members.

Dr. William R. DeCesare, Executive Secretary, General Clinical Research Centers Committee, Division of Research Resources, National Institutes of Health, Building 31, Room 4B–13, Bethesda, Maryland 20014, phone 301–496–6595, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.333, National Institutes of Health)

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

DECEMBER 12, 1974.

[FR Doc.74–29939 Filed 12–23–74;8:45 am]

GENERAL RESEARCH SUPPORT PROGRAM ADVISORY COMMITTEE

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the General Research Support Program Advisory Committee, Division of Research Resources, February 6–7, 1975, National Institutes of Health, Building 31, Conference Room 9.

This meeting will be open to the public on February 6, 1975 from 9 a.m. to 12:30 p.m. to report progress on proposed changes in the General Research Support/Biomedical Sciences Support Program. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552(b)(4) and 552(b)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on February 6, 1975 from 12:30 p.m. to 5 p.m. and on February 7, 1975 from 9 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. The applications contain information of a proprietary or confidential nature, including detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with the applications.

Mr. James Augustine, Information Officer, Division of Research Resources, Building 31, Room 5B39, Bethesda, Maryland 20014, AC 301 496–5545 will provide summaries of meetings and rosters of committee members. Dr. Ciriaco Q. Gonzales, Executive Secretary, General Research Support Program Advisory Committee, Division of Research Resources, Building 31, Room 4B04, Bethesda, Maryland 20014, AC 301 496–6743 will furnish substantive program information.

(Catalog of Federal Domestic Assistance Programs Nos. 13.337 and 13.375, National Institutes of Health)

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

DECEMBER 12, 1974.

[FR Doc. 74–29945 Filed 12–23–74;8:45 am]

HEART AND LUNG PROJECT COMMITTEE

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Heart and Lung Program Project Committee, National Heart and Lung Institute, January 31–February 1, 1975, National Institutes of Health, Building 31, Conference Room 9. This meeting will be open to the public on January 31, 1975, from 8:30 a.m. to approximately 9:30 a.m. to discuss administrative details and to hear a report of the current status of the Division of Lung Diseases. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552(b)(4) and 552(b)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on January 31, 1975, from 9:30 a.m. until the adjournment on February 1, 1975, for the review, discussion and evaluation of individual grant applications. The applications contain information of a proprietary or confidential nature, including detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with the applications.

Mr. York E. Onnen, Chief, Public Inquiries and Reports Branch, NHLI, NIH, Building 31, Room 5A21, Bethesda, Maryland 20014, phone (301) 496–4236, will provide summaries of the meeting and rosters of the committee members. Dr. Arthur W. Merrick, Executive Secretary, NHLI, NIH, Westwood Building, Room 655, phone (301) 496–7351, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, 13.838, and 13.839 National Institutes of Health)

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

DECEMBER 12, 1974.

[FR Doc.74–29943 Filed 12–23–74;8:45 am]

HIGH BLOOD PRESSURE EDUCATION RESEARCH PROGRAM AD HOC REVIEW COMMITTEE

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the High Blood Pressure Education Research Program ad hoc Review Committee, National Heart and Lung Institute, February 6–8, 1975, National Institutes of Health, Building 31, Conference Room 10.

This meeting will be open to the public on February 6, 1975, from 8:30 a.m. to approximately 9:30 a.m. to discuss review procedures. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552(b)(4) and 552(b)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on February 6, 1975, from 9:30 a.m. until the adjournment on February 8, 1975, for the review, discussion and evaluation of individual grant applications. The applications contain information of a proprietary or confidential nature, including detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with the applications.

Mr. York E. Onnen, Chief, Public Inquiries and Reports Branch, NHLI, NIH, Building 31, Room 5A21, Bethesda, Maryland 20014, phone (301) 496–4236, will provide summaries of the meeting and rosters of the committee members. Dr. Alice M. McGill, Prevention, Control and Education Coordinator, NHLI, NIH, Landow Building, Room 1005, phone (301) 496–1706, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, 13.838, and 13.839 National Institutes of Health)

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

DECEMBER 12, 1974.

[FR Doc.74–29944 Filed 12–23–74;8:45 am]

INFECTIOUS DISEASE COMMITTEE

Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Infectious Disease Committee, National Institute of Allergy and Infectious Diseases, January 16–17, 1975, Wilson Hall, Building 1, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public from 9 a.m. to 3 p.m. on January 16, 1975 to review and discuss the hepatitis collaborative program and from 8:30 a.m. to 3 p.m. on January 17, 1975 to review and discuss the Ara-A collaborative study and administrative reports. Attendance by the public will be limited to space available. In accordance with the provisions set forth in section 552(b)4 and 552(b)6, Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 3 p.m. to 5 p.m. on January 16, 1975 for the review, discussion and evaluation of individual contracts in the hepatitis program. The meeting will be closed to the public from 3 p.m. to adjournment on January 17, 1975 for the review, discussion and evaluation of the Ara-A collaborative study. These contracts contain information of a proprietary or confidential nature, including detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with these contracts.

Mr. Robert Schreiber, Information Officer, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A–34, phone 496–5717 will furnish summaries of the meeting and roster of committee members. Mrs. Martha Mattheis, Executive Secretary of the Infectious Disease Committee, National Institute of Allergy and Infectious Diseases, National Institutes of Health, Building 31, Room 7A–10, phone 496–5105, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.857, National Institutes of Health)

Dated November 20, 1974.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.74–29931 Filed 12–23–74;8:45 am]

MATERNAL AND CHILD HEALTH RESEARCH COMMITTEE

Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Maternal and Child Health Research Committee, National Institute of Child Health and Human Development, on February 12–13, 1975, in Room C418, Landow Building, 7910 Woodmont Avenue, Bethesda, Maryland.

The meeting will be open to the public on February 12, 1975, from 9 a.m. to 11 a.m., to discuss general business of the Committee and reports from the Acting Associate Director for Extramural Programs, Program Director for Perinatal Biology and Infant Mortality Branch, Acting Program Director for Growth and Development Branch, and the Executive Secretary of the Committee. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552(b)(4) and 552(b)(6) of Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on February 12, 1975, from 11 a.m. until adjournment, for the review, discussion and evaluation of individual grant applications. The applications contain information of a proprietary or confidential nature, including detailed research protocols, designs, and other technical information; financial data, such as salaries and personal information concerning individuals associated with the applications.

Mrs. Marjorie Neff, Committee Management Officer, NICHD, Landow Building, Room C–603, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–1756, will provide summaries of meetings and rosters of committee members. Dr. Patsy H. Sampson, Executive Secretary of the Maternal and Child Health Research Committee, NICHD, Room C717, Landow Building, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–5575, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.317, National Institutes of Health)

Dated: December 12, 1974.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.74–29940 Filed 12–23–74;8:45 am]

NEUROLOGICAL DISEASES AND STROKE SCIENCE INFORMATION PROGRAM ADVISORY COMMITTEE

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Neurological Diseases and Stroke Science Information Program Advisory Committee, National Institute of Neurological Diseases and Stroke, on January 20–21, 1975, Building 31, Room 8A30, National Institutes of Health, Bethesda, Maryland.

The entire meeting will be open to the public from 9 a.m. to 5 p.m., on January 20th, and from 9 a.m. to adjournment on January 21st, to discuss future activities of the Committee. Attendance by the public will be limited to space available.

This meeting is necessary to advise the Director, NINDS regarding the future of the NINDS Neurological Information Network. This advice is a vital element for the report by the Director, NINDS to the Congress, which in its second supplementary appropriation of 1974 for the DHEW, required reconsideration of a previous decision regarding the information centers in the network. This advisory meeting must be held at this time to permit a prompt timely response to the Congress for which the Director, NINDS is committed.

The Chief, Office of Scientific and Health Reports, Mrs. Ruth Dudley, Bldg. 31, Room 8A03, NIH, NINDS, Bethesda, Maryland, will furnish summaries of the meeting and rosters of committee members.

Mr. Alfred Weissberg, Executive Secretary of the Committee, Room 706, Federal Bldg., Phone. 49–66084, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.356, National Institutes of Health)

Dated: December 16, 1974.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.74–29937 Filed 12–23–74;8:45 am]

NEUROLOGY A STUDY SECTION

Amended Notice of Meeting

Notice is hereby given of a change in the meeting date of the Neurology A Study Section, Division of Research Grants, which was published in the FEDERAL REGISTER on November 29, 1974 (39 FR 41571).

The Neurology A Study Section was to have convened at 9:00 a.m. on January 8–11, 1975, but has been changed to 9:00 a.m. January 9–11, 1975 at Building 1, Bethesda, Maryland, the same location for which it was originally scheduled.

The meeting will be open to the public for approximately one hour at the beginning of the first session of the first day of the meeting.

Dated: December 16, 1974.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.74–29933 Filed 12–23–74;8:45 am]

POPULATION RESEARCH COMMITTEE

Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Population Research Committee, National Institute of Child Health and Human Development, on January 20–21, 1975, in Room C–418, Landow Building, 7910 Woodmont Avenue, Bethesda, Maryland.

This meeting will be open to the public on January 20, 1975 from 9 a.m. to 10:30 a.m. to discuss the program status, new developments and projections for population research centers and program projects. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552(b)(4) and 552(b)(6) of Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on January 20, 1975 from 10:30 a.m. until adjournment, for the review, discussion and evaluation of individual grant applications. The applications contain information of a proprietary or confidential nature, including detailed research protocols, designs, and other technical information; financial data, such as salaries and personal information concerning individuals associated with the applications.

Mrs. Majorie Neff, Committee Management Officer, NICHD, Landow Building, Room C–603, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–1756, will provide summaries of meetings and rosters of committee members.

Dr. William A. Sadler, Executive Secretary of the Population Research Committee, NICHD, Room C–733, Landow Building, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–6515, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.317, National Institutes of Health)

Dated: December 12, 1974.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.74–29941 Filed 12–23–74;8:45 am]

PRESIDENT'S CANCER PANEL

Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the

President's Cancer Panel, National Cancer Institute, February 11, 1975, 9:30 a.m. to adjournment, National Institutes of Health, Building 31, Conference Room 2. This meeting will be open to the public from 9:30 a.m. to 12 noon for a report from the Director, National Cancer Institute, and a report from the Chairman, President's Cancer Panel. Attendance by the public will be limited to space available. The meeting will be closed to the public from 1:30 p.m. to adjournment for review and discussion of the proposed fiscal year 1977 budget in accordance with the provisions set forth in section 552(b)(5) of Title 5 U.S. Code and 10(d) of Pub. L. 92–463.

Mrs. Marjorie F. Early, Committee Management Officer, NCI, Building 31, Room 3A16, National Institutes of Health, Bethesda, Maryland 20014 (301/496–5708) will furnish transcripts of the open meeting and roster of committee members.

Dr. Richard A. Tjalma, Executive Secretary, Building 31, Room 11A46, National Institutes of Health, Bethesda, Maryland 20014 (301/496–5854) will provide substantive program information.

Dated: December 18, 1974.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.74–29928 Filed 12–23–74;8:45 am]

PULMONARY DISEASES ADVISORY COMMITTEE

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Pulmonary Diseases Advisory Committee, National Heart and Lung Institute, February 1, 1975, in Conference Room 8, Building 31, National Institutes of Health, Bethesda, Maryland.

The entire meeting will be open to the public on February 1, 1975, from 8:30 a.m. until 5 p.m., to discuss the Division of Lung Diseases programs relative to contracts and Specialized Centers of Research. Attendance by the public will be limited to space available.

Mr. York Onnen, Chief, Public Inquiries and Reports Branch, National Heart and Lung Institute, Building 31, Room 5A21, National Institutes of Health, Bethesda, Maryland 20014, phone (301) 496–4236, will provide summaries of the meeting and rosters of the committee members. Dr. Malvina Schweizer, Executive Secretary of the Committee, Westwood Building, Room 6A18, National Institutes of Health, Bethesda, Maryland 20014, phone (301) 496–7208, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.838, National Institutes of Health)

Dated: December 12, 1974.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.74–29936 Filed 12–23–74;8:45 am]

TROPICAL MEDICINE AND PARISITOLOGY STUDY AND BIOMEDICAL COMMUNICATION STUDY

Amended Notice of Meetings

Notice is hereby given of a change in the meeting date or place of the following National Institutes of Health Study Sections which were published in the FEDERAL REGISTER on November 29, 1974 (39 FR 41571).

The Tropical Medicine and Parisitology Study Section meeting was to have convened at the Connecticut Inn Motel, Washington, D.C., but has been changed to the Bethesdan Motor Hotel, 7740 Wisconsin Avenue, Bethesda, Maryland at 9 a.m., January 8–10, 1975.

The Biomedical Communication Study Section was to have met January 16–17, 1975, but will meet for one day only, January 17, 1975 at 9 a.m. at the Holiday Inn, Chevy Chase, Maryland, the same location for which it was originally scheduled.

These meetings will be open to the public for approximately one hour at the beginning of the first session of the first day of the meeting.

Dated: December 16, 1974.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.74–29934 Filed 12–23–74;8:45 am]

Office of Education

RIGHT TO READ STATE GRANTS PROGRAM

Notice of Closing Date for Receipt of Applications

Notice is hereby given that pursuant to the authority contained in the Cooperative Research Act, Pub. L. 83–531, as amended, 20 USC 331, applications are being accepted for non-competing continuation grants under the Right to Read State Grants Program. No new grants will be awarded under this program.

In order to be considered for support, applications should be received by the U.S. Office of Education Application Control Center on or before January 30, 1975.

A. *Applications sent by mail.*

An application sent by mail should be addressed as follows: U.S. Office of Education, Application Control Center, 400 Maryland Avenue SW., Washington, D.C. 20202, Attention: 13.533. An application sent by mail will be considered to be received on time by the Application Control Center if:

(1) The Application was sent by registered or certified mail not later than the fifth calendar day prior to the closing date or if such fifth calendar day is a Saturday, Sunday, or Federal Holiday not later than the next following business day, as evidenced by the U.S. Postal Service postmark on the wrapper or envelope, or on the original receipt from the U.S. Postal Service; or

(2) The application is received on or before the closing day by either the Department of Health, Education, and Welfare, or the U.S. Office of Education mail rooms in Washington, D.C. In establishing the date of receipt, the Commissioner will rely on the time-date stamp of such mail rooms or other documentary evidence of receipt maintained by the Department of Health, Education, and Welfare, or the U.S. Office of Education.

B. *Hand delivered applications.*

An application to be hand delivered must be taken to the U.S. Office of Education Application Control Center, Room 5673, Regional Office Building Three, 7th and D Streets SW., Washington, D.C. 20202.

Hand delivered applications will be accepted daily between the hours of 8:30 a.m. and 4 p.m. Washington, D.C. time except Saturdays, Sundays, or Federal Holidays. Applications will not be accepted after 4 pm. on the closing date.

C. *Authority.*

The regulations applicable to this program include the Office of Education General Provisions Regulations (45 CFR 100a), the General Regulations for Right to Read (45 CFR Part 151, Subpart A; published in the FEDERAL REGISTER on June 20, 1974 at 39 FR 22147), and regulations for the State Grants Program which are being separately published in the FEDERAL REGISTER in proposed form (45 CFR Part 151, Subpart D).

D. *Program information and forms.*

Information and application forms may be obtained from the Right to Read Program, U.S. Office of Education, Room 2131, 400 Maryland Avenue SW., Washington, D.C. 20202.

(20 U.S.C. 331a(a)(1))

Dated: December 17, 1974.

(Catalog of Federal Domestic Assistance Number 13.533; Right to Read—Elimination of Illiteracy)

T. H. BELL,
U.S. Commissioner
of Education.

[FR Doc.74–30040 Filed 12–23–74;8:45 am]

NATIONAL ADVISORY COUNCIL ON VOCATIONAL EDUCATION

Public

Notice is hereby given, pursuant to Pub. L. 92–463, that the next meeting of the National Advisory Council on Vocational Education will be held on January 16, 1974 from 9 a.m. to 5 p.m., Eastern Standard Time and January 17, 1974 from 9 a.m. to 12 Noon, Eastern Standard Time, at the Ramada Inn, Washington, D.C.

The National Advisory Council on Vocational Education is established under section 104 of the Vocational Education Amendments of 1968 (20 U.S.C. 1244). The Council is directed to advise the Commissioner of Education concerning the administration of, preparation of general regulations for, and operation of, vocational education programs, supported with assistance under the act; review the administration and operation of vocational education programs under the act; including the effectiveness of

such programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations to the Secretary of HEW for transmittal to the Congress; and conduct independent evaluation of programs carried out under the act and publish and distribute the results thereof.

The meeting of the Council shall be open to the public. The proposed agenda includes:

January 16, 1974, 9 a.m. to Noon: Discussion of meetings with Commissioner of Education, representatives of Domestic Council, and Assistant Secretary of Education.

Discussion of Roles of Vocational Education, Career Education, Career Counseling, and CETA.

Discussion of Council Priorities and Concerns for FY 76.

Noon to 5 p.m. Committee Meetings.

January 17, 1974, 9 a.m. to Noon: Reports on Committee Meetings, Other General Business.

Records shall be kept of all Council proceedings and shall be available for public inspection at the office of the Council's Executive Director, located in Suite 412, 425–13th Street, NW, Washington, D.C. 20004.

Signed at Washington, D.C., on December 16, 1974.

CALVIN DELLEFIELD,
Executive Director.

[FR Doc.74–29900 Filed 12–23–74;8:45 am]

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 74–10; Notice 09]

AIR BRAKE SYSTEMS

Request for Comments

A question has been raised concerning Federal Motor Vehicle Safety Standard No. 121 (49 CFR 571.121) that indicates that a more explicit explanation of the basic assumptions underlying its requirements is in order. (See entry N6–74–10–1 in this docket.) Specifically, the requirement that tractor-trailers be capable of meeting the braking test requirements without lockup of wheels, except in certain limited circumstances, has been questioned as unduly design-restrictive, in that it requires the vehicle to have antilock systems that are not necessary to achieve the required stopping distances in the specified 12-foot lane.

The purpose of these requirements is to assure a minimum safe level of braking system performance when a driver attempts to stop or slow down a motor vehicle under either normal or emergency conditions of real-world use. The tests employed to achieve these ends consist of stopping the vehicle from various initial speeds while traversing a straight path on a smooth, flat roadway. Stops are made under two different conditions of vehicle loading, and on both dry and wet pavement surfaces. The performance requirements associated with these tests deal with two fundamental aspects of performance: (a) The deceleration levels which the vehicle is capable of achieving, and (b) the degree to which the vehicle's directional stability and controllability remain unimpaired by brake application.

Minimum safe levels of deceleration capability are assured by prescribing maximum distances within which the vehicle must be able to stop under the various test conditions. Maintenance of adequate directional stability and controllability is assured by stipulating two independent performance constraints which must be satisfied during the test maneuvers: (a) That all parts of the vehicle remain within a 12-foot lane, to preclude excessive side-to-side brake imbalance which cannot be compensated by the typical driver, and (b) that all wheels continue rolling until the vehicle's speed falls below 10 mph.

Requirement (b), the one that has been questioned, is based on the fact that a locked wheel, whose tire is sliding against the road surface, is lacking in adequate directional stability. That is, the sliding tire cannot generate forces to change the direction in which it is moving, whether longitudinal or lateral. Thus, a vehicle whose wheels are locked is likely to slide sidewards as a result of such conditions as unevenness or banking in the road surface, wind forces, impacts on or by another vehicle, or steering inputs by the driver as a result either of the emergency situation or of curve in the road. One or more of these factors are often present in a situation where the full braking capability of a vehicle is needed because of an emergency. Consequently, the NHTSA has determined that the capability of keeping the wheels rolling while making a full-torque brake application is a necessary element of any vehicle's safety braking performance.

It is not enough merely to be able to bring the vehicle to a halt within the prescribed length and lane on a flat, straight surface. Safe braking capability must take into account the other variables that affect braking performance, and the prohibition against locking is included in the requirement to assure safe braking under such other conditions. The stipulated performance requirements are compatible with widely accepted automotive engineering practice, and the safety performance thus measured is found to have a strong correlation with safe real-world braking performance.

The foregoing statement is an amplification of the discussions of Standard No. 121 that have appeared in preambles to previous issuances on this subject. The NHTSA has assumed that interested persons have agreed with these principles, and in the opinion of the NHTSA, the tests and requirements of Standard 121 (in particular, the stipulation that wheels not lock up at speeds above 10 mph) constitute the most objective, meaningful, and efficient experimental methods to measure safety braking performance that are presently available.

It is not now anticipated that there will be any further amendment to the rule on the basis of this statement. To ensure that all relevant comments are included in the public record, however, this agency is interested in receiving any comments that interested persons may wish to submit on the subject discussed in this notice.

Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street, SW, Washington, D.C. 20590. It is requested but not required that 10 copies be submitted. All comments received will be available for examination at the above address.

(Sec. 103, 119, Pub. L. 89–563, 80 Stat. 718, (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.51)

Issued on December 18, 1974.

JAMES B. GREGORY,
Administrator.

[FR Doc.74–29906 Filed 12–20–74;10:36 am]

ATOMIC ENERGY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS PROCEDURES SUBCOMMITTEE

Notice of Meeting

DECEMBER 19, 1974.

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the ACRS Procedures Subcommittee will hold a closed meeting at 2 p.m. on January 8, 1975, in Washington, D.C. to discuss ACRS policy and internal practices with regard to the functioning of the Committee and the conduct of its activities.

I have determined, in accordance with subsection 10(d) of Public Law 92–463, that the meeting will consist of exchanges of opinions and formulation of recommendations, the discussion of which, if written, would fall within exemption (5) of 5 U.S.C. 552(b). Any factual material that may be presented during the meeting will be inextricably intertwined with such exempt material, and no separation of this material is considered practical. It is essential to close this meeting to protect the free interchange of internal views and to avoid undue interference with Subcommittee and agency operation.

JOHN C. RYAN,
Advisory Committee Management Officer.

[FR Doc.74–30019 Filed 12–23–74;8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS WORKING GROUP ON LMFBR HYPOTHETICAL CORE DISRUPTIVE ACCIDENTS (HCDA'S)

Notice of Meeting

DECEMBER 19, 1974.

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the Advisory Committee on Reactor Safe-

guards' Working Group on LMFBR Hypothetical Core Disruptive Accidents (HCDA's) will hold a meeting at 8:30 a.m. on January 8, 1975, in Room 1062, 1717 H Street NW, Washington, D.C. The subject scheduled for discussion is LMFBR Hypothetical Core Disruptive Accidents. This meeting will be closed to the public.

The Subcommittee is meeting to discuss various alternative proposals, which may be made to proceed with the study and what kind of support may be anticipated, to formulate recommendations to the full ACRS regarding the above subject.

I have determined, in accordance with subsection 10(d) of Public Law 92-463 that the meeting will consist of exchanges of opinions, the discussion of which, if written, would fall within exemption (5) of 5 U.S.C. 552(b). Any factual material that may be presented during the meeting will be inextricably intertwined with such exempt material and no separation of this material is considered practical. It is essential to close this meeting to protect the free interchange of internal views and to avoid undue interference with Subcommittee and agency operation.

JOHN C. RYAN,
Advisory Committee Management Officer.

[FR Doc.74-30018 Filed 12-23-74;8:45 am]

REGULATORY GUIDE

Notice of Issuance and Availability

The Atomic Energy Commission has issued two new guides in its Regulatory Guide series. This series has been developed to describe and make available to the public methods acceptable to the AEC Regulatory staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.70.15, "Information for Safety Analysis Reports—Industrial Security for Nuclear Power Plants," and Regulatory Guide 1.70.16, "Information for Safety Analysis Reports—Missile Barrier Design Procedures," identify information that is needed in safety analysis reports at the construction permit and operating license stages of review.

These guides are two of a number being issued in the 1.70.X series to identify information that has often been missing from applicants' safety analysis reports or to present revisions necessary to make a portion of the "Standard Format and Content of Safety Analysis Reports for Nuclear Power Plants," Revision 1, October 1972 (Regulatory Guide 1.70), consistent with the appropriate Standard Review Plan. Standard Review Plans (SRPs) are being prepared by the Regulatory staff for the guidance of staff reviewers who perform the detailed safety review of applications to construct or operate nuclear power plants. A primary purpose of SRPs is to improve the quality and uniformity of staff reviews and to provide a well-defined base from which to evaluate proposed changes in the scope and requirements of reviews. A complete Revision 2 of the Standard Format incorporating the changes presented in this 1.70.X series will be issued following completion of publication of the SRPs.

Comments and suggestions in connection with improvements in all published guides are encouraged at any time. Public comments on Regulatory Guides 1.70.-15 and 1.70.16 will, however, be particularly useful in developing the forthcoming revision of the Standard Format if received by February 28, 1975.

Comments should be sent to the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Docketing and Service Section.

Regulatory Guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of issued guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future guides should be made in writing to the Director of Regulatory Standards, U.S. Atomic Energy Commission, Washington, D.C. 20545. Telephone requests cannot be accommodated. Regulatory Guides are not copyrighted and Commission approval is not required to reproduce them.

(5 U.S.C. 522(a))

Dated at Rockville, Maryland this 17th day of December 1974.

For the Atomic Energy Commission.

LESTER ROGERS,
Director of Regulatory Standards.

[FR Doc.74-30020 Filed 12-23-74;8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS

Notice of Meeting

DECEMBER 20, 1974.

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the Advisory Committee on Reactor Safeguards will hold a meeting on January 9-11, 1975 in Room 1046, 1717 H Street NW, Washington, D.C.

The following constitutes that portion of the Committee's agenda for the above meeting which will be open to the public:

Thursday, January 9, 1975. 9:30 a.m.-12:30 p.m.: River Bend Station, Units 1 and 2 (Open)—The Committee will meet with representatives of Gulf States Utilities Company and the AEC Regulatory Staff to hear presentations and hold discussions regarding its review of the request for a construction permit for this station. Portions of this meeting will be closed if required to discuss proprietary information related to the design, construction and/or operation of this station and to discuss security arrangements for this facility. Closed portions will also be held for Committee deliberative sessions.

2:15 p.m.-5 p.m.: Douglas Point Nuclear Generating Station (Open). The Committee will meet with representatives of the Potomac Electric Power Company to hear presentations and hold discussions regarding the request for a construction permit for this station. Portions of this session will be closed if required to discuss proprietary information related to the design, construction and/or operation of this station and to discuss security arrangements for this plant. Closed portions will also be held for Committee deliberative sessions.

Friday, January 10, 1975. 10 a.m.-11 a.m.—Meeting with AEC Regulatory Staff (Open)—The Committee will hear presentations and hold discussions with representatives of the AEC Regulatory Staff regarding recent reactor operating experience and recent licensing actions.

11 a.m.-12:30 p.m. and 1:30 p.m.-2:30 p.m.—WASH-1400, Reactor Safety Study (Open). The Committee will meet with representatives of the AEC Staff to hear presentations and discuss this report. Portions of this session will be closed if required, under the provisions of section 10(d) of Public Law 92-463 (the Federal Advisory Committee Act) to exchange opinions leading to the formulation of recommendations, the discussion of which, if written, would fall within exemption (5) of 5 U.S.C. 552(b).

It should be noted that, in addition to the closed portions of the agenda items noted above, the Committee will hold other sessions not open to the public under the authority of section 10(d) of Public Law 92-463 (the Federal Advisory Committee Act), to consider the above applications and other matters. I have determined in accordance with subsection 10(d) of Public Law 92-463 that it is necessary to close such portions of the meeting to protect proprietary data (5 U.S.C. 552(b)(4)), and to protect the free interchange of internal views to avoid undue interference with agency or Committee operation (5 U.S.C. 552(b)(5)). Any non-exempt material that may be discussed during the closed portions of the meeting will be inextricably intertwined with discussion of exempt material and no further separation is practical. Practical considerations may dictate alterations in the above agenda or schedule.

The Chairman of the Committee is empowered to conduct the meeting in a manner that in his judgment will facilitate the orderly conduct of business, including provisions to carry over an incompleted open session from one day to the next.

With respect to public participation in the open portion of the meeting, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda items may do so by mailing 25 copies thereof, postmarked no later than December 31, 1974, to the Executive Secretary, Advisory Committee on Reactor Safeguards,

U.S. Atomic Energy Commission, Washington, D.C. 20545. Such written comments shall be based on documents related to the agenda items noted above, and related documents on file and available for public inspection at the Atomic Energy Commission's Public Document Room, 1717 H Street NW, Washington, D.C. 20545, and as follows:

RIVER BEND STATION, UNITS 1 & 2

Audubon Library, West Feliciana Branch, St. Francisville, Louisiana 70775.

DOUGLAS POINT NUCLEAR GENERATING STATION

St. Charles County Library, Garrett and Charles Street, La Plata, Maryland 20646.

WASH-1400, REACTOR SAFETY STUDY

AEC's field information offices in Albuquerque; Chicago; King of Prussia, Pennsylvania; Idaho Falls, Idaho; Las Vegas, Nevada; Grand Junction, Colorado; Oak Ridge, Tennessee; Richland, Washington; San Francisco; Aiken, South Carolina; Atlanta, and Denver.

(b) Those persons submitting a written statement in accordance with paragraph (a) above may request an opportunity to make oral statements concerning the written statement. Such requests shall accompany the written statement and shall set forth reasons justifying the need for such oral statement and its usefulness to the Committee. To the extent that the time available for the meeting permits, the Committee will receive oral statements during a period of not more than 30 minutes at an appropriate time, chosen by the Chairman of the Committee.

(c) Requests for the opportunity to make oral statements shall be ruled on by the Chairman of the Committee, who is empowered to apportion the time available among those selected by him to make oral statements.

(d) Information as to whether the meeting or portions of the meeting have been cancelled or rescheduled, and in regard to the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted, can be obtained by a prepaid telephone call on January 8, 1975, to the Office of the Executive Secretary of the Committee (Telephone: 202-634-1371) between 8:30 a.m. and 5:15 p.m., Eastern Time. It should be noted that the schedule noted above is tentative, based on the anticipated availability of related information, etc. It may be necessary to reschedule items during the same day to accommodate required changes. The ACRS Executive Secretary will be prepared to describe these changes on January 8, 1975.

(e) Questions may be propounded only by members of the Committee and its consultants.

(f) The use of still, movie, and television cameras, the physical installation and presence of which will not interfere with the course of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(g) Persons desiring to attend portions of the meeting where proprietary information is being discussed may do so by providing to the Executive Secretary 7 days prior to the meeting, a copy of an executed agreement with the owner of the proprietary information providing for access to this information.

(h) A copy of the transcript of the open portions of the meeting will be available for inspection during the following workday at the Atomic Energy Commission's Public Document Room, 1717 H Street NW., Washington, D.C. On request, copies of the minutes of the meeting will be made available for inspection at the Atomic Energy Commission's Public Document Room, 1717 H Street NW., Washington, D.C. on or after April 11, 1975. Copies may be obtained upon payment of appropriate charges.

JOHN C. RYAN,
Advisory Committee Management Officer.

[FR Doc.74-30087 Filed 12-23-74;8:45 am]

[Docket No. 50-219]

JERSEY CENTRAL POWER AND LIGHT CO.

Availability of Final Environmental Statement, Oyster Creek Nuclear Generating Station, Unit 1

Pursuant to the National Environmental Policy Act of 1969 and the United States Atomic Energy Commission's regulations in 10 CFR Part 51, notice is hereby given that the Final Environmental Statement prepared by the Commission's Directorate of Licensing, related to the issuance of a full term operating license for the Oyster Creek Nuclear Generating Station currently being operated by the Jersey Central Power and Light Company located in Lacey Township, Ocean County, New Jersey is available for inspection by the public in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C., and in the Ocean County Library in Toms River, New Jersey. The Final Environmental Statement is also being made available at the Division of State and Regional Planning, Department of Community Affairs, P.O. Box 2768, Trenton, New Jersey 08625, and at the Ocean County Planning Board, Court House Square, Toms River, New Jersey 08753.

The notice of availability of the Draft Environmental Statement for the Oyster Creek Nuclear Generating Station, Unit 1, and requests for comments from interested persons was published in the FEDERAL REGISTER on July 5, 1973 (38 FR 17870). The comments received from Federal, State, local and interested members of the public have been included as appendices to the Final Environmental Statement.

Single copies of the Final Environmental Statement may be obtained by writing the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Deputy Director for Reactor Projects, Directorate of Licensing.

Dated at Bethesda, Maryland, this 20th day of December 1974.

For the Atomic Energy Commission.

WM. H. REAGAN, Jr.,
Chief, Environmental Projects Branch 4, Directorate of Licensing.

[FR Doc.74-30089 Filed 12-23-74;8:45 am]

[Docket No. 50-267]

PUBLIC SERVICE COMPANY OF COLORADO

Issuance of Amendment to Facility Operating License

Notice is hereby given that the U.S. Atomic Energy Commission (the Commission) has issued Amendment No. 5 to Facility Operating License No. DPR-34 issued to Public Service Company of Colorado which revised Technical Specifications for operation of the Fort St. Vrain Nuclear Generating Station, located in Weld County, Colorado. The amendment is effective as of its date of issuance.

The amendment permits revised staffing requirements for plant operating shifts.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings required by the Act and the Commission's rules and regulations in 10 CFR Chapter 1, which are set forth in the license amendment.

For further details with respect to this action, see (1) the application for amendment dated October 23, 1974, (2) Amendment No. 5 to License No. DPR-34, with any attachments, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Greeley Public Library, City Complex Building, Greeley, Colorado 80631.

A copy of items (2) and (3) may be obtained upon request addressed to the United States Atomic Energy Commission, Washington, D.C. 20545, Attention: Deputy Director for Reactor Projects, Directorate of Licensing—Regulation.

Dated at Bethesda, Maryland, this 19th day of December 1974.

For the Atomic Energy Commission.

ROBERT A. CLARK,
Chief, Gas Cooled Reactors Branch, Directorate of Licensing.

[FR Doc.74-30088 Filed 12-23-74;8:45 am]

[Docket Nos. 50-445 & 50-446]

TEXAS UTILITIES GENERATING CO., ET AL. (COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2)

Assignment of Members of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority in 10 CFR 2.787 (a), the Chairman of the Atomic Safety and Licensing Appeal Panel has assigned the following panel members to serve as the Atomic Safety and Licensing Appeal Board for these proceedings:

Alan S. Rosenthal, Chairman
Michael C. Farrar, Member
Dr. Lawrence R. Quarles, Member

Dated: December 17, 1974.

MARGARET E. DU FLO,
Secretary to the Appeal Board.

[FR Doc.74-29898 Filed 12-23-74;8:45 am]

[Docket No. 50-186]

UNIVERSITY OF MISSOURI—COLUMBIA

Notice of Proposed Issuance of Amendment to Facility Operating License

The Atomic Energy Commission (the Commission) is considering the issuance of an amendment to Facility Operating License No. R-103 issued to the University of Missouri (the licensee) for operation of the University of Missouri Research Reactor (UMRR) located in Columbia, Missouri.

The proposed amendment would revise provisions in the Technical Specifications to increase the maximum allowable average fuel burnup from 99 megawatt days (MWD) for the UAl intermetallic fuel to 150 megawatt days (MWD) per element. It would also increase the allowable time between inspections of the fuel elements.

The notice provides that within 30 days after publication of notice in the FEDERAL REGISTER, any member of the public whose interest may be affected by the proceeding may file a request for a public hearing in the form of a petition for leave to intervene with respect to whether the amendment to the facility operating license should be issued.

Petitions for leave to intervene must be filed under oath or affirmation and in accordance with the provisions of § 2.714 of 10 CFR Part 2 of the Commission's regulations. Petitions for leave to intervene must set forth the interest of the petitioner in the proceeding how that interest may be affected by the results of the proceeding, and the petitioner's contentions with respect to the proposed licensing action. Such petitions must be filed in accordance with the provisions of the FEDERAL REGISTER Notice and § 2.714, and must be filed with the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Docketing and Service Section by January 23, 1975. A copy of the petition and/or request for hearing should be sent to the Chief Hearing Counsel, Office of the General Counsel, Regulation, U.S. Atomic Energy Commission, Washington, D.C. 20545.

A petition for leave to intervene must be accompanied by a supporting affidavit which identifies the specific aspect or aspects of the proceeding as to which intervention is desired and specifies with particularity the facts on which the petitioner relies as to both his interest and his contentions with regard to each aspect on which intervention is requested. Petitions stating contentions relating only to matters outside the Commission's jurisdiction will be denied.

All petitions will be acted upon by the Commission or the licensing board designated by the Chairman of the Atomic Safety and Licensing Board Panel. Timely petitions will be considered to determine whether a hearing should be noticed or another appropriate order issued regarding the disposition of the petitions.

In the event that a hearing is held and a person is permitted to intervene, he becomes a party to the proceeding and has a right to participate fully in the conduct of the hearing. For example, he may present evidence and examine and cross-examine witnesses.

For further details with respect to this action, see the application for amendment dated October 21, 1974, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. As they become available, the Commission's related Safety Evaluation, and the proposed license amendment and attachment will also be available at the above location. A copy of the Safety Evaluation and the proposed amendment and attachment, when available may be obtained upon request addressed to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Deputy Director for Reactor Projects, Directorate of Licensing—Regulation.

Dated at Bethesda, Maryland, this 13th day of December, 1974.

For the Atomic Energy Commission.

GEORGE LEAR,
Chief, Operating Reactors Branch No. 3, Directorate of Licensing.

[FR Doc.74-29792 Filed 12-23-74;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket No. 27283; Order 74-12-71]

AIRLIFT INTERNATIONAL, INC.

Surcharge Per Shipment of Restricted Articles, Order of Suspension and Investigation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 19th day of December, 1974.

By tariff revision[1] bearing the issued date of November 20, and marked to become effective December 20, 1974, Airlift International, Inc. (Airlift) proposes to establish a surcharge of $5.00 per shipment of articles subject to the Restricted Articles Tariff, C.A.B. No. 82.

Airlift asserts, in support of its proposal and in answer to a compaint, inter alia, that the tariff rule requiring that restricted articles be tendered outside of containers under container charges has resulted in Airlift's absorbing additional costs; that these costs, which are adequately justified, amount to $5.29 in additional direct labor costs per shipment plus certain non-labor costs; that the proposal would generate $35,400 in additional revenue over the next twelve months; and that Airlift does not favor embargoes, but it must recover its extra costs of handling restricted articles.

The Council for Safe Transportation of Hazardous Articles (COSTHA) filed a complaint requesting rejection, or alternatively, suspension and investigation. In support of its request for rejection, COSTHA alleges, inter alia, that the proposal is a penalty charge for compliance with the tariff restriction on acceptance of containerized restricted articles, and that tariff non-acceptance is a matter outside the authority of the Board to endorse. In support of its request for suspension and investigation, COSTHA alleges, among other things, that the proposal is based on purported costs incurred by the carrier in voluntary action in contravention of the carrier's common carrier obligation; that the direct labor cost comparison submitted by Airlift is inadequate to support the charges assessed, since it is a summary without indication as to methodology or identification of acts performed in consuming the man-minutes counted; and that the surcharge will divert traffic to other modes and will be tantamount to an embargo of restricted articles.

With respect to COSTHA's request for rejection, we believe the imposition of a surcharge to be an economic matter under the purview of the Board. Airlift has essentially complied with the Board's Economic Regulations on filing tariffs (14 CFR Part 221), and, consequently, we find no basis for rejection.

Upon consideration of all relevant matters, however, the Board finds that Airlift's proposal may be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and should be investigated. The Board further concludes that the proposal should be suspended pending investigation.

In support of its assertion that restricted articles require additional services peculiar to such articles, Airlift submits the results of a man-minute study designed to quantify the costs of such services and presents a purportedly partial list of non-labor costs, not quantified. The man-minute study indicates that a restricted article shipment requires an average of 50 man-minutes at a cost of $5.29, including benefits.

We believe that the foregoing submission has significant defects. There is no indication of the size of the sample upon which the man-minute data are based; without such indication, it is impossible

[1] Revision to Airline Tariff Publishers, Inc., Agent, C.A.B. No. 96.

to evaluate the accuracy of the figures. Moreover, we believe that terminal handling costs for restricted article shipments may vary by the number of pieces per shipment, as well as by the number of shipments. For example, Airlift claims that over half of the man-minutes, 26.5 out of a total of 50, are required for an item that includes "inspection of packaging, marking, and labeling; confirmation of quantity limitations," as well as certain other items. It is apparent that the requirements indicated above vary with the number of pieces per shipment. Consequently, Airlift's submission raises a serious question as to whether a surcharge applied on a per-shipment basis, regardless of the number of pieces per shipment, is unreasonable or unjustly discriminatory.

Our suspension action herein is consistent with those actions taken with respect to proposals establishing a $3.00 surcharge per shipment in Orders 74–1–100 for Braniff Airways, Inc. (Braniff) and 73–12–116 for United Air Lines, Inc. (United). Investigation of these surcharges was consolidated into the Domestic Freight Rate Investigation, Docket 22859.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a), 403, 404, and 1002 thereof,

It is ordered, That: 1. An investigation is instituted to determine whether the charge and provisions in Rule No. 51(C) on 26th and 27th Revised Pages 18–B of Airline Tariff Publishers, Inc., Agent, Tariff C.A.B. No. 96, and rules, regulations, or practices affecting such charge and provisions, are or will be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful, to determine and prescribe the lawful charge and provisions, and rules, regulations, or practices affecting such charge and provisions;

2. Pending hearing and decision by the Board, the charge and provisions in Rule 51(C) on 26th and 27th Revised Pages 18–B of Airline Tariff Publishers, Inc., Agent, Tariff C.A.B. No. 96, are suspended and their use deferred to and including March 19, 1975, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board;

3. The proceeding herein designated Docket 27283, be assigned before an Administrative Law Judge of the Board at a time and place hereafter to be designated;

4. Except to the extent granted herein, the complaint of the Council for Safe Transportation of Hazardous Articles in Docket 27218 is dismissed; and

5. Copies of this order shall be filed with the tariff and served upon Airlift International, Inc., and the Council for Safe Transportation of Hazardous Articles, which are hereby made parties to Docket 27283.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.74–29985 Filed 12–23–74;8:45 am]

[Docket Nos. 27061 and 27062]

EASTERN AIR LINES, INC.

Suspension/Deletion of Service at Mayaguez, Puerto Rico; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on January 30, 1975, at 10:00 a.m. (local time), in Room 1031 North Universal Building, 1875 Connecticut Avenue, NW, Washington, D.C., before Chief Administrative Law Judge Robert L. Park.

In order to facilitate the conduct of the conference, parties are instructed to submit one copy to each party and four copies to the Judge of (1) proposed statements of issues; (2) proposed stipulations; (3) requests for information; (4) statement of positions of parties; and (5) proposed procedural dates. The Bureau of Operating Rights will circulate its material on or before January 17, 1975, and the other parties on or before January 24, 1975. The submissions of the other parties shall be limited to points on which they differ with the Bureau of Operating Rights, and shall follow the numbering and lettering used by the Bureau to facilitate cross-referencing.

Dated at Washington, D.C., December 18, 1974.

[SEAL] ROBERT L. PARK,
Chief Administrative Law Judge.

[FR Doc.74–29981 Filed 12–23–74;8:45 am]

[Docket No. 25280; Agreement C.A.B. 24815; Order 74–12–75]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding Minimum Charges for Cargo Rates

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 19th day of December, 1974.

An agreement has been filed with the Board, pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations, between various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of the Traffic Conferences of the International Air Transport Association (IATA). The agreement, adopted by mail vote for expedited January 1, 1975 effectiveness at the 38th Meeting of TC1 Specific Commodity Rates Board, has been assigned the above-designated C.A.B. agreement number.

The agreement would amend IATA Resolution 501 relating to minimum charges for cargo within TC1 by increasing by $2 the existing charges which range from $10 to $27. IATA alleges that the increase is required because cargo rates within TC1 have been increased three times in recent months while the minimum charges have remained status quo.

We will approve the agreement as the proposed new minimum charges appear consistent with similar charges for the distances involved and which are currently in effect in various world areas, including charges which the Board has permitted to become effective within the United States.

The Board, acting pursuant to sections 102, 204(a), 412 and 1002 of the Act, does not find that Resolution 100 (Mail 966) 501, incorporated in Agreement C.A.B. 24815, is adverse to the public interest or in violation of the Act.

Accordingly, it is ordered, That: 1. Agreement C.A.B. 24815 be and hereby is approved;

2. The carriers are hereby authorized to file tariffs implementing the approved agreement on not less than one day's notice for effectiveness not earlier than January 1, 1975. The short-notice authority granted in this paragraph expires on January 31, 1975; and

3. Tariffs implementing the agreement shall be marked to expire not later than September 30, 1975.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.74–29983 Filed 12–23–74;8:45 am]

[Docket No. 25280; Agreements C.A.B. 24819, 24835; Order 74–12–72]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding North Atlantic Cargo Rates

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 19th day of December, 1974.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations, between various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of the Joint Traffic Conferences of the International Air Transport Association (IATA). The agreement, requested at a North Atlantic Cargo Policy Meeting held November 4–6, 1974 at Geneva and adopted by mail vote, has been designated Agreement C.A.B. 24819.

The agreement would extend the existing North Atlantic (except Africa) cargo rates structure, due to expire December 31, 1974, by one month to January 31, 1975. The IATA carriers consider this action necessary so they may have additional time to consider a proposal under development which would amend the entire North Atlantic rates structure as of February 1, 1975. In that

light we will approve the instant agreement. At this time, we will also approve a mail vote agreement establishing bulk unitization charges for rate classifications three and five from Jersey to New York at levels representing a differential seven cents higher than existing rates between New York and London.

The Board, acting pursuant to sections 102, 204(a) and 412 of the Act, does not find resolutions JT12(Mail 856)002 and JT12(Mail 854)534a, incorporated in Agreements C.A.B. 24819 and 24835 respectively, to be adverse to the public interest or in violation of the Act provided that approval is subject, where applicable, to conditions previously imposed by the Board.

Accordingly, it is ordered, That: 1. Agreements C.A.B. 24819 and 24835 be and hereby are approved subject, where applicable, to conditions previously imposed by the Board;

2. The carriers and affected indirect air carriers are hereby authorized to file tariffs implementing or reflecting the provisions of Agreement C.A.B. 24819 on not less than one day's notice for effectiveness not earlier than January 1, 1975. The authority granted in this paragraph expires on January 31, 1975; and

3. Tariffs implementing the agreements shall be marked to expire on their respective expiry dates.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.74-29984 Filed 12-23-74;8:45 am]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

COTTON TEXTILES

Products Produced or Manufactured in the Republic of China

DECEMBER 18, 1974.

On January 4, 1974, there was published in the FEDERAL REGISTER (39 FR 1102), a letter dated December 27, 1973 from the Chairman, Committee for the Implementation of Textile Agreements, to the Commissioner of Customs, establishing levels of restraint applicable to certain specified categories of cotton textiles and cotton textile products produced or manufactured in the Republic of China and exported to the United States during the twelve-month period beginning January 1, 1974. As set forth in that letter, the levels of restraint are subject to adjustment pursuant to paragraph 6 of the Bilateral Cotton Textile Agreement of December 30, 1971, as amended, between the Governments of the United States and the Republic of China, which provides that within the aggregate and applicable group limits, limits on certain categories may be exceeded by not more than five (5) percent.

Accordingly, at the request of the Government of the Republic of China and pursuant to the provision of the bilateral agreement referred to above, there is published below a letter of December 18, 1974, from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs amending the levels of restraint applicable to cotton textile products in selected categories for the twelve-month period which began on January 1, 1974.

ALAN POLANSKY,
Acting Chairman, Committee for the Implementation of Textile Agreements, and Acting Deputy Assistant Secretary for Resources and Trade Assistance.

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229

DEAR MR. COMMISSIONER: On December 27, 1973, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry during the twelve-month period beginning January 1, 1974 of cotton textiles and cotton textile products in certain specified categories, produced or manufactured in the Republic of China, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1] Certain of these levels were previously amended by directive of September 5, 1974.

Pursuant to paragraph 6 of the Bilateral Cotton Textile Agreement of December 30, 1971, as amended, between the Governments of the United States and the Republic of China, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, you are directed further to amend, effective on December 28, 1974, the levels of restraint established in the aforesaid directive of December 27, 1973 for cotton textile products in the following categories for the twelve-month period which began on January 1, 1974:

Category		*Amended 12-month level of restraint*
5/6	square yards	3,141,891
9/10	do	35,699,010
18/19	do	4,001,198
22/23	do	3,858,266
24/25	do	3,762,725
26/27	do	7,823,535
43 and part of 62 (only T.S.U.S.A. Nos. 382.0002, 382.0605, and 382.0610)	dozen	118,572
46/47	square yards	12,447,398
48	dozen	22,992
49	do	35,372
50	do	253,052
51	do	406,542
54	do	43,559
60	do	39,203
62 (All T.S.U.S.A. Nos. except those combined with category 43)	pounds	48,729
63	do	364,275
64	do	350,331

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton Textile Agreement of December 30, 1971, as amended, between the Governments of the United States and the Republic of China which provide, in part, that within the aggregate limit, the limits for Groups I and II may be exceeded by not more than five (5) and ten (10) percent, respectively; for limited carryover of shortfalls in certain categories to the next agreement year; and for administrative arrangements.

[2] These levels have not been adjusted to reflect any entries made on or after January 1, 1974.

The actions taken with respect to the Government of the Republic of China and with respect to imports of cotton textiles and cotton textile products from the Republic of China have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ALAN POLANSKY,
Acting Chairman, Committee for the Implementation of Textile Agreements, and Acting Deputy Assistant Secretary for Resources and Trade Assistance.

[FR Doc.74-29989 Filed 12-23-74;8:45 am]

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

PROCUREMENT LIST 1975

Proposed Additions

Notice is hereby given pursuant to section 2(a)(2) of Public Law 92-28; 85 Stat. 79, of the proposed addition of the following commodities and service to Procurement List 1975, November 12, 1974 (39 FR 39964).

COMMODITIES

Ballpoint pen, stick type, RAD 19019
Ballpoint pen, stick type, RAD 19022

SERVICE

INDUSTRIAL CLASS 7349

Janitorial/Custodial Service, Non-Commissioned Officer's Club, Building 512, Homestead Air Force Base, Florida.

Comments and views regarding these proposed additions may be filed with the Committee not later than 30 days after the date of this FEDERAL REGISTER. Communications should be addressed to the Executive Director, Committee for Purchase from the Blind and Other Severely Handicapped, 2009 Fourteenth Street North, Suite 610, Arlington, Virginia 22201.

By the Committee.

C. W. FLETCHER,
Executive Director.

[FR Doc.74-30071 Filed 12-23-74;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 310-7]

PLUTONIUM AND THE TRANSURANIUM ELEMENTS

Public Hearing

In the September 23, 1974 issue of the FEDERAL REGISTER 39 FR 34098, the Environmental Protection Agency published a notice of intent to evaluate the environmental impact of plutonium and

the other transuranium elements and to consider whether new guidelines or standards under the authorities of this Agency are needed to assure adequate protection of the general ambient environment and of the public health from potential contamination of the environment by radionuclides of the transuranium elements. This notice requested information from interested parties relevant to the development of standards and guidelines.

In accordance with the above request, this Agency in the October 24, 1974, issue of the FEDERAL REGISTER 39 FR 37810 announced public hearings on the above subject to be held in Washington. Further hearings were to be scheduled if deemed advisable.

Response from those interested parties in the Western United States has made it advisable to continue the public hearing in that region. Accordingly, the Environmental Protection Agency will hold a continuance of the public hearing on the environmental impact of plutonium and the other transuranium elements on January 10, 1975, at 9 a.m. at the U.S. Post Office Auditorium, 1823 Stout Street, Denver, Colorado.

Persons wishing to present an oral statement at this hearing shall give written notice to the Director, Criteria and Standards Division (AW-560), Office of Radiation Programs, U.S. Environmental Protection Agency, Washington, D.C. 20460 no later than January 3, 1975, in order to be placed on the agenda.

The procedures and rules announced in the FEDERAL REGISTER notice of public hearing, 39 FR 37810 shall also apply to this hearing. A transcript of the hearing will be made and a copy of the transcript, together with copies of all documents presented at this hearing, will constitute the record of the hearing. Copies of the transcript will be available for public inspection within 30 days after conclusion of the hearings at locations to be announced.

ROGER STRELOW,
Assistant Administrator for Air and Waste Management.

DECEMBER 18, 1974.

[FR Doc.74-29877 Filed 12-23-74;8:45 am]

[OPP-32000/159 (FRL 307-8)]

RECEIPT OF APPLICATIONS FOR PESTICIDE REGISTRATION

Data To Be Considered in Support of Applications

On November 19, 1973, the Environmental Protection Agency (EPA) published in the FEDERAL REGISTER (38 FR 31862) its interim policy with respect to the administration of section 3(c) (1) (D) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This policy provides that EPA will, upon receipt of every application for registration, publish in the FEDERAL REGISTER a notice containing the information shown below. The labeling furnished by the applicant will be available for examination at the Environmental Protection Agency, Room EB-31, East Tower, 401 M Street SW., Washington, D.C. 20460.

Any person who (a) is or has been an applicant, (b) believes that data he developed and submitted to EPA on or after October 21, 1972, is being used to support an application described in this notice, (c) desires to assert a claim for compensation under Section 3(c) (1) (D) for such use of his data, and (d) wishes to preserve his right to have the Administrator determine the amount of reasonable compensation to which he is entitled for such use of the data, must notify the Administrator and the applicant named in the notice in the FEDERAL REGISTER of his claim by certified mail on or before February 24, 1975. Notification to the Administrator should be addressed to the Information Coordination Section, Technical Services Division (WH-569), Office of Pesticide Programs, 401 M Street SW., Washington, D.C. 20460. Every such claimant must include, at a minimum, the information listed in the interim policy of November 19, 1973.

Application submitted under 2(a) or 2(b) of the interim policy will be processed to completion in accordance with existing procedures. Applications submitted under 2(c) of the interim policy cannot be made final until the 60 day period has expired. If no claims are received within the 60 day period, the 2(c) application will be processed according to normal procedure. However, if claims are received within the 60 day period, the applicants against whom the claims are asserted will be advised of the alternatives available under the Act. No claims will be accepted for possible EPA adjudication which are received after February 24, 1975.

APPLICATIONS RECEIVED

EPA File Symbol 3051-TO. Agricultural Products Co., Inc., PO Box 698, Mesquite NM 88048. AGCO DIPEL 150 DUST. Active Ingredients: Bacillus thuringiensis, Berliner, Potency of 320 International Units per mg. (at least 0.5 billion viable spores per g.) 0.064 percent. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 35480-R. Mr. Bar-B-Q, Inc., 50 Lexington Ave., Bethpage NY 11714. MR. BAR-B-Q, INC. TORCH FUEL WITH CITRONELLA. Active Ingredients: Petroleum Napthan 99 percent; Citronella 1 percent. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 7048-RR. Edmar Chemical Co., 7800 Bessemer Ave., Cleveland OH 44127. BIO-MAGIC RINSE G POWDER FABRIC SOFTENER-BACTERIOSTAT. Active Ingredients: 2,4,4'-Trichloro-2'-Hydroxydiphenyl Ether 1.6 percent. Method of Support: Application proceeds under 2(c) of interim policy.

EPA Reg. No. 11696-6. Feedwaters, Inc., 340 Evelyn St., Paramus NJ 07652. BETACOL 51 COMPOSITION. Active Ingredients: Sodium Dimethyldithiocarbamate 27.6 percent; Sodium 2-Mercaptobenzothiazole 2.4 percent. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 17869-G. General Drug & Chemical Corp., PO Box 5692, Kansas City MO 64102. GENERAL DRUG FORMALDEHYDE. Active Ingredients: Formaldehyde 37 percent. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 802-LEI. The Chas. H. Lilly Co., 109 SE Alder, Portland OR 97214. MILLER'S ROSE AND FLORAL SPRAY. Active Ingredients: Pyrethrins 0.026 percent; Piperonyl Butoxide, Technical 0.256 percent; Rotenone 0.128 percent; Other Cube Extractives 0.238 percent; Captan (N-trichloromethylthio-4 - cyclohexene - 1,2-dicarboximide) 0.504 percent; 2,4-Dinitro-6-octyl phenyl crotonate 0.146 percent; 2,6-Dinitro-4-octyl phenyl crotonate Nitrooctyl phenols (principally dinitro) 0.010 percent; Petroleum Distillate 0.026 percent. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 802-LET. The Chas. H. Lilly Co. SPRAY OIL 90 SUPERIOR TYPE FOR DORMANT AND SUMMER USE. Active Ingredients: Petroleum Oil 99 percent. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 802-LEO. The Chas. H. Lilly Co. MILLER'S BRUSH KILLER. Active Ingredients: 2,4,5-Trichlorophenoxyacetic Acid, Butoxypropyl Ester 12.7 percent; 2,4-dichlorophenoxy acetic acid, Butoxypropyl Ester 26.9 percent. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 802-LEA. The Chas. H. Lilly Co. MILLER'S MULTI-PURPOSE HOUSE PLANT INSECT SPRAY. Active Ingredients: Tetrametrin (1-Cyclohexene-1,2-dicarboximidomethyl 2,2-dimethyl - 3 - (2-methylpropenyl) cyclopropanecarboxylate) 0.250 percent; Related Compounds 0.034 percent; (5-Benzyl-3-furyl) methyl 2,2-dimethyl-3-(2 - methylpropenyl) cyclopropanecarboxylate 0.106 percent; Related compounds 0.014 percent; Petroleum Distillate 9.000 percent. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 1021-RGGR. McLaughlin Gormley-King Co., 8810 Tenth Ave. N., Minneapolis MN 55427. PYROCIDE INTERMEDIATE 7236. Active Ingredients: Pyrethrins 3.00 percent; Piperonyl butoxide technical 6.00 percent; N-octyl bicycloheptene dicarboximide 10.08 percent; 0,0-Diethyl 0-(2 - isopropyl - 6 - methyl - 4-pyrimidinyl) phosphorothioate 33.34 percent; Petroleum distillate 42.60 percent. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 8637-RU. Mitco, Inc., 1601 Steele Ave., SW, Grand Rapids MI 49502. CC-18-L. Active Ingredients: Disodium cyanodithioimidocarbonate 3.68 percent; Potassium N-methyldithiocarbamate 5.07 percent. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 8637-RE. Mitco, Inc. CC-20-L. Active Ingredients: Disodium cyanodithioimidocarbonate 14.7 percent; Potassium N-methyldithiocarbamate 20.3 percent. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 8637-RG. Mitco, Inc. CC-19-L. Active Ingredients: Disodium cyanodithioimidocarbonate 7.35 percent; Potassium N-methyldithiocarbamate 10.15 percent. Method of Support: Application proceeds under 2(b) of interim policy.

EPA Reg. No. 4581-292. Pennwalt Corp., Agchem-Decco Div., 3 Parkway, Philadelphia PA 19102. PENNCAP M. Active Ingredients: 0.0-Dimethyl 0-p-nitrophenyl phosphorothioate 22 percent; Xylene base aromatic solvent 5.61 percent. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 34901-R. Smith Distributors, 2742 Shadowdale, Houston TX 77043. SPRAY KILL DO IT YOURSELF EXTERMINATOR PROFESSIONAL TYPE CONCENTRATE INSECTICIDE. Active Ingredients: 0,0-diethyl 0-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate 18.27 percent;

2,2-dichlorovinyl dimethyl phosphate (DDVP) 5.26 percent; Related compounds 0.39 percent; Chlordane Technical 16.62 percent; Aromatic Petroleum Derivative Solvent 45.20 percent. Method Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 9782-LE. Woodbury Chemical Co., PO Box 4319, Princeton FL 33030. ZINC PHOSPHIDE MOUSE BAIT. Active Ingredients: Zinc Phosphide 1 percent. Method of Support: Application proceeds under 2(c) of interim policy.

REPUBLISHED ITEMS

The following items represent a correction in the list of Applications Received published in the FEDERAL REGISTER of December 4, 1974 (39 FR 42022).

EPA File Symbol 279-EOOA. FMC Corp., Aricultural Chem. Div., 100 Niagara St., Middleport NY 14105. CODE 920.00 PYRENONE 5.0-0.5 & 25.0 E. C. REPELLENT INSECTICIDE. Originally published as CODE 920.0 PYRENONE 5.0100.5 & 25.0 E. C. REPELLENT INSECTICIDE.

EPA File Symbol 18433-G. Lee Chemical Corp., 2800 Taft Ave., Orlando FL 32804. LEE FOG MASTER. Active Ingredients: Petroleum Distillate 98.42 percent . . . Pyrethrins 0.250 percent. Originally published as Active Ingredients: Petroleum Distillate 98.42 percent . . . Pyrethrins 9.250 percent.

Dated: December 10, 1974.

JOHN B. RITCH, Jr.,
Director,
Registration Division.

[FR Doc.74-29249 Filed 12-23-74;8:45 am]

[FRL 312-3]

RESEARCH PRODUCTS CO., INC.

Filing of Petition Regarding Pesticide Chemical

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a (d)(1)), notice is given that a pesticide petition (PP 5F1535) has been filed by Research Products Co., Inc., Post Office Box 1057, 1835 E. North St., Salina, KS 67401, proposing establishment of a tolerance (40 CFR Part 180) for negligible residues of the fumigant phosphine from postharvest treatment with aluminum phosphide in or on the raw agricultural commodities seed and pod vegetables (except soybeans) at 0.01 part per million.

The analytical method proposed in the petition for determining residues of the fumigant is a procedure in which the amount of phosphine gas present is measured in a graduated Drager tube. The measurement is based on the volume of coloration change of white gold compound to a grayish violet colloidal gold (derived from the reaction of phosphine with the gold compound).

Dated: December 19, 1974.

JOHN B. RITCH, Jr.,
Director, Registration Division.

[FR Doc.74-30062 Filed 12-23-74;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 732]

COMMON CARRIER SERVICES INFORMATION [1]

Domestic Public Radio Services Applications Accepted for Filing [2]

DECEMBER 16, 1974.

Pursuant to §§ 1.227(b)(3) and 21.30 (b) of the Commission's rules, an application, in order to be considered with any domestic public radio services application appearing on the list below must be substantially complete and tendered for filing by whichever date is earlier: (a) The close of business 1 business day preceding the day on which the Commission takes action on the previously filed application; or (b) within 60 days after the date of the public notice listing the first prior filed application (with which subsequent applications are in conflict) as having been accepted for filing. An application which is subsequently amended by a major change will be considered to be a newly filed application. It is to be noted that the cutoff dates are set forth in the alternative—applications will be entitled to consideration with those listed below if filed by the end of the 60 day period, only if the Commission has not acted upon the application by that time pursuant to the first alternative earlier date. The mutual exclusivity rights of a new application are governed by the earliest action with respect to any one of the earlier filed conflicting applications.

The attention of any party in interest desiring to file pleadings pursuant to section 309 of the Communications Act of 1934, as amended, concerning any domestic public radio services application accepted for filing, is directed to § 21.27 of the Commission's rules for provisions governing the time for filing and other requirements relating to such pleadings.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Secretary.

APPLICATIONS ACCEPTED FOR FILING

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

20850-CD-P-(2)-75, General Telephone Company of the Northwest, Inc. (KON912). C.P. to change antenna system operating on 454.425 & 454.525 MHz. located at 426 Casino Road, Everett, Washington.

20851-CD-P-(4)-75, Page A Fone Corporation (KKG410). C.P. to relocate facilities and change antenna system operating on 454.025, 454.075, 454.175, & 454.300 MHz. to be located at Fort Worth National Bank Building, 500 Throckmorton Street, Fort Worth, Texas.

20852-CD-P-75, Airsignal of Colorado, Inc. (new). C.P. for a new one-way station to operate on 35.58 MHz. to be located at Cheyenne Mountain, Manitou Springs, Colorado.

20853-CD-P-75, Tel-Illinois, Inc. (KWH304). C.P. to add Transmitter Loc. :#2 operating on 158.70 MHz. to be located at Existing WSIE(FM) Tower, Edwardsville, Illinois.

20854-CD-P-75, Tel-Illinois, Inc. (KUO565). C.P. to add Transmitter Loc. #2 operating on 43.22 MHz. to be located at Existing WSIE(FM) tower, Edwardsville, Illinois.

20855-CD-P-(2)-75, Tel-Page, Inc. (KMB305). C.P. for additional facilities to operate on 43.58 MHz. at Loc. #3: Summit of Roundtop Peak, east of Oakland, California; and same facilities at Loc. #4: 1200 Lakeshore Avenue, Oakland, California.

20856-CD-P-75, Mobile Radio Telephone Service, Inc. (KRS691). C.P. to increase power operating on 152.24 MHz. located at Ensign Park, Salt Lake City, Utah.

20857-CD-P-(2)-75, Airsignal of Colorado, Inc. (KAA276). C.P. for additional control facilities to operate on 2175.2 MHz at Loc. #3: 1616 Glenarm Place, Denver, Colorado; and repeater facilities to operate 2112.4 MHz. at Loc. #4: 2.2 miles due south from Golden, Lookout Mountain, Colorado.

20858-CD-P-75, Mobile Radio Communication Service, Inc. (KOA264). C.P. to reinstate facilities operating on 152.06 MHz. at Loc. #2: 310 Southwest 4th Avenue, Portland, Oregon.

20859-CD-P-(4)-75, Summit Mobile Radio Company (KCI304). C.P. for additional facilities operating on 152.06 & 152.12 MHz., Base and 459.225 MHz, Repeater at Loc. #1: Streaked Mountain, 3.5 miles SW. of Buckfield, Maine; and additional facilities operating on 454.225 MHz., Control at Loc. #2: 32 Cook Street, Auburn, Maine.

20860-CD-P-75, Vegas Instant Page (KRH 634). C.P. to add facilities operating on 152.240 MHz. at Loc. #3: 1020 Industrial Road, Boulder City, Nevada.

20861-CD-P-(6)-75, Mobile Radio Telephone Service, Inc. (KOE252). C.P. to relocate facilities from KOA272 operating on 152.03 MHz. and change antenna system operating on 152.09, 152.12, 152.15, 454.125, & 454.225 at Loc. #1: Oquirrh Range, 5.2 mi. SW. of Garfield, Utah.

20862-CD-P-75, Metrotec, Inc. (KTS283). C.P. to add antenna Loc. #3 operating on 35.22 MHz. to be located 3 miles NE. of Bolivar, Ohio.

20863-CD-P-75, Vegas Instant Page (KFL 943). C.P. to add antenna Loc. #4 operating on 35.58 MHz. to be located at 1020 Industrial Road, Boulder City, Nevada.

20437-CD-P-(13)-75, (KKD292), South Central Bell Telephone Company, New Orleans, Louisiana. Amend to add base frequencies on 454.375 and 454.525 MHz. Also, add test frequencies on 459.375 and 459.525 MHz. All other particulars to remain as reported on PN #721 dated September 30, 1974.

Corrections

20834-CD-P-75, Comex, Inc. (KCC797), should read: C.P.. to add antenna location #5 to operate on 152.12 MHz. All other particulars to remain the same as reported on PN #731, dated December 9, 1974.

20827-CD-TC-(2)-75, J & S Communication Company. Correction to delete Call Sign KRS908. File number should read: 20827-CD-TC-75. All other particulars to remain the same as reported on PN #731, dated December 9, 1974.

20847-CD-P-(3)-75, Samuel W. Waldenberg (new). Correction to include FN #20850-CD-P-75. All other particulars to remain the same as reported on PN #731, dated December 9, 1974.

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[1] All applications listed below are subject to further consideration and review and may be returned and/or dismissed if not found to be in accordance with the Commission rules, regulations, and other requirements.

[2] The above alternative cutoff rules apply to those applications listed below as having been accepted in Domestic Public Land Mobile Radio, Rural Radio, Point-to-Point Microwave Radio, and Local Television Transmission Services (part 21 of the rules).

Informative

It appears that the following applications may be mutually exclusive and subject to the Commission's Rules regarding Ex Parte presentations by reasons of potential electrical interference.

Radio Phone Communications, Inc., Arlington, Virginia, (KMM684), FN: 7057–C2–P–(3)–69.

Washington Mobile Telephone Company, Arlington, Virginia (new), FN 5547–C2–P–(3)–69.

RURAL RADIO

60211–CR–P–75, Continental Telephone Company of Texas (new). C.P. for a new rural subscriber station to operate on 157.80 MHz. to be located at 44.5 miles South Southwest of Pecos, Texas.

60212–CR–P–75, Continental Telephone Company of Texas (new). C.P. for a new rural subscriber station to operate on 158.07 MHz. to be located at 24.5 East Southeast of Van Horn, Texas.

POINT-TO-POINT MICROWAVE RADIO SERVICE

1726–CF–R–75, Continental Telephone Company of Texas (KVU53), Van Horn, Texas. Renewal of Developmental License expiring December 20, 1974. Applicant requests authority to change from Developmental to Regular service on 11015V and 11015H MHz towards Lobo, Texas, on azimuth 180 degrees/42 minutes.

1727–CF–R–75, Same (WHT95), Valentine, Texas. Renewal of Developmental License expiring December 20, 1974. Applicant requests authority to change from Developmental to Regular service on 11175H and 11175V MHz towards Lobo, Texas, on azimuth 315 degrees/49 minutes.

1728–CF–R–75, Same (WHT97), Lobo, Texas. Renewal of Developmental License expiring December 20, 1974. Applicant requests authority to change from Developmental to Regular service on 11385V and 11385H MHz towards Sierra Blanca, Texas, on azimuth 304 degrees/02 minutes; 11305V and 11305H MHz towards Valentine, Texas, on azimuth 135 degrees/39 minutes.

1729–CF–R–75, Same (WHT98), Sierra Blanca, Texas. Renewal of Developmental License expiring December 20, 1974. Applicant requests authority to change from Developmental to Regular service on 10775V and 10775H MHz towards Lobo, Texas, on azimuth 123 degrees/46 minutes.

1873–CF–P–75, Northwestern Bell Telephone Company (new), 509 Main Street, Ames, Iowa. Lat. 42°01'32" N., Long. 93°36'51" W. C.P. for a new station on 6241.7V MHz towards Boone, Iowa, on azimuth 316 degrees/20 minutes.

1874–CF–P–75, Same (WAN23), 9.5 miles NNE. of Boone, Iowa. Lat. 42°09'55" N., Long. 93°47'37" W. C.P. to add 6019.3V MHz towards a new point of communication at Ames, Iowa, on azimuth 136 degrees/13 minutes.

1876–CF–P–75. The Pacific Telephone and Telegraph Company (new), 17200 South Vermont Avenue, Gardena, California. Lat. 33°52'31" N., Long. 118°17'21" W. C.P. for a new station on 11265V and 11585V MHz towards Los Angeles, California, on azimuth 316 degrees/57 minutes.

1877–CF–P–75, Same (KNM40), 8530 Airport Boulevard, Los Angeles, California. Lat. 33°57'36" N., Long. 118°23'03" W. C.P. to add 10855V and 11175V MHz towards a new point of communication at Los Angeles, California, on azimuth 136 degrees/54 minutes.

1878–CF–P–75, American Telephone and Telegraph Company (KOC26), 10 South Canal Street, Chicago, Illinois. Lat. 41°52'54" N., Long. 87°38'24" W. C.P. to add 10875V MHz towards Morton Grove, Illinois, on azimuth 324 degrees/08 minutes.

1879–CF–P–75, Same (KSO56), On Naragansett Street 525' south of Main Street, Morton Grove, Illinois. Lat. 42°01'56" N., Long. 87°47'13" W. C.P. to add 11325V MHz towards Chicago #6, Illinois, on azimuth 144 degrees/02 minutes; 11605V MHz towards Northbrook, Illinois, on azimuth 321 degrees/39 minutes.

1880–CF–P–75, American Telephone and Telegraph Company (WJL25), 2305 Sanders Road, Northbrook, Illinois. Lat. 42°06'44" N., Long. 87°52'16" W. C.P. to add 11155V MHz towards Morton Grove, Illinois, on azimuth 141 degrees/36 minutes.

1895–CF–P–75, Southwestern Bell Telephone Company (KSW26), 405 North Broadway Avenue, Oklahoma City, Oklahoma. Lat. 35°28'16 N., Long. 97°30'53" W. C.P. to add 6345.5V MHz; change polarity from Horizontal to Vertical on 11265, and change 6286.2H and 6404.8H towards Guthrie, Oklahoma, to 6286.2V and 6404.8V MHz and direct them towards Yukon, Oklahoma, on azimuth 299 degrees/45 minutes.

1896–CF–P–75, Same (KSW28), 2.2 miles SSW. of Minco, Oklahoma. Lat. 35°16'36" N., Long. 97°57'32" W. C.P. to change points of communication, power, replace transmitters, and change frequency to 6286.2V and 6404.8V MHz towards a new point of communication at Cement, Oklahoma, on azimuth 199 degrees/11 minutes.

1897–CF–P–75, Same (KSW32), 1702 Gore Street, Lawton, Oklahoma. Lat. 34°36'30" N., Long. 98°24'48" W. C.P. to change frequency, point of communication, power and replace transmitter to 6034.2H MHz towards a new point of communication at Letitia, Oklahoma, on azimuth 99 degrees/35 minutes.

1898–CF–P–75, Same (WKR86), 4.3 miles NNE. of Yukon, Oklahoma. Lat. 35°33'54" N., Long. 97°42'56" W. C.P. to add 6034.2V MHz and 6152.8V MHz towards Minco, Oklahoma, on azimuth 214 degrees/39 minutes; change 10735V and 10815V MHz to 6152.8H and 6034.2H MHz, add 6093.5H MHz towards Oklahoma City, Oklahoma, on azimuth 119 degrees/38 minutes.

1899–CF–P–75, Same (new), 2.4 miles ESE. of Cement, Oklahoma. Lat. 34°55'36" N., Long. 98°06'24" W. C.P. for a new station on 6034.2V MHz towards Letitia, Oklahoma, on azimuth 192 degrees/59 minutes; 6034.2H and 6152.8H MHz towards Minco, Oklahoma, on azimuth 19 degrees/06 minutes.

1900–CF–75, Same (new), 0.5 mile ESE. of Letitia, Oklahoma. Lat. 34°34'44" N., Long. 98°12'13" W. C.P. for a new station on 6286.2V MHz towards Lawton, Oklahoma, on azimuth 279 degrees/42 minutes; 6286.2H MHz towards Cement, Oklahoma, on azimuth 12 degrees/56 minutes.

1901–CF–ML–75, The Pacific Telephone and Telegraph Company (WJM30), 3.6 miles NNE. of Farmington, California. Lat. 37°58'27" N., Long. 120°58'08" W. Mod. of License to add facilities 4198H and 6404.8H MHz towards Patterson, California, on azimuth 200 degrees/25 minutes; 4198V and 6404.8V MHz towards Lodi, California, on azimuth 301 degrees/32 minutes; formerly licensed to American Telephone and Telegraph Company (WDE78).

1902–CF–ML–75, Same (WJM31), 4.6 miles WSW. of Patterson, California. Lat-37°26'48" N., Long. 121°12'54" W. Mod. of License to add facilities 4190V and 6152.8H MHz towards Pacheco Pass, California, on azimuth 177 degrees/04 minutes; 4190H and 6152.8V MHz towards Farmington, California, on azimuth 20 degrees/16 minutes; formerly licensed to American Telephone and Telegraph Company (WDE79).

1903–CF–ML–75, The Pacific Telephone and Telegraph Company (WJM32), 8.8 miles NE of Bell Station, Pacheco Pass, California. Lat. 37°07'29" N., Long. 121°11'-40" W. Mod. of License to add facilities 4198V and 6404.8V MHz towards Patterson, California, on azimuth 357 degrees/05 minutes; formerly licensed to American Telephone and Telegraph Company (WDE77).

1932–CF–P–75, American Telephone and Telegraph Company (KLS27), 5 miles NE. of Floresville, Texas. Lat. 29°11'21" N., Long. 98°06'20" W. C.P. to add 3870V MHz towards San Antonio, Texas, on azimuth 305 degrees/40 minutes; change transmission path towards Seguin, Texas, to 39.3 kilometers on azimuth 33 degrees/45 minutes.

1939–CF–P–75, The Mountain States Telephone and Telegraph Company (KPS98), Little Mountain, 8.3 miles WSW. of Plain City, Utah. Lat. 41°15'25" N., Long. 112°-14'13" W. C.P. to replace transmitters and change power on 10755H and 11075V MHz towards Promontory, Utah, on azimuth 339 degrees/04 minutes from Western Electric, TJ to Farinon, SS1000–01.

1946–CF–P–75, American Telephone and Telegraph Company (KJM70), 130 West Nassau Street, Lake City, Florida. Lat. 30°-11'17" N., Long. 82°38'18" W. C.P. to add 3790V MHz towards Ellisville, Florida, on azimuth 163 degrees/45 minutes; 4110V MHz towards Benton, Florida, on azimuth 354 degrees/50 minutes.

1947–CF–P–75, Same (KJM88), 4.2 miles Southeast of Nickelsville, Georgia. Lat. 32°39'15" N., Long. 83°01'48" W. C.P. to add 4110V MHz towards Garretta, Georgia, on azimuth 156 degrees/49 minutes.

1948–CF–P–75, Same (KJM89), 8.2 miles ESE. of Rentz, Georgia. Lat. 32°19'55" N., Long. 82°52'03" W. C.P. to add 4150H MHz towards McRae, Georgia, on azimuth 174 degrees/12 minutes; 4150V MHz towards Nickelsville, Georgia, on azimuth 336 degrees/54 minutes.

1949–CF–P–75, Same (KJM90), 4.2 miles ESE. of McRae, Georgia. Lat. 32°01'53" N., Long. 82°49'54" W. C.P. to add 4110H MHz towards Pridgen, Georgia, on azimuth 195 degrees/10 minutes; 4110H MHz towards Garetta, Georgia, on azimuth 354 degrees/13 minutes.

1950–CF–P–75, Same (KJM91), 1.2 mile NNW. of Pridgen, Georgia. Lat. 31°42'38" N., Long. 82°56'00" W. C.P. to add 4150H MHz towards Pearson, Georgia, on azimuth 173 degrees/09 minutes; 4150H MHz towards McRae, Georgia, on azimuth 15 degrees/06 minutes.

1951–CF–P–75, Same (KJM92), 3.3 miles East of Mora, Georgia. Lat. 31°24'19" N., Long. 82°53'26" W. C.P. to add 4110H MHz towards Pridgen, Georgia, on azimuth 353 degrees/10 minutes; change distance to 34.8 kilometers and add 4110H MHz towards Homerville, Georgia, on azimuth 168 degrees/47 minutes.

1952–CF–P–75, Same (KJM93), 5.9 miles NW. of Homerville, Georgia. Lat. 31°05'52" N., Long. 82°49'11" W. C.P. to add 4150H MHz towards Fargo, Georgia, on azimuth 151 degrees/39 minutes: Change distance to 34.8 milometers and add 4150H MHz towards Pearson, Georgia, on azimuth 348 degrees/49 minutes.

1792–CF–P–75, The Western Union Telegraph Company (new), 2555 Briar Crest Drive, Los Angeles, California. Lat. 34°-07'08" N., Long. 118°23'29" W. C.P. for a new station on frequencies 3710V, 3870V, and 4110V MHz toward Sierra Peak, California, on azimuths 113°23'.

1793–CF–P–75, Same (new), Gulf & Western Building, 1829 Broadway, New York, New York. Lat. 40°46'08" N., Long. 73°58'-55" W. C.P. for a new station on frequencies 3730V MHz toward Warwick, New York, on azimuths 327°16' and 4050V MHz toward New York, New York, on azimuths 327°16'.

1794–CF–P–75, Same (KEL61), 2.8 miles South of Warwick, New York. Lat. 41°12′30″ N., Long. 74°21′23″ W. C.P. to add frequencies 3770V MHz, 3850V, 4170V MHz toward New York, New York, on azimuths 147°02′ and frequency 11585V MHz toward Vernon, New Jersey, on azimuth 253°47′.

1795–CF–P–75, Same (KNJ72), 5 Miles WSW. of Corona, California. Lat. 33°51′01″ N., Long. 117°39′10″ W. C.P. to add frequencies 3750– MHz and 3990V MHz toward Los Angeles #2, California, on azimuth 293° 47′ and frequencies 3910V MHz, 4150V MHz toward Perris, California, on azimuths 99°56′.

1796–CF–P–75, Same (WQQ40), 1.7 miles SW. of Vernon, New Jersey. Lat. 41°10′38″ N., Long. 74°29′51″ W. C.P. to add frequencies 10815H MHz and 1093V MHz toward Warwick, New York, on azimuths 73°41′ and 10975V MHz toward Glenwood, New Jersey, on azimuths 04°27′.

1797–CF–P–75, Same (WQQ41), 1.1 Miles NW. of Vernon, New Jersey. Lat. 41°12′44″ N., Long. 74°29′38″ W. C.P. to add frequencies 11545V MHz and 11665H MHz toward Vernon, New Jersey, on azimuths 184°27′.

1789–CF–P–75, Same (WQR30), 3.8 miles SW. of Perris, California. Lat. 33°45′30″ N., Long. 117°18′55″ W. C.P. to add frequency 11625V MHz toward Perris, California, on azimuths 03°49′.

1799–CF–P–75, Same (WQR31), 2.3 miles West of Perris, California. Lat. 33°48′00″ N., Long. 117°18′43″ W. C.P. to add frequencies 10895H MHz and 11135H MHz toward Steele Valley, California, on azimuth 183°49′ and 4030V MHz on azimuth 280° 07′

1930–CF–MP–75, Southern Pacific Communications Company (WAH684), 0.15 mile West of State Road #4, 0.2 Mile South of Caroline. Lat. 41°03′05″ N., Long. 82°53′ 50″ W. M.P. to change antenna location resulting in change in coordinates as stated above; change in azimuth on frequency 61231V toward Greenwich, Ohio, to 94°10′ and toward Maple Grove, Ohio, to 301°59′.

1366–CF–P–75, West Texas Microwave Company (KLR75), Estes Ranch, 3.8 Miles North of Abilene, Texas. Lat. 32°20′32″ N., Long. 99°45′58″ W. C.P. to add point of communication on frequencies 5930.4V MHz, 5989.7V MHz, and 6167.6V MHz toward Table Mountain, Texas, on azimuth 180°03′.

1367–CF–P–75, Southwest Texas Transmission Company (WPF93), Table Mtn., 21.0 Miles NE. of Ballinger, Texas. Lat. 32°00′-28″ N., Long. 99°46′00″ W. C.P. to add point of communication on frequencies 6241.7H MHz, 6301.0H MHz, and 6360.3H MHz toward Miles, Texas, on azimuth 220° 15′.

1368–CF–P–74, Same (WSM42), Miles, Texas. Lat. 31°35′19″ N., Long. 100°10′51″ W. C.P. to add frequencies 5989.7H MHz, 6108.3H MHz, and 6167.6H MHz toward Ballinger, Texas, on azimuth 57°28′ and 5989.7H MHz, 6108.3H MHz, and 6167.6H MHz toward San Angelo, Texas, on azimuth 239°31′. (A waiver of 21.701(i) is requested by West Texas and Southwest Texas.)

1706–CF–MP–75, Midwestern Relay Company (WIV43), Foshay Tower, S. 9th St., Minneapolis, Minnesota. Lat. 44°58′28″ N., Long. 93°16′17″ W. C.P. (1) to increase transmitter power for frequency 11625H MHz on corrected azimuth 42°53′ toward Arden Hills (WIV45), Minnesota; (2) to increase transmitter power for frequencies 11265V MHz and 11505V MHz on corrected azimuth 276°04′ toward Golden Valley (Studios of WTCN), Minnesota; and (3) to increase transmitter power for frequencies 11345H MHz and 11505H MHz and add by power split frequency 11265H MHz on corrected azimuth 199°35′ toward Edina (Studios of KMSP), Minnesota.

1707–CF–MP–75, Same (WIV45), 1296 W. County Rd. F, Arden Hills, Minnesota. Lat. 45°03′47″ N., Long. 93°09′18″ W. C.P. (1) to add by power split frequency 10775V MHz on corrected azimuth 201°34′ toward Saint Paul (Studios of KSTP), Minnesota; (2) to change polarization and point of communication for frequency 11175H MHz and to increase power on frequencies 10775H MHz, 10935H MHz, and 11095H MHz on corrected azimuth 223°03′ toward Foshay Tower (WIV43), Minnesota.

1709–CF–MP–75, American Television & Communications Corp. (WPF92), 2.5 Miles SSW. of Delray Beach, Florida. Lat. 26°25′53″ N., Long. 80°05′38″ W. Mod. of C.P. (1123–C1–P–73) to relocate station to foregoing coordinates.

1708–CF–MP–75. Same (WJL80), 2.0 Miles West of Mico, Florida. Lat. 27°53′25″ N., Long. 80°32′12″ W. Mod. of C.P. (4250–C1–MP–74) to correct coordinates to foregoing.

1710–CF–P–75, Eastern Microwave, Inc. (KCK71), Beech Hill, 7.0 Miles E. of Marlboro, New Hampshire. Lat. 42°54′41″ N., Long. 72°04′11″ W. C.P. to add 11262.0H MHz toward Manchester, New Hampshire (new), on azimuth 78°22′.

1712–CF–P–75, Eastern Microwave, Inc. (new), Wood Hill, 2.2 Miles SW. of Lawrence, Massachusetts. Lat. 42°39′17″ N., Long. 71°13′05″ W. C.P. to add (a) frequency 11225.0H MHz toward Lawrence, Massachusetts, on azimuth 84°51′(b) frequency 11225.0H MHz toward new point of communications Woburn, Massachusetts, on azimuth 172°3′.

1713–CF–P–74, Same (KCK71), Beech Hill, 7.0 miles E. of Marlboro, New Hampshire. Lat. 42°54′41″ N., Long. 72°04′11″ W. C.P. to add 6330.7V MHz toward Florida Mt. (N. Adams), Massachusetts, on azimuth 252°34′. A waiver of section 21.701(i) is requested).

1721–CF–P–74, Michigan Bell Telephone Company (WAS494), Dow Center, 2030 Abbott Rd 1, Midland, Michigan. Lat. 43°36′58″ N., Long. 84°12′01″ W. C.P. to add 6412.2H MHz toward Saginaw, Michigan, on azimuth, 134°16′.

1720–CF–P–74, Same (KQM41), 309 S. Washington Street, Saginaw, Michigan. Lat. 43°25′51″ N., Long. 83°56′24″ W. C.P. to add 4110H MHz toward Pine Run, Michigan, on azimuth 143°37′; and 6100.9V MHz toward Midland, Michigan, on azimuth 314°28′.

1717–CF–P–75, Same (KQF43), 1.5 Miles East of Pine Run, Michigan. Lat. 43°10′20″ N., Long. 83°40′48″ W. C.P. to add 4150V MHz toward Flint, Michigan, on azimuth 183°20′, and 4150H MHz toward Saginaw, Michigan, on azimuth 323°48′.

1718–CF–P–75, Same (KQG59), 502 Beach St., Flint, Michigan. Lat. 43°00′53″ N., Long. 83°41′33″ W. C.P. to add 4110V MHz toward Pine Run, Michigan, on azimuth 03°19′ and 4110V MHz toward Atlas, Michigan, on azimuth 115°22′.

1757–CF–P–75, Eastern Microwave, Inc. (new), Equinox, Mtn., 2.3 Miles W. of Manchester, Vermont. Lat. 43°09′56″ N., Long. 73°07′14″ W. C.P. to add 6093.5H MHz toward Bennington, Vermont, on azimuth 195°21′.

1953–CF–P–75, American Telephone and Telegraph Company (KJM94), 10.3 miles East of Thelma, Georgia. Lat. 30°49′39″ N., Long. 82°39′03″ W. C.P. to add 4110V MHz towards Benton, Florida, on azimuth 183 degrees/31 minutes; 4110H MHz towards Homerville, Georgia, on azimuth 331 degrees/44 minutes.

1954–CF–P–75, Same (KJM95), 3 miles North of Benton, Florida. Lat. 30°31′05″ N., Long. 82°40′22″W. C.P. to add 4150V MHz towards Lake City, Florida, on azimuth 174 degrees/49 minutes; 4150V MHz towards Fargo, Georgia, on azimuth 03 degrees/30 minutes.

1955–CF–P–75, Same (WQN65), 4.7 miles SE. of Ellisville, Florida. Lat. 29°56′53″ N., Long 82°33′29″ W. C.P. to add 3830V MHz towards Lake City, Florida, on azimuth 343 degrees/48 minutes.

1956–CF–P–75, The Mountain States Telephone and Telegraph Company (KBC96), Baxter Pass, 22.5 miles North Northwest of Mack, Colorado. Lat. 39°35′11″ N., Long. 108°57′00″ W. C.P. to add 2118.4H MHz towards a new point of communication at Raven Ridge, Colorado, on azimuth 0 degrees/00 minutes; 2112.0V MHz towards Grand Jct., Colorado, on azimuth 149 degrees/30 minutes.

1957–CF–P–75, Same (KVU54), 800 Main Street, Grand Junction, Colorado. Lat. 39°04′03″ N., Long. 108°33′30″ W. C.P. to add 2162.0V MHz towards Baxter Pass, Colorado, on azimuth 329 degrees/44 minutes.

1958–CF–P–75, Same (new), Raven Ridge, 8 miles West Northwest of Rangely, Colorado. Lat. 40°07′40″ N., Long. 108°57′00″ W. C.P. for a new station on 2178.0V MHz towards a new point of communication at Rangely, Colorado, on azimuth 109 degrees/29 minutes. 2168.4H MHz towards Baxter Pass, Colorado, on azimuth 180 degrees/00 minutes.

1959–CF–P–75, Same (new), 112 North White Avenue, Rangely, Colorado. Lat. 40°05′17″ N., Long. 108°48′15″ W. C.P. for a new station on 2128.0V MHz towards Raven Ridge, Colorado, on azimuth 289 degrees/35 minutes.

Correction

1513–CF–ML–75, American Telephone and Telegraph Company (KSP73). Correct station location to read: 1.2 miles SE. of Hardinsburg, Indiana. (Rest same as reported on Public Notice dated November 25, 1974.)

[FR Doc.74–29812 Filed 12–23–74;8:45 am]

[Report No. 730]

COMMON CARRIER SERVICES INFORMATION [1]

Domestic Public Radio Services Applications Accepted for Filing [2]

DECEMBER 2, 1974.

Pursuant to §§ 1.227(b)(3) and 21.30 (b) of the Commission's rules, an application, in order to be considered with any domestic public radio services application appearing on the attached list below must be substantially complete and tendered for filing by whichever date is earlier: (a) The close of business 1 business day preceding the day on which the Commission takes action on the previously filed application; or (b) within 60

[1] All applications listed below are subject to further consideration and review and may be returned and/or dismissed if not found to be in accordance with the Commission's rules, regulations, and other requirements.

[2] The above alternative cutoff rules apply to those applications listed below as having been accepted in Domestic Public Land Mobile Radio, Rural Radio, Point-to-Point Microwave Radio, and Local Television Transmission Services (part 21 of the rules).

days after the date of the public notice listing the first prior filed application (with which subsequent applications are in conflict) as having been accepted for filing. An application which is subsequently amended by a major change will be considered to be a newly filed application. It is to be noted that the cutoff dates are set forth in the alternative—applications will be entitled to consideration with those listed below if filed by the end of the 60-day period, only if the Commission has not acted upon the application by that time pursuant to the first alternative earlier date. The mutual exclusivity rights of a new application are governed by the earliest action with respect to any one of the earlier filed conflicting applications.

The attention of any party in interest desiring to file pleadings pursuant to section 309 of the Communications Act of 1934, as amended, concerning any domestic public radio services application accepted for filing, is directed to § 21.27 of the Commission's rules for provisions governing the time for filing and other requirements relating to such pleadings.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

APPLICATIONS ACCEPTED FOR FILING:

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE:

20795–CD–P–75, John R. Willcox, dba Willcox Communications (KJU805). C.P. to reinstate expired license operating on 152.12 MHz located at U.S. Highway #41, Lake City, Florida.

20796–CD–MP–75, Industrial Communications, Inc., dba Port Arthur Mobile Phone (KRS642). C.P. to relocate facilities operating on 152.21 MHz to be located at Church House Rd., 6 miles S. of Vidor, Texas.

20797–CD–P–75, Services Unlimited, Inc. (KRH656). C.P. to add standby facilities to operate on 152.24 MHz at Loc. #1: Wachovia Building, Winston-Salem, North Carolina.

20798–CD–P–75, Northeast Louisiana Telephone Company, Inc. (new). C.P. for a new 2-way station to operate on 152.81 MHz to be located at Lot 123, near corner of Third Avenue and Fifth Street, Collinston, Louisiana.

20799–CD–P/L–75, Wilkes Telephone and Electric Company (KIM912). C.P. and License to reinstate expired facilities operating on 152.57 MHz located 400 feet N. of 215 E. Robert Toombs Avenue, Washington, Georgia.

20800–CD–P–75, Amelia Telephone Corporation (new). C.P. for a new 2-way station to operate on 152.66 MHz to be located at intersection of Routes 661 & 630, 2.5 miles NE of Amelia, Virginia.

20802–CD–P–75, Dodge County Telephone Company (new). C.P. for a new 2-way station to operate on 152.51 MHz to be located 1.8 mile SW of Reeseville, Wisconsin.

20803–CD–MP–(4)–75, Hawaiian Telephone Company (KUA216). Mod. Permit to replace transmitter operating on 152.75 & 152.78 MHz at Loc. #1: 2.9 miles NE of Honolulu, Mt. Tantalus, Hawaii; and change antenna system operating on 152.75 & 152.78 MHz at Loc. #7: .8 mile S. of Hawaii Kai P.O., Koko Head, Hawaii.

20804–CD–P–(2)–75, Salinas Valley Radio Telephone Company (KMA837). C.P. for additional facilities to operate on 454.025 & 454.175 MHz at Loc. #1: Mt. Toro, 10.3 miles SSE of Salinas, California.

20805–CD–MP–75, Salinas Valley Radio Telephone Company (KMA837). Mod. Permit to change antenna system and relocate facilities operating on 2161 MHz to be located at 590 Valenzuela Road, Monterey, California.

20806–CD–P–75, Summit Mobile Radio Company (KCI304). C.P. to relocate facilities operating on 454.075 MHz at Loc. #2: 32 Cook Street, Auburn, Maine, control.

Corrections:

20035–C2–P–74, Cinatti Radio Telephone Systems, Inc. Should have been listed as an additional channel and location to KQK710. All other particulars are to remain as reported on the Commission's PN #723 dated October 15, 1973.

20505–C2–P–(3)–74, Radio Dispatch Company, Lakewood, New Jersey. Should have been listed as additional channels to KEC943. All other particulars are to remain as reported on PN #674 dated November 12, 1973.

20585–CD–P–(2)–75, Houston Mobilfone, Inc. (KKA343). Correct entry on PN #725, dated October 29, 1974 to read: Change antenna system and relocate facilities operating on 454.250 & 454.300 MHz located at 6222 Skyline Drive, Houston, Texas.

RURAL RADIO SERVICE:

60195–CR–P–75, Continental Telephone Company of Texas (new). C.P. for a new rural subscriber-fixed station to operate on 157.80 & 158.04 MHz located 20.5 miles SSE of Pecos, Texas.

60196–CR–P–75, Continental Telephone Company of Texas (new). C.P. for a new rural subscriber-fixed station to operate on 157.80 & 158.04 MHz located 12.5 miles ESE of Pecos, Texas.

60197–CR–P–75, Continental Telephone Company of Texas (new). C.P. for a new rural subscriber-fixed station to operate on 157.80 & 158.04 MHz located 11 miles WNW of Pecos, Texas.

60198–CR–P–75, Continental Telephone Company of Texas (new). C.P. for a new rural subscriber-fixed station to operate on 157.80 & 158.04 MHz located 38 miles NW of Pecos, Texas.

POINT-TO-POINT MICROWAVE RADIO SERVICE

1531–CF–P–75, American Telephone and Telegraph Company (KYZ91), 4.9 miles NW of Roanoke, Texas. Lat. 33°01'43" N., Long. 97°18'05" W. C.P. to change coordinates as indicated above; add 3770H MHz and change distance in kilometers and azimuth toward Ft. Worth, Texas on azimuth 184°08'; change distance in kilometers and azimuth toward Grapevine, Texas to 115°-08'; change distance in kilometers and azimuth toward Kennedale, Texas to 167°02'; change distance in kilometers and azimuth toward Adams, Texas to 71°46'.

1532–CF–MP–75, Same (WDD90), 3 miles ESE of Hawley, Pennsylvania. Lat. 41°27'51" N., Long. 75°07'48" W. Mod. C.P. to change polarization from Vertical to Horizontal on 11265, 11345, 11425, 11505 and 11585 MHz toward Rowland, Pennsylvania on azimuth 74°08'.

1533–CF–P–75, The Mountain States Telephone and Telegraph Company (new), Crystal Dam, 13.6 miles East of Montrose, Colorado. Lat. 38°31'17" N., Long. 107°38'-43" W. C.P. for a new station on 2178.0V MHz toward Fitzpatrick, Mesa, Colorado via passive reflector.

1534–CF–P–75, Same (KAN29), 25 miles East of Montrose, Colorado. Lat. 38°23'50" N., Long. 107°25'48" W. C.P. to add 2128.0V MHz toward a new pt. of communication at Crystal Dam, Colorado via passive reflector.

1535–CF–P–75, General Telephone Company of Kentucky (new), Treadway Avenue, Owingsville, Kentucky. Lat. 38°08'28" N., Long. 83°45'58" W. C.P. for a new station on 2176.8H MHz toward Reynoldsville, Kentucky via passive reflector.

1536–CF–P–75, Same (KYC60), Reynoldsville, 4.3 miles NW of the Owingsville, Kentucky intersection of U.S. route 60 and Kentucky 36. Lat. 38°11'28" N., Long. 83°48'59" W. C.P. to add 2126.8H MHz toward Owingsville, Kentucky on azimuth 141°32'.

1538–CF–P/L–75, General Telephone Company of Michigan (new), within the operating territory served by the Grantee. C.P. and License for a new developmental station on 3700–4200; 5925–6425; 10700–11700 toward an Associated Temporary Fixed Station.

1553–CF–P–75, Multi-Point Communications Corporation (new), 1058 W. Washington Boulevard, Chicago, Illinois. Lat. 41°52'59" N., Long. 87°39'14" W. C.P. for a new station on freq. 11265.0V MHz toward John Hancock Building, Chicago, Illinois on azimuth 56°12'.

1554–CF–P–75, The Pacific Telephone and Telegraph Company (KMQ41), Wolf Creek, 6 miles SW of Grass Valley, California. Lat. 39°08'17" N., Long. 121°06'01" W. C.P. to add 6197.2H MHz toward Cisco Butte, California on azimuth 67°57'.

1555–CF–P–75, Same (KMZ79), Cisco Butte, near Cisco, California. Lat. 38°18'22" N., Long. 120°33'45" W. C.P. to add 5945.2V MHz toward Wolf Creek, California on azimuth 248°17'; 5945.2H MHz toward Mt. Rose, Nevada on azimuth 87°47'.

1556–CF–P–75, Bell Telephone Company of Nevada (KOP47), Peavine Peak, 7.6 miles NW of Reno, Nevada. Lat. 39°35'22" N., Long. 119°55'39" W. C.P. to change power, replace transmitter and change freq. to 11305V, 11465V and 11625V MHz toward Reno, Nevada on azimuth 124°49'; change power, replace transmitter and change freq. to 10735V, 10895V and 11055V MHz toward Mt. Rose, Nevada on azimuth 182°36'.

1557–CF–P–75, Same (KOY38), Mt. Rose, 13 miles SW of Reno, Nevada. Lat. 39°19'23" N., Long. 119°56'35" W. C.P. to change power, replace transmitter and change freq. to 11265V, 11425V and 11585V MHz toward Peavine Peak, Nevada on azimuth 02°35'; change power, replace transmitter and change freq. to 6197.2V MHz toward Cisco Butte, California on azimuth 268°11'.

1558–CF–P–75, Same, 195 East First Street, Reno, Nevada. Lat. 39°31'35" N., Long. 119°48'38" W. C.P. to change power, replace transmitter on 10775V add 10935V and 11095V MHz toward Peavine Peak, Nevada on azimuth 304°54'.

The following renewal applications for the term ending January 1, 1980 have been received.

American Telephone & Telegraph Co.

Call sign	Station name
KAA62	Princeton, IA
KAA63	Lowden, IA
KAA64	Morse, IA
KAA65	Homestead, IA
KAA70	Des Moines, IA
KAA85	Collins, IA
KAA86	Gilman, IA
KAA87	Chelsea, IA
KAA95	Earlham, IA
KAA96	Adair, IA
KAB20	Elkhorn, IA
KAB21	Minden, IA
KAB24	Denver, CO
KAB26	Prospct Vly, CO
KAB27	Ft Morgan, CO
KAB28	Atwood, CO
KAB29	Peetz, CO
KAC24	Twig, MN
KAC25	Wales, MN
KAC29	Isabella, MN
KAC30	Julesburg, CO
KAC31	Ogallala, NE
KAC32	Sutherland, NE
KAC33	Maxwell, NE
KAC34	Cozad, NE
KAC35	Elm Creek, NE
KAC36	Gibbon, NE
KAC37	St. Libory, NE
KAC38	Fullerton, NE
KAC39	Columbus, NE
KAC55	Tofte, MN
KAC56	Hovland, MN
KAC58	No Bend, NE
KAC59	Arlington, NE
KAC60	Omaha, NE
KAC61	Buckhorn Mt, CO
KAC62	Broomfield, CO
KAC63	Kansas City, MO
KAC64	Hudson, CO
KAC66	Dalton, KS
KAC67	Wichita Jct, KS
KAC68	Eldorado, KS
KAC69	Matfld Grn, KS
KAC70	Halls Sumit, KS
KAC71	Worden, KS
KAC72	Lenape, KS
KAC73	Kansas City, MO
KAE39	Castana, IA
KAH84	St. Louis, MO
KAH85	Witoka, MN
KAH86	Chester, MN
KAH87	Red Wing, MN
KAH88	Newport, MN
KAH89	Minneapolis, MN
KAH91	Elkhorn, MO
KAH92	Dover, MO
KAH93	Slater, MO
KAI71	Moville Jct., IA
KAI78	Praire Home, MO
KAI79	Holt Summit, MO
KAI80	Hermann, MO
KAI81	Gray Summit, MO
KAI83	Fairview, KS
KAI85	Oak Grove, MO
KAI87	Hoyt, KS
KAJ60	Barnett, MO
KAJ66	Blk Forest, CO
KAJ67	Louisburg, KS
KAJ69	Nevada, MO
KAJ70	Goldn Cy Jc, MO
KAJ74	Dexter, MN
KAJ76	Windsor, MO
KAJ77	Cole Camp, MO
KAK43	Hume, MO
KAK46	Cedar Rpds, IA
KAK47	Vinton, IA
KAK48	Wyoming, MN
KAK49	Rollag, MN
KAK73	Luce, MN
KAK74	Sebeka, MN
KAK75	Motley, MN
KAK76	Little Fall, MN
KAK77	Gilman, MN
KAK78	Zimmermn, MN
KAK80	Brinktown, MO

American Telephone & Telegraph Co.

Call sign	Station name
KAL47	Cape Gr Jct MO
KAL48	Mondamin, IA
KAL52	Rosati, MO
KAL75	Richwoods, MO
KAL78	Duluth, MN
KAL79	Joplin, MO
KAL80	Seneca, MO
KAM34	Halifax, MO
KAM39	San Luis, CO
KAM41	Adaville, IA
KAM42	Moe, SD
KAM43	Pmpkin Ctr, SD
KAM44	Liberal, KS
KAM45	Sublette, KS
KAM46	Montezuma, KS
KAM47	Dge Cty Jct, KS
KAM48	Mulnville, KS
KAM62	Cullison, KS
KAM63	Nashville, KS
KAM64	Bluff City, KS
KAM65	South Haven, KS
KAM69	Greeley R, CO
KAM70	Strasburg, CO
KAM71	Kiowa R, CO
KAM95	Colo Springs, CO
KAM97	Sioux Falls, SD
KAN21	Winslow, NE
KAN22	Portsmouth, IA
KAN23	Griswold, IA
KAN24	Red Oak, IA
KAN89	St Louis, MO
KAN90	La Veta Pas, CO
KAN92	Hanston, KS
KAN93	Larned, KS
KAN94	Hoisington, KS
KAN95	Ellsworth, KS
KAO46	Mineapolis, KS
KAO47	Aurora, KS
KAO48	Linn, KS
KAO49	Beattie, KS
KAO50	Humboldt, NE
KAO51	Watson, MO
KAO52	Corning, IA
KAO53	Afton, IA
KAO54	Leon, IA
KAO55	Mystic, IA
KAO56	Blakesburg, IA
KAO57	Fairfield, IA
KAO58	Crafrdsvill, IA
KAP26	Davenport, IA
KAQ68	Jamestown, ND
KAQ72	Raymond, IA
KAQ76	Elsberry, MO
KAQ77	Wright City, MO
KAQ78	Hillsboro, MO
KAQ86	Valley City, ND
KAQ87	Urbana, ND
KAQ89	Tappen, ND
KAQ90	Driscoll, ND
KAQ91	Bismarck Jc, ND
KAR43	Pierceville, KS
KAR44	Holcomb, KS
KAR45	Lakin, KS
KAR46	Syracuse, KS
KAR47	Hartman, CO
KAR48	Lamar, CO
KAR49	Eads, CO
KAR50	Wild Horse, CO
KAR51	Hugo, CO
KAR52	Limon, CO
KAR53	New Salem, ND
KAR54	Antelope, ND
KAR55	Dickinson, ND
KAR56	Fryburg, ND
KAR57	Sentnel Bte, ND
KAR59	Dearborn, MO
KAR60	Helena, MO
KAR61	Bedison, MO
KAR69	Braddyville, IA
KAR70	Mineola, IA
KAR75	Gardner, ND
KAR76	Buxton, ND
KAR77	Gr Forks Jc, ND
KAR78	Pisek, ND
KAR79	Olga, ND

American Telephone & Telegraph Co.

Call sign	Station name
KAR83	Paola, KS
KAR84	La Cygne, KS
KAR85	Dayton, MO
KAR86	Holden, MO
KAR87	Aullville, MO
KAS37	Lawrenceton, MO
KAS38	Alliance, MO
KAS39	Campbell, MO
KAS40	Bloomfield, MO
KAS42	Ames, IA
KAS43	Radcliffe, IA
KAS44	Hampton, IA
KAS45	Nora Spring, IA
KAS46	Glenville, MN
KAS67	Hartland, MN
KAS68	Medford ,MN
KAS69	Lonsdale, MN
KAS85	Cedarwood, CO
KAU62	Boone, CO
KAV53	Truckton, CO
KAV54	Calhan, CO
KAW74	Knoxville, MO
KAW75	Cameron, MO
KAX39	Blue Grass, IA
KAY66	Fargo, ND
KAY69	Westcreek, CO
KAY72	Atlanta, KS
KAY83	Critchell, CO
KAZ54	Manzanola, CO
KAZ59	La Junta, CO
KAZ60	Frick, CO
KAZ61	Lamar 2, CO
KBC88	Endrlin, ND
KBD32	Hollister, MO
KBD34	Goodhope, MO
KBD35	Manfield, MO
KBD36	Bendavis, MO
KBD37	Lenox, MO
KBD38	Cherryville, MO
KBD39	Shirley, MO
KBI25	Cheyenne Mt, CO
KBI26	Kutch, CO
KBI27	Beulah, CO
KBI28	Simla, CO
KBI30	Thatcher, CO
KBI31	Walsenburg, CO
KBI32	Red Wing, CO
KBI33	Monte Vista, CO
KBI34	South Fork, CO
KBI35	Wolf Crk Ps, CO
KBI36	Pagosa Spgs, CO
KBI37	Bayfield, CO
KBI38	Hesperus, CO
KBI39	Yellow Jkt, CO
KBI40	Dove Creek, CO
KBI45	Sioux City, IA
KBI46	Chester, SD
KBI47	Arlington, SD
KBI48	Watertown, SD
KBI61	Loveland, IA
KBI97	Two Buttes, CO
KBI98	Coldwater, KS
KBI99	Tyro, KS
KBT46	Dennis, KS
KBT47	Walnut, KS
KBT48	Fort Scott, KS
KBT49	Minneola, KS
KBT50	Manter, KS
KBT51	Ulysses, KS
KBT52	Woods, KS
KBT53	Plains, KS
KBT54	Walker, MO
KBT55	Deepwater, MO
KBT69	Gwinner, ND
KBT70	Britton, SD
KBT71	Bristol, SD
KBT72	Wallace, SD
KCA22	High Rock, MA
KCA23	Boston, MA
KCA43	Bear Hill, MA
KCA44	Asnebumskit, MA
KCA45	Bald Hill, CT
KCA46	Johntom Hil, CT
KCA47	Spindle Hil, CT
KCA78	Mohawk, Mtn, CT

American Telephone & Telegraph Co.

Call sign	Station name
KCA79	Booth Hill, CT
KCB79	Chester, NH
KCB80	Sanford, ME
KCB81	Portland, ME
KCB82	Brunswick, ME
KCB83	Liberty, ME
KCB99	Orwell, VT
KCC85	Kings Mtn, ME
KCC86	Franklin, ME
KCC92	Cooper Hill, ME
KCC99	Providence, RI
KCD30	Peru, MA
KCD31	Wendell, MA
KCD65	Ashburnham, MA
KCD66	Nobscot, MA
KCD67	Winsted, CT
KCD68	Durham, CT
KCD69	Hartford, CT
KCD70	New Haven, CT
KCE33	Granville, MA
KCE34	Springfield, MA
KCE38	E Charlotte, VT
KCG64	Cheltenham 2 MD
KCJ79	Killingly, CT
KCJ80	Montville, CT
KCK61	Cornish, ME
KCK62	West Paris, ME
KCK63	Black Mtn, ME
KCK64	Andover, ME
KCK76	Bangor, ME
KCK79	Manchester, NH
KCL43	Vienna, ME
KCL44	Athens, ME
KCL45	Dover Foxct, ME
KCL46	Lincoln, ME
KCL47	Wytopitlock, ME
KCL48	Topsfield, ME
KCL68	Berry Mtn, MA
KCL69	Pittsfield, MA
KCL73	Francestown, NH
KCL74	Lempster, NH
KCL75	Brownsville, VT
KCL76	Meriden, NH
KCL77	White Rv Jt, VT
KCL91	Barnard, VT
KCL92	Granitevill, VT
KCL93	Burlington, VT
KCL94	Irasville, VT
KCL98	Tilton, NH
KCL99	Water Vilge, NH
KCM82	Littleton, MA
KEA22	New York 4, NY
KEA23	Martinsvill, NJ
KEA25	Buffalo, NY
KEA34	Tyner, NY
KEA36	Cntrl Lisle, NY
KEA39	Erin, NY
KEA43	Vernal, NY
KEA45	Monterey, NY
KEA46	Hartsville, NY
KEA47	Alma, NY
KEA49	Albany, NY
KEA50	Rotterdam, NY
KEA51	Cherry Valy, NY
KEA52	Deerfield, NY
KEA53	Sullivan, NY
KEA56	Olean, NY
KEA57	Geneseo, NY
KEA62	Birch Hill, NY
KEA63	Jackie Jons, NY
KEA76	Iselin, NJ
KEA77	Cherryville, NJ
KEA78	Plattsburg, NY
KEA79	Franklinvll, NY
KEA87	Windsor, NY
KEA88	New Berlin, NY
KEB27	Green Pond 1, NJ
KEB31	Syracuse, NY
KEB32	Pinnacl Hll, NY
KEB33	Phelps, NY
KEB34	Van Buren, NY
KEB37	Temp. Fixed
KEB38	Swedesboro, NJ
KEB39	New Albany, NJ

American Telephone & Telegraph Co.

Call sign	Station name
KEB40	New Egypt, NJ
KEB46	Austerlitz, NY
KEB47	Plainview, NY
KED49	Farnham, NY
KED50	Ripley, NY
KED51	White Plain, NY
KED82	No. Hebron, NY
KED87	Stone Tavrn, NJ
KEE50	Shirley, NY
KEE51	Noyack, NY
KEE52	Montauk, NY
KEE54	Navesink, NJ
KEE55	Hempstead, NY
KEE56	Pleasntvill, NY
KEE57	Poughquag, NY
KEE58	Halihan Hll, NY
KEE59	Walden, NY
KEE60	Colesville, NJ
KEE61	Surprise, NY
KEE71	Renselrvill, NY
KEE72	Decatur, NY
KEE73	Peterboro, NY
KEE74	Amboy Centr, NY
KEE75	Phoenix, NY
KEE76	Utica, NY
KEE77	Cheningo, NY
KEE76	E. Steamburg, NY
KEE79	Bristol Crt, NY
KEE80	Warsaw, NY
KEE81	Springville, NY
KEE85	N. Syracuse, NY
KEF71	Hillsdale, NY
KEG40	Binghamton, NY
KEG42	Smartville, NY
KEG43	Barnes Crns, NY
KEG44	Edwards, NY
KEG45	Colton, NY
KEG46	Reynoldston, NY
KEG61	Kinderhook, NY
KEG62	Ellenville, NY
KEG63	Newark, NJ
KEG84	Bohemia, NY
KEL79	Rochester, NY
KEL87	New York 7, NY
KEL94	Rosendale, NY
KEL96	Deposit, NY
KEL97	Long Eddy, NY
KEL98	Monticello, NY
KEL99	Monroe, NY
KEM28	Jenkins, NJ
KEM29	Cedarbrook 1, NJ
KEM30	Mount Royal, NJ
KEM32	Atlntic Cty, NJ
KEM33	Pt Republic, NJ
KEM37	Hastings, NY
KEM38	Kéeseville, NY
KEM46	Holland, NY
KEM50	Trenton, NJ
KEM51	Camden, NJ
KEM52	Green Pond 2, NJ
KEM53	New Brunswk, NJ
KEM54	Sciota, NY
KEM64	Netcong, NJ
KEM65	Paterson W., NJ
KEM66	Rochelle Pk, NJ
KEM67	Alpine, NJ
KEM68	Clarksville, NY
KEM69	Wurtsboro, NY
KEM70	Olivebridge, NY
KEM71	Rock City, NY
KEM72	Sayreville, NJ
KEM73	Quinton, NJ
KEM74	Tully, NY
KEM75	Georgetown, NY
KEM76	Barnegat, NJ
KEM77	Manahawkin, NJ
KEZ65	Pt Reyes, CA
KGA26	Wyndmoor, PA
KGA27	Buckinghamt PA
KGA34	Thomas Hill, PA
KGA35	New Holland, PA
KGA36	Hallam, PA
KGA37	Waggoner Gp, PA
KGA38	Clarks Knob, PA
KGA39	Sideling Hl, PA

American Telephone & Telegraph Co.

Call sign	Station name
KGA40	Bald Knob, PA
KGA41	Johnstown, PA
KGA42	Salina, PA
KGA43	Troy Hill, PA
KGA95	Fairview, PA
KGB25	Catoctin Mt, MD
KGC87	Mt Wheeler, PA
KGC88	Gambrills, MD
KGD51	St John, ND
KGF61	Baltimore, MD
KGF62	Carney, MD
KGF63	North East, MD
KGF64	Philadelphia, PA
KGF98	Waterford, PA
KGG35	Topton Mtn, PA
KGG36	Big Boulder, PA
KGH24	Fairlee, MD
KGH25	Marriott Hl, MD
KGH26	Waldorf, MD
KGH27	Washington, DC
KGH33	Jennerstown, PA
KGH34	Penn Run, PA
KGH35	Cabot, PA
KGH36	Lillyville, PA
KGH37	London, PA
KGH38	Adamsville, PA
KGH41	Del Water G, PA
KGH83	Lionville, PA
KGH84	Oxford, PA
KGH85	Wayne, PA
KGH88	Gouldsboro, PA
KGH89	Eagles Mere, PA
KGH90	Elimsport, PA
KGH91	Swissdale, PA
KGH92	Unionville, PA
KGH93	Dean, PA
KGH94	Ebensburg, PA
KGH95	Derry, PA
KGH96	W Mifflin, PA
KGH97	Pittsburgh, PA
KGI20	Connellsvil, PA
KGI21	Uniontown, PA
KGI62	N Barnaby, MD
KGI63	Mehoopany, PA
KGJ22	Dillsburg, PA
KGJ24	Germantown, MD
KGJ25	Lewistown, MD
KGJ26	Blu Rdg Smt, PA
KGJ27	Frostburg, MD
KGJ30	Harrisburg, PA
KGJ32	Buckhorn, PA
KGJ33	Mtn Top, PA
KGJ68	Clear Sprin, MD
KGJ72	Berrysburg, PA
KGN34	Beltsville, MD
KGN35	Suitland, MD
KGN36	Lanark, PA
KGN37	Plumstead Vl, PA
KGN38	Southampton, PA
KGN78	Westwood, MD
KGN82	Windber, PA
KGN87	Faulkner, MD
KGN89	Mt Jewett, PA
KGN90	Munderf, PA
KGN91	Sligo, PA
KGN92	Butler, PA
KGN93	Aliquippa, PA
KGN94	Eldersville, PA
KGN95	Pr Frederic, MD
KGN99	Monrovia, MD
KGO31	Randallstow, MD
KGO32	Clarksville, MD
KGO33	Silver Spg, MD
KGO60	Trappe, MD
KGO72	Baldwin, PA
KGO73	Apollo, PA
KGO74	Centerport, PA
KGO75	Cornwall, PA
KGO76	Freysville, PA
KGO77	Hanover, PA
KGO78	Lewisberry, PA
KGO79	Cashtown, PA
KGO80	McConnellesb, PA
KGO81	Chaneysvill, PA
KGO83	Sycamore, PA

American Telephone & Telegraph Co.

Call sign	Station name
KGO84	Salisbury, PA
KGO85	Fairchance, PA
KGO86	Mt Nebo, PA
KGP38	Harrow, PA
KGP39	Denton, MD
KGP40	Finland, PA
KGP41	Landenberg, PA
KGP42	Blackiston, DE
KGP43	Glasgow, DE
KGP48	Washington, DC
KGP49	Pomonkey, MD
KGP50	Flint Hill, VA
KGP54	Hagerstown, MD
KGP61	Eden, MS
KGP62	Anguilla, MS
KGP63	Cary, MS
KGP64	Transylvana, LA
KGP65	Delhi, LA
KGP66	Mangham, LA
KGP67	Clarks, LA
KGP68	Winnfield, LA
KGP69	Montgomery, LA
KGP70	Robeline, LA
KGP71	Hornbeck, LA
KGP72	Mayflower, TX
KGP73	Rockland, TX
KGP74	Camden, TX
KGP75	Camilla, TX
KGP76	Willis, TX
KGP77	Spring, TX
KGP78	Fairbanks, TX
KGP82	Layton, PA
KGP83	Wilmington, DE
KIA57	Thach, AL
KIA59	Brickchurch, TN
KIA60	Farmington, TN
KIA61	Duplex, TN
KIA62	Pegram, TN
KIA63	Ivy Point L, TN
KIA64	Adairville, KY
KIA67	Clifty, KY
KIA68	Sacramento, KY
KIA69	Robards, KY
KIA88	Richmond, VA
KIA90	Mt. Plst, Sc VA
KIA91	Newtown, VA
KIA92	Longview, VA
KIB27	Garden City, VA
KIB37	Radford R, VA
KIB38	Mtn. Lake, VA
KIB79	Jackson, GA
KIB80	Round Oak, GA
KIB81	Gordon, GA
KID63	Atlanta, GA
KID64	Sawnee Mtn., GA
KID65	Currahee Mt., GA
KID66	Little Mtn, SC
KID67	Parris Mtn., SC
KID68	Gaffney, SC
KID69	Filbert, SC
KID70	Granitevle, NC
KID71	Youngs Mtn., NC
KID72	Thomasville, NC
KIJ90	Brown Sumit, NC
KIJ91	
KIJ92	Axton Lodge, VA
KIJ93	Smith Mtn., VA
KIJ94	Tobacco Row, VA
KIJ95	Heard Mtn., VA
KIJ96	Clark Mtn., VA
KIJ97	Haymarket, VA
KIK31	Lynchburg, VA
KIK32	Dalton, GA
KIK33	Adairsville, GA
KIK34	Marietta, GA
KIK35	Signal Mtn., TN
KIK36	Monteagle, TN
KIK37	Woodbury, TN
KIK38	Lavergne, TN
KIK39	Nashville, TN
KIK40	Graball, TN
KIK41	Scottsville, KY
KIK42	Horse Cave, KY
KIK63	Elizabethtw, KY
	Brooks, KY

American Telephone & Telegraph Co.

Call sign	Station name
KIK64	Louisville, KY
KIK65	Lovejoy, GA
KIK66	Forsyth, GA
KIK67	Macon, GA
KIK68	Kathleen, GA
KIK69	Eastman, GA
KIK70	Fitzgerald, GA
KIK71	Nicholls, GA
KIK72	Waycross, GA
KIK92	Folkston, GA
KIK93	Hilliard, FL
KIK94	Jacksonvl R, FL
KIK95	Palmetto, GA
KIK96	Omaha, AL
KIK97	Ashland, AL
KIK98	Equality, AL
KIK99	Montgomery, AL
KIL22	Lowndesboro, AL
KIL23	Pleasant Hl, AL
KIL24	Safford, AL
KIL25	Aimwell, AL
KIL26	Norfolk, VA
KIL27	Hillsboro, NC
KIL28	Westover, NC
KIL29	Chattanooga, TN
KIL30	Augusta, GA
KIL31	Hancock Lnd, GA
KIL68	Newark, IL
KIL83	Verona, IL
KIL84	Allendale, SC
KIL93	Mcalpine, NC
KIL94	Asheville, NC
KIL95	Camp CK Bld, TN
KIL96	Greencovesp, FL
KIL97	Carraway, FL
KIL98	Crescent Cy, FL
KIL99	Deleon Spgs, FL
KIM20	Longwood, FL
KIM21	Orlando, FL
KIM22	Herscher, IL
KIM23	Onarga, IL
KIM29	East Lynn, IL
KIM34	Willmsprt, IN
KIM35	Crawfdvle, IN
KIM41	Cloverdle, IN
KIM42	Freedom, IN
KIM45	Marco, IN
KIM47	Montgmery, IN
KIM49	Greens Knob, VA
KIM50	Roanoke, VA
KIM51	Schnelvle, IN
KIM52	Leopold, IN
KIM53	Pine Castle, FL
KIM54	Holopaw, FL
KIM55	Melbourne R, FL
KIM56	Fellsmere, FL
KIM57	Ft Pierce, FL
KIM58	Stuart, FL
KIM60	Payneville, KY
KIM66	Madrid, KY
KIM71	Brownsville, KY
KIM72	Game, KY
KIM78	Flippen, KY
KIM86	Gainesboro, TN
KIM90	Smithville, TN
KIM91	Spencer, TN
KIN20	Coalmont, TN
KIN23	Orme, TN
KIN28	Rosalie, AL
KIN34	Collbran, AL
KIN35	Haney, GA
KIN39	Buchanan, GA
KIN42	Jupiter, FL
KIN43	W Palm Bch, FL
KIN47	Silas, AL
KIN48	Fruitdale, AL
KIN49	Mt Vernon, AL
KIN89	Clayvillage, KY
KIN92	Oak Grove, VA
KIN93	Aylett, VA
KIN95	Memphis, TN
KIP57	Miami, FL
KIP58	Goulds, FL
KIP59	Florida Cy, FL

American Telephone & Telegraph Co.

Call sign	Station name
KIQ99	Greensboro, NC
KIR20	Paint Bank, VA
KIR21	Airpoint, VA
KIR22	Spencer, VA
KIS33	Birmingham, AL
KIS34	Warrior, AL
KIS35	Falkville, AL
KIS36	Decatur, AL
KIT26	Waleska, GA
KIT27	Yorkville, GA
KIT28	Villa Rica, GA
KIT29	Rockdale, GA
KIT30	Grayson, GA
KIT34	Petersburg, VA
KIT41	Dillwyn, VA
KIT42	Oilville, VA
KIT43	Matoaca, VA
KIT44	Dewitt, VA
KIT45	Margaretsvl, NC
KIT46	Scotland Nk, NC
KIT92	Rylnd Hts, KY
KIT93	Butler, KY
KIT94	Williamstwn, KY
KIT95	Marbury, AL
KIT96	Maplesville, AL
KIT97	Woodstock, AL
KIU25	Classified
KIV60	Sadieville, KY
KIV70	Chatsworth, GA
KIV71	Cleveland R, TN
KIV72	Pikeville, TN
KIV73	Crossville, TN
KIV74	Jamestown, TN
KIV75	Wiborg, KY
KIV76	Argyle, KY
KIV77	Junction Cy, KY
KIV78	Versailles, KY
KIV79	Oxford, KY
KIW77	Bardstown, KY
KIW81	Omps, VA
KIW82	Hamilton, VA
KIW83	Linden, VA
KIW84	Warrenton 2, VA
KIW85	Indep Hill, VA
KIY56	Springgrove, KY
KJA62	Ft Lauderdl, FL
KJB46	Quantico, VA
KJC26	Clinton, SC
KJC27	Chapin, SC
KJC28	Columbia 2, SC
KJC29	Swansea, SC
KJC30	Blackville, SC
KJC95	Morristown, TN
KJC96	Greentop, TN
KJC98	Oakland, FL
KJC99	Polk City, FL
KJE58	Raleigh, NC
KJG83	Pendleton, VA
KJG84	Post Oak, VA
KJG85	Morrisville, VA
KJG86	Nokesville, VA
KJG87	Aldie, VA
KJH33	Arlington, TN
KJH34	Brownsville, TN
KJH53	Leesburg, VA
KJH70	Pennsuco, FL
KJH79	Brentwood, TN
KJH80	Dickson, TN
KJH84	Lobelville, TN
KJH85	Lexington, TN
KJH86	Jackson, TN
KJH87	York, SC
KJH88	Carlisle, SC
KJH89	Johnston R, SC
KJH90	Clarks Hill, SC
KJH91	Powhatan, VA
KJH92	Farmville, VA
KJH93	Madisonvill, VA
KJH94	Cody, VA
KJH95	Blairs, VA
KJH96	Reidsville, NC
KJH97	Meadows, NC
KJH98	Smithtown, NC
KJH99	Charles, NC
KJJ20	Anderson Mt, NC

American Telephone & Telegraph Co.

Call sign	Station name
KJJ21	Charlotte, NC
KJJ22	Gastonia, R, NC
KJJ68	Ojus R, FL
KJJ69	Boynton, Bch, FL
KJJ70	Margate, FL
KJJ94	Chatham, NC
KJK34	Linden, FL
KJK35	Fruitlandpk, FL
KJK36	Oklawaha, FL
KJK37	Sparr, FL
KJK38	Gainesville, FL
KJK72	Glen Allen, VA
KJL40	Classified
KJL41	Leesburg 5, VA
KJL49	Classified
KJL50	Classified
KJL53	Stanardsvl, VA
KJL54	Charlottesv, VA
KJM20	Lake Hamilt, FL
KJM21	Frost Proof, FL
KJM22	Sebring, FL
KJM23	Childs, FL
KJM24	Palmdale, FL
KJM25	Moore Haven, FL
KJM26	Clwstnjct, FL
KJM27	Okeelanta, FL
KJM28	Andytown No, FL
KJM29	Andytown So, FL
KJM61	Lambert, NC
KJM62	Troy, NC
KJM63	Coleridge, NC
KJM64	Silk Hope, NC
KJM65	Duncan, NC
KJM66	Dunn, NC
KJM67	Princeton, NC
KJM68	Wilson, NC
KJM69	Rocky Mount, NC
KJM70	Lake City, FL
KJM71	Jasper, FL
KJM72	Madison, FL
KJM73	Monticello FL
KJM74	Thomasville, GA
KJM75	Climax Whig, GA
KNM76	Oak Grove, FL
KJM77	Pleasant Hl, FL
KJM78	Marianna, FL
KJM79	Chipley, FL
KJM80	Prosperity, FL
KJM81	Liberty, FL
KJM82	Wing, AL
KJM83	Dixie, AL
KJM84	Brewton, AL
KJM85	Thomson, GA
KJM86	Mitchell, GA
KJM87	Tennille, GA
KJM88	Nickelsvl, GA
KJM89	Garretta, GA
KJM90	Mcrae, GA
KJM91	Pridgen, GA
KJM92	Pearson, GA
KJM93	Homerville, GA
KJM94	Fargo, GA
KJM95	Benton, FL
KJM96	Sanderson, FL
KJM97	Baldwin, FL
KJM98	Jacksonvl 2, FL
KJM99	Dukes, FL
KJW68	Goodway, AL
KJW69	Blacksher, AL
KJW70	Citronelle, AL
KJW71	Goldhead, FL
KJW72	Middleburg, FL
KJX26	Cajah Mtn, NC
KJX27	Marion, NC
KJX28	Black Mtn, NC
KJX29	Mt Olive Ch, NC
KKA88	Luis Lopez, NM
KKC90	Austin Jct, TX
KKC91	Lone Man Mt, TX
KKC92	Bulverde, TX
KKC93	San Antonio, TX
KKC95	Glencoe, OK
KKC96	Ponca City, OK
KKC97	Hardy, OK
KKC98	Guthrie, OK

American Telephone & Telegraph Co.

Call sign	Station name
KKH65	Dallas, TX
KKH66	Adams, TX
KKH67	Gainesville, TX
KKH68	Marietta, OK
KKH69	Davis, OK
KKH70	Wayne, OK
KKH71	Norman, OK
KKH72	Oklahoma Cy, OK
KKK30	Ennis, TX
KKK31	Richland, TX
KKK32	Kirk, TX
KKK33	Cedar Spgs, TX
KKK34	Rockdale, TX
KKK35	Lexington, TX
KKK36	Bastrop, TX
KKK37	Lockhart, TX
KKK43	Coweta, OK
KKK44	Ketchum, OK
KKK45	Pryor, OK
KKK80	Little Rock, AR
KKK82	Bernalillo, NM
KKK83	La Clenega, NM
KKK84	Nambe, NM
KKK85	Ojo Calnte, NM
KKK86	Questa, NM
KKK92	Grapevine, TX
KKL88	Olive, OK
KKL89	Midlothian, TX
KKM25	Woodbury, TX
KKM26	Waco, TX
KMM27	Moody, TX
KKM28	Florence, TX
KKM29	Pflugerville, TX
KKN22	Jackson, MS
KKN23	Houston, TX
KKN28	Laplace, LA
KKN29	Sorrento, LA
KKN30	Baton Rouge, LA
KKN31	Whynot, MS
KKO20	Meridian, MS
KKO21	Newton, MS
KKO22	Forest, MS
KKO23	Goshen Spgs, MS
KKO24	Sweetwater, TX
KKO31	Shreveport, LA
KKO37	Amarilo Jct, TX
KKO38	Vega, TX
KKO39	Adrian, TX
KKP80	Wheatland, NM
KKP81	Tucumcari, NM
KKP82	Cuervo, NM
KKP83	Santa Rosa, NM
KKP84	Clines Crnr, NM
KKP85	Tijeras, NM
KKP86	Albuq Jct, NM
KKP88	Livonia, LA
KKP89	Cecelia, LA
KKP90	Lafayette, LA
KKP91	Maxie, LA
KKP92	Fenton, LA
KKP95	Quitman, MS
KKP96	Terrell, TX
KKP97	Emory, TX
KKP98	Lindale, TX
KKP99	East Mtn, TX
KTT20	Marshall, TX
KKT21	Leigh, TX
KKT22	Haughton, LA
KKT23	Athens, LA
KKT24	Vienna, LA
KKT25	Monroe R, LA
KKT26	Oak Ridge, LA
KKT27	Tendal, LA
KKT28	Vicksburg, MS
KKT29	Raymond, MS
KKT53	San Fidel, NM
KKT54	Paxton Sprg, NM
KKT55	Black Rock, NM
KKT66	Crosby, TX
KKT67	Felicia, TX
KKU46	Carlsbad, NM
KKU89	Borger, TX
KKU90	Pringle, TX
KKU91	Gruver, TX
KKU92	Hooker, OK

American Telephone & Telegraph Co.

Call sign	Station name
KKW31	Albuquerque, NM
KKW32	Los Lunas, NM
KKW33	Socorro 1, NM
KKW34	San Antonio, NM
KKX56	Monticello, NM
KKX57	Cutter, NM
KKX58	Rincon, NM
KKX60	Crazy Cat, TX
KKX61	El Paso, TX
KKX63	Kaufman, TX
KKY47	Lake Charl, LA
KKZ89	Seguin, TX
KLC40	Weimar, TX
KLC41	Shiner, TX
KLC42	Cat Springs, TX
KLC43	Katy, TX
KLD52	Star, MS
KLD53	Wesson, MS
KLD54	Auburn, MS
KLD55	Gloster, MS
KLD56	Clinton, LA
KLD98	Marmaduke, AR
KLD99	Bay, AR
KLJ72	Brandon, MS
KLK79	Biscoe, AR
KLK80	Lonoke, AR
KLN20	Redwood, MS
KLN21	Bentonia, MS
KLN22	Pickens, MS
KLN23	Tchula, MS
KLN24	Greenwood, MS
KLN25	Glendora, MS
KLN69	Clarksdale, MS
KLN70	Dundee, MS
KLN71	Marianna, AR
KLN72	Forest City, AR
KLN73	Cherry Vlly, AR
KLN81	Wayside, TX
KLN82	Silverton, TX
KLN83	Lockney, TX
KLO77	Petersburg, TX
KLO93	Hunter, AR
KLR95	Beaumont, TX
KLR96	Peveto, TX
KLR97	Edgerly, LA
KLS27	Floresville, TX
KLS28	Pleasanton,TX
KLS29	Hindes, TX
KLS30	Cotulla, TX
KLS31	Encinal, TX
KLS32	Laredo Jct, TX
KLS77	Whitewright, TX
KLS78	Achille, OK
KLS79	Bennington, OK
KLS80	Kiowa, OK
KLS81	Krebs, OK
KLS82	Kinta, OK
KLS83	Gans, OK
KLS84	Natural Dam, AR
KLS85	Durham, AR
KLS86	Berryville, AR
KLS87	Denton, TX
KLS88	Decatur, TX
KLS89	Perrin, TX
KLS90	Graford, TX
KLS91	Woodson, TX
KLS97	Albany, TX
KLS98	Stamford, TX
KLS99	McCaulley, TX
KTL20	Snyder, TX
KLT21	Vincent, TX
KLT22	Ackerly, TX
KLT23	Tarzan, TX
KLT24	Odessa, TX
KLT25	Notrees, TX
KLT26	Wink, TX
KLT27	Orla, TX
KLT28	Delaware Sp, TX
KLT29	Pine Sprngs, TX
KTL30	Salt Flat, TX
KLT31	Rim Rock Mt, TX
KLT32	Ysleta, TX
KLT57	Harrah, OK
KLT58	Prague, OK
KLT59	Mounds, OK

American Telephone & Telegraph Co.

Call sign	Station name
KLT60	Tulsa, OK
KLT92	Hueco Mtn, NM
KLT93	Orgrande, NM
KLT94	Organ, NM
KLT95	Fairacres, NM
KLT96	Deming, NM
KLT97	Gage, NM
KLT98	White Signl, NM
KLV37	Neely, MS
KLV38	Wiggins, MS
KLV39	Lumberton, MS
KLV40	Crossroads, NM
KLV41	Talisheek, LA
KLV45	Pine, LA
KLV46	Wilmer, LA
KLV47	Montpelier, LA
KLV48	Pride, LA
KLV49	Starhill, LA
KLV50	Innis, LA
KLV51	Long Bridge, LA
KLV52	Turkey Crek, LA
KLV66	Oakdale, LA
KLV67	Sugartown, LA
KLV68	Singer, LA
KLV69	Deweyville, TX
KLV70	Silsbee, TX
KLV71	Batson, TX
KLV72	Dayton, TX
KLV83	Henryetta, OK
KLV84	McAlester, OK
KLV85	Daisy, OK
KLV86	Darwin, OK
KLV87	Boswell, OK
KLV88	Petty, TX
KLV89	Commerce, TX
KLV90	Greenville, TX
KLV91	Combine, TX
KLV93	Paloduro, TX
KLV94	Hedley, TX
KLV95	Wellington, TX
KLV96	Reed, OK
KLV97	Sentinel, OK
KLV98	Mtn View, OK
KLV99	Washita, OK
KLW20	Middleberg, OK
KLW21	Noble, OK
KLW22	Nevada, TX
KMC30	Sn Francsco, CA
KMC31	E Bay Hills, CA
KMC32	Vaca Hill, CA
KMC33	Sacramento, CA
KMC34	Wolf Creek, CA
KMC63	Cisco Bte, CA
KMJ86	Los Angeles, CA
KMJ87	Padua Hills, CA
KMJ88	Strawbry, Pk, CA
KMJ89	Cline Sprgs, CA
KMJ90	Sandy, CA
KMJ91	Turquoise, CA
KML66	Mtn Pass, CA
KMQ40	Pt Arena, CA
KNB54	Cima, CA
KNE66	Kelso, CA
KNJ99	Hector, CA
KNK20	Bess, CA
KNK21	Lucerne Vly, CA
KNK22	Lytle Creek, CA
KNK23	Olinda, CA
KNK24	Arcadia, CA
KNK93	Echo Summit, CA
KNK94	Union Hill, CA
KNK95	Ben Bolt, CA
KNK96	Lodi, CA
KNK97	Clayton, CA
KNK98	Round Top, CA
KNK99	Oakland, CA
KNL24	Crna de Mar, CA
KNL25	San Clement, CA
KNL26	San Marcos, CA
KNL28	Salton, CA
KNL29	Brawley, CA
KNL30	Glamis, CA
KOB23	Barro, UT
KOB24	Cedar Mtn, UT
KOB25	Stansbry Is, UT

American Telephone & Telegraph Co.

Call sign	Station name
KOB26	SLC Jct, UT
KOB27	Pratts Pass, UT
KOB28	Wahsatch, UT
KOB29	Evanston, WY
KOB61	Church Bte, WY
KOB62	Green River, WY
KOB63	Rock Spgs, WY
KOB64	Bitter Crk, WY
KOB65	Creston, WY
KOB66	No Rawlins, WY
KOB67	Hanna, WY
KOB68	Rock River, WY
KOB69	Crow Crk Hl, WY
KOB70	Rocky Pt, NV
KOB81	Ruby, NV
KOB82	Adobe Hill, NV
KOB83	Tuscarora, NV
KOB84	Argenta, NV
KOB85	Fish Creek, NV
KOB86	Stlwtr Rnge, NV
KOB87	Wild Horse, NV
KOB88	Hot Springs, NV
KOB89	Chrchll Bte, NV
KOB90	Mt Rose, NV
KOB91	Wendover, NV
KOB95	Suffolk, NY
KOC26	Chicago 6, IL
KOC27	Matteson, IL
KOC34	Green Hill, RI
KOP55	Sanders, AZ
KOP56	Pnted Desrt, AZ
KOP57	Holbrook Jc, AZ
KOP58	Winslow, AZ
KOP59	Sunshine AZ
KOP60	Flagstaff AZ
KOP61	Williams, AZ
KOP62	Crookton, AZ
KOP63	Seligman, AZ
KOP64	Kingman, AZ
KOR47	Santa Claus, AZ
KOR48	Searchlight, NV
KOT52	Angeles Pt, WA
KOU87	Cheyenne Jc, WY
KOU88	Cheyenne, WY
KOU89	Horse Creek, WY
KOU90	Chugwater, WY
KOU91	Wendover, WY
KOU92	Douglas, WY
KOU93	Orpha, WY
KOU94	Casper Jct, WY
KOU96	Teapot, WY
KOU97	Midwest, WY
KOU98	Mayoworth, WY
KOU99	Ft McKinney, WY
KOV20	Sheridan, WY
KOV21	Wyola, MT
KOV22	Ft Custer, MT
KOV43	Billings, MT
KOV44	Billngs Jct, MT
KOV47	Columbus, MT
KOV48	Big Timber, MT
KOV49	Bozeman, MT
KOV50	Three Forks, MT
KOV51	Toston, MT
KOV52	Winston, MT
KOV54	Helena Jct, MT
KOV55	Craig, MT
KOY54	Glendive Jt, MT
KOY55	Fallon, MT
KOY56	Miles City, MT
KOY57	Hathaway, MT
KOY58	Forsyth, MT
KOY59	Big Horn, MT
KOY60	Pompeys Plr, MT
KOY61	Gold Creek, MT
KOY62	Bearmouth, MT
KOY63	Missoula Jc, MT
KOY64	Superior, MT
KOY65	Mullan, MT
KOY66	Coeur D' alene, ID
KOY67	Tekoa, WA
KOY68	Sprague Jct, WA
KPB83	Bountiful, UT
KPB84	North Ogden, UT
KPB85	Riverside, UT

American Telephone & Telegraph Co.

Call sign	Station name
KPB86	Malad City, ID
KPB87	Inkom, ID
KPB88	Pocatlo Jct, ID
KPE97	Boise, ID
KPE98	Boise Jct, ID
KPE99	Mountn Home, ID
KPF20	Indian Bu, ID
KPF21	Jerome, ID
KPF22	Burley, ID
KPF23	Rupert, ID
KPF24	Amrcn Falls, ID
KPM66	Riverton, UT
KPM67	Payson, UT
KPM68	Levan, UT
KPM69	Scipio, UT
KPM70	Meadow, UT
KPM71	Cricket Mtn, UT
KPM72	Milford, UT
KPM73	Lund, UT
KPM74	Enterprise, UT
KPM75	Santa Clara, UT
KPM76	Mormon Mesa, NV
KPM77	Arrow Canyn, NV
KPM78	Arden, NV
KPM79	Beer Bottle, NV
KPP46	Mount Blyn, WA
KPQ27	Simms, MT
KPQ28	Choteau, MT
KPQ29	Valier, MT
KPQ30	Santa Rita, MT
KPT94	Duncan, AZ
KPT95	Pima, AZ
KPT96	Klondyke, AZ
KPT97	Winkleman, AZ
KPT98	Kelvin, AZ
KPT99	Oracle, AZ
KPV20	Tucson, AZ
KPV21	Apache Jct, AZ
KPV22	Phoenix, AZ
KPW24	Delta, UT
KPW25	Clear Lake, UT
KPW26	Confusn Mtn, UT
KPW27	Sacrmnto Ps, NV
KPW28	Connors Pas, NV
KPW76	Murry Smt, NV
KPW77	Currant, NV
KPW78	Lockes, NV
KPW79	Warm Spgs, NV
KPW80	Stone Cabin, NV
KPW81	Booker, NV
KPW82	Gilbert, NV
KPW83	Table Mtn, NV
KPW84	Kinkaid, NV
KPW85	Wassuk, NV
KPW86	Topaz Lake, NV
KPW93	Cstl Dm Mtn, AZ
KPW94	Quartzsite, AZ
KPW95	Salome, AZ
KPW96	Aguila, AZ
KPW97	Morristown, AZ
KPW98	Cave Creek, AZ
KPX88	Monticello, UT
KPX89	Moab, UT
KPX90	Crscnt Junc, UT
KPX91	Green River, UT
KPX92	Cleveland, UT
KPX93	Ephraim, UT
KPX94	Leamington, UT
KPY95	Nampa, ID
KPY96	Parma, ID
KPY97	Maryhill, WA
KPY98	Goldendale, WA
KPY99	Ahtanum, WA
KPZ20	Tieton, WA
KPZ21	Amercn Rvr, WA
KPZ22	Enumclaw, WA
KPZ23	Seattle 5, WA
KPZ24	Yakima, WA
KQA26	Kalamazo Co, MI
KQA40	Gandeeville, WV
KQA41	Elizabeth, WV
KQA42	Parkersburg, WV
KQA48	Cincinnati, OH
KQA49	White Oak, OH
KQA50	Sprgboro, OH

American Telephone & Telegraph Co.

Call sign	Station name
KQA51	Dayton, OH
KQA52	Springfld, OH
KQA54	Catawba, OH
KQA66	Winona, OH
KQA67	Richfld, OH
KQA68	Shalrsvle, OH
KQA69	Cleveland, OH
KQA70	Lorain, OH
KQA71	Birminghm, OH
KQA72	Castalia, IL
KQA73	Gibsonbrg, OH
KQA74	Toled, OH
KQA75	Swanton, OH
KQA76	Wauseon, OH
KQA77	Bryan, OH
KQA80	Sulphr. Gr, OH
KQA81	Wright Ptsn, OH
KQA82	Bluffton, OH
KQA83	Detroit, MI
KQA86	Brookvle, OH
KQA87	New Hope, OH
KQA88	Ayersvle, OH
KQB39	Hopedale, OH
KQB40	Gilmore, OH
KQB41	New Castl, OH
KQB42	Alexandra, OH
KQD73	Dansville, MI
KQD75	Kingsvle, OH
KQD76	Painesvle, OH
KQD78	Jones, MI
KQD79	Kalamazoo, MI
KQD81	Cutlervle, MI
KQE45	Botkins, OH
KQE49	Bridgeprt, OH
KQE72	Hopetown, OH
KQE73	Beaver, OH
KQE74	Buckhorn, OH
KQE75	Skyhigh, WV
KQE76	Tyler, WV
KQE91	Milford, MI
KQF42	Atlas, MI
KQF48	Ida, MI
KQF49	Frecksbg, OH
KQF50	Polk, OH
KQF51	N Fairfld, OH
KQF52	Bascom, OH
KQF53	Republic, OH
KQF54	Rudolph, OH
KQF57	Gerald, OH
KQF58	West Unity, OH
KQF59	Reading, MI
KQF60	Parma, MI
KQF61	Lacey, MI
KQG22	Battle Ck, MI
KQG23	Southfield, MI
KQG36	Morgantown, WV
KQG37	Wolf Summit, WV
KQG38	Alexander, WV
KQG39	Webster Spg, WV
KQG40	Nettie, WV
KQG41	Rainelle, WV
KQG57	Sumpter, MI
KQG64	Lisbon, OH
KQG65	Perrysvle, OH
KQG66	Ragersvle, OH
KQH32	Glen, WV
KQH33	Charleston, WV
KQH34	Clintonvill, WV
KQH35	Saranac, MI
KQH36	Grand Rapds, MI
KQH50	Rose Hill, OH
KQH51	Schumm, OH
KQH52	Paulding, OH
KQH82	Owensvle, OH
KQI60	New Viena, OH
KQI76	Fletcher, OH
KQI77	Cairo, OH
KQI78	Hamler, OH
KQI79	Berkey, OH
KQL35	New Calif, OH
KQL36	Urbana, OH
KQN35	Huntington, WV
KQO32	Blue Ball, OH
KQO33	Frankfort, OH
KQO34	Shandon, OH

American Telephone & Telegraph Co.

Call sign	Station name
KQO46	Kates Mtn, WV
KQO55	Classified
KQO62	Dryden, MI
KQO63	Lamb, MI
KQO64	Malaga, OH
KQO65	Plsnt, Cty, OH
KQO66	Mcconsvle, OH
KQO67	New Lexng, OH
KQO68	Amanda, OH
KQO69	Delhi Hls, OH
KQO72	Wash Ct Hse, OH
KQO73	Wilmingtn, OH
KQO74	Columbus, OH
KRR46	Lookout, OK
KRR47	Alva, OK
KRR48	Goltry, OK
KRR49	Hunter, OK
KRR50	Sumner, OK
KRR51	Burbank, OK
KRR52	Herd, OK
KRR69	Salt Lake C, UT
KRR76	Berry, AL
KRR77	Carrollton, AL
KRR78	Crossville, AL
KRR79	Douglas, AL
KRS89	Ft Payne, AL
KRS90	Gordo, AL
KRS91	Jasper, AL
KRS92	Nectar, AL
KRS93	Dahlonega, GA
KRS94	Elberton, GA
KRS95	Emma, GA
KRS96	Fairmount, GA
KRS97	Gainesville, GA
KRS98	Jersey, GA
KRS99	Lula, GA
KRT20	Pocataligo, GA
KRT21	Shannon, GA
KRT22	Statham, GA
KRT23	Summerville, GA
KRT24	Brooksville, MS
KRT25	Canton, MS
KRT26	Cynthia, MS
KRT27	Durant, MS
KRT28	Louisville, MS
KRT29	Mashulavle, MS
KRT30	Williamsble, MS
KRT31	Bunn, NC
KRT32	Coats, NC
KRT33	Ellerbe, NC
KRT34	Pine View, NC
KRT35	Mcfarlan, NC
KRT36	Southern, Pn, NC
KRT37	Warrenton, NC
KRT38	Wendell, NC
KRT39	Cross Keys, SC
KRT40	Heath Sprin, SC
KRT41	Hickory Tav, SC
KRT42	Level Land, SC
KRT43	Pageland, SC
KRT44	Shelton, SC
KRT45	White Oak, SC
KRT46	Amelia, VA
KRT47	Boydton, VA
KRT48	Caledonia, VA
KRT49	Coatesville, VA
KRT50	Corbin, VA
KRT51	Victoria, VA
KSA36	Chicago 2, IL
KSA40	Angola, IN
KSA41	La Grange, IN
KSA42	Goshen, IN
KSA43	Mishawaka, IN
KSA44	La Porte, IN
KSA45	Valpariso, IN
KSA46	Chgo Hts, IL
KSA47	Cloverdale, IL
KSA48	Plato Ctr, IL
KSA49	Lee, IL
KSA50	Sublette, IL
KSA51	Tampico, IL
KSA71	Chicago 1, IL
KSA72	Prospect, WI
KSA74	Lk Zurich, IL
KSA77	Glenwood, IN

American Telephone & Telegraph Co.

Call sign	Station name
KSA78	Greenfld, IN
KSA79	Lemont, IL
KSA80	Lostant, IL
KSA81	Norway, IL
KSB66	Indianapols, IN
KSB67	Montclair, IN
KSB68	Lena, IN
KSB69	Terre Hte, IN
KSB70	Kansas, IL
KSB71	Mattoon, IL
KSB72	Lakewood, IL
KSB73	Vansbnsbg, IL
KSB74	Highland, IL
KSB75	Metamora, IL
KSE21	Groveland, IL
KSE22	Teheran, IL
KSE23	Berlin, IL
KSE24	Scottvle, IL
KSE25	Newbern, IL
KSE26	Alden, IL
KSE27	Palmyra, WI
KSE28	Milwaukee, WI
KSE29	Stoughton, WI
KSE30	Baraboo, WI
KSE69	Mt Tabor, WI
KSE70	Coon Valy, WI
KSE76	Slinger, WI
KSE98	Springfld, IL
KSF22	Chicago 3, IL
KSF29	Leo, IN
KSF36	Grantsbg, WI
KSF71	Danbury, WI
KSF72	Chaffey, WI
KSF77	Graysvle, IN
KSF78	Brucevle, IN
KSF79	Petersbg, IN
KSF80	Stanley, IN
KSF81	Evansville, IN
KSG63	Kouts, IN
KSG64	Grant Park, IL
KSG65	Bonfield, IL
KSG66	Winnebago, IL
KSG67	Capron, IL
KSG72	Culver, IN
KSG73	Atwood, IN
KSG74	Albion, IN
KSG75	Plsnt Lke, IN
KSH88	Madison, WI
KSH89	Madison Jct, WI
KSH90	Waterntn Jct, WI
KSH96	Joy, IL
KSH97	New Wndsr, IL
KSH98	Kewanee, IL
KSH99	Buda, IL
KSI20	Mendota, IL
KSI24	E Entrpr, IN
KSI25	Manchstr, IN
KSI26	Mt Carmel, IN
KSI27	Lynn, IN
KSI28	Hudson, WI
KSI29	Gillespie, IL
KSI30	Waterloo, IL
KSI31	Mascoutah, IL
KSI52	Sth Bend, IN
KSJ40	Commnwlth, WI
KSJ41	Crandon, WI
KSJ42	Parrish, WI
KSJ43	Rib Hill, WI
KSJ44	Stevens Pnt, WI
KSJ47	Lanesville, IN
KSM21	Portage, WI
KSM22	Coloma, WI
KSM23	Bancroft, WI
KSN54	Centrla Jct, IL
KSN65	Odell, IL
KSN66	Saybrook, IL
KSN67	Cisco, IL
KSN68	Macon, IL
KSN69	Nokomis, IL
KSN70	Hookdale, IL
KSO56	Morton Gr, IL
KSO57	Lindnhrst, IL
KSO58	Franklin, WI
KSO70	Manteno, IL
KSO71	Tinley Pk, IL

American Telephone & Telegraph Co.

Call sign	Station name
KSO75	Ft Wayne, IN
KSO80	Sheridan, IN
KSO81	Michtown, IN
KSO82	Monon, IN
KSO83	Burrows, IN
KSO84	Wheatfld, IN
KSP23	Morgantwn, IN
KSP24	New Unvle, IN
KSP25	Clear Spg, IN
KSP26	Salem, IN
KSP27	Flyd Knbs, IN
KSP31	Walsh, IL
KSP32	Oakdale, IL
KSP33	Freeburg, IL
KSP35	Centuria, WI
KSP36	Cumberlnd, WI
KSP37	Cameron, WI
KSP38	Eagleton, WI
KSP39	Eau Claire, WI
KSP40	Bellinger, WI
KSP41	Medford, WI
KSP69	Lawncebg, IN
KSP70	Versailes, IN
KSP71	Paris Crs, IN
KSP72	Henryvle, IN
KSP73	Hardinsbg, IN
KSP74	Edwrdvle, IN
KSP75	Birdseye, IN
KSP76	Stendal, IN
KSP77	Ft Branch, IN
KSP78	St Wendls, IN
KSP79	Crossvle, IL
KSP80	Mclnsboro, IL
KSP81	Valier, IL
KSP93	Racine, WI
KSQ42	Walcott, ND
KSQ43	Casslton, ND
KSQ55	Graysville, AL
KSQ56	Wiley, AL
KSQ57	Coker, AL
KSQ58	Akron, AL
KSQ59	Marion, AL
KSQ60	Orrville, AL
KSQ61	Oakhill, AL
KSQ62	Georgiana, AL
KSQ63	Rosehill, AL
KSQ64	Victoria, AL
KSQ65	Pinckard, AL
KSV22	Tumbleton, AL
KSV23	Blakley, GA
KSV24	Newton, GA
KSV25	Bridgeboro, GA
KSV26	Norman Park, GA
KSV27	Morven, GA
KSV28	Clyattville, GA
KSV29	Day, FL
KSV30	Mayo, FL
KSV31	Bell, FL
KSV32	Chiefland, FL
KSV33	Gulf Hamock, FL
KSV34	Dunnellon, FL
KSV35	Floral City, FL
KSV36	Dade City, FL
KSV51	Kiptopeke, VA
KSV52	Silver Beac, VA
KSV53	Onancock, VA
KSV54	Wallops Sta, VA
KSV55	Helena 1, MT
KSV56	East Helena, MT
KSV57	Lake Helena, MT
KSV59	Sandoval, NM
KSW25	West Andovr, MA
KTF51	Luke AFB, AZ
KTF75	Crafrdsvlle, AR
KTF88	Slaton, TX
KTF89	Post, TX
KTF90	Dermott, TX
KTF91	Pyron, TX
KTG40	Arkabutla, MS
KTG41	West Helena, AR
KTG42	Palmer, AR
KTG43	Stuttgart, AR
KTG44	Tucker, AR
KTG45	Alexander, AR

American Telephone & Telegraph Co.

Call sign	Station name
KTG58	Lyme, CT
KTG59	New London, CT
KTQ65	Bethany, CT
KTQ66	New Fairfld, CT
KTQ67	Putnam Valy, NY
KTQ68	Campbel Hal, NY
KTQ69	Hope, NJ
KTQ86	Julian Rs, CA
KTR43	Green Vly, AZ
KTR44	Carmen, AZ
KTR52	Nathan, AL
KTR53	Forkville, AL
KTR54	Hodges, AL
KTR55	Fulton, MS
KTR56	Dumas, MS
KTR57	Ashland, MS
KTR58	Galena, MS
KTR59	Como, MS
KVD79	Paron, AR
KVD80	Danville, AR
KVD81	Union Hill, AR
KVD82	Bates, AR
KVD83	Talihina, OK
KVD84	Hartshorne, OK
KVD85	Stuart, OK
KVD86	Spaulding, OK
KVD87	Asher, OK
KVD88	Happy, TX
KVD94	Archer, FL
KVI43	Youngstw, OH
KVI44	Campbell, OH
KVI50	St Paul, MN
KVI51	Lino Lakes, MN
KVI56	Winamac, IN
KVI57	Plymouth, IN
KVU33	Cheshire, CT
KVU34	Little City, CT
KVU37	Geigertown, PA
KVU38	Lynnport, PA
KVU39	Allentown, PA
KVU40	Freeland, PA
KVU41	Beaumont, PA
KVU42	Ransom, PA
KVU43	Scranton, PA
KVU49	Cedarbrook 2, NJ
KVU50	Carmel, NJ
KVU58	Moseley, VA
KVU71	Grnd Rpds, OH
KVU72	Lyons, OH
KVU73	Clinton, MI
KVU74	Plymth Jct, MI
KVU77	Timpas, CO
KYC22	Wickes, MT
KYC23	Boulder, MT
KYC24	Twin Bridge, MT
KYC25	Glen, MT
KYC26	Bannack, MT
KYC27	Leadore, ID
KYC28	Gilmore, ID
KYC29	Mud Lake, ID
KYC30	Atomic City, ID
KYC31	Springfield, ID
KYC81	Kinnelon, NJ
KYC85	Beckmann, TX
KYC86	Rio Medina, TX
KYC88	Camp Verde, TX
KYC89	Harper, TX
KYC90	Segovia, TX
KYC91	Cleo, TX
KYC92	Eden, TX
KYC93	Mereta, TX
KYC94	Bronte, TX
KYC95	Maryneal, TX
KYC99	Monticello, KY
KYJ61	Appleton, WI
KYJ62	Hortonvle, WI
KYJ63	Fisk, WI
KYJ64	Fox Lake, WI
KYJ83	Stafford, VA
KYJ84	Rhoadesvill, VA
KYJ85	Advance Mls, VA
KYJ86	Afton, VA
KYJ87	McKinley, VA
KYJ88	Warm Spring, VA
KYJ89	Anthony, WV

American Telephone & Telegraph Co.

Call sign	Station name
KYJ90	Springdale, WV
KYJ91	Flat Top, WV
KYJ92	Kopperstown, WV
KYJ93	Holden, WV
KYJ94	Missouri Br, WV
KYJ95	Paintsville, KY
KYJ96	Seitz, KY
KYJ97	Cowcreek, KY
KYJ98	Annville, KY
KYJ99	Mt. Victory, KY
KYM98	IDA, KY
KYM99	Allons, TN
KYN20	Algood, TN
KYN21	Cassville, TN
KYN22	Sentertown, TN
KYN23	Wartrace, TN
KYN24	Culleoka, TN
KYN25	Brace, TN
KYN26	Waynesboro, TN
KYN27	Olivehill, TN
KYN28	Michie, TN
KYN29	Pocahontas, TN
KYN30	Saulsbury, TN
KYN31	Slayden, MS
KYN32	Cockrum, MS
KYN67	Roscoe, NE
KYN68	Chappell, NE
KYN69	Sunol, NE
KYN70	Dalton, NE
KYN71	Angora, NE
KYN72	Berea, NE
KYN73	Whitney, NE
KYN74	Wayside, NE
KYN75	Smithwick, SD
KYN76	Fairburn, SD
KYN77	Caputa, SD
KYN78	Hereford, SD
KYN79	Newell, SD
KYN80	Castle Rock, SD
KYN81	Redig, SD
KYN82	Ludlow, SD
KYN83	Reeder, ND
KYN84	New England, ND
KYN85	Dunn Center, ND
KYN86	Killdeer, ND
KYN87	Keene, ND
KYN88	Sprng Brook, ND
KYN89	Corinth, ND
KYN90	Boone, IA
KYN93	Lyons, NE
KYO23	Fall River, MA
KYO24	Berkley, MA
KYO58	Reading, PA
KYO63	Arlington 2, VA
KYO77	Wheeling, WV
KYR98	Tallman, NY
KYS55	Mount Airy, NJ
KYS56	Monmouth Jt, NJ
KYS84	South Owego, NY
KYS85	Richford, NY
KYS86	Vestal, NY
KYS87	South Salem, NY
KYS88	Stamford, CT
KYS89	Roslyn Hbr, NY
KYS99	Forest Lake, PA
KYZ91	Roanoke, TX
KYZ92	Kennedale, TX
KZA33	Itasca, TX
KZA34	West, TX
KZA35	Riesel, TX
KZA36	Hammond, TX
KZA37	Caldwell, TX
KZA38	Independence, TX
KZA39	Pattison, TX
KZA40	Rosenberg, TX
KZA41	Arcola, TX
KZA49	Attica, NY
KZA50	Byron, NY
KZA56	Bernal Hgts, CA
KZA57	Sierra Mrna, CA
KZA58	Loma Prieta, CA
KZA59	Salinas, CA
KZA60	Carmel Vly, CA
KZA61	Jamesbrg Rs, CA
KZA78	Valley Poin, WV

American Telephone & Telegraph Co.

Call sign	Station name
KZA79	Rowelsburg, WV
KZA80	Etam R, WV
KZA81	Etam, WV
KZA83	Horn Lake, MS
KZI42	Sumerco, WV
KZI43	Charleston R, WV
KZI44	Longmont, CO
KZI45	Timnath, CO
KZI49	Newport New, VA
KZI66	Ady, TX
KZS63	Annapolis, MD
KZS64	Cheltenham, MD
KZS65	Reddish Kno, VA
KZS67	Worcester, MA
KZS72	Blackstone, MA
WAD34	Las Nutrias, NM
WAD35	La Joya, NM
WAD36	Magdalena, NM
WAD37	Datil, NM
WAD38	Quemado, NM
WAD39	Greer, AZ
WAD40	McNary, AZ
WAD41	Seneca, AZ
WAD42	Miami, AZ
WAD43	Florence, AZ
WAD44	Casa Grande, AZ
WAD45	Red Hill, NM
WAD46	S Phoenix, AZ
WAD47	Vale, OR
WAD48	Brogan, OR
WAD49	Elkhorn, OR
WAD50	John Day, OR
WAD51	Dayville, OR
WAD52	Mitchell, OR
WAD53	Antelope, OR
WAD54	Maupin, OR
WAD55	Grass Vly, OR
WAD56	Pine Grove, OR
WAD57	Mount Hood, OR
WAD58	Boring, OR
WAD59	Portland, OR
WAD61	Swain Notch, ME
WAD62	Canton, ME
WAD63	West Minot, ME
WAX97	Claysburg, PA
WAX98	Altoona, PA
WAY29	Coopers Roc, WV
WAY57	Brickeys, AR
WBO69	Laurel Mtn, WV
WBO70	Arthurdale, WV
WBP67	Wheatlnd, ND
WBP72	Columbus, NJ
WBP73	Hamilton Sq, NJ
WBP74	New Britain, PA
WCZ29	Mission, KS
WDE72	New Orlns 2, LA
WDE74	Jamesbrg Gs, CA
WDE75	Palo Escrto, CA
WDE76	Thompsn Vly, CA
WDE77	Pacheco Pas, CA
WDE78	Farmington, CA
WDE79	Patterson, CA
WDE87	Sacaton, AZ
WDE88	Chndlr Hgts, AZ
WDE89	Scholle, NM
WDE90	Mountainair, NM
WDE91	Pedernal, NM
WDE92	Carnero, NM
WDE93	Cardenas, NM
WDE94	Taiban, NM
WDE95	Nazareth, TX
WDE96	Field, NM
WDE97	Broadview, NM
WDE98	Black, TX
WGI23	Mableton, GA
WGI24	Atla 3-Smyna, GA
WGI25	Tucker, GA
WGI26	Monticello, GA
WHB36	Marion, WI
WHB38	Eland, WI
WHB40	Pueblo, CO
WHT48	Ada, MI

American Telephone & Telegraph Co.

Call sign	Station name
WHT82	Dahlonega 2, GA
WHT84	Nelson, GA
WIV54	Rutledge, GA
WIV86	Warner Spgs, CA
WIV87	Wildomar, CA
WIV88	Corona, CA
WJK78	Stephentown, NY
WJL25	Northbrook, IL
WJL30	Cambridge, MN
WJL87	Finksburg, MD
WJM51	Wilbur, IN
WJM59	Lawrence, MA
WJM60	No. Pelham, NH
WKR77	Palmer, IN
WKS20	Denver Zuni, CO
WKS21	Dnvr Champa, CO
WLJ71	Plano, IL
WPE77	Collinsvill, IL
WPE78	Middleport, NY
WPE79	Olcott, NY
WPG32	Far Rockway, NY
WPX92	Houston 3, TX
WPY26	Temp. fixed
WQN65	Ellisville, FL
WQQ56	Buford, GA
WQQ58	Tulsa Jct, OK
WQR45	Brockton, MA
WQR46	Lebanon, Ch, VA
WSL71	Lacombe, LA

[FR Doc.74-29694 Filed 12-23-74;8:45 am]

TABLE OF CANADIAN TELEVISION CHANNEL ALLOCATIONS WITHIN 250 MILES OF THE CANADA-U.S.A. BORDER

DECEMBER 6, 1974.

The attached table of Canadian Television Channel Allocations is recapitulative and contains information supplied by the Department of Communications of Canada, pursuant to Section F of the Canadian-U.S.A. Television Agreement (TIAS 2594). It reflects all the additions, changes and deletions notified to the Commission by the above date and supersedes previous lists issued by the Commission.

Further additions, changes and deletions, as coordinated between the Commission and the Canadian Department of Communications will be issued from time to time.

Copies of the list may be obtained from ABS Duplicators, Inc., 1732 Eye Street NW., Washington, D.C. 20006, Telephone (202) 298-5537.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Secretary.

CANADIAN—U.S.A. TELEVISION AGREEMENT

TABLE OF ALLOCATIONS FOR VHF AND UHF TELEVISION

(Listed by Province)

CANADA

TABLE A

OFFSET CARRIER DESIGNATORS

— Zero offset frequency (underscored)
\+ Plus 10 kHz
— Minus 10 kHz
L Limited Allocation

ALBERTA

City	VHF channel No.	UHF channel No.
Banff		51+
Blairmore		57+
Brooks		66—, 72
Burmis	3, 5— L[1]	
Calgary	2+, 4, 9+	16, 22, 38, 44, 50, 73+, 79
Cardston		19+
Claresholm		52
Coronation	10	
Drumheller	12	30
Fort MacLeod		74—
Hanna		78—
High River		56
Innisfail		71
Lacombe		15—
Lethbridge	7, 13+	23+, 58—, 64+, 80
Medicine Hat	6—, 8	49, 65+, 71+
Olds		81
Oyen	2— L[3]	
Pincher Creek		70
Pivot	4+ L[3]	
Provost		24—
Raymond		36+
Red Deer	6+, 8+	31—, 59, 65
Rocky Mountain House		37
Stettler		67
Taber		42+
Vulcan		25

L[1]—Limitation to protect CBUAT-3 Crawford Bay, B.C.
L[2]—Limitation to protect CKSA-TV Lloydminster, Sask. and CHCT-TV Calgary, Alberta.
L[3]—Limitation 18 dbk and 500 feet EHAAT.

BRITISH COLUMBIA

City	VHF channel No.	UHF channel No.
Bonnington	13+ L[1]	
Campbell River	7−	49+
Canal Flats	12 L[2]	
Cassiar	7	
Castlegar		81+
Chilliwack	3	14+, 36+
Clinton	9+ L[3]	
Courtenay	9− L[4], 13	79
Cranbrook	10	59+
Crawford Bay	5 L[5]	
Creston	3 L[6]	42
Duncan		51
Enderby		72, 78
Fernie	8+ L[7]	21+
Golden	13 L[8]	64
Grand Forks		57
Hope		65
Kamloops	4+, 6+ L[9]	50+, 74+, 80
Kelowna	2, 5− L[10]	21, 43+
Kimberley		71−
Kinnaird		63+
Kitimat		21
Ladysmith		29
Merritt		20+
Mission City		81
Mount Timothy	3, 5−	
Nanaimo		23−, 63
Natal	11 L[11]	
Nelson	3+ L[12], 9 L[13]	14, 23
Newcastle Ridge	11−	
Oliver	8	41
Penticton	10 L[14], 13	73, 79+
Port Alberni	3+ L[15]	27+, 71+
Port Hardy	8	
Powell River		15−, 43
Prince Rupert	6+, 7	14, 20
Princeton		71
Radium		77
Revelstoke		66+
Rossland		19
Salmon Arm	9− L[16]	56+
Smithers		28
Spillimacheen		69
Squamish		35+
Summerland		49
Terrace	3	19
Trail	11	36, 52+
Vancouver-New Westminster	2+, 8+	26, 32, 45, 55, 61, 72+, 83
Vernon	7−, 12 L[17]	18, 27
Victoria	6, 10+	42, 53, 74, 80+
Warfield		25+
Williams Lake		21+

L[1]—Limitation to protect CHBC–TV–1, Penticton, B.C.
L[2]—Limitation to protect CFCN–TV–1, Drumheller, Alberta.
L[3]—Limitation to protect CHBC–TV–4, Salmon Arm, B.C.
L[4]—Limitation of 8.9 kW ERP, 493 feet EHAAT specified directional pattern, to protect KCTS, Seattle, Wash.
L[5]—1 kW ERP and 100 feet EHAAT.
L[6]—Limitation to protect CJOC–TV–3, Burmis, Alberta, and 790 watts maximum ERP and 2,000 feet EHAAT.
L[7]—Limitation of 1,000 watts maximum ERP and −1,804 feet EHAAT.
L[8]—Limitation to protect CBUDT, Bonnington, B.C., and CHBC–TV–1 Penticton, B.C.
L[9]—Limitation to protect CHEK–TV, Victoria, B.C.
L[10]—To protect CFCR–TV–6, Mount Timothy, B.C., and CBUAT–3, Crawford Bay, B.C.
L[11]—Limitation to protect CBUAT, Trail, B.C.
L[12]—Limitation to protect CJLH–TV–3, Burmis, Alberta
L[13]—Limitation 1.37 kW ERP, 1,400 feet EHAAT, to protect KCFW–TV, Kalispell, Mon'.
L[14]—Limitation to protect CBUBT, Cranbrook, B.C.
L[15]—To protect CBUT–2, Chilliwack, B.C.
L[16]—Limitation to protect CBUAT–1, Nelson, B.C.
L[17]—Limitation to protect CBUBT–1, Canal Flats, B.C.

MANITOBA

City	VHF channel No.	UHF channel No.
Alonsa	11— L[1]	47, 39, 49, 55
Altona		58
Baldy Mountain		47+
Beausejour		44
Birch River	2 L[2], 4— L[3], 13+	43+
Boissevain		53—
Brandon	2— L[4], 4+, 5+	21+, 37+, 63
Carberry		61
Carman		60
Dauphin-(Baldy Mountain)	6— L[5], 8, 12— L[6]	18—, 57
Dawson Bay		19, 41+, 53+, 62+
Fisher Branch	10+ L[7]	33—, 45+
Foxwarren	9 L[8], 11	28+, 34—, 58+
Gimli		65
Interlake	8— L[9]	
Killarney		43
Lac du Bonnet	4 L[10], 5— L[11]	15+, 24—, 46, 52
Matheson Island		35, 41, 53, 62—
Melita	9+ L[12]	45
Minnedosa		59
Morden-Winkler		47—
Neepawa		29
Pembina Valley		19+, 35—, 41—, 64
Portage La Prairie		17, 38
Roblin		52+
Russel		22
St. Boniface (see Winnipeg)		
Ste. Rose du Lac	7— L[13]	
Selkirk		54
Sherridon		21, 27, 33
Steinbach		18
Swan River		14
Vassar		16, 28, 37, 53+, 62
Virden		32
West Hawk		34, 40+, 50, 56
Winnipeg-St. Bonniface	3—, 6—, 7+, 9+, 13+	20+, 26, 36, 42, 48, 71, 77+, 83

L[1]—Limitation to protect CKX–TV–1, Foxwarren, Manitoba.

L[2]—Limitation to protect CKBQ–TV, Melfort, Sask., and an allocation at Brandon, Manitoba.

L[3]—Limitation to protect CKBI–TV–3, Greenwater Lake, Sask.

L[4]—Site to be located no less than 170 miles from cochannel assignment at Grand Forks, North Dakota, with site coordinates 48°08′24″ North Latitude, 97°59′28″ West Longitude, and limited to 100 kilowatts maximum ERP and 1,000 feet EHAAT, or the equivalent, in the general direction of Grand Forks, North Dakota.

L[5]—Limitation to protect CHSS–TV, Wynyard, Sask., CBWT, Winnipeg, Manitoba, and an allocation at The Pas, Man.

L[6]—Limitation to protect an allocation at Wynyard, Sask.

L[7]—Limitation 200 kW ERP 600 feet EHAAT to protect CBWAT–5, Red Lake, Ontario.

L[8]—Limitation to protect CKX–TV–2, Melita, Manitoba, CBKRT, Regina, Saskatchewan, and an allocation at Winnipeg, Manitoba.

L[9]—Limitation to protect CKSS–TV, Dauphin, Manitoba, and CBWAT, Kenora, Ontario.

L[10]—Limitation to protect allocations at Dryden, Ontario, and Brandon, Manitoba.

L[11]—Limitation to protect CKX–TV, Brandon, Manitoba, and CBWCT, Fort Frances, Ontario.

L[12]—Limitation to protect Channel 9— at Regina, Saskatchewan, and Channel 9+ at Winnipeg, Manitoba.

L[13]—Limitation to protect CKY–TV, Winnipeg, Manitoba, and CFSS–TV, Carlyle Lake, Saskatchewan.

NEW BRUNSWICK

City	VHF channel No.	UHF channel No.
Bathurst		54+, 82
Buctouche		27
Bon Accord	6−	
Campbellton	7− L[1], 12	38, 78+
Caraquet		64
Chatham		62+
Chipman		67+
Dalhousie		60
Dorchester		18+
Edmundston	13	18, 68
Fredericton-Saint John	5− L[2], 9+	15, 45+, 61
Grand Falls	4 L[3]	20
McAdam		71−, 77−
Milltown		33
Moncton	2, 7, 11	24+ 30, 70 83
Neguac	3 L	
Newcastle		35,
Oromocto		21−, 51−
Perth		37+
Richibucto		40−
Sackville		53
St. Andrews		82+
Saint John	4+	17, 23, 39, 69 78
St. Leonard		50+
St. Quentin		42−
St. Stephens		49−
Salisbury		14
Shediac		36
Shippegan		46
Sussex		48
Tracadie		52
Upsalquitch Lake (see Campbellton)		
Woodstock	3+ L[5]	19+

L[1]—Limitation 18 dbk and 500 feet EHAAT and Toward Channel 7, CKRT–TV, Riviere du Loup, P.Q.

L[2]—Limitation to protect CJCH–TV, Halifax, Nova Scotia, CHAU–TV, Carleton (New Carlisle), Quebec, and WABI–TV, Bangor, Maine.

L[3]—Limitation to protect CHSJ–TV, Saint John, N.B., CFCM–TV, Quebec, P.Q., and a cochannel allocation at Ste. Anne des Monts, P.Q.

L[4]—Limitation to protect cochannel allocation at Woodstock, New Brunswick.

L[5]—Limitation to protect Channel 5, CJBR–TV, Rimouski, P.Q.

NORTHWEST TERRITORIES

City	VHF channel No.	UHF channel No.
Inuvik	6	
Fort McPherson	13	

NOVA SCOTIA

Amherst		47, 79
Annapolis Royal		42
Antigonish	9	23−
Bridgetown		29
Bridgewater	9− L[1]	54
Caledonia	6+	
Canning	10	
Digby		52−
Halifax	3, 5, 13 L[2]	22, 32, 38+, 44+, 63, 74
Kentville		76
Liverpool	12	62
Luneburg		41
Middleton		60+
New Glasgow	4− L[3]	15−, 43, 65
Parrsboro		20+
Pictou		25
Sheet Harbour	11+ L[4]	35+
Shelburne	8	75
Springhill		26
Tatamagouche		49, 77
Truro		55, 71
Windsor		16+
Wolfville		50
Yarmouth	11−, 3− L[5]	40

L[1]—Limitation 17.78 dbk and 500 feet EHAAT.
L[2]—Limitation to protect cochannel stations CBCT, Charlottetown, P.E.I. and WMED–TV, Calais, Maine.
L[3]—Limitation to protect CHSJ–TV, Saint John, N.B., and CJCB–TV, Sydney, N.S.
L[4]—Limitation to protect Channel 11, CBAFT, Moncton, N.B.
L[5]—Limitation to protect CBHT, Halifax, N.S.

ONTARIO

City	VHF channel No.	UHF channel No.
Arnprior		20
Atikokan	7−	39
Ayr		28[e]
Bancroft	2+ L[1]	
Barrie	3+	55+, 74, 83+
Belleville	6−	15−
Blind River		40+
Brantford		63
Brockville		27+, 75
Chapleau	7+ L[2]	33+
Chatham		48[b], 59[c], 81−
Cobourg-Port Hope		67+, 80
Collingwood		78+
Cornwall	8+ L[3]	36+, 77, 83
Deep River		25−
Dryden	4+, 9− L[4]	20
Elliot Lake	3, 7− L[5], 12+	18−
Espanola		77
Exeter		52−[d]
Forest		21+[e]
Fort Frances	5	25
Fort William-Pt. Arthur	2, 4−	20−, 26, 32, 38, 44
Gananoque		19+
Geraldton	13+	
Goderich		39
Guelph		20
Haliburton	5 L[6]	
Hamilton	11+ L[7]	41−, 47−, 53
Hanover		36[f]
Hearst	4−, 7	
Huntsville	8+ L[8], 11− L[9]	
Kapuskasing	2+ L[10], 10, 12	77−, 83
Kenora	8	21, 32+
Kingston	11−	32−, 38−, 73
Kirkland Lake	2, 11	
Kitchener-Waterloo	13+	76, 82

City	VHF channel No.	UHF channel No.
Leamington		22−, 72
London	10	18[e], 40
Manitouwadge	8+	
Marathon	11−	
Midland		58+
Niagara Falls		81
North Bay	10−, 4− L[11]	48+, 70, 76+
Oakville		73+
Oil Springs		29+[h], 42−[i]
Orillia		24−, 46−
Oshawa		16+, 22+, 77−
Ottawa-Hull	4+, 6 L[12], 9+, 13+ L[13]	14, 24, 30+, 40, 46, 52−, 58
Owen Sound		26, 32
Paris	6+	
Parry Sound		62−
Pembroke	5+	41, 47, 53−
Peterborough	12+	33+, 44, 54
Picton		56
Port Arthur (see Ft. William)		
Prescott		48
Red Lake	10−	
Renfrew		69
St. Catherines		69+
St. Thomas		65
Sarnia		68, 79−
Sault Ste. Marie	2−, 5 L[14]	20, 26−, 48, 54, 83+
Smiths Falls		71, 81+
Stratford		30−
Sturgeon Falls	7	82+
Sudbury	5, 9+ L[15], 13−	19, 25+, 41+, 47+, 69−
Thessalon		70+
Timmins	6, 9−, 3−, L[16], 7− L[17]	62, 68+, 78
Toronto	5 L[18], 9	19−, 25, 45, 51, 57, 79
Trenton		35
Wawa	9+ L[19]	
Welland		75+
White River	12− L[20]	
Wiarton	2−	
Windsor	9−	22−[j], 26−[k], 32+[l], 78[m]
Wingham	8−	60
Woodstock		71

L[1]—Limitation to protect cochannel assignment at Wiarton, Ontario. Limitation to protect WGR–TV, Buffalo, N.Y. Bancroft assignment to be located no less than 170 miles from WGR–TV.

L[2]—Limitation to protect CBFOT–2, Hearst, Ontario.

L[3]—The transmitter site of a television broadcast station authorized to operate pursuant to this allocation shall not be located less than 170 miles from the transmitter site of cochannel station WMTW–TV, Poland Springs, Maine. The effective radiated power from the Cornwall station over a sector encompassing the northern and southern limits of Lake Champlain will not exceed the equivalent of 50 kilowatts from an antenna 500 feet above average terrain.

L[4]—Limitation 20 dbk and 1,000 feet EHAAT.

L[5]—Limitation to protect CFCL–TV–6, Chapleau, Ontario; CBFST, Sturgeon Falls, Ontario and a cochannel limited allocation at Timmins, Ontario.

L[6]—Limitation of 310 watts maximum radiated power and 100 watts equivalent non-directional power, with specified directional antenna pattern at 149 feet EHAAT. Also, limitation to protect WPTZ–TV, North Pole, N.Y., and WHEN–TV, Syracuse, New York.

L[7]—Limitation to protect Channel 11−, CKWS–TV, Kingston, Ontario.

L[8]—Limitation to protect Channel 8−, CKNX–TV, Wingham, Ontario, and Channel 8, WROC–TV, Rochester, New York.

L[9]—Limitation to protect CHCH–TV, Hamilton, Ontario, CKWS–TV, Kingston, Ontario, and CBOFT–1, Chapeau, Quebec.

L[10]—Limitation to protect CFCL–TV–2, Kirkland Lake, Ontario.

L[11]—Limitation to protect CKRN–TV, Rouyn, Quebec and CBOT, Ottawa, Ontario.

L[12]—Limitation to protect CBMT, Montreal, Quebec and Channel 6, Belleville, Ontario.

L[13]—Limitation to protect Channel 13−, CKTM–TV, Three Rivers, P.Q.

L[14]—Limitation to protect CKSO–TV, Sudbury, Ontario.

L[15]—Limitation to protect CBFOT, Timmins, Ontario.

L[16]—Limitation to protect CKSO–TV–1, Elliot Lake, Ontario.

L[17]—Limitation to protect CFCL–TV–6, Chapleau, CBFOT–2, Hearst and CBFST, Sturgeon Falls.
L[18]—Limitation to protect WHEN–TV, Syracuse, New York.
L[19]—Limitation to protect CBFOT, Timmins, Ontario.
L[20]—Limitation to protect CBFOT–1, Kapuskasing, Ontario.
Approximate site locations:
[a] 43°15′35″ North Latitude, 80°26′39″ West Longitude.
[b] 42°25′40″ North Latitude, 82°07′14″ West Longitude.
[c] 42°27′00″ North Latitude, 82°05′00″ West Longitude.
[d] 43°21′00″ North Latitude, 81°28′48″ West Longitude.
[e] 43°06′00″ North Latitude, 82°00′00″ West Longitude.
[f] 44°09′00″ North Latitude, 81°02′00″ West Longitude.
[g] 42°57′15″ North Latitude, 81°15′58″ West Longitude.
[h] 42°43′21″ North Latitude, 82°10′00″ West Longitude.
[i] 42°08′00″ North Latitude, 82°45′42″ West Longitude.
[j] 42°17′42″ North Latitude, 83°05′00″ West Longitude.
[k] 42°09′09″ North Latitude, 82°57′05″ West Longitude.
[l] 42°08′28″ North Latitude, 82°51′40″ West Longitude.

PRINCE EDWARD ISLAND

City	VHF channel No.	UHF channel No.
Charlottetown, P.E.I.	8+, 13+	31, 37, 81
Summerside		57, 75+

QUEBEC

City	VHF channel No.	UHF channel No.
Alma		48+, 74+, 80−
Asbestos		53
Baie Comeau-Hauterive	5+ L[1]	28, 57+, 79+
Baie St. Paul		75
Buckingham		80+
Cabano		63+
Chapeau	11+ L[2]	
Chicoutimi-Arvida	2+ L[3], 6	36, 58, 70, 76−, 82−
Clermont-La Malbaie		23+
Coaticook		75−
Cowansville		79
Dolbeau		78−
Donnacona		24+
Dorchester County	6 L[4]	
Drummondville		19−, 41+
Estcourt		43−
Forestville		77
Fox River	7 L[5]	
Granby		73−
Hull (see Ottawa, Ontario)		
Jolliette		65+
Jonquiere-Kenogami	12+	14, 20−, 30−, 42
Lac Etchemin		55+
Lac Megantic		42+
La Tuque	3− L[6]	34, 66
Magog		81
Manicouagan	10	
Marieville	4 L[7]	
Matane	6+ L[8], 9−	24, 49+
Mont Climont	11 L[9]	
Mont Joli		22
Mont Laurier	3+	68
Mont Tremblant	11 L[10]	
Montreal-Verdun	2, 6+, 10, 12	17, 23, 29, 35+, 60, 76, 82
Montmagny		49, 67
New Carlisle	5	17+
Normandin	10−	
Perce	2+ L[1]	15+
Plessisville		61+
Port Alfred-Bagotville	9+	52+, 64+
Quebec-Levis	2+ L[3], 4, 5−, 11+.	15−, 21, 27, 45, 51+, 77+, 83+

City	VHF channel No.	UHF channel No.
Rapides des Jouchims	8− L[3]	
Rimouski	3−	16, 51
Riviere du Loup	7+	35−, 71
Roberval	8+	26+
Ste. Adele		56+
Ste. Anne des Monts	4−	
Ste. Anne de la Pocatiere		65
St. Felicien		72+
St. Georges de Beauce		72
St. Hyacinthe		47+
St. Jean-Iberville		70−
St. Jerome		78
Ste. Marguerite-Marie	2− L[4]	
Sept Iles	3+ L[5], 11−, 13+.	14, 20+
Shawinigan Falls		16+, 43, 63
Sherbrooke	7, 9 L[6]	14−, 30, 50
Sorel-Tracy		25
Thetford Mines		32, 74, 80
Timiskaming	12− L[7]	
Trois Pistoles		73.
Trois Rivieres	13−	37, 69+
Valleyfield		26, 66+
Verdun (see Montreal)		
Victoriaville		71+

L[1]—Limitation to protect CHAU–TV, Carleton (New Carlisle).

L[2]—Limitation to protect CKWS–TV, Kingston, Ontario, and CBFT–1, Mt. Tremblant, P.Q.

L[3]—Limitation to protect a cochannel allocation at Quebec City, Quebec.

L[4]—Limitation to protect CHSJ–TV–1, Bon Accord, N.B., CJPM–TV, Chicoutimi, P.Q., CBMT, Montreal, P.Q., and WCSH–TV, Portland, Maine.

L[5]—Limitation 63 watts, 850 feet EHAAT toward Channel 7−, CKCD–TV, Campbellton, N.B.

L[6]—Limitation to protect CBFT–2, Mont Laurier, Quebec.

L[7]—Limitation to protect CBOT, Ottawa, Ontario, and CFCM–TV, Quebec, P.Q.

L[8]—Limitation to protect CHSJ–TV–1, Bon Accord, N.B., and CJPM–TV, Chicoutimi, P.Q.

L[9]—Limitation ERP 1.25 dbk EHAAT 732 feet with specified antenna pattern.

L[10]—Limitation toward CKWS–TV, Kingston, Ont. and CBVT, Quebec, P.Q.

L[11]—Limitation toward Channel 2−, CHAU–TV–1, Ste. Marguerite-Marie, P.Q.

L[12]—Limitation to protect CBFT, Montreal, Quebec, and CKRS–TV–2, Chicoutimi, Quebec, and Quebec City site to be located not less than 170 miles from WLBZ–TV, Channel 2, Bangor, Maine.

L[13]—Limitation to protect CKVR–TV–2, Huntsville, Ontario, CJSS–TV, Cornwall, Ontario, and CJDG–TV, Lithium Mines, P.Q.

L[14]—Limitation toward Channel 2+, CKRS–TV–2, Chicoutimi, P.Q.

L[15]—Limitation to protect CJBR–TV, Rimouski, Quebec.

L[16]—Limitation to protect CBOFT, Ottawa, Ontario, and WMUR–TV, Manchester, New Hampshire. Assignment to be located no less than 170 miles from WMUR–TV, Manchester, New Hampshire.

L[17]—Limitation 18 dbk and 860 feet EHAAT and specified radiation pattern.

SASKATCHEWAN

City	VHF channel No.	UHF channel No.
Assiniboia		61
Biggar		41−
Broadview		62
Canora		64−
Carlyle Lake	7+ L[1]	
Colgate	12	
Esterhazy		83+
Estevan		40
Eston		32
Fort Qu'Appelle		41
Gravelbourg		39−
Greenwater Lake	4 L[2]	
Humboldt		25
Indian Head		75+
Kamsack		42+
Kindersley		38+
Maple Creek		53+
Melville		46+
Moose Jaw	4−, 7−	16, 26, 55
Moosomin		54+
Oxbow		56+
Regina	2, 9−, 13−	18+, 24+, 47, 53, 71, 77−
Riverhurst	10−, L[3]	
Rosetown		63
Saskatoon	8+, 11	17, 23, 33, 54, 70, 76
Shaunavon	7+, L[4]	78
Stranraer	3−, 9	
Swift Current	5−, 12−	40+, 56
Unity		80−
Watrous		78+
Weyburn		48+
Wilkie		31
Willow Bunch	6− L[5], 10+, L[6]	
Wynyard	6, 12+ L[7]	31+
Yorkton	3, 10	20, 33+

L[1]—Limitation 20 dbk and 500 feet EHAAT and toward CKMJ–TV, Marquis (Moose Jaw) Saskatchewan.

L[2]—Limitation to protect CHAB–TV, Moose Jaw, Saskatchewan.

L[3]—Limitation to protect Channel 10+, CKBI–TV–1, Alticane, Sask.

L[4]—Limitation to protect CKMJ–TV, Channel 7−, Marquis, (Moose Jaw) Saskatchewan.

L[5]—Limitation to protect Channel 6, CKOS–TV–3, Wynyard, Sask.

L[6]—Limitation to protect CJFB–TV–3, Riverhurst, Saskatchewan.

L[7]—Limitation to protect Channel 12, CKCK–TV–1, Colgate, Saskatchewan, and an allocation at Swift Current, Sask.

YUKON TERRITORY

City	VHF channel No.	UHF channel No.
Clinton Creek	8	
Dawson	3, 10	14, 20
Elsa	2	
Faro	8	
Keno Hill	13	
Mayo	7	
Watson Lake	8+	
Whitehorse	2+, 6	14, 20

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WALLACE E. JOHNSON,
Chief, Broadcast Bureau,
Federal Communications Commission.

[FR Doc.74-29818 Filed 12-23-74;8:45 am]

[Docket Nos. 20266, 20267; File Nos. BPH-8863, BPH-8965]

KENNEBEC WESTERN BROADCASTING CO. AND WILLSON BROADCASTING CO.

Application for Construction Permits

In re applications of Kennebec Western Broadcasting Company, Hanford, California; Requests: 103.7 mHz; Channel No. 279 50 kW(H&V); 497.6 feet; Willson Broadcasting Company, Hanford, California; Requests: 103.7 mHz; Channel No. 279; 50 kW(H&V); 500 feet; For construction permits.

1. The Commission, by the Chief of the Broadcast Bureau, acting pursuant to delegated authority, has under consideration the two above-captioned applications which are mutually exclusive in that they seek the same channel in Hanford, California.

2. Both applicants request a waiver of § 73.210 of the Commission's rules in order that they may locate the main studio of the proposed facility at the site of the tower and transmitter, outside of the city limits of Hanford. In light of the potential hazards that a tower would pose if located closer to Hanford, and thus within the area of the Lemoore Naval Air Station as well as other airports, and because of the demonstrated accessibility of the proposed site to the residents of the city of license, good cause has been established, and permission will be granted, to locate the main studio of the proposed facility outside of the city limits of Hanford, consistent with § 73.210 (a)(3) of the Commission's rules.

3. The applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

4. *Accordingly, it is ordered*, That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for a hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine which of the proposals would, on a comparative basis, better serve the public interest.

(2) To determine, in the light of the evidence adduced pursuant to the foregoing issues, whether a grant of the application would serve the public interest, convenience and necessity.

5. *It is further ordered*, That, the applicants having demonstrated that good cause exists for the location of the main studio outside the city limits of Hanford and that the location is consistent with operation of the station in the public interest, permission to so locate the main studio is granted.

6. *It is further ordered*, That, to avail themselves of the opportunity to be heard, the applicants herein, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, shall, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

7. *It is further ordered*, That, the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing, either individually or, if feasible and consistent with the rules, jointly, within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the rules.

Adopted: December 9, 1974.

Released: December 13, 1974.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.74-30078 Filed 12-23-74;8:45 am]

STANDARD BROADCAST APPLICATION

Availability for Processing

The following application, seeking the facilities of station KAVE, Carlsbad, New Mexico, was accepted for filing on November 14, 1974. The former licensee of KAVE failed to file an application for renewal of its license, and the KAVE license expired on October 1, 1974. The Commission will accept any other applications for consolidation with the following application which proposes essentially the same facilities. The Commission will also entertain a request for joint interim operation by all interested and qualified applicants.

BP-19837, NEW, Carlsbad, New Mexico, Zia Telecommunications, Inc., Req: 1240 kHz, 250 W, 1 kW-LS, U.

Pursuant to the provisions of §§ 1.227 (b)(1) and 1.591(b) of the Commission's rules, an application, in order to be considered with this application must be tendered no later than January 31, 1975. Any request for joint interim operation must be filed no later than March 3, 1975.

The attention of any party in interest desiring to file pleadings concerning this application, pursuant to section 309(d)(1) of the Communications Act of 1934, as amended, is directed to § 1.580(i) of the Commission's rules for the provisions governing the time of filing and other requirements relating to such pleadings.

Adopted: December 17, 1974.

Released: December 18, 1974.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Secretary.

[FR Doc.74-30077 Filed 12-23-74;8:45 am]

FEDERAL ENERGY ADMINISTRATION

ALLOCATION OF FEEDSTOCKS TO SYNTHETIC NATURAL GAS FACILITIES

Public Hearing

The Federal Energy Administration (FEA) hereby gives notice that public hearings will be held on the petitions of two Synthetic Natural Gas (SNG) manufacturers for assignment or adjustment of base period volumes under 10 CFR 211.29. Specific information on each petition is set forth in the Appendix to this notice.

Notice of these petitions was originally issued on October 25, 1974 and written comments regarding the petitions were solicited at that time. Fourteen comments from interested persons have been received and several of the comments contain requests that the FEA hold public hearings on individual petitions under § 211.29 of the FEA regulations prior to official action on such petitions. In view of these requests and because the FEA believes that factual disputes between interested parties respecting these petitions are likely, the FEA has determined that public hearings on such petitions will materially advance consideration of the issues involved.

Therefore, a public hearing on the petitions set forth in the Appendix to this notice will be held beginning at 9:30 a.m. on January 7, 1975 in the Auditorium, Room 2105, at 2000 M Street, NW, Washington, D.C. 20036, in order to receive further comments from interested persons. Each petition set forth in the Appendix to this notice will receive separate consideration during the hearing.

Any person who has an interest in the petitions set forth in the Appendix to this notice or who is a representative of a group or class of persons which has an interest in the petitions, may make a written request for an opportunity to make oral presentation. Such a request should be directed to Executive Communications, FEA, Box BR, Room 3309, Federal Building, 12th and Pennsylvania Avenue, NW, Washington, D.C. 20461, and must be received before 4:30 p.m., e.d.t., January 2, 1975. Such a request may be hand delivered to Room 3309, Federal Building, 12th and Pennsylvania Avenue, NW, Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Since the petitions set forth in the Appendix to this notice are to be considered separately, requests for an opportunity to make oral presentation should identify the petition or petitions to be addressed. The person making the request should be prepared to describe the interest concerned; if appropriate, to state why he is a proper representative of a group or class of persons which has such an interest; and give a concise summary of the proposed oral presentation and a phone number where he may be contacted through January 3, 1975. Each person selected to be heard will be so notified by the FEA before 4:30 p.m.,

e.d.t., January 3, 1975 and must submit 50 copies of this statement to Executive Communications, FEA, Room 3309, Federal Building, Washington, D.C. 20461, before 4:30 p.m., e.d.t., on January 6, 1975.

It should be emphasized that, in holding these hearings, the FEA intends to receive comments addressing the specific application of 10 CFR § 211.29 and Special Rule No. 1 thereunder to the individual petitions under consideration. Accordingly, persons requesting an opportunity to make an oral presentation should be prepared to provide information which is directed toward consideration of the criteria set forth in § 211.29 and Special Rule No. 1 with specific regard to the petitions set forth in the Appendix to this notice. General comments respecting the propriety or legality either of the Special Rule itself or of the FEA's policy regarding the use of petroleum feedstocks in the manufacture of SNG, except to the extent that such comments address the propriety or legality of application of the Special Rule in a specific instance, are not regarded as germane for the purpose of these hearings and are therefore discouraged.

The FEA reserves the right to select the persons to be heard at these hearings to schedule their respective presentations and to establish the procedures governing the conduct of the hearings. The length of each presentation may be limited, based on the number of persons requesting to be heard.

An FEA official will be designated to preside at the hearings. These will not be judicial or evidentiary-type hearings. Questions may be asked only by those conducting the hearings and there will be no cross-examination of persons presenting statements. Any decision made by the FEA with respect to the subject matter of the hearings will be based on all information available to the FEA. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he so desires to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any interested person may submit questions, to be asked of any person making a statement at the hearings, to Executive Communications, FEA, before 4:30 p.m., EDT, January 6, 1975. Any person who makes an oral statement and who wishes to ask a question at the hearings may submit the question, in writing, to the presiding officer. The FEA or the presiding officer, if the question is submitted at the hearings, will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearings will be announced by the presiding officer.

A transcript of the hearings will be made and the entire record of the hearings, including the transcript, will be retained by the FEA and made available for inspection at the Administrator's Reception Area of the FEA, Room 3400, The Federal Building, 12th and Pennsylvania Avenue, NW, Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

Issued in Washington, D.C., December 18, 1974.

ROBERT E. MONTGOMERY, Jr.,
General Counsel.

APPENDIX

Petitioner	Feedstock (specific chemical content)	Annual capacity (millions of cubic feet per day)	Assignment or adjustment of base per volume requested	Supplier	Status
Columbia LNG Corp...	Natural Gas Liquids, LPG, Naphtha.	250	6,370,000 bbls for each base period.	Dome Petroleum, La Gloria, Ohio.	Complete.
Northern Illinois Gas Co.	Liquid Petroleum gas, Natural Gas liquids, Naphtha.	166	4,349,800 bbls for each base period.	UPG, Inc., ARCO, San Juan Oil Co.	Do.

[FR Doc.74-29903 Filed 12-19-74;11:12 pm]

SOUTHERN CALIFORNIA OUTER CONTINENTAL SHELF

Notice of Public Symposium

The Federal Energy Administration hereby announces that it will hold a public symposium in Los Angeles, California, on January 22 and 23, 1975, to examine issues and problems surrounding possible accelerated exploration and development of the Outer Continental Shelf (OCS) lying off the coast of Southern California. Representatives of industry, local and Federal Government officials, members of university staffs and members of the public have been selected to present views on various aspects of the subject. The public is invited to attend and to submit written views upon the issues. The symposium will be held in Room 8544, Federal Building, 300 N. Los Angeles Street, Los Angeles, California 90012, beginning at 9 a.m. on January 22, 1975.

Recent events have shown that undue reliance upon foreign oil imports has a severely unfavorable impact upon the United States' balance of trade and can constitute a threat to the national security and economy. One of the options to reduce this reliance upon imports is to increase domestic oil and gas production by exploring and developing any reserves that might exist on the Outer Continental Shelf.

The Federal Energy Administration (FEA) believes the option of exploring and developing the Outer Continental Shelf must be examined in all its facets with a complete airing of varying views. The Department of the Interior has issued a draft environmental statement concerning exploration and development of the OCS and will conduct public hearings in the near future regarding the draft statement. Those hearings are expected to develop in great detail the environmental considerations involved in exploring and developing the Outer Continental Shelf.

In view of the fact that environmental issues will be considered in the hearing of the Department of the Interior, the symposium commencing on January 22, 1975, to be conducted by the FEA will focus on the following listed issues:

(a) The place of the OCS in U.S. energy supply/demand balance.

(b) Operating conditions and technical constraints regarding operating on the OCS.

(c) Applicable laws, rules and regulations.

(d) Social impacts of OCS exploration and development.

The FEA encourages representatives of recognized regional groups, environmental and consumer organizations, officials of State and local governments, representatives of the oil, gas and chemical industries, and the general public to attend the symposium and to submit written comments on the above issues. Written comments should be submitted no later than February 7, 1975, and should be addressed to the Federal Energy Administration, Executive Communications, Box BS, 12th Street and Pennsylvania Avenue, NW, Washington, D.C. 20461.

PROCEDURES FOR THE SYMPOSIUM

Persons selected to address the symposium have been asked to limit their oral presentation to about twenty minutes. A few minutes for questions will be reserved at the end of each presentation. The symposium will be open to the public and to the press and other media. A complete record of the proceedings will be compiled and made available to the public in Room 3400, Administrator's Reception Area, between the hours of 8 a.m. and 4:30 p.m. daily.

Any questions concerning the symposium should be directed to the Office of Oil and Gas, 202-961-7478.

ROBERT E. MONTGOMERY, Jr.,
General Counsel.

DECEMBER 18, 1974.

[FR Doc.74-29461 Filed 12-19-74;1:08 pm]

ALLOCATION OF OLD OIL

Availability of Reporting Forms

On December 10, 1974, the Federal Energy Administration mailed FEA Forms P-102-MO (Refiners Monthly Report) P-104-MO (Importers Monthly

Report), which are the required reports for the month of November 1974 under FEA's Old Oil Entitlements Program (39 FR 42246; December 4, 1974), to the firms listed in the Appendix to this notice.

If a firm not listed in the Appendix hereto believes that it qualifies as an eligible firm under the program, it should contact FEA at (202) 634–7610 to obtain copies of the appropriate reporting forms.

Issued in Washington, D.C., on December 19, 1974.

ROBERT E. MONTGOMERY, Jr.,
General Counsel,
Federal Energy Administration.

APPENDIX

The following is a list of firms to which FEA mailed copies of the reporting forms for November 1974 under FEA's Old Oil Entitlements Program:

Allied Materials Corporation
Amerada Hess Corporation
American Oil Company
A. Johnson
American Petrofina, Inc.
APCO Oil Corporation
Arizona Fuels Corporation
Ashland Oil Company
Atlantic Richfield Company
Bay Refining Company
Bayou State Oil Corporation
Beacon Oil Company
Belcher Oil Company
Blue Ridge Fuel Company
CRA-Farmland Industries, Inc.
Calumet Refining Company
Canal Refining Company
Caribou Four Corners Oil Co.
Castle Coal & Oil Company, Inc.
Central Petroleum Corporation
C & H Refinery
Champlin Petroleum Company
Charter International Oil Co.
Cirillo Brothers Oil Company
Cities Service Oil Company
Claiborne Gasoline Company
Clark Oil & Refining Corporation
Coastal States Gas Corporation
Colonial Oil Company
Colonial Oil Industries, Inc.
Commonwealth Oil Refining Co. Inc.
Continental Oil Company
Cross Oil & Refining Co. of AR
Crown Central Petroleum Corporation
Crystal Refining Company
Crystal Oil Company
Deepwater Oil Terminals, Inc.
Delta Refining Company
Diamond Shamrock Corporation
Dingman Oil & Refining Co., Inc.
Dorchester Gas Producing Co.
Eastern of New Jersey, Inc.
Eddy Refining Company
Edgington Oxnard Refinery
Elm City Filling Stations, Inc.
Evangeline Refining Co., Inc.
Exxon Corporation
Famariss Oil & Refining Co.
Edgington Oil Company
Farmers Union Central Exchange
Fletcher Oil & Refining Co.
Flint Chemical Corporation
Fort Neck Oil Terminals Corp.
Gary Operating Company
George Hall Corporation
Getty/Skelly Oil Co. of the U.S.
Giant Industries Inc.
Gladieux Refining Company
Goetz Oil Corporation
Golden Eagle Refining Co., Inc.
Good Hope Refineries, Inc.
Guam Oil & Refining Co., Inc.
Gulf Oil Corporation
Gulf States Oil & Ref. Co.
H. N. Hartwell & Son, Inc.
Hawaiian Independent Refinery, Inc.
Howard Oil Company
Howell Corporation
Hunt Oil Company
Husky Oil Company
Indiana Farm Bureau Cooperative Association
Irving Oil Corporation
J. W. Refining, Inc.
Jet Fuel Refinery
The Kaiser Trading Co.
Kentucky Oil & Refining Co.
Kerr-McGee Corporation
The King Service, Inc.
Koch Refining Co.
LaGloria Oil & Gas Company
Lakeside Refining Co.
Laketon Asphalt Refining, Inc.
Little America Refining Co.
MacMillan Ring-Free Oil Co., Inc.
Marathon Oil Company
Marion Corporation
Meenan Oil Co., Inc.
Mid-America Refining Co., Inc.
Midland Cooperatives, Inc.
Mid-Tex Refinery
Mobil Oil Corporation
Mohawk Petroleum Corporation
Mountaineer Refining Co., Inc.
Murphy Oil Corporation
National Cooperatives Refinery Association
National Oil Recovery Corp.
Navajo Refining Company
New England Petroleum Corporation
Newhall Refining Company, Inc.
R. B. Newman Fuel Corporation
North American Petroleum Corp.
Northeast Petroleum Industries Inc.
Northern New Jersey Oil Company
Northland Oil & Refining Co.
Northville Industries Corporation
Monsanto Company
Morrison Petroleum Company
Oil Shale Corporation
Oriental Refining Company
Pace Oil Company
Pasco Incorporated
Patchogue Oil Terminal Corp.
Patterson Fuel Oil Co., Inc.
Pennzoil Company
Petroleum Heat & Power Co., Inc. Stamford, Conn.
Petroleum Heat & Power Co., Inc. Phila., Pa.
Phillips Petroleum Company
Pioneer Refining Company
Pittston Co.
Plateau, Incorporated
Powerine Oil Company
Pride Refining Incorporated
Publicker Industries, Inc.
Quaker-State Oil Refining Corp.
The Refinery Corporation
Remington Oil Co., Inc.
Rico Petroleum Corporation
Road Oil Sales, Inc.
Rock Island Refining Corporation
OKC Refining Incorporated
Rockway Fuel Oil Corporation
Royal Petroleum Corporation
Saber Petroleum Corporation
Sage Creek Refining Company, Inc.
San Joaquin Refining Co.
Sears Oil Co. & Sears Petroleum & Transport Corp.
Seminole Asphalt Refining Co.
Shaheen Natural Resources Co.
Shell Oil Company
Sigmor Corporation
Signal Companies, Inc.
Somerset Refining Company
Sound Refining Inc.
Southern Terminal & Transport Co.
South Hampton Company
Southland Oil Company
Southwestern Refining Company
Standard Oil Company of CA.
Standard Oil Company of Ohio
Stephens International Corp.
Steuart Petroleum Company
Stillings Petroleum Corporation
Sunland Refining Corporation
Sun Oil Company
Swann Oil Company
A. Tarricone
Tenneco Oil Company
Tesoro Petroleum Corporation
Texaco Incorporated
Texas Asphalt & Refining Co.
Texas Fuel & Asphalt Co., Inc.
Texas City Refining Inc.
Thagard Oil
Thriftway Oil Co.
Thunderbird Resources Inc.
Tonkawa Refining Co.
Total Leonard Incorporated
U.S. Oil & Refining Co.
Union Oil Company of Ca.
Union Petroleum Corporation
Union Texas Petroleum
United Independent Oil Co.
United Refining Company
Ven-Fuel Inc.
Vickers Petroleum Corporation
VI Oil Company
Vulcan Asphalt Refining Co.
Wallace & Wallace Fuel Oil Co.
Warrior Asphalt Corporation
Webber Tanks
Wellen Oil Inc.
West Coast Oil Company
Western Refining Co.
Wickett Refining Company
Toro Petroleum Corporation
Winston Refining Company
Wireback Oil Co.
Witco Chemical Corporation
Wyatt, Inc.
Yetter Oil Company
Young Refining Corporation

[FR Doc.74-30021 Filed 12-20-74;9:42 am]

FEDERAL MARITIME COMMISSION

[Docket No. 74-54]

INTERNATIONAL FREIGHT SERVICES, LTD. INC.

Order of Hearing on Petition for License

On November 30, 1973, pursuant to section 44, Shipping Act, 1916 (46 U.S.C. 841b), International Freight Services, Ltd. Inc., 6519 Eastland Road, Cleveland, Ohio, filed an application for a license as an independent ocean freight forwarder. The Commission's investigation of International Freight Services, Ltd. Inc. revealed apparently that:

(1) The experience of one of the employees who was to be made the qualifying officer pursuant to § 510.5(a)(2)(iii) of the Commission's General Order 4 (46 CFR 510.5(a)(2)(iii)), was falsely enlarged so that it would appear that the employee was fully qualified to perform ocean freight forwarding services. This employee was also induced by the applicant's President and sole stockholder, Mr. Swift, to make false and misleading

statements to the Federal Maritime Commission investigator;

(2) A second person was also induced by Mr. Swift to make false and misleading statements to the Federal Maritime Commission investigator;

(3) On the applicant's original application, Mr. Swift falsely stated he was a citizen of the United States, when in fact he is a citizen of Mexico.

When confronted by discrepancies from the facts provided in this application, Mr. Rafael Swift, the President and sole stockholder of the applicant, withdrew the application and re-filed a modified application which was received by the Commission on March 18, 1974.

Mr. Swift, who subsequently alleges to be the qualifying officer pursuant to § 510.5(a)(2)(iii) of the Commission's General Order 4 (46 CFR 510.5(a)(2)(iii)) with respect to ocean freight forwarding, does not appear to have adequate experience to competently perform the necessary duties of a licensed independent ocean freight forwarder. It is therefore questionable whether he would be able to properly perform ocean freight forwarding duties for the applicant corporation in the public interest.

In the foregoing respects, Mr. Swift's conduct appears to demonstrate a lack of regard for the Commission's rules and regulations, the statutory provisions of the Shipping Act, 1916, and reflects a lack of fitness and ability to be licensed as an independent ocean freight forwarder. In view of the fact that Mr. Swift is the sole stockholder and President of the applicant, International Freight Services, Ltd., Inc., it further appears that the applicant, International Freight Services, Ltd., Inc., lacks the fitness and ability to be licensed as an independent ocean freight forwarder.

Pursuant to § 510.8 of the Commission's General Order 4 (46 CFR 510.8) the Commission, on August 1, 1974, advised the applicant of its intent to deny the application for the reasons set out hereinabove. In accordance with General Order 4, an applicant may, within 20 days of receipt of such advice request a hearing on the application.

By letter dated August 9, 1974, Mr. Swift, as President of the applicant, requested the opportunity to show at a hearing that denial of International Freight Services, Ltd., Inc.'s application is unwarranted.

Now, therefore, it is ordered, That pursuant to section 44 of the Shipping Act, 1916, § 510.8 of the Commission's General Order 4 (46 CFR 510.8), a hearing is hereby ordered to afford International Freight Services, Ltd. Inc. the opportunity to demonstrate that the foregoing information and/or reasons do not warrant finding that the applicant is not fit and able properly to carry on the business of forwarding and to conform to the provisions of the Shipping Act, 1916, and the requirements, rules and regulations of the Commission issued thereunder.

It is further ordered, That International Freight Services, Ltd. Inc. be hereby made a petitioner in this proceeding pursuant to Rule 3(a) of the Commission's Rules of Practice and Procedure (46 CFR 502.41).

It is further ordered, That this proceeding be assigned for public hearing and an initial decision before an Administrative Law Judge of the Commission's Office of Administrative Law Judges and that the hearing be held at a date and place to be determined by the presiding Administrative Law Judge on or before June 19, 1975.

It is further ordered, That notice of this order be published in the FEDERAL REGISTER and that a copy thereof and notice of hearing be served upon petitioner.

It is further ordered, That any persons other than petitioner who desire to become a party to this proceeding and to participate therein, shall file a petition to intervene in accordance with Rule 5 (1) of the Commission's Rules of Practice and Procedure (46 CFR 502.72).

It is further ordered, That all future notices issued by or on behalf of the Commission in this proceeding, including notice of time and place of hearing or prehearing conference, shall be mailed directly to all parties of record.

By the Commission.

[SEAL] FRANCIS C. HURNEY,
Secretary.

[FR Doc.74-29987 Filed 12-23-74;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. E-9165]

ALABAMA POWER CO.

Filing of Service Agreement

DECEMBER 17, 1974.

Take notice that on December 9, 1974, Alabama Power Company filed in Docket No. E-9165 a proposed service agreement dated July 1, 1974, providing for service by Alabama to Tallapoosa River Electric Cooperative, Inc. under Alabama's Tariff Rate Schedule REA-1 at two proposed delivery points, LaFayette and Providence, Alabama.

Any person desiring to be heard and to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 9, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Alabama's filing is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-29888 Filed 12-23-74;8:45 am]

[Docket No. E-9162]

CONSUMERS POWER CO.

Filing of Contract for Electric Service

DECEMBER 17, 1974.

Take notice that on December 9, 1974, Consumers Power Company (Consumers) tendered for filing with the Federal Power Commission a Contract for Electric Service with the Village of Union City, Michigan. The Contract, when it becomes effective under its terms, will cancel and supersede an earlier Contract between the same two parties, as amended, that has been in effect since October 19, 1965, and designated as FPC Rate Schedule No. 11. The rates to be charged under the new Contract are the same as those established by Commission Order in Docket No. E-7803, dated August 30, 1974. The new Contract increases the capacity reservation from 2000 kilowatts to 5000 kilowatts. Consumers states that this increase could affect the minimum charge established under the terms of the Contract, but is not expected to affect revenues actually collected by Consumers from the Village of Union City.

Consumers states that the proposed effective date of the new Contract will be "the date that the Company completes all work required to provide the reserve capacity of 5000 kw from its said 46,000-2400/4160 volt station. Consumers estimates this completion to occur during the first week of January, 1975.

Consumers states that copies of the filing were mailed to the Village of Union City and to the Michigan Public Service Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 31, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary

[FR Doc.74-29889 Filed 12-23-74;8:45 am]

[Docket No. ID-1235]

DONALD C. COOK

Supplemental Application

DECEMBER 16, 1974.

Take notice that on November 19, 1974, Donald C. Cook (Applicant) filed a supplemental application with the Federal Power Commission. Pursuant to section

305(b) of the Federal Power Act, Applicant seeks authority to hold the following position:

President & Director, Ohio Electric Company, Public Utility.

Ohio Electric Company, whose principal office is located at 301 Cleveland Avenue, SW, Canton, Ohio 44702 owns and operates the General James M. Gavin Plant at Gallipolis, Ohio which, when completed, will have two 1300 megawatt generating units. All of Ohio Electric Company's available electrical energy is sold to Ohio Power Company, of which it is a wholly owned subsidiary.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 31, 1974, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-29890 Filed 12-23-74;8:45 am]

[Docket No. E-8547]

MISSOURI EDISON CO.

Further Extension of Procedural Dates

DECEMBER 16, 1974.

On December 9, 1974, Staff Counsel filed a motion to indefinitely suspend the procedural dates fixed by order issued February 15, 1974, as most recently modified by notice issued September 24, 1974, in the above-designated matter.

Upon consideration, notice is hereby given that the procedural dates in the above matter are modified as follows:

Service of Staff's Testimony, January 8, 1975.
Service of Company Rebuttal, January 29, 1975.
Prehearing Conference, February 4, 1975 (10 a.m. e.s.t.).
Hearing (Unchanged) February 18, 1975 (10 a.m. e.s.t.).

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-29891 Filed 12-23-74;8:45 am]

[Project No. 5]

MONTANA POWER CO.

Extension of Procedural Dates

DECEMBER 17, 1974.

On December 13, 1974, The Montana Power Company filed a motion to extend the procedural dates fixed by order issued November 15, 1974 in the above-designated matter. On December 16, 1974, Staff Counsel filed an answer concurring in the above motion and seeking further extensions.

Upon consideration, notice is hereby given that the procedural dates in the above matter are modified as follows:

Service of Company's Testimony, December 27, 1974.
Service of Staff's Testimony and that of all other participants, January 17, 1975.

The Hearing Date will remain as scheduled (February 25, 1975, at 10:30 a.m. e.s.t.).

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-29892 Filed 12-23-74;8:45 am]

[Docket No. E-8823]

SOUTH CAROLINA ELECTRIC AND GAS CO.

Further Extension of Procedural Dates

DECEMBER 17, 1974.

On December 10, 1974, Saluda River Electric Cooperative, Inc., filed a motion to extend the procedural dates fixed by order issued August 2, 1974, as most recently modified by notice issued October 29, 1974, in the above-designated matter. The motion states that the parties have been notified and have no objection.

Upon consideration, notice is hereby given that the procedural dates in the above matter are modified as follows:

Service of Intervenor's Testimony, January 3, 1975.
Service of Company Rebuttal, January 17, 1975.
Hearing (Unchanged), January 28, 1975 (10 a.m. e.s.t.).

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-29893 Filed 12-23-74;8:45 am]

[Docket No. E-8514]

SOUTHERN SERVICES, INC.

Further Extension of Procedural Dates

DECEMBER 17, 1974.

On December 13, 1974, Southern Services, Inc., Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company, the Cities of Acworth, et al., and the Water, Light and Sinking Fund Commission of the City of Dalton, Georgia, jointly filed a motion to extend the procedural dates fixed by order issued May 8, 1974, as most recently modified by notice issued November 19, 1974 in the above-designated matter. The motion states that Staff Counsel has no objection to the extension.

Upon consideration, Notice is hereby given that the procedural dates in the above matter are modified as follows:

Service of Evidence by Intervenors, January 30, 1975.
Service of Evidence by Staff, February 20, 1975.
Service of Company Rebuttal, March 3, 1975.
Hearing, March 17, 1975 (10 a.m. e.d.t.).

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-29894 Filed 12-23-74;8:45 am]

[Docket No. E-9156]

WISCONSIN PUBLIC SERVICE CORP.

Amendment to Interconnection and Emergency Energy Agreement

DECEMBER 17, 1974.

Take notice that on December 6, 1974, Wisconsin Public Service Corporation (Wisconsin) tendered for filing a proposed amendment to Article VIII of the Interconnection and Emergency Energy Agreement between Consolidated Water Power Company and Wisconsin. Wisconsin states that the agreement has been mutually agreed upon by the parties.

As several retroactive dates are requested, Wisconsin urges a waiver of the prior notice requirement as set forth in section 205(d) of the Federal Power Act.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 30, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-29895 Filed 12-23-74;8:45 am]

[Docket No. E-9124]

NEW YORK STATE ELECTRIC AND GAS CORP.

Notice of Amendment to Filing

DECEMBER 18, 1974.

Take notice that on November 25, 1974, New York State Electric and Gas Corporation (New York) tendered for filing a letter agreement dated October 11, 1974, which constitutes an amendment to the agreement dated March 12, 1970, between the Power Authority of the State of New York and Niagara Mohawk Power Corporation (Niagara), New York State Electric and Gas Corporation (NYSE&G) and Rochester Gas and Electric Corporation (RG&E). New York states that the earlier agreement provides for the sale by New York, Niagara and RG&E to the Power Authority of the State of New York of up to 200,000 kilowatts of power for supplying specified high load factor manufacturers for the period commencing with the date of initial service and terminating on March 31, 1974.

New York submits that the later agreement filed herewith extends the term of the earlier agreement to July 1, 1975. Niagara and RG&E concur. An effective date of November 1, 1974, is requested.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 30, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-30030 Filed 12-23-74;8:45 am]

FEDERAL RESERVE SYSTEM

AMERICAN BANCORP, INC.

Formation of Bank Holding Company

American Bancorp, Inc., Hammond, Indiana, 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 through acquisition of 80.25 percent or more of the voting shares of American State Bank, North Judson, Indiana. 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 office of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received not later than January 16, 1975.

Board of Governors of the Federal Reserve System, December 17, 1974.

[SEAL] GRIFFITH L. GARWOOD,
Assistant Secretary of the Board.

[FR Doc.74-29911 Filed 12-23-74;8:45 am]

FIRST MACOMB CORP.

Order Approving Formation of Bank Holding Company

First Macomb Corporation, Mount Clemens, Michigan, 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)) of formation of a bank holding company through acquisition of 100 percent of the voting shares of the successor by consolidation to Mount Clemens Bank, Mount Clemens, Michigan ("Bank"). The bank with which Bank is to be consolidated has no significance except as a means to facilitate the acquisition of the voting shares of Bank. Accordingly, the proposed acquisition of shares of the successor organization is treated herein as the proposed acquisition of the shares of Bank.

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant is a recently-organized corporation formed for the purpose of becoming a bank holding company through the acquisition of Bank. The proposed transaction essentially involves the transfer of control of Bank from individuals to a corporation owned by the same individuals. Bank holds deposits of approximately $91.5 million,[1] representing 0.62 of one percent of the total deposits in commercial banks in the Detroit banking market,[2] and ranks as the 20th largest of 45 banks operating in that market. Upon acquisition of Bank, Applicant would control less than 0.34 of one percent of the total commercial bank deposits in Michigan. Since the proposed transaction is essentially a reorganization of Bank's ownership and Applicant presently has no subsidiaries, consummation of the proposal would not have an adverse effect on existing or potential competition, nor would it increase the concentration of banking resources or have an adverse effect on other banks in any of the relevant areas. Therefore, the Board concludes that the competitive considerations are consistent with approval of the application.

The financial condition of Bank is considered generally satisfactory in view of Applicant's commitment to inject $1.5 million of equity capital into Bank within one year after consummation of the proposal. The managerial resources of Bank and Applicant are considered satisfactory and the future prospects for each appear favorable. Therefore, the banking factors are consistent with approval of the application. Considerations relating to the convenience and needs of the community to be served are also consistent with approval of the application. It is the Board's judgment that the proposed transaction would be in the public interest and that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be made (a) before the thirtieth calendar day following the effective date of this Order or (b) later than three months after the effective date of this Order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Chicago, pursuant to delegated authority.

By order of the Board of Governors,[3] effective December 16, 1974.

[SEAL] THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.74-29912 Filed 12-23-74;8:45 am]

FIRST MISSISSIPPI NATIONAL CORP.

Order Approving Formation of Bank Holding Company

First Mississippi National Corporation, Hattiesburg, Mississippi, 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)) of formation of a bank holding company through acquisition of 100 percent (less directors' qualifying shares) of the voting shares of the successor by merger to First Mississippi National Bank, Hattiesburg, Mississippi ("Bank"). The bank into which Bank is to be merged has no significance except as a means to facilitate the acquisition of the voting shares of Bank. Accordingly, the proposed acquisition of shares of the successor organization is treated herein as the proposed acquisition of the shares of Bank.

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired. The Board has considered the application and all comments received, including those submitted by The People's Bank of Biloxi, Biloxi, Mississippi ("Protestant"), in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant is a recently organized corporation formed for the purpose of becoming a bank holding company through the acquisition of Bank's stock. Bank (deposits of $136.6 million) is the largest of four banks in the Forrest and Lamar County banking market and controls 68.5 per cent of the total deposits in commercial banks in that market.[1] Since the proposal represents a shifting of Bank's ownership from individuals to a corporation owned by the same individuals, consummation of the proposal would have no adverse effects on competition in any relevant area. Accordingly, the Board concludes that competitive considerations are consistent with approval of the application.

The managerial resources and future prospects of Applicant, which will depend initially upon those of Bank, are considered satisfactory and the financial condition of Bank is regarded as generally satisfactory. Accordingly, banking factors are regarded as being consistent with approval of the application. Since the proposal is merely reorganization of existing ownership interests in Bank, considerations relating to the convenience and needs of the communities to be

[1] All banking data are as of December 31, 1973.

[2] The Detroit banking market is approximated by Macomb, Oakland, and Wayne Counties, Michigan.

[3] Voting for this action: Vice Chairman Mitchell and Governors Sheehan, Bucher, Holland, Wallich and Coldwell. Absent and not voting: Chairman Burns.

[1] Banking data are as of December 31, 1973.

served will remain unchanged; however, such considerations are consistent with approval. It is the Board's judgment that consummation of the transaction would be in the public interest and that the application to acquire Bank should be approved.

At noted above, an objection was received to the proposed bank holding company formation. In acting on the present application, the Board has fully considered the arguments offered by the Protestant as well as Applicant's response thereto. Protestant's main contentions appear to be as follows: (1) The close relationship of the top management of Bank and Deposit Guaranty National Bank, Jackson, Mississippi ("Deposit Guaranty") indicates that approval of this holding company formation is tantamount to a future merger between Bank and Deposit Guaranty; (2) financial and managerial resources of Bank are not satisfactory; and (3) the holding company formation will disadvantage present shareholders of Bank because the holding company will be incorporated in Delaware.

From the facts of record, it is the Board's view that, although a correspondent relationship does exist between the two banks, there is no substantial evidence to indicate that Deposit Guaranty controls or has a controlling influence over Bank within the meaning of the provisions of the Bank Holding Company Act. In fact, Deposit Guaranty does not own any of Bank's voting securities and it does not appear from the record that it controls or has the power to vote 5 percent or more of the voting securities of Bank. Thus, the Board would not regard the instant proposal as being tantamount to a future merger of the two institutions; furthermore, any such merger would have to be approved by the appropriate supervisory authorities under the Bank Merger Act. With respect to financial and managerial considerations, the Board finds, as noted above, that such factors are consistent with approval of the application. Finally, the Board finds no legal impediment, either under the Bank Holding Company Act or relevant State law, to a holding company formed for the purpose of acquiring a bank in Mississippi being incorporated in the State of Delaware. Accordingly, on the basis of the facts of record, the Board concludes that Protestant raises no significant issues that would warrant denial of the application.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be made (a) before the thirtieth calendar day following the effective date of this Order or (b) later than three months after the effective date of this Order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Atlanta pursuant to delegated authority.

By order of the Board of Governors,[2] effective December 17, 1974.

[SEAL] THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.74-29913 Filed 12-23-74;8:45 am]

NCNB CORP.

Order Granting Determination Under Bank Holding Company Act

In the matter of the request by NCNB Corporation, Charlotte, North Carolina ("NCNB"), for a determination pursuant to section 2(g)(3) of the Bank Holding Company Act of 1956, as amended.

NCNB, a bank holding company within the meaning of section 2(a) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841(a)) ("Act"), has requested a Board determination, pursuant to section 2(g)(3) of the Act (12 U.S.C. 1841(g)(3)), that NCNB is not in fact capable of controlling Collier Cobb and Associates, Inc., Chapel Hill, North Carolina ("Collier"), notwithstanding the indebtedness incurred by Collier to NCNB in connection with its purchase during April, 1974, from NCNB of all of the shares of American Commercial Agency, Inc. ("ACA") and, further, notwithstanding that Collier is currently indebted to NCNB's subsidiary bank, North Carolina National Bank ("Bank"), and may borrow additional funds from Bank in the future. Bank has retained possession of all ACA shares sold by NCNB to Collier as security for indebtedness incurred by Collier to NCNB and Bank arising from the sale transaction and subsequent loan to Collier. ACA is a general insurance agency to which NCNB has 10-year grandfather rights under section 4(a)(2) of the Act.

Under the provisions of section 2(g)(3) of the Act, shares transferred after January 1, 1966, by any bank holding company (or by any company which, but for such transfer, would be a bank holding company) directly or indirectly to any transferee that is indebted to the transferor, or has one or more officers, directors, trustees, or beneficiaries in common with or subject to control by the transferor, shall be deemed to be indirectly owned or controlled by the transferor unless the Board of Governors of the Federal Reserve System, after opportunity for hearing, determines that the transferor is not in fact capable of controlling the transferee.

Notice of receipt of this request, affording an opportunity for hearing and for interested persons to make written comments with respect to NCNB's request for a determination under section 2(g)(3), was published in the FEDERAL REGISTER on Thursday, February 14, 1974 (39 FR 5667). The time provided for requesting a hearing or for submission of written comments expired on March 4, 1974. No request for a hearing or written comments has been received by the Board, nor has any evidence been received to show that NCNB is in fact capable of controlling Collier.

It is hereby determined that NCNB is not in fact capable of controlling Collier. This determination is based on the documentary evidence of record in this proceeding, including commitments by NCNB that:

1. NCNB will not own, control or hold with power to vote, directly or indirectly, any of the outstanding voting shares of either Collier or ACA.

2. Neither NCNB nor any of its subsidiaries will have any employee, officer or director who is at the same time an employee, officer or director of either Collier or ACA.

3. Neither NCNB nor any of its subsidiaries will control or exert a controlling influence over any employee, officer or director of either Collier or ACA.

4. The terms of the existing loan obligations of Collier to North Carolina National Bank, the terms of the proposed installment obligations of Collier to NCNB which will be created in connection with the sale of the capital stock of ACA and the terms of any future credit obligations of Collier to NCNB or any of its subsidiaries are and will be on terms that are the same or similar to and not less favorable to NCNB than those which would be offered to other borrowers in connection with similar transactions.

5. NCNB will not control or exert a controlling influence over either Collier Cobb or ACA through the existing indebtedness of Collier Cobb to NCNB or in any other manner.

6. In the event Collier defaults on the loan from Bank or obligation to NCNB and Bank obtains title to the shares of ACA in its possession, pursuant to the pledge agreement, solely for purposes of affecting sale thereof, NCNB shall notify the Board of that fact and Bank shall sell such shares as soon as practicable, in any event, within a period not to exceed 18 months, and in accordance with any instructions the Board may issue.

Accordingly, it is ordered that NCNB's request for a determination pursuant to section 2(g)(3) be, and hereby is, granted.

By order of the Board of Governors,[1] effective December 16, 1974.

[SEAL] THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.74-29914 Filed 12-23-74;8:45 am]

PENTAGON BANKSHARES, INC.

Order Denying Formation of Bank Holding Company

Pentagon Bankshares, Inc., Minneapolis, Minnesota, has applied for the

[2] Voting for this action: Vice Chairman Mitchell, Governors Sheehan, Bucher, Holland, Wallich, and Coldwell. Absent and not voting: Chairman Burns.

[1] Voting for this action: Chairman Burns and Governors Mitchell, Sheehan, Bucher, Holland, Wallich, and Coldwell.

Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) of formation of a bank holding company through acquisition of 87.4 percent of the voting shares of the State Bank of St. Anthony Village, St. Anthony Village, Minnesota ("Bank").

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant is a recently organized nonoperating corporation, formed for the purpose of becoming a bank holding company through the acquisition of Bank. The purpose of the proposed transaction is to effect a transfer of ownership of Bank from individuals to a corporation owned by the same individuals with no change in the Bank's management or operations. Bank (deposits of $17.6 million) is the 27th largest of 103 banking organizations in the relevant banking market,[1] controlling less than .3 of one percent of the total commercial bank deposits therein. (All banking data are as of December 31, 1973.) Since Applicant presently has no subsidiaries, consummation of the proposal would not have an adverse effect on existing or potential competition, nor would it increase the concentration of banking resources or have an adverse effect on other banks in the relevant market. Therefore, the Board concludes that the competitive considerations are consistent with approval of the application.

As it has indicated on previous occasions, the Board believes that a holding company should be a source of financial and managerial strength for its subsidiary bank(s) and every proposed acquisition or formation is closely examined with this consideration in mind. Regarding the subject proposal, the Board has some concern about the financial and managerial resources of Applicant. In particular, the Board notes that Applicant proposes to service the debt that it will incur as a part of this transaction entirely through dividends from Bank. In the Board's view, the debt retirement program does not provide Applicant with the necessary financial flexibility to service the acquisition debt while maintaining Bank's capital at an acceptable level. Moreover, Bank has paid no dividends in recent years and the introduction of dividends at this time in order to service the acquisition debt could place an undue strain on Bank's overall financial condition. Accordingly, on the basis of the foregoing and other facts of record, the Board concludes that the considerations relating to the managerial and financial aspects of Applicant's proposal weigh against approval of the application.

As noted above, the proposed formation represents merely a restructuring of the ownership of Bank with no significant changes in Bank's operations or the services offered to customers. Consequently, considerations relating to the convenience and needs of the community to be served lend no weight toward approval of the application. On the other hand, the servicing requirements of the acquisition debt incurred by Applicant could impair Bank's ability to continue to serve the community as a viable banking organization.

On the basis of all the facts in the record, the Board concludes that the financial considerations involved in this proposal present adverse circumstances bearing upon the financial condition and prospects of Applicant and Bank. These adverse factors are not outweighed by any procompetitive effects or benefits to the convenience and needs of the community to be served. Accordingly, it is the Board's judgment that consummation of the proposal would not be in the public interest, and that the application should be, and is hereby, denied.

By order of the Board of Governors,[2] effective December 16, 1974.

[SEAL] THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.74-29915 Filed 12-23-74;8:45 am]

[1] The relevant banking market is approximated by the Minneapolis-St. Paul RMA.

[2] Voting for this action: Chairman Burns and Governors Mitchell, Sheehan, Bucher, Holland, Wallich and Coldwell.

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Notice of Receipt of Report Proposals

The following requests for clearance of reports intended for use in collecting information from the public were received by the Regulatory Reports Review Staff, GAO, on December 19, 1974. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public of such receipt.

The list 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 ICC form are invited from all interested persons, organizations, public interest groups, and affected businesses. This proposed form is being reviewed expeditiously and comments must be received on or before January 7, 1975. Comments should be addressed to Mr. Monte Canfield, Jr., Director, Office of Special Programs, United States General Accounting Office, 425 I Street NW., Washington, D.C. 20548.

Further information about the items on this list may be obtained from the Regulatory Reports Review Officer, 202-376-5425.

INTERSTATE COMMERCE COMMISSION

Request for clearance of a new annual performance report to be filed by Household Goods Carriers with the Interstate Commerce Commission and furnished each prospective customer. The purpose of the report is to provide information to prospective consumers which will permit them to intelligently compare the services of competing carriers. The requirement and data to be included in the report are specified in 49 CFR 1056.7(b). Respondents will be some 2,500 Household Goods Motor Carriers. Reporting burden is estimated at 660 man-hours for each respondent.

NORMAN F. HEYL,
Regulatory Reports Review Officer.

[FR Doc.74-29992 Filed 12-23-74;8:45 am]

GENERAL SERVICES ADMINISTRATION

REGIONAL PUBLIC ADVISORY PANEL ON ARCHITECTURAL AND ENGINEERING SERVICES

Notice of Meeting

DECEMBER 13, 1974.

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Regional Public Advisory Panel on Architectural and Engineering Services, Region 7, January 15 and 16, 1975, from 9 a.m. to 4 p.m., Room 12A01, Fritz G. Lanham Federal Building, 819 Taylor Street, Fort Worth, Texas. The meeting will be devoted to the initial step of the procedures for screening and evaluating the qualifications of architect-engineers under consideration for selection to furnish professional services for the proposed Federal Youth Center, Bastrop, Texas, Project NTX74997. Frank and open discussion of the professional qualifications of the firms being considered is essential to insure selection of the best qualified firms. Accordingly, pursuant to a determination that it will be concerned with a matter listed in 5 U.S.C. 552(b)(5) the meeting will not be open to the public.

L. N. STEWART,
Acting Regional Administrator.

[FR Doc.74-29990 Filed 12-23-74;8:45 am]

REGIONAL PUBLIC ADVISORY PANEL ON ARCHITECTURAL AND ENGINEERING SERVICES

Notice of Meeting

DECEMBER 6, 1974.

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Regional Public Advisory Panel on Architectural and Engineering services, Region I, January 20, 1975 from 10 a.m. to noon, Room 711, John W. McCormack Post Office and Courthouse Building, Postoffice Square, Boston, Mass. 02109.

The meeting will be concerned with the review of the conceptual design for the proposed new Federal Office Building, New Haven, Connecticut. Frank and open critical analysis of the proposed design is essential to insure that the design approach produces the best possible design solution. Accordingly, pursuant to a determination that it will be concerned with a matter listed in 5 USC 552(b)(5) the meeting will not be open to the public.

ALBERT A. GAMMAL, Jr.,
Regional Administrator.

[FR Doc.74-29991 Filed 12-23-74;8:45 am]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (74-75)]

AD HOC ADVISORY SUBCOMMITTEE TO REVIEW PROPOSALS FOR PARTICIPATION IN THE SCIENTIFIC DEFINITION OF SPACE SHUTTLE MISSIONS FOR SOLAR PHYSICS SPACELAB PAYLOADS

Notice of Meeting

The NASA Ad Hoc Advisory Subcommittee of the Space Science and Applications Steering Committee for review of proposals for participation in the scientific definition of Space Shuttle Missions for Solar Physics payloads will meet at the Goddard Space Fight Center in Greenbelt, Maryland on January 8, 9, and 10, 1975. The meetings will be held in Room 200 in Building 26 from 9 a.m. to 5 p.m.

The Subcommittee will discuss, evaluate and categorize proposals for participation on Facility Definition Teams which will define Space Shuttle Missions for Solar Physics Spacelab Payloads. Throughout the Subcommittee sessions, the professional qualifications of the proposers and their potential scientific contributions to the Facility Definition Teams will be candidly discussed and appraised. Discussion of these matters in a public session would invade the privacy of the proposers and the other individuals involved. The meeting will be closed to members of the public.

Since the Subcommittee session will be concerned throughout with matters listed in 5 U.S.C. 552(b)(6), it is hereby determined that the session will be closed to the public.

For further information please contact Dr. Adrienne F. Timothy at (202)—755-8490.

BOYD C. MYERS, II,
Assistant Associate Administrator for Organization and Management, National Aeronautics and Space Administration.

DECEMBER 19, 1974.

[FR Doc.74-29974 Filed 12-23-74;8:45 am]

[Notice (74-74)]

RESEARCH AND TECHNOLOGY ADVISORY COUNCIL, COMMITTEE ON ENERGY TECHNOLOGY AND SPACE PROPULSION

Notice of Meeting

The NASA Research and Technology Advisory Council, Committee on Energy Technology and Space Propulsion will meet January 10, 1975, at NASA Headquarters, 600 Independence Avenue, SW., Washington, D.C. The meeting will be held in Room 625. Members of the public will be admitted on a first-come, first-served basis, up to the seating capacity of the room which is about 40 persons. All visitors must register at the reception desk in Room 625.

The NASA Research and Technology Advisory Council, Committee on Energy Technology and Space Propulsion serves in an advisory capacity only. The Chairman is Dr. Beno Sternlicht, and there are 11 members. The following list sets forth the approved agenda and schedule for the January 10, 1975, meeting of the Committee on Energy Technology and Space Propulsion. For further information, please contact Mr. R. D. Ginter, Area Code 202, 755-8475, or Mr. W. H. Woodward, Area Code 202, 755-8501.

JANUARY 10, 1975

Time:	*Topic*
8:30 a.m.	Reports of working groups (Purpose: Chairmen of the four working groups listed below will report to the committee on the status of the work being done by the respective groups: (1) Space power and propulsion, (2) NASA's terrestrial energy capabilities, (3) Potential joint industry/NASA terrestrial energy projects, and (4) NASA surface propulsion technology.).
1 p.m.	Discussion of issues raised by NASA (Purpose: To afford an opportunity for the committee to discuss issues regarding: (1) Early distribution of NASA research results to U.S. manufacturers, (2) workshops or seminars which would be useful to committees, (3) emphasis to be placed on particular technology problems, and (4) most fruitful potential areas of research to reduce aircraft fuel consumption.).
2 p.m.	Future plans (Purpose: The committee chairman will review the remaining actions to be taken by the working groups and will propose a tentative agenda and schedule for the next committee meeting.).
2:30 p.m.	Adjournment.

BOYD C. MYERS, II,
Assistant Associate Administrator for Organization and Management, National Aeronautics and Space Administration.

DECEMBER 18, 1974.

[FR Doc.74-29973 Filed 12-23-74;8:45 am]

OFFICE OF MANAGEMENT AND BUDGET

ADVISORY COMMITTEE ON THE BALANCE OF PAYMENTS STATISTICS PRESENTATION

Establishment

Determination pursuant to Executive Order 11769 (Advisory Committee Management) and Pub. L. 92-463 (Federal Advisory Committee Act).

The objectives and scope of the Advisory Committee on the Balance of Payments Statistics Presentation is to provide advice on improvements in the presentation of the balance of payments accounts, which are developed and published by the Department of Commerce, to facilitate a more meaningful interpretation of the U.S. balance of payments and exchange rate developments each quarter. Particular attention will be paid to the continued adequacy of the overall summary balances in reflecting pressures on the price of the dollar in international exchange markets.

It is determined that the Advisory Committee on the Balance of Payments Statistics Presentation is essential in providing assistance necessary to carry out my responsibilities under the Budget and Accounting Procedures Act of 1950, as amended, Executive Order No. 8248, September 1939 and Executive Order No. 10253, June 1951. It is also determined that the Advisory Committee on the Balance of Payments Statistics Presentation is in the public interest.

The Advisory Committee on the Balance of Payments Statistics Presentation will terminate on September 30, 1975 unless renewed prior to that date. The authority to make determinations as to the formation and utilization of advisory committees and panels of the Advisory Committee on the Balance of Payments Statistics Presentation is hereby delegated to the Deputy Associate Director for Statistical Policy. This authority may be redelegated.

Dated: December 19, 1974.

ROY L. ASH,
Director.

[FR Doc.74-29978 Filed 12-23-74;8:45 am]

CLEARANCE OF REPORTS

Lists of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and budget on 12/19/74 (44 USC 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

The symbol (x) identifies proposals which appear to raise no significant issues, and are to be approved after brief notice thru this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503, (202-395-4529), or from the reviewer listed.

NEW FORMS

DEPARTMENT OF AGRICULTURE

Departmental and other, Survey of Bee and Pollinating Insect Research Priorities, Selected Participants in the Industry, single-time, Suppliers, processors & marketing firms, Natural Resources Division, 395-6827.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service: Study to Assess the Nutritional Quality and Microbiological Safety of Various School Food Delivery Systems, Single-time, School Children ages ten thru twelve, Human Resources Division, 395-3532.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Center for Education Statistics: Precanvass for the Full-Scale Statistical Survey of Elementary Schools 1975. OE 2369-4, single-time. Local education agencies, Planchon, P., 395-3898.

NEW FORMS

ENVIORNMENTAL PROTECTION AGENCY

SOTDAT (Source Test Data), on occasion, Air Pollution emission record, where available, Weiner, N., 395-4890.

EXTENSIONS

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration, Summary of Electric Construction Releases, REA169, on occasion, REA electric borrower engineers, Evinger, S. K., 395-3648.

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget: Federal grant application award notification, annually, agencies applying for grant applications, Lowry, R. L., 395-3772.

PHILLIP D. LARSEN,
Budget and management officer.

[FR Doc.74-30103 Filed 12-23-74;8:45 am]

POSTAL RATE COMMISSION

SAN ANTONIO, TEXAS

Notice of Visit to Postal Facilities

DECEMBER 19, 1974.

Notice is hereby given that an employee of the Postal Rate Commission will be visiting Postal Service facilities on the dates indicated for the purpose of acquiring general background knowledge of postal operations.

No particular matter at issue in contested proceedings before the Commission nor the substantive merits of a matter that is likely to become a particular matter at issue in contested proceedings before the Commission will be discussed.

A report of the visit will be on file in the Commission's docket room.

Place of visit:	*Date of visit*
San Antonio, Tex----	January 3 and 4 1975

By direction of the Commission.

JOSEPH A. FISHER,
Secretary.

[FR Doc.74-29959 Filed 12-23-74;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

I-T-E IMPERIAL CORP.

Notice Amending Notice of Suspension of Trading

DECEMBER 12, 1974.

The Commission having determined to amend its notice of December 4, 1974 summarily suspending trading in the securities of I-T-E Imperial Corp. for the period December 5, 1974 through December 14, 1974.

Therefore, pursuant to sections 15(c)(5) and 19(a)(4) of the Securities Exchange Act of 1934, that trading in the common stock being traded on the New York and Pacific Stock Exchanges and the preferred 4.60 percent cumulative stock being traded on the Philadelphia-Baltimore-Washington Stock Exchange and all other securities of I-T-E Imperial Corp. being traded otherwise than on a national securities exchange is suspended, for the period from December 5, 1974 through midnight (e.s.t.) December 12, 1974.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.74-29954 Filed 12-23-74;8:45 am]

[Release No. IC-8596; File No. S7-539]

REGISTRATION OF FOREIGN INVESTMENT COMPANIES

Request for Public Comments

Introduction. Recent years have seen a developing trend towards internationalization of the capital markets, including our own, together with a general policy favorable to the free flow of capital between nations. In view of these developments, the Commission is now considering various questions concerning foreign access to United States markets by foreign broker-dealers and banks directly or through domestic subsidiaries.[1] The purpose of this release is to invite comments which will assist the Commission in exploring the issues involved in registration and regulation of foreign investment companies under the Investment Company Act of 1940 (the "Act").

The investment company vehicle can be useful as an instrument to channel funds of a country's nationals into foreign investments. A foreign investment company, managed by experts familiar with the foreign economy, business atmosphere, political situation and the factors relevant to the analysis of the investment merits of the securities of the foreign issuers in the area of their operations, should be in a position to assist the investor to meet the risks and problems of investing abroad. Domestic investment companies have provided these services to foreign investors who have channeled substantial sums into securities of United States issuers through United States investment companies. In 1973, sales of United States open-end investment companies to foreigners aggregated $257.4 million. The foreigners were afforded the opportunity to invest their funds and, at the same time, provided the United States economy with a source for significant amounts of capital.

At the present time, foreign investment companies are restricted in their ability to attract United States investor interest. Although the concept of the investment company originated in Europe and has spread from there to the United States and the other commercial nations of the world, most foreign investment companies are not now permitted to sell their securities in this country. Without this ability they cannot, in any meaningful way, serve as an instrument for private United States investment in foreign securities or as a vehicle for foreign economies to obtain capital from private United States sources.

A foreign investment company must be registered under the Act in order to sell its shares in the United States, but such registration is prohibited unless the Commission can make the special, and often difficult, findings called for by section 7(d) of the Act [15 U.S.C. 80a-7(d)]. As more fully discussed below, the United States has participated in a conference of the Organisation for Economic Cooperation and Development ("OECD") which resulted in the development of certain rules for the operations of investment companies and a recommendation, supported by the Commission, that member countries take those rules into account when considering their existing legislation or applications for permission to sell publicly in their own territory securities of foreign institutions for collective investments.

In line with this action, the Commission believes it appropriate to consider the extent to which it can and should act to facilitate the registration under the Act of investment companies which are domiciled in countries which are members of the OECD and which comply with the rules it adopted. On the other hand, the Commission believes that it should not encourage the registration of foreign investment companies under circumstances where necessary regulatory modifications would significantly lessen investor protections or provide such companies with an unfair competitive advantage over United States investment companies. The Commission therefore seeks the assistance of the international financial community, interested agencies of the United States and foreign governments, state regulatory authorities in the United States, and members of the

See footnotes at end of document.

bar and the public generally, on the policy questions posed below. The Commission recognizes that many of these questions may also arise in the case of companies domiciled in non-OECD member countries. Accordingly, comments on these questions to the extent they are applicable to such companies may also be submitted.

Background. The statutory provisions. The Commission has previously permitted a limited number of foreign investment companies to register under the Act and offer their securities in the United States. The only provisions of the Act specifically dealing with the Commission's authority to permit a foreign investment company to register under the Act and publicly offer its securities in the United States are contained in sections 8(a) and 7(d) of the Act [15 U.S.C. 80a–8(a), 80a–7(d)]. Section 8(a) of the Act authorizes only a domestic investment company to register and section 7(d) prohibits a foreign investment company from using the mails or any instrumentality of interstate commerce to publicly offer its securities in the United States. However, section 7(d) also authorizes the Commission to permit a foreign investment company to register under the Act and make a public offering of its securities, but only:

> * * * if the Commission finds that, by reason of special circumstances or arrangements it is both legally and practically feasible effectively to enforce the provisions of this [Act] against such company and that the issuance of such order is otherwise consistent with the public interest and protection of investors.

This then is the statutory standard which section 7(d) requires the Commission to apply in considering the registration of a foreign investment company under the Act. However, section 6(c) [15 U.S.C. 80a–6(c)] of the Act empowers the Commission by rule or order to exempt any person, security or transaction from any provisions of 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 the provisions of the Act; and section 38(a) of the Act authorizes the Commission to make, issue, amend, and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the power conferred upon the Commission elsewhere in the Act.

Rule 7d–1. In 1954, the Commission adopted Rule 7d–1 [17 CFR 270.7d–1] under the Act to enumerate the conditions and special arrangements to be entered into by Canadian management investment companies in order to enable them to obtain an order permitting registration. In announcing that it had under consideration the adoption of the rule,[2] the Commission described the standards of the rule as "special arrangements" formulated "[i]n line with the policy of this government to facilitate and encourage foreign investments * * *" and "[a]fter extended discussions with certain Canadian companies which [had] applied for registration * * *."[3] The Commission went on to state:

> The conditions and arrangements have been established in the light of the high degree of comity that has prevailed between this country and Canada, the existing treaties, the proximity of the two countries, their joint heritage of the common law, and the essential similarity of statutes and law relating generally to corporations and the rights of stockholders. Accordingly, the rule is applicable only to Canadian management investment companies. Conditions and arrangements proposed by investment companies organized under the laws of other foreign countries will be considered on a case by case basis in the light of the statutory standards.

The special arrangements specified in Rule 7d–1, generally speaking, provide that the charter and by-laws of the company contain the substantive provisions of the Act which the company must agree may be enforced as a matter of contract right in the United States or Canada by shareholders. At least a majority of the officers and of the directors are required to be citizens of the United States and a majority of each such majority must be residents of the United States. The officers and directors must also agree to comply with the Act and consent to the enforcement of their agreements by shareholders in those jurisdictions. In furtherance of this purpose the rule also requires the company to maintain its assets in the United States and agree to their liquidation and distribution upon direction of the Commission, or the courts, upon a finding of noncompliance by the company or its officers and directors with their agreements or the Commission's order. The Commission indicated its belief that these provisions "in the over-all * * * will accord protection to investors, equal to, though not necessarily identical with, the protection accorded by the Act to investors in the usual domestic company."[4]

Although the provisions of Rule 7d–1 are applicable only to Canadian companies, they have come to be used as guidelines in the consideration of applications of other foreign companies for permission to register.[5]

The OECD rules. The Commission has taken additional action looking to internationalization of the capital markets with respect to investment company securities. In 1972, representatives of the United States, including a representative of the Commission, participated in the deliberations of the OECD which led to the promulgation by that body of a set of "Standard Rules for the Operations of Institutions for Collective Investments" ("Standard Rules").[6] The Standard Rules are applicable to investment companies of the open-end type and, generally speaking, deal with minimum requirements for disclosure and the furnishing of periodic financial reports to investors and the filing of periodic reports with supervisory authorities. They also deal with the institutions' sales practices and activities and their investment practices, including restrictions relating to short sales, borrowings and the writing of options. In addition, the Standard Rules deal with minimum capital requirements, issuance of warrants, custody of assets, management and distribution agreements, conflicts of interest, incentive performance fees, pricing of shares and assignment of management agreements. These rules further provide that each member country provide official surveillance of the institutions domiciled there.

It can be seen therefore that the Standard Rules represent a significant step forward in the protection of investors in investment company securities although they do not provide many important protections afforded by the Act. Following the promulgation of the Standard Rules, the OECD recommended that member countries:

> (1) Review, as appropriate, their existing legislation or regulations concerning the operations of institutions for collective investment, taking into consideration the Standard Rules and to take the Standard Rules into account when preparing new legislation or regulations on this subject;
>
> (2) When considering applications for admission to public sale in their own territory of the securities of foreign institutions for collective investment which comply with the Standard Rules, give substantial weight, within the framework of their legislation, to the fact of such compliance.

The Commission supported these recommendations.

Proposed legislation. Shortly thereafter, the Commission proposed enactment of the "Foreign Portfolio Sales Corporation Act of 1973." One provision of that proposal would amend section 7(d) of the Act to authorize the Commission, in considering applications by a foreign investment company to register, to "take into account the differing laws, regulations, customs and business conditions of particular countries and the adequacy of existing regulations in such countries."[7] The purpose of the suggested provision, as described by the Commission, is to:

> * * * provide greater flexibility under section 7(d) to the Commission in allowing registration of foreign investment companies. This should better enable the Commission to administer the Act in light of developments in foreign securities regulation and recent adoption of an OECD Code of proposed uniform standards for the regulation of investment companies.[8]

Sales abroad of securities of United States investment companies. The Commission has also taken action to facilitate the sales overseas of securities of United States investment companies. In its "Guidelines Concerning the Applicability of the Federal Securities Laws to the Offer and Sale outside of the United States of shares of Registered Open-end Investment Companies" ("Guidelines") promulgated on June 23, 1970 (Investment Company Act Release No. 6082), the Commission indicated that it considered the protections of the securities laws to be applicable to United States investment companies even when selling outside the United States. Among other things, the Guidelines made clear the

See footnotes at end of document.

Commission's view that the registration requirements of the Securities Act of 1933 apply to shares of a registered open-end investment company offered and sold outside the United States to foreign nationals and that the issuer should conduct such offerings by means of a prospectus not substantially different from the one used in the United States printed in a language understood by that segment of the foreign investing public being solicited. The Guidelines also expressed the Commission's view that while the provisions of the Act apply to an open-end company registered under the Act regardless of where its shares are sold, exemptive relief from the price maintenance provisions of the Act may be justified under appropriate circumstances with respect to overseas sales to foreign nationals.

In recognition of the Commission's position that the extensive pattern of investor protection provided by the United States securities laws was generally available to foreign investors, German authorities have since permitted several United States investment companies to sell their shares in Germany. In addition, a number of United States companies are now selling in the European community outside of Germany. Most recently, several United States investment companies have been permitted to sell their shares in Japan.[9]

The current situation. Despite the action taken by the Commission looking to the registration of foreign investment companies and the substantial interest manifested in registering foreign investment companies, to date only a small number of foreign companies have actually registered under the Act.[10] Recently, interest has been expressed in registering companies organized in Belgium, Germany, Japan, The Netherlands and Switzerland. However, it appears that the provisions of section 7(d) of the Act and Rule 7d–1 (taken as guidelines) are considered formidable obstacles to obtaining the required permission of the Commission. Even where the proposed OECD Standard Rules are met, conflicts between the laws of the company's domicile and the United States securities laws raise substantial questions as to whether registration may be permitted.

In view of the foregoing, the Commission wishes to consider whether and how United States investors in foreign investment companies permitted to register under the Act can be provided with adequate protection without unduly impeding the public offering of the securities of such companies in the United States and the operation of such companies outside of the United States.

Issues to be addressed. American investors have for many years manifested an interest in investing in foreign securities and, in view of the increasing internationalization of the securities markets, this interest may be expected to increase. As pointed out above, foreign investment companies could provide a valuable medium for such investment. On the other hand, investors in investment companies are in need of special protections, extending beyond disclosure, and the Investment Company Act was a response to that need. Section 7(d) of the Act expresses a policy that American investors in foreign investment companies should have the same protection. As the Senate and House Committees in their reports on that Act put it:

> Foreign investment companies may not register as investment companies or publicly offer securities of which they are the issuer in the United States unless the Commission finds that these foreign investment companies can be effectively subjected to the same type of regulation as domestic investment companies.[11]

This objective has proven to be difficult to accomplish except in the case of some Canadian investment companies, which essentially are controlled by Americans. Many foreign investment companies find it difficult, if not impossible, to comply fully with the Act because of the requirements of foreign law and practice; other investment companies may be deterred by the requirements of section 7(d). As discussed above, the Standard Rules afford certain of the protections provided by the Act and, in certain respects, provide additional protections. The basic question, therefore, is whether or not it is desirable, under present conditions, to relax certain of the restrictions in the Act with respect to foreign investment companies, particularly those domiciled in OECD member countries which adopt the regulatory framework provided in the Standard Rules, and, if desirable, how this can be done in a way which will not sacrifice essential investor protections.

In view of the foregoing, the Commission requests comments on the following questions: [12]

1. (a) What effect would increasing the number of foreign investment companies registered under the Act have on the United States capital markets, on domestic issuers of securities, and on the domestic investment company industry?

(b) Would easing requirements for access by foreign investment companies to the United States facilitate the entry of United States investment companies into foreign markets?

2. (a) Should the Commission permit foreign investment companies to register under the Act under conditions and arrangements which do not provide protections equal to those provided under the Act and, if so, what provisions of the Act should they not be required to meet?

(b) Should any foreign investment company established in an OECD member country which has conformed with the Standard Rules and which company complies with such rules be permitted to register under the Act?

(c) If not, what additional protections should be required?

(d) Is it feasible and practical to require a foreign investment company to solicit proxies, or to provide United States investors with voting rights to elect directors, pass upon advisory and underwriting contracts, ratify the selection of auditors and pass upon any proposal to change fundamental investment policy or go out of the investment company business?

(e) Is it feasible and practical to require a foreign investment company subject to regulation in another country to comply fully with bookkeeping, record retention, valuation and capital structure requirements of the Act and is it possible to provide adequate safeguards from overreaching by affiliated persons in a manner equal to that contemplated by section 17 [15 U.S.C. 80a–17] of the Act?

(f) Can net asset value of the shares of a foreign investment company which invests in foreign securities be readily and reliably ascertained?

(g) Must the Commission inquire into the adequacy of the foreign markets for the securities in the investment company's portfolio, particularly in the case of a company which has issued redeemable securities?

(h) If it is not feasible and practical to apply these protections and safeguards with respect to a foreign investment company, what variations are possible in order to provide "equal" protections to United States investors?

3. (a) A fundamental touchstone of the Commission's program for regulating United States investment companies involves a routine inspection. Can this be accomplished with respect to foreign investment companies?

(b) Are the problems of surveillance and enforcement presented by permitting foreign investment companies to register under the Act, especially in view of the laws of their respective jurisdictions of origin (including "secrecy" laws), capable of solution? Among other things, these problems include access to information abroad to determine the nature of transactions and to verify the manner in which they are being conducted, the policing of foreign broker relationships with customers to insure compliance with applicable United States law, and the extent to which foreign courts would honor judgments rendered by United States courts against foreign brokers doing business here.

(c) Can foreign courts enforce, and is it likely that foreign courts will enforce, United States securities laws or United States judgments based on violations of those laws against such foreign persons?

(d) What requirements are appropriate to assure adequate jurisdiction over a foreign investment company by United States courts?

(e) Should the assets of such a company be kept in the United States or should a specified percentage of its officers or directors be required to be United States citizens or residents?

4. (a) To what extent would additional costs be incurred in regulating foreign investment companies and in enforcing the securities laws against them?

See footnotes at end of document.

(b) How should they be measured and should such measurement take into account varying distances from the United States?

(c) If such additional costs should be borne by the registered foreign investment companies themselves, what procedure should be used to assess and obtain payment of the additional costs and from whom should payment be obtained (e.g., as a class or otherwise)?

5. Could foreign-exchange problems adversely affect United States investors in foreign investment companies with respect to payment of dividends and ability to redeem shares and, if so, what protections are needed in this regard?

6. Would the domestic investment company industry be unfairly disadvantaged if foreign investment companies were permitted to operate in the United States without being required to comply fully with the Act in essentially the same manner as domestic investment companies?

7. (a) If all registered investment companies of the same type, domestic and foreign, are not required to meet essentially the same regulatory standards under the Act, what would prevent any investment company, domestic or foreign, from organizing or reorganizing under the laws of the foreign country whose investment companies registered under the Act are subject to the regulation deemed least restrictive?

(b) If such action were not prevented would not the quality of regulation tend to deteriorate?

(c) How can such action be prevented?

(d) Should the Commission entertain an application for registration by a foreign investment company only if it has had an operating history of not less than a specified period, say five years?

8. (a) Would the flexible standard proposed for Section 7(d) as part of the Foreign Portfolio Sales Corporation bill (H.R. 8256, 93d Cong. 1st Sess.) provide the Commission with adequate authority to deal with the registration needs of those foreign investment companies which desire to sell their shares in the United States?

(b) If not, how might the bill be changed to clarify the Commission's authority?

9. (a) In the light of United States law and policy, particularly the policies of the National Banking Act of 1933 (the "Glass-Steagall Act") which is generally interpreted to restrict bank participation in the management of an investment company, would it be in the public interest and consistent with the protection of investors in the United States to permit a foreign investment company to register under the Act where such company has an investment adviser, principal underwriter or broker which is a foreign bank or where it has an officer, director, or employee who is an officer or director of a foreign bank?

(b) Should the Commission concern itself with the possible circumvention of the provisions of the Glass-Steagall Act by United States banks through ownership or control of or other interests in foreign banks which act as investment company underwriters?

The Commission requests written comments and data or other information on the enumerated questions and any other matters relevant to the issues involved in registering foreign investment companies under the Act. All such submissions should be directed to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, NW., Washington, D.C. 20549 by January 31, 1975, and should be designated File No. S7–539.

Although the Commission, as previously noted, is most interested in the questions relating to registration of foreign investment companies in light of the formulation by the OECD of the Standard Rules, the Commission is aware that investment companies domiciled in non-OECD member countries may also wish to register under the Act and offer their securities in the United States. In view of this possibility, comments and data and other information also may be submitted with respect to the enumerated questions from the prespective of companies established in such other jurisdictions. Any such submissions should be made at the time and place and in the manner noted above.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

DECEMBER 2, 1974.

[FR Doc.74-29953 Filed 12-23-74;8:45 am]

[1] Public comments have been submitted to the Commission on this matter pursuant to the Commission's invitation. (Securities Exchange Act Release No. 10634, February 8, 1974.)

[2] Investment Company Act Release No. 1945 (1954).

[3] Id. at 1.

[4] Id. at 2.

[5] See e.g., Pan Australian Fund, Ltd., Investment Company Act Release No. 8028 (1973); First American-Australian Investors, Ltd., Investment Company Act Release No. 6517 (1971); and American-South African Investment Company Ltd., Investment Company Act Release No. 2756 (1958).

[6] Standard Rules for the Operations of Institutions for Collective Investments in Securities (Organisation for Economic Cooperation and Development, Paris, 1972). Copies may be purchased in the United States from OECD Publications Center, Suite 1207, 1750 Pennsylvania Avenue, NW., Washington, D.C. 20006, at $2.25 each. Orders and inquiries may also be sent to OECD Publications Office, 2 Rue André-Pascal, 75 Paris 16c, France.

[7] In 1973, Congressman Harley O. Staggers introduced this proposed bill as H.R. 8256. No further action has been taken in the Congress and the bill is still pending.

[8] SEC-Treasury Department Memorandum entitled "Description of Foreign Portfolio Sales Corporation Proposal," March 27, 1973, p. 7.

[9] In accordance with the view of the Commission contained in the Guidelines, the Commission has granted exemption from the price maintenance provisions of the Act with respect to sales of securities in Germany (Pilgrim Fund Incorporated, Investment Company Act Release No. 5968, February 10, 1970) and Japan (Dreyfus Fund Incorporated, Investment Company Act Release No. 7631, January 18, 1973; Keystone Custodian Funds, Inc. as Trustee for Keystone Custodian Fund, Series S–4, Investment Company Act Release No. 7814, May 11, 1973).

[10] At June 30, 1974, seven foreign companies with total net assets of about $500 million were registered under the Act. Of the seven registered, four are Canadian companies, one is a South African company, one is an Australian company, and one is an English company.

[11] S. Rep. No. 1775, 76th Cong., 3rd Sess. (1940), 13; H.R. Rep. No. 2639, 76th Cong. 3rd Sess (1940), 13. The original bill which became the Investment Company Act, S. 3580, would have simply prohibited any foreign investment company from making a public offering in the United States and would have permitted only domestic companies to register. The change to the present language was made in committee for reasons that are not entirely clear.

[12] When used in the following questions, the term "foreign investment company" means a foreign investment company domiciled in an OECD member country which has adopted the regulatory framework provided in the Standard Rules.

REPORT COORDINATING GROUP (ADVISORY)

Notice of Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, Pub. L. 92–463, 86 Stat. 770, the Securities and Exchange Commission announces a public advisory committee meeting.

The Commission's Report Coordinating Group (Advisory), will hold a meeting on January 17, 1975 at 55 Water Street, Twenty-third Floor, New York, New York. The meeting will commence at 10 a.m. local time and will be for the purpose of discussing the FOCUS Report of financial and operational information and the development of simplified trading forms and assessment forms.

The Group's meetings are open to the public. Any interested person may attend and appear before or file statements with the advisory committee. Said statements, if in written form, may be filed before or after the meeting. Oral statements shall be made at the time and in the manner permitted by the Report Coordinating Group.

The Report Coordinating Group was formed to assist the Commission in developing a coherent, industry-wide, coordinated reporting system. In carrying out this objective, the Report Coordinating Group is to review all reports, forms and similar materials required of broker-dealers by the Commission, the self-regulatory community and others. The Group is expected to advise the Commission on such matters as eliminating unnecessary duplication in reporting, reducing reporting requirements where feasible, and developing the FOCUS Report of financial and operational information. (Securities Exchange Act Release No. 10612; Securities Exchange Act Release No. 10959).

Information concerning the meeting, including the procedures for submitting statements to the Group, may be obtained by contacting: Mr. Daniel J.

Piliero II, Secretary, SEC Report Coordinating Group, Securities and Exchange Commission, Washington, D.C. 20549.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.74-29958 Filed 12-23-74;8:45 am]

[34-11125]

GOLD PURCHASING AND INVESTING

Recommendations

As of December 31, 1974 the Federal restrictions on the purchase, sale and ownership of gold will be lifted. The President's Special Assistant for Consumer Affairs, the Department of Justice, the Federal Trade Commission (FTC), the U.S. Postal Inspection Service and the Securities and Exchange Commission (SEC) have today issued the recommendations set forth below to prospective gold purchasers and investors.

The Department of Treasury recently announced that the U.S. Government will offer for sale 2 million ounces of gold in 400-ounce bars on January 6, 1975, at public auction. The Department will consider at a later date whether subsequent sales of gold would be appropriate.

As in the instance of other precious metals, investors and unsophisticated purchasers must often rely upon the representations of others and the integrity of the seller or promoter. Accordingly, it is recommended that purchasers and investors obtain as much information as possible about the companies and individuals with whom they are dealing. In other words, investigate before you invest.

Various Federal and State regulatory agencies will regulate gold trading. The SEC regulates public interstate offerings of and trading in securities related to gold. Federal law prohibiting unfair or deceptive acts in interstate commerce is enforced by the FTC. Trading in gold commodity futures and transactions involving margin and leverage contracts in gold bullion and bulk gold coins will be regulated effective April 21, 1975 by the recently created Commodity Futures Trading Commission. Federal laws against securities and mail fraud will be enforced by the SEC, the Postal Inspection Service, and the Department of Justice. Justice Department has underway a major effort to detect and prosecute the growing number of frauds involving gold and other precious metals.

The purchase of and investment in gold is a potentially fertile area for unscrupulous promoters and fraudulent schemes. Moreover, the price of gold is oftentimes dictated by speculative interests rather than industrial supply and demand, and is subject to significant and rapid fluctuations.

Inquiries or complaints regarding unfair or deceptive trade practices, including false or misleading advertisements, should be addressed to the FTC's Division of Special Statutes, 7th Street and Pennsylvania Avenue NW., Washington, D.C. 20580. With respect to investment programs, prospective investors should insist upon a prospectus or offering circular before making an investment decision. A copy of the prospectus may be reviewed at the public reference facilities of the respective state securities agencies, and in the instance of registered interstate offerings or registered companies, at the public reference rooms of the SEC in Washington, D.C., New York City, Chicago and Los Angeles. To determine whether any particular company is registered with the SEC call or write the SEC, Public Reference Section, 500 North Capitol Street, Washington, D.C. 20549, (202) 523-5506. Information concerning buyer-investor experience with specific companies may be obtained from your nearest Better Business Bureau.

The following guidelines are suggested (but should not be considered to be all inclusive) before purchasing or investing in gold.

1. Be wary of unsolicited correspondence or calls from strangers offering to sell you gold or gold investments;

2. Be skeptical of promises of spectacular profits. Ask yourself why am I being offered this golden opportunity;

3. Resist pressures to make hurried, uninformed decisions;

4. Be suspicious of claims of new, secret or exotic processes to extract gold;

5. Seek independent advice from a person you trust and who is knowledgeable;

6. Consider the risks in relation to your own financial position and needs;

7. Find out if the company has registered with the SEC or state securities agency;

8. Attempt to determine the seller's mark-up (or how much it cost the seller to purchase the gold);

9. Ascertain what costs, in addition to the quoted price of gold, are involved. For example, you may be required to pay a refining charge, assay fees, commissions, shipping and storage fees, insurance costs and sales tax;

10. Demand a written guarantee concerning weight and fineness (pureness). Some gold bears a refiner's mark assaying its weight and fineness; however, there are no Federal standards;

11. Attempt to make your purchases through local reputable firms. (Firms including the term "Exchange" in their name should not be assumed to constitute an association or group of firms which provide a public market for buyers and sellers);

12. Obtain in writing the terms of your purchase, for example, when and how the gold will be delivered and stored, including what security precautions will be taken to insure that your gold is not shaved or that counterfeit gold is not substituted;

13. Ask whether the gold will be segregated and stored in your name (not the seller's or supplier's). Make sure you receive a written receipt showing that the requisite amount of gold is being stored for your account by a reputable concern; and

14. Ask whether there will be a ready market for the gold in the form being offered to you. You may have to pay to have your gold reassayed, recast into a different shape, size and/or transported to a distant market before you can sell it.

The areas which are fraught with the greatest potential for fraud are representations concerning the existence, amount and purity of gold, accuracy of assays and geological surveys and secret refining processes. Several schemes that appear to have already surfaced involve the following situations:

1. False mining claims were used to inflate a company's financial position and to tout its investment merit. Bogus or speculative geological surveys by a purported expert or misleading ore samples were used by the company as the basis for unwarranted high estimates of mineral value.

2. Purportedly large quantities of gold located outside of the United States and obtained from underdeveloped countries were being offered in the form of certificates of ownership through off-shore banks.

3. An unscrupulous assayer conspired with a seller to certify that bars of almost pure lead were pure gold.

4. Gold coins of low purity have been issued within the past year or two by small foreign entities. (The Certification Service of the American Numismatic Association, P.O. Box 87, Ben Franklin Station, Washington, D.C. 20044, will, for a fee, authenticate gold coins.)

5. Secret processes promised to extract gold from ore which had been previously labeled as worthless. Investors were induced to finance the construction of the secret-process machinery necessary for the production of the gold.

If you believe that you may have been the victim of a fraud, you should consult your attorney to determine what steps to take to assert and protect your rights. You should also communicate such information to any of the Federal agencies listed above or to the Consumer Protection Division of the Attorney General's Office in your state or your State Securities Commissioner, and to your nearest local Better Business Bureau. Consider authorizing your attorney to inform the agencies of any problem that may arise. Although the agencies cannot intervene in your behalf or offer legal representation to obtain redress of your individual rights, your complaint may prevent others from being defrauded.

Remember, investigate before you make a purchase or investment.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

DECEMBER 9, 1974.

[FR Doc.74-30107 Filed 12-23-74;8:45 am]

INTERSTATE COMMERCE COMMISSION

IRREGULAR-ROUTE MOTOR COMMON CARRIERS OF PROPERTY

Elimination of Gateway Letter Notices

DECEMBER 19, 1974.

The following letter-notices of proposals to eliminate gateways for the purpose of reducing highway congestion, alleviating air and noise pollution, minimizing safety hazards, and conserving fuel have been filed with the Interstate Commerce Commission under the Commission's gateway elimination rules (49 CFR 1065 (a)), 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 January 3, 1975. 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 consecutivly for convenience in identification. Protests, if any, must refer to such letter-notices by number.

No. MC 37203 (Sub-No. E7), (Correction), filed June 4, 1974, published in the FEDERAL REGISTER December 11, 1974. Applicant: MILLSTEAD VAN LINES, INC., P.O. Drawer 878, Bartlesville, Okla. 74003. Applicant's representative: Thomas J. Sedberry, Suite 1102, Perry-Brooks Bldg., Austin, Tex. 78701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in Wyoming, on the one hand, and, on the other, points in Oklahoma on and east of a line beginning at the Oklahoma-Kansas State line on Interstate Highway 35, thence along Interstate Highway 35 to the Oklahoma-Texas State line. The purpose of this filing is to eliminate the gateways of points in Oklahoma within 25 miles of Coffeyville, Kans., and Tulsa, Okla., and points in Oklahoma within 80 miles of Tulsa. The purpose of this correction is to correct the "E" number, previously published by E1.

No. MC 61403 (Sub-No. E4), filed May 31, 1974. Applicant: THE MASON AND DIXON TANK LINES, INC., P.O. Box 969, Kingsport, Tenn. 37662. Applicant's representative: Charles E. Cox (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals*, in bulk, in tank vehicles, between points in Delaware, on the one hand, and, on the other, points in Georgia, Kentucky, Louisiana, Mississippi, Missouri (except St. Louis), Tennessee, and Texas. The purpose of this filing is to eliminate the gateway of Kingsport, Tenn.

No. MC 61403 (Sub-No. E5), filed May 31, 1974. Applicant: THE MASON AND DIXON TANK LINES, INC., P.O. Box 969, Kingsport, Tenn. 37662. Applicant's representative: Charles E. Cox (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Chemicals*, in bulk, in tank vehicles, from Tampa, Fla., to points in Arkansas, Connecticut, Delaware, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia (Kingsport, Tenn., and Sheffield, Ala.)*; and (2) *Liquid chemicals*, in bulk, in tank vehicles, (except phosphate and phosphatic products), from Tampa, Fla., to points in Iowa, Kansas, Minnesota, Nebraska, North Dakota east of U.S. Highway 85, South Dakota east of U.S. Highway 85 and Wisconsin (Sheffield, Ala., and Marshall, Ill.)*. The purpose of this filing is to eliminate the gateways indicated by asterisks above.

No. MC 61403 (Sub-No. E6), filed May 31, 1974. Applicant: THE MASON AND DIXON TANK LINES, INC., P.O. Box 969, Kingsport, Tenn. 37662. Applicant's representative: Charles E. Cox (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Chemicals*, in bulk, in tank vehicles, between points in Georgia, on the one hand, and, on the other, points in Maryland, Michigan, Minnesota, New Jersey, New York, Pennsylvania, and Wisconsin (Kingsport, Tenn.)*; (2) *Chemicals*, in bulk, in tank vehicles, from points in Georgia, to points in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont (Kingsport, Tenn.)*; and (3) *Liquid chemicals*, in bulk, in tank vehicles, from points in Georgia to points in North Dakota on and east of U.S. Highway 85 and South Dakota on and east of U.S. Highway 85 (Kingsport, Tenn., and Marshall, Ill.)*. The purpose of this filing is to eliminate the gateways indicated by asterisks above.

No. MC 61403 (Sub-No. E8), filed May 31, 1974. Applicant: THE MASON AND DIXON TANK LINES, INC., P.O. Box 969, Kingsport, Tenn. 37662. Applicant's representative: Charles E. Cox (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals*, in bulk, in tank vehicles, between points in Maryland, on the one hand, and, on the other, points in Mississippi, Tennessee, and Texas. The purpose of this filing is to eliminate the gateway of Kingsport, Tenn.

No. MC 61403 (Sub-No. E9), filed May 31, 1974. Applicant: THE MASON AND DIXON TANK LINES, INC., P.O. Box 969, Kingsport, Tenn. 37662. Applicant's representative: Charles E. Cox (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals*, in bulk, in tank vehicles, between points in Michigan, on the one hand, and, on the other, points in North Carolina and South Carolina. The purpose of this filing is to eliminate the gateway of Kingsport, Tenn.

No. MC 61403 (Sub-No. E10), filed May 31, 1974. Applicant: THE MASON AND DIXON TANK LINES, INC., P.O. Box 969, Kingsport, Tenn. 37662. Applicant's representative: Charles E. Cox (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals*, in bulk, in tank vehicles, between points in Mississippi, on the one hand, and, on the other, points in New Jersey, New York, and Pennsylvania. The purpose of this filing is to eliminate the gateway of Kingsport, Tenn.

No. MC 61403 (Sub-No. E11), filed May 31, 1974. Applicant: THE MASON AND DIXON TANK LINES, INC., P.O. Box 969, Kingsport, Tenn. 37662. Applicant's representative: Charles E. Cox (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals*, in bulk, in tank vehicles, between points in Minnesota, on the one hand, and, on the other, points in North Carolina, South Carolina, and Virginia. The purpose of this filing is to eliminate the gateway of Kingsport, Tenn.

No. MC 61403 (Sub-No. E14), filed May 31, 1974. Applicant: THE MASON AND DIXON TANK LINES, INC., P.O. Box 969, Kingsport, Tenn. 37662. Applicant's representative: Charles E. Cox (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals*, in bulk, in tank vehicles, (1) between points in New York, on the one hand, and, on the other, points in Tennessee and Texas (Kingsport, Tenn.)*, (2) between points in New York (except Suffolk County), on the one hand, and, on the other, points in South Carolina (Kingsport, Tenn.)*, (3) between points in New York on and west of a line beginning at the New York-Pennsylvania State line and extending along New York Highway 7 to junction New York Highway 12, thence along New York Highway 12 to junction New York Highway 28, thence along New York Highway 28 to junction New York Highway 30, thence along New York Highway 30 to the International Boundary line between the United States and Canada, on the one hand, and, on the other, points in North Carolina on and west of a line beginning at the North Carolina-Virginia State line and extending along U.S. Highway 52 to junction U.S. Highway 601, thence along U.S. Highway 601 to junction U.S. Highway 52, thence along U.S. Highway 52 to the North Carolina-South Carolina State line (Kingsport, Tenn.)*; (2) *Chemicals*, in bulk, in tank vehicles, from points in New York to points in Florida on and west of U.S. Highway 331 (Kingsport, Tenn., and Sheffield, Ala.)*; and (3) Chemicals, in bulk, in tank vehicles, over irregular routes, between points in Suffolk County, N.Y., on the one hand, and, on the other, points in South Carolina

on and west of U.S. Highway 321 (Kingsport, Tenn.). The purpose of this filing is to eliminate the gateways indicated by asterisks above.

No. MC 73688 (Sub-No. E18) (Correction), filed May 14, 1974, published in the FEDERAL REGISTER November 5, 1974. Applicant: SOUTHERN TRUCKING CORP., P.O. Box 7195, Memphis, Tenn. 38107. Applicant's representative: Fred F. Bradley, Frankfort, Ky. 40601. Authority sought too perate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Structural steel, steel piling, iron, steel, culvert, and contractors' equipment, wire, nails, roofing materials, and fabricated metal pipe*, which are iron, steel, or steel products, between Greenville, Miss., on the one hand, and, on the other, points in Tennessee. The purpose of this filing is to eliminate the gateways of points in Arkansas and Memphis, Tenn. The purpose of this correction is to omit the restriction.

No. MC 76177 (Sub-No. E70), filed May 21, 1974. Applicant: BAGGETT TRANSPORTATION COMPANY, 2 South 32nd St., Birmingham, Ala. 35233. Applicant's representative: T. C. Sinclair (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Classes A and B explosives and blasting supplies*, between points in Delaware, Maryland, and New Jersey, on the one hand, and, on the other, points in Colorado, Utah, and Wyoming. The purpose of this filing is to eliminate the gateway of Carthage, Mo., and points within 6 miles thereof.

No. MC 76177 (Sub-No. E71), filed May 21, 1974. Applicant: BAGGETT TRANSPORTATION CO., 2 South 32nd St., Birmingham, Ala. 35233. Applicant's representative: T. C. Sinclair (same as above). Authority sought to operate as a *common carrier*, by motor vehicle over irregular routes, transporting: *Classes A and B explosives and blasting supplies*, between points in New York and Pennsylvania, on the one hand, and, on the other, points in Colorado and Utah. The purpose of this filing is to eliminate the gateway of Carthage, Mo., and points within 6 miles thereof.

No. MC 76177 (Sub-No. E72), filed May 21, 1974. Applicant: BAGGETT TRANSPORTATION COMPANY, 2 South 32nd St., Birmingham, Ala. 35233. Applicant's representative: T. C. Sinclair (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Classes A and B explosives, and blasting supplies*, between points in New York and Pennsylvania, on the one hand, and, on the other, points in that part of Wyoming on, South, and west of a line beginning at the Wyoming-South Dakota State line, thence along U.S. Highway 26 to junction U.S. Highway 20, thence along U.S. Highway 20 to junction Wyoming Highway 120, thence along Wyoming Highway 120 to the Wyoming-Montana State line. The purpose of this filing is to eliminate the gateway of Carthage, Mo., and points within 6 miles thereof.

No. MC 76177 (Sub-No. E73), filed May 6, 1974. Applicant: BAGGETT TRANSPORTATION CO., 2 South 32nd St., Birmingham, Ala. 35233. Applicant's representative: T. C. Sinclair (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Classes A and B explosives, and blasting supplies*, from points in Maryland to points in Oklahoma. The purpose of this filing is to eliminate the gateways of (1) points in that part of West Virginia within 10 miles of Martinsburg, W. Va. (except Martinsburg, W. Va.)*; (2) Grafton, Ill., and points within 2 miles thereof; and (3) Wolf Lake, Ill., and points within 15 miles thereof.

No. MC 76177 (Sub-No. E74), filed May 6, 1974. Applicant: BAGGETT TRANSPORTATION CO., 2 South 32nd St., Birmingham, Ala. 35233. Applicant's representative: T. C. Sinclair (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Classes A, B, and C explosives, and blasting supplies*, from points in Alabama, to points in Michigan and Pennsylvania. The purpose of this filing is to eliminate the gateway of Greenup, Ky., and points within 5 miles thereof.

No. MC 76177 (Sub-No. E75), filed May 6, 1974. Applicant: BAGGETT TRANSPORTATION COMPANY, 2 South 32nd St., Birmingham, Ala. 35233. Applicant's representative: T. C. Sinclair (same as above). Authority sought to operate as a *common carrier*, by vehicle, over irregular routes, transporting: *Classes A and B explosives and blasting supplies*, from points in Kentucky, Virginia, and West Virginia, to points in Georgia. The purpose of this filing is to eliminate the gateways of (1) Grafton, Ill., and points within 2 miles thereof; (2) Wolf Lake, Ill., and points within 15 miles thereof.

No. MC 76177 (Sub-No. E76), filed May 6, 1974. Applicant: BAGGETT TRANSPORTATION CO., 2 South 32nd St., Birmingham, Ala. 35233. Applicant's representative: T. C. Sinclair (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Classes A and B explosives, and blasting supplies*, from points in Kentucky to points in Montana. The purpose of this filing is to eliminate the gateways of Seneca and Grafton, Ill.

No. MC 76177 (Sub-No. E77), filed May 6, 1974. Applicant: BAGGETT TRANSPORTATION COMPANY, 2 South 32nd Street, Birmingham, Ala. 35233. Applicant's representative: T. C. Sinclair (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Classes A and B explosives, and blasting supplies*, from points in Wyoming to points in Louisiana. The purpose of this filing is to eliminate the gateway of Atlas, Mo., and points within 15 miles thereof.

No. MC 76177 (Sub-No. E79), filed May 6, 1974. Applicant: BAGGETT TRANSPORTATION COMPANY, 2 South 32nd St., Birmingham, Ala. 35233. Applicant's representative: T. C. Sinclair (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Classes A and B explosives, and blasting supplies*, from points in Colorado, Utah, and Wyoming to points in Tennessee. The purpose of this filing is to eliminate the gateway of Atlas, Mo., and points within 15 miles thereof.

No. MC 76177 (Sub-No. E80), filed May 6, 1974. Applicant: BAGGETT TRANSPORTATION COMPANY, 2 South 32nd Street, Birmingham, Ala. 35233. Applicant's representative: T. C. Sinclair (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Classes A and B explosives, and blasting supplies*, from points in Alabama, Florida, and Mississippi to points in Nebraska. The purpose of this filing is to eliminate the gateway of the plant site of Trojan-U.S. Powder, division of Commercial Solvents Corporation, at or near Ordill, Ill.

No. MC 76177 (Sub-No. E81), filed May 6, 1974. Applicant: BAGGETT TRANSPORTATION COMPANY, 2 South 32nd Street, Birmingham, Ala. 35233. Applicant's representative: T. C. Sinclair (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Classes A and B explosives, and blasting supplies*, between points in Mississippi, on the one hand, and, on the other, points in Pennsylvania. The purpose of this filing is to eliminate the gateway of McAdory, Ala., and points within 15 miles thereof.

No. MC 76177 (Sub-No. E83), filed May 6, 1974. Applicant: BAGGETT TRANSPORTATION COMPANY, 2 South 32nd Street, Birmingham, Ala. 35233. Applicant's representative: T. C. Sinclair (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Classes A and B explosives, and blasting supplies*, from points in New Mexico, Texas, Louisiana, and Mississippi to points in Indiana. The purpose of this filing is to eliminate the gateway of points in that part of Illinois that are within 25 miles of Energy, Ill., and also within 15 miles of Wolf Lake, Ill.

No. MC 76177 (Sub-No. E87), filed May 6, 1974. Applicant: BAGGETT TRANSPORTATION CO., 2 South 32nd Street, Birmingham, Ala. 35233. Applicant's representative: T. C. Sinclair (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Classes A and B explosives, and blasting supplies*, from points in

Georgia, North Carolina, and South Carolina to points in Nebraska. The purpose of this filing is to eliminate the gateways of (1) points in Alabama, and (2) the plant site of Trojan-U.S. Powder, division of Commercial Solvents Corporation, at or near Ordill, Ill.

No. MC 95540 (Sub-No. E811), filed November 29, 1974. Applicant: WATKINS MOTOR LINES, INC., PO Box 1636, Atlanta, Ga. 30301. Applicant's representative: Jerome F. Marks (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods* (except commodities in bulk, in tank vehicles), from South Edmeston, N.Y., to points in Alabama and those points in Arkansas on and southwest of a line beginning at the Arkansas-Missouri State line and extending along Arkansas Highway 25 to its junction with U.S. Highway 63, thence along U.S. Highway 63 to the Arkansas-Missouri State line. The purpose of this filing is to eliminate the gateway of Gainesville, Ga.

No. MC 106398 (Sub-No. E90) (Correction), filed May 31, 1974, published in the FEDERAL REGISTER October 31, 1974. Applicant: NATIONAL TRAILER CONVOY, INC., P.O. Box 3329, Tulsa, Okla. 74101. Applicant's representative: Irvin Tull (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Prefabricated buildings, complete, knocked down, or in sections, and component parts, materials, supplies, and fixtures when shipped with such buildings, and accessories* used in the erection, construction, and completion thereof, from points in New Jersey, Delaware, Maryland, and the District of Columbia, to points in Minnesota, South Dakota, Nebraska, and Kansas. The purpose of this filing is to eliminate the gateways of Hanover, Pa., and Des Moines, Iowa. The purpose of this correction is to correct the "E" number, previously published as E9.

No. MC 106398 (Sub-No. E143) (Correction), filed May 31, 1974, published in the FEDERAL REGISTER October 31, 1974. Applicant: NATIONAL TRAILER CONVOY, INC., P.O. Box 3329, Tulsa, Okla. 74101. Applicant's representative: Irvin Tull (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plywood* (except in bulk), from the plant site of General Plywood Corporation at New Albany, Ind., to points in the Upper Peninsula of Michigan and Wisconsin. The purpose of this filing is to eliminate the gateway of the facilities of the Celotex Corporation at Charleston, Ill. The purpose of this correction is to correct the "E" number, previously published as E144.

No. MC 109397 (Sub-No. E2) (Correction), filed May 15, 1974, published in the FEDERAL REGISTER July 29, 1974. Applicant: TRI-STATE MOTOR TRANSIT CO., P.O. Box 113, Joplin, Mo. 64801. Applicant's representative: E. S. Gordon (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Source, special nuclear and byproduct materials, and radioactive materials*, between points in Illinois, on the one hand, and, on the other, points in Washington, restricted to the transportation of traffic moving under Government bills of lading. The purpose of this filing is to eliminate the gateway of the facilities of the General Electric Co., located near Morris, Grundy County, Ill. The purpose of this correction is to omit the exception.

No. MC 109397 (Sub-No. E3) (Correction), filed May 15, 1974, published in the FEDERAL REGISTER July 29, 1974. Applicant: TRI-STATE MOTOR TRANSIT CO., P.O. Box 113, Joplin, Mo. 64801. Applicant's representative: E. S. Gordon (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Source, special nuclear and byproduct materials, and radioactive materials*, between points in the Lower Peninsula of Michigan, on the one hand, and, on the other, points in that part of Illinois on and west of U.S. Highway 66, restricted to the transportation of traffic moving under Government bills of lading. The purpose of this filing is to eliminate the gateway of the facilities of the General Electric Co., located near Morris, Grundy County, Ill. The purpose of this correction is to omit the exception.

No. MC 109397 (Sub-No. E4) (Correction), filed May 15, 1974, published in the FEDERAL REGISTER July 25, 1974. Applicant: TRI-STATE MOTOR TRANSIT CO., P.O. Box 113, Joplin, Mo. 64801. Applicant's representative: E. S. Gordon (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Source, special nuclear and byproducts materials, and radioactive materials*, between points in Washington, on the one hand, and, on the other, points in Kentucky, Tennessee, Alabama, Georgia, South Carolina, and Florida, restricted to the transportation of traffic moving under Government bills of lading. The purpose of this filing is to eliminate the gateways of (1) the facilities of the General Electric Co., located near Morris, Grundy County, Ill., and (2) points in DuPage County, Ill. The purpose of this correction is to omit the exception.

No. MC 109397 (Sub-No. E5) (Correction), filed May 15, 1974, published in the FEDERAL REGISTER July 25, 1974. Applicant: TRI-STATE MOTOR TRANSIT CO., P.O. Box 113, Joplin, Mo. 64801. Applicant's representative: E. S. Gordon (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Source, special nuclear and by-products materials, and radioactive materials*, between points in Washington, on the one hand, and, on the other, points in the Lower Peninsula of Michigan and that part of Wisconsin on and east of a line beginning at the Michigan-Wisconsin State line, thence along U.S. Highway 41 to junction Wisconsin Highway 67, thence along Wisconsin Highway 67 to the Wisconsin-Illinois State line, restricted to the transportation of traffic under Government bills of lading. The purpose of this filing is to eliminate the gateway of (1) the facilities of the General Electric Co., located near Morris, Grundy County, Ill., and (2) points in DuPage County, Ill. The purpose of this correction is to omit the exception.

No. MC 109397 (Sub-No. E6) (Correction), filed May 15, 1974, published in the FEDERAL REGISTER July 25, 1974. Applicant: TRI-STATE MOTOR TRANSIT CO., P.O. Box 113, Joplin, Mo. 64801. Applicant's representative: E. S. Gordon (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Source, special nuclear and by-product materials, and radioactive materials*, between points in Anderson and Roane Counties, Tenn., on the one hand, and, on the other, points in Iowa, Minnesota, and Wisconsin, restricted to the transportation of traffic under Government bills of lading. The purpose of this filing is to eliminate the gateways of (1) the facilities of the General Electric Co., located near Morris, Grundy County, Ill., and (2) points in DuPage County, Ill. The purpose of this correction is to omit the exception.

No. MC 109397 (Sub-No. E7) (Correction), filed May 15, 1974, published in the FEDERAL REGISTER July 25, 1974. Applicant: TRI-STATE MOTOR TRANSIT CO., P.O. Box 113, Joplin, Mo. 64801. Applicant's representative: E. S. Gordon (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Source, special nuclear and byproducts materials, and radioactive materials*, between points in Anderson and Roane Counties, Tenn., on the one hand, and, on the other, points in that part of Illinois on and north of Illinois Highway 17, restricted to the transportation of traffic under Government bills of lading. The purpose of this filing is to eliminate the gateway of points in DuPage County, Ill. The purpose of this correction is to omit the exception.

No. MC 109397 (Sub-No. E8) (Correction), filed May 15, 1974, published in the FEDERAL REGISTER July 29, 1974. Applicant: TRI-STATE MOTOR TRANSIT CO., P.O. Box 113, Joplin, Mo. 64801. Applicant's representative: E. S. Gordon (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Source, special nuclear, and byproduct materials, and radioactive materials*, between the Cimarron facilities of Kerr-McGee Corporation at or near Crescent, Okla., on the one hand, and, on the other, points in Michigan, that part of Wisconsin on and east of U.S. Highway 51, and those parts of Indiana and Ohio on and

north of U.S. Highway 30, restricted to the transportation of traffic under Government bills of lading. The purpose of this filing is to eliminate the gateways of (1) the facilities of the General Electric Co., located near Morris, Grundy County, Ill., and (2) the Argonne National Laboratory of the United States Atomic Energy Commission, near Lemont, Ill. The purpose of this correction is to omit the exception.

No. MC 109397 (Sub-No. E9) (Correction), filed May 15, 1974, published in the FEDERAL REGISTER July 29, 1974. Applicant: TRI-STATE MOTOR TRANSIT CO., P.O. Box 113, Joplin, Mo. 64801. Applicant's representative: E. S. Gordon (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Source, special nuclear, and byproducts materials, and radioactive materials*, between points in Washington, Idaho, Oregon, Nevada, and that part of California on, west, and north of Interstate Highway 15, on the one hand, and, on the other, points in Illinois, restricted to the transportation of traffic under Government bills of lading. The purpose of this filing is to eliminate the gateway of the facilities of the General Electric Co., located near Morris, Grundy County, Ill. The purpose of this correction is to omit the exception.

No. MC 109397 (Sub-No. E10) (Correction), filed May 15, 1974, published in the FEDERAL REGISTER July 29, 1974. Applicant: TRI-STATE MOTOR TRANSIT CO., P.O. Box 113, Joplin, Mo. 64801. Applicant's representative: E. S. Gordon (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Special, nuclear, radioactive, and by-product materials*, between the Nuclear Generating Stations located at or near Monticello, Minn., and Two Rivers, Wis., on the one hand, and, on the other, points in that part of South Carolina on and east of South Carolina Highway 121, restricted to the transportation of traffic moving under Government bills of lading. The purpose of this filing is to eliminate the gateways of (1) the facilities of the General Electric Co., located near Morris, Grundy County, Ill., and (2) Sheffield, Ill. The purpose of this correction is to omit the exception.

No. MC 109397 (Sub-No. E11) (Correction), filed May 15, 1974, published in the FEDERAL REGISTER July 29, 1974. Applicant: TRI-STATE MOTOR TRANSIT CO., P.O. Box 113, Joplin, Mo. 64801. Applicant's representative: E. S. Gordon (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Source, special nuclear, and by-product materials, and radioactive materials*, between points in that part of South Carolina on and east of South Carolina Highway 121, on the one hand, and, on the other, points in that part of Illinois on and north of U.S. Highway 36, restricted to the transportation of traffic moving under Government bills of lading. The purpose of this filing is to eliminate the gateway of the facilities of the General Electric Co., located near Morris, Grundy County, Ill. The purpose of this correction is to omit the exception.

No. MC 109397 (Sub-No. E36) (Correction), filed May 15, 1974, published in the FEDERAL REGISTER August 5, 1974. Applicant: TRI-STATE MOTOR TRANSIT CO., P.O. Box 113, Joplin, Mo. 64801. Applicant's representative: E. S. Gordon (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (A) *Explosives*, (1) from points in Arkansas, Florida, Georgia, Louisiana, Mississippi, New Mexico, Texas, and that part of Tennessee on and west of U.S. Highway 27, to points in New Jersey; (2) from points in Florida, Georgia, Louisiana, Mississippi, New Mexico, and Texas, to points in Pennsylvania; (3) from points in Florida to points in Delaware, Maryland, and Virginia; and (4) from points in Georgia to points in Delaware, Maryland, and that part of Virginia on and east of U.S. Highway 21; and (B) *Ammunition and explosives, and component parts* of ammunition and explosives when moving in the same vehicle therewith (except such commodities which, because of size or weight, require the use of special equipment or special handling), from points in Clay and Duval Counties, Fla., to points in North Carolina, Delaware, Maryland, New Jersey, Pennsylvania, and Virginia, and the District of Columbia. The purpose of this filing is to eliminate the gateway of Charleston, S.C. The purpose of this correction is to clarify the territorial description.

No. MC 109397 (Sub-No. E88) (Correction), filed May 14, 1974, published in the FEDERAL REGISTER October 22, 1974. Applicant: TRI-STATE MOTOR TRANSIT CO., P.O. Box 113, Joplin, Mo. 64801. Applicant's representative: George Cain (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Self-propelled articles*, each weighing 15,000 pounds or more, and *related machinery, equipment, tools, parts, and supplies*, moving in connection therewith, between points in the Lower Peninsula of Michigan, on the one hand, and, on the other, points in New York, Massachusetts, Rhode Island, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, West Virginia, Virginia, North Carolina and the District of Columbia, restricted to the transportation of traffic transported on trailers, and further restricted to the transportation of articles requiring specialized handling or rigging. The purpose of this filing is to eliminate the gateway of points in Lucas County, Ohio. The purpose of this correction is to correct the "E" number, previously published as E38.

No. MC 111545 (Sub-No. E581) (Correction), filed May 26, 1974, published in the FEDERAL REGISTER September 11, 1974. Applicant: HOME TRANSPORTATION CO., INC., P.O. Box 6426, Station A, Marietta, Ga. 30062. Applicant's representative: Robert E. Born (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Prefabricated buildings*, unassembled, from points in Florida to points in Indiana, Massachusetts, and Ohio. The purpose of this filing is to eliminate the gateway of Marietta, Ga. The purpose of this correction is to clarify the territorial description.

No. MC 113495 (Sub-No. E47) (Correction), filed June 3, 1974, published in the FEDERAL REGISTER December 9, 1974. Applicant: GREGORY HEAVY HAULER, INC., P.O. Box 60628, Nashville, Tenn. 37206. Applicant's representative: E. T. Gregory (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Road-construction machinery, equipment, and supplies* (except petroleum products and coal tar products in bulk, in tank vehicles, and except coal), from points in Ohio to points in Pocahontas County, W. Va. The purpose of this filing is to eliminate the gateway of points in Virginia. The purpose of this correction is to clarify the exception.

No. MC 114211 (Sub-No. E175), filed June 4, 1974. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Tractors* (except those with vehicle beds, bed frames, or fifth wheels), *agricultural machinery and implements, industrial and construction machinery and equipments, and trailers*, designed for the transportation of the commodities described above (except those designed to be run by passenger automobiles), *attachments*, for the commodities described above, *internal combustion engines*, and *parts* of the commodities described above, when moving in mixed loads with such commodities, between Miami, Fla., Savannah, Ga., and Wilmington, N.C., on the one hand, and, on the other, points in Wyoming, Nebraska, and South Dakota, restricted to the transportation of traffic moving in foreign commerce only. The purpose of this filing is to eliminate the gateway of Grand Island, Nebr.

No. MC 114211 (Sub-No. E176), filed June 4, 1974. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Farm machinery and parts thereof*, from points in that part of South Dakota on and west of a line beginning at the North Dakota-South Dakota State line, thence along U.S. Highway 93 to junction Interstate Highway 90, thence along Interstate Highway 90 to junction U.S. Highway 18,

thence along U.S. Highway 18 to junction South Dakota Highway 47, thence along South Dakota Highway 47 to the South Dakota-Nebraska State line, to points in that part of Iowa on and east of Iowa Highway 169. The purpose of this filing is to eliminate the gateway of Ft. Dodge, Iowa.

No. MC 114211 (Sub-No. E177), filed June 4, 1974. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Cast iron pressure pipe* (except pipe 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), *fittings and accessories therefore*, when moving with such pipe, from points in that part of Michigan on, south, and west of a line beginning at the Indiana-Michigan State line, thence along U.S. Highway 127 to junction Interstate Highway 96, thence along Interstate Highway 96 to Muskegon, that part of Indiana on and north of U.S. Highway 40, to points in Idaho, Utah, and Arizona. The purpose of this filing is to eliminate the gateway of the plant site of Griffin Pipe Co., located at or near Council Bluffs, Iowa.

No. MC 114211 (Sub-No. E178), filed June 4, 1974. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Cast iron pressure pipe* (except pipe 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), *fittings and accessories therefore* when moving with such pipe from points in Missouri and that part of Illinois on and south of a line beginning at the Ohio-Illinois State line, thence along U.S. Highway 136 to junction Illinois Highway 94, thence along Illinois Highway 94 to junction U.S. Highway 24, thence along U.S. Highway 24 to junction Illinois Highway 99, thence along Illinois Highway 99 to junction Illinois Highway 104, thence along Illinois Highway 104 to junction Illinois Highway 29, thence along Illinois Highway 29 to junction Illinois Highway 16, thence along Illinois Highway 16 to junction Illinois Highway 32, thence along Illinois Highway 32 to junction Illinois Highway 70, thence along Illinois Highway 70 to the Illinois-Indiana State line, to points in Idaho, and that part of Utah on and north of a line beginning at the Colorado-Utah State line, thence along Interstate Highway 70 to junction Utah Highway 128, thence along Utah Highway 128 to junction U.S. Highway 163, thence along U.S. Highway 163 to junction Interstate Highway 70, thence along Interstate Highway 70 to junction U.S. Highway 89, thence along U.S. Highway 89 to junction Utah Highway 4, thence along Utah Highway 4 to junction Interstate Highway 15, thence along Interstate Highway 15 to junction Utah Highway 56, thence along Utah Highway 56 to the Utah-Nevada State line. The purpose of this filing is to eliminate the gateway of the plant site of the Griffin Pipe Company located at or near Council Bluffs, Iowa.

No. MC 114211 (Sub-No. E179), filed June 4, 1974. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Agricultural machinery, implements, and parts*, as described in Appendix XII to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209, and *farm tractors*, from points in that part of Iowa on and north of a line beginning at the Minnesota-Iowa State line, thence along U.S. Highway 71 to junction U.S. Highway 30, thence along U.S. Highway 30 to junction U.S. Highway 69, thence along U.S. Highway 69 to junction U.S. Highway 65, thence along U.S. Highway 65 to junction Iowa Highway 330, thence along Iowa Highway 330 to junction U.S. Highway 30, thence along U.S. Highway 30 to junction Iowa Highway 14, thence along Iowa Highway 14 to junction Iowa Highway 96, thence along Iowa Highway 96 to junction U.S. Highway 63, thence along U.S. Highway 63 to the Iowa-Minnesota State line, to points in Louisiana. The purpose of this filing is to eliminate the gateways of Des Moines, Iowa, points in that part of Missouri within 15 miles of Martin City, Kans., and Claremore, Okla.

No. MC 114211 (Sub-No. E180), filed June 4, 1974. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Farm machinery and parts thereof* (except commodities which, because of size or weight, requires the use of special equipment and special handling, and those described in *Mercer Extension-Oil Field Commodities*, 74 M.C.C. 459), from points in that part of Iowa on, north, and west of a line beginning at the Iowa-Minnesota State line, thence along U.S. Highway 63 to junction U.S. Highway 30, thence along U.S. Highway 30 to junction Iowa Highway 330, thence along Iowa Highway 330 to junction Interstate Highway 80, thence along Interstate Highway 80 to the Iowa-Nebraska State line, to points in that part of Nebraska on and south of Interstate Highway 80. The purpose of this filing is to eliminate the gateways of Council Bluffs, Iowa, and Omaha, Nebr.

No. MC 114211 (Sub-No. E181), filed June 4, 1974. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Farm machinery and parts thereof*, from points in that part of Minnesota on and north of a line beginning at the South Dakota-Minnesota State line, thence along Minnesota Highway 19 to junction Minnesota Highway 5, thence along Minnesota Highway 5 to junction U.S. Highway 12, thence along U.S. Highway 12 to the Minnesota-Wisconsin State line, to points in Indiana, Kentucky, Ohio, West Virginia, Virginia, Maryland, Delaware, New Jersey, Pennsylvania, New York, Rhode Island, Connecticut, Massachusetts, Vermont, New Hampshire, Maine, and that part of Michigan on and south of Interstate Highway 96, and of the District of Columbia. The purpose of this filing is to eliminate the gateways of Minneapolis, Minn., and Horscon, Wis.

No. MC 114211 (Sub-No. E182), filed June 4, 1974. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Road building and machinery*, from points in that part of North Dakota on and east of a line beginning at the International Boundary line between the United States and Canada, thence along North Dakota Highway 256 to junction U.S. Highway 83, thence along U.S. Highway 83 to junction U.S. Highway 52, thence along U.S. Highway 52 to junction North Dakota 3, thence along North Dakota 3 to the North Dakota-South Dakota State line, to points in Oklahoma and Texas. The purpose of this filing is to eliminate the gateways of Canton, S. Dak., and points in Kansas.

No. MC 114211 (Sub-No. E265), filed June 4, 1974. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Agricultural implements and machinery, tractors* (except truck tractors), *attachments and accessories therefor, and equipment* designed for use with agricultural implements and machinery, and tractors, from the plant site and storage facilities of International Harvester Co., located at West Chicago, Ill., to points in Washington, Oregon, California, Nevada, Idaho, Utah, Wyoming, and Montana, restricted to the transportation of self-propelled vehicles (except motor vehicles as defined in section 203(a)(13) of the Interstate Commerce Act and commodities moving in driveaway service), equipment designed for use in conjunction with self-propelled vehicles (except tank semi-trailers), and parts and attachments for self-propelled vehicles and equipment designed for use in conjunction therewith. The purpose

of this filing is to eliminate the gateway of Minneapolis, Minn.

No. MC 114211 (Sub-No. E269), filed June 4, 1974. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cast iron pressure pipe and fittings and accessories therefore* when moving with such pipe, from points in that part of Illinois on and north of a line beginning at the Iowa-Illinois State line, thence along U.S. Highway 34 to junction Illinois Highway 116, thence along Illinois Highway 116 to junction U.S. Highway 24, thence along U.S. Highway 24 to the Illinois-Indiana State line, to points in Wyoming, Colorado, New Mexico, that part of Nebraska on, south, and west of a line beginning at the Iowa-Nebraska State line, thence along Interstate Highway 80 to junction U.S. Highway 73, thence along U.S. Highway 73 to junction U.S. Highway 30, thence along U.S. Highway 30 to junction U.S. Highway 81, thence along U.S. Highway 81 to junction U.S. Highway 275, thence along U.S. Highway 275 to junction U.S. Highway 20, thence along U.S. Highway 20 to junction Nebraska Highway 137, thence along Nebraska Highway 137 to the Nebraska-South Dakota State line (except points in that part of Nebraska on and west of a line beginning at the Iowa-Nebraska State line, thence along U.S. Highway 75 to junction U.S. Highway 136, thence along U.S. Highway 136 to junction U.S. Highway 77, thence along U.S. Highway 77 to the Nebraska-Kansas State line), that part of Kansas on and west of a line beginning at the Nebraska-Kansas State line, thence along U.S. Highway 77 to junction U.S. Highway 50, thence along U.S. Highway 50 to junction Interstate Highway 35, thence along Interstate Highway 35 to junction U.S. Highway 81, thence along U.S. Highway 81 to the Kansas-Oklahoma State line, that part of Oklahoma on and west of a line beginning at the Kansas-Oklahoma State line, thence along U.S. Highway 81 to junction U.S. Highway 70, thence along U.S. Highway 70 to junction Oklahoma Highway 79, thence along Oklahoma Highway 79 to the Oklahoma-Texas State line, that part of South Dakota on, west, and south of a line beginning at the Nebraska-South Dakota State line, thence along South Dakota Highway 47 to junction U.S. Highway 18, thence along U.S. Highway 18 to junction U.S. Highway 183, thence along U.S. Highway 183 to junction Interstate Highway 90, thence along Interstate Highway 90 to junction U.S. Highway 83, thence along U.S. Highway 83 to junction South Dakota Highway 34, thence along South Dakota Highway 34 to junction U.S. Highway 212, thence along U.S. Highway 212 to the South Dakota-Wyoming State line, that part of Montana on and west of a line beginning at the Wyoming-Montana State line, thence along U.S. Highway 212 to junction Montana Highway 22, thence along Montana Highway 22 to junction Montana Highway 200, thence along Montana Highway 200 to junction Montana Highway 24, thence along Montana Highway 24 to junction U.S. Highway 2, thence along U.S. Highway 2 to junction Montana Highway 242, thence along Montana Highway 242 to the International Boundary line between the United States and Canada, and in that part of Texas on and west of a line beginning at the Oklahoma-Texas State line, thence along Texas Highway 79 to junction U.S. Highway 281, thence along U.S. Highway 281 to junction U.S. Highway 81, thence along U.S. Highway 81 to the International Boundary line between the United States and Mexico. The purpose of this filing is to eliminate the gateway of the plant site of the Griffin Pipe Co., located at or near Council Bluffs, Iowa.

No. MC 114211 (Sub-No. E270), filed June 4, 1974. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle over irregular routes, transporting: *Cast iron pressure pipe* (except pipe 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 *fittings and accessories therefor*, when moving with such pipe, from points in that part of Nebraska on and east of a line beginning at the South Dakota-Nebraska State line, thence along U.S. Highway 81 to junction Nebraska Highway 92, thence along Nebraska Highway 92 to junction Nebraska Highway 15, thence along Nebraska Highway 15 to junction Nebraska Highway 33, thence along Nebraska Highway 33 to junction U.S. Highway 77, thence along U.S. Highway 77 to the Nebraska-Kansas State line, to points in Utah, Arizona, and that part of Idaho on and west of a line beginning at the Idaho-Montana State line, thence along U.S. Highway 93 to junction U.S. Alternate Highway 93, thence along U.S. Alternate Highway 93 to junction U.S. Highway 26, thence along U.S. Highway 26 to junction Interstate Highway 15, thence along Interstate Highway 15 to junction U.S. Highway 30, thence along U.S. Highway 30 to the Idaho-Wyoming State line, restricted to the transportation of traffic which, because of size or weight, requires the use of special equipment. The purpose of this filing is to eliminate the gateway of the plant site of the Griffin Pipe Co., located at or near Council Bluffs, Iowa.

No. MC 114211 (Sub-No. E271), filed June 4, 1974. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cast iron pressure pipe, and fittings and accessories therefor* when moving with such pipe, from points in New York and that part of Pennsylvania on and north of a line beginning at Erie, thence along U.S. Highway 19 to junction U.S. Highway 6, thence along U.S. Highway 6 to junction U.S. Highway 11, thence along U.S. Highway 11 to junction Interstate Highway 380, thence along Interstate Highway 380 to junction Interstate Highway 80, thence along Interstate Highway 80 to the Pennsylvania-New Jersey State line, and in that part of New Jersey on and north of a line beginning at the Pennsylvania-New Jersey State line, thence along Interstate Highway 80 to junction Interstate Highway 280, thence along Interstate Highway 280 to the New Jersey-New York State line, to points in North Dakota, South Dakota, Nebraska, Montana, Wyoming, Colorado, New Mexico, that part of Kansas on and west of a line beginning at the Missouri-Kansas State line, thence along Interstate Highway 35 to junction U.S. Highway 75, thence along U.S. Highway 75 to the Kansas-Oklahoma State line, that part of Minnesota on and west of a line beginning at the Iowa-Minnesota State line, thence along U.S. Highway 59 to junction Minnesota Highway 7, thence along Minnesota Highway 7 to junction U.S. Highway 12, thence along U.S. Highway 12 to the Minnesota-South Dakota State line, that part of Texas on and west of a line beginning at the Oklahoma-Texas State line, thence along U.S. Highway 75 to junction Interstate Highway 35E, thence along Interstate Highway 35E to junction U.S. Highway 183, thence along U.S. Highway 183 to junction U.S. Highway 90, thence along U.S. Highway 90 to junction Texas Highway 123, thence along Texas Highway 123 to junction U.S. Highway 181, thence along U.S. Highway 181 to junction Texas Highway 72, thence along Texas Highway 72 to junction U.S. Highway 281, thence along U.S. Highway 281 to the International Boundary line between the United States and Mexico, and that part of Oklahoma on and west of a line beginning at the Kansas-Oklahoma State line, thence along U.S. Highway 75 to junction Indian National Turnpike, thence along Indian National Turnpike to junction U.S. Highway 69, thence along U.S. Highway 69 to junction U.S. Highway 75, thence along U.S. Highway 75 to the Oklahoma-Texas State line. The purpose of this filing is to eliminate the gateway of the plant site of Griffin Pipe Co., located at or near Council Bluffs, Iowa.

No. MC 114211 (Sub-No. E272), filed June 4, 1974. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular

routes, transporting: *Agricultural machinery, implements, and parts* as described in Appendix XII to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209, and *farm tractors* (except commodities which because of size or weight, require the use of special equipment, and those described in *Mercer Extension-Oilfield Commodities*, 74 M.C.C. 459), between points in that part of Iowa on and east of a line beginning at the Minnesota-Iowa State line, thence along U.S. Highway 71 to junction Iowa Highway 141, thence along Iowa Highway 141 to junction Iowa Highway 25, thence along Iowa Highway 25 to junction Iowa Highway 44, thence along Iowa Highway 44 to junction U.S. Highway 6, thence along U.S. Highway 6 to junction Iowa Highway 35, thence along Iowa Highway 35 to junction Iowa Highway 5, thence along Iowa Highway 5 to junction U.S. Highway 34, thence along U.S. Highway 34 to junction U.S. Highway 63, thence along U.S. Highway 63 to junction Iowa Highway 78, thence along Iowa Highway 78 to junction Iowa Highway 1, thence along Iowa Highway 1 to junction Iowa Highway 92, thence along Iowa Highway 92 to junction U.S. Highway 61, thence along U.S. Highway 61 to the Iowa-Illinois State line, to points in Oklahoma. The purpose of this filing is to eliminate the gateways of Des Moines, Iowa, points in that part of Missouri within 15 miles of Martin City, Kans., and Marin City, Kans.

No. MC 114211 (Sub-No. E277), filed June 4, 1974. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Agricultural machinery, agricultural implements, and parts thereof*, between points in that part of South Dakota on and east of a line beginning at the Wyoming-South Dakota State line, thence along U.S. Highway 14 to junction Interstate Highway 90, thence along Interstate Highway 90 to junction South Dakota Highway 47, thence along South Dakota Highway 47 to junction U.S. Highway 18, thence along U.S. Highway 18 to junction South Dakota Highway 50, thence along South Dakota Highway 50 to junction U.S. Highway 81, thence along U.S. Highway 81 to the South Dakota-Oklahoma State line, on the one hand, and, on the other, points in that part of Oklahoma on, south, and east of a line beginning at the Kansas-Oklahoma State line, thence along U.S. Highway 281 to junction U.S. Highway 183, thence along U.S. Highway 183 to the Oklahoma-Texas line, restricted against the transportation of traffic which because of size or weight, requires the use of special equipment, and further restricted against the transportation of commodities described in *Mercer Extension-Oilfield Commodities*, 74 M.C.C. 459. The purpose of this filing is to eliminate the gateway of Beatrice, Nebr.

No. MC 114211 (Sub-No. E278), filed June 4, 1974. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Farm tractor show displays, and experimental farm tractors*, between points in the Upper Peninsula of Michigan, on the one hand, and, on the other, points in Colorado, Kansas, that part of South Dakota on and west of a line beginning at the Nebraska-South Dakota State line, thence along U.S. Highway 385 to junction U.S. Highway 18, thence along U.S. Highway 18 to the South Dakota-Wyoming State line, that part of Nebraska on and south of a line beginning at the Iowa-Nebraska State line, thence along U.S. Highway 20 to junction Nebraska Highway 12, thence along Nebraska Highway 12 to junction U.S. Highway 81, thence along U.S. Highway 81 to the Nebraska-South Dakota State line, and that part of Iowa on, south, and west of a line beginning at the Illinois-Iowa State line, thence along U.S. Highway 20 to junction U.S. Highway 52, thence along U.S. Highway 52 to junction Iowa Highway 3, thence along Iowa Highway 3 to junction U.S. Highway 218, thence along U.S. Highway 218 to junction Iowa Highway 14, thence along Iowa Highway 14 to junction Iowa Highway 3, thence along Iowa Highway 3 to junction Iowa Highway 4, thence along Iowa Highway 4 to junction Iowa Highway 7, thence along Iowa Highway 7 to junction U.S. Highway 71, thence along U.S. Highway 71 to junction U.S. Highway 20, thence along U.S. Highway 20 to the Iowa-South Dakota State line, restricted against the transportation of commodities which, because of size or weight, requires the use of special equipment. The purpose of this filing is to eliminate the gateway of Dubuque, Iowa.

No. MC 114211 (Sub-No. E279), filed June 4, 1974. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Farm tractors* (except those with vehicle beds, bed frames, or fifth wheels) *equipment designed for use in conjunction with farm tractors and parts* for farm tractors, and equipment designed for use therewith, from points in North Dakota to points in the United States and east of Indiana, Kentucky, Tennessee, Arkansas, and Louisiana, and points in that part of Michigan on and east of a line beginning at Hancock, thence along U.S. Highway 41 to junction U.S. Highway 141, thence along U.S. Highway 141 to the Michigan-Wisconsin State line, that part of Wisconsin on and east of a line beginning at the Michigan-Wisconsin State line, thence along U.S. Highway 2 to junction U.S. Highway 141, thence along U.S. Highway 141 to junction U.S. Highway 151, thence along U.S. Highway 151 to junction Wisconsin Highway 69, thence along Wisconsin Highway 69 to the Wisconsin-Illinois State line, that part of Illinois on and east of a line beginning at the Wisconsin-Illinois State line, thence along Illinois Highway 26 to junction U.S. Highway 52, thence along U.S. Highway 52 to junction Illinois Highway 84, thence along Illinois Highway 84 to junction U.S. Highway 67, thence along U.S. Highway 67 to junction U.S. Highway 61, thence along U.S. Highway 61 to the Missouri-Illinois State line, that part of Iowa on and east of a line beginning at the Illinois-Iowa State line, thence along U.S. Highway 67 to junction U.S. Highway 61, thence along U.S. Highway 61 to junction Iowa Highway 96, thence along Iowa Highway 96 to the Iowa-Missouri State line, that part of Missouri on and east of a line beginning at the Illinois-Missouri State line, thence along U.S. Highway 61 to junction Missouri Highway 16, thence along Missouri Highway 16 to junction Missouri Highway 6, thence along Missouri Highway 6 to junction Missouri Highway 11, thence along Missouri Highway 11 to junction U.S. Highway 24, thence along U.S. Highway 24 to the Missouri-Kansas State line, and that part of Texas on and east of a line beginning at the Arkansas-Texas State line, thence along U.S. Highway 59 to junction Texas Highway 155, thence along Texas Highway 155 to junction U.S. Highway 84, thence along U.S. Highway 84 to junction Interstate Highway 35, thence along Interstate Highway 35 to the International Boundary line between the United States and Mexico. The purpose of this filing is to eliminate the gateway of Fargo, N. Dak.

No. MC 114211 (Sub-No. E281), filed June 4, 1974. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tractors, road making machinery, and contractors' equipment and supplies*, from points in that part of Minnesota on and south of a line beginning at the Minnesota-South Dakota State line, thence along Minnesota Highway 19 to junction U.S. Highway 71, thence along U.S. Highway 71 to the Minnesota-Iowa State line, to points in that part of Washington on and west of a line beginning at the Washington-Idaho State line, thence along Interstate Highway 90 to junction U.S. Highway 395, thence along U.S. Highway 395 to the Washington-Oregon State line, that part of Oregon on and west of a line beginning at the Washington-Oregon State line, thence along U.S. Highway 395 to junction Oregon Highway 74, thence along Oregon Highway 74 to junction Oregon Highway 206, thence along Oregon Highway 206 to junction Oregon Highway 218, thence along Oregon Highway 218 to junction U.S. Highway 97, thence along U.S. Highway 97 to the Oregon-California State line, and that part of California on and west of a line beginning at the Oregon-California State line, thence along U.S. Highway 97 to junction Interstate Highway 5, thence along Interstate Highway

5 to junction California Highway 99, thence along California Highway 99 to junction California Highway 58, thence along California Highway 58 to junction California Highway 14, thence along California Highway 14 to junction Interstate Highway 5, thence along Interstate Highway 5 to junction California Highway 170, thence along California Highway 170 to junction U.S. Highway 101, thence along U.S. Highway 101 to junction Interstate Highway 10, thence along Interstate Highway 10 to the California-Arizona State line, restricted to the transportation of self-propelled vehicles (except motor vehicles as defined in Section 203(a)(13) of the Interstate Commerce Act and commodities moving in driveaway service), equipment designed for use in conjunction with self-propelled vehicles (except tank semi-trailers), and parts and attachments therefore. The purpose of this filing is to eliminate the gateway of Minneapolis, Minn.

No. MC 114211 (Sub-No. E282), filed June 4, 1974. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cast iron pressure pipe and fittings and accessories therefore* when moving with such pipe, from points in that part of Iowa on and west of Iowa Highway 59, to points in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, Ohio, Pennsylvania, New Jersey, Delaware, Maryland, Ohio, West Virginia, Kentucky, Virginia, Tennessee, North Carolina, South Carolina, Louisiana, Mississippi, Alabama, Georgia, and Florida, and the District of Columbia, restricted to the transportation of commodities which, because of size or weight, require the use of special equipment. The purpose of this filing is to eliminate the gateway of Council Bluffs, Iowa.

No. MC 114211 (Sub-No. E283), filed June 4, 1974. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Agricultural machinery, implements, and parts*, as described in Appendix XII to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209, and *farm tractors*, between points in that part of Iowa on, north, and east of a line beginning at the Minnesota-Iowa State line, thence along U.S. Highway 65 to junction Interstate Highway 80, thence along Interstate Highway 80 to the Iowa-Illinois State line, on the one hand, and, on the other, points in that part of Kansas on and south of a line beginning at the Colorado-Kansas State line, thence along U.S. Highway 36 to junction Kansas Highway 28, thence along Kansas Highway 28 to junction Kansas Highway 9, thence along Kansas Highway 9 to junction U.S. Highway 159, thence along U.S. 159 to junction U.S. Highway 59, thence along U.S. Highway 59 to the Missouri-Kansas State line. The purpose of this filing is to eliminate the gateways of Des Moines, Iowa, and Kansas City, Mo.

No. MC 114211 (Sub-No. E284), filed June 4, 1974. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Agricultural shredders, agricultural sprayers, scalpers, row crop shields, corn cribs*, knocked down, and *attachments and parts* for shredders, sprayers, scalpers, and corn cribs, when moving incidentally to and in the same vehicle with said commodities, from points in North Dakota to points in Indiana, Kentucky Ohio, Pennsylvania, New York (except points in Kings, Queens, Nassau, and Suffolk Counties), that part of Michigan on and south of a line beginning at Lake Michigan, thence along U.S. Highway 10 to junction Michigan Highway 25, thence along Michigan Highway 25 to junction Michigan Highway 142, thence along Michigan Highway 142 to Lake Huron, and that part of Missouri on and east of U.S. Highway 65. The purpose of this filing is to eliminate the gateway of Olwein, Iowa.

No. MC 114211 (Sub-No. E285), filed June 4, 1974. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Agricultural shredders, agricultural sprayers, scalpers, row crop shields, corn cribs*, knocked down, and *attachments and parts* for shredders, sprayers, scalpers, and corn cribs, when moving incidentally to and in the same vehicle with said commodities from points in that part of Minnesota on and south of U.S. Highway 12, to points in Indiana, Kentucky, Ohio, Pennsylvania, New York (except points in Kings, Queens, Nassau, and Suffolk Counties), and that part of Michigan on and south of a line beginning at the Lake Michigan, thence along U.S. Highway 10 to junction Michigan Highway 25, thence along Michigan Highway 25 to junction Michigan Highway 142, thence along Michigan Highway 142 to Lake Huron. The purpose of this filing is to eliminate the gateway of Olwein, Iowa.

No. MC. 114211 (Sub-No. E286), filed June 4, 1974. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Agricultural shredders, agricultural sprayers, scalpers, row crop shields, corn cribs*, knocked down, and *attachments and parts* for shredders, sprayers, scalpers, and corn cribs, when moving incidentally to and in the same vehicle with said commodities, from points in Minnesota to points in Pennsylvania, Kentucky, New York (except points in Kings, Queens, Nassau, and Suffolk Counties), that part of Missouri on and east of a line beginning at the Iowa-Missouri State line, thence along U.S. Highway 61 to junction Missouri Highway 16, thence along Missouri Highway 16 to junction Missouri Highway 6, thence along Missouri Highway 6 to junction U.S. Highway 63, thence along U.S. Highway 63 to the Missouri-Arkansas State line, that part of Michigan on and east of Interstate Highway 75, that part of Ohio on and south of a line beginning at the Indiana-Ohio State line, thence along Ohio Highway 29 to junction Interstate Highway 75, thence along Interstate Highway 75 to the Ohio-Michigan State line, and in that part of Indiana on and south of a line beginning at the Illinois-Indiana State line, thence along Indiana Highway 32 to junction Indiana Highway 37, thence along Indiana Highway 37 to junction Indiana Highway 18, thence along Indiana Highway 18 to junction Indiana Highway 67, thence along Indiana Highway 67 to the Indiana-Ohio State line. The purpose of this filing is to eliminate the gateway of Olwein, Iowa.

No. MC 114211 (Sub-No. E287), filed June 4, 1974. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson, (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Agricultural shredders, agricultural sprayers, scalpers, road crop shields, corn cribs*, knocked down, and *attachments and parts* for said shredders, sprayers, scalpers, and corn cribs, when moving incidentally to and in the same vehicle with said commodities, from points in that part of Iowa on, north, and west of a line beginning at the Minnesota-Iowa State line, thence along U.S. Highway 52 to junction Iowa Highway 150, thence along Iowa Highway 150 to junction U.S. Highway 20, thence along U.S. Highway 20 to junction Iowa Highway 57, thence along Iowa Highway 57 to junction Iowa Highway 14, thence along Iowa Highway 14 to junction Iowa Highway 330, thence along Iowa Highway 330 to junction Iowa Highway 80, thence along Iowa Highway 80 to the Iowa-Nebraska State line, to points in Ohio, Pennsylvania, New York (except points in Kings, Queens, Nassau, and Suffolk Counties), the Lower Peninsula of Michigan, that part of the Upper Peninsula of Michigan on and north of U.S. Highway 2, that part of Kentucky on and east of a line beginning at the Kentucky-Indiana State line, thence along Kentucky Highway 69 to junction U.S. Highway 231, thence along U.S. Highway 231 to junction Interstate Highway 65, thence along Interstate Highway 65 to the Kentucky-Tennessee State line, and that part of Indiana on, north, and east of a line beginning at Lake Michigan, thence along

Interstate Highway 65 to junction U.S. Highway 30, thence along U.S. Highway 30 to junction Interstate Highway 69, thence along Interstate Highway 69 to junction Indiana Highway 18, thence along Indiana Highway 18 to junction Indiana Highway 3, thence along Indiana Highway 3 to junction Indiana Highway 46, thence along Indiana Highway 46 to junction Interstate Highway 65, thence along Interstate Highway 65 to junction Indiana Highway 58, thence along Indiana Highway 58 to junction Indiana Highway 37, thence along Indiana Highway 37 to junction Indiana Highway 237, thence along Indiana Highway 237 to the Indiana-Kentucky State line. The purpose of this filing is to eliminate the gateway of Olwein, Iowa.

No. MC 114211 (Sub-No. E288), filed June 4, 1974. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pre-cast concrete*, the transportation of which, because of size or weight, require the use of special equipment, from New Ulm, Minn., to points in Missouri. The purpose of this filing is to eliminate the gateway of points in Iowa.

No. MC 114211 (Sub-No. E289), filed June 4, 1974. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such agricultural and industrial implements* as are self-propelled vehicles, or equipment designed for use in conjunction with self-propelled vehicles, and *parts and attachments therefor*, from Bloomington, Ill., to points in Washington, Oregon, Idaho, Montana, that part of Nevada on, north, and west of U.S. Highway 91, that part of Utah on and west of a line beginning at the Idaho-Utah State line, thence along Utah Highway 30 to junction U.S. Highway 89, thence along U.S. Highway 89 to junction U.S. Highway 91, thence along U.S. Highway 91 to the Utah-Arizona State line, that part of Wyoming on, north, and west of a line beginning at the South Dakota-Wyoming State line, thence along Wyoming Highway 24 to junction Wyoming Highway 116, thence along Wyoming Highway 116 to junction U.S. Highway 14, thence along U.S. Highway 14 to junction Wyoming Highway 59, thence along Wyoming Highway 59 to junction Wyoming Highway 387, thence along Wyoming Highway 387 to junction U.S. Highway 87, thence along U.S. Highway 87 to junction U.S. Highway 26, thence along U.S. Highway 26 to junction U.S. Highway 89, thence along U.S. Highway 89 to the Wyoming-Idaho State line, and in that part of California on, west, and north of a line beginning at the Nevada-California State line, thence along Interstate Highway 15 to junction U.S. Highway 395, thence along U.S. Highway 395 to junction Interstate Highway 5, thence along Interstate Highway 5 to the International Boundary line between the United States and Mexico. The purpose of this filing is to eliminate the gateway of Minneapolis, Minn.

No. MC 114211 (Sub-No. E293), filed June 4, 1974. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tractors*, from points in Minnesota to points in that part of Texas on and south of a line beginning at the Louisiana-Texas State line, thence along Interstate Highway 20 to junction Texas Highway 31, thence along Texas Highway 31 to junction Texas Highway 22, thence along Texas Highway 22 to junction U.S. Highway 281, thence along U.S. Highway 281 to junction U.S. Highway 190, thence along U.S. Highway 190 to junction Texas Highway 29, thence along Texas Highway 29 to junction U.S. Highway 290, thence along U.S. Highway 290 to junction U.S. Highway 67, thence along U.S. Highway 67 to the International Boundary line between the United States and Mexico. The purpose of this filing is to eliminate the gateway of Waterloo, Iowa.

No. MC 114211 (Sub-No. E295), filed June 4, 1974. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Kenneth R. Nelson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tractors, road making machinery, and contractors' equipment and supplies*, from points in Illinois and that part of Iowa on and east of a line beginning at the Iowa-Missouri State line, thence along U.S. Highway 169, to junction Interstate Highway 80, thence along Interstate Highway 80 to junction U.S. Highway 69, thence along U.S. Highway 69 to junction U.S. Highway 30, thence along U.S. Highway 30 to junction U.S. Highway 65, thence along U.S. Highway 65 to the Iowa-Minnesota State line, to points in Washington, Oregon, Idaho, Utah, that part of Montana on and west of a line beginning at the International Boundary line between the United States and Canada, thence along Montana Highway 242 to junction U.S. Highway 191, thence along U.S. Highway 191 to junction U.S. Highway 87, thence along U.S. Highway 87 to the Montana-Wyoming State line, and that part of Wyoming on, west, and south of a line beginning at the Wyoming-Montana State line thence along U.S. Highway 87 to junction U.S. Highway 26, thence along U.S. Highway 26 to the Wyoming-Nebraska State line. The purpose of this filing is to eliminate the gateway of Des Moines, Iowa.

No. MC 115603 (Sub-No. E3), filed May 30, 1974. Applicant: TURNER BROS. TRUCKING CO., INC., P.O. Box 94626, Oklahoma City, Okla. 73109. Applicant's representative: Jack E. Turner (same as above). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: (1) *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; and (2) Earth drilling machinery and equipment, and machinery, equipment, materials, supplies, and pipe incidental to, used in, or in connection with (a) the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, (b) the completion of holes or wells drilled, (c) the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and (d) the injection or removal of commodities into or from holes or wells, (a) between points in Kansas, on the one hand, and, on the other, points in Colorado on and north of a line beginning at the Colorado-Nebraska State line and extending along U.S. Highway 34 to its junction with U.S. Highway 85, thence along U.S. Highway 85 to its junction with Colorado Highway 66, thence along Colorado Highway 66 to its junction with U.S. Highway 36, thence along U.S. Highway 36 to its junction with U.S. Highway 40, thence along U.S. Highway 40 to its junction with Colorado Highway 318, thence along Colorado Highway 318 to the Colorado-Wyoming State line, (b) between points in Colorado on and west of a line beginning at the Colorado-New Mexico State line and extending along Interstate Highway 25 to its junction with U.S. Highway 6, thence along U.S. Highway 6 to its junction with Colorado Highway 71, thence along Colorado Highway 71 to the Colorado-Nebraska State line, on the one hand, and, on the other, points in Kansas on and east of a line beginning at the Colorado-Kansas State line and extending along Kansas Highway 51 to its junction with U.S. Highway 56, thence along U.S. Highway 56 to its junction with U.S. Highway 160, thence along U.S. Highway 160 to its junction with U.S. Highway 54, thence along U.S. Highway 54 to its junction with Kansas Highway 17, thence along Kansas Highway 17 to its junction with U.S. Highway 50, thence along U.S. Highway 50 to its junction with Kansas Highway 177, thence along Kansas Highway 177 to its junction with U.S. Highway 24, thence along U.S. Highway 24 to its junction with U.S. Highway 281, thence along U.S. Highway 281 to its junction with Kansas Highway 9, thence along Kansas Highway 9 to its junction with Kansas Highway 223, thence along Kansas Highway 223 to its junction with Kansas Highway 23, thence along Kansas Highway 23 to its junction with U.S. Highway 83, thence along U.S. Highway 83 to its junction with U.S. Highway 36, thence along U.S. Highway 36 to its junction with Kansas Highway 27, thence along Kansas Highway 27 to the Kansas-Nebraska State line, and (c) between points in Colorado, on the one hand, and,

on the other, points in Kansas on and east of a line beginning at the Kansas-Nebraska State line and extending along Kansas Highway 27 to its junction with U.S. Highway 36, thence along U.S. Highway 36 to its junction with U.S. Highway 283, thence along U.S. Highway 283 to its junction with Kansas Highway 9, thence along Kansas Highway 9 to its junction with Kansas Highway 15, thence along Kansas Highway 15 to its junction with unnumbered highway, thence along unnumbered highway to its junction with U.S. Highway 77, thence along U.S. Highway 77 to its junction with Kansas Highway 9, thence along Kansas Highway 9 to its junction with Kansas Highway 99, thence south 9 miles along Kansas Highway 99 to its junction with unnumbered highway, thence along unnumbered highway to its junction with Kansas Highway 9, thence along Kansas Highway 9 to its junction with U.S. Highway 75, thence along U.S. Highway 75 to its junction with Kansas Highway 16, thence along Kansas Highway 16 to its junction with U.S. Highway 59, thence along U.S. Highway 59 to its junction with U.S. Highway 160, thence along U.S. Highway 160 to its junction with unnumbered highway near junction of U.S. Highway 160 and U.S. Highway 83, thence along unnumbered highway to its junction with U.S. Highway 56, thence along U.S. Highway 56 to the Kansas-Oklahoma State line. The purpose of this filing is to eliminate the gateways of points in Oklahoma, Nebraska, and Missouri.

No. MC 115603 (Sub-No. E4), filed May 30, 1974. Applicant: TURNER BROS. TRUCKING CO., INC., P.O. Box 94626, Oklahoma City, Okla. 73109. Applicant's representative: Jack E. Turner (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (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, and *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; (2) *Machinery, equipment, materials, and supplies* used in or in connection with the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, other than pipelines used for the transmission of natural gas, petroleum, their products, and by-products, water, or sewerage, restricted to the transportation of shipments moving to or from pipeline rights-of-way; and (3) *Earth drilling machinery and equipment, and machinery, equipment, materials, supplies, and pipe* incidental to, used in, or in connection with (a) the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, (b) the completion of holes or wells drilled, (c) the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and (d) the injection or removal of commodities into or from holes or wells, between points in Kansas, on the one hand, and, on the other, points in Wyoming. The purpose of this filing is to eliminate the gateway of points in Nebraska.

No. MC 115603 (Sub-No. E5), filed May 30, 1974. Applicant: TURNER BROS. TRUCKING CO., INC., P.O. Box 94626, Oklahoma City, Okla. 73109. Applicant's representative: Jack E. Turner (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *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, 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, between points in Kansas, on the one hand, and, on the other, points in Arkansas. The purpose of this filing is to eliminate the gateway of points in Oklahoma.

No. MC 115603 (Sub-No. E17), filed May 30, 1974. Applicant: TURNER BROS. TRUCKING CO., INC., P.O. Box 94626, Oklahoma City, Okla. 73109. Applicant's representative: Jack E. Turner (same as above). Authority sought to operates as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *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; and (2) *Earth drilling machinery and equipment, and machinery, equipment, materials, supplies, and pipe* incidental to, used in, or in connection with (a) the transportation, maintenance, and dismantling of drilling machinery and equipment, (b) the completion of holes or wells drilled, (c) the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and (d) the injection or removal of commodities into or from holes or wells, between points in Wyoming, on the one hand, and, on the other, points in New Mexico on and east of a line beginning at the New Mexico-Texas State line and extending along Interstate Highway 10 to its junction with U.S. Highway 82, thence along U.S. Highway 82 to its junction with U.S. Highway 54, thence along U.S. Highway 54 to its junction with New Mexico Highway 18, thence along New Mexico Highway 18 to its junction with U.S. Highway 87, thence along U.S. Highway 87 to the New Mexico-Colorado State line. The purpose of this filing is to eliminate the gateway of points in Oklahoma.

No. MC 115603 (Sub-No. E18), filed May 30, 1974. Applicant: TURNER BROS. TRUCKING CO., INC., P.O. Box 94626, Oklahoma City, Okla. 73109. Applicant's representative: Jack E. Turner (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (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, and *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), between points in New Mexico, on the one hand, and, on the other, points in Arkansas. The purpose of this filing is to eliminate the gateway of points in Oklahoma.

No. MC 115603 (Sub No. E19), filed May 30, 1974. Applicant: TURNER BROS. TRUCKING CO., INC., P.O. Box 94626, Oklahoma City, Okla. 73109. Applicant's representative: Jack E. Turner (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (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, and *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); (2) *Machinery, equipment, materials, and supplies* used in or in connection with the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, other than pipelines used for the transmission of natural gas, petroleum, their products, and by-products, water, or sewerage, restricted to the transportation of shipments moving to or from pipeline rights-of-way; and (3) *Earth drilling machinery and equipment, and machinery, equipment, materials, supplies and pipe* incidental to, used in, or in connection with (a) the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, (b) the completion of holes or wells drilled, (c) the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and (d) the injection or removal of commodities into or from holes or wells, between points in New Mexico,

on the one hand, and, on the other, Mississippi. The purpose of this filing is to eliminate the gateway of points in Oklahoma.

No. MC 115603 (Sub-No. E20), filed May 30, 1974. Applicant: TURNER BROS. TRUCKING CO., INC., P.O. Box 94626, Oklahoma City, Okla. 73109. Applicant's representative: Jack E. Turner (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (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, and machinery, material, equipment, and supplies used in, or in connection with the construction, operation, repair, servicing, maintenance, and dismantling of pipe lines, including the stringing and picking up thereof (except the stringing or picking up of pipe in connection with main or trunk pipe lines); (2) *Machinery, equipment, materials, and supplies*, used in or in connection with the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, other than pipelines used for the transmission of natural gas, petroleum, their products, and by-products, water, or sewerage, restricted to the transportation of shipments moving to or from pipeline rights-of-way; (3) *Earth drilling machinery and equipment and machinery, equipment, materials, and supplies and pipe* incidental to, used in, or in connection with (a) the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, (b) the completion of holes or wells drilled, (c) the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and (d) the injection or removal of commodities into or from holes or wells, (a) between points in Illinois, on the one hand, and, on the other, points in Louisiana on and west of a line beginning at the Louisiana-Arkansas State line and extending along U.S. Highway 167 to its junction with U.S. Highway 84, thence along U.S. Highway 84 to its junction with U.S. Highway 165, thence along U.S. Highway 165 to its junction with U.S. Highway 71, thence along U.S. Highway 71 to its junction with Louisiana Highway 10, thence along Louisiana Highway 10 to its junction with Louisiana Highway 31, thence along Louisiana Highway 31 to its junction with U.S. Highway 90, thence along U.S. Highway 90 to its junction with Louisiana Highway 83, thence along unnumbered highway to Weeks on the Gulf of Mexico, and (b) between points in Illinois on and west of a line beginning at the Illinois-Wisconsin State line and extending along U.S. Highway 51 to its junction with Illinois Highway 2, thence along Illinois Highway 2 to its junction with Illinois Highway 88, thence along Illinois Highway 88 to its junction with Illinois Highway 116, thence along Illinois Highway 116 to its junction with U.S. Highway 34, thence along U.S. Highway 34 to the Illinois-Iowa State line, on the one hand, and, on the other, points in Louisiana on and west of a line beginning at Shell Beach on the Gulf of Mexico and extending along Louisiana Highway 46 to its junction with Louisiana Highway 39, thence along Louisiana Highway 39 to its junction with Interstate Highway 10, thence along Interstate Highway 10 to its junction with U.S. Highway 61, thence along U.S. Highway 61 to the Louisiana-Mississippi State line. The purpose of this filing is to eliminate the gateway of points in Oklahoma and Texas.

No. MC 115603 (Sub-No. E36), filed May 30, 1974. Applicant: TURNER BROS. TRUCKING CO., INC., P.O. Box 94626, Oklahoma City, Okla. 73109. Applicant's representative: Jack E. Turner (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (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 and *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; (2) Machinery, equipment, materials, and supplies used in or in connection with the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, other than pipelines used for the transmission of natural gas, petroleum, their products, and by-products, water, or sewerage, restricted to the transportation of shipments moving to or from pipeline rights-of-way; and (3) Earth drilling machinery and equipment, and machinery, equipment, materials, supplies and pipe incidental to used, in, or in connection with (a) the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, (b) the completion of holes or wells drilled, (c) the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and (d) the injection or removal of commodities into or from holes or wells, between points in South Dakota, on the one hand, and, on the other, points in Mississippi. The purpose of this filing is to eliminate the gateway of points in Oklahoma.

No. MC 119443 (Sub-No. E5) (Correction), filed May 17, 1974, published in the FEDERAL REGISTER July 18, 1974. Applicant: P. E. KRAMME, INC., Main St., Monroeville, N.J. 08343. Applicant's representative: Gerald A. Kramme (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chocolate, liquid chocolate coating, liquid chocolate liquor, and liquid cocoa butter*, in bulk, in tank vehicles, from Jersey City, N.J., to points in (1) Alabama, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and Wisconsin and Buffalo, N.Y., and the District of Columbia; (2) points in that part of West Virginia on and south of a line beginning at the West Virginia-Virginia State line on U.S. Highway 50, thence west over U.S. Highway 50 to the junction of West Virginia Highway 50 and the West Virginia-Maryland State line, thence south and north along the West Virginia-Maryland State line to the junction of the West Virginia-Maryland State line and U.S. Highway 50, thence west over U.S. Highway 50 to the junction of U.S. Highway 50 and West Virginia Highway 18, thence north over West Virginia Highway 18 to the West Virginia-Ohio State line; (3) points in that part of Ohio on and west of a line beginning at the Ohio-West Virginia State line and Ohio Highway 800, thence north over Ohio Highway 800 to junction Ohio Highway 800 and Ohio Highway 78, thence west over Ohio Highway 78 to junction Ohio Highway 78 and Ohio Highway 146, thence north on Ohio Highway 146 to junction Ohio Highway 146 and Ohio Highway 285, thence north over Ohio Highway 285 to junction Ohio Highway 285 and Ohio Highway 265, thence west over Ohio Highway 265 to junction Ohio Highway 265 and U.S. Highway 40, thence west over U.S. Highway 40 to junction U.S. Highway 40 and Interstate Highway 77, thence north over Interstate Highway 77 to junction U.S. Highway 250 and Interstate Highway 77, thence north over Interstate Highway 77-U.S. Highway 250 to junction Interstate Highway 77-U.S. Highway 250 and U.S. Highway 250-Ohio Highway 21, thence north over U.S. Highway 250-Ohio Highway 21 to junction U.S. Highway 250-Ohio Highway 21 and Ohio Highway 21, thence north over Ohio Highway 21 to junction Ohio Highway 21 and U.S. Highway 30, thence west over U.S. Highway 30 to junction U.S. Highway 30 and Ohio Highway 93, thence north over Ohio Highway 93 to junction Ohio Highway 93 and unnumbered Ohio Highway 2 miles south of U.S. Highway 21, thence west over unnumbered Ohio Highway to junction unnumbered Ohio Highway and Ohio Highway 94, thence north over Ohio Highway 94 to Marshallville and junction unnumbered Ohio Highway, thence west over unnumbered Ohio Highway to junction unnumbered Ohio Highway and Ohio Highway 585, thence south over Ohio Highway 585 to Smithville and junction Ohio Highway 585 and unnumbered Ohio Highway, thence west over unnumbered Ohio Highway to junction unnumbered Ohio Highway and Ohio Highway 3, thence south over Ohio Highway 3 to Madisonburg

and junction Ohio Highway 30 and unnumbered Ohio Highway, thence west over unnumbered Ohio Highway through Overton to junction unnumbered Ohio Highway and Ohio Highway 539, thence north over Ohio Highway 539 to junction Ohio Highway 539 and Ohio Highway 604, thence west over Ohio Highway 604 to junction Ohio Highway 604 and Ohio Highway 302, thence west over Ohio Highway 302 to junction U.S. Highway 250, thence north over U.S. Highway 250 to junction U.S. Highway 250 and Ohio Highway 162, thence west over Ohio Highway 162 to junction Ohio Highway 162 and Ohio Highway 19, thence north over Ohio Highway 19 to Green Springs and junction Ohio Highway 19 and unnumbered Ohio Highway, thence east over unnumbered Ohio Highway to junction unnumbered Ohio Highway and Ohio Highway 101, thence north over Ohio Highway 101 to junction Ohio Highway 101 and Ohio Highway 269, thence north over Ohio Highway 269 to Castalia and junction Ohio Highway 269 and unnumbered Ohio Highway, thence east over unnumbered Ohio Highway to junction unnumbered Ohio Highway and Ohio Highway 4, thence over Ohio Highway 4 to Sandusky and Lake Erie. The purpose of this filing is to eliminate the gateways of Philadelphia, Hershey, Elizabethtown, and Lititz, Pa., and Dover, Del. The purpose of this correction is to correct the route description.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.74–29999 Filed 12–23–74;8:45 am]

[Ex Parte No. MC–43]

LEASE AND INTERCHANGE OF VEHICLES BY MOTOR CARRIERS

DECEMBER 19, 1974.

At a session of the Interstate Commerce Commission, Motor Carrier Leasing Board, held at its office in Washington, D.C. on the 17th day of December 1974.

It appearing, that a petition has been filed by Akers Motor Lines, Inc. (MC 72442 sub 4 and numerous subs), Central Motor Lines, Incorporated (MC 39406 and various subs) and Northern Freight Lines, Inc. (MC 31675 and four subs), under temporary common control, for waiver of paragraphs (a)(3) and (c) of § 1057.4 of the lease and interchange of vehicles regulations (49 CFR 1057), concerning equipment leased between petitioners;

It further appearing, That petitioners have a jointly administered program applying the same standards of inspection and maintenance to equipment in accordance with the motor carrier safety regulations of the U.S. Department of Transportation;

It further appearing, That the U.S. Department of Transportation offers no objection to the petition in view of the fact that there is no significant adverse information regarding petitioners' past safety inspection and maintenance programs and the fact that the current safety program is unified and controlled, conducted, and administered by petitioner Akers;

It is ordered, That a waiver of paragraph (a)(3) and (c) of § 1057.4, be, and, it is hereby granted provided that the equipment is inspected on the day it is to be leased and found to meet the requirements of the safety regulations of the U.S. Department of Transportation and that petitioners remain in satisfactory compliance with those regulations and under common control.

By the Commission, Motor Carrier Leasing Board.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.74–29994 Filed 12–23–74;8:45 am]

[Notice 207]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

DECEMBER 24, 1974.

Synopses of orders entered by the Motor Carrier Board of the Commission pursuant to sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings on or before January 13, 1975. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC FC 75530. By order of December 17, 1974, the Motor Carrier Board approved the transfer to Cedar Rapids Transfer and Storage Company, a corporation, Cedar Rapids, Iowa, of the operating rights in Certificate No. MC 5895 issued October 31, 1950, to Cedar Rapids and Iowa City Railway Company, a corporation, Cedar Rapids, Iowa, authorizing the transportation of general commodities, with exceptions, between Cedar Rapids and Iowa City, Iowa, over regular routes serving all intermediate points.

William O. Gray, 807 American Bldg., Cedar Rapids, Iowa, 52401, Attorney for transferee.

John F. Gaston, P.O. Box 351, Cedar Rapids, Iowa, 52406, Attorney for transferor.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.74–29996 Filed 12–23–74;8:45 am]

[Notice 22]

TEMPORARY AUTHORITY TERMINATION

The temporary authorities granted in the dockets listed below have expired as a result of final action either granting or denying the issuance of a certificate on permit in a corresponding application for permanent authority, on the date indicated below:

Temporary authority application	Final action or certificate or permit	Date of action
Commercial Carriers, Inc., MC–43038 Sub-446	MC–43038 Sub-448	Dec. 5, 1972
Schneider Transport, Inc., MC–51146 Sub-322	MC–51146 Sub-301	Oct. 29, 1974
Shropshire Trucking Inc., MC–73037 Sub-3	MC–73037 Sub-4	Feb. 1, 1973
Roy Bros., Inc., MC–112963 Sub-23	MC–112963 Sub-25	Sept. 18, 1972
DBA Paffile Truck Lines, MC–117304 Sub-26	MC–117304 Sub-26	Oct. 3, 1972
Nationwide Carriers, Inc., MC–117940 Sub-50	MC–117940 Sub-72	Dec. 18, 1972
Acme Transport Co., MC–120673 Sub-3	MC–120673 Sub-4	Sept. 7, 1972
Mitchell Transport, Inc., MC–124212 Sub-59	MC–124212 Sub-60	Dec. 1, 1972
Mobile Home Express, Inc., MC–127777 Sub-15	MC–127777 Sub-16	May 2, 1973
DBA, Evergreen Express, MC–129350 Sub-14	MC–129350 Sub-16	Dec. 22, 1972
R & S Trucking, Inc., MC–133734 Sub-1	MC–133734 Sub-2	Sept. 21, 1972
Suddath of Savannah, MC–135095 Sub-1	MC–135095 Sub-2	Oct. 12, 1972

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.74–29995 Filed 12–23–74;8:45 am]

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TUESDAY, DECEMBER 24, 1974

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PART II

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

■

PUBLIC INFORMATION

Title 21—Food and Drugs

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

PUBLIC INFORMATION

The Commissioner of Food and Drugs issued a notice of proposed rulemaking, published in the FEDERAL REGISTER of May 5, 1972 (37 FR 9128), on the disclosure of information to the public in conformity with Public Law 89-487, revised by Public Law 90-23, the public information section of the Administrative Procedure Act, known commonly as the "Freedom of Information Act."

The Commissioner received a total of 667 letters, 68 of which made substantive comments on one or more sections of the proposal. These letters were from individuals, consumer groups, nonprofit institutions and associations, trade associations, and representatives of companies subject to regulation under the laws administered by the Food and Drug Administration.

The bulk of the comments, mainly from individuals, made general observations in favor of the release of more or all information in government files to all who want to review it.

A small number of comments opposed in general any liberalization of disclosure policies on the ground that this posed a threat to free enterprise.

Most of the letters making substantive comments were concerned with various specific provisions of the regulations and contained recommendations for changes. These comments and recommendations and the Commissioner's conclusions concerning them are set out below.

The proposed regulations have been implemented since they were published except in a few minor respects. The Commissioner concluded not to issue final regulations immediately after the time for public comment on the proposal had expired, in order to gain experience under the proposal and because of pending litigation on the scope of the trade secrets exemption. Substantial experience has now been gained under the proposal, and the preamble and final regulations cover all of the types of issues that have arisen in the intervening 2 years. The pending litigation, "Morgan v. FDA," 495 F.2d 1075 (D.C. Cir. 1974), has been concluded. Accordingly, the Commissioner concludes that it is appropriate to issue these final regulations governing the handling of all public information requests by the Food and Drug Administration.

GENERAL POLICY AND ORGANIZATION OF THE FINAL REGULATIONS

1. When the proposed regulations were first published in May 1972, they represented a major change from prior agency policy. Whereas the agency formerly retained roughly 90 percent of the records in its files as confidential and disclosed only 10 percent, during the past 2 years it has reversed this proportion and now makes available roughly 90 percent of the records in its files.

The Commissioner has carefully reviewed the impact of this policy on the Food and Drug Administration during the past 2 years, and concludes that it has had a beneficial rather than a detrimental effect. Contrary to fears expressed in many comments at the time the proposal was published, this new policy of open disclosure has not hindered communications or relations with anyone outside the Federal government nor has it impeded internal agency deliberations. It has, of course, properly encouraged closer public scrutiny of Food and Drug Administration actions, and thus has fostered greater public accountability of the agency.

Accordingly, the Commissioner concludes not only that the open disclosure policy under the proposed regulations should be continued, but indeed that greater use should be made in the future of the Commissioner's discretionary authority to release agency records which, under the strict terms of the statute, could be retained as confidential. This policy is reflected in these final regulations. The Commissioner believes that this policy is in the best interests of both the public and the government.

2. The proposed regulations were divided into two different types of provisions. The general provisions relating to procedure, fees, exemptions, and some specific categories of agency records were included in Part 4 of Title 21 of the Code of Federal Regulations. Specific provisions relating to documents that are already the subject of regulations in other parts of Title 21 of the Code of Federal Regulations were incorporated directly into those other parts, such as the provisions relating to section 305 hearing records, food additive petitions, and new drug applications.

Upon review of the comments submitted on the proposal, the Commissioner concludes that this basic structure should be retained. Whenever possible, provisions relating to disclosure or nondisclosure of records should be incorporated into existing or new regulations dealing specifically with those types of documents.

The Commissioner has also concluded that the more general provisions in Part 4 require reorganization in order to group together the provisions that more closely relate to each other and to make these regulations more readable and understandable. Accordingly, Part 4 has been divided into six subparts, dealing with official testimony and information, general policy, procedures and fees, exemptions, limitations on exemptions, and the availability of specific types of documents for which requests are frequently made.

FREEDOM OF INFORMATION ACT AMENDMENTS

3. In October 1974 Congress passed H.R. 12471, the Freedom of Information Act amendments, to revise and add to a number of the existing provisions of the Freedom of Information Act. On October 17, 1974, the President vetoed this bill. On November 20 and 21, 1974, Congress voted to override the President's veto. The new amendments become effective 90 days after enactment, i.e., on February 19, 1975.

The Commissioner notes that, the concerns expressed by the President in his veto message are not applicable to the types of records contained in Food and Drug Administration files. Many of the provisions in the amendments reflect recommendations made earlier by the Administrative Conference of the United States or are already reflected in existing case law, in the regulations of the Department of Health, Education, and Welfare, and in the proposed Food and Drug Administration regulations published in May 1972. Accordingly, the Food and Drug Administration has closely followed the legislative progress of these amendments in preparing these final regulations, so that the regulations would fully implement the new amendments. The Commissioner has carefully considered the final regulations published in this order, in the light of the congressional policy established in the amendments, and concludes that they meet both the spirit and the letter of the amended law.

GENERAL COMMENTS

4. Comments contended that the open disclosure policy set out in the proposed regulations published in May 1972 would increase product liability and other litigation problems for companies.

The Commissioner advises that the question of whether this type of litigation would increase or decrease is not a factor to be considered in determining the disclosure of information to the public under the Freedom of Information Act.

5. Comments contended that many Food and Drug Administration records and documents should not be disclosed because they could be distorted, misconstrued, and quoted out of context.

The Commissioner realizes that all public information can be abused. This is, however, not a reason for declining to comply with the requirements of the Freedom of Information Act.

6. One comment stated that, in the scientific world, the ability to publish an article containing data that have not previously been made available is a definite advantage. It was contended that those who create the data have a right to publish them without the threat of a prior disclosure of such data by the Food and Drug Administration.

The Commissioner concludes that, once disclosable data have been submitted to the Food and Drug Administration, they will be disclosed to the public upon request. Before any voluntary submission of unpublished scientific information to the Food and Drug Administration, the person submitting it will have an opportunity to obtain an opinion from the agency under the procedure established in § 4.44 of the regulations as to whether it will be disclosed to the public upon request, or whether it falls within an exemption from disclosure and thus will not be available for public disclosure.

The Freedom of Information Act contains no exemption permitting the Food and Drug Administration to withhold data from public disclosure solely on the ground that it is not yet published. Accordingly, unless data fall within one of the specific statutory exemptions from disclosure, the only positive means for a scientist to protect his first publication rights is to publish the information before submitting it to the Food and Drug Administration.

7. A comment contended that some data and information submitted to the Food and Drug Administration may not properly be copied for distribution to the public because of the copyright rights to it.

The Commissioner concludes that, to the extent that the Freedom of Information Act and the copyright laws conflict, the specific requirements for public disclosure under the Freedom of Information Act must be construed to prevail.

8. It was asserted in comments that there is no legal support for the provision contained in several places in the proposed regulations that records shall be disclosed unless "extraordinary circumstances" exist. It was suggested that guidelines be adopted to establish the meaning of "extraordinary circumstances."

The Commissioner advises that this type of provision creates a strong presumption of disclosure and requires any person who believes that a specific record falling within the rule should not be disclosed bears the burden of overcoming that presumption by showing unusual circumstances that justify nondisclosure. Because it is impossible to predict what facts would be sufficient to satisfy this burden, the Commissioner concludes that general guidelines are not feasible and that this type of provision will be administered on the basis of the facts shown in each case.

9. Several provisions in the proposed regulations published in May 1972 would have imposed the requirement that, within 180 days from the final regulations, any person who had previously submitted data or information to the Food and Drug Administration must review that material and, if confidentiality was desired and justified, submit a request that it be retained in confidence. Numerous comments objected to this provision on the grounds that it imposed an impossible burden on industry in light of the voluminous information submitted and that much of this information would never be requested anyway. It was almost uniformly suggested that this matter be handled on an ad hoc basis when requests for disclosure are received.

The Commissioner agrees with these comments, and has deleted all requirements for justifying the confidentiality of previously submitted material. When a request for information is received, and it clearly falls within the disclosure rules laid out in these final regulations, it will be disclosed at once. If the matter presents a close question, the affected person may be consulted pursuant to § 4.45. The Commissioner concludes that this procedure is sufficient and will reduce the burden on both the agency and persons who submit information.

10. Comments suggested that the decision of the Assistant General Counsel, Food and Drug Division, on disclosure should constitute final agency action since the Assistant Commissioner for Public Affairs did not appear to have the necessary legal expertise. A comment also suggested that the power to make final decisions on disclosure be placed in the office of the Associate Commissioner for Compliance who would then delegate this power to an Administrative Law Judge operating out of that office.

The Commissioner advises that it is in accordance with the policy of the Department of Health, Education, and Welfare to vest the power to make final decisions on public disclosure of records in the Assistant Commissioner for Public Affairs. The legal expertise of the Assistant General Counsel and the experience of the Associate Commissioner for Compliance is available to the Assistant Commissioner for Public Affairs at all times.

11. One comment stated that the proposed regulations of the Food and Drug Administration appear to go beyond the proposed regulations of the Department of Health, Education, and Welfare, and contended that the Food and Drug Administration has no authority to promulgate regulations different from the Department regulations.

The Department published its final regulations in the FEDERAL REGISTER of August 17, 1973 (38 FR 22231). Section 5.11 of those regulations (45 CFR 5.11) expressly recognizes that the Food and Drug Administration may issue its own supplementary regulations as long as they are consistent with the Department regulations. The Commissioner concludes that these final regulations are entirely consistent with the Department regulations.

12. Questions have arisen about the availability for public disclosure of the various types of petitions filed with the agency pursuant to the Administrative Procedure Act rather than pursuant to particular provisions of the Federal Food, Drug, and Cosmetic Act, requesting the agency to take or refrain from taking action with respect to any matter subject to its jurisdiction.

The Commissioner advises that such petitions will be the subject of explicit provisions in the new procedural regulations that will be published in the FEDERAL REGISTER in the near future. Accordingly, no provision is included in these regulations relating to such matters.

13. Questions have been asked as to whether data and information contained in a request for hearing on such matters as a food standard regulation, a food additive regulation, or withdrawal of a new drug application, are available for public disclosure.

The Commissioner advises that this matter will also be handled in the new procedural regulations that will be published in the FEDERAL REGISTER in the near future. As a general rule, such data and information have the same status as they would if they had been submitted as part of a petition or application of the type involved in the proceeding.

14. Requests have been made for all internal memoranda and other documents supporting a particular proposed or final regulation issued by the Food and Drug Administration.

The Commissioner advises that this matter will also be handled in the proposed new procedural regulations to be published shortly in the FEDERAL REGISTER. Accordingly, no provision with respect to this matter is included in these final regulations.

SECTION 305 HEARING RECORDS

15. Section 305 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 335) provides for an informal hearing before the Food and Drug Administration reports any violation of the Federal Food, Drug, and Cosmetic Act to a United States attorney for prosecution. Section 1.6(c) of the proposed regulations makes available for public disclosure factual information contained in the file relating to a hearing held under section 305 after the file is closed or the statute of limitations runs, whichever occurs first.

The basic objection to § 1.6(c) voiced in several comments was fear of what was variously termed "trial by newspaper" or "trial by press." It was argued that the effect of making public a section 305 citation would be to stigmatize a company without providing the company an opportunity for a public defense. This would be particularly true, it was asserted, if the section 305 hearing resulted in a determination that there was no basis for criminal prosecution. It was felt that the need for the public to know was outweighed by the potential injury to the manufacturer generated by a possible public misunderstanding over the nature of a section 305 hearing. Several comments drew parallels between the section 305 hearing and a grand jury hearing, suggesting that the secrecy necessary for the latter to operate was also necessary for a section 305 hearing.

The Commissioner concludes that the legislative history of the Freedom of Information Act and the recent amendments shows that Congress considered the potential for harm caused by release to the public of government information, and found it to be outweighed by the public's right to obtain this information. Section 1.6(c)(4) adequately protects the rights of individuals by providing for deletion of names of individuals who were considered for criminal prosecution but were not prosecuted from the disclosable material. The Constitution and the Freedom of Information Act protect the right of privacy only of individuals. Accordingly, § 1.6(c) does not provide for similar deletion of names of corporations.

16. Concern was expressed that the utility of the section 305 hearing, described in current Food and Drug Administration regulations as "private and informal" (21 CFR 1.6(a)), would be seriously impaired if the hearing file is publicly disclosed. In a private and informal setting, a manufacturer might be willing to admit unintentional technical violations of the act in order to place the full facts on the record. If there were to be free disclosure of such factual information, it was stated, it would close the mouths of the manufacturers and prevent the section 305 hearing from accomplishing its purpose.

The Commissioner has no reason to believe that disclosure of this information after the matter is closed would impair the utility of the section 305 hearing. The Commissioner concludes that disclosure of the section 305 hearing records after the matter is closed is particularly important where prosecution is not recommended, or is recommended but not filed, in order to assure a public accounting of the matter. Any regulatory matter must at some point in time be open to public scrutiny and public accountability.

17. One comment argued that the Freedom of Information Act exemption for "investigatory files" was dispositive and prevented the Food and Drug Administration from providing for even limited release of investigatory records. The case of "Frankel v. SEC," 460 F. 2d 813 (2d Cir. 1972), was cited as a bar to the disclosures provided for in § 1.6(c). In "Frankel," a shareholder sought the SEC investigatory files on a corporation against which the SEC had brought suit. Prior to the request for disclosure the suit had been concluded by a consent decree. The Court noted that one of the purposes of the exemption for investigatory files, as expressed in the House and Senate reports, was "* * * to keep confidential the procedures by which the agency conducted its investigation and by which it has obtained information" (460 F. 2d at 817) and reversed the District Court decision which held that after the file was not being actively used for law enforcement purposes it was no longer subject to the investigatory file exemption.

The Commissioner notes that the exemptions from disclosure for which the Freedom of Information Act provides are discretionary, not mandatory. The Commissioner has concluded, as a matter of discretion, that these records should be available for public disclosure after the matter is closed or the statute of limitations runs, whichever occurs first. See "Rayner & Stonington, Inc. v. FDA," No. 68–1995 (E.D. Pa. 1969). The "Frankel" decision merely holds that, where an agency does assert the investigatory file exemption, it may properly do so even after the matter is closed. The Commissioner does agree that those portions of investigatory records that would reveal confidential investigative techniques and procedures will not be disclosed, and § 4.64(a)(5) of the regulations so provides.

18. Questions have been raised as to whether section 305 hearing records, or any other investigatory records, compiled with respect to the activity of an individual, e.g., a clinical investigator, will be released after a determination is made not to take regulatory action and the matter is closed.

The Commissioner advises that all such records will be released to the public in accordance with §§ 1.6(c) and 4.64 after the matter is closed. Names and other information that would identify the individual will be deleted. If records relating to a closed section 305 hearing for a specific individual are requested by name, they will also be released after deletion of identifying information.

19. There was criticism of the provision for the deletion of "statements of witnesses obtained through promises of confidentiality, names of individuals * * * and other confidential information" since these exemptions are not specifically provided for in the statute. It was also suggested that keeping secret the names of individuals against whom the Food and Drug Administration determines not to bring prosecutions is a misapplication of "Wisconsin v. Constantineau," 400 U.S. 433 (1971). It was asserted that one court has rejected the contention that "Constantineau" bars disclosure of names of persons against whom "no prosecution" decisions have been made by administrative agencies, "Wellford v. Hardin," 444 F.2d 21 (4th Cir. 1971). It was contended that the public has a right to know of and judge these kinds of decisions, particularly since strict criminal liability is involved.

The Commissioner concludes that the Food and Drug Administration, as a law enforcement agency, is entitled under the Freedom of Information Act to exempt from disclosure investigatory records compiled for law enforcement purposes, and may, under some circumstances, keep such records confidential after the enforcement action is completed. See, e.g., "Frankel v. SEC," 460 F.2d 813 (2d Cir. 1972); "Weisberg v. Department of Justice," 489 F.2d 1195 (D.C. Cir. 1973); "Aspin v. Department of Defense," 491 F.2d 24 (D.C. Cir. 1973). The Food and Drug Administration views nondisclosure of witness statements induced by a promise of confidentiality to be essential to its law enforcement function and finds that such statements are protected by the investigatory records exemption. "Other confidential information" refers only to confidential information within the meaning of the Freedom of Information Act, and the regulation has been revised to so state. With regard to the nondisclosure of names of individuals, § 1.6(c) is clearly in accord with the holding in "Wisconsin v. Constantineau." "Wellford v. Hardin" is inapplicable since it dealt with the disclosure of names of persons to whom warning letters were sent in lieu of prosecution and therefore would apply to section 306 of the Federal Food, Drug, and Cosmetic Act rather than to section 305. As discussed elsewhere in this preamble, all warning letters issued under section 306 of the act are immediately released to the public.

20. It was suggested that what was determined to be disclosable "factual information" might well not be strictly factual since "facts" as recorded may reflect the opinions and subjective evaluations of the recorder. Opinions and subjective evaluations would thus be indirectly available for public disclosure when investigatory records are released.

The Commissioner is aware that in some instances it may be difficult to distinguish between fact and opinion. An effort will be made to separate the two and to release under § 1.6(c) those portions of the section 305 hearing records which do not contain any subjective opinions, except where the Commissioner concludes, in his discretion, that release of such additional material would be in the public interest.

The Commissioner notes that the investigatory records exemption is discretionary, not mandatory. Accordingly, the Commissioner may determine to release opinions and subjective information if he concludes that it is in the public interest to do so. A new § 4.82 has been added to the final regulations explicitly to provide for such discretionary disclosure.

21. A question has arisen as to whether the names of Food and Drug Administration employees will be deleted from section 305 hearing records.

The Commissioner concludes that the names of all Food and Drug Administration employees will be disclosed, except in rare circumstances where it is concluded that disclosure of such names would be inconsistent with the other provisions of these regulations, e.g., it would endanger confidential sources of information. The Commissioner believes that the names of all government officials involved in any regulatory matter should ordinarily be a matter of public information. Section 4.32 of the final regulations states this policy.

22. Questions have also arisen as to whether the names of individuals will be deleted from section 305 hearing records if the matter results in criminal prosecution.

The Commissioner concludes that such names will not be deleted if those specific individuals were included in the criminal prosecution. The name and other information that would identify any individual in a section 305 citation but not subsequently prosecuted will be deleted in order to protect his privacy.

23. Questions have arisen as to whether all or any portion of section 305 hearing records may be disclosed before the matter is closed or the statute of limitations has run.

Although the Commissioner retains discretion to release such information before the file is closed, he concludes that this will be done only in rare circumstances where consideration of criminal prosecution is involved. Because a section 305 hearing raises the possibility of criminal prosecution, the Food and Drug Administration must take precautions to avoid prejudicial pretrial publicity. Accordingly, the Commissioner will only very rarely exercise his discretion to release such material before the file is

closed or the statute of limitations runs, and only under circumstances that demonstrate a compelling necessity.

24. Questions have been raised with respect to the exact time at which section 305 hearing records become "closed."

The Commissioner advises that the Food and Drug Administration has adopted general guidelines to determine when section 305 hearing records are closed. These guidelines are set out in § 1.6(c) of the final regulations and discussed in paragraph 113 of this preamble.

25. Under the Freedom of Information Act amendments, the investigatory records exemption has been amended to read as follows:

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;

The Commissioner concludes that the policy stated in § 1.6(c) fully complies with this change in the law. Section 305 hearing records deal with possible criminal prosecution. The Food and Drug Administration must be careful to avoid prejudicial pretrial publicity with respect to criminal matters. See "United States v. Abbott Laboratories," 369 F. Supp. 1396 (E.D.N.C. 1973), rev'd, No. 74–1230 (4th Cir. 1974). Accordingly, the Commissioner concludes that, except in rare circumstances, information should not be released from a section 305 hearing record before the matter is closed, in order to avoid interference with enforcement proceedings or prejudicing a person's right to a fair trial and an impartial adjudication.

The Conference Report No. 93–1380, dated September 25, 1974, on the Freedom of Information Act amendments indicates that the purpose of this revision of the law is to narrow some of the court decisions that had tended to expand the investigatory file exemption. The Commissioner notes that § 1.6(c) is considerably narrower than a number of the court decisions would permit, and that the agency has already concluded to exercise its discretion to release investigatory records when a case is closed. The information excluded from such release under the final regulations falls squarely within the provisions of the revised statutory exemption contained in the amendments.

Official Records and Information

26. A number of questions have arisen as to when the Food and Drug Administration will permit an employee to testify in private litigation.

The Commissioner concludes that the primary obligation of Food and Drug Administration employees is to implement and enforce the laws subject to the agency's jurisdiction. The agency has no congressional mandate to aid private litigants. Accordingly, the Food and Drug Administration will ordinarily decline to permit agency employees to testify or otherwise participate in their official capacity in private litigation.

The Commissioner recognizes, however, that exceptions will exist to this rule. For example, the Commissioner will permit Food and Drug Administration employees to testify or participate in private litigation in instances where former Food and Drug Administration employees testify with respect to agency policy in a way that requires correction of the record to prevent an unjust result, or where private litigation is designed to achieve the same purpose that would be achieved by agency action and thus is concluded by the Food and Drug Administration to be in the public interest, or where the results of the private litigation may have a significant impact on Food and Drug Administration policy or action, or where Food and Drug Administration action resulted in the lawsuit. Section 4.1 of the regulations has been revised to state this policy, and has been divided into three sections and rewritten for editorial purposes.

General Policy

27. A number of comments on the proposed regulations published in May 1972 related to the broad policy underlying and interspersed with the specific provisions.

The Commissioner concludes that a new Subpart B should be added to 21 CFR Part 4, to include such statements of general policy.

Policy on Disclosure of Food and Drug Administration Records

28. Comments contended that the proposed regulations published in May 1972 improperly placed the burden for justifying nondisclosure on companies who have previously furnished information, while placing no burden upon the public to justify any compelling need or cogent reason for requesting the information.

The Commissioner advises that these comments accurately reflect the proposed and final regulations, and that those regulations in turn reflect the intent of Congress as embodied in the Freedom of Information Act. Under the law, any person is entitled to receive information unless it is subject to one of the stated exemptions. The law does not require that there be any justification whatever for such a request. Only where there is a request for discretionary release of exempt records, or for waiver of fees, does the justification for disclosure become relevant.

Uniform Access to Records

29. In administering the Freedom of Information Act, the Food and Drug Administration has uniformly adopted the position that, if any record is available to any member of the public, it must be made available to all members of the public, with only very limited exceptions. This approach guarantees equal access to all information available from the Food and Drug Administration.

The Commissioner concludes that this general policy should be explicitly stated in the final regulations. Accordingly, a new § 4.21 has been added for that purpose.

30. Comments requested clarification of the statement to the effect that information in Food and Drug Administration files that has previously been made public "in an authorized manner" will be generally released to the public, and asked what would be considered an "unauthorized" manner.

The Commissioner advises that this phrase, and other similar language in the final regulations, is intended to exclude information that is "leaked" from agency files or otherwise disclosed in an unauthorized manner. Thus, if an internal memorandum is given to a member of the press without authorization, and part of it is reproduced in the public media, the entire memorandum or even the portion that has been reproduced need not be made available for public disclosure. Any different policy would encourage unauthorized disclosures of agency material.

The Commissioner concludes that release by Congress of material that would not be disclosed by the Food and Drug Administration is nevertheless an authorized release, since Congress is authorized to release any information it wishes to release. Accordingly, any material obtained by Congress, i.e., by a committee or subcommittee, and subsequently authorized to be disclosed, automatically triggers the requirement that it be released for public disclosure by the Food and Drug Administration to any person who requests it.

31. Some comments indicated that it would be acceptable to have scientific information contained in Food and Drug Administration files furnished to scientists and scholars, but that it should not be furnished to the news media or others who might distort it.

The Commissioner advises that such a distinction is untenable under the Freedom of Information Act. If any such information is made available to one member of the public, it must be made available to all.

Partial Disclosure of Records

32. The Freedom of Information Act amendments specify that any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under the Freedom of Information Act.

The Commissioner regards this new provision as a statement of existing Food and Drug Administration policy under the proposed regulations, and existing case law. See "EPA v. Mink," 410 U.S. 73

(1973). Accordingly, § 4.22 has been added to state this general policy.

The Commissioner concludes that, as a general rule, when a document contains some material that is disclosable and other material that is nondisclosable, it will be released with the nondisclosable material deleted unless the two types of material are so inextricably linked that it is not reasonably possible to separate them. In instances of this type, the Commissioner may also exercise his discretion pursuant to § 4.82 of the regulations to release the entire document, or to make only a minimum number of deletions, e.g., the names of individuals, in order to avoid release of a document that would not be meaningful or useful to the public.

REQUEST FOR EXISTING RECORDS

33. Questions have been raised as to what constitutes a request for records under the Freedom of Information Act.

The Commissioner advises that pamphlets, speeches, and other materials routinely prepared for public distribution are distributed free of cost to the public upon request and thus do not fall under the Freedom of Information Act and these regulations. It is the policy of the Food and Drug Administration to regard any request for records not routinely prepared for distribution to the public to be under the Freedom of Information Act, whether or not the Freedom of Information Act is mentioned in the request, and thus subject to the requirements of these new regulations. New § 4.23 clearly states this policy.

PREPARATION OF NEW RECORDS

34. Questions have been raised as to whether the Freedom of Information Act requires the creation of new records or documents that do not presently exist, in order to provide an adequate response to a request.

The Commissioner concludes that the Freedom of Information Act pertains only to existing records. It does not create an obligation to prepare new compilations of information or otherwise to create new documents in order to respond to an inquiry.

On occasion, a request for documents that presently do not exist may raise questions of sufficient public interest to justify the diversion of agency time and effort necessary to prepare new documents that will provide an adequate response. The Commissioner may exercise his discretion in this regard whenever he concludes that it is in the public interest to do so. New § 4.24 of the regulations reflects this policy.

35. In the past 2 years, several requests have been received which would involve compiling statistics, researching citations to FEDERAL REGISTER notices, and similar work by the Food and Drug Administration.

The Commissioner advises that the Food and Drug Administration ordinarily will not undertake the compilation of new statistical reports or legal research, or preparation of new computer programs, or similar work, except where such work would benefit the public generally and fits within the priorities and objectives of the agency. Any decision to undertake such work is solely within the discretion of the Commissioner.

RETROACTIVE APPLICATION OF REGULATIONS

36. Comments contended that the Freedom of Information Act may not properly be applied on a retroactive basis to data and information supplied to the Food and Drug Administration prior to the enactment date of the statute.

The Commissioner concludes that the Freedom of Information Act applies to all data and information in Food and Drug Administration files, regardless of when it was submitted. New § 4.25 of the final regulations so provides.

INDEXES OF CERTAIN AGENCY RECORDS

37. The Freedom of Information Act amendments provide for the maintenance and distribution of current indexes providing identifying information with respect to final opinions by an agency made in the adjudication of cases, statements of policy and interpretations not published in the FEDERAL REGISTER, and administrative staff manuals and instructions to staff that affect members of the public.

The Commissioner has ordered preparation of appropriate indexes of this type. New § 4.26 has been added to the regulations stating that such indexes shall be available at cost upon request from the Food and Drug Administration Public Records and Documents Center (HFC–18), Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20852.

Since all final agency opinions in the adjudication of administrative cases are published in the FEDERAL REGISTER, an index will contain a citation to each. Such matters include only adjudicatory decisions in contested cases on the denial or revocation of new drug applications and new animal drug applications, and not decisions in rule making proceedings such as food standards and antibiotic drugs. An index will also include all statements of policy and interpretation adopted by the agency since enactment of the various laws subject to the jurisdiction of the agency, not published in the FEDERAL REGISTER, and still in force. Finally, an index will cover all administrative staff manuals and instructions that contain directives that affect a member of the public, except those that contain only internal personnel rules and practices of the agency, which are specifically exempt from public disclosure under the Freedom of Information Act.

SUBMISSION OF RECORDS MARKED AS CONFIDENTIAL

38. Several comments contended that merely stamping documents submitted to the Food and Drug Administration as "confidential" or "privileged" or "trade secret material" would create a presumption of confidentiality or, at the very least, an obligation on the part of the Food and Drug Administration to review the material and to return it if the Food and Drug Administration disagreed with the requested status of the documents. In effect, the comments suggested that any such designation would trigger a request for a presubmission review, and that the failure of the agency to respond to any such designation would automatically require the Food and Drug Administration to retain those documents in confidence.

The Commissioner disagrees with these comments. New § 4.27 explicitly provides that any such designation is inadequate to trigger a presubmission review for confidentiality, and that the acceptance by the Food and Drug Administration of documents so designated creates no obligation whatever on the part of the Food and Drug Administration with respect to their subsequent handling under the Freedom of Information Act. A presubmission review of records submitted voluntarily to the Food and Drug Administration, to determine whether they will be disclosed to the public on request, may be obtained under the provisions of new § 4.44.

FOOD AND DRUG ADMINISTRATION DETERMINATIONS OF CONFIDENTIALITY

39. A number of comments objected to requirements contained in several provisions in the proposed regulations that confidential information be specifically marked "confidential" upon submission, and that such claims to confidentiality be justified in advance of any request for the information. It was contended that this would be a massive amount of paperwork, much of which may be needless.

The Commissioner agrees with this comment. Most determinations for confidentiality are already spelled out in the form of specific provisions in the final regulations and in this preamble, and many of the remainder will be settled by the new procedure for presubmission review specified in § 4.44 of the final regulations. Where close questions arise, moreover, § 4.45 will be utilized to permit consultation with the affected person. Accordingly, the final regulations do not require that data or information be stamped as confidential or that justification for confidentiality be submitted. Indeed, under § 4.27 of the final regulations, stamping material as confidential will have no effect whatever. New § 4.28 provides that the status of all records will be determined solely by the regulations and any presubmission review that is requested.

PROHIBITION ON WITHDRAWAL OF RECORDS FROM FOOD AND DRUG ADMINISTRATION FILES

40. Situations have frequently arisen within the past 2 years in which persons who have voluntarily submitted information without a written pledge of confidentiality by the Food and Drug Administration have objected to release of the documents involved or have requested that the disputed documents be returned to them.

The Commissioner notes that new § 4.44 makes it clear that any information voluntarily submitted without a written pledge of confidentiality pursuant to the procedures contained in that provision may be disclosed to the public unless the Commissioner concludes that it falls within one of the exemptions set out in the Freedom of Information Act and these implementing regulations and that he should not exercise his discretion to release the information involved. Under no circumstances will the Food and Drug Administration return any document submitted to it. The only circumstances under which any document will not be retained by the Food and Drug Administration is where, pursuant to new § 4.44, there is a presubmission review, the Food and Drug Administration concludes that the information will not be accepted as confiidential, and the person declines to submit the information on that basis and requests that it be returned to him instead. New § 4.29 makes this policy clear.

FOOD AND DRUG ADMINISTRATION PUBLIC RECORDS AND DOCUMENTS CENTER

41. The Freedom of Information Act amendments embody a congressional mandate for greater agency accountability for compliance with the provisions of the Freedom of Information Act.

The Commissioner has established a Public Records and Documents Center to be responsible for the agency's compliance with the Freedom of Information Act. All requests for records will be submitted to this Center, and all responses will be coordinated by it. Section 4.30 of the final regulations so provides.

PERMANENT FILE OF REQUESTS FOR FOOD AND DRUG ADMINISTRATION RECORDS

42. In order to permit public review of information previously disclosed under the Freedom of Information Act, the Food and Drug Administration maintains a permanent file of all requests and responses. This file is available for public review during working hours.

The Commissioner concludes that a new § 4.31 should be added to the final regulations stating this policy.

DISCLOSURE OF FOOD AND DRUG ADMINISTRATION EMPLOYEE NAMES

43. Questions frequently arise as to whether the names of Food and Drug Administration employees contained in various agency records will be deleted prior to disclosure of such records.

The Commissioner concludes that, except in extraordinary circumstances, the names of all government officials involved in any regulatory matter are properly disclosed to the public. New § 4.32 states this policy. Only in unusual circumstances, such as where the identity of a confidential source would be disclosed if the name of the agency employee involved in the matter were also disclosed, will the name of the agency employee be deleted before the requested records are made available for public disclosure.

PROCEDURES AND FEES

44. The Freedom of Information Act amendments contain a number of provisions pertaining to procedures and fees. In addition, the proposed regulations published in May 1972 contained several provisions relating to procedures and fees, and the Commissioner concludes that they should be set out in one place for ready reference.

Accordingly, the Commissioner is adding a new Subpart C to 21 CFR Part 4, relating to procedures and fees.

FILING A REQUEST FOR RECORDS

45. The Freedom of Information Act amendments state that, upon any request for records which reasonably describes such records and which is made in accordance with published rules, the records shall be made promptly available.

The Commissioner concludes that this policy should be clearly stated in a new § 4.20, along with directions on where to file a request for any Food and Drug Administration record.

TIME LIMITATIONS

46. The publication of rules stating the time, place, fees (if any) and procedures to be followed by the public in requesting records pursuant to the Freedom of Information Act is important for the proper implementation of that law.

The Commissioner concludes that all requests for Food and Drug Administration documents shall be made in writing to the Public Records and Documents Center (HFC–18), Rm. 4–62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20852. Such requests will be logged in at the time, and in the order, they are received. The time at which a written request is logged in at that office shall determine the beginning of any time requirements. Oral requests for documents will not trigger any time requirements. Written requests sent elsewhere within the agency will not trigger any time requirements until they are redirected to the Public Records and Documents Center and are logged in there. This is the only way in which an accounting of all public information requests can accurately be made.

47. The recommendations of the Administrative Conference of the United States, the regulations of the Department of Health, Education, and Welfare, and the Freedom of Information Act amendments all provide that the agency determine within 10 days, excepting Saturdays, Sundays, and legal public holidays, after the receipt of any request whether or not to comply with that request, and, if not, immediately notify the person making the request of such determination, the reasons therefor, and the right of such person to appeal any adverse determination. The Freedom of Information Act amendments provide for an extension of the 10-day time period in "unusual circumstances," and define that phrase.

The Commissioner has included, in § 4.41 of the final regulations, provisions implementing this concept. Within 10 days of receipt, a determination will be made whether, or to what extent, the information will be released, except in unusual circumstances. As soon as possible after that determination is made and any required prepayment is furnished, the disclosable material will be forwarded or made available to the person requesting it.

The Commissioner anticipates that in most instances the specific provisions of these final regulations, together with the explanatory discussion in this preamble, will clearly determine whether the material is disclosable.

48. A number of comments on the proposed regulations asked for clarification of the procedure under which responses are made and persons are required to furnish payment before receiving the requested records.

The Commissioner agrees that a specific procedure should be included in the regulations and a new provision in § 4.41 has been added for this purpose. Within the 10 days required for response to a Freedom of Information Act request, an estimate will be made of the cost of providing the requested records that are available and the response will contain that estimate. If the cost can be determined accurately ahead of time and is greater than $25, the response will state that the records will be sent or made available upon receipt of the amount of money specified or estimated. If the person requesting the information wishes to proceed and sends the prepayment, the material will be obtained and forwarded as quickly as possible.

The Commissioner concludes that records should not be furnished until the money is actually received, since otherwise there would be no way to guarantee that fees will in fact be paid. Situations have arisen during the past 2 years where the Food and Drug Administration has gathered documents at agency expense in response to a request under the Freedom of Information Act, only to be informed that the expense involved was too high.

FEES

49. The proposed regulations published in May 1972 contained uniform standard charges at or slightly below the cost of the activity to the Food and Drug Administration. It also provided for waiver of fees on the basis of indigence. Criticism of the fee schedule was made by several groups in comments filed on the proposal. One comment indicated that copies should cost no more than the few cents per page they cost the agency. The $5.00 fee for certification of authenticity was thought to be out of line and it was suggested that the charge be 50 cents, the amount charged for that service by the United States District Court for the District of Columbia. It was contended that there should be a threshold fee, below which there is no charge. It was suggested that the fees, as proposed, would act as a deterrent to legitimate requests for disclosure.

Upon reconsideration, the Commissioner has modified the fee schedule in some respects. The fees charged by the Department of Justice (16 CFR 16.9) and the Department of Health, Education, and Welfare (45 CFR 5.61) have been used as a model. The charges, as modified, are slightly less than the actual cost to the agency. Under the Federal User Charges Act (31 U.S.C. 483a), and in accordance with the policy of the Federal government, these costs must be passed along to those who seek services from the agency. This system should not act as a deterrent to legitimate requests for disclosure.

50. Comments requested that the fees for copying be reduced to five cents per page.

The Commissioner advises that the cost to the government for copying is in excess of 10 cents per page. Accordingly, the Commissioner concludes that a fee of 10 cents per page is reasonable.

51. Numerous questions have been raised with respect to the fee required for a computer printout of information that is available in this form.

The Commissioner advises that fees for computer printouts will be assessed at actual cost. No standard fee can be calculated, because of the different factors that must be considered with respect to each request. Section 4.42(a)(3) states this policy.

52. Comments also urged that the hourly fee for search not be charged for administrative time spent in deciding whether to grant access to information and suggested that this be explicitly stated in the regulations.

The Commissioner advises that the hourly fee is to be charged exclusively for actual time spent in determining what records are requested, locating those records, and copying them. It will be the policy of the Food and Drug Administration not to charge for time spent by legal counsel or others in determining which information must be disclosed pursuant to the Freedom of Information Act. This policy is reflected in § 4.42(b) of the final regulations.

53. Questions have been raised as to how a check or money order for documents should be made payable, and to whom it should be sent within the Food and Drug Administration.

The Commissioner advises that all checks or money orders should be made payable to the "Food and Drug Administration." The term "United States" or the initials "U.S." should not be included. Checks or money orders are to be mailed to the Accounting Operations Branch (HFA-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20852. Section 4.42(c) of the final regulations states these requirements.

Waiver of Fees

54. Many different circumstances have been brought to the Commissioner's attention to justify a waiver of fees.

As a general principle, the Commissioner concludes that waiver or reduction of fees should not be granted except under circumstances of indigence, or where it will benefit the public broadly, or where it involves another component of the federal government or a state government. Thus, information furnished to a congressional committee, a federal agency, a state or local agency, a court, or a foreign government, will ordinarily be furnished without cost.

The Commissioner has also determined that the cost of obtaining payment for a small number of records, in terms of government time and effort involved, exceeds the revenue obtained from this effort. Accordingly, the final regulations provide that no fee will be charged where the specific request and any related requests involve a cost of less than $5.00.

55. Comments stated that the regulations should include a definition of "indigence" and "strong public interest necessary to justify a waiver of fees." It was suggested that the customary definition of indigence, "unable to afford the fee without deprivation of the necessities of life," ignores the needs of most nonprofit and citizens' groups. The following test was suggested:

1. The requester purports to represent the consumer and general public interest.

2. The requester is a nonprofit organization exempted from payment of Federal income taxes by the Internal Revenue Service.

3. It generates no profits and, except in connection with its charitable activities, sells no goods or services.

4. It receives its funds solely from one or more of the following sources: Membership dues, contributions from the general public and from other charitable organizations, and grants and contracts with government agencies.

5. It has no uncommitted funds available at the time of the request for payment of the fees from which it seeks relief by waiver.

The Commissioner notes that the Federal User Charges Act (31 U.S.C. 483a) and the Freedom of Information Act do not make any distinction between industry, citizens' groups, professional associations, and individuals. All who can pay must bear the cost of covered services provided to them by the Federal government.

The Commissioner concludes that the test of indigence suggested in the comments is insufficient to demonstrate that release of the information requested will primarily benefit the general public. Under the test suggested in the comment, any request that even purports to be in the general public interest would be sufficient to justify a waiver of fees.

The Commissioner concludes that a definition of indigence based on the definition of this term used by state and federal courts in determining who may proceed in forma pauperis should be adopted for purposes of these regulations. Section 4.43(b) sets out the considerations that will be used in determining indigence.

56. The Freedom of Information Act amendments provide that documents shall be furnished without charge or at a reduced charge where the agency makes a discretionary determination that waiver or reduction of the fee is in the public interest because furnishing the information can be considered primarily as benefiting the general public.

The Commissioner advises that a new paragraph (c) has been added to § 4.43 of the final regulations to implement this provision.

The Food and Drug Administration has in the past received a substantial number of open-ended requests for documents from individuals and organizations purporting to represent the consumer and general public interest. For example, requests have been made for all data and information in Food and Drug Administration files relating to the safety of cosmetics, and for all "Dear Doctor" letters required by the Food and Drug Administration to be sent to physicians to correct misleading advertising and labeling. It is apparent that, if all such requests were honored without the requirement of fees, the agency would soon be engulfed by similar requests for information from large numbers of individuals and organizations, and that a major portion of its time would be spent answering such inquiries.

Thus, in applying this new provision, the Commissioner will require a demonstration of a broad public interest before fees will be waived or reduced. As part of this demonstration, the Commissioner will request a statement of the intended purpose to which the information will be put, in order to determine whether it is likely to be used in a manner that will benefit the public generally. Narrow and specific requests for documents will be far more likely to satisfy this standard than will broad fishing expeditions requesting large numbers of vaguely described documents covering a wide range of issues. In making a determination of the public interest involved, the Commissioner will weigh the agency resources involved against the likely benefit to the public.

The Commissioner wishes to assist any inquiry that will genuinely advance the public interest. If this is to be done, however, the very limited resources available in the Food and Drug Administration for this purpose must be devoted to those requests that demonstrate the greatest likelihood of useful public service. The Commissioner intends to utilize this authority to encourage requests for information that will broadly promote the public interest.

57. Questions have arisen as to whether fees will be assessed when the records requested are not found or are withheld from public disclosure.

The Commissioner advises that no fees will be assessed under these circumstances. This policy is stated in new § 4.43(d).

Presubmission Review of Request for Confidentiality of Voluntarily Submitted Data or Information

58. Section 4.26 of the proposed regulations contained a provision permitting

any person who wishes to submit information voluntarily to the Food and Drug Administration to request an initial determination as to whether it will be held in confidence or will be disclosed upon request to the public. The comments submitted on the proposal, and numerous questions that have arisen in the intervening 2 years, have made it clear that this provision has not been well understood by those who reviewed the proposal.

Accordingly, the Commissioner concludes that this provision should be the subject of a separate procedural regulation and expanded to clarify its intended application. Section 4.44 has been added to the final regulations to accomplish this purpose.

The Commissioner concludes that any person who wishes to submit information on a voluntary basis to the Food and Drug Administration is entitled to a presubmission determination of the status of the documents involved if that status is not already determined by other provisions in the regulations. Merely labeling a submission as "confidential" is insufficient to trigger this provision and raises within the Food and Drug Administration no obligation to consider the status of the documents at that time or to return the information or otherwise to communicate with the person submitting it. Similarly, oral assurances of confidentiality by Food and Drug Administration employees will not be honored. If this procedure is to be invoked, it must be done in strict accordance with the requirements of new § 4.44. The Commissioner realizes that this is a stringent procedure but concludes that this is the only way that these matters can be handled in fairness both to persons submitting information and to the members of the public who subsequently request the information involved.

The Commissioner emphasizes that this procedure is not available where the status of a record is already determined by other provisions in the final regulations, and especially § 4.111 *Data and information submitted voluntarily to the Food and Drug Administration*. For example, § 4.111(d)(2) states that no information on manufacturing processes is available for public disclosure, and thus presubmission review of any such information would be unnecessary and inappropriate.

59. Comments expressed concern that, although there is validity in the concept of permitting the Food and Drug Administration to accept information in confidence that it would not otherwise obtain, procedures should be spelled out to preclude abuse of this provision.

The Commissioner agrees with this comment. Accordingly, the final regulations provide that such information may be accepted in confidence only if it is relevant to and important for agency activity, and only if the Assistant Commissioner for Public Affairs signs a letter pledging confidentiality. A determination of confidentiality cannot be given orally or by any other agency official.

60. Comments pointed out that, if information submitted voluntarily on a pledge of confidentiality is already contained in other Food and Drug Administration records which are not exempt from disclosure, those other records should be disclosed to the public.

The Commissioner advises that, under these circumstances, a determination of confidentiality will not be made. If a determination of confidentiality is mistakenly made, the information already available in the Food and Drug Administration files will, if it is not otherwise exempt from disclosure, promptly be disclosed upon request.

61. Many comments indicated the need for a "meaningful" appeal procedure that would go to the highest level within the agency and to the courts, with provision for a stay of disclosure to permit the commencement of an appeal process.

The Commissioner agrees that an appeal procedure and a stay of disclosure pending appeal is reasonable, where the issue presents a close question. Appropriate procedures have been incorporated in §§ 4.44 through 4.46 for this purpose.

SITUATIONS IN WHICH CONFIDENTIALITY IS UNCERTAIN

62. Proposed § 4.33 stated that, where disclosure is uncertain, the Food and Drug Administration will consult with the person who submitted the information in making a determination whether it will be disclosed. This proposed provision has been included in the final regulations as § 4.45.

Comments stated that industry should be notified in all instances, not just in situations where the Food and Drug Administration is uncertain about disclosure. This section was also criticized because it does not make clear who decides when disclosure of data is uncertain, and whether such an "uncertain" status is created only with regard to previously submitted material or whether it also applies to newly submitted material.

The Commissioner concludes that the Food and Drug Administration will notify the submitting person only when it determines that there is some question as to the status of the material. There are many instances in which the material is clearly disclosable under the law and these implementing regulations, and it would be burdensome and wasteful to contact the person who had submitted it under such circumstances.

A decision as to whether or not the status of the data is "uncertain" and therefore subject to § 4.45 will be made by those administratively responsible for making disclosures. Such a decision will be made, if necessary, with the assistance of legal counsel.

Uncertainty about the status of information voluntarily submitted on which presubmission review is requested is the subject of separate provisions in new § 4.44.

63. Comments suggested that a company should be advised whenever any record is to be released for public disclosure pursuant to the Freedom of Information Act if that record was either submitted by the company or refers to the company.

The Commissioner rejects this suggestion. Any such procedure would severely hinder implementation of the Freedom of Information Act. Section 4.45 of the final regulations provides for consultation with affected persons wherever a close issue arises, and § 4.46 permits an affected person to seek court review in such instances.

The Commissioner advises that the final regulations adequately state the basis on which disclosure will be made to the public in the future. The proper remedy for any person to pursue, in the event that he has submitted data or information in the past which he believes to be confidential but which, under the final regulations, is included within a category for which public disclosure is permitted, is to bring a declaratory judgment action contesting the validity of the regulations. Unless these regulations are successfully challenged in the courts, the Food and Drug Administration intends to implement them. Thus, all persons who have previously submitted records to the Food and Drug Administration are hereby put on public notice that such information will be handled in the future as set out in these final regulations and this preamble. For this reason, specific notice to a person that a particular record will be disclosed pursuant to these regulations is unnecessary as well as impracticable.

64. Comments contended that this provision shows the high value that the Food and Drug Administration puts on industry interests in information as opposed to the public welfare. Some interpreted this provision as the Food and Drug Administration asking to be persuaded that the information is confidential. It was suggested that, in situations where it has not been conclusively established that the information falls squarely within an exemption to the Freedom of Information Act, the information should be disclosed.

The Commissioner regards these comments as reflecting a lack of understanding of the law. The exemptions under the Freedom of Information Act relate to such important issues as personal privacy and valuable trade secrets. Congress has directed Federal agencies to consider these matters and the Commissioner regards this responsibility as important. In utilizing this provision the Food and Drug Administration will seek clarification in uncertain situations, not persuasion. If information does not fit within any exemption to the Freedom of Information Act, it will be disclosed.

JUDICIAL REVIEW OF PROPOSED DISCLOSURE

65. A number of questions have been raised with respect to the right of a person to obtain a court determination before the Food and Drug Administration discloses data or information submitted by that person which he believes should be retained by the agency in confidence.

During the past 2 years the Commissioner has adopted a procedure of permitting any person who believes he would

be adversely affected by disclosure of information to institute suit in a United States District Court to enjoin such disclosure. The Commissioner has stated that, if any such suit is instituted, no disclosure will be undertaken until all court appeals are exhausted. The Commissioner believes that this procedure adequately balances the right of the public to obtain information against the right of a person to protect the confidentiality of material that he believes should not be publicly disclosed. Accordingly, new § 4.46 of the final regulations includes this procedure.

The Commissioner cautions that this does not mean that the Food and Drug Administration must in every instance advise persons who might be affected by a disclosure of information that such information has been requested by a member of the public. The Food and Drug Administration will exercise its judgment in determining when close issues exist that may give rise to this procedure. The Commissioner believes that experience during the past 2 years has demonstrated that proper judgment in these matters can readily be exercised.

DENIAL OF A REQUEST FOR RECORDS

66. The Commissioner concludes that specific provisions should be made in the final regulations for the procedure to be followed upon denial of any request for records. The Freedom of Information Act amendments provide that the names and titles or positions of each person responsible for the denial of a request for information shall be set forth in the letter denying the request.

Accordingly, new § 4.47 has been added to the regulations to accomplish these purposes.

NONSPECIFIC AND OVERLY BURDENSOME REQUESTS

67. Section 4.35 of the proposed regulations, which dealt with nonspecific and overly burdensome requests, has been redesignated as § 4.48 in the final regulations.

A few comments were concerned that the proposed regulations were not sufficient to prevent "fishing expeditions." It was emphasized that the Freedom of Information Act, as well as the Attorney General's Memorandum interpreting it, makes information available only in response to a request for identifiable records. It was noted that the courts have upheld the requirement that those seeking disclosure under the act provide a reasonable description of the records to enable government employees to locate the documents, citing "Irons v. Schuyler," 465 F. 2d 608 (D.C. Cir. 1972); "Bristol-Myers Co. v. FTC," 424 F. 2d 935 (D.C. Cir. 1970).

The Commissioner notes that many cases, as well as the Freedom of Information Act amendments, require only that documents be described, not that they be specifically identified. Section 4.40(b) of the final regulations states this requirement. A request must be made with sufficient specificity to permit the Food and Drug Administration to determine what information is requested and to obtain it. However, merely because a request is nonspecific or broad does not mean that the records requested are not identifiable. For example, a request for all of the documents in a particular category is a broad, nonspecific request, yet such records would be easily identified. If a request is so vague that it is difficult, if not impossible, to determine which records the request seeks, the agency will seek clarification.

68. A comment objected to this provision on the ground that the Freedom of Information Act provides for no such balancing of public interest against administrative efficiency, and contended that there is no justification for any provision dealing with "overly burdensome" requests, citing "Wellford v. Hardin," 444 F. 2d 21 (4th Cir. 1971).

The Commissioner advises that this provision is intended to emphasize the need for specific requests, rather than general requests for large numbers of documents that are often not relevant to the immediate interests of the person making the request, and to point out that responding to requests for large numbers of documents may require a substantial period of time. The Commissioner notes that the Freedom of Information Act amendments provide only that the person making a request be informed within 10 days whether part or all of the documents will be disclosed. No statutory time limit is established for actual production of the documents themselves. This indicates recognition by Congress that government employees cannot be expected to drop all other duties in order to respond to requests for information. There is no indication, in short, that Congress intends the Food and Drug Administration to handle freedom of information requests on a higher priority basis than its important law enforcement duties.

On the other hand, the Commissioner does not intend that requests under the Freedom of Information Act receive a low priority or simply be ignored. They will be handled as expeditiously as is feasible. Sections 4.41 and 4.48 of the final regulations so provide.

REFERRAL TO PRIMARY SOURCE OF RECORDS

69. Comments on the proposed regulations asked what documents will be distributed without charge pursuant to the regulations. In particular, questions were raised about the status of documents such as the Code of Federal Regulations (CFR), FEDERAL REGISTER, United States Pharmacopeia (U.S.P.), and National Formulary (N.F.).

The Commissioner notes that there are a wide variety of materials, including press releases and educational materials, which are prepared by the Food and Drug Administration for distribution to the public. These will continue to be released and distributed without charge.

It is the policy of the Food and Drug Administration that if anyone is charged for a document, all must be charged unless the fee is waived pursuant to these regulations. Conversely, if a document is routinely given free of charge, then all must receive it free of charge.

Two of the documents referred to in the comments, i.e., CFR and the FEDERAL REGISTER, are available from the Government Printing Office. The other two, U.S.P. and N.F., are available from the organizations that publish them. Since none of these are Food and Drug Administration materials and all are readily available elsewhere at a price lower than it would cost the Food and Drug Administration to reproduce them, it is the policy of the Food and Drug Administration to refer anyone who requests them to those places where they are available, pursuant to § 4.49 of the final regulations.

AVAILABILITY OF RECORDS AT NATIONAL TECHNICAL INFORMATION SERVICE

70. In a number of instances, the Food and Drug Administration has recognized that reports or information generated or received by the agency will receive widespread interest. The Department of Commerce has established the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22152, to serve as a clearinghouse for such information. The Food and Drug Administration is, for example, sending all scientific literature reviews and reports of the Select Committee on GRAS Substances of the Federation of American Societies for Experimental Biology to NTIS for reproduction and distribution to the public, as announced in the FEDERAL REGISTERS of July 26, 1973 (38 FR 20054), April 17, 1974 (39 FR 13796), and September 23, 1974 (39 FR 34218).

The Commissioner concludes that, when documents are furnished to NTIS, a single copy will be available for public review at the Food and Drug Administration. All requests for copies of such documents will be answered by referring the person requesting the copies to NTIS. The Commissioner concludes that this approach fully satisfies the requirements of the Freedom of Information Act. Section 4.50 of the final regulations states this policy.

USE OF PRIVATE CONTRACTOR FOR COPYING

71. A comment suggested that, rather than charge for copying or sending information to an independent contractor for copying, information in Food and Drug Administration files that is available for public disclosure should be loaned to the person who is requesting it who can then copy it himself.

The Commissioner concludes that lending material for copying usually will not be permitted. The Food and Drug Administration has had difficulty with loss of materials from files in the office of the Hearing Clerk. The Food and Drug Administration would have no way to determine whether materials loaned to individuals would be returned intact. Only where materials requested are contained in bound volumes and their safe return can be assured would this possibly be feasible. The Commissioner concludes

that no change in the final regulations is warranted to handle these situations.

REQUEST FOR REVIEW WITHOUT COPYING

72. Numerous requests have been received by the Food and Drug Administration during the past 2 years for an opportunity to review specified documents without the necessity of copying them. Such requests have pointed out that copying is expensive and that on occasion only a few, if any, of the requested documents might be relevant to the person's needs. Copies would then be requested only of those documents which, after a personal review, are determined to be relevant.

The Commissioner advises that this procedure is entirely acceptable to the Food and Drug Administration except where a record involved contains both disclosable and nondisclosable material. Under those circumstances, the only feasible way to make the record available for inspection is to copy it with the nondisclosable material blocked out. Accordingly, a new § 4.52 is added to the final regulations to state this policy.

INDEXING TRADE SECRET AND CONFIDENTIAL COMMERCIAL OR FINANCIAL DATA AND INFORMATION

73. In recent court decisions, it has been suggested that, upon judicial review of an agency decision to deny documents or portions thereof, the agency may be required to itemize and index the disputed material in order to permit adequate judicial consideration of the issues.

The Commissioner concludes that, where records or portions thereof are denied on the basis of the exemption for trade secrets and confidential commercial or financial data and information, the matter is subsequently contested in the courts, and the court orders such itemization and indexing, the Food and Drug Administration will require that this be undertaken by the person affected, i.e., the person who submitted the documents. The Food and Drug Administration will also request that the person affected intervene to defend the trade secret status of the disputed documents. The failure of the affected person to itemize and index such disputed documents and to defend their status will constitute a waiver of any trade secret defense, and the Food and Drug Administration will promptly make them available for public disclosure. Section 4.53 states this policy.

The Commissioner concludes that the burden of defending the trade secret status of disputed documents is properly placed upon the affected person, because this status inures only to the benefit of that person. The Commissioner concludes that it should not be encumbent upon the government to defend the property right of a person in such a matter, and that, in any event, the person affected is in the best position to present a trade secret defense to the court.

EXEMPTIONS

74. The Freedom of Information Act provides that all government records and documents shall be made available to the public upon request, except for the following nine specific types of information:

1. (A) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order.

2. Related solely to the internal personnel rules and practices of an agency.

3. Specifically exempted from disclosure by statute.

4. Trade secrets and commercial or financial information obtained from a person and privileged or confidential.

5. Interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.

6. Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

7. Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel.

8. Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

9. Geological and geophysical information and data, including maps, concerning wells.

Of these nine exemptions, the four relating to trade secrets, internal memoranda, personal privacy, and investigatory files are of particular importance to the Food and Drug Administration.

In the proposed regulations published in May 1972, the provisions relating to these four exemptions were interspersed with a number of other sections relating to other matters. The Commissioner concludes that, for purposes of clarity, the provisions of the final regulations relating to these exemptions should be separated from the other sections and placed in a separate new Subpart D of Part 4.

75. Questions have arisen as to whether documents that are not available from the Food and Drug Administration because of the applicability of one of the exemptions, e.g., trade secrets, may be obtained directly from the company or other person who has submitted them.

The Commissioner advises that this procedure is entirely acceptable, and encourages companies and other persons submitting information to the Food and Drug Administration to make such exempt material available.

APPLICABILITY OF EXEMPTIONS

76. Numerous comments on the proposed regulations suggested that each of the available exemptions should be repeated as possibly applicable in every particular section dealing with the status of particular types of documents, e.g., correspondence and written summaries of oral discussions.

The Commissioner notes that § 4.36 of the proposal provided that nondisclosable portions of documents will be deleted from otherwise disclosable material before it is made public. It is apparent, however, that this provision was not clearly understood by many who reviewed the proposal. Accordingly, the Commissioner is placing this provision in new § 4.60, the first section in Subpart D of Part 4 dealing with exemptions, and has revised it more clearly to state the policy that each exemption is to be considered in determining whether all or any part of otherwise disclosable records should be deleted before making the records available to the public.

77. It was suggested in comments on the proposed regulations that, if deletions of confidential information are to be made, only the company is capable of making all necessary deletions. Frequently, it was stated, just the association of a trade name of a product with a certain composition may be a breach of confidentiality. In many records a complete rewriting would be necessary rather than a simple deletion because confidential material may be interwoven with nonconfidential material.

The Commissioner advises that, where there is some uncertainty as to the confidential status of the material, the person who submitted it will, under § 4.45, have the opportunity to indicate which portions of a record he believes should be exempt. However, the person who submits material does not under any circumstances have the final say on what will and will not be deleted.

TRADE SECRETS AND COMMERCIAL OR FINANCIAL INFORMATION THAT IS PRIVILEGED OR CONFIDENTIAL

78. By far the most extensive comment on the proposed regulations related to the definitions of "trade secret" and "confidential data or information" in proposed § 4.25, and the specific application of these definitions with respect to particular information received in petitions and applications as reflected in the proposed amendments to Parts 8, 121, 130, 135, and 146.

Numerous comments pointed out that the regulations must reflect the interaction of three statutes: The general Federal confidentiality statute, 18 U.S.C. 1905; the confidentiality provision in section 301(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(j)); and the exemption under the Freedom of Information Act for "trade secrets and commercial or financial information that is privileged or confidential" (5 U.S.C. 552(b)(4)). The Commissioner notes that the preamble to the proposed regulations referred to all three statutes, and that the proposal was intended to reflect the congressional policy embodied in them.

The general Federal confidentiality statute, 18 U.S.C. 1905, provides that:

> Whoever, being an officer or employee of the United States or of any department or agency thereof, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined not more than $1,000, or imprisoned not more than one year, or both; and shall be removed from office or employment.

Section 301(j) of the Federal Food, Drug, and Cosmetic Act, (21 U.S.C. 331 (j)) prohibits:

> (j) The using by any person to his own advantage, or revealing, other than to the Secretary or officers or employees of the Department, or to the courts when relevant in any judicial proceeding under this Act, any information acquired under authority of section 404, 409, 505, 506, 507, 512, 704, or 706 concerning any method or process which as a trade secret is entitled to protection.

The Commissioner concludes that the Freedom of Information Act trade secrets exemption is as least as broad as, and is perhaps somewhat broader than, the confidentiality provisions of the other two statutes. The major difference between them is that, whereas the Freedom of Information Act exemption is discretionary, the other two statutes embody mandatory requirements. Disclosure of information prohibited by the other two statutes constitutes a criminal offense. Accordingly, to the extent that the other two confidentiality statutes apply, disclosure of trade secrets and confidential commercial or financial information by the Food and Drug Administration is wholly prohibited by Federal law. Even if such disclosure would be in the public interest, in order to protect the public health, and even if the Commissioner wishes as a matter of discretion to release such material, such disclosure cannot lawfully be undertaken.

The Commissioner concludes that it is not feasible or practical to determine the differences, if any, between the confidentiality provisions in 18 U.S.C. 1905 and 21 U.S.C. 331(j), and in the Freedom of Information Act. If there are any differences, they are extremely subtle and small. Accordingly, the Commissioner intends, for practical reasons of daily administration of the law, to regard the coverage of these provisions as identical. This will have the effect of prohibiting any discretionary release of documents that fall within the trade secrets and confidential commercial information exemption to the Freedom of Information Act. The Commissioner concludes that to do otherwise would invite confusion, lead to arbitrary decisions, and raise the possibility of violation of the criminal sanctions contained in the two mandatory Federal confidentiality statutes.

The Food and Drug Administration has on numerous occasions testified before Congress that current statutory prohibitions prevent disclosure of useful information contained in the agency's files, and particularly, data relating to the safety and effectiveness of drugs. The Food and Drug Administration cannot change the law, and thus is bound by the present provisions until Congress acts.

79. One comment discussed at length the Commissioner's citation of 18 U.S.C. 1905, the general Federal confidentiality statute, contending that this statutory provision was intended by Congress to be solely a "remedial" provision and does not represent substantive law. It argued that 18 U.S.C. 1905 has no application unless the information sought falls within one of the exemptions to the Freedom of Information Act, and that 18 U.S.C. 1905 is not itself an exemption to the Freedom of Information Act, citing "Frankel v. SEC," 336 F. Supp. 675 (S.D.N.Y. 1971); "Schapiro v. SEC," 339 F. Supp. 467 (D.D.C. 1972). It was suggested that 18 U.S.C. 1905 may properly be read to provide for criminal penalties for disclosure of information only when such disclosure is specifically prohibited by another statute, and to read 18 U.S.C. 1905 as an exemption to the Freedom of Information Act would, in effect, nullify the act and such could not have been the intent of Congress.

The Commissioner believes that this issue is moot, in view of the fact that the confidentiality provisions in 21 U.S.C. 331(j) and the trade secret exemption from the Freedom of Information Act cover the same type of information. The Commissioner also advises, however, that he does not concur with the legal interpretation provided by the comment. The comment did not cite any other confidentiality provision in Federal law that does not carry with it a sanction against release of the confidential information. Accordingly, if 18 U.S.C. 1905 were read solely as a remedial statute, to provide sanctions for disclosure of information that is prohibited by other sections of the law, it would be wholly meaningless. The only way to give this provision of the law true meaning is to read it as a general Federal prohibition against disclosure of trade secret information. This is the interpretation adopted by the Attorney General's Memorandum on the Freedom of Information Act. In any event, it is not necessary to resolve this legal question in this instance because of the separate confidentiality requirements in the Federal Food, Drug, and Cosmetic Act and the Freedom of Information Act.

80. A large number of comments questioned the use of the definition of a trade secret in section 757 of the Restatement of Torts. The comments argued that this definition was intended for purposes of litigation, to establish commercial damages, and thus is an inappropriate definition for harmonizing the competing values of an "open society" with adequate protection of trade secrets. The comments stated that the regulations should be sensitive to a "right of privacy" of a manufacturer and should recognize that information furnished by industry to the Food and Drug Administration is subject to a property right. Under the approach suggested in these comments, the key to a question of confidentiality would be whether the company intended the information to be confidential and whether it had, in fact, so treated the information, not whether there is a competitive use for the information.

The Commissioner concludes, upon review of the comments and the relevant case law, that the Restatement definition of a trade secret should remain the basic guideline for application of this exemption from the Freedom of Information Act. The Supreme Court has recently noted that the Restatement definition of a trade secret is "widely relied-upon," "Kewanee Oil Co. v. Bicron Corp.", 94 S. Ct. 1879 (1974). The Commissioner can find no reason why it should be utilized for determining commercial damages but not for purposes of the Freedom of Information Act.

The Commissioner agrees that there is a property right reflected by the trade secrets exemption from the Freedom of Information Act. He concludes that new § 4.61 adequately reflects that right.

The Commissioner does not agree that the intent of the person who submits documents to the Food and Drug Administration controls, or is even relevant to, the question whether those documents may be released to the public upon request under the Freedom of Information Act. The Freedom of Information Act establishes specific exemptions, which are to be applied by objective criteria. The subjective standard proposed in the comments would result in little or no disclosure of information to the public, contrary to the clear intent of Congress.

81. Comments suggested that the official Restatement Comment on the definition of trade secrets be included as part of the Food and Drug Administration regulations. Comment (b) to section 757 of the Restatement of Torts states that:

> An exact definition of a trade secret is not possible. Some factors to be considered in determining whether given information is one's trade secret are: (1) The extent to which the information is known outside his business; (2) the extent to which it is known by employees and others involved in his business; (3) the extent of measures taken by him to guard the secrecy of the information; (4) the value of the information to him and to his competitors; (5) the amount of effort or money expended by him in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

The Commissioner agrees that the official Comment on the Restatement definition is helpful in understanding the intended meaning of the definition. This Comment neither broadens nor narrows the definition itself, but simply elucidates the various factors encompassed within that definition. The Commissioner concludes that it is unnecessary to include this Comment as part of the definition in the final regulations, but advises that these factors will be considered in applying the definition set out in the regulations.

82. The definition of a trade secret as set forth in the proposed Uniform Trade Secret Protection Act was suggested as a possible alternative definition by several comments:

> Any formula, pattern, device or compilation of scientific, technical, or commercial information which the trade secret owner has taken reasonable precautions to maintain in secrecy so that except by the use of improper means there would be difficulty in acquiring it, and which gives said owner an opportunity to obtain an advantage over others who do not know or use it * * * Matter which otherwise constitutes a trade secret will not lose its status as such if it is disclosed by the trade secret owner to and accepted by an outsider in confidence * * *

The Commissioner concludes that there is no significant difference between this definition and the Restatement definition. Both place primary emphasis upon competitive advantage.

83. A number of comments cited case law dealing with trade secrets for the proposition that any technical or scientific information developed by a company may be considered a trade secret where it is not generally known or readily ascertainable and when it is protected and maintained as confidential by the developer and is of value to him.

The Commissioner agrees with this general statement of the case law, and concludes that the definition set out in § 4.61 of the final regulations adequately reflects it. In the Commissioner's opinion, the concept of commercial and competitive value is fully recognized by the courts.

84. Other comments contended that the Restatement definition of a trade secret is far too broad. One suggested that the controlling definition of trade secret in connection with the release of information should be the one noted in "Consumers Union v. Veterans Administration," 301 F. Supp. 796, 801 (S.D. N.Y. 1969), appeal dismissed, 436 F.2d 1363 (2d Cir. 1971):

> * * * an unpatented, secret, commercially valuable plan, appliance, formula, or process, which is used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities.

Information contained in a new drug application concerning animal and clinical testing, it was asserted, would not be a trade secret under this definition.

The Commissioner notes that the court in the "Consumers Union" case did not attempt an all-inclusive definition of a trade secret for purposes of all Federal law. It used a judicial description found in a 1925 case that arose under the predecessor statute of 18 U.S.C. 1905. There is no reason to consider that definition controlling for purposes of the Freedom of Information Act. Moreover, even this definition does not exclude clinical data since such data can properly be considered as part of a "plan" or a "process".

85. Comments stated that the Restatement definition of trade secret is inadequate because it does not include a crucial element required in the common law of trade secrets in order to prove damages, i.e., the requirement that improper means be employed in obtaining the information.

The Commissioner concludes that the common law requirement that improper means be employed to obtain a trade secret in order to prove damage is comparable to the requirement included in the proposed and final regulations that information cannot be regarded as a trade secret if it has been previously disclosed in a lawful manner to any member of the public. Accordingly, no modification in the definition in the final regulations is warranted.

86. Several comments took the position that, while the Restatement definition indicates that the information must give an individual an opportunity to obtain an advantage over competitors, the language in the second paragraph 5 of the preamble to the proposal seemingly excluded any information which is not currently providing a manufacturer with a competitive advantage and thus narrowed further what was already a narrow definition of trade secrets.

The Commissioner concludes that information which provided a manufacturer with a competitive advantage in the past, but is not currently providing a competitive advantage and will not, in all likelihood, do so in the future, is not covered by the Restatement definition and does not fall within the trade secrets exemption. If the information is not currently providing a competitive advantage the Food and Drug Administration will make a determination as to the probability of a future competitive advantage. Paragraph 5 of the preamble to the proposal indicated that the Food and Drug Administration has made some conclusions from past experience as to the probability of future competitive advantage with regard to safety, effectiveness, and functionality data. If a manufacturer can show in a particular case that, because of extraordinary circumstances, these data will provide a future competitive advantage, they will not be made available for public disclosure.

87. Several comments pointed out that the statutory exemption for trade secrets actually extends to two separate types of information, trade secrets and confidential commercial information, and that while, in theory, these two were treated as separate entities in the proposal, by relying solely upon the criterion of competitive advantage the two were in fact merged together into one narrow exemption. It was urged that the Restatement definition is only adequate to deal with the concept of "trade secret" and is not relevant in determining whether or not information was "confidential". It was again suggested that the manner in which information was treated was of greater importance in determining its confidential nature than the immediate use of the information. It was suggested that the regulations be amended to provide a separate type of exemption for confidential information that does not rely upon the concept of competitive advantage.

Other comments emphasized that there was no exemption for confidential information per se and that the exemption applies only to confidential information that is commercial or financial in nature.

The Commissioner concludes that, under the relevant statutes, trade secrets and confidential commercial or financial information are two separate categories of exempt information, and that there are different criteria for each. This is reflected in the separate definitions for each given in § 4.61 (a) and (b) of the final regulations. If information falls within either paragraph (a) or (b) it will be considered exempt. However, it should be noted that the matter of competitive advantage is often significant in determining whether commercial information is confidential within the meaning of § 4.61(b) since confidential information per se is not exempt, but only confidential information that is commercial or financial in nature.

88. Numerous comments discussed an appropriate definition for "commercial or financial information" that is "privileged or confidential". Some argued that this would include all information which a company regards as confidential and uses in the course of its business, and others contended that it should apply only to such clear financial information as data relating to sales and profits.

The Commissioner has reviewed the legislative history of the Freedom of Information Act and has concluded that this phrase is properly interpreted on a narrow basis. If it were interpreted broadly, as suggested by some comments, it would make the trade secrets exemption irrelevant, and indeed would largely undermine the philosophy of the Freedom of Information Act. The legislative history indicates that this portion of the exemption was intended to apply to information customarily held in strict confidence, such as business sales statistics, inventories, customer lists, manufacturing processes, and technical or financial data submitted to obtain a loan, as well as to information customarily subject to the doctor-patient and lawyer-client privileges. The Commissioner believes that the provisions of 18 U.S.C. 1905 and 21 U.S.C. 331(j) are properly interpreted in the same way. Accordingly, the Commissioner has revised the final regulations to reflect this approach to the matter.

89. There was objection to the dependence of a confidential status upon whether or not the information was of a type "customarily held in strict confidence or regarded as privileged." The issue, it was asserted, was whether a particular record or document was, in fact, held in confidence.

The Commissioner does not agree with this comment. If the confidential status of commercial information depended solely upon the way that each individual manufacturer handles information in his own business, decisions under the Freedom of Information Act would be highly inconsistent and would require the Food and Drug Administration to conduct an ad hoc inquiry into the way that each manufacturer handles documents submitted to the agency. Such an approach is neither practicable nor contemplated by the law.

The Commissioner notes that the legislative history shows that Congress intended that commercial and financial information submitted to the government would be handled according to the customary and usual practice in the industry rather than according to the way that any particular firm regards it. Thus, it is customary to expect that the doctor-patient and lawyer-client privilege will be respected, whereas many other forms of commercial information are not customarily held in confidence.

In this respect, the criteria for a trade secret and for confidential commercial information are substantially different. The former depends entirely upon the competitive advantage attributable to the specific information involved, whereas the latter may be applicable even if there is no specific competitive advantage involved if such information is generally held in strict confidence according to usual industry practice. In both instances, of course, lawful prior public release of the information automatically destroys the confidential status of the information.

90. Comments asserted that the need for the public disclosure of safety and effectiveness data is so great that no justification of trade secret or confidential commercial status was sufficient to withhold such information.

The Commissioner concludes that it is Congress which weighs the need for the release of certain information against the need for retaining it as confidential. With regard to trade secrets, Congress has concluded that the need to withhold such information outweighs the need to release it. The Freedom of Information Act expressly makes an exemption for this type of information and other statutes provide for criminal penalties for releasing it.

91. Comments suggested that language covering manufacturing and quality control procedures be added to this provision in the final regulations even though it is specifically dealt with in other provisions.

The Commissioner advises that § 4.61 is intended to serve as a general definition, and not to catalog all information that may have trade secret status. The fact that it does not mention a particular type of information does not mean that information is not a trade secret.

92. One comment contended that the fact that more than one manufacturer in an industry may know of and use an ingredient does not lessen the competitive advantage that accrues to those manufacturers who know and use the ingredient as opposed to all other manufacturers in the industry. The comment also argued that it is frequently impossible for any manufacturer to know whether any of his competitors has become aware of his use of a particular ingredient.

The Commissioner concludes that use of an ingredient by more than one manufacturer for the same purpose is not, in itself, sufficient to justify a conclusion that such use is not a trade secret. The Commissioner recognizes that whether the use of an ingredient constitutes a trade secret will depend upon a number of factors, and primarily whether it has previously been disclosed to the public as defined in § 4.81 of the regulations. A representation by a company that, to the best of its knowledge and belief, the ingredient has not previously been disclosed to any member of the public, will be sufficient to create a prima facie case of confidentiality, which may be rebutted by the Food and Drug Administration if it determines that the ingredient has in fact become public knowledge.

93. Comments asserted that the release of information under the proposed regulations would result in claims against the government based on "Padbloc v. United States," 161 Ct. Cl. 369 (1963) and "Bofors v. United States," 153 F. Supp. 397 (Ct. Cl. 1957).

The Commissioner concludes that, since the Freedom of Information Act requires release of information not specifically exempt, and no contract is involved, no claims may properly be made against the government under the "Padbloc" case. The Commissioner notes that the "Padbloc" and "Bofors" cases involved a breach of contract in a commercial venture with the government and thus are not relevant here.

94. Comments suggested that a manufacturer's assertion that specified information is either a trade secret or confidential commercial information not be overruled unless "clearly erroneous." It was also suggested that a final determination be subject to judicial review on the weight of the evidence as a whole, since otherwise there would be too severe a burden of persuasion for the company in court to overturn an incorrect determination by the Food and Drug Administration.

The Commissioner concludes that the Freedom of Information Act does not permit the Food and Drug Administration to accept a manufacturer's assertions of confidential status without careful scrutiny of each claim. Moreover, under the Freedom of Information Act the courts are obligated to "determine the matter de novo" and the burden is on the agency to sustain any denial of records.

95. A question has arisen as to whether information that has been made public through a patent can nevertheless be classified as a trade secret.

The Commissioner concludes that all information made public through a patent will be available for public disclosure, and that the trade secrets exemption will under no circumstances be applicable to any such information.

96. A comment contended that information which may fall within the trade secrets protection cannot be divulged without notice, hearing, and judicial review, citing "American Sumatra Tobacco Corp. v. SEC," 93 F.2d 236 (D.C. Cir. 1937).

The Commissioner concurs with the substance of this comment. Notice and an opportunity to present comments on the rules to be utilized in determining when the trade secrets exemption applies were furnished by the proposed regulations published in May 1972. The possibility of judicial review has been extended, with rare exception, to affected persons when disclosure is contemplated by the Food and Drug Administration in situations where the facts present a close question. Upon the receipt of any further comments and any modifications of these regulations as provided in this final order, judicial review will be available through a declaratory judgment action challenging the final regulations or a declaratory judgment action in accordance with § 4.46 challenging the proposed release of specific records. Accordingly, the Commissioner concludes that the general principles laid down in the "Sumatra" case are fully satisfied.

Inter- and Intra-Agency Memoranda or Letters

97. Section 4.27 of the proposed regulations, which dealt with the internal memorandum exemption from the Freedom of Information Act, is redesignated as § 4.62 in the final regulations.

Comments stated that the term "memoranda" is unclear. Questions were asked whether it refers to all written communications, including an investigator's report, or only to a document entitled "memorandum." It was suggested that the preamble should state the criteria for determining whether or not a document is a "memorandum."

The Commissioner advises that the term "memoranda" refers to all written communications and not just to those documents bearing the title "memorandum." The legislative history of the Freedom of Information Act reveals that this was the intended congressional meaning of the term. Section 4.62 has been revised accordingly.

98. One comment contended that if the explanatory portions of an internal agency memorandum are deleted and the remainder is disclosed, the "factual" information may be reported out of context. It was suggested that, because of this consideration, all portions of agency memoranda should be exempt. It was also suggested that, since it is frequently difficult to distinguish between "fact" and

"conclusion," some clarification of the term "factual information" would be helpful. It was stated that "factual information" should be defined to include factual analysis and materials which can be considered surveys and studies.

The Commissioner notes that the intra-agency memorandum exemption applies only to opinions, recommendations, or policy discussions within the deliberative processes of an agency. The courts have held that an entire agency memorandum that includes both factual information and opinions is not exempt from disclosure unless fact is so interwoven with opinion that the two cannot be separated. The Commissioner intends to make liberal use of his discretion to disclose internal memoranda reflecting policy discussions, with deletion only of trade secret data and material relating to personal privacy, wherever this can be done without disrupting the agency's activities. In all other instances the agency will do its best to distinguish between "fact" and "opinion." The Commissioner concludes that it is neither necessary nor practical to define the term "factual information." The dividing line between fact and opinion must be made on a review of the specific material in question.

99. Comments contended that the agency, by not disclosing agency memoranda while at the same time disclosing written communications from private external sources, creates the possibility of presenting a distorted view. For example, damaging communications from and to a firm could be disclosed while data contained in intra-agency memoranda relevant to a full understanding of the situation would be withheld.

The Commissioner advises that he intends, wherever feasible, to exercise his discretion to release internal agency memoranda in order to avoid the possibility of a distorted view. In any event, the factual portions of internal memoranda are clearly disclosable unless they cannot reasonably be separated from the policy portions.

100. In a number of instances, requests have been received by the Food and Drug Administration for disclosure of internal memoranda analyzing data or information submitted to the Food and Drug Administration. Such memoranda invariably contain both factual information and opinions and recommendations, and the two very seldom are or can be separated. Moreover, even the way that the factual information is presented may well reflect the internal opinions and views of the Food and Drug Administration staff.

The Commissioner concludes that, as a general rule, such internal summaries of data and information will not ordinarily be disclosed if the underlying data and information are available for public disclosure. Thus, an analysis of food additive safety data, all of which are available for disclosure, usually will not be made public. Where the underlying data and information are not available for public disclosure, however, the Commissioner either will exercise his discretion to release the entire analysis with appropriate limited deletions, such as names of patients, trade secrets, and statements that would represent an unwarranted invasion of privacy, but disclosing all of the deliberative and policy discussion, or will, at the very least, make available the document with the factual information intact and all of the deliberative and policy discussion deleted. Thus, as discussed elsewhere in this preamble, the Commissioner has concluded to make available for public disclosure internal memoranda summarizing the safety and effectiveness data contained in previously approved new drug applications, with deletions only of the limited type mentioned above, since the underlying safety and effectiveness data are themselves not publicly available. This general approach to the handling of internal agency summaries has recently received judicial approval in "Montrose Chemical Corp. v. Train," 491 F.2d 63 (D.C. Cir. 1974).

101. It is frequent practice for the Food and Drug Administration to prepare a summary of comments received on proposed regulations or objections received on final regulations, for purposes of internal decisionmaking. Requests have been made for copies of such summaries.

The Commissioner concludes that such summaries are internal memoranda that ordinarily will not be made available for public disclosure. Such summaries usually combine both factual information and conclusions and policy recommendations. The underlying documents on which the summary is based are all available for public disclosure. The courts have recently ruled that such summaries are therefore exempt from disclosure pursuant to the internal memorandum exemption. "Montrose Chemical Corp. v. Train," 491 F.2d 63 (D.C. Cir. 1974).

102. Weekly reports are prepared by Food and Drug Administration field offices for submission to the Executive Director for Regional Operations in Washington. Requests have been made for such reports.

The Commissioner advises that such reports are internal memoranda that are explicitly exempt from disclosure under the Freedom of Information Act. Although they contain some factual information that may be disclosable, they also contain conclusions and recommendations relating to policy that are not disclosable.

The Commissioner advises that, in order to promote free and open discussion between field personnel and headquarters, it is not feasible to make these reports available for public disclosure on a routine basis. The factual information contained in any specific report may well be available for public disclosure if it does not otherwise fall within an exemption from the Freedom of Information Act, and the Commissioner will also consider release of any specific report on a discretionary basis if good cause is shown for such release.

CLEARLY UNWARRANTED INVASIONS OF PERSONAL PRIVACY

103. A comment wanted to know the exemption to the Freedom of Information Act upon which the deletion of names from records is based. The comment stated that names or identifying characteristics may be deleted from "personnel and medical files" only if disclosure would produce a "clearly unwarranted invasion of privacy." Whether or not an invasion of privacy is clearly unwarranted must be decided on a case-by-case basis. "Getman v. NLRB," 450 F.2d 670 (D.C. Cir. 1971) was cited for the proposition that an agency must "balance the right of privacy of affected individuals against the right of the public to be informed, and the statutory language 'clearly unwarranted' instructs [an agency] to tilt the balance in favor of disclosure", 450 F.2d at 674.

The Commissioner advises that he bases the deletion of names upon both the privacy exemption under the Freedom of Information Act and general principles pertaining to the right to privacy under common law and the Constitution. The Freedom of Information Act exempts from disclosure all medical and personnel files, and all similar files the disclosure of which is a clearly unwarranted invasion of personal privacy. The agency has concluded that the release of any names contained in a medical file is clearly unwarranted, except in extraordinary circumstances. A possible exception to this general conclusion might arise if an issue of fraud were to be involved. Similarly, names of individuals involved in criminal investigations will be deleted if no criminal charges are brought, in order to prevent unfair accusations.

104. Many questions have been asked about the relationship between proposed § 4.31 and the related provisions in proposed § 4.26(f). It was contended that they are to some extent inconsistent or, in any event, require clarification, since proposed § 4.31 provided for public disclosure of the identity of any person who writes to the Food and Drug Administration and proposed § 4.26(f) provided for deletion of the name of the person reporting adverse reaction and complaint information.

The Commissioner agrees that these two provisions require clarification, and appropriate modifications have been made in the final regulations. The Commissioner advises that, pursuant to § 4.111(c)(3)(i) of the final regulations, all consumer letters and other communications received from lay persons, which relate to their own personal complaints, will be made public after deletion of names and other identifying information, in order to protect their privacy. With respect to complaints received voluntarily from third parties, usually health professionals, i.e., doctors, nurses, pharmacists, and so forth, relating to such matters as adverse reactions they have observed, and which thus relate to complaints made on behalf of other persons, the Commissioner concludes on the

basis of the longstanding experience of the Food and Drug Administration that it is essential to pledge that all identifying information will be deleted prior to public disclosure, and § 4.111(c)(3)(iii) so provides. If such a pledge is not made, the possibility of persuading health professionals voluntarily to submit important adverse reaction information on marketed products to the Food and Drug Administration is substantially diminished, and indeed perhaps wholly destroyed. Such information is important to the Food and Drug Administration and to the public, since it may well lead to action by the Food and Drug Administration designed to protect the public health. Accordingly, the Commissioner concludes that deletion of all such identifying information from such reports prior to release to the public is fully within the intent of the personal privacy and confidential commercial information exemptions.

105. Comments stated that, even though a specific request for confidentiality may not be made, consumer complaint letters may contain documents which are per se confidential. Some complaints contain medical records which were obtained by a patient's written release to doctors or hospitals. Such medical records may be confidential or such medical release may imply the confidentiality of the entire complaint. Release of medical records of complainants may violate the doctor-patient relationship of confidentiality. The comments pointed out that the Freedom of Information Act exempts medical files of government employees from disclosure, and urged that this same privilege be extended to all letters containing such material which are submitted to the Food and Drug Administration.

The Commissioner advises that such medical records are seldom enclosed with a consumer complaint. However, if the Food and Drug Administration receives medical records of a complainant, they will be held as confidential even if the complainant makes no specific request for confidentiality, except that they may be disclosed to the complainant.

106. Comments on various provisions in the proposed regulations contended that manufacturer and product names should be accorded the same treatment as individual names. It was urged that corporations be permitted to require the Food and Drug Administration to keep their identity confidential if they submitted a particular piece of information voluntarily. Comments requested that the requirement of a showing of "extraordinary circumstances" for nondisclosure of corporate names be deleted. Other comments argued, however, that a manufacturer should never be permitted to make a showing of "extraordinary circumstances" to justify nondisclosure of his identity.

The Commissioner concludes that the same treatment should not be given to corporate and product names as to individual names. The right to privacy applies only to individuals. If a corporation requests presubmission review of information it wishes to submit voluntarily pursuant to § 4.44, and makes a claim of confidentiality for the manufacturer or brand name which is rejected by the Food and Drug Administration, the corporation has the option of withdrawing that information.

The Commissioner concludes that the final regulations properly provide for a showing in a particular instance that a manufacturer or product name constitutes confidential commercial information and thus, under § 4.61, is properly deleted from a record before it is made available for public disclosure.

107. Comments contended that the name of the investigator in a test or research project should be deleted where the report of the test or project is otherwise disclosable, in order to prevent a clearly unwarranted invasion of his personal privacy.

The Commissioner does not agree with this comment. The investigator is the person who is responsible for conducting the test or study. Names of investigators are customarily published in the scientific literature with a summary of their work, and an investigator's curriculum vitae customarily refers to the research projects in which he has participated. Accordingly, the Commissioner concludes that disclosure of the name of the investigator on a particular project is neither a clearly unwarranted invasion of personal privacy nor confidential commercial information.

108. Questions have arisen as to whether the Food and Drug Administration will divulge all agency records relating to a specifically named individual, without that individual's consent.

The Commissioner advises that any such request is regarded as a clearly unwarranted invasion of personal privacy. A "fishing expedition" of this type will therefore not be permitted. In the event that a specific record relating to a specific individual is requested, it will be released in accordance with the various provisions established in the final regulations.

109. Comments suggested that § 4.31(b) of the proposed regulations, which stated that the identity of patients should not be disclosed in IND and NDA submissions, more properly belongs in other portions of Food and Drug Administration regulations.

The Commissioner concurs that this provision should be added to other Food and Drug Administration regulations, but believes that the principle should also be stated in Part 4. Accordingly, § 4.63(b) of the final regulations states this policy in general terms.

INVESTIGATORY RECORDS COMPILED FOR LAW ENFORCEMENT PURPOSES

110. The proposed § 4.32, dealing with investigatory records, has been redesignated as § 4.64 in the final regulations.

The Commissioner notes that a number of comments and questions specifically directed to § 1.6(c) of the regulations, dealing with section 305 hearing records, are also generally applicable to other investigatory records compiled by the Food and Drug Administration for law enforcement purposes. Accordingly, the conclusions of the Commissioner stated in this preamble are equally applicable to § 4.64 of the final regulations, and appropriate conforming modifications have been made in § 4.64.

111. Numerous questions have been raised with respect to specific documents that will or will not be made available pursuant to the investigatory records exemption.

Each of the specific types of letters, reports, forms, worksheets, and other documents prepared or used by the Food and Drug Administration in the course of its regulatory activities has been reviewed in detail by the Commissioner, in light of the exemption for investigatory records. The proposed regulations published in May 1972 took a very open disclosure policy, and provided for disclosure even where the law permitted retention of records as confidential. Implementation of that proposal during the past 2 years has demonstrated that even greater disclosure would not harm the regulatory activities of the agency. Accordingly, the Commissioner has concluded that the final regulations should continue the broad disclosure policy reflected in the proposal, and indeed should provide even greater release of such information. Thus, as discussed in relation to § 4.101, all records relating to administrative enforcement action will be released even though they may also be part of an investigatory file.

The sole exception to this rule applies where the possibility of criminal prosecution is under active consideration. As discussed above in this preamble, considerations of interference with enforcement proceedings and the right of an individual to a fair trial and an impartial adjudication lead the Commissioner to conclude that section 305 hearing records should not be released until the matter is closed. These same considerations apply to all investigatory records pertaining to a matter that is under active review with respect to possible criminal prosecution.

This exception only applies, however, with respect to such records while criminal prosecution is under active and current consideration. The Commissioner recognizes that any records in any file within the Food and Drug Administration may at some point lead to, or become part of, a criminal prosecution. This is plainly an insufficient justification for retaining all such material as confidential. Thus, it is fully anticipated that in some instances investigatory records will be released before any serious consideration of criminal prosecution even though criminal prosecution is later considered and in fact instituted. The Commissioner concludes that this anomaly cannot be avoided if there is to be a policy in favor of the greatest possible disclosure of information to the public. The Commissioner believes that any disruption of enforcement proceedings by adherence to this policy will be insubstantial, and that

there will be no adverse impact whatever on the right to fair trial and impartial adjudication.

The Commissioner has also considered these matters in light of the revision of the investigatory records exemption contained in the Freedom of Information Act amendments. It is the Commissioner's conclusion that the final regulations fully meet the standards set out in that revision and thus that the regulations do not require further change.

112. Comments contended that the release of investigatory records after a matter is closed is directly contrary to the Food and Drug Administration's prior position as expressed in Mamana, "FDA's Obligations Under The 1966 Public Information Act," FDA Papers, Sept. 1967 at page 18:

> It is also reasonable to conclude that the indiscriminate distribution of FDA investigative files to the public would result in a carte blanche interpretation of the facts contained in such files. This would not be in keeping with the principles of fair play and justice to those regulated.

The Commissioner advises that, since the publication of that article, there has been a reevaluation of the release of such information to the public. Whether or not to claim a particular exemption is discretionary and, in this instance, the agency has exercised its discretion in favor of greater disclosure. Experience during the past 2 years has demonstrated that this will not jeopardize the agency's law enforcement efforts. The Commissioner therefore concludes that disclosure of this material is entirely proper.

113. A comment contended that, in order to justify the use of the investigatory records exemption, there must be a concrete prospect of enforcement proceedings, citing "Bristol-Myers v. FTC," 424 F. 2d 935 (D.C. Cir. 1970). It was urged that, after an inspection has been made, the Food and Drug Administration should have 3 months to decide whether or not to institute proceedings. If a decision is made not to institute proceedings or if no decision is made within 3 months, the files should be opened. The comment stated that the 5-year statute of limitations would destroy all attempts to examine or understand Food and Drug Administration compliance activities within the last 5 years, which is clearly not the intent of the Freedom of Information Act.

The Commissioner concludes that it is appropriate to establish internal guidelines for determining when a matter is "closed." No arbitrary time period can properly be established. In very few, if any, instances will disclosure of investigatory records be delayed until the statute of limitations runs. A decision on action is normally made within the Food and Drug Administration within a relatively short period of time. Only where a decision is made to take legal action and the action results in protracted preparation or litigation will the matter normally remain open for any lengthy period of time.

The Commissioner advises that investigatory records will be available as soon as the decision is made not to take action on the specific matter involved in that record. To make this intent clearer, § 4.64 has been revised to replace the word "file" with the word "record." This is consistent with the Freedom of Information Act amendments, which make the same change in the statutory language. Thus, although a Food and Drug Administration file remains open on a continuous basis, and records on which no action has been taken in the past may well be the subject of future action where there is a continuing problem, individual records will be released at the earliest possible moment.

The Commissioner advises that, except in unusual circumstances, a record will be considered closed following:

1. *Inspection*, when:

a. The report, as endorsed by the supervisor, shows either no action is indicated (NAI), or in compliance (IC), and there are no samples in the process of being analyzed which are related to the inspection. If samples are being analyzed, the file remains open until the samples are determined to be not actionable (NAI).

b. The report is endorsed as voluntary action indicated (VAI), and a subsequent decision is made by higher review authority that no action will be taken (NAI).

NOTE: The issuance of a letter to the company has no bearing on the status of the matter.

2. *Sample collection*, when:

a. The district office concludes the sample is not actionable (NAI), whether or not the sample was analyzed.

b. A decision is made by higher review authority that the sample is not actionable (NAI), based on the sample results.

c. Any legal action involving the sample is completed.

NOTE: Results of analyses or worksheets shall be given to a firm on request and thus are available to the public on request.

3. *Regulatory letter*, when:

A response has been received which has been verified to show the violations were corrected, and no further action is contemplated.

NOTE: The regulatory letter itself and any correspondence relating to it or documents given to the company are available to the public as soon as they are issued.

4. *Seizure*, when:

a. A decision is made not to forward the case to a United States attorney (PA).

b. A final decision is made by the Department of Justice not to file the case.

c. The seizure has been adjudicated, time for appeal has passed, and no further action (criminal or civil) is contemplated using that sample. This coincides with permanent abeyance (PA) of the case.

NOTE: Court papers filed in connection with a seizure are available to the public when filed, unless directed otherwise by the court.

5. *Section 305 citation*, when:

A final agency decision has been made to seek no further action on the matter (PA). If further review of the matter is requested, the matter remains open until a decision is made by the reviewing office to close the case with no further action. If prosecution is sought, the matter remains open until that action is concluded.

NOTE: Providing a copy of the memorandum prepared by the Food and Drug Administration summarizing the hearing to the citee or his attorney, to assure the accuracy of the record, does not require release of that memorandum to the public.

6. *Prosecution*, when:

a. A decision is made not to forward the case to a United States attorney (PA).

b. A final decision is made by the Department of Justice not to file the case.

c. The case is adjudicated and time for appeal is past.

NOTE: Court papers filed in connection with a prosecution are available to the public when filed, unless directed otherwise by the court.

7. *Injunction*, when:

a. A decision is made not to forward the case to a United States attorney (PA).

b. A final decision is made by the Department of Justice not to file the case.

c. The case is adjudicated and time for appeal is past.

NOTE: Court papers filed in connection with an injunction are available to the public when filed, unless directed otherwise by the court.

8. *Recall*, when:

A decision has been made not to pursue criminal or civil action, based on the recall. This may be some time after the recall is completed, or shortly after it begins. The point is reached whenever the decision is made.

NOTE: Information on each recall is immediately released to the press, specific press releases may be issued on certain recalls, and all correspondence with the firm is available to the public upon request.

9. *Imports*, when:

a. A refusal of entry has been issued. The fact of detention is public information as soon as the detention is made, but the file does not become available until after there is an opportunity for an informal hearing, a final refusal of admission is made, and all litigation is concluded.

b. The product has been released into commerce.

LIMITATIONS ON EXEMPTIONS

114. A number of the regulations in the May 1972 proposal relate to limitations on the exemptions from the Freedom of Information Act, i.e., exceptions to the usual rules of nondisclosure.

The Commissioner concludes that these limitations should properly be grouped together in a separate new Subpart E of Part 4, for purposes of clarity.

APPLICABILITY OF LIMITATIONS ON EXEMPTIONS

115. Comments requested clarification on the extent to which a record that is ordinarily exempt from public disclosure could nonetheless be disclosed by the Food and Drug Administration to limited categories of persons without invoking the rule that a record must be available to all members of the public if it is available to anyone.

The Commissioner advises that the Freedom of Information Act specifically recognizes certain categories of persons and situations where a record may be disclosed without making it generally available to all members of the public. Section 4.80 sets out those circumstances where disclosure of a record will and will not require general disclosure to the public. For example, when the Commissioner concludes to exercise his discretion pursuant to § 4.82 to disclose an internal memorandum that he would otherwise be authorized to withhold from disclosure, that record must be available to any member of the public who requests it. If the Commissioner discloses that internal memorandum to Congress or to another Federal agency, however, disclosure to the public is not required.

DATA AND INFORMATION PREVIOUSLY DISCLOSED TO THE PUBLIC

116. Section 4.28 of the proposed regulations, which provided that data and information previously made available to the public will not be regarded as confidential by the Food and Drug Administration, has been redesignated as § 4.81 in the final regulations.

A number of comments stated that the proposal was too restrictive and indicated that there may be situations in which trade secret information is furnished in confidence to individuals other than employees or paid consultants, e.g., confidential disclosures to clinical investigators or to potential or actual licensees, or during discovery, or to other government agencies, or to health authorities outside the United States. It was suggested that the applicant himself may have received the information under contract from a third party. It was further suggested that the provision be revised to contain the following language:

> For purposes of these regulations, such data and information will not be deemed to have been disclosed to the public if it is disclosed by the owner thereof on a confidential basis and with appropriate restrictions on its disclosure or use.

The Commissioner agrees that there may be other legal arrangements between business associates under which such disclosure of trade secrets is entirely appropriate and would not destroy the confidentiality of the information involved. Section 4.81 of the final regulations so provides. Disclosure to a limited number of unpaid consultants solely for purposes of the consultation involved is specifically permitted.

117. Comments stated that the mechanics for determining whether there has been prior public disclosure of a submission are unclear. It was suggested that a statement be required, subject to the False Reports to the Government Act (18 U.S.C. 1001), for all information previously submitted.

The Commissioner concludes that a statement with respect to prior disclosure will be requested only when the Food and Drug Administration concludes that the issue is relevant to a question of disclosure. It would not be feasible to require such a statement for all information previously submitted to the agency, and any such requirement would be wasteful because much of the previously submitted information is unlikely ever to be requested.

118. A comment contended that the policy as stated in the preamble seems more restrictive than as stated in the proposed regulation, i.e., the preamble refers to disclosure by the manufacturer, while the proposed regulation refers to disclosure by "any person."

The Commissioner advises that lawful disclosure to the public by any person is sufficient to destroy the confidentiality of the information. Disclosure of material only in an unlawful way, e.g., stolen material, will not destroy its confidentiality.

119. A question was raised as to what was meant by "public disclosure." It was suggested that the disclosure in a scientific article of the product formula should not be equated with the manufacturing process information and quantitative formula submitted to the Food and Drug Administration. Refinement of a manufacturing process to the point where it produces a drug of high quality is a process more costly and exacting than required to prepare new components which are described in scientific literature.

The Commissioner advises that public disclosure is any lawful disclosure outside of the company and its consultants. Any information that has appeared in a published article has been publicly disclosed. However, such publication constitutes public disclosure only of the information that appears in the article. If only the product formula appears, only the product formula has been disclosed.

120. Questions have been raised as to whether disclosure in litigation is sufficient to break the trade secret status of data and information.

The Commissioner concludes that such disclosure would break the trade secret status of the material unless it were disclosed to the court in camera or pursuant to a protective order or only to defense counsel.

121. Questions were raised in comments as to whether the confidential status of a trade secret will be broken if the information involved has been given to licensees, to Federal or State agencies or foreign governments for regulatory purposes, or to business associates under contract.

The Commissioner advises that, under all the situations described above, the confidentiality of the information will be retained. It is only when the information is given to a member of the public without any arrangement of this type that confidentiality can no longer be claimed.

The Commissioner specifically rejects the suggestion that trade secret material should not lose its confidential status if it is divulged to any member of the public pursuant to any type of "confidentiality agreement." This loose wording would permit, for example, a manufacturer to disseminate any information he wishes on a widespread basis, simply through stating in his letters that receipt of the information constitutes agreement that it will be retained as confidential. The Commissioner concludes that the trade secret laws cannot properly be construed this broadly.

122. A comment asked whether, in a situation where the composition of a new packaging material and process has been published in a patent, but the patent does not reveal the detailed commercial process, the Food and Drug Administration would conclude that the detailed commercial process had been previously disclosed, and thus would release it to the public.

The Commissioner advises that the Food and Drug Administration will find a previous disclosure of information only to the extent that such information has actually been disclosed. In the instance cited in the comment, if the commercial process has not in fact been published in the patent or elsewhere, there has not been prior disclosure and the Food and Drug Administration will not release the information.

123. In one instance during the past 2 years, the Food and Drug Administration denied a consumer's request for release of the identity of the color used in a drug when the company affected informed the agency that it had not previously made this information available to the public. Shortly thereafter, when a physician requested the same information from the company, it was given to him. The Food and Drug Administration then released the information to the consumer who had originally requested it.

The Commissioner concludes that it is important to emphasize to companies who request trade secret status of data or information submitted to the Food and Drug Administration that any statements made with respect to the lack of prior release to the public are subject to the False Reports to the Government Act. Accordingly, all communications with firms with respect to this type of issue in the future will contain a statement to that effect.

DISCRETIONARY DISCLOSURE BY THE COMMISSIONER

124. The exemptions from public disclosure under the Freedom of Information Act are discretionary, not mandatory. Numerous occasions have arisen in the past 2 years where the Commissioner has concluded that documents exempt from public disclosure under the Freedom of Information Act should nonetheless be made available to the public.

Accordingly, the Commissioner has concluded that new § 4.82 should be

added to the final regulations to authorize the discretionary release of documents which could lawfully be held as confidential under the Freedom of Information Act, where the Commissioner concludes that such release would be in the public interest, and where such release is not otherwise prohibited by law.

125. Comments contended that the purpose of the Freedom of Information Act was to make the operations of Federal agencies more available to public scrutiny without subjecting information derived from private sources to unwarranted disclosure. Comments argued that the proposed regulations published in May 1972 released most information supplied by industry without releasing internal Food and Drug Administration memoranda.

The Commissioner advises that the congressional intent was to permit greater public scrutiny of Federal agency operations and the data and information on which those agencies base their decisions. Even though internal agency memoranda are explicitly exempt from disclosure under the law, the final regulations provide for discretionary release of such information whenever the Commissioner concludes that it will not hinder agency operations and is in the public interest.

126. Questions have arisen as to whether the Commissioner may, in his discretion, release trade secret information.

The Commissioner advises, for the reasons set out elsewhere in this preamble, that he has no discretion to release trade secret information. All records subject to the trade secrets exemption from the Freedom of Information Act are prohibited from public disclosure pursuant to 18 U.S.C. 1905 and 21 U.S.C. 331(j). These prohibitions are enforceable by criminal sanctions. Accordingly, new § 4.82 does not permit discretionary release of such material.

127. Questions have also arisen with respect to the discretionary release of names of individuals where that would constitute a clearly unwarranted invasion of privacy.

The Commissioner regards the right to privacy as a fundamental principle of law and ethics. Accordingly, new § 4.82 prohibits dicretionary release of any information that falls within the personal privacy exemption.

128. Questions have arisen as to whether the written comments of a special government employee sent to the agency with respect to proposed regulations published in the FEDERAL REGISTER will be made public by filing them with the Hearing Clerk of the Food and Drug Administration, along with all other comments on the proposal.

The Commissioner concludes that any such written comments are properly filed with the Hearing Clerk. Similarly, any written comments by other governmental agencies are also properly filed with the Hearing Clerk. The Commissioner concludes that, although these comments could be retained as confidential pursuant to the exemption for inter- and intra-agency memoranda, the policy of developing a full public record for decision on proposed regulations should be paramount. Accordingly, the Commissioner concludes that he will exercise his discretionary authority by placing all such documents on public display in the office of the Hearing Clerk.

129. Concern has been expressed that, if the Commissioner exercises his discretion to release certain types of documents even though they properly fall within an exemption from the Freedom of Information Act, e.g., internal memoranda, this may be regarded as precedent that will require the disclosure of all similar documents in the future.

The Commissioner advises that discretionary release of some documents does not require disclosure of all similar documents. Such a conclusion would be counter-productive, because it would require rigid adherence to the statutory exemptions, and less disclosure of information to the public, contrary to the intent of the Freedom of Information Act. A new provision has been added to § 4.82 of the final regulations to state this policy.

DISCLOSURE PURSUANT TO COURT ORDER

130. Comments pointed out that the Food and Drug Administration cannot guarantee confidentiality for any record, since a court may conclude that the information is subject to public disclosure.

The Commissioner concurs with this comment. Accordingly, new § 4.83 states that a determination of confidentiality by the Food and Drug Administration pursuant to § 4.44, or indeed pursuant to any provision in these final regulations which states that a particular record is exempt from public disclosure, means that the Food and Drug Administration will make the record available for public disclosure only if ordered by a court.

DISCLOSURE TO CONSULTANTS, ADVISORY COMMITTEES, STATE AND LOCAL GOVERNMENT OFFICIALS COMMISSIONED PURSUANT TO 21 U.S.C. 372(a), AND OTHER SPECIAL GOVERNMENT EMPLOYEES

131. Section 4.30 of the proposed regulations published in May 1972, which states that confidential documents may be disclosed to special government employees without disclosing them to all members of the public, is redesignated as § 4.84 in the final regulations.

A comment stated that disclosure to consultants and advisory committees should be made pursuant to a "confidentiality agreement" to insure that the recipients of such information are aware that the data must be treated on a confidential basis.

The Commissioner agrees with this comment. Sections 4.80(c) and 4.84 of the regulations provide that all government employees and special government employees to whom such records are disclosed shall be subject to the same restrictions as Food and Drug Administration employees with respect to their disclosure.

132. In preparing for court cases, the Food and Drug Administration often consults with potential witnesses and, in the course of such discussion, may disclose internal information not previously disclosed to the general public. Questions have arisen as to whether such disclosure triggers the requirement that such information also be made available for public disclosure to any other person who requests it.

The Commissioner concludes that consultation with potential witnesses in preparation for litigation, whether it be in a court or in an administrative hearing, does not fall within the rule that disclosure to one member of the public requires disclosure to all. Although these potential witnesses are not always special government employees, they are government consultants for purposes of the litigation, and thus such consultation falls within the exception established in § 4.64 of the regulations for investigatory records for law enforcement purposes.

133. Comments stated that the Food and Drug Administration should clarify the conditions under which correspondence and summaries of calls and meetings with special government employees are not disclosable. It was suggested that there be disclosure unless the communication relates only and specifically to matters (a) upon which special employees are consulting or advising and (b) which are encompassed within the scope of their duties as special government employees.

The Commissioner agrees with this comment, and § 4.84 has been revised accordingly. To the extent to which a communication by or to a special government employee is not a communication by or to him in that capacity, such a communication is not covered by the inter- or intra-agency memorandum exemption, and is available for disclosure.

134. Questions have arisen with respect to release of data and information to contractors that is exempt from public disclosure.

The Commissioner concludes that, since contractors are not special government employees, they stand in the same position as any other member of the public and are not subject to the provisions in § 4.84 of the final regulations.

DISCLOSURE TO OTHER FEDERAL GOVERNMENT DEPARTMENTS AND AGENCIES

135. Questions have arisen about the disclosure of information contained in Food and Drug Administration files to other Federal government departments and agencies.

The Commissioner concludes that all data and information contained in Food and Drug Administration files may properly be disclosed to other Federal government departments and agencies, without regard to the statutory exemptions, or to triggering the necessity for releasing the information to the public generally, except for records subject to the confidentiality provisions contained in section 301(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(j)). Thus, for example, preliminary results of scientific testing may be exchanged by government agencies so that they will be kept

informed of new developments and can prepare for any appropriate action prior to release to the public of the full results in a final report.

Section 301(j) explicitly provides that the material it covers may only be disclosed within the Department of Health, Education, and Welfare, or to the courts when relevant in any judicial proceeding. This limitation is contained in new § 4.85. Where another Federal government agency has concurrent jurisdiction over a matter, however, and thus also has legal authority to obtain and review material covered by section 301(j), the Food and Drug Administration may share such material directly with that other agency rather than requiring the other agency to obtain it from the original source. This situation occurs, for example, as a result of the joint jurisdiction of the Food and Drug Administration and the Environmental Protection Agency over pesticides that are also new animal drugs.

136. Concern has been expressed that, if the Food and Drug Administration makes available to other government agencies information that is exempt from public disclosure, those other agencies may disclose the information contrary to a pledge of confidentiality given by the Food and Drug Administration in writing or in these final regulations.

The Commissioner advises that any data or information furnished to other government agencies that is not disclosable to the general public will be furnished only pursuant to an agreement that the information will be held in confidence. If no such assurance can be given, the data or information will not be furnished. Section 4.85 of the final regulations so provides.

DISCLOSURE IN ADMINISTRATIVE OR COURT PROCEEDINGS

137. No comments were received on the provision in the proposed regulations which stated that data and information exempt from public disclosure may nevertheless be revealed in administrative or court proceedings.

The Commissioner concludes that this provision should be retained in the final regulations under § 4.86. The Food and Drug Administration will, where some disclosure is necessary, take whatever action is reasonable to reduce such disclosure to the minimum necessary under the circumstances.

DISCLOSURE TO CONGRESS

138. The Freedom of Information Act explicitly provides that the exemptions are "not authority to withhold information from Congress" (5 U.S.C. 552(c)).

The rules of Congress provide that the House of Representatives and the Senate act through their committees and subcommittees. Accordingly, a request from Congress for records, i.e., from the chairman of a committee or subcommittee, acting on behalf of that committee or subcommittee, falls within the provision set out in 5 U.S.C. 552 (c) and thus is not subject to the exemptions from disclosure. A request for records from an individual member of Congress, on his own behalf or on behalf of any constituent, is subject to all the requirements applicable to a request for records by a member of the public, including the usual exemptions and fees. See "EPA v. Mink," 410 U.S. 73 (1973); "Aspin v. Department of Defense," 491 F.2d 24 (D.C. Cir. 1973). A new § 4.87 has been added to the final regulations to state this policy.

139. A question has arisen as to whether the General Accounting Office is within the provision contained in 5 U.S.C. 552(c) which states that the exemptions from disclosure under the Freedom of Information Act do not apply to "Congress".

The Commissioner concludes that, since GAO was established by an act of Congress with powers to investigate agencies of the executive branch, it is within the exception set out in 5 U.S.C. 552(c) and thus stands on the same footing as congressional committees and subcommittees.

140. Concern has been expressed that information exempt from public disclosure pursuant to the Freedom of Information Act must nonetheless be disclosed to Congress, and that there is no statutory provision prohibiting Congress from disclosing such information. In particular, it has been pointed out that some years ago a congressional committee obtained from the Food and Drug Administration adverse reaction information which it subsequently published as part of the record of a hearing without deletion of the patient or physician names or other identifying information. As a result, physicians have expressed reluctance to supply such information to the Food and Drug Administration.

The Commissioner concurs that the law presently does not prohibit release by Congress of confidential information obtained from the Food and Drug Administration which is otherwise exempt from public disclosure. However, the Commissioner knows of no instance other than the one mentioned above in which this has happened. In that specific instance, no damage resulted from the disclosure. In discussions with congressional staff members, the Food and Drug Administration has been advised that the single incident mentioned above was an aberration that will be guarded against in the future. The Commissioner therefore concludes that disclosures of this type are extremely unlikely.

COMMUNICATIONS WITH STATE AND LOCAL GOVERNMENT OFFICIALS

141. Section 702(a) of the act (21 U.S.C. 372(a)) authorizes the Food and Drug Administration to commission any health, food, or drug officers or employee of any State, Territory, or political subdivision to act as an officer of the Food and Drug Administration in conducting examinations and investigations for purposes of enforcement of the act. Pursuant to this provision, the Food and Drug Administration has commissioned a number of State and local officials to help enforce the law. In addition, sections 301 and 311 of the Public Health Service Act (42 U.S.C. 241 and 243) encourage cooperative efforts between State and local officials and the Food and Drug Administration in regulatory activities. Indeed, the effectiveness of the Food and Drug Administration is frequently dependent upon the cooperation of such State and local officials.

The Commissioner concludes that all information exchanged between the Food and Drug Administration and a commissioned State or local official or a State or local official under contract with the Food and Drug Administration to conduct law enforcement work is exempt from disclosure under the Freedom of Information Act pursuant to the intra-agency memoranda and investigatory records exemptions. Such information will be subject to discretionary release by the Commissioner, however, pursuant to the principles established in these new regulations, after consultation with the State or local official involved.

Information supplied to the Food and Drug Administration by a State or local official who is not commissioned pursuant to section 702(a) of the act, or supplied by the Food and Drug Administration to such a State or local official, presents a somewhat different issue. A large amount of this information consists of investigatory records that are supplied by or to State and local officials on the understanding that they will be retained as confidential and will not be disclosed. The Commissioner concludes that material of this kind obtained by the Food and Drug Administration in accordance with such an understanding with State and local officials will be retained as confidential, on the grounds that disclosure would interfere with enforcement proceedings, would disclose the identity of a confidential source, and would disclose investigative techniques and procedures. Similarly, disclosure of information of this type to State or local officials will not require release of the information to the public. The Food and Drug Administration has no authority to require that State and local officials furnish this information to it. This exchange of information is important to the regulatory activities of the agency. Accordingly, the Commissioner concludes that retention of this information as confidential is fully within the intent of the investigatory records exemption. Similarly, trade secrets disclosed to the Food and Drug Administration by a State or local government official will also be retained as confidential.

A new § 4.88 has been added to the regulations to reflect this policy.

COMMUNICATIONS WITH FOREIGN GOVERNMENT OFFICIALS

142. A number of comments raised questions about the status of foreign governments under the proposed regulations. Specific instances have arisen in which a counterpart agency in a foreign country has offered data or information to the Food and Drug Administration on a confidential basis, or the Food and Drug Administration has wished to make

data or information available to the foreign government without making it available to the general public at that time. In all instances these matters have related to pending regulatory matters and the communications have represented an attempt to coordinate action on an international level.

The Commissioner notes that there is no specific exemption relating to communications with foreign governments under the Freedom of Information Act, except for classified material relating to national defense or foreign policy. The investigatory records exemption does recognize, however, that documents relating to current regulatory issues may properly be retained as confidential during the period necessary to ensure that enforcement activities are not disrupted. The Commissioner concludes that most, if not all, communications with foreign governments relating to pending regulatory matters properly fall within this exemption. Once the pending action is in fact taken, however, such communications and information would ordinarily become available for public disclosure, except where the foreign nation specifically requires that the information involved be retained as confidential for a longer period of time.

The Commissioner emphasizes the importance of maintaining good working relationships with counterpart agencies throughout the world both to sound diplomatic relations with foreign nations and to the availability of important new information of regulatory significance. Such cooperation is encouraged by sections 301 and 308 of the Public Health Service Act (42 U.S.C. 241 and 242f). Unless regulatory information can be exchanged without required public disclosure, the Food and Drug Administration will lose its sources of important information that is vital to protect the public, and will be unable to disseminate preliminary information when it is first generated within this country in order to help protect the public health throughout the world.

143. A foreign regulatory agency suggested that any information submitted to the Food and Drug Administration by a foreign company, and certified by a foreign government agency as confidential, should be held by the Food and Drug Administration as confidential.

The Commissioner concludes that the same rules with respect to confidentiality apply to foreign companies as to domestic companies under the Freedom of Information Act. An assertion by a foreign government that information submitted by a foreign company is confidential is insufficient, under the Freedom of Information Act, to require nondisclosure.

144. A comment urged that a special provision be added specifically to retain as confidential any information that is submitted to the Food and Drug Administration by a foreign government in confidence or as a trade secret. There was particular concern that confidential information in foreign government inspection reports be automatically treated as confidential. Article 162 of the Swiss Penal Code was cited as subjecting Swiss authorities to a penalty for the disclosure of trade secrets.

The Commissioner advises that the Food and Drug Administration has authority to withhold from disclosure only information specifically exempt from disclosure under the Freedom of Information Act. The Commissioner believes that § 4.89 reflects the current law in this regard and will permit the agency to retain in confidence all trade secret information or investigatory files.

145. Questions have arisen about the status of papers prepared for or by international organizations, particularly the Food and Agriculture Organization and the World Health Organization.

The Commissioner notes that 22 U.S.C. 288a(c) provides that "The archives of international organizations shall be inviolable." The Commissioner interprets this to mean that the United States government and the public may not obtain information directly from such organizations, i.e., the Freedom of Information Act does not apply to such organizations. This does not mean, however, that communications from such organizations to the Food and Drug Administration, or materials prepared by the Food and Drug Administration for such organizations, are not subject to public disclosure under the Freedom of Information Act. The Commissioner concludes that Congress has not granted special immunity to such records. Accordingly, communications to and from such organizations will have the same status as documents to and from any other organization.

146. In particular, a question has been raised about the availability for public disclosure of working papers prepared by an employee of the Food and Drug Administration for the World Health Organization.

The Commissioner notes that when such working papers are prepared by an employee in his capacity as a representative of the Food and Drug Administration, and not in an individual capacity, all such documents are properly available for public disclosure in accordance with the same rules that apply to all records contained in agency files. However, when such records are not prepared during working hours, using the facilities of the Food and Drug Administration, and copies are not included in Food and Drug Administration files, they are not available for public disclosure. Accordingly, the status of such records will be determined by the specific circumstances involved in each instance.

USE OF DATA OR INFORMATION FOR ADMINISTRATIVE OR COURT ENFORCEMENT ACTION

147. No comments were received on the provisions contained in the proposed regulations stating that any data or information obtained by the Food and Drug Administration, by any means whatever, may be used as the basis for taking any appropriate administrative or court enforcement action within its jurisdiction.

The Commissioner concludes that this provision should be retained in the final regulations as § 4.90 *Data and information* that would otherwise be exempt from public disclosure will nonetheless be released in connection with such enforcement action if necessary to implement the specific action involved. For example, the Food and Drug Administration routinely discloses commercial information about recalled products that is relevant to the recall but that would not otherwise be disclosed. The Commissioner concludes that, when enforcement action of this type occurs, such information is customarily revealed and thus that the exemption for confidential commercial information is no longer applicable.

AVAILABILITY OF SPECIFIC CATEGORIES OF DOCUMENTS

148. Many of the sections in the proposed regulations published in May 1972 related to the availability of specific categories of documents. Some of these categories of documents are the subject of separate regulations published by the Food and Drug Administration, e.g., food additive petitions and new drug applications, and the detailed rules on the availability of these types of documents are therefore properly incorporated directly into those existing regulations. In many other instances, however, there are no specific regulations dealing with the types of documents involved, e.g., agency correspondence and administrative enforcement records, and therefore separate rules are included in Part 4 to cover these matters.

The Commissioner concludes that a new Subpart F should be established in Part 4 to include all of these provisions relating to specific categories of documents not dealt with elsewhere in Food and Drug Administration regulations. For convenience, a new provision in § 4.100(c) is also included to cross-reference all other sections in the act relating to the availability of documents not specifically dealt with in Subpart F of Part 4.

APPLICABILITY

149. Numerous comments on the proposed regulations published in May 1972 expressed concern that some of the provisions dealing with specific categories of records did not directly incorporate all of the exemptions from disclosure.

The Commissioner advises that each of the exemptions from disclosure set out in Subpart D of Part 4 is applicable to each of the specific categories of records for which a provision is established in Subpart F of Part 4 or elsewhere in Food and Drug Administration regulations. Both §§ 4.60 and 4.100 state this policy.

150. Provisions in other parts of the Food and Drug Administration regulations also establish rules governing the availability for public disclosure of specific categories of records.

For ready reference, new § 4.100(c) lists all of the other Food and Drug Administration regulations relating to public disclosure of records. Additions to this list will be made when the new procedural regulations are published, and when other regulations are published by the Food and Drug Administration setting out rules on the availability of specific records for public disclosure.

ADMINISTRATIVE ENFORCEMENT RECORDS

151. Section 4.21 of the proposed regulations, which made available for public disclosure records of all informal administrative enforcement action, has been redesignated as § 4.101 in the final regulations.

As with § 1.6(c), a number of comments expressed concern about "trial by newspaper" as a result of release of informal enforcement action records. It was stated that there was a great potential for an imbalanced and distorted view since not all information bearing on the alleged or suspected violation would necessarily be in the files, e.g., information concerning the severity of the violation and the extent of its occurrence. A Food and Drug Administration employee's notes were characterized as subjective and just one individual's opinion. It was suggested that items in a Food and Drug Administration employee's report might be incorrect, and that the company, to protect against such possibilities, should be given the opportunity to review the file and explain it before it is released to the public. It was argued that a rebuttal after the item had hit the newspapers was too late. A denial after disclosure could not repair the damage already done to a business reputation. It was also suggested that, if the agency disclosed warning letters and other requests for corrective action, it should also make public a balanced presentation of the facts, including the fact, if such is the case, that an alleged violation is minor or technical.

The Commissioner concludes that these comments are not persuasive, and that all records of administrative enforcement action disclosed to any person will be made available to the public. If accepted, the logic of the comments summarized above would require holding the pleadings in all court actions confidential until the matter was finally concluded, as well as all administrative actions. The Commissioner concludes that the approach suggested in the comments is in complete disregard of the intent of Congress as expressed in the Freedom of Information Act. See "Wellford v. Hardin," 444 F.2d. 21 (4th Cir. 1971).

The Commissioner also concludes that it is not feasible to furnish requested material to an affected person for review, prior to disclosing it to the public, nor is this required by law. Such a procedure would substantially reduce the availability of information to the public, contrary to the Freedom of Information Act.

152. Questions have been raised on the difference between "informal" and "formal" enforcement action.

The Commissioner concludes that the term "informal" should be replaced by the term "administrative," in order to clarify the intent of this section. All administrative enforcement action will be governed by this section regardless whether it is considered informal or formal in nature.

153. Many comments cited the probability of an adverse effect upon a company's desire to cooperate with the Food and Drug Administration if all such correspondence and reports are released to the public. Several stressed the importance of industry cooperation in order for the Food and Drug Administration effectively to regulate the industry. One suggested that the provision might interfere with voluntary compliance, since cooperation might, in the public's eye, indicate guilt. There would be, it was stated, a tendency to resist and litigate rather than accept "trial by newspaper." It was suggested that manufacturers who previously fully cooperated in an inspection situation would attempt to use section 704 of the Federal Food, Drug, and Cosmetic Act against the Food and Drug Administration employee by questioning the "reasonableness" of inspections and permitting nothing beyond the letter of the law.

The Commissioner concludes, on the basis of experience in the 2 years during which the provision has been implemented, that the fears expressed in the comments are wholly unfounded. There has been no adverse impact upon the cooperation of the regulated industry in complying with Food and Drug Administration requirements.

154. One comment argued that a policy of nondisclosure should apply as much to informal enforcement communications as it does to intra- and interagency communications since industry has the same right as the agency not to "operate in a fishbowl."

The Commissioner notes that the Freedom of Information Act specifically exempts intra- and interagency communications. The disclosure of communications between the Food and Drug Administration and industry does not in any way require industry to disclose its own internal decisionmaking process.

155. Questions have been raised about the status of lists of observations left by a Food and Drug Administration employee upon completion of a factory inspection, setting forth observations on violative conditions, pursuant to section 704(b) of the act. These reports are made on Forms FD–483 and, for drugs, FD–2275.

The Commissioner concludes that these are in the nature of warning letters and, since they are provided to the company involved, are also properly provided to any other person who requests them. Even though these reports of observations may form a part of an investigatory file, the Commissioner concludes that their routine release will not interfere with enforcement proceedings or impede a fair trial or an impartial adjudication because there are several thousand of them every year and, unlike section 305 hearing files, they are not closely related to possible criminal prosecution in most cases. Such reports have been released routinely upon request during the past 2 years without prejudice to the agency's regulatory activities.

156. Similar questions have been raised with respect to the status of the establishment inspection report (EIR) prepared by a Food and Drug Administration employee after an inspection. The EIR is retained only in Food and Drug Administration files, and is not sent to the establishment or any other person.

The Commissioner concludes that the EIR is properly retained as confidential until the matter is closed, since it is both an intra-agency memorandum and part of an investigatory file. Unlike the information in Forms FD–483 and FD–2275, the EIR contains personal conclusions and recommendations for consideration only within the Food and Drug Administration, and is not disclosed to anyone outside the agency except other authorized governmental officials. It is not a simple factual list of observations, but rather a much longer description of conditions observed and conclusions and recommendations with respect to those observations. The Commissioner concludes that routine release of the EIR before the matter is closed would interfere with normal enforcement activities and could have an adverse impact on a fair trial and an impartial adjudication. In specific situations, an EIR may be released by the Commissioner as an exercise of his discretion pursuant to § 4.82.

The list of the Food and Drug Administration employee's observations on violative conditions, given to the responsible company official upon completion of the inspection on Forms FD–483 or FD–2275, contains at least part of the information subsequently incorporated in the EIR. Accordingly, the Commissioner concludes that the Food and Drug Administration will respond to any request for a nondisclosable EIR with an offer to furnish a Form FD–483 or FD–2275 covering the same inspection.

157. In some instances, a Food and Drug Administration employee will discuss matters with a firm during or at the conclusion of the inspection, and will subsequently note those and perhaps other matters in the EIR. Questions have arisen as to whether this requires that the EIR be made available for public disclosure.

The Commissioner concludes that an oral discussion of matters subsequently reduced to writing in an EIR does not require that the EIR be made available for public disclosure. If any part of the EIR is subsequently disclosed to the firm or any member of the public, however, the same portion of the EIR must then be made available to anyone who requests it, except for appropriate deletions for exempt material.

158. It is common practice for a representative of the Food and Drug Administration to write a high official in a company to bring to his personal attention any violation of the law that may

have been observed during a factory inspection and reported in an EIR.

In accordance with the Commissioner's conclusion that all correspondence with any person outside the Federal government is properly made public, all such postinspection correspondence will be made publicly available upon request. Such letters are in the nature of warnings pursuant to section 306 of the act, and may well be in lieu of seizure. See "Wellford v. Hardin," 444 F.2d 21 (4th Cir. 1971). Such letters have been released publicly for the past 2 years without disruption of the activities of the agency.

159. In many instances, the Food and Drug Administration issues a formal regulatory letter pursuant to section 306 of the act, stating that appropriate court action will be undertaken if specified violations of the act are not corrected.

The Commissioner concludes that all regulatory letters, and all followup correspondence relating to such letters, will be made publicly available upon their issuance. These letters constitute administrative enforcement action by the agency and should be subject to the same disclosure principles as court enforcement action.

The Commissioner concludes that a copy of each regulatory letter will be filed in the Food and Drug Administration Public Records and Documents Center, for public review. Additional correspondence and memoranda relating to such letters will be available upon request. Thus, regulatory letters will be handled in the same way as court actions filed by the agency. All regulatory letters issued by the agency during the past 2 years have been made publicly available upon request without any adverse consequences.

160. The Food and Drug Administration often requests the recall of violative products from the market in lieu of seizure.

The Commissioner concludes that all administrative enforcement records requesting recalls are properly released to the public upon request, for the same reasons that regulatory letters and other administrative enforcement records are the subject of public disclosure. The Commissioner believes that all regulatory action taken by the agency, whether of an administrative or of a court nature, must be subject to public scrutiny and public accountability. In releasing records on recalls, however, the Commissioner will delete any confidential commercial information that may be included. For example, a list of customers of a particular company and sales demography data are customarily regarded as confidential commercial information, and will not be disclosed to the public.

161. A number of comments noted the absence in proposed § 4.21 of a specific exemption for trade secret or confidential information and indicated that such an exemption should be added.

As § 4.100(a) makes clear, each exemption from the Freedom of Information Act, including the exemption for trade secret and confidential commercial information, applies to all records released by the agency. The Commissioner concludes that it is impractial to mention each exemption in each section of the regulations.

162. Comments suggested that some of the information covered by this section would also be covered by the section on the investigatory records exemption.

The Commissioner concludes that there is no overlap between these sections. The investigatory records exemption in § 4.64 is explicitly limited only to data and information obtained by the Food and Drug Administration, retained solely in its files, and not shown to anyone outside the agency. Thus, § 4.64 covers no communications with an affected person or company, such as the observations left by a Food and Drug Administration employee or product analyses furnished to a company. Section 4.64 covers only the Food and Drug Administration's own investigatory reports which are not made available outside the agency, such as an EIR or any other internal report, as well as information contained in section 305 hearing records and other investigatory reports relating to an active and current criminal investigation. The provisions of §§ 4.64 and 4.101 have been revised to clarify this policy.

163. A number of requests have been made for "action levels" used by the agency in determining when it will institute administrative or court enforcement action against a product for violation of the law.

The Commissioner advises that all such action levels have, to the best of his knowledge, now been made public. The action levels for natural or unavoidable defects in food are the subject of § 128.10 (21 CFR 128.10). Paragraph 7 of the preamble to the final order promulgating that regulation, published in the FEDERAL REGISTER of January 5, 1973 (38 FR 854), stated that, when finally revised, all such action levels will be published in the FEDERAL REGISTER for comment, and that, in the interim, they would be available upon request from the office of the Assistant Commissioner for Public Affairs, Food and Drug Administration, Rm. 15B-42, 5600 Fishers Lane, Rockville, MD 20852. Such action levels are also available at the Food and Drug Administration Public Records and Documents Center.

The Commissioner has recently proposed a revision of Part 122 of the regulations (21 CFR Part 122), published in the FEDERAL REGISTER of December 6, 1974 (39 FR 42738), to provide for publication of all action levels for food products not included within § 128.10. Although the Commissioner recognizes that this project will require a significant amount of resources and cannot be completed in a short period of time, and that legal action can in any event be taken for violation of the law without publication of action levels or enforcement criteria, it is the Commissioner's intent in the future to publish all action levels in the FEDERAL REGISTER with time for comment, in order to codify them in regulations.

In the past, the Food and Drug Administration utilized a "tolerance on a tolerance" under some limited circumstances. In these instances, legal action would not be undertaken against a product which exceeded the announced tolerance or action level but would be taken if it exceeded the unannounced higher tolerance or action level. The legislative history of the Freedom of Information Act shows that such unannounced tolerances may properly be retained by an agency as confidential. Nevertheless, the Food and Drug Administration concluded some years ago that all such unannounced tolerances should be abolished, and none remains in existence today.

A determination that a product violates an action level must, of course, be made on the basis of specified analytical methodology and equipment. In many instances, such methodology yields variable results, and thus is accurate only within a specified range. In most instances, this variability is widely known within the scientific profession. The Food and Drug Administration will make available to the public upon request the amount of variation recognized by the agency in considering enforcement action based upon analytical results.

Finally, the Food and Drug Administration has established levels above which its field offices may request legal action directly to the office of the General Counsel, rather than through the Bureau compliance offices. Findings below these levels, but above the action level, must be sent to the Bureau compliance office and then forwarded to the office of General Counsel. The Commissioner concludes that these "direct reference levels" need not be held in confidence and may properly be made available for disclosure to the public.

COURT ENFORCEMENT RECORDS

164. The Food and Drug Administration institutes many formal legal actions in the courts every year. These include seizures, injunctions, and criminal prosecutions. The Commissioner concludes that a new § 4.102 should be added to the final regulations concerning the availability of documents relating to these matters.

All legal documents filed in the courts are public information. In order to make certain that accurate copies are obtained, copies of any such documents must be requested directly from the courts involved. The Commissioner concludes, however, that the Food and Drug Administration will make available copies of such documents when it has a copy that can be determined to be in the form actually filed in the court.

165. In some instances, legal actions requested by the Food and Drug Administration are not filed by a United States attorney. Requests have been made for copies of all such records, regardless whether the action was or was not filed.

The Commissioner advises that the correspondence with the United States attorney and the recommended complaints are available for public disclosure upon request in accordance with the provisions of § 4.64 *Investigatory records compiled for law enforcement purposes.* Names of individuals considered for criminal prosecution but not prosecuted will be deleted from such material to prevent an unwarranted invasion of personal privacy and unfair accusations.

CORRESPONDENCE

166. As with §§ 1.6(c) and 4.111, comments suggested that disclosure of all correspondence to the public would seriously affect communications between the Food and Drug Administration and industry because of a reluctance of industry to discuss sensitive issues in a public forum. It was asserted that the public interest would be better served by open communication between the Food and Drug Administration and the regulated industries.

The Commissioner concludes that there is no reason to believe that public disclosure of correspondence would hinder the flow of communications in any way. Experience under this provision during the past 2 years has shown no difficulty whatever. Correspondence between the agency and nongovernmental groups and individuals outside the agency is clearly not exempt under the Freedom of Information Act, except to the extent that portions may fall within the specific exemptions under the law.

167. Comments expressed concern that a specific exemption for trade secrets and confidential commercial information was not included in this provision, since correspondence might well include such information.

The Commissioner advises that the exemption for trade secrets and confidential commercial information applies to all agency records. Any exempt material will be deleted before correspondence is disclosed. Sections 4.60 and 4.100 emphasize that fact.

168. One comment protested that to exempt inter- and intra-agency correspondence, but not correspondence between the agency and industry, was "discrimination" that was "ominous in portent."

The Commissioner advises that the Freedom of Information Act provides for the exemption of inter- and intra-agency correspondence, but does not exempt correspondence between the agency and industry. Any "discrimination" which exists was purposely created by Congress. Moreover, there are persuasive policy reasons for handling these documents in different ways. Internal agency documents reflecting policy deliberations require confidential handling if there is to be a full and frank discussion of all alternatives within the agency. All correspondence with the regulated industries, affected professional groups, Congress, and the public must be disclosed, however, to permit public scrutiny of all of the information and views presented to the agency on which a decision is based. Public accountability thus requires a full disclosure of all such materials except where specific exemptions apply and cannot properly be waived, e.g., trade secrets or an invasion of personal privacy.

169. Comments stated that the provision relating to disclosure of correspondence to or from "members of Congress" should be clarified so that it is in accordance with the regulations of the Department of Health, Education, and Welfare which exempts correspondence with Congress from disclosure. Comments suggested that either letters to Congress should be exempted per se or the phrase "members of Congress" might be clarified to indicate that the nonexempt correspondence only includes that correspondence in which a member of Congress is not acting in an official capacity as a member of a duly authorized committee.

The Commissioner concludes that any letters to or from a member of Congress, as well as summaries of oral discussions, regardless of whether the member is acting in an official capacity or as a member of a duly authorized committee, will be available for public disclosure except to the extent that the correspondence contains trade secrets or other nondisclosable information. The final Department regulations adopted this position.

170. Comments stated that confidentiality should be maintained if the correspondence would not have taken place but for an implied assumption or the explicit promise of nondisclosure. The need for an appeal procedure before public disclosure of correspondence was asserted.

The Commissioner has added a new § 4.44 to the regulations to establish a procedure for determining those records which the agency will receive under a determination of confidentiality. Except where such procedure is followed, the Food and Drug Administration will not undertake to retain any information in confidence except specific types of records for which confidentiality is explicitly provided in these regulations, e.g., quantitative formulas that have not previously been made public. Where there is a close question with respect to possible confidentiality, the Commissioner will use the procedure set out in § 4.45 of the final regulations to consult with the affected person, and that person may then request a court determination on the issue pursuant to § 4.46 if he does not agree with the Commissioner's conclusion.

The Commissioner concludes that these procedural safeguards fully protect the right of the affected person to nondisclosure of confidential information.

171. Comments expressed concern that this provision might be misinterpreted to give the impression that protocols contained in unsuccessful contract proposals are available to the public contrary to the intent of the Department regulations. It was suggested that there were also other types of administrative information which should be free from disclosure, e.g., correspondence with applicants for employment concerning conflict of interest issues, and with private attorneys or national representatives of employee unions concerning grievances, adverse actions, or contract negotiations.

The Commissioner concludes that these comments misinterpreted the proposed regulations. Each of the statutory exemptions reflected in the proposed regulations is applicable to all of the types of records contained in Food and Drug Administration files, including correspondence. Thus, the trade secrets and personal privacy exemptions will be applied wherever the facts in a given situation show that they are applicable. For example, correspondence with a prospective employee concerning conflict of interest issues would be exempt from public disclosure under the personal privacy exemption.

172. Questions have arisen as to whether the general rules with respect to agency correspondence and summaries of telephone calls and meetings will be applicable when the subject of the correspondence or summary is a pending petition or application for approval of a specific ingredient or a product, e.g., a new drug application or a food additive petition.

The Commissioner advises that these general rules will not apply to such correspondence or summaries until the petition or application is approved. Securities analysts, competitors, and many others are interested in the progress of such petitions and applications within the agency. Daily monitoring of such matters by outside individuals or organizations is not contemplated by the Freedom of Information Act. The Commissioner concludes that such correspondence and summaries constitute trade secret and commercial or financial information that is privileged or confidential, until the approval of the ingredient or product is obtained or it is finally disapproved.

Once approval is obtained, or final disapproval results, the Commissioner concludes that all such correspondence and summaries shall be made available for public disclosure except to the extent that specific material may be exempt from disclosure as containing a trade secret or constituting an invasion of personal privacy. Thus, confidential handling will exist only during the deliberative stage of the proceeding, and the agency's decision will be subject to full public scrutiny and public accountability once a decision is final.

Sections 4.103 and 4.104 and other specific provisions dealing with petitions and applications have been modified to reflect this policy.

SUMMARIES OF ORAL DISCUSSIONS

173. Comments urged that the agency not totally withhold summaries of telephone calls and meetings if they contain both disclosable and nondisclosable information. It was suggested that the appropriate course in that circumstance would be to delete exempt material and disclose the remainder. Several cases

were cited for that proposition, "Grumman Aircraft Engineer Corp. v. Renegotiation Board," 425 F.2d 578 (D.C. Cir. 1970); "Wellford v. Hardin," 315 F. Supp. 768 (D.D.C. 1970).

The Commissioner agrees with this comment and advises that §§ 4.22 and 4.60 make this policy clear.

174. Comments asked whether the summaries to which this provision applies are intended to be a contemporaneous record or a record prepared in response to a request for information.

As stated in § 4.24 of the final regulations, the Freedom of Information Act does not require the preparation of documents in response to requests for information. Any summary of oral discussions to be disclosed pursuant to § 4.104 will be an existing contemporaneous record. If no such summary exists, none need be prepared. The Commissioner will shortly be issuing comprehensive new procedural regulations that will state the circumstances under which Food and Drug Administration employees will be required to prepare a summary of an oral discussion.

175. One comment advanced the proposition that summaries of telephone calls or meetings relating to a clearly identifiable active file should carry the level of confidentiality of the parent file. Another indicated that confidentiality should be maintained if the disclosure would not have taken place but for an assumption of confidential treatment of the information. Still another drew a parallel between disclosure of the summaries and wiretapping and commented that, since evidence of this nature is not permissible in a court of law, there was a serious question as to whether it should be made available to the public.

The Commissioner concludes that the provisions of the Freedom of Information Act apply only to specific records, not to entire files. Accordingly, it is improper to label any particular file as "confidential" and thus any summary subject to § 4.104 must be reviewed to determine whether, on its own merits, it is disclosable in part or in full.

The Commissioner advises that disclosure of information on the basis of a grant of confidentiality will be subject to the specific procedures set out in new § 4.44 of the final regulations. No other form of confidentiality will be granted except in the form of explicit provisions relating to particular types of documents in the final regulations.

The Commissioner concludes that there is no parallel whatever between preparation and disclosure of a summary of a telephone conversation and wiretapping. The public should be aware that such summaries are routinely maintained. In any event, these regulations and the new procedural regulations constitute public notice that such summaries are being prepared.

176. A number of comments were concerned with the possibility that government-composed summaries of telephone calls and meetings might contain misquotes, inaccurate transcriptions, and one-sided interpretations. It was suggested that the problem of misinterpretation could be dealt with by furnishing a copy of the summary to the nongovernment party. The nongovernment person would then be given an opportunity to reply if inaccuracies existed and any written reply would be included when disclosure was made.

The Commissioner is aware that a summary prepared by one party to an oral discussion is necessarily one-sided. Since all such summaries will be available under the Freedom of Information Act, all persons outside the Federal government who were parties to any such conversation may properly request a copy of the summary in order to verify its contents. The new procedural regulations will explicitly provide that any person outside the Federal government who was a party to such a conversation may himself prepare a summary of that conversation and submit it to the Food and Drug Administration, where it will be retained in the same files as the summary prepared by the Food and Drug Administration. In the event that a request is made under the Freedom of Information Act for any such summary, both summaries (or indeed as many as exist) will be disclosed at the same time pursuant to § 4.104(c).

177. Many comments cited this section as inhibiting frank and open communication between the Food and Drug Administration and industry. One letter suggested, on the strength of "Israel v. Baxter Laboratories," 466 F. 2d 272 (D.C. Cir. 1972), that reports of violations by competitors may be the subject of antitrust litigation, and that if under § 4.104 such reports were subject to disclosure it would discourage industry informers.

The Commissioner notes that provisions are included in § 4.64 of the final regulations to protect the confidentiality of information received from informers and confidential sources. Accordingly, the problem raised by this comment will not be encountered. The experience of the Food and Drug Administration under this provision for the past 2 years has demonstrated that disclosure of summaries of telephone conversations and other meetings will not impair the agency's activities.

178. A number of comments referred to the lack of a specific exemption in § 4.24 (b) for trade secrets and confidential information and expressed the fear that there would be disclosure without the editing out of such exempt information. Comments noted that confidential information is not per se exempt from disclosure under the Freedom of Information Act. The exemption covers only "commercial or financial information" that is "privileged or confidential". It was argued that the reference to confidential information in this provision was in effect broadening the exemption as it appears in the statute.

The Commissioner concludes that revised §§ 4.60 and 4.100 make it clear that all exemptions provided under the regulations will be applicable to every type of document in the Food and Drug Administration files. The Commissioner agrees that "confidential" information is not per se exempt from disclosure under the Freedom of Information Act, and § 4.61 makes this clear.

TESTING AND RESEARCH CONDUCTED BY OR WITH FUNDS PROVIDED BY THE FOOD AND DRUG ADMINISTRATION

179. Comments asked about the scope of the "nonregulatory testing and research" that would be disclosed under the proposed regulations. It was suggested that the final regulations include a definition of this phrase.

Upon reconsideration, the Commissioner concludes that it is often not feasible to distinguish between regulatory and nonregulatory testing and research, and that, in any event, there is no sound public policy reason for not disclosing both types of testing and research. The intent of the proposal was to retain as confidential the regulatory testing and research that is part of investigatory records for law enforcement purposes. The Commissioner concludes, however, that he should exercise his discretion to release this part of investigatory records upon request in order to make as full a disclosure of agency activities as possible without disrupting enforcement proceedings. All such testing and research would be required to be disclosed in the course of any enforcement proceeding, and thus its earlier disclosure should not have any adverse impact upon agency activities.

Moreover, there are strong public policy reasons for disclosing all regulatory testing and research when it is completed and a final report is available or it is otherwise disclosed to any member of the public. The Food and Drug Administration frequently requests the regulated industry to take appropriate action based upon the results of such testing and research, such as recalls. It would be unfair to request such industry action without at the same time disclosing the basis for the request.

180. The proposed regulation provided that a list of nonregulatory testing and research being conducted by or with funds provided by the Food and Drug Administration, together with any research contract, would be available for public disclosure.

In seeking to implement this proposed provision, the Commissioner has discovered that, as already noted, it is not feasible to divide testing and research into regulatory and nonregulatory purposes nor is it practical to maintain a current list of all testing and research being conducted by the agency. All research contracts are of course available for public disclosure, and any internal list of ongoing testing or research is also available upon request.

The Commissioner therefore concludes that § 4.105(a) should be revised to delete the requirement for preparation and maintenance of a comprehensive list of all agency testing and research, but to retain the provision stating that any list of agency testing and research that is prepared will be available upon request.

181. Comments requested clarification of the term "final report." If some form of agency approval is necessary before the results of such research can be characterized as "final," the public should be informed whether or not this would mean an effective agency method for preventing disclosure of testing and research the agency deems ill-advised to release, i.e., by simply never characterizing a report as "final." The comments cited "Consumers Union v. Veterans Administration," 301 F. Supp. 796 (S.D.N.Y. 1969), in which the court ordered the Veterans Administration to release raw test data on hearing aids, for the proposition that raw data in a tabular form must be released.

The Commissioner concludes that, until a report is completed and accepted by the responsible Food and Drug Administration official, it represents an intra-agency document that is not available for public disclosure. The Freedom of Information Act does not require premature disclosure of internal agency information before it is in final form, but was intended to promote disclosure of such internal agency information after it is put in final form. Release of tentative data, preliminary reports, or similar material would seriously hinder regulatory efforts of the agency.

The Commissioner fully concurs that any attempt to retain internal data and information as incomplete or, in any event, not "final" for any significant period of time is properly regarded as a violation of the intent of the Freedom of Information Act and will not be tolerated. The provisions of § 4.105 must not be used to avoid disclosure of embarrassing material or information that may cause public concern. Rather, this section is intended to permit the agency time to prepare a responsible final report that reflects an institutional approach to the matter, and a reasonable time for review of the report internally in order to determine any appropriate action, before it is released to the public.

The case of "Consumers Union v. Veterans Administration" does not justify a contrary result. There, the data involved were included in a final report and were not simply worksheets or preliminary drafts from which a final report had not yet been prepared. Moreover, the reports involved in that case had been available for a sufficient period of time to permit internal review and consideration, and no reasonable basis for failing to disclose them to the public was offered.

182. Questions have been raised as to the availability of the raw data and slides from Food and Drug Administration studies once they are completed and a final report is released.

The Commissioner advises that access to all raw data, slides, worksheets, and other similar working materials will be granted, once a final report is available.

183. Comments suggested that the statement in paragraph 4 of the preamble of the proposal to the effect that the results of testing and research represent internal information, should be clarified. The application of the internal memorandum exemption to such records was questioned.

The Commissioner concludes that the internal memorandum exemption under the Freedom of Information Act covers only the preliminary results of testing and research and draft reports based upon testing and research prior to acceptance of a final report. Once a final report is prepared, the internal memorandum exemption is not applicable to that report and it, together with any raw data, is available for public disclosure. Any draft reports remain exempt from public disclosure after the final report is released.

184. Questions have been raised as to whether preliminary data obtained from agency testing or research is disclosable if it forms the basis for a talk or other public presentation prior to preparation of a final report.

The Commissioner advises that, once such information is disclosed publicly by the Food and Drug Administration in any way, whether in correspondence or in a private conversation or in a public talk, all of such information reasonably related to the material disclosed must be made publicly available at that time even though a final report has not yet been prepared. Authorized dissemination of any data or information to persons other than as provided in Subpart E of Part 4 breaks the internal memorandum exemption and requires disclosure of such data or information to any person who requests it.

185. One comment expressed uncertainty as to whether testing done on marketed drugs would be disclosed to the public. If so, it was argued that the manufacturer should be given the opportunity to review the results and comment upon them before the report was made available to the public. Another comment suggested that a summary of the research should be prepared so that the study might be properly understood by the lay public.

The Commissioner concludes that all testing on marketed drugs, whether for regulatory or nonregulatory purposes, will be available for public disclosure. Comment by the manufacturer before the release of test results is not feasible or required by the law. The preparation of summaries of this research, as suggested, is not contemplated by the Freedom of Information Act and the agency cannot justify the expenditure of manpower which would be required to create such documents.

186. The Food and Drug Administration obtains two different types of product samples in the course of its regulatory activities. A Food and Drug Administration employee will often obtain a sample during a factory inspection. The Food and Drug Administration employee must give a receipt for such a sample, and a copy of the results of certain analyses are required by law to be furnished promptly to the person from whom the sample was obtained. Where a sample is obtained other than through a factory inspection, and it results in a seizure, the Food and Drug Administration is required under section 304(c) of the act to furnish the results of any analysis to any party to the seizure action. There is no legal requirement that the Food and Drug Administration furnish the results of any other analyses to any person who might be affected by them.

The Commissioner concludes that, regardless of the origin of any sample obtained by the Food and Drug Administration, the results of any analysis of a sample will be made available upon request to any interested person, whether or not that person is directly affected by the results of the analysis. As a matter of policy, any affected person should immediately be given the results upon request in order to take appropriate action. In accordance with the general principle that any information available to one member of the public must be available to everyone, the Commissioner concludes that all analyses of this type should be made generally available to the public upon request.

187. Several comments noted the possibility that agency research might rely, in part, on manufacturer-generated trade secrets or confidential commercial information. It was stated that this provision of the regulations should deal explicitly with this possibility and should exempt from disclosure any trade secret or confidential information utilized in such studies which had been supplied by nongovernment sources.

The Commissioner advises that § 4.61 of the regulations applies to disclosure of trade secrets and confidential commercial information in any agency documents, and §§ 4.60 and 4.100 of the final regulations make this clear. The Commissioner concurs that trade secret information may not be disclosed. This does not mean, however, that agency research or regulatory requirements cannot be based upon trade secret information. For example, bioavailability data on a drug submitted by a manufacturer may constitute trade secret information that is not disclosable to the public. This trade secret status of the underlying information would not prevent the Food and Drug Administration from conducting and disclosing its own similar research, however, or from imposing by regulation new requirements for the drug involved in order to protect the public health.

188. A comment pointed out that, in its performance tests and analyses, the Food and Drug Administration may include trade secrets or other confidential commercial data in test protocols or records of the testing.

The Commissioner advises that any trade secrets or confidential commercial information involved in testing or research will be deleted before the results are made available for public disclosure.

STUDIES AND REPORTS PREPARED BY OR WITH FUNDS PROVIDED BY THE FOOD AND DRUG ADMINISTRATION

189. Questions have arisen as to what internal Food and Drug Administration

reports and studies are available for public disclosure.

The Commissioner has reviewed the various categories of reports and studies conducted by the Food and Drug Administration, and has set out in new § 4.106 those types that will be disclosed and those that will be retained as confidential under the internal memorandum exemption. The Commissioner recognizes that a number of these reports may be partially or fully exempt under the internal memorandum exemption, but has concluded that it is in the public interest to release as many of them as feasible when they are prepared in final form. In general, the following types of reports and studies will be disclosed upon their acceptance by the responsible agency official: Quarterly and annual reports of the agency; broad reviews of agency needs by external committees, such as the Ritts Committee; surveys, compilations, and summaries of industry trends and data obtained from various outside sources for purposes of establishing internal priorities and programs; surveys of consumers or industry and other similar studies undertaken to determine the need for or content of proposed new regulations or compliance programs; and compliance studies undertaken to determine the performance of the regulated industry or the products it produces, such as contamination of foods or the sanitation status of a particular type of food plant. As a general rule, the following types of studies will not ordinarily be disclosed to the public: Internal audits of agency performance to determine the possible need for personnel changes or other action to strengthen agency performance; the records relating to the internal planning and budget process; and legislative proposals or comments unless and until they are submitted to Congress.

190. In particular, questions have been raised about the availability of the results of special drug surveys, and FORDS studies (Formulator Oriented Rx Drug Study).

The Commissioner advises that all such analyses and surveys are available for public disclosure without deletion of the brand name or lot number involved. The Bureau of Drugs of the Food and Drug Administration presently publishes the results of such analyses and surveys on a periodic basis.

191. Questions have been raised about the public availability of Food and Drug Administration compliance programs, which are sent to field offices to direct specific regulatory activities.

The Commissioner advises that all such compliance programs are available for public disclosure upon request, with any names of specific firms, the location of specific activity, and details about sampling numbers or sizes deleted in order to preclude disclosure of regulatory activities.

192. Questions have been raised about the availability of final agency work plans prepared by bureaus, field offices, and other agency components, as well as the yearly and other agency plans prepared by the office of the Commissioner for the entire agency.

The Commissioner advises that all such plans are available for public disclosure after they have been reviewed and approved by the responsible agency official in their final form, with any information about specific regulatory activities deleted.

FOOD AND DRUG ADMINISTRATION MANUALS

193. Questions have arisen about the status of various manuals maintained by the Food and Drug Administration, such as the Regulatory Procedures Manual, the Administrative Guidelines Manual, and similar material.

The Commissioner advises that all such manuals have been reviewed to delete confidential internal directives, and are available for public review in the Food and Drug Administration Public Records and Documents Center. Copies of these manuals may also be purchased at cost, but the Food and Drug Administration does not maintain a mailing list for amendments to these manuals because of the prohibitive expense involved. A complete index of all such manuals is being prepared and will be available from the Food and Drug Administration Public Records and Documents Center pursuant to § 4.26. A partial list of these manuals is as follows:

Administrative Guidelines Manual
Bacteriological Analytical Manual
Drug Autoanalysis Manual
Food Additives Manual
Inspector Operations Manual
Inspector Programs Manual
Instrument Operations Manual
Laboratory Information Bulletins
Laboratory Operations Manual
Microanalytical Manual
Pesticide Analytical Manual
Regulatory Procedures Manual

194. A comment contended that all agency operating manuals must be made available under the Freedom of Information Act, and that the exemptions from disclosure do not apply to any portion of them.

The Commissioner disagrees with this comment. Nothing in the legislative history of the Freedom of Information Act indicates that otherwise nondisclosable information must be made available through agency operating manuals. Accordingly, the Commissioner has reviewed all such manuals and deleted from them information that falls within any of the exemptions from disclosure. All of those manuals, as so revised, are now available for public review and purchase.

AGREEMENTS BETWEEN THE FOOD AND DRUG ADMINISTRATION AND OTHER DEPARTMENTS, AGENCIES, AND ORGANIZATIONS

195. Requests have been made for copies of agreements entered into by the Food and Drug Administration with State and Federal agencies and with private organizations.

The Commissioner has recently issued a notice, published in the FEDERAL REGISTER of October 3, 1974 (39 FR 35697), stating that all such agreements are on file in the office of the Food and Drug Administration Public Records and Documents Center, and that all future agreements will be published in the FEDERAL REGISTER. A new § 4.108 has been added to state this policy.

DATA AND INFORMATION OBTAINED BY CONTRACT

196. Various questions have been raised about the availability for public disclosure of data and information furnished to the Food and Drug Administration pursuant to contracts with outside organizations. In particular, the question has been raised whether information can be purchased by the Food and Drug Administration by contract, with a clause which precludes public dissemination. Some private organizations, for example, undertake market research surveys and then sell the results to purchasers who must agree not to distribute the information further. This type of contract is used so that one person to whom the reports are sold will not furnish them to a second person. There has been concern that the Freedom of Information Act would preclude the Food and Drug Administration from purchasing such information pursuant to a contract of this type.

The Commissioner concludes that the Freedom of Information Act does not permit the Food and Drug Administration to purchase information under a contract that prohibits its further public distribution, unless the information is otherwise exempt from disclosure. All information obtained by the Food and Drug Administration through a contract is available for public disclosure unless it falls within a specific exemption established in Subpart D of Part 4 of the regulations.

The Commissioner notes that, on occasion, the Food and Drug Administration has also entered into contracts which permit representatives of the agency to review data and information retained by an outside organization. Such contracts permit access to outside data and information, but do not permit the Food and Drug Administration to obtain copies of such material. Under these circumstances, since the Food and Drug Administration does not have copies of the documents in its files, the Freedom of Information Act is inapplicable.

197. A question has arisen as to whether the progress reports on contracts, which are usually submitted to the Food and Drug Administration quarterly, are available for public disclosure.

The Commissioner advises that the Freedom of Information Act requires that all information received under contract, including progress reports, is available for public disclosure when received by the Food and Drug Administration, except to the extent that it contains material otherwise exempt from public disclosure under these regulations.

INFORMATION ABOUT FOOD AND DRUG ADMINISTRATION EMPLOYEES

198. Questions have arisen as to what information is available about Food and Drug Administration employees.

The Commissioner advises that the name, title, grade, position description, salary, and work address and telephone number for every Food and Drug Administration employee is available for public disclosure. The home address and telephone number of such employees are not available because they fall within the personal privacy exemption. A new § 4.110 has been added to the regulations to state this policy.

199. The Food and Drug Administration has received a number of requests with respect to prior employment experience of present agency employees, and present employment of past agency employees. Although no such lists had been kept in the past, the Commissioner concluded that research should be undertaken in order to respond adequately to inquiries of this type.

The Commissioner advises that the statistics obtained from this research are available for public disclosure at the Food and Drug Administration Public Records and Documents Center. They will be kept up to date on a periodic basis. Pursuant to the exemption for personal privacy, the raw data are not available for public disclosure.

DATA AND INFORMATION SUBMITTED VOLUNTARILY TO THE FOOD AND DRUG ADMINISTRATION

200. Section 4.26 of the proposed regulations published in May 1972, dealing with data and information submitted voluntarily, has been redesignated as § 4.111 in the final regulations.

Several comments objected to the concept of permitting information to be withheld as confidential simply because the manufacturer would refuse to submit it unless it was so held. It was argued that the Freedom of Information Act makes no such distinction and that such an approach flouts the express intention of Congress to entitle all citizens to information in the hands of the agency which is not specifically exempt under the Freedom of Information Act.

The Commissioner agrees that a mere claim for confidential treatment does not bestow a confidential status upon information that is voluntarily submitted. Section 4.111 reflects the necessity for showing that the information falls within one of the exemptions set out in Subpart D of Part 4 of the regulations. A claim of nondisclosure based upon the trade secrets or confidential commercial information exemption or any other exemption to the Freedom of Information Act will not be automatically accepted. When the Food and Drug Administration makes a determination that information will be accepted in confidence, the agency is at that time exercising its judgment that the information properly falls within an exemption from disclosure and that the Commissioner will not exercise his discretion to disclose it pursuant to § 4.82.

201. The Food and Drug Administration has instituted a system of inspection of the food industry on the basis of hazard analysis and critical control points (HACCP). Food and Drug Administration employees regularly request, pursuant to this program, access to company records that are not required by law at this time to be given to the Food and Drug Administration for review and evaluation. Numerous questions have arisen about the availabilty of such records under the Freedom of Information Act after they become a part of Food and Drug Administration files.

The Commissioner advises that such records fall within the provisions in the final regulations relating to information voluntarily submitted to the government, except for those records required to be submitted by other provisions, e.g., § 90.20. Virtually all such records consist of information relating to manufacturing processes and controls, product formulations, and consumer complaints. Manufacturing processes and controls and product formulations are per se exempt from disclosure under the Freedom of Information Act, except to the extent that they have already been publicly disclosed. Consumer complaints are exempt from disclosure to the extent set out in § 4.111(c)(3)(v) of the final regulations, i.e., they will be released only as part of a blind compilation.

202. Comments contended that information given voluntarily to a Food and Drug Administration employee during a factory inspection should be considered confidential unless the employee obtains the signature of a company representative permitting him to make the information public.

The Commissioner concludes that information given by a company representative voluntarily to the Food and Drug Administration during a factory inspection will be governed by the rules set out in § 4.111 of the final regulations, and § 4.111(a) so provides. No special rules need be established for information given voluntarily during a factory inspection as contrasted with any other time.

203. Comments contended that the Food and Drug Administration should not distinguish between information submitted voluntarily and involuntarily, and suggested that the agency should reject all "voluntary" information in order to impress upon Congress the need for new legislation to compel submission of such data and information.

The Commissioner rejects this comment. As the agency designated by Congress to protect against distribution of adulterated or misbranded food, drugs, cosmetics, devices, and electronic products, the Food and Drug Administration is obligated to obtain all data and information, from any source, that will assist it in these important regulatory efforts. The Food and Drug Administration will also continue to request appropriate legislation from Congress to provide important new investigatory and enforcement tools.

204. Questions have arisen about the status of reports of adverse reactions to products, where such reactions are submitted voluntarily by the manufacturer, i.e., not pursuant to the requirements of the new drug or prescription drug factory inspection sections of the law or pursuant to a procurement contract. The law presently does not authorize the Food and Drug Administration to require that reports of such adverse reactions be furnished to it.

The Commissioner advises that such adverse reaction reports are subject to the following disclosure rules, depending upon the source of the information and any request for confidentiality submitted with it. If the reaction is reported in a consumer complaint letter, it will be made public after deletion of any information that would identify the individual involved. If it is made by a physician or other health professional, it will be made public after all identifying information relating to the patient, physician, and institution has been deleted, but the identification of the product will be released. If the reaction is reported by a manufacturer, public disclosure of the report will be made only in the form of a compilation of all adverse reaction reports, in a way that will not relate to a specific brand name or manufacturer, except when regulatory action is involved, e.g., a product recall. The Commissioner concludes that the personal privacy and confidential commercial information exemptions justify these rules.

205. Experience during the past 2 years has shown that manufacturers and physicians are uniformly unwilling to divulge consumer complaint or adverse reaction information, or other materials of this type, voluntarily except on a pledge of confidentiality.

Accordingly, the Commissioner concludes that it serves no useful purpose to require, in every instance of voluntary disclosure of this type, that the manufacturer or physician be requested to state whether the information will be disclosed without such a pledge of confidentiality. Adherence to such a provision would simply increase administrative red tape and serve no public interest. Section 4.111(c)(3)(ii) and (iii) of the final regulations therefore provides for appropriate deletions of information where it is provided by a physician, and provides that reports submitted by a manufacturer may be released only as part of a blind compilation that will not reveal the name of the manufacturer or the brand name of the product involved except when regulatory action is involved.

206. The Food and Drug Administration has established a medically oriented data systems (MODS) program under which it enters into contracts with hospitals and other medical institutions for

reporting to the agency, upon the payment of a standard fee, adverse reactions and other medical information related to products subject to the agency's jurisdiction.

The Commissioner advises that the reports obtained pursuant to such contracts are not submitted voluntarily, and thus are subject to § 4.109, which establishes the disclosure rules for information obtained by contract. Pursuant to § 4.63 the names or other information which would identify patients will be deleted prior to disclosure of such reports, but the identity of the reporting institution will be disclosed. The name of any physician or other health professional will also be disclosed if any such name is included in the report, but the contracts involved do not require the reporting of any such names.

207. One comment suggested that the provisions which permit names of those submitting adverse reaction data to remain confidential "applauds the sniper" and that if an individual is unwilling to be identified he should not be heard to complain.

The Commissioner concludes that there are valid reasons why an individual might wish to submit information in confidence. It should be noted that if an individual is not identified and the complaint cannot be followed up, this may affect the weight accorded the complaint by those to whom it is disclosed.

208. Comments contended that the Freedom of Information Act does not allow the Food and Drug Administration to distinguish between the handling of adverse reactions to products for which reports must be submitted to the agency, and adverse reactions to products for which the agency presently cannot require such reports.

The Commissioner disagrees with this comment. Until new legislation is enacted authorizing the Food and Drug Administration to obtain adverse reaction reports from manufacturers on all products subject to its jurisdiction, the agency is dependent upon the voluntary submission of such information for all products except new drugs and prescription drugs. Adverse reaction information is often of critical importance in determining the safety, or lack thereof, of a marketed product. Without such information, the Food and Drug Administration's efforts to prevent the continued marketing of an unsafe product would be substantially hindered.

Nothing in the legislative history of the Freedom of Information Act indicates that this law was intended to be applied in a way that would hinder regulatory activity or prevent an agency from taking action to protect the public health. The Commissioner believes that it is entirely reasonable to conclude that adverse reaction reports that are not required to be submitted to the Food and Drug Administration, and which the manufacturer will not otherwise submit, fall within the exemptions for confidential commercial information, personal privacy, and investigatory records. Accordingly, the Commissioner has pledged the confidentiality of such reports as provided in § 4.111(c)(3)(ii) in order to assure that they will continue to be available to the agency for its regulatory purposes.

The Commissioner recognizes the anomaly created by classifying certain portions of adverse reaction reports not required by law to be submitted to the government as confidential, while at the same time classifying those same portions of other adverse reaction reports that are required by law to be submitted to the government as not confidential. The Commissioner concludes that this anomaly must continue to exist as long as the disparity in legal authority survives. The alternative would be to discourage voluntary submission by manufacturers of any adverse reaction reports not required by law. The Commissioner concludes that this alternative would not be in the public interest.

209. Comments suggested that adverse reactions should be disclosed by the Food and Drug Administration only to health professionals, and not to the general public, in order to avoid false alarms and damage to the public health.

The Commissioner concludes that limited distribution of this type is precluded by the Freedom of Information Act, and is not in the public interest.

210. Comments suggested that reports of adverse reactions submitted to the Food and Drug Administration by someone other than the manufacturer should be available for public disclosure only after probable causation has been studied and documented and the manufacturer of the product involved has had an opportunity to comment with respect to the alleged reaction.

The Commissioner disagrees with this comment. The Freedom of Information Act nowhere provides for a procedure of this type, which would severely hinder the dissemination of information that is clearly available for public disclosure under the Freedom of Information Act.

211. Comments contended that many consumer complaints are not based on fact, but are simply intended to obtain refunds on products or are, in any event, based upon mistaken impressions. It was contended that it would be unfair to reveal all such complaints because of the many inaccuracies they contain.

The Commissioner recognizes that both industry and consumer versions of complaints may be inaccurate. This is not a basis for exempting reports on complaints or adverse reactions from disclosure under the Freedom of Information Act.

212. Large numbers of requests are received from plaintiffs' attorneys in product liability lawsuits, requesting records relating to any other injuries caused by the product that is the subject of the lawsuit.

The Commissioner advises that, in response to such requests, all such adverse reaction reports received on the product involved will be furnished, with identifying information deleted as provided in § 4.111(c)(3), except that those reports submitted voluntarily by the manufacturer to the Food and Drug Administration will not be released in any form other than as part of a blind compilation. Section 4.111 of the final regulations reflects this policy.

213. Numerous requests are made for copies of investigations conducted by the Food and Drug Administration of specific consumer complaints.

The Commissioner concludes that such complaints fall within the rules for disclosure set out above. Accordingly, they will be released depending upon the source of the information that led to the investigation. The original consumer complaint that initiated an investigation will be released after deletion of the person's identity. No disclosure of the Food and Drug Administration report shall be made if it relates to a specific person or event without the express written consent of the person who was the original source of the information that resulted in the investigation, since otherwise it would not be possible to promise that such information will be held in confidence.

VOLUNTARY DRUG EXPERIENCE REPORTS SUBMITTED BY PHYSICIANS AND HOSPITALS

214. The Food and Drug Administration has given wide distribution of Form FD-1639, Drug Experience Report, to physicians for use in reporting adverse reactions relating to drug products to the Food and Drug Administration. This form is stamped "In confidence," and the Food and Drug Administration has pledged that no information on this form that would identify patients or physicians or institutions will be released to the public.

The Commissioner advises that this commitment will in all instances be honored under the personal privacy, confidential commercial information, and investigatory records exemptions, and that any release of information contained on this form will be through a compilation that will in no way disclose the identity of any individual patient, physician, or institution. A new § 4.112 has been added to the final regulations to state this policy.

215. Questions have arisen as to whether a copy of the Form FD-1639, with all identifying information deleted, will be made available to the patient who is the subject of the report, or his attorney, if it is specifically requested.

The Commissioner concludes that no release of this report may be made to a patient or his representative without the permission, in writing, of the physician who submitted the report. If the report were disclosed to the patient, for purposes of malpractice litigation, this entire voluntary reporting system could be destroyed. The Commissioner concludes that, since all of the information contained in any such report can be obtained from the physician through discovery in the course of litigation, the patient has an equally effective alternative.

VOLUNTARY PRODUCT DEFECT REPORTS

216. The Food and Drug Administration has entered into a program with the United States Pharmacopeia (U.S.P.) under which reports on drug product defects are furnished to the agency for use in determining whether regulatory action is warranted. Under this program, the Food and Drug Administration has pledged that the names and identifying characteristics of physicians, patients, pharmacists, institutions, and similar persons will be deleted prior to public disclosure of any report. Similar programs are being pursued with other organizations.

The Commissioner advises that all commitments with respect to confidentiality of identifying information of this type will be honored, under the personal privacy, confidential commercial information, and investigatory records exemptions. A new § 4.113 has been added to the final regulations to state this policy.

217. A request was received for a compilation of all the drug defect reports received for one particular drug pursuant to the joint program undertaken by the United States Pharmacopeia and the Food and Drug Administration.

The Commissioner advises that specific reports will be disclosed after deletion of information that would identify any individual. A compilation of reports showing the number of reports for each drug, by generic name or by brand name, is also available for public disclosure.

The Commissioner realizes that the Food and Drug Administration does not necessarily investigate each defect report, and therefore their accuracy cannot be verified. Where this is the situation, release of such reports may be accompanied by an explanatory statement to that effect.

DATA AND INFORMATION SUBMITTED PURSUANT TO COOPERATIVE QUALITY ASSURANCE AGREEMENTS

218. The Food and Drug Administration has entered into a number of cooperative quality assurance agreements with members of the food industry. These agreements provide that the company will disclose to the Food and Drug Administration pertinent internal records and documents which are not required by law to be disclosed, and which the company regards as confidential trade secret and commercial information.

The Commissioner advises that all records and documents of this nature which are voluntarily disclosed pursuant to a cooperative quality assurance agreement will be retained by the Food and Drug Administration as confidential in accordance with § 4.111. In order to clarify this matter, a new § 4.114 has been added to the regulations to state this policy.

219. Questions have been raised as to whether the Better Salmon Control Plan entered into between the National Canners Association and the Food and Drug Administration, and any records obtained from companies pursuant to this plan, will be available for public disclosure under the Freedom of Information Act.

The Commissioner advises that the plan is available for public review in the office of the Food and Drug Administration Public Records and Documents Center. All company records obtained pursuant to the plan will be handled in accordance with the rules set out in §§ 4.111 and 4.114 of these final regulations for information voluntarily submitted to the Food and Drug Administration relating to quality assurance. No records relating to manufacturing procedures and quality control will be available for public disclosure.

PRODUCT CODES FOR MANUFACTURING OR SALES DATES

220. Requests have been made for the keys to the codes used by manufacturers to identify the actual date of manufacture of an electronic product subject to regulation under the Radiation Control for Health and Safety Act of 1968.

The Commissioner advises that the keys to all such codes have been made available for public disclosure. Final regulations revising 21 CFR 1002.10(b) and 1010.3(a)(2) were published in the FEDERAL REGISTER of May 8, 1974 (39 FR 16227), requiring that, in the future, the date of actual manufacture must be stated on the product in understandable terms rather than in code.

The Commissioner concludes that coded information with respect to a date of manufacture, a date by which the product should be sold, or a date by which the product should be used, do not fall within the trade secrets or confidential commercial information exemption. Accordingly, any key to such a code in Food and Drug Administration files will be available for public disclosure. A new § 4.115 has been added to the final regulations to state this policy.

DRUG LISTING INFORMATION

221. The Drug Listing Act of 1972 (Public Law 92–387, 86 Stat. 559), which amended section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360), requires drug manufacturers to submit specific information to the Food and Drug Administration with respect to marketed drugs. This provision of the law contains its own confidentiality requirements, and there is extensive legislative history interpreting them.

The Commissioner has previously promulgated regulations in the FEDERAL REGISTER of March 7, 1973 (38 FR 6258), establishing Part 132 of the regulations (21 CFR Part 132) implementing these provisions of the law. All requests for information obtained by the Food and Drug Administration pursuant to section 510 of the act will be handled in accordance with the provisions of Part 132. Accordingly, new § 4.116 cross-references the confidentiality provisions of these regulations.

NEW DRUG INFORMATION

222. The Food and Drug Administration Bureau of Drugs has computerized a large amount of information relating to investigational new drug notices and new drug applications, extending back to the enactment of the Federal Food, Drug, and Cosmetic Act in 1938. Questions have arisen as to what information will be made available for public disclosure, and in what form, from this computer bank of information.

The Commissioner concludes that certain basic information on previously approved new drug applications should be readily available to any member of the public who wishes to review it, without cost. Accordingly, the following two computer printouts have been placed on public display in the office of the Food and Drug Administration Public Records and Documents Center, where they may be reviewed during working hours:

a. A numericial listing of all new drug applications and abbreviated new drug applications approved since 1938, showing the NDA number, the trade name, the applicant, the approval date, and, where applicable, the date approval was withdrawn and the date the Food and Drug Administration was notified that marketing of the product was discontinued.

b. A numerical listing of all new drug applications and abbreviated new drug applications approved since 1938 which are still approved. This printout shows the same information as the first printout, except that it does not show a withdrawal date.

Copies of these printouts may be ordered, at cost. Orders will be filled in accordance with the priorities established for use of the Food and Drug Administration computer.

In addition to the two computer printouts that will be permanently available for public review, the following examples of information may be obtained in printout form upon special request:

a. An alphabetical list by trade name of the approved new drug applications and abbreviated new drug applications held by specific applicants.

b. An alphabetical list of the trade names of drugs subject to approved new drug applications and abbreviated new drug applications showing either the NDA number or the applicant or both.

c. An alphabetical list of generic drugs showing approved new drug applications and abbreviated new drug applications held by applicants.

d. An alphabetical list of commercial sponsors who have filed investigational new drug notices.

Orders for such printouts will also be filled as rapidly as possible, subject to other priorities for the Food and Drug Administration computer.

The Commissioner concludes that a list of all drugs subject to investigational new drug notices constitutes trade secret information that may not be disclosed to the public.

223. The Food and Drug Administration has received requests for a list of the names and addresses of all investigators who have ever worked on investigational new drugs, without designating the specific drugs they investigated. A

similar request has been received for a list of the names and addresses of all drug companies or sponsors who have ever filed an investigational new drug notice (IND) or a new drug application (NDA), without designating the specific drugs involved.

The Commissioner advises that such lists are available for public disclosure to the extent that they already exist in documentary form or can be obtained from computer printouts by existing programs.

ADVISORY COMMITTEES

224. One comment contended that the provision in the proposed regulations relating to advisory committees "perpetuates the secrecy that has characterized the deliberations of FDA advisory committees" and proposed that the following items be required and available for disclosure:

a. The transcript of each advisory committee meeting where the same had been stenographically reported, or a complete summary of the proceedings, if not stenographically reported. The transcript or summary shall contain a record of the persons present with their affiliations, a description of the matters discussed and the conclusions reached, and copies of reports and background information received, issued, or approved by the advisory committee. The accuracy of a summary shall be certified to by the chairman of the advisory committee. Participants shall be given an opportunity to review and make corrections before a summary is certified.

b. A complete and accurate summary of each meeting or telephone call that relates, in whole or in part, to advisory committee business which was conducted at a time or place not covered by reasonable notice in the FEDERAL REGISTER as a time or place for a meeting of the advisory committee. This provision governs whether the meeting or telephone conversation involved advisory committeemen only or advisory committeemen and strangers. In case a stranger is involved, his affiliations will be disclosed.

c. A copy of each directive or guideline given to the advisory committee by the Food and Drug Administration.

d. A copy of the agenda of each meeting of an advisory committee.

e. A list of the names of all the corporations, companies, firms, state or local organizations, research organizations, and educational or other institutions in which an advisory committeeman is serving as an employee, officer, member, owner, director, trustee, advisor or consultant.

f. A list of persons who were asked to become advisory committeemen and who declined. The reason for declining, if any were given, will be disclosed.

The Commissioner will issue in the near future comprehensive new procedural regulations in 21 CFR Part 2 that will include provisions governing all aspects of the activities of advisory committees. The Commissioner concludes that detailed consideration of the application of the Freedom of Information Act to advisory committee matters should properly be dealt with in those regulations, rather than in these regulations, and an appropriate cross-reference is included in § 4.118 for this purpose.

COLOR ADDITIVE, FOOD ADDITIVE, ANTIBIOTIC, NEW DRUG, AND NEW ANIMAL DRUG PETITIONS, APPLICATIONS, AND FORMS

225. The proposed regulations published in May 1972 contained specific amendments to existing regulations dealing with color additives, food additives, new animal drugs, new human drugs, and antibiotic drugs. Many of the provisions present issues that are common to some or all of these regulations, as well as to the provisions in § 4.111 *Data and information submitted voluntarily to the Food and Drug Administration.* For example, the handling of requests for disclosure of test protocols, assay methods, adverse reaction reports, and manufacturing methods must be the same for all of these various types of documents.

Accordingly, the Commissioner has grouped together all of the comments relating to common issues for purposes of analysis and discussion in this preamble.

226. Questions have been raised with respect to the status of data and information submitted to the Food and Drug Administration in "master files" which are subsequently used to support individual petitions or applications. It was suggested in comments that all master file material should remain confidential.

The Commissioner advises that data and information contained in a master file have the same status that they would have in a petition or application. The fact that they are included in a master file rather than directly in a petition or application is of no relevance.

227. Several comments questioned the source of the "public policy," referred to in paragraph 5 of the preamble to the proposal, which favors an expanded public disclosure of research data on safety, functionality, and effectiveness in contrast to the position the Food and Drug Administration has taken since 1938 that all such data and information ordinarily represent valuable commercial property and trade secrets that must be retained as confidential. It was suggested that the relevant "public policy" to be considered was that set forth in the House and Senate reports and in the Attorney General's Memorandum. The point made in the House report that "a citizen must be able to confide in his Government" was stressed as was the statement in the Attorney General's Memorandum that "[w]here similar property in private hands would be held in confidence, such property in the hands of the United States should be covered under exemption (b)(4)."

The Commissioner advises that the "public policy" referred to in paragraph 5 of the preamble to the proposal is that expressed in the Freedom of Information Act. It is the responsibility of the Food and Drug Administration to conform with this mandate of Congress regardless of what its own past policies may have been.

The Commissioner concludes that the final regulations manifest a proper balance between the general statutory objective of releasing all records unless they are exempt and the specific statutory exemptions for trade secrets. Those records that do represent valuable commercial information, in that they provide a competitive advantage, will not be disclosed to the public.

228. A number of comments requested clarification of the intended scope of "safety, effectiveness, and functionality data" under the regulations.

The Commissioner advises that this phrase encompasses all data from animal and human tests designed to show safety and effectiveness, and all studies and tests conducted to establish the basic identity, stability, purity, potency, bioavailability, performance, and usefulness of the product. It does not include quality control tests continuously conducted on a manufacturing process and a product to establish its adherence to process and product specifications or adverse reaction reports obtained upon marketing of a drug or similar information. All of the regulations involved have been revised to reflect this policy.

229. Requests have been made for safety, effectiveness, and functionality data and information contained in letters requesting opinions on the food or feed additive or new drug or new animal drug status of products or ingredients.

The Commissioner advises that these matters will be handled as follows:

a. If the request relates to the status of a food or feed ingredient, the safety and functionality information will be made available to the public immediately.

b. If the request relates to the status of a drug or animal drug under the act, a decision as to what information is disclosable must await the response of the Food and Drug Administration to the request. If it is decided that the drug does not require a new drug application or new animal drug application, the safety and effectiveness data will be made available for public disclosure. If the decision is that a new drug application or new animal drug application is required, such data and information will remain exempt from disclosure as trade secrets except to the extent that any of it has previously been made public. This is the procedure presently being followed under the OTC drug review pursuant to § 330.10(a)(2) of the regulations (21 CFR 330.10(a)(2)).

SAFETY, EFFECTIVENESS, AND FUNCTIONALITY DATA AND INFORMATION CONTAINED IN COLOR ADDITIVE, FOOD ADDITIVE, AND ANTIBIOTIC DRUG PETITIONS AND FORMS

230. The proposed regulations published in May 1972 established the same rules for release of safety, functionality, and effectiveness data contained in color additive, food additive, and antibiotic petitions and forms. Under the Federal Food, Drug, and Cosmetic Act, these three types of petitions and forms result in public regulations rather than private licenses, although antibiotic drugs are subject to the IND provisions of the law

prior to approval for marketing. Accordingly, it was concluded that the safety, functionality, and effectiveness data do not fall within the trade secrets and confidential commercial information exemption and thus are properly made available for public disclosure regardless of whether the petitioner has previously made this information public.

All of the comments received with respect to the handling of these matters have been grouped together for purposes of analysis and discussion in this preamble.

231. It was pointed out in some comments that this was a direct about-face from the previous position of the Food and Drug Administration. It was urged that data contained in food and color additive petitions and antibiotic drug forms be disclosed only to Food and Drug Administration consultants, advisory committees, and special government employees, and not to the public.

The Commissioner notes that there was no clear policy on this matter in the past, and that in any event the policy of the Food and Drug Administration prior to enactment of the Freedom of Information Act is not determinative with respect to proper implementation of the Freedom of Information Act at the present time. The Commissioner concludes that the safety, functionality, and effectiveness data contained in food and color additive petitions and antibiotic drug forms have no trade secret value and, since they are often published in scientific journals or given to customers or scientists or disclosed to the public in other ways, are not customarily regarded as privileged. Accordingly, this type of material does not qualify as confidential either under the trade secret portion of the exemption or under the confidential commercial and financial data portion of the exemption. This is in contrast to other information, such as manufacturing procedures, which are not customarily so disclosed or made public.

232. Several comments objected to the statement in paragraph 5 of the preamble to the proposed regulations published in May 1972, to the effect that research data for food additives and color additives are "not the type of commercial information customarily regarded as privileged."

The Commissioner disagrees with this comment and affirms the statement made in the preamble to the proposed regulations. A number of comments filed by food ingredient manufacturers did not object to the release of safety and functionality data for food additives and color additives. In the intervening 2 years, all such data have been made available to the public. Although affected manufacturers were permitted an opportunity to contest such disclosure in the courts, no such lawsuits were filed. Some manufacturers have, indeed, affirmatively agreed to the disclosure of such information. Information of this type is routinely published in the scientific literature or otherwise distributed to interested scientists, potential customers, and others. Accordingly, the Commissioner concludes that it is not customarily regarded as confidential commercial information.

233. A comment suggested that safety, effectiveness, and functionality data for food additives, color additives, and antibiotic drugs do provide an advantage over competitors because they can be referred to in promotional and selling activities.

The Commissioner rejects this comment. Once such ingredients or products are approved by the Food and Drug Administration for distribution generally, the use of such data by a particular manufacturer for promotional activities cannot reasonably be regarded as providing a competitive advantage.

234. One comment contended that, even if food additive and color additive safety and functionality data provide no competitive advantage in the United States, they do provide a substantial competitive advantage in obtaining governmental approvals in foreign countries.

The Commissioner concludes that the possibility that such data and information may at some future time permit a competitve advantage in some foreign country is too conjectural and remote to permit the conclusion that all such data and information fall within the trade secrets exemption. In the event that specific facts are available to show such a competitve advantage with respect to a particular matter in a specific foreign country, the Commissioner will evaluate the situation to determine whether it presents the "extraordinary circumstances" under which the material will not be disclosed pursuant to the final regulations.

235. With regard to the safety, effectiveness, and functionality data for food and color additive petitions and antibiotic drugs, comments stated that there was no justification for withholding information until the regulations are issued. It was argued that, if this information does not provide a competitive advantage when such approval is granted, since all manufacturers are then free to make the product, it is questionable whether the information provides any competitive advantage prior to approval, since no manufacturer may market or use the product until then. It was urged that, when the approval is granted for minor variations in formulations of such ingredients or products, any competitive advantage is insignificant, considering the little time it would take a competitor to start production by using the information published in the regulation. As a positive benefit, it was argued that release before the regulation was issued might trigger research which might contribute to the making of a more reasoned decision on the petition or antibiotic drug form.

The Commissioner agrees with the substance of this comment. Accordingly, the final regulations provide that the safety and functionality data contained in color additive and food additive petitions will be made available for public disclosure when the notice of filing of the petition is published in the FEDERAL REGISTER. Where such notice of filing is substantially delayed, because the petition does not contain sufficient information and further testing is required, the safety and functionality data submitted will be available for public disclosure after the review of the submission by the Food and Drug Administration is complete and the petitioner has been informed of the deficiencies. Similarly, the safety and effectiveness data contained in an antibiotic drug form will be available for public disclosure when the Food and Drug Administration issues an approval letter to the manufacturer. This usually occurs a substantial time before an antibiotic drug monograph is published in the FEDERAL REGISTER.

The Commissioner believes that this approach adequately accommodates any legitimate desire of industry to maintain the confidentiality of its data until a reasonable time before approval, the need for the Food and Drug Administration for review and evaluation of the submission before it is released to the public, and the right of the public for access to the data and information submitted in order to make meaningful comments on it within the time permitted.

236. Comments suggested that, if food and color additive petitions and antibiotic drug forms are not customarily privileged, manufacturers should not be permitted to show "extraordinary circumstances" to justify nondisclosure. It was emphasized that no "extraordinary circumstances" may be created by a manufacturer's plea where the Freedom of Information Act exemptions do not apply.

The Commissioner advises that the provision permitting a manufacturer to show "extraordinary circumstances" to justify nondisclosure was included in the event that, on rare occasions, circumstances may arise that cannot be foreseen at this time which would require, in fairness, that material not be disclosed. The Commissioner anticipates that this will happen on very few occasions, and that in almost all instances this type of information will promptly be released to the public. In order to show "extraordinary circumstances," the manufacturer must demonstrate that release of the information will destroy a competitive advantage that he would otherwise enjoy, that he will be hurt financially as a result, and thus that it would be unlawful or unfair to release the information involved. The mere fact that the information may be embarrassing, or may require removal of a product from the market, or may disclose adverse reactions, or may be of interest to others, or that there is some remote future possibility of competitive advantage, or that others might conduct duplicative research which would be obviated by release of the information, or similar arguments, will be insufficient to justify nondisclosure.

237. Following publication of the proposed regulations in May 1972, some food additive petitions were submitted to the agency marked "confidential" or accompanied by letters stating the opinion that the information contained therein was confidential.

In each of these instances, the Food and Drug Administration responded stating that the petition was being filed without any pledge of confidentiality. In order to clarify this matter, the Commissioner is including in new § 4.27 of the final regulations a statement that any such gratuitous designation by a person submitting a petition or application is of no legal effect, and that the only pledges of confidentiality that will be made by the Food and Drug Administration are contained in these final regulations themselves and through the procedure established in new § 4.44 of the regulations.

SAFETY AND EFFECTIVENESS DATA FOR NEW DRUGS AND NEW ANIMAL DRUGS

238. The proposed regulations published in May 1972 established the same rules for release of safety and effectiveness data contained in new drug and new animal drug applications. Under the Federal Food, Drug, and Cosmetic Act, these applications, and the notices relating to investigational use of new drugs, result in private licenses rather than in public regulations. Accordingly, it was concluded that the safety and effectiveness data for new drugs and new animal drugs, including antibiotic drugs for veterinary use, fall within the trade secrets exemption and thus are not available for public disclosure unless the applicant has previously made the information public or the drug has been disapproved or withdrawn from the market or the drug has reached the stage where it may be marketed without submission of such data to the agency for approval.

All of the comments received with respect to the handling of these matters have been grouped together for purposes of analysis and discussion in this preamble.

239. Comments suggested that the provision in the proposed regulations, that the existence of an IND will not be disclosed unless it has previously been "acknowledged" by the sponsor, is too vague, and that the term "publicly disclosed" should be substituted for "acknowledged."

The Commissioner concurs in part with this comment, and uses the phrase "publicly disclosed or acknowledged" in the final regulations. Private acknowledgment of the existence of an IND to a consultant is insufficient to constitute public disclosure. Discussion with other scientists who are not paid consultants, however, or with securities analysts, or acknowledging the existence of an IND to any such person, is sufficient to break the confidentiality of the existence of an IND. The Commissioner notes that the existence of an IND is often common knowledge within the industry and the scientific world, and that confidentiality of such information is becoming more and more unusual.

240. Questions have arisen as to whether the existence of an IND notice can be regarded as confidential commercial information if the drug is marketed abroad or if published literature exists on the drug.

The Commissioner concludes that the existence of an IND notice under these circumstances will not be regarded as confidential. The marketing of a drug abroad or the publication of information about the drug constitutes public notice of the existence of the drug entity and the probability that the company will be considering marketing it. In particular, scientific discussion of the drug in the United States, in the literature or in meetings, clearly discloses the existence of an IND.

241. Requests have been received for the names and addresses of all investigators with respect to an investigational new drug where the existence of the IND notice has been publicly disclosed or acknowledged.

The Commissioner concludes that a list of all such investigators is confidential commercial information. If such a list were disclosed, there would be a good possibility that competitors could determine the progress of the investigation, or that patients would seek out the investigators to determine whether they might also receive the investigational drug, or that the value of the study could be destroyed by outside interference.

242. A request was received for the curriculum vitae of a specific person who is publicly known to be an investigator for a particular new drug.

The Commissioner concludes that a curriculum vitae is properly available for public disclosure under these circumstances. Information contained in a curriculum vitae is customarily distributed in a public fashion, and accordingly such release does not constitute an unwarranted invasion of privacy.

243. A comment contended that all IND information should be available, whether or not the IND has been terminated, for the protection of the human subjects involved in the drug experiments. The comment stated that there is increased danger in testing subjects because of the Food and Drug Administration policy of allowing drug companies to experiment on human beings before animal tests are completed. Without disclosure, it was stated, there is also no incentive for following up on patients who have taken experimental drugs.

The Commissioner concludes that the present law precludes such release of the safety and effectiveness data in an active IND file unless it has previously been publicly disclosed. The remedy for the individual who has participated in the testing of a new drug is to obtain information about the drug from the drug company involved. Current Food and Drug Administration regulations require such disclosure, and the individual to be tested also has the option of not participating in the test unless there is full disclosure of all information, including, in particular, the adverse effects on other test subjects. Proposed regulations on the followup of test subjects, and a petition relating to requirements for animal tests before human tests, are presently under active consideration.

244. Comments contended that, once an IND is terminated, there is no public benefit to be obtained from the disclosure of information in it.

The Commissioner concludes that "public benefit" is not a criterion for determining whether information shall be disclosed to the public under the Freedom of Information Act. Moreover, in many instances there will be a definite public benefit from such disclosure.

245. Comments stated that even the irrevocable and final termination of an IND in this country should not result in disclosure of the safety and effectiveness information contained in it if the same drug is being marketed elsewhere in the world.

The Commissioner does not agree with this comment. Even the pharmaceutical industry's comments generally agreed that a summary of safety and effectiveness information can properly be disclosed to the public without violating the trade secrets and confidential commercial information provisions of the law. It is only the full reports that may not properly be disclosed, because the Federal Food, Drug, and Cosmetic Act requires that such full reports are necessary in order to obtain an approved NDA. If the terminated IND contains adverse information with respect to safety and effectiveness, therefore, a summary of that information could properly be released, and would be as damaging to foreign marketing as would the full reports of such information.

Moreover, none of the comments submitted demonstrated any likelihood that the full reports of such information, as contrasted with summaries, are required under foreign law in order to justify marketing abroad. The Commissioner therefore concludes that any such possibility of competitive advantage is too conjectural and remote to justify invoking the trade secrets exemption of the Freedom of Information Act. Should a specific instance arise in which a competitive advantage can be demonstrated in concrete terms, a manufacturer is permitted to support nondisclosure of such information under the "extraordinary circumstances" exemption provided in the final regulations.

246. In at least two instances, manufacturers have requested that an IND not be terminated for fear that such termination, in and of itself, would result in the information in the IND becoming available for public disclosure.

The Commissioner advises that the termination of an IND is not dispositive with respect to the availability of information contained therein. If the company can demonstrate that the matter is still under active development, such information will retain its trade secret status.

247. In one instance, a request was made for information contained in an IND file for which human clinical studies had been discontinued as a result of adverse animal findings. The company requested continued confidentiality of the information in the file on the ground that it was pursuing additional animal studies in order to reactivate the IND file and intended eventually to pursue an NDA.

The Commissioner concludes that, under these circumstances, safety and effectiveness information contained in an IND file that is otherwise confidential will remain confidential. An IND is terminated or abandoned only after all human and animal work with respect to the drug has been discontinued, and the data and information contained in an IND which are otherwise confidential will not be disclosed to the public as long as the matter remains open and active. Where the issue is in doubt, the Food and Drug Administration will require submission of further information from the person who submitted the IND. Any statement relating to the future intentions of that person with respect to the IND would be subject to the False Reports to the Government Act, 18 U.S.C. 1001.

248. One comment suggested that the IND provision be clarified to state that approval of an NDA, which technically results in termination or discontinuance of an IND, does not require release of all of the confidential information contained in the IND.

The Commissioner advises that the IND and NDA are regarded as one continuous process. Indeed, the NDA incorporates the IND. Accordingly, upon the filing or approval of an NDA the material in the IND has the same status as the material in the NDA. The final regulations make this clear.

249. The proposed regulations published in May 1972 provided that a list of pending new drug applications would be available for public inspection.

On reconsideration, the Commissioner has concluded that such a list should be made available only for new drug applications for which the applicant has been advised that the NDA is "approvable," and not for all pending new drug applications. The existence of a pending NDA constitutes confidential commercial information where the existence of clinical testing has not previously been publicly disclosed or acknowledged. Accordingly, the final regulations have been revised to state that the list will include only those new drug applications where the company has been advised by the Food and Drug Administration that the NDA is approvable.

250. Comments stated that the fact that a company has filed an IND or is even interested in a particular pharmaceutical area may well be a trade secret.

The Commissioner concludes that such information, although not a trade secret, is properly regarded as confidential commercial information that will not be disclosed to the public by the Food and Drug Administration unless it has previously been disclosed or acknowledged to any member of the public.

251. Comments asserted that knowledge of a pending NDA or NADA will almost always afford a competitor an advantage because he will then be in a position to adjust his marketing strategy in anticipation of a competing product. Hence, the very fact that an NDA is pending will frequently be a trade secret.

The Commissioner agrees that the fact that an NDA or NADA is pending is confidential commercial information that will not be disclosed if it has not previously been publicly acknowledged or disclosed. The trade press often reports that an NDA has been submitted or is pending before the agency and frequently a company will make such information public in its reports to stockholders.

252. Undoubtedly the most persistent issue raised in the comments relates to the disclosure of safety and effectiveness data in IND and NDA files. Comments requesting disclosure of all such information quite properly pointed out that it is important to scientists and physicians. Comments opposing disclosure of this information quite properly pointed out that it is of enormous economic value.

The Commissioner concludes that there can be no question, under present law, about the tremendous economic value of the full reports of the safety and effectiveness data contained in an IND, NDA, INAD, or NADA. Such information costs hundreds of thousands, and in some instances, millions of dollars to obtain. Release of such information would allow a competitor to obtain approval from the Food and Drug Administration for marketing the identical product, at a mere fraction of the cost. Present law contains no provision that would permit the Food and Drug Administration to refuse to approve a "me-too" product on the basis of information obtained from the first manufacturer, once that information from the first manufacturer is disclosed.

The Commissioner recognizes the important public policy issues that would be raised by disclosure of such trade secret data. The public is dependent upon private pharmaceutical manufacturers for development of drugs. In some instances those drugs may be patented, but in other instances they may not be patented. If a manufacturer's safety and effectiveness data are to be released upon request, thus permitting "me-too" drugs to be marketed immediately, it is entirely possible that the incentive for private pharmaceutical research will be adversely affected.

The Commissioner does not believe that this issue can or should be addressed by the Food and Drug Administration alone. Rather, it is an important public policy issue that can and should be addressed primarily by Congress. Accordingly, the Commissioner concludes that, if any change is to be made in the handling of the full reports of the safety and effectiveness data submitted to the agency as part of an IND, NDA, INAD, or NADA, it should properly be made by Congress through new legislation, and not by the Food and Drug Administration through these regulations.

253. Comments argued that the treatment of trade secrets in the proposed regulations is circular since the "competitive advantage" acquired is one that is based on the Food and Drug Administration's own regulatory scheme.

The Commissioner concludes that there does not appear to be any legal or policy reason why a "competitive advantage" for purposes of determining whether information is a trade secret may not be one obtained from a statutory scheme. The existing regulatory scheme is one created by the Congress and not by the Food and Drug Administration. Data that no longer provide a competitive advantage—because any competitor may lawfully market the product involved, or because the information has otherwise been made public, or for other reasons—no longer qualify as a trade secret under 18 U.S.C. 1905, 21 U.S.C. 331(j), or the Freedom of Information Act.

254. A comment objected to the withholding of NDA information on the ground that it grants a monopoly that continues forever, since in order to market an approved drug a company must do all the testing required to show safety and effectiveness. It was pointed out that this may cost millions of dollars and has the effect of limiting the market to the company that did the original testing and to those other companies which are permitted by a first company to incorporate by reference its safety and effectiveness data into their applications. This system, referred to as a "domestic cartel," bars production of a drug because of the expense of reproducing the test data, irrespective of whether the patent has expired or is declared invalid or whether the product is unpatentable because it is a "product of nature" or lacks novelty. Further, it was asserted that, once a drug was tested, there was no social gain in requiring duplication of the testing by other companies.

The Commissioner advises that the Federal Food, Drug, and Cosmetic Act requires full reports of safety and effectiveness from each company submitting an NDA. The Food and Drug Administration has, on a number of occasions, pointed out to Congress the effect of this requirement, and has suggested that Congress consider whether this policy should be retained or changed. Congress has, to date, not taken action on this matter.

255. Comments questioned whether animal and human data on safety and effectiveness can be considered a "method or process which as a trade secret is entitled to protection", within the meaning of section 301(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(j)).

The Commissioner advises that, since 1938, it has been the consistent administrative interpretation that this statutory provision can encompass animal and human data, although the agency did not previously have a clear policy as to when such data did or did not represent trade

secrets. This longstanding interpretation has been set out in Food and Drug Administration manuals, in advisory opinions, and in testimony to Congress. Accordingly, the Commissioner concludes that it would be improper for the Food and Drug Administration to make an administrative determination reversing that position at this time. Moreover, regardless of the scope of section 301(j), the Commissioner concludes that the provisions of 18 U.S.C. 1905 and the trade secrets exemption to the Freedom of Information Act are clearly applicable to such data.

This issue was recently considered in the case of "Morgan v. FDA," 495 F.2d 1075 (D.C. Cir. 1974). The District Court ruled that the data on safety and effectiveness contained in a new drug application are exempt from disclosure under all three statutes. The Court of Appeals ruled that such data can properly be encompassed within the trade secrets exemption to the Freedom of Information Act.

256. Comments contended that the new drug license system results in "superpatents," and that by using drug licensing to create a second patent system the Food and Drug Administration permits companies to settle private patent disputes by cross-licensing.

The Commissioner advises that it is Congress, not the Food and Drug Administration, that has created the new drug licensing system. The Commissioner believes that the Department of Justice and the Federal Trade Commission have full legal authority to prevent any collusive cross-licensing agreements within the pharmaceutical industry. In any event, it is well recognized that a person who owns a property right of any type may contract with others for its use. Thus, a company may sell its rights in an NDA or may license others to refer to it.

257. Comments suggested that public policy supports the release of all safety and effectiveness data for new drugs, and contended that summaries of such data are insufficient to afford adequate scientific review. It was pointed out that the President's Commission on Federal Statistics recommended in 1971 that all such information should be released. Comments suggested that the procedure for release of this type of information contained in the Federal Environmental Pesticide Control Act of 1972 (Pub. L. 92–516, 86 Stat. 973) should be used.

The Commissioner agrees that public policy supports release of all safety and effectiveness data, but points out that present statutory law, 18 U.S.C. 1905 and 21 U.S.C. 331(j), prohibits such release. The Federal Environmental Pesticide Control Act of 1972 contains a statutory mechanism for protecting a manufacturer's property right in trade secret data. The Commissioner has no authority to institute such a system without statutory authorization from Congress.

258. The proposed regulations published in May 1972 would have required every holder of a previously approved NDA or NADA to submit a summary of confidential safety and effectiveness data, and every person submitting such an application in the future to include such a summary, which would then be revised by the Food and Drug Administration and publicly disclosed. Present Food and Drug Administration regulations require that an NDA or NADA contain a short or expanded summary of all of the information contained in the application. In addition, these applications are review thoroughly by Food and Drug Administration personnel who prepare internal memoranda summarizing the information they contain, evaluating it, and setting out their conclusions and recommendations on it. During the past 2 years, requests have been made for the various summaries in NDA files prepared by the medical officer, the pharmacologist, the chemist, and in some instances, the biostatistician.

The Commissioner concludes that, in view of the fact that the full reports of the safety and effectiveness data contained in an approved NADA or NDA that have not previously been disclosed to the public constitute trade secret information that is prohibited from public dissemination pursuant to 21 U.S.C. 331 (j) and 18 U.S.C. 1905, it is important that summaries of all such data and information be made available so that scientists and members of the public who are interested will have an opportunity to determine the basis on which Food and Drug Administration decisions are made. Accordingly, the Commissioner has concluded that summaries of the safety and effectiveness data and information on the basis of which an NDA or NADA has been approved should be made publicly available.

a. The Commissioner recognizes the difficulty involved in implementing this decision for previously approved NDA's and NADA's. It is not administratively feasible to prepare new summaries at this time for all such prior approvals. Accordingly, for such prior approvals the Commissioner has concluded that internal agency records that describe such data and information will be made available for public disclosure upon request. It is not possible to state exactly which internal records will be adequate to convey this information, because this may vary depending upon the bureau involved, the administrative procedures being followed at the time the approval was granted, and various other factors. Such records will include internal reviews of the data and information, action memoranda, a summary of the basis for approval, or other internal memoranda sufficient to describe the safety and effectiveness data and information for the drug involved.

The Commissioner also recognizes that many of these old memoranda were prepared solely for internal consideration, and may contain information that is not proper for public disclosure. For example, some memoranda may mention the names of patients in an IND study. Some of these memoranda also contain criticism of investigations to which the investigators have never had an opportunity to respond and other inappropriate gratuitous comments unnecessary to an objective presentation of the data and information. If these memoranda had been prepared for public dissemination, such information and comments would not have been included. Accordingly, the Commissioner concludes that the names of patients and investigators and inappropriate comments will be deleted prior to public disclosure.

On the other hand, the Commissioner concludes that the analysis, discussion, conclusions, and recommendations contained in such memoranda should not be deleted. Such material could properly be withheld from public disclosure in accordance with the exemption for intra-agency memoranda, but the Commissioner believes that public discussion of these matters is better served by disclosure of all of the conclusions and recommendations set out in the memoranda, with only the minimal deletions mentioned above. In some instances, this will disclose recommendations which the Food and Drug Administration concluded not to follow at the time, or decisions which have subsequently been reversed. The Commissioner believes that such disclosure will not harm the regulatory efforts of the agency, but indeed will serve to foster better public understanding of the internal discussion about scientific and medical issues that must always characterize an open and responsive regulatory agency.

b. For NDA's and NADA's approved in the future, the Commissioner concludes that somewhat different rules should apply. Rather than disclosing internal discussion memoranda, it is more appropriate to provide for preparation of a single institutional summary stating all of the data and information relating to the safety and effectiveness of the product on the basis of which the agency action was taken. Moreover, rather than wait until a request is made for such a summary, it will be publicly released when the approval is made.

It is not administratively feasible immediately to implement this new requirement. Accordingly, the Commissioner concludes that NDA's and NADA's approved on or after July 1, 1975, will be the subject of such an institutional summary of the safety and effectiveness data and information. This will provide sufficient time for the Bureau of Drugs and the Bureau of Veterinary Medicine to prepare guidelines for such summaries and to implement this new policy for those applications now undergoing review within the agency.

The Commissioner concludes that, for these future approvals, the summary may be prepared in one of two alternative ways. First, the relevant bureau may request the applicant to prepare a summary of all of the data and information for this purpose, which the bureau will then review, revise, and release at the time that the drug is approved. It would obviously be premature to require that

this summary be submitted with the NDA or NADA. Rather, where this alternative is utilized, the bureau will request submission of such a summary at an appropriate time near approval of the application, when it is likely that all of the data and information will have been submitted and fully considered.

The second alternative way for preparing such a summary will be for the bureau to prepare its own summary, without requesting the applicant to submit a summary for this purpose. The Commissioner concludes that this approach may well be appropriate where the application and internal memoranda already contain various summaries and the bureau decides that submission of another summary is unnecessary.

Once the requirement for an institutional summary goes into effect on July 1, 1975, it will no longer be necessary or appropriate for the Food and Drug Administration to release other internal discussion memoranda relating to approval of NDA's and NADA's. This institutional summary will collate and distill all of the numerous internal memoranda relating to these matters, and thus will set forth in a comprehensive way the basis for the approval. Since it will purposely be prepared for public dissemination, it is unnecessary for the final regulations to state that these new summaries will not violate personal privacy or otherwise contain inappropriate material.

c. Finally, the Commissioner notes that the rules pertaining to summaries set out in the final regulations apply to supplemental and abbreviated NDA's and NADA's as well as to original NDA's and NADA's. On the other hand, not every supplemental or abbreviated NDA or NADA is sufficiently different to justify a new summary. Accordingly, it will be left to the judgment of the bureau to determine whether the original summary for an NDA or NADA will require revision or supplementation to reflect changes made by approval of a supplemental NDA or NADA. Where a new use or substantially different dosage is approved such revision would undoubtedly be required, but where only such matters as manufacturing controls or ingredient sources are involved no change would be warranted.

259. A number of comments from the pharmaceutical industry agreed with the concept of making public a summary of the information on safety and effectiveness in approved new drug applications. Some comments agreed with the proposal that this should be a specially prepared summary, and some suggested that it should be the summary already provided in the NDA.

The Commissioner concludes that the rules for preparation and disclosure of summaries set out in the final regulations are adequate to provide for information to the public on the safety and effectiveness data on the basis of which an NDA or NADA is approved, with minimum disruption to the applicant and the Food and Drug Administration. The Commissioner concludes that it would be unduly burdensome to require preparation of new summaries for previously approved drugs, and that internal memoranda should be sufficient to describe the basis for these past decisions. The Commissioner also concludes that the institutional summary to be prepared and released to the public for all approvals after July 1, 1975, may properly be prepared solely by the bureau involved, or may be based upon a summary specially submitted by the applicant for that purpose. None of these summaries will be sufficient for a competitor to satisfy the statutory requirement for "full reports" of safety and effectiveness in order to obtain his own approved application, and thus the trade secret status of the underlying data and information will be preserved. If the Commissioner determines that this is not successful in providing adequate summaries of the safety and effectiveness data to the public, the matter will be reopened for consideration of alternative methods of achieving this purpose.

260. The question was raised in comments as to what was meant by "a summary of the safety and effectiveness data and information submitted" which was proposed to be submitted with each NDA for release to the public. It was suggested that a "general" summary should suffice for the needs of the practicing physician, the consumer, and the scientific community. A "detailed" summary, it was believed, would ease the burden of a subsequent new drug applicant in this country and might also enable such a manufacturer to market in other countries with little or no testing. It was also indicated that a detailed summary might well constitute prior disclosure under the patent laws of one or more foreign countries and therefore prevent the original NDA holder from obtaining patent protection in those countries. It was also suggested, because of the trade secret and otherwise confidential nature of the underlying data involved, that the manufacturer should have the final say on the content of any such summary, and that no summary change be made without the consent of the manufacturer.

The Commissioner concludes that the summaries to be released pursuant to the final regulations will not ease the burden on a subsequent new drug applicant in this country since such an applicant would nonetheless be responsible for running the required tests. The Commissioner concludes that the possibility of competitive advantage abroad is speculative and remote. Although in some instances the bureau may wish to confer with others, including the applicant, in preparing the institutional summary, this is not required and under no circumstances will the applicant have the final say on its contents.

261. Comments asked whether submission of a summary is required each time a supplemental NDA is filed. This, it was indicated, would be an unnecessary duplication since the supplement is often directed to some rather minor change in the labeling of the product with no relevance to the previously submitted safety and effectiveness data.

The Commissioner advises that, under the final regulations, a summary will be released for a supplemental NDA or NADA where the supplemental application has a significant impact on safety or effectiveness. It is unnecessary specifically to mention supplemental applications in the regulations because a supplemental application becomes part of the original application. Thus, consideration of revision or supplementation of a summary is required whenever a supplemental application is approved.

262. Comments complained that disclosure of summaries of safety and effectiveness data does not serve the purpose of the Freedom of Information Act since outside scientists need the raw data in order to determine whether the agency has acted wisely in a given instance. It was contended that release of a summary would serve only as a "public relations stunt" for the industry.

The Commissioner concludes that the present law provides the Food and Drug Administration a choice between release of a summary or release of no safety and effectiveness information, since release of the complete data would constitute disclosure of a trade secret prohibited by 21 U.S.C. 331(j) and 18 U.S.C. 1905. The release of a summary is preferable to no release of information. The summary will be complete enough to convey both the nature of the experiment and the scientific data generated.

263. Questions have arisen as to whether the Food and Drug Administration may release adverse safety data submitted by a manufacturer as part of an IND file or a pending NDA.

The Commissioner concludes that the full report and data may not properly be released, but that a summary of such data may be released, if the existence of the IND or pending NDA is itself not confidential. If the existence of the IND or pending NDA is itself confidential, release of a summary of adverse safety data would not be permitted.

Because the Commissioner concludes that the full administrative record of an IND or pending NDA represents confidential commercial information prior to approval of an NDA, a summary of safety or effectiveness data in an IND or pending NDA shall be made public only on a selective basis, in a way that will not reveal the full administrative record. Such a situation usually occurs when the matter is under consideration by a Food and Drug Administration advisory committee. This policy is reflected in § 314.14(d) of the final regulations.

264. Foreign governments have discussed with the Food and Drug Administration the possibility of exchanging data and information on the safety and effectiveness of investigational and marketed drugs.

The Commissioner concludes that the same rules will apply with respect to disclosure of such information to foreign governments as apply to disclosure to the public. This will permit the Food and Drug Administration to provide full summaries of all safety and effectiveness data for all approved NDA's, and selected summaries for IND's and pending NDA's

for which the existence of an IND has been publicly disclosed or acknowledged. The Commissioner concludes that this will adequately satisfy the need for international exchange of important regulatory information of this type.

265. Comments were received that adverse safety and effectiveness information, which might lead to a reduction in use of a drug or to withdrawal of the drug from the market, is properly regarded as confidential commercial information because it can adversely affect the sales of the product. Other comments, however, did not distinguish between adverse information and favorable information, and concluded that the Food and Drug Administration could properly release summaries of all material relating to safety and effectiveness.

The Commissioner concludes that a summary of adverse safety and effectiveness information may properly be made available for public disclosure. As already discussed, such information is commonly published in the scientific literature and distributed to the scientific community. Accordingly, it cannot be said to be customarily held in strict confidence.

266. A comment stated that, for an NDA which is not approved, a summary of the basis of the refusal should be released.

The Commissioner advises that the disapproval letter and all data from an NDA which has received final agency disapproval will be available for disclosure after all administrative and judicial appeals are exhausted. However, such records will be released only where the agency disapproval is final, and not where there is merely an intermediate determination of insufficient data for approval and the applicant continues the work needed to obtain approval.

267. Comments contended that all data and information contained in an NDA are properly held in confidence forever by the Food and Drug Administration, and thus cannot be disclosed when the drug is withdrawn or becomes an old drug or for any other reason, because (1) the legislative history of 21 U.S.C. 331(j) indicates that all such information was to be regarded as trade secrets, (2) the Food and Drug Administration has in any event obligated itself to maintain the confidence of this information by promises made to industry since 1938, and (3) the agency is precluded from changing its consistent administrative interpretation of the law under the doctrine of "Udall v. Tallman," 380 U.S. 1 (1965).

The Commissioner concludes that the legislative history of 21 U.S.C. 331(j) shows that Congress simply did not decide the issue raised in these regulations. Although Congress stated that all trade secrets in new drug applications were to remain confidential, it did not, in the reports or legislative debate, consider or define the intended scope of the term "trade secret."

The Food and Drug Administration has since 1938 pledged that all trade secret information contained in a new drug application will be held in confidence, and has stated that animal and human tests can fall within that section. The Food and Drug Administration has not previously adopted a specific definition of "trade secret," however, or delineated the precise circumstances under which animal and human data do or do not constitute trade secrets, or otherwise attempted to set out the scope of that provision of the law in the detail that is done in these regulations and this preamble. Moreover, Congress has now enacted the Freedom of Information Act, establishing new public policy, which requires reevaluation and clarification of the agency's prior policy.

The Freedom of Information Act contains a congressional mandate to release all information not explicitly prohibited or exempt from public disclosure. The proposed regulations published in May 1972 represent the Food and Drug Administration's first attempt to interpret and apply that directive. The Commissioner believes that the policy proposed there, and adopted in these final regulations, represents a reasonable accommodation of both the disclosure provisions of the Freedom of Information Act and the nondisclosure provisions contained in 21 U.S.C. 331(j), 18 U.S.C. 1905, and the trade secrets exemption from the Freedom of Information Act, insofar as they apply to trade secrets and other confidential commercial information.

268. Comments contended that the fact that a product is not currently being marketed or has been withdrawn from the market does not prevent that product from being entitled to trade secret protection, citing "Harris Manufacturing Co. v. Williams," 157 F. Supp. 779 (W.D. Ark. 1957); and "Ferroline Corp. v. General Aniline Corp.," 207 F.2d 912 (7th Cir. 1953).

The Commissioner does not concur with this comment, and believes that the cases do not support the proposition for which they are cited. In the "Harris" case, the court noted that the plaintiff had not abandoned use of the product in question, and stated that the mere fact that a company is not using a particular product at a particular time does not prevent it from being a trade secret. The final regulations make it clear that termination or disapproval of an IND or NDA refer to final termination or disapproval, not to some intermediate step. As is discussed elsewhere in the preamble, continued pursuit of the IND or NDA will be sufficient to justify the continued confidentiality of the safety and effectiveness data involved.

In the "Ferroline" case, the company had conveyed by contract its rights to the trade secret to another party, and then later regained the rights to that trade secret and attempted unsuccessfully to re-enter the field. The gravamen of its complaint was that the misappropriation of the trade secret by the defendants precluded successful reentry. The court held that the plaintiff was entitled to bring the suit notwithstanding the fact that it currently was not utilizing the trade secret in question. The Commissioner concludes that the circumstances of this case are totally different from any of those involved in the final regulations, and thus that this case is of little, if any, relevance. The final regulations do recognize that a property right in a trade secret may be conveyed by contract. In the "Ferroline" case, however, the nonuse of the trade secret was caused by the alleged breach of confidentiality, whereas in the final regulations promulgated by the Commissioner there can be no authorized release until the product is not currently being marketed or has been withdrawn from the market.

269. The major argument advanced in comments objecting to the disclosure of IND and NDA safety and effectiveness data after disapproval of the product is that the events upon which disclosure hinges, e.g., termination, discontinuance, approval, etc., are actually irrelevant to the issue of whether or not the information is a trade secret. It was contended that a number of competitive advantages continue to exist or later accrue after such an event occurs. It was asserted that simply knowing a process does or does not work is worth hundreds of thousands of dollars and years of research to a competitor. Further, such information could be used to develop marketing and sales literature and provides a definite advantage to its owner in obtaining foreign product registrations. The advantage was thought to be especially strong with respect to marketing in countries where there is little or no patent protection. The advantage in the foreign market situation could, it was suggested, be so great as to create a further imbalance against the United States in foreign trade. It was indicated that a discontinued or terminated IND or NDA may be reviewed and reactivated if there is a change in scientific knowledge. It was argued that drugs subject to termination may be found to have congeners which are safer and more effective, and that initial investigations may indicate a metabolite of the drug under study is the more active form and investigational efforts may be diverted to studies of the metabolite. Comments stated that termination may simply be the result of a determination at that point in time to use research money on another drug. The data in an investigational file may later become essential when related drugs are being investigated. Such data can form the basis of cooperative agreements with other drug companies or universities on renewed trials of a drug. Comments contended that the termination of one IND or NDA and disclosure of trade secrets relating to it may affect another IND or NDA which has not been terminated. It was also pointed out that investigations voluntarily terminated here may be continued abroad.

The Commissioner concludes that termination, in order to trigger disclosure, must be final. If there is some legitimate

reason for the termination being only temporary, data and information will not be disclosed. The regulations also permit a showing of "extraordinary circumstances" why data in a terminated file should not be disclosed. A situation in which one IND or NDA directly affects another might be viewed as an extraordinary circumstance. Again, the possibility of foreign competitive advantage is too speculative and remote to justify a broad exemption from disclosure under the Freedom of Information Act.

270. Many comments based objections to the release of any safety and effectiveness data whatever on an affidavit by Henry E. Simmons, M.D., former Director of the Bureau of Drugs, dated April 5, 1971, filed in the United States District Court in the case of "Morgan v. FDA."

The Commissioner advises that the position taken in that affidavit no longer represents the policy of the Food and Drug Administration. Subsequent to the preparation of that affidavit, the Food and Drug Administration made a comprehensive evaluation of the status of safety and effectiveness data for drugs under the Freedom of Information Act for the first time since that law was passed. The results of that evaluation were set out in the proposed regulations published in May 1972 and in the brief subsequently filed by the Food and Drug Administration in the United States Court of Appeals in the "Morgan" case. The recent decision of the United States Court of Appeals in the "Morgan" case explicitly recognizes that, because of the procedural posture of that case, it does not provide precedent for determining the status of all safety and effectiveness data for new drugs. The Commissioner advises that the proper way to decide this issue will be through a declaratory judgment action contesting either the validity of these final regulations or the propriety of proposed disclosure of particular information in a specific instance.

271. Comments argued that, although safety and effectiveness data and information for an old drug may no longer be a "trade secret," they can still be regarded as "confidential commercial information" because they are not customarily divulged publicly.

The Commissioner rejects this comment. Such data no longer have any commercial value, and indeed no comment suggested any reasonable rationale for such value. Moreover, scientific data are customarily published in the scientific literature or in any event are made available to physicians and scientists for review, and accordingly are not customarily regarded as privileged information.

272. Comments contended that confidentiality of safety and effectiveness data should not cease once a drug becomes an old drug, particularly in light of the fact that, under the decision in "Bentex Pharmaceuticals, Inc. v. Richardson," 463 F.2d 363 (4th Cir. 1972), the Food and Drug Administration has no authority to determine old drug status.

The Commissioner notes that, upon appeal in that case, the Supreme Court held that the Food and Drug Administration has primary jurisdiction to decide the new drug/old drug status of a drug. "Weinberger v. Bentex Pharmaceuticals, Inc.," 412 U.S. 645 (1973). Since the agency will be in a position to settle this issue with administrative finality, subject only to judicial review, there should no longer be any confusion with respect to the time at which safety and effectiveness data become available for public disclosure.

273. Comments argued that information concerning a drug on which a patent is pending should be considered prima facie confidential.

The Commissioner notes that a patent application may or may not be granted. A patent which has been granted may run out before the new drug status of a product is terminated. The Freedom of Information Act provides no special status for patented products, nor does the Federal Food, Drug, and Cosmetic Act. For these reasons, the patent status of a product cannot be relied upon by the Food and Drug Administration as determinative or indicative of whether information concerning that product should be released to the public.

274. Requests have been received for safety and effectiveness information with respect to a new drug for which an NDA is effective but which is currently subject to the drug efficacy study implementation (DESI) review program. Some of these data have been submitted after publication of an initial DESI notice but prior to a notice of opportunity for hearing, and some have been submitted in response to a notice of opportunity for hearing in order to justify a request for a hearing.

The Commissioner concludes that such data and information have the same status as any other data and information on safety and effectiveness contained in the NDA. Prior to final action revoking an NDA, requests for data and information will be handled in the same way as requests relating to any other approved NDA. If the NDA is withdrawn, after all appeals are exhausted the data and information will be disclosed in the same way that data and information are disclosed for all other NDA's for which approval is denied or withdrawn.

275. Questions have arisen as to whether an approval of an antibiotic drug for animal use is a private license or a public regulation, and thus whether the safety and effectiveness data are or are not available for public disclosure upon such approval.

The Commissioner concludes that, although antibiotic drugs for animal use were formerly subject to the same form of approval contained in section 507 of the Federal Food, Drug, and Cosmetic Act as are antibiotic drugs for human use, i.e., a public regulation, the Animal Drug Amendments of 1968 (Pub. L. 90–399, 82 Stat. 342), which added section 512 to the act (21 U.S.C 360b), changed this. Under section 512, all new animal drugs, including antibiotics, require an approved NADA, i.e., a private license, before they may lawfully be marketed. Accordingly, § 146.16 of the final regulations states the same disclosure rules for new antibiotic animal drugs as for any other new animal drugs.

276. Comments stated that, prior to the development of Form FD–1800, feed manufacturers had to submit essentially the same information as the animal drug manufacturer, in order to obtain approval for use of a new animal drug. It was the previous understanding that confidentiality of feed manufacturers' applications and related files would be honored. The comments stated that the Food and Drug Administration should honor this previous understanding.

The Commissioner advises that the Food and Drug Administration will honor the confidentiality of such applications insofar as the information contained in them is exempt under the Freedom of Information Act. In accordance with the provisions of § 4.45, any request for information contained in such applications will be discussed with the manufacturer if a close question is raised. The manufacturer will be given the opportunity to assert and justify confidential status for the material requested, and may appeal to the courts in the event the Food and Drug Administration determines that the material is disclosable.

277. Questions have been raised as to whether food additive and antibiotic petitions and forms for veterinary drugs submitted prior to the effective date of the Animal Drug Amendments of 1968 (Pub. L. 90–399, 82 Stat. 342) are subject to the disclosure rules established for these petitions and forms in §§ 121.51 (h) and 431.71 or to the disclosure rules established for new animal drug applications in §§ 135.33a and 146.16. The Animal Drug Amendments changed the law by requiring approval of an individual new animal drug application for every new animal drug.

The Commissioner advises that the rules for disclosure will depend upon the nature of the approval requested or obtained. Accordingly, the food additive petitions and antibiotic forms submitted for animal drugs are subject to the disclosure rules established for these petitions and forms. The new drug applications submitted for veterinary drugs prior to the Animal Drug Amendments are similarly subject to the disclosure rules established in § 314.14.

278. Pursuant to the Controlled Substances Act (Pub. L. 91–513, 84 Stat. 1236), the Secretary of Health, Education, and Welfare is required to submit to the Attorney General a scientific and medical evaluation and recommendations relating to the scheduling of drugs. The preparation of such recommendations has been delegated to the Commissioner. Requests have been made for copies of such recommendations.

The Commissioner advises that all recommendations relating to the Controlled Substances Act are available for public disclosure.

A PROTOCOL FOR A TEST OR STUDY

279. A comment contended that the amount of money expended in developing a protocol should be irrelevant to its status as a trade secret, and that the only factors that should properly be considered in making this determination is whether it gives the owner an opportunity to obtain a competitive advantage and whether the protocol is in fact secret.

The Commissioner does not concur with this comment. Cost is one factor, but not the sole factor, in determining whether information constitutes a trade secret. However, the final regulations refer directly to the exemption for trade secrets and confidential commercial information in § 4.61, rather than attempt to specify all of the relevant factors involved.

280. Comments also contended that uniqueness is not necessary for a trade secret, and thus that this element should not be included in the criteria for determining whether a protocol constitutes a trade secret.

The Commissioner concludes that, if a protocol is not distinguishable in a significant respect from those developed by others, it cannot be regarded as providing a competitive advantage. Nevertheless, the regulations have been revised to refer only to § 4.61, rather than to attempt to set out the various criteria that will be used in determining when the standards set out in § 4.61 are met.

281. A comment stated that the criteria for determining the trade secret status of protocols seem to have eliminated the necessity of showing that a protocol is "used in one's business." It was suggested that the Restatement definition should apply, and that there must be a showing of commercial value. If protocols are not trade secrets or privileged or confidential commercial or financial information, they cannot be withheld under any other exemption.

The Commissioner advises that the criteria proposed in order to show that a protocol is a trade secret were intended to amplify the Restatement definition, not to replace it. The Restatement definition does apply to protocols, as well as to any other type of information for which trade secret status is claimed. The final regulations make this clear.

ADVERSE REACTION REPORTS, PRODUCT EXPERIENCE REPORTS, CONSUMER COMPLAINTS, AND OTHER SIMILAR DATA AND INFORMATION

282. The primary concern expressed in comments about release of this type of information was the possibility that it may frequently be "misinformation." It was pointed out that the occurrence of reaction "B" does not mean that "A" caused it, particularly in a situation where the person may have been consuming more than one product. It was further asserted that, when taken out of context, adverse reaction data are subject to misinterpretation, particularly by a layman unqualified to analyze them. As protection against misinterpretation, it was suggested that the Food and Drug Administration not release any adverse reaction information until a scientific evaluation has been made of the reaction and its probable causation. Industry, it was asserted, had a right to expect this type of protection from "cranks and dissidents." Alternatively, it was suggested that release not be permitted until the firm involved agrees. It was also suggested that the manufacturer be given an opportunity to analyze reports by third parties, and reply to the agency before the reports are made public, in order to provide a fair and balanced disclosure.

The Commissioner rejects the presumption upon which the bulk of the criticism in the comments is based, i.e., that the public, scientists, and the Food and Drug Administration are incapable of making responsible judgments on this information. This type of information, when released, will be evaluated in the same manner as any other information that is publicly available.

283. Questions have arisen about the status of reports of adverse reactions to drug products subject to the requirements of the new drug or prescription drug sections of the law. Adverse reactions for new drugs are required to be reported to the Food and Drug Administration pursuant to section 505 of the Federal Food, Drug, and Cosmetic Act and adverse reactions for prescription drugs must be furnished to the Food and Drug Administration pursuant to the factory inspection provisions in section 704 of the act.

The Commissioner advises that such adverse reaction information is available for public disclosure with only the names and other identifying information of individuals deleted. The brand name of the product and the name of the manufacturer will not be deleted.

284. Questions have been raised as to whether adverse reactions reported to an IND file are available for public disclosure.

The Commissioner concludes that the same rules with respect to disclosure of adverse reactions should apply whether they are reported to an IND file or in a pending NDA. Such information is not available for public disclosure until the NDA is approved or finally disapproved or withdrawn, except that an individual who participates in a study involving an investigational new drug will be given a copy of any adverse reaction report relating to him. Such reports are required by law to be furnished to the Food and Drug Administration. The Commissioner concludes that furnishing adverse reaction reports under these limited circumstances raises no possible issue under the exemptions for privacy or trade secrets and confidential commercial information.

PRODUCT INGREDIENTS

285. Comments stated that even a simple list of ingredients in a product constitutes confidential commercial information which provides a competitive advantage, and that the exemption for a particular ingredient is not helpful because it may be a particular combination of all ingredients which makes the product unique and effective. It was suggested that a manufacturer be permitted to show that the entire list constitutes a trade secret.

The Commissioner rejects the suggestion that a list of ingredients is always confidential commercial information. To conform these regulations with the Drug Listing Act, however, they have been revised to state that inactive ingredients in drug products not required to be stated on the label and not previously disclosed to the public are not available for public disclosure. The Commissioner also agrees that a combination of ingredients as well as a single ingredient may qualify for exemption and the final regulations have been revised to reflect this.

286. One comment stated that this provision in the proposed regulation "is just another way of saying that excipient materials that are well known do not contribute significantly to the performance of the product." The choice of excipients, it was asserted, was arrived at by a considerable expenditure of funds and it was stated that, with the increasing attention paid to bioavailability, this process would become more costly. This regulation, it was concluded, would make it easier for generic drug manufacturers to arrive at superior products without having to conduct research and experience developmental delay. It was suggested that quantitative information be exempt except to the extent that it was disclosed on the label or labeling since the information required for public health already appears there, and that a manufacturer should not have to defend the confidentiality of any ingredient information by proving it unique.

The Commissioner agrees that undisclosed inactive ingredients in drugs will be handled as trade secret information.

287. A comment contended that an ingredient should be regarded as a trade secret if it provides a competitive advantage, and suggested that the criteria of uniqueness, importance to the product, and knowledge to competitors should be deleted.

The Commissioner intended the criteria set out in this provision of the proposed regulations to amplify the phrase "competitive advantage," and believes that they are an adequate reflection of the factors which comprise competitive advantage with respect to ingredients. Nevertheless, the final regulations have been revised to refer directly to § 4.61 rather than to attempt to specify all of the criteria applicable in determining the status of an ingredient.

ASSAY METHOD OR OTHER ANALYTICAL METHOD

288. Comments contended that an assay method is a trade secret regardless whether it must be available to permit other manufacturers to comply with limits established under Food and Drug Administration regulations.

The Commissioner does not agree with these comments. For many years the Food and Drug Administration has routinely made available for public disclosure, and has included in its widely distributed manuals, analytical methods which are contained in petitions and applications, and which are needed for regulatory assays for food and drugs. The Association of Official Analytical Chemists (AOAC) publishes official analytical methods. Other methods are frequently published in the scientific literature. Accordingly, methods of this type are not customarily regarded as confidential information. Moreover, such methods are needed by State and local officials as well as by Federal officials to assure compliance with legal requirements. They provide no competitive advantage for one manufacturer over another, but rather permit regulatory officials to assure compliance with the law. Even if such methods were not made publicly available to competing manufacturers, such competitors would still be permitted to market the products involved. Thus, the failure to make such methods public would deter only regulatory activity and would not hinder the marketing of competing products. Accordingly, the Commissioner concludes that all such methods will be made public except where they serve no regulatory function whatever. The final regulations have been revised to state this policy.

289. A comment indicated that it was not clear whether the Restatement definition of a trade secret must be met before assay methodology information will be retained as confidential. It was also stated that if the assay method is not required for the approval of a new drug, it does not provide a competitive advantage and therefore cannot be regarded as exempt.

The Commissioner advises that, as with any other information in the possession of the Food and Drug Administration which is to be exempt from disclosure as a trade secret, the information must be a trade secret within the meaning of the Restatement. The Food and Drug Administration has determined that assay methods are disclosable except where they perform no regulatory function and are shown to fall within the exemption established in § 4.61.

MANUFACTURING METHODS OR PROCESSES, INCLUDING QUALITY CONTROL PROCEDURES

290. Several comments noted that, although manufacturing methods and processes, quality control procedures, and quantitative formulas are specifically exempt from disclosure unless there has been a prior public disclosure, the proposed regulations also required all data to be marked as confidential and adequate grounds given to justify each individual item so marked. Clarification of these seemingly conflicting provisions was requested.

The Commissioner advises that a company's manufacturing methods and processes, quality control procedures, and quantitative formulas are per se exempt from disclosure unless previously disclosed or later abandoned, and need not be marked as confidential or specially justified. A manufacturer need not submit a statement on prior public disclosure or subsequent abandonment unless so requested in a specific situation by the Food and Drug Administration.

291. The technical question was raised in comments as to whether adjuvants, such as catalysts or polymerization modifiers used in a secret manufacturing process for a polymer used as a food packaging material, would be available to the public.

The Commissioner concludes that, if the adjuvants are necessary to the manufacturing of a safe product, the food additive regulation itself must disclose their use. If they are not necessary for a safe product and are exempt from regulation as food additives but are described as part of the manufacturing process in a food additive petition on the final polymer, their use would not be disclosed to the public because, under § 121.51(h)(2)(i) of the final regulations, a manufacturing process is regarded as a trade secret that will not be disclosed.

PRODUCTION, SALES, DISTRIBUTION, AND SIMILAR DATA AND INFORMATION

292. No comments contended that production, sales, or distribution data and information should be available for public disclosure.

The Commissioner concludes that such information is per se exempt from public disclosure unless it is released in a blind compilation that does not disclose confidential information, and that it need not be marked as confidential or otherwise specially justified. The only form in which such information may be disclosed to the public is through a compilation which aggregates data from several sources, in a way that does not reveal the data from any particular source. This form of blind compilation of confidential commercial information is often prepared and made public by trade associations and the Department of Commerce.

293. Questions have been raised about the release of otherwise confidential commercial information, such as sales figures and manufacturing data, after a product has been withdrawn from the market and abandoned.

The Commissioner concludes that such information ordinarily no longer represents confidential commercial information or trade secret data once the product has been removed from the market and abandoned. It will be the Commissioner's practice to consult with the company involved before making a final decision on release of such information, however, to determine whether there are future plans for remarketing the product or whether the data in some way also disclose confidential information about other products that remain on the market.

294. One comment requested an amendment to the regulations to provide that the amounts and the identity of recipients of refunds from advance deposits of fees paid to the Food and Drug Administration for certification services constitute proprietary information, exempt from public disclosure.

The Commissioner concludes that such information is exempt from public disclosure only to the extent that it may disclose sales data or the share of individual companies in the market.

FOOD STANDARD TEMPORARY PERMITS

295. Questions have arisen about the availability for public disclosure of petitions received pursuant to § 10.5 of the regulations (21 CFR 10.5) requesting a temporary permit to vary from a standard of identity, or an extension of such a permit.

The Commissioner advises that all such petitions and related correspondence are available for public disclosure upon publication of the notice granting the permit in the FEDERAL REGISTER, except to the extent that these records contain information otherwise exempt from disclosure, e.g., manufacturing procedures or quantitative formulas. Prior to a notice in the FEDERAL REGISTER granting the petition, the existence of the petition is properly regarded as confidential commercial information, since it would disclose the intent of the company to pursue the marketing of a new product. Once such a notice is published, however, the petition can no longer be regarded as confidential. Similarly, a request for extension of the permit shall be available for public disclosure if and when it is granted, since granting such an extension permits other manufacturers to begin marketing under the same terms and conditions as the first manufacturer. A new paragraph (k) is added to § 10.5 to state this policy.

PROCESSING RECORDS FOR LOW-ACID CANNED FOODS

296. The Commissioner published in the FEDERAL REGISTER of May 14, 1973 (38 FR 12716) and subsequently amended in the FEDERAL REGISTERS of January 29, 1974 (39 FR 3750) and April 1, 1974 (39 FR 11876), new regulations governing emergency permit controls for thermally processed low-acid foods packaged in hermetically sealed containers (21 CFR 90.20). The final regulations require that manufacturers subject to these regulations furnish to the Food and Drug Administration various records relating to their processing. Questions have arisen with respect to the status of such records under the Freedom of Information Act.

The Commissioner advises that all such records constitute manufacturing or processing records that fall within the trade secret exemption from the Freedom of Information Act. In order to make this policy clear, a new paragraph (l) is added to § 90.20 in this final order.

COSMETIC PRODUCT INFORMATION

297. The Commissioner has promulgated regulations relating to voluntary

registration of cosmetic product establishments, voluntary filing of cosmetic product ingredient and cosmetic raw material composition statements, and voluntary filing of cosmetic product experiences in the FEDERAL REGISTERS of April 11, 1972 (37 FR 7151) and October 17, 1973 (38 FR 28914). The recodification of cosmetic regulations under a new Subchapter G—Cosmetics was published in the FEDERAL REGISTER of March 15, 1974 (39 FR 10054). Cosmetic manufacturers have informed the Food and Drug Administration that they have delayed the filing of ingredient and composition statements and product experience reports pending promulgation of final regulations under the Freedom of Information Act in order to determine whether such information, submitted voluntarily, will be retained as confidential by the Food and Drug Administration or will be disclosed to the public upon request.

Accordingly, the Commissioner concludes that clarification of these regulations at this time is appropriate in order to conform them with the provisions of Part 4.

298. Section 710.7 of the regulations (21 CFR 710.7) provides that a copy of Form FD–2511 (Registration of Cosmetic Product Establishment) is available for public inspection in its entirety.

It is the Commissioner's understanding that no question has been raised about the public disclosure of this document because it does not contain information relating to specific products. Accordingly, no modification in this provision is warranted.

299. Section 720.8 of the regulations (21 CFR 720.8) provides that Forms FD–2512 (Cosmetic Product Ingredient Statement), FD–2513 (Cosmetic Raw Material Composition Statement), and FD–2514 (Discontinuance of Commercial Distribution of Cosmetic Product or Cosmetic Raw Material), and amendments thereto, must be clearly marked as confidential if trade secret status is claimed. The provision states that, if the Food and Drug Administration concludes that an item so marked is not exempt from disclosure, the matter may be appealed within the agency for a final decision.

The Commissioner concludes that § 720.8 should be revised to make it consistent with the general provisions contained in new Part 4 as promulgated by these final regulations. The Commissioner further concludes that, by incorporating the procedural safeguards contained in new § 4.44 and clarifying the status of voluntary ingredient disclosures in § 4.111, and adopting the principles for disclosure enunciated in the other provisions of Part 4, any questions about the status of the information contained in these forms will be resolved.

300. Section 730.7 of the regulations (21 CFR 730.7) provides that Forms FD–2704 (Cosmetic Product Experience Report), FD–2705 (Cosmetic Product Unusual Experience Report), and FD–2706 (Summary Report of Product Experience by Product Categories) shall be handled in accordance with the final regulations to be published by the agency under the Freedom of Information Act.

The Commissioner is therefore also amending § 730.7 to include the rules laid down in the final regulations established in Part 4. The Commissioner concludes that these rules will adequately protect against unfair disclosure of materials regarded by the industry as constituting important confidential commercial information and at the same time assure that information that is of major importance to Food and Drug Administration regulatory programs will in fact be submitted.

301. Questions have arisen as to the procedure by which a person who has submitted a request for confidentiality of cosmetic ingredient information pursuant to Part 720 may appeal a decision by the Bureau of Foods that the information does not constitute a trade secret and thus is available for public disclosure pursuant to the Freedom of Information Act.

The Commissioner concludes that the procedure established in new § 4.44 is properly used to resolve any issues of this nature, prior to submission of the information involved. Since this determination controls the question whether the ingredient(s) involved must be labeled pursuant to § 701.3 (21 CFR 701.3), which was published in the FEDERAL REGISTER of October 17, 1973 (38 FR 28912), an adverse determination constitutes final agency action that may be challenged in the courts. Section 720.8 is revised to reflect these conclusions.

The Commissioner realizes that a number of cosmetic companies have already submitted ingredient information with a request for confidentiality pursuant to Part 720. In order to deal fairly with all of these submissions, the Commissioner has concluded that all such requests for confidentiality will now be handled pursuant to the procedure established in new § 4.44. In the event that it is determined that the information involved is not confidential, the company will have the opportunity to withdraw the information or to submit it without a pledge of confidentiality. This will place those manufacturers who have already submitted this information to the Food and Drug Administration on an equal footing with those who have delayed such submission until the procedures for review of confidentiality were clarified.

BIOLOGICAL DRUGS

302. Subsequent to publication of the proposed regulations in May 1972, jurisdiction over section 351 of the Public Health Service Act (42 U.S.C. 262), which governs the licensing of biologics, was transferred to the Food and Drug Administration. Under section 351, a biologic must be licensed by the Food and Drug Administration before it may lawfully be shipped in interstate commerce. Unlike the regulation of human and animal drugs, all biological products are required to undergo clinical testing in order to demonstrate safety, purity, potency, and effectiveness prior to licensing, regardless whether other versions of the same product are already marketed or standards for the product have been adopted by rule making. Indeed, many of the existing standards require specific clinical testing before approval will be granted. This is required because all biological products are to some extent different and thus each must be separately proved safe, pure, potent, and effective. Although, like an approved NDA, a license to manufacture a particular biologic is a private license that is applicable only to a single manufacturer, a biologics license is under no circumstances granted by the Food and Drug Administration to a second manufacturer based upon published or otherwise publicly available data and information on another manufacturer's version of the same product. Under section 351 of the Public Health Service Act, biologics never become "old drugs" and cannot be marketed solely on the basis of an existing product standard published in the FEDERAL REGISTER. There is no such thing as a "me-too" biologic.

Thus, the regulatory scheme for biologics is quite different from the methods by which new drugs and antibiotic drugs are controlled under sections 505 and 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355 and 357).

Accordingly, the Commissioner concludes that the safety and effectiveness data for a biologic regulated under section 351 of the Public Health Service Act is not properly classified as a trade secret. Such data afford no competitive advantage because, unlike the situation with new drugs, no competitor can utilize it to gain approval for his product. Moreover, since such data are routinely published in the scientific literature, they do not fall within the confidential commercial information exemption. New §§ 601.7 and 601.8 are added to the existing regulations for biologics to state this policy.

303. During the past 2 years, requests have been made for various types of information contained in Food and Drug Administration files relating to approval of particular lots of a biologic.

The Commissioner concludes that all forms used within the Bureau of Biologics to show what testing has been undertaken by the Bureau on a particular lot, the results obtained, and whether approval was granted, are available for public disclosure. All documents showing the manufacturer's testing of a particular lot will also be released, except to the extent that it would show the volume of the drug produced, manufacturing procedures and controls, yield from raw materials, costs, or other similar confidential commercial information. New § 601.8 reflects this policy.

FEDERAL HAZARDOUS SUBSTANCES ACT

304. Jurisdiction over the Federal Hazardous Substances Act has been transferred to the Consumer Product Safety Commission pursuant to the Consumer Product Safety Act (Pub. L. 92–573, 86

Stat. 1207; 15 U.S.C. 2051 note), as published in the FEDERAL REGISTER of September 27, 1973 (38 FR 27012).

Accordingly, the proposed amendment of § 191.213 (21 CFR 191.213) is withdrawn.

RELIANCE UPON FOOD AND DRUG ADMINISTRATION FREEDOM OF INFORMATION FILES

305. In preparing the final regulations, the Commissioner has relied both upon the extensive comments filed on the proposed regulations published in May 1972, and upon the numerous requests for documents received by the agency since enactment of the Freedom of Information Act. Accordingly, the Commissioner hereby incorporates by reference the Freedom of Information files of the agency as part of the administrative record on which the decision on these final regulations is based.

ADDITIONAL TIME FOR COMMENT

306. The final regulations promulgated in this final order reflect both the proposal published in May 1972 and the actual practice of the Food and Drug Administration in handling requests for documents in the intervening 2 years. Comments submitted on the proposal and requests for documents during the past 2 years have raised most of the issues discussed in this preamble and resolved in the final regulations. Accordingly, these regulations embody very few new decisions.

The Freedom of Information Act is a self-executing statute for which no regulations are required for implementation. The Food and Drug Administration is therefore obligated to disclose documents not specifically exempt from disclosure regardless of the existence of published rules of the type promulgated in this final order.

Accordingly, the Commissioner concludes that these regulations will become effective 30 days after publication in the FEDERAL REGISTER.

Nevertheless, the Commissioner recognizes that it has been over 2 years since these regulations were first proposed, that the final regulations incorporate some new decisions not specifically dealt with in the proposal or the comments, and that sound public policy supports allowing time for comment wherever feasible. Accordingly, the Commissioner is providing an additional 60 days within which to present further brief comments on issues not raised by the initial comments and discussed in this preamble. The Commissioner will then rule on those comments very expeditiously and will publish an additional order ruling upon any such matters.

The Commissioner advises that comments submitted within this additional period should address new issues, and should not reopen matters raised by the initial proposal and fully discussed in this preamble. The Commissioner is particularly interested, for example, in any comments on the new portions of the procedural regulations contained in Subpart B of Part 4 and on the new provisions relating to biological drugs, as well as on any other similar provisions which were not covered in the proposal and the comments received on it.

The Commissioner concludes that the entire final order will become effective (*insert date 30 days after date of publication in the FEDERAL REGISTER*), and that all of the provisions will be implemented pending reconsideration of any specific provisions as a result of the receipt of additional comments. This will work no hardship since, if any close or controversial issues arise, the Commissioner will utilize the provisions of § 4.45 to consult with any person who may be adversely affected by disclosure of information, and that person will have the opportunity, as set forth in § 4.46, to seek judicial determination on the issue of disclosure in the event that he disagrees with the Commissioner's conclusion.

JUDICIAL REVIEW OF FINAL REGULATIONS

307. The Commissioner notes that one of the major purposes of the initial proposal published in May 1972 and these final regulations is to settle the status under the Freedom of Information Act of every category of document contained in Food and Drug Administration files, in order to avoid ad hoc decisions and to facilitate prompt handling of requests for records.

The comments disclose a wide divergence of opinion with repect to the rules contained in these final regulations. Some comments stated that far too much was being released, and others stated that not enough was being released. The Commissioner anticipates that the same disagreement will exist with respect to portions of the final regulations as was reflected in the comments received on the proposal.

Accordingly, the Commissioner invites any person who believes that the final regulations do not properly interpret and apply the Freedom of Information Act to institute legal action in the courts to contest their validity. The Commissioner concludes that, after receipt of the additional comments permitted and any further modifications as a result thereof, all administrative remedies with respect to these matters will be exhausted, that the matters will be ripe for judicial review, and that any person will have standing to bring suit to contest these regulations since they affect the rights of the entire public, including those who have submitted or will submit information to the Food and Drug Administration and those who have requested or will request disclosure of such information by the Food and Drug Administration. The Commissioner believes that it would be in the public interest for all such issues to be litigated promptly so that these matters may be settled and the applicable rules clearly understood by everyone who is affected.

Accordingly, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 201 et seq., 52 Stat. 1040 et seq. as amended; 21 U.S.C. 321 et seq.), the Public Health Service Act (sec. 1 et seq., 58 Stat. 682 et seq. as amended; 42 U.S.C. 201 et seq.), and the Freedom of Information Act (Public Law 90–23, 81 Stat. 54–56 as amended by 88 Stat. 1561–1565; 5 U.S.C. 552) and under authority delegated to the Commissioner (21 CFR 2.120), Parts 1, 2, 4, 8, 10, 90, 121, 135, 146, 312, 314, 431, 601, 720, and 730 are amended as follows:

SUBCHAPTER A—GENERAL

PART 1—REGULATIONS FOR THE ENFORCEMENT OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT AND THE FAIR PACKAGING AND LABELING ACT

1. In Part 1, by adding a new paragraph (c) to § 1.6 to read as follows:

§ 1.6 Presentation of views under section 305 of the act.

* * * * *

(c) Records relating to this proceeding constitute investigatory records for law enforcement purposes and may include inter- and intra-agency memoranda.

(1) Notwithstanding the rule established in § 4.21 of this chapter, no record relating to a section 305 hearing is available for public disclosure prior to the consideration of criminal prosecution based upon that record being closed, except as provided in § 4.82 of this chapter. The Commissioner will exercise his discretion to disclose records relating to a section 305 hearing pursuant to § 4.82 of this chapter prior to the consideration of criminal prosecution being closed only very rarely and only under circumstances that demonstrate a compelling public interest.

(2) After the consideration of criminal prosecution is closed, such records are available for public disclosure except to the extent that the exemptions from disclosure in Subpart D of Part 4 of this chapter are applicable. No statements of witnesses obtained through promises of confidentiality are available for public disclosure.

(3) The consideration of criminal prosecution based upon a particular section 305 hearing shall be deemed to be closed within the meaning of this section when a final decision has been made not to recommend criminal prosecution to a United States attorney based upon that hearing, or such recommendation has been finally refused, or criminal prosecution has been instituted and the matter and all related appeals have been concluded, or the statute of limitations has run.

(4) Prior to disclosure of any record specifically reflecting consideration of possible criminal prosecution of any individual, all names and other information that would identify an individual who was considered for criminal prosecution but who was not prosecuted shall be deleted unless the Commissioner concludes that there is a compelling public interest in the disclosure of such names.

(5) Names and other information which would identify a Food and Drug Administration employee shall be deleted from section 305 hearing records prior to public disclosure only pursuant to § 4.32 of this chapter.

PART 2—ADMINISTRATIVE FUNCTIONS, PRACTICES, AND PROCEDURES

Subpart G—Public Information

Subpart G [Deleted]

2. In Part 2, by deleting Subpart G—Public Information containing § 2.115 *Fee schedule for searching, supplying, and certifying records.* Concurrently, the information in this subpart is being recodified into Part 4 as § 4.42.

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3. By revising Part 4 to read as follows:

PART 4—PUBLIC INFORMATION

Subpart A—Official Testimony and Information

Sec.

Subpart B—General Policy

Subpart C—Procedures and Fees

Subpart D—Exemptions

Subpart E—Limitations on Exemptions

Sec.

Subpart F—Availability of Specific Categories of Records

AUTHORITY: Sec. 201 et seq., Pub. L. 717, 52 Stat. 1040 et seq., as amended (21 U.S.C. 321 et seq.); sec. 1 et seq., Pub. L. 410, 58 Stat. 682 et seq., as amended (42 U.S.C. 201 et seq.); Pub. L. 90-23, 81 Stat. 54-56 as amended by 88 Stat. 1561-1565; (5 U.S.C. 552).

Subpart A—Official Testimony and Information

§ 4.1 Testimony by Food and Drug Administration employees.

(a) No officer or employee of the Food and Drug Administration or of any other office or establishment in the Department of Health, Education, and Welfare, except as authorized by the Commissioner of Food and Drugs pursuant to this section or in the discharge of his official duties under the laws administered by the Food and Drug Administration, shall give any testimony before any tribunal pertaining to any function of the Food and Drug Administration or with respect to any information acquired in the discharge of his official duties.

(b) Whenever a subpena, in appropriate form, has been lawfully served upon an officer or employee of the Food and Drug Administration commanding the giving of any testimony, such officer or employee shall, unless otherwise authorized by the Commissioner, appear in response thereto and respectfully decline to testify on the ground that it is prohibited by this section.

(c) A person who desires testimony from any employee may make written request therefor, verified by oath, directed to the Commissioner setting forth his interest in the matter sought to be disclosed and designating the use to which such testimony will be put in the event of compliance with such request: *Provided*, That a written request therefor made by a health, food, or drug officer, prosecuting attorney, or member of the judiciary of any State, Territory, or political subdivision thereof, acting in his official capacity, need not be verified by oath. If it is determined by the Commissioner, or any other officer or employee of the Food and Drug Administration whom he may designate to act on his behalf for the purpose, that such testimony will be in the public interest and will promote the objectives of the act and the agency, the request may be granted. Where a request for testimony is granted, one or more employees of the Food and Drug Administration may be designated to appear, in response to a subpena, and testify with respect thereto.

§ 4.2 Production of records by Food and Drug Administration employees.

(a) Any request for records of the Food and Drug Administration, whether it be by letter or by a subpena duces tecum or by any other writing, shall be handled pursuant to the procedures established in Subpart B of this part, and shall comply with the rules governing public disclosure established in Subparts C, D, E, and F of this part and in other regulations cross-referenced in § 4.100 (c).

(b) Whenever a subpena duces tecum, in appropriate form, has been lawfully served upon an officer or employee of the Food and Drug Administration commanding the production of any record, such officer or employee shall appear in response thereto, respectfully decline to produce the record on the ground that it is prohibited by this section, and state that the production of the record(s) involved will be handled by the procedures established in this part.

§ 4.3 Certification and authentication of Food and Drug Administration records.

(a) Upon request, the Food and Drug Administration will certify the authenticity of copies of records that are requested to be disclosed pursuant to this

part or will authenticate copies of records previously disclosed.

(b) A request for certified copies of records or for authentication of records shall be sent in writing to the Public Records and Documents Center (HFC–18), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20852.

Subpart B—General Policy

§ 4.20 Policy on disclosure of Food and Drug Administration records.

(a) The Food and Drug Administration will make the fullest possible disclosure of records to the public, consistent with the rights of individuals to privacy, the property rights of persons in trade secrets and confidential commercial or financial information, and the need for the agency to promote frank internal policy deliberations and to pursue its regulatory activities without disruption.

(b) Except where specifically exempt pursuant to the provisions of this part, all Food and Drug Administration records shall be made available for public disclosure.

(c) All nonexempt records shall be made available for public disclosure upon request regardless whether any justification or need for such records has been shown.

§ 4.21 Uniform access to records.

Any record of the Food and Drug Administration that is disclosed in an authorized manner to any member of the public is available for disclosure to all members of the public, except that:

(a) Data and information subject to the exemptions established in § 4.61 for trade secrets and confidential commercial or financial information, and in § 4.63 for personal privacy, shall be disclosed only to the persons for the protection of whom these exemptions exist.

(b) The limited disclosure of records permitted in § 1.6(c)(1) of this chapter for section 305 hearing records, in § 4.80(b) regarding certain limitations on exemptions, in § 4.103(b) for certain correspondence, and in § 4.104(b) for certain summaries of oral discussions, shall be subject to the special rules stated therein.

§ 4.22 Partial disclosure of records.

If a record contains both disclosable and nondisclosable information, the nondisclosable information will be deleted and the remaining record will be disclosed unless the two are so inextricably intertwined that it is not feasible to separate them or release of the disclosable information would compromise or impinge upon the nondisclosable portion of the record.

§ 4.23 Request for existing records.

(a) Any written request to the Food and Drug Administration for existing records not prepared for routine distribution to the public shall be deemed to be a request for records pursuant to the Freedom of Information Act, whether or not the Freedom of Information Act is mentioned in the request, and shall be governed by the provisions of this part.

(b) Records or documents prepared by the Food and Drug Administration for routine public distribution, e.g., pamphlets, speeches, and educational materials, shall be furnished free of charge upon request as long as the supply lasts. The provisions of this part shall not be applicable to such requests except when the supply of such material is exhausted and it is necessary to reproduce individual copies upon specific request.

(c) All existing Food and Drug Administration records are subject to routine destruction according to standard record retention schedules.

§ 4.24 Preparation of new records.

(a) The Freedom of Information Act and the provisions of this part apply only to existing records that are reasonably described in a request filed with the Food and Drug Administration pursuant to the procedures established in Subpart C of this part.

(b) The Commissioner may, in his discretion, prepare new records in order to respond adequately to a request for information when he concludes that it is in the public interest and promotes the objectives of the act and the agency.

§ 4.25 Retroactive application of regulations.

The provisions of this part apply to all records in Food and Drug Administration files.

§ 4.26 Indexes of certain records.

(a) Indexes shall be maintained, and revised at least quarterly, for the following Food and Drug Administration records:

(1) Final orders published in the FEDERAL REGISTER with respect to every denial or withdrawal of approval of a new drug application or a new animal drug application for which a public hearing has been requested.

(2) Statements of policy and interpretation adopted by the agency and still in force and not published in the FEDERAL REGISTER.

(3) Administrative staff manuals and instructions to staff that affect a member of the public.

(b) A copy of each such index is available at cost from the Public Records and Documents Center (HFC–18), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20852.

§ 4.27 Submission of records marked as confidential.

Marking records submitted to the Food and Drug Administration as confidential, or with any other similar term, raises no obligation by the Food and Drug Administration to regard such records as confidential, to return them to the person who has submitted them, to review them pursuant to the procedures established in § 4.44, to withhold them from disclosure to the public, or to advise the person submitting them when a request for their public disclosure is received or when they are in fact disclosed.

§ 4.28 Food and Drug Administration determinations of confidentiality.

A determination that data or information submitted to the Food and Drug Administration will be held in confidence and will not be available for public disclosure shall be made only in the form of a regulation published or cross-referenced in this part or by a written determination pursuant to the procedure established in § 4.44.

§ 4.29 Prohibition on withdrawal of records from Food and Drug Administration files.

Except pursuant to the procedure established in § 4.44 for presubmission review of records, no person may withdraw records submitted to the Food and Drug Administration. All Food and Drug Administration records shall be retained by the agency until disposed of pursuant to routine record disposal procedures.

§ 4.30 Food and Drug Administration Public Records and Documents Center.

(a) The office responsible for agency compliance with the Freedom of Information Act and this part is:

Public Records and Documents Center (HFC–18)
Food and Drug Administration
Rm. 4–62
5600 Fishers Lane
Rockville, MD 20852

(b) All requests for agency records shall be sent in writing to this office.

§ 4.31 Permanent file of requests for Food and Drug Administration records.

The Food and Drug Administration shall maintain a permanent file of all requests for Food and Drug Administration records and all responses thereto, including a copy of all of the records furnished in response to a request. This file is available for public review during working hours.

§ 4.32 Disclosure of Food and Drug Administration employee names.

The names of Food and Drug Administration employees will not be deleted from disclosable records except where such deletion is necessary to prevent disclosure of an informant or danger to the life or physical safety of the employee or under other extraordinary circumstances.

Subpart C—Procedures and Fees

§ 4.40 Filing a request for records.

(a) All requests for Food and Drug Administration records shall be filed in writing by mailing the request or delivering it to the Public Records and Documents Center (HFC–18), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20852.

(b) A request for Food and Drug Administration records shall reasonably describe the records being sought, in a way that they can be identified and located. A request should include all pertinent details that will help identify the records sought.

(1) If the description is insufficient to locate the records requested, the Food and Drug Administration will so notify the person making the request and indicate the additional information needed to identify the records requested.

(2) Every reasonable effort shall be made by the Food and Drug Administration to assist in the identification and location of the records sought.

(c) Upon receipt of a request for records, the Public Records and Documents Center shall enter it in a public log. The log shall state the date and time received, the name and address of the person making the request, the nature of the records requested, the action taken on the request, the date of the determination letter sent pursuant to § 4.41(b), the date(s) any records are subsequently furnished, the number of staff-hours and grade levels of oersons who spent time responding to the request, and the payment requested and received.

§ 4.41 Time limitations.

(a) All time limitations established pursuant to this section shall begin as of the time at which a request for records is logged in by the Public Records and Documents Center pursuant to § 4.40(c). An oral request for records shall not begin any time requirement. A written request for records sent elsewhere within the agency shall not begin any time requirement until it is redirected to the Public Records and Documents Center and is logged in there in accordance with § 4.40(c).

(b) Within 10 working days (excepting Saturdays, Sundays, and legal public holidays) after a request for records is logged in at the Public Records and Documents Center, a letter shall be sent to the person making the request determining whether, or the extent to which, the agency will comply with the request, and, if any records are denied, the reasons therefor.

(1) If all of the records requested have been located and a final determination has been made with respect to disclosure of all of the records requested, the letter shall so state.

(2) If all of the records have not been located or a final determination has not yet been made with respect to disclosure of all of the records requested, e.g., because it is necessary to consult the person affected pursuant to § 4.45, the letter shall state the extent to which the records involved shall be disclosed pursuant to the rules established in this part.

(3) In the following unusual circumstances, the time for sending this letter may be extended for up to an additional 10 working days by written notice to the person making the request setting forth the reasons for such extension and the time within which a determination is expected to be dispatched:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the Public Records and Documents Center.

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request.

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the Food and Drug Administration having substantial subject-matter interest therein.

(4) If any record is denied, the letter shall state the right of the person requesting such records to appeal any adverse determination to the Assistant Secretary for Health, Department of Health, Education, and Welfare, in accordance with the provisions of 45 CFR 5.82.

(5) If the request for records will result in a fee of more than $25.00, the letter shall specify or estimate the fee involved and shall require prepayment, as well as payment of any amount not yet received as a result of any previous request, before the records are made available. If the fee is less than $25.00, prepayment shall not be required unless payment has not yet been received for records disclosed as a result of a previous request.

(c) Whenever possible, the determination letter required by paragraph (b) of this section, relating to a request for records that involves a fee of less than $25.00, shall be accompanied by the requested records. Where this is not possible, the records shall be forwarded as soon as possible thereafter, consistent with other obligations of the agency.

(d) For requests for records involving a fee of more than $25.00, the records shall be forwarded as soon as possible after receipt of prepayment from the person requesting the records, consistent with other obligations of the agency.

§ 4.42 Fees.

(a) Unless waived in accordance with the provisions of § 4.43, the following fees shall be imposed for disclosure of any record pursuant to this part.

(1) *Copying of records.* Ten cents per copy of each page.

(2) *Copying of microfilm or microfiche.* Fifty cents per microfilm frame or microfiche.

(3) *Computerized records.* The sum of the actual costs of:

(i) The computer time involved, based upon the prevailing level of cost to government organizations and upon the particular types of computer and associated equipment and the amounts of time on such equipment that are utilized.

(ii) The supplies or materials necessary to produce the requested records.

(iii) The services of the personnel in accordance with paragraphs (a) (4) and (5) of this section.

(4) *Clerical searches.* $1.25 for each one-quarter hour spent by clerical personnel searching for and producing a requested record, including time spent copying any record.

(5) *Nonclerical searches.* $3.75 for each one-quarter hour spent by professional or managerial personnel searching for and producing a requested record, including time spent copying any record.

(6) *Certification or authentication of records.* $3.00 per certification or authentication.

(7) *Forwarding material to destination.* Postage, insurance, and special fees will be charged on an actual cost basis.

(b) No charge shall be made for the time spent in resolving legal or policy issues or in examining records for the purpose of deleting nondisclosable portions thereof.

(c) Payment shall be made by check or money order payable to "Food and Drug Administration," and shall be sent to the Accounting Operations Branch (HFA–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20852.

§ 4.43 Waiver of fees.

(a) No fee shall be charged for disclosure of records pursuant to this part where:

(1) The cost of providing the records is less than $5.00. In making this determination, the cost of other requests by the same individual or organization, or related individuals or organizations, shall be aggregated.

(2) The records are requested by a congressional committee or subcommittee or the General Accounting Office.

(3) The records are requested by a Federal department or agency.

(4) The records are requested by a Federal court.

(5) The records are requested by a foreign government or by a State or local goyernment or any agency thereof for purposes that are in the public interest and will promote the objectives of the act and the agency.

(b) The Assistant Commissioner for Public Affairs may waive payment of fees when he determines, based upon a petition, that the person making the request for records is indigent and that the disclosure has a strong public interest justification. All statement. made in any such petition are subject to the False Reports to the Government Act, 18 U.S.C. 1001. A person shall be deemed to be indigent for the purposes of this section if he does not have income or resources sufficient to pay the fees involved. Determinations pursuant to this provision will be made within the discretion of the agency.

(c) The Assistant Commissioner for Public Affairs may reduce or waive payment of fees when he determines, based upon a verified petition, that such reduction or waiver is in the public interest because furnishing the information can be considered primarily as benefiting the general public.

(1) Any such petition shall contain a statement of the intended purpose to which the records requested will be put, showing how it will primarily benefit the general public, and, if the total fee would otherwise exceed $25.00, a statment of

the reason why the volume of records requested is necessary and a statement of the income and financial resources available to the person making the request.

(2) The Assistant Commissioner for Public Affairs may make available part of the records requested, or different records from those requested, in response to any such request for waiver of fees where he concludes that such records adequately meet that part of the request which is in the public interest.

(3) In making a determination of the broad public interest involved, the Assistant Commissioner for Public Affairs will weigh the agency resources involved against the likely benefit to the public.

(4) Determinations pursuant to this provision will be made within the discretion of the agency.

(d) No fee shall be charged if a record requested is not found or for any record that is totally exempt from disclosure.

§ 4.44 Presubmission review of request for confidentiality of voluntarily submitted data or information.

(a) Any person who is considering submission of data or information voluntarily to the Food and Drug Administration may forward to the Director of the Bureau involved, or to the Associate Commissioner for Compliance, a request for presubmission review of the records involved to determine whether the Food and Drug Administration will or will not make part or all of them available for public disclosure upon request if they are submitted. Any such request shall state why the data or information involved fall within an exemption from public disclosure set out in Subpart D of this part and shall enclose the records involved.

(b) Pending a determination upon such request, the records involved shall be held confidentially and separately by the Food and Drug Administration and shall not be received as part of Food and Drug Administration files.

(c) Pursuant to such a request, the Food and Drug Administration shall make a determination whether part or all of the records involved will be made available for public disclosure upon request if they are submitted. A determination of confidentiality will be made only if it is concluded that the data or information involved fall within an exemption from public disclosure set out in Subpart D of this part and are relevant to and important for agency activity.

(d) After a determination is made pursuant to this section, the Food and Drug Administration shall receive as part of its files the records for which a request for confidentiality has been granted and shall so mark or designate those records. The person requesting the presubmission review shall have the option of submitting or withdrawing the records for which a request for confidentiality has been denied. No copy or summary of records withdrawn pursuant to this section, or any correspondence or memoranda or records relating thereto, shall be retained in Food and Drug Administration files.

(e) A determination of confidentiality pursuant to this section is subject to the limitations established in Subpart E of this part except that the data or information involved shall not be subject to discretionary release pursuant to § 4.82. Such a determination of confidentiality by the Food and Drug Administration means that the Food and Drug Administration will not make the data or information involved available for public disclosure unless ordered to do so by a court.

(f) A determination based upon a presubmission review pursuant to this section shall be made in writing and shall be signed only by the Assistant Commissioner for Public Affairs.

(g) Data and information that may be required to be submitted to the Food and Drug Administration but that are submitted voluntarily instead are not subject to the provisions of this section and will be handled as if they had been required to be submitted.

(h) No request under this section shall be accepted if the status of the records involved is already determined by § 4.111 or by any other regulation published or cross-referenced in this part.

§ 4.45 Situations in which confidentiality is uncertain.

In situations where the confidentiality of data or information is uncertain and there is a request for public disclosure, the Food and Drug Administration will consult with the person who has submitted or divulged the data or information or who would be affected by disclosure before determining whether or not such data or information is available for public disclosure.

§ 4.46 Judicial review of proposed disclosure.

Where the Food and Drug Administration consults with a person who will be affected by a proposed disclosure of data or information contained in Food and Drug Administration records pursuant to § 4.45, and rejects the person's request that part or all of the records not be made available for public disclosure, the decision constitutes final agency action that is subject to judicial review pursuant to 5 U.S.C. chapter 7. The person affected will be permitted 5 days after receipt of notification of such decision within which to institute suit in a United States District Court to enjoin release of the records involved. If suit is brought, the Food and Drug Administration will not disclose the records involved until the matter and all related appeals have been concluded.

§ 4.47 Denial of request for records.

(a) A denial of a request for records, in whole or in part, shall be signed by the Assistant Commissioner for Public Affairs.

(b) The name and title or position of each person who participated in the denial of a request for records shall be set forth in the letter denying the request. This requirement may be met by attaching a list of such individuals to the letter.

(c) A letter denying a request for records, in whole or in part, shall state the reasons for the denial and shall state that an appeal may be made to the Assistant Secretary for Health, Department of Health, Education, and Welfare, pursuant to the provisions of 45 CFR 5.82.

(d) Deletion of nondisclosable data and information from disclosable records shall not be deemed to be a denial of a request for records.

§ 4.48 Nonspecific and overly burdensome requests.

The Food and Drug Administration will make every reasonable effort to comply fully with all requests for disclosure of nonexempt records. Nonspecific requests or requests for a large number of documents that require the deployment of a substantial amount of agency manhours to search for and compile will be processed taking into account the staff-hours required, the tasks from which these resources must be diverted, the impact that this diversion will have upon the agency's consumer protection activities, and the public policy reasons justifying the requests. A decision on the processing of such a request for information shall be made after balancing the public benefit to be gained by the disclosure against the public loss that will result from diverting agency personnel from their other responsibilities. In any situation in which it is determined that a request for voluminous records would unduly burden and interfere with the operations of the Food and Drug Administration, the person making the request will be asked to be more specific and to narrow the request, and to agree on an orderly procedure for the production of the requested records, in order to satisfy the request without disproportionate adverse effects on agency operations.

§ 4.49 Referral to primary source of records.

Upon receipt of a request for a record or document which is contained in Food and Drug Administration files but which is available elsewhere at a lower cost, the person requesting the record or document shall be referred to the primary source of the record or document.

§ 4.50 Availability of records at National Technical Information Service.

The Food and Drug Administration is furnishing a number of records to the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22152, which reproduces and distributes such information to the public at cost. A single copy of each such record shall be available for public review at the Food and Drug Administration. All persons requesting copies of such records shall be answered by referring the person requesting the records to NTIS.

§ 4.51 Use of private contractor for copying.

The Food and Drug Administration may furnish requested records to a private contractor for copying after deletion of all nondisclosable data and information. Under these circumstances, the Food and Drug Administration will

charge the person requesting the records for all of the fees involved pursuant to § 4.42.

§ 4.52 Request for review without copying.

(a) A person requesting disclosure of records shall be permitted an opportunity to review them without the necessity for copying them where the records involved contain only disclosable data and information. Under these circumstances, the Food and Drug Administration will charge only for the costs of searching for the records.

(b) Where a request is made for review of records without copying, and the records involved contain both disclosable and nondisclosable information, the records containing nondisclosable information shall first be copied with the nondisclosable information blocked out and the Food and Drug Administration will charge for the costs of searching and copying.

§ 4.53 Indexing trade secrets and confidential commercial or financial information.

If a court requires the Food and Drug Administration to itemize and index records that the Food and Drug Administration has determined to be exempt from public disclosure as trade secrets or confidential commercial or financial information pursuant to § 4.61, the Food and Drug Administration will so inform the person affected, i.e., the person who submitted the records, and will require that such person undertake the itemization and indexing of the records and to intervene to defend the exempt status of the records. The failure of the affected person to itemize and index such disputed records and to intervene to defend the exempt status of the records will constitute a waiver by such person of such exemption, and the Food and Drug Administration will promptly make them available for public disclosure.

Subpart D—Exemptions

§ 4.60 Applicability of exemptions.

(a) The exemptions established in this subpart shall apply to all Food and Drug Administration records, except as provided in Subpart E of this part. Accordingly, a record that is ordinarily available for public disclosure in accordance with the provisions in Subpart F of this part or of another regulation cross-referenced in § 4.100(c) is not available for such disclosure to the extent that it falls within an exemption contained in this subpart, except as provided by the limitations on exemptions specified in Subpart E of this part. For example, correspondence that is ordinarily disclosable under § 4.103 is not disclosable to the extent that it contains trade secrets exempt from disclosure under § 4.61 and is not subject to discretionary release under § 4.82.

(b) Where application of one or more exemptions results in a record being disclosable in part and nondisclosable in part, the rule established in § 4.22 shall apply.

§ 4.61 Trade secrets and commercial or financial information which is privileged or confidential.

(a) A trade secret may consist of any formula, pattern, device, or compilation of information which is used in one's business and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.

(b) Commercial or financial information that is privileged or confidential means valuable data or information which is used in one's business and is of a type customarily held in strict confidence or regarded as privileged and not disclosed to any member of the public by the person to whom it belongs.

(c) Data and information submitted or divulged to the Food and Drug Administration which fall within the definitions of a trade secret or confidential commercial or financial information are not available for public disclosure.

§ 4.62 Inter- or intra-agency memoranda or letters.

All communications within the Executive Branch of the Federal government which are in written form or which are subsequently reduced to writing may be withheld from public disclosure except that factual information which is reasonably segregable in accordance with the rule established in § 4.22 is available for public disclosure.

§ 4.63 Personnel, medical, and similar files, disclosure of which constitutes a clearly unwarranted invasion of personal privacy.

(a) The names or other information which would identify patients or research subjects in any medical or similar report, test, study, or other research project shall be deleted before the record is made available for public disclosure.

(b) The names and other information which would identify patients or research subjects should be deleted from any record before it is submitted to the Food and Drug Administration. If the Food and Drug Administration subsequently needs the names of such individuals, a separate request will be made.

(c) Requests for deletion of business or product names prior to disclosure of any record to the public shall not be granted on the ground of privacy, but such deletion may be justified under another exemption established in this subpart, e.g., the exemption for trade secrets and confidential commercial or financial information under § 4.61.

(d) Names of individuals conducting investigations, studies, or tests on products or ingredients shall not be deleted prior to disclosure of any record to the public unless extraordinary circumstances are shown.

(e) A request for all records relating to a specific individual will be denied as a clearly unwarranted invasion of personal privacy unless accompanied by the written consent of the individual named.

§ 4.64 Investigatory records compiled for law enforcement purposes.

(a) An investigatory record for law enforcement purposes may be withheld from public disclosure pursuant to the provisions of this section to the extent that disclosure of such records would:

(1) Interfere with enforcement proceedings.

(2) Deprive a person of a right to a fair trial or an impartial adjudication.

(3) Constitute an unwarranted invasion of personal privacy.

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source.

(5) Disclose investigative techniques and procedures.

(6) Endanger the life or physical safety of law enforcement personnel.

(b) Investigatory records include all records relating to regulatory enforcement action, including both administrative and court action, which have not been disclosed to any member of the public, including any person who is the subject of the investigation.

(c) Any investigatory record which is disclosed to any person, including any person who is the subject of a Food and Drug Administration investigation, and any data or information received from any person who is the subject of a Food and Drug Administration investigation relating to such investigation, is available for public disclosure at that time in accordance with the rule established in § 4.21, except that:

(1) Disclosure of such records shall be subject to the other exemptions established in this subpart and to the limitations on exemptions established in Subpart E of this part.

(2) The record of a section 305 hearing shall be available for public disclosure only in accordance with the provisions of § 1.6(c) of this chapter.

(d) Investigatory records for law enforcement purposes shall be subject to the following rules:

(1) No such record is available for public disclosure prior to the consideration of regulatory enforcement action based upon that record's being closed, except as provided in § 4.82. The Commissioner will exercise his discretion to disclose records relating to possible criminal prosecution pursuant to § 4.82 prior to consideration of criminal prosecution being closed only very rarely and only under circumstances that demonstrate a compelling public interest.

(2) After the consideration of regulatory enforcement action is closed, such records shall be made available for public disclosure except to the extent that other exemptions from disclosure in this subpart are applicable. No statements of witnesses obtained through promises of

confidentiality are available for public disclosure.

(3) The consideration of regulatory enforcement action based upon a particular record shall be deemed to be closed within the meaning of this section:

(i) If it relates to administrative action, when a final decision has been made not to take such action or such action has been taken and the matter has been concluded.

(ii) If it relates to court action, when a final decision has been made not to recommend such action to a United States attorney based upon that record, or a recommendation has been finally refused by a United States attorney, or court action has been instituted and the matter and all related appeals have been concluded, or the statute of limitations runs.

(iii) If it relates to both administrative and court action, when the events described in both paragraphs (d)(3)(i) and (d)(3)(ii) of this section have occurred.

(4) Prior to disclosure of any record specifically reflecting consideration of possible criminal prosecution of any individual, all names and other information that would identify an individual who was considered for criminal prosecution but who was not prosecuted shall be deleted unless the Commissioner concludes that there is a compelling public interest in the disclosure of such names.

(e) Names and other information that would identify a Food and Drug Administration employee shall be deleted from investigatory records prior to public disclosure only pursuant to § 4.32.

Subpart E—Limitations on Exemptions

§ 4.80 Applicability of limitations on exemptions.

(a) The limitations on exemptions established in this subpart shall apply to all Food and Drug Administration records, except as specifically provided herein. Accordingly, a record that is ordinarily exempt from public disclosure in accordance with the provisions in Subpart D of this part is available for such disclosure to the extent that it falls within a limitation on the exemption contained in this subpart. For example, an investigatory record that is ordinarily exempt from disclosure under § 4.64 is disclosable to Congress in accordance with the provisions of § 4.87.

(b) Disclosure of a record to any member of the public pursuant to the provisions in § 4.81, data and information previously disclosed to the public, in § 4.82, discretionary disclosure by the Commissioner, and in § 4.83, disclosure pursuant to a court order, shall invoke the rule established in § 4.21 that the record shall be made available for disclosure to all members of the public who request it. Disclosure of a record only to the limited categories of persons and under the conditions specified in § 4.84, special government employees, in § 4.85, other Federal government departments and agencies, in § 4.86, in camera disclosure in administrative or court proceedings, in § 4.87(b), Congress, in § 4.88, State and local government officials, and in § 4.89, foreign government officials, which does not result in disclosure of the record to any member of the public in an authorized manner, shall not invoke the rule established in § 4.21.

(c) Disclosure to government employees and special government employees of records exempt from public disclosure shall subject those persons to the same restrictions with respect to the disclosure of such records as any Food and Drug Administration employee.

§ 4.81 Data and information previously disclosed to the public.

(a) Any Food and Drug Administration record that is otherwise exempt from public disclosure pursuant to Subpart D of this part is available for public disclosure to the extent that it contains data or information that have previously been disclosed in a lawful manner to any member of the public, other than an employee or consultant or pursuant to other commercial arrangements with appropriate safeguards for secrecy.

(1) For purposes of this section, an individual shall be deemed to be a consultant only if disclosure of the information was necessary in order to perform that specific consulting service and the purpose of the disclosure was solely to obtain that service. The number of consultants who have received such information shall have been limited to the number reasonably needed to perform that particular consulting service.

(2) For purposes of this section, other commercial arrangements shall include licenses, contracts, and similar legal relationships between business associates.

(b) Any data or information furnished to the Food and Drug Administration for a presubmission review pursuant to the procedure established in § 4.44 shall be accompanied by a statement that the information has not previously been published or disclosed to anyone other than as provided in paragraph (a) of this section.

(c) Any statement relating to prior public disclosure is subject to the False Reports to the Government Act, 18 U.S.C. 1001.

§ 4.82 Discretionary disclosure by the Commissioner.

(a) Except as provided in paragraph (b) of this section, the Commissioner may, in his discretion, disclose part or all of any Food and Drug Administration record that is otherwise exempt from disclosure pursuant to Subpart D of this part. The Commissioner shall exercise his discretion to disclose such records whenever he determines that such disclosure is in the public interest, will promote the objectives of the act and the agency, and is consistent with the rights of individuals to privacy, the property rights of persons in trade secrets, and the need for the agency to promote frank internal policy deliberations and to pursue its regulatory activities without disruption.

(b) The Commissioner shall not make available for public disclosure any record that is:

(1) Exempt from public disclosure pursuant to § 4.61.

(2) Exempt from public disclosure pursuant to § 4.63.

(3) Prohibited from public disclosure pursuant to 21 U.S.C. 331(j), 42 U.S.C. 263g(d), 42 U.S.C. 263i, or 18 U.S.C. 1905.

(c) Discretionary disclosure of a record pursuant to this section shall invoke the requirement that the record shall be disclosed to any person who requests it pursuant to § 4.21, but shall not set a precedent for discretionary disclosure of any similar or related record and shall not obligate the Commissioner to exercise his discretion to disclose any other record that is exempt from disclosure.

§ 4.83 Disclosure required by court order.

Records of the Food and Drug Administration which the Commissioner has determined are not available for public disclosure, either in the form of a regulation published or cross-referenced in this part or by a written determination pursuant to the procedure established in § 4.44, shall nevertheless be made available for public disclosure in compliance with a final court order requiring such disclosure.

§ 4.84 Disclosure to consultants, advisory committees, State and local government officials commissioned pursuant to 21 U.S.C. 372(a), and other special government employees.

Data and information otherwise exempt from public disclosure may be disclosed to Food and Drug Administration consultants, advisory committees, State and local government officials commissioned pursuant to 21 U.S.C. 372(a), and other special government employees for use only in their work with the Food and Drug Administration. Such persons are thereafter subject to the same restrictions with respect to the disclosure of such data and information as any other Food and Drug Administration employee.

§ 4.85 Disclosure to other Federal government departments and agencies.

Any Food and Drug Administration record otherwise exempt from public disclosure may be disclosed to other Federal government departments and agencies, except that trade secrets prohibited by 21 U.S.C. 331(j) from disclosure outside the Department of Health, Education, and Welfare may be disclosed only to a department or agency that has concurrent jurisdiction over the matter and separate legal authority to obtain the specific information involved. Any disclosure under this section shall be pursuant to an agreement that the record shall not be further disclosed by the other department or agency except with the written permission of the Food and Drug Administration.

§ 4.86 Disclosure in administrative or court proceedings.

Data and information otherwise exempt from public disclosure may be revealed in Food and Drug Administration administrative or court proceedings where the data or information are relevant. The Food and Drug Administration will request that the data or information be held in camera and that any other appropriate measures be taken to reduce disclosure to the minimum necessary under the circumstances.

§ 4.87 Disclosure to Congress.

(a) All records of the Food and Drug Administration shall be disclosed to Congress upon an authorized request, except for trade secrets prohibited by 21 U.S.C. 331(j) from disclosure outside the Department of Health, Education, and Welfare.

(b) An authorized request for Food and Drug Administration records by Congress shall be made by the chairman of a committee or subcommittee of Congress acting pursuant to committee business.

(c) An individual member of Congress who requests a record for his own use or on behalf of any constituent shall be subject to the same rules in this part that apply to any other member of the public.

§ 4.88 Communications with State and local government officials.

(a) A State or local government official commissioned by the Food and Drug Administration pursuant to 21 U.S.C. 372(a) shall have the same status with respect to disclosure of Food and Drug Administration records as any special government employee.

(b) Communications with State and local government officials with respect to law enforcement activities undertaken pursuant to a contract between the Food and Drug Administration and such officials shall be subject to the rules for public disclosure established in § 4.64.

(c) Communications with State and local government officials who are not commissioned pursuant to 21 U.S.C. 372(a) or under a contract to perform law enforcement activities shall have the same status as communications with any member of the public, except that:

(1) Investigatory records compiled for law enforcement purposes by State and local government officials who perform counterpart functions to the Food and Drug Administration at the State and local level, and trade secrets and confidential commercial or financial information obtained by such officials, which are voluntarily disclosed to the Food and Drug Administration as part of cooperative law enforcement and regulatory efforts, shall be exempt from public disclosure to the same extent to which the records would be so exempt pursuant to §§ 4.61 and 4.64, as if they had been prepared by or submitted directly to Food and Drug Administration employees, except that investigatory records shall be exempt from disclosure for a longer period of time if the State or local government officials so require as a condition of their furnishing the information to the Food and Drug Administration.

(2) Disclosure of investigatory records compiled for law enforcement purposes by the Food and Drug Administration to State and local government officials who perform counterpart functions to the Food and Drug Administration at the State and local level as part of cooperative law enforcement efforts does not invoke the rule established in § 4.21 that such records shall be made available for disclosure to all members of the public.

§ 4.89 Communications with foreign government officials.

Communications with foreign government officials shall have the same status as communications with any member of the public, except that:

(a) Investigatory records compiled for law enforcement purposes by foreign government officials who perform counterpart functions to the Food and Drug Administration in a foreign country, and trade secrets and confidential commercial or financial information obtained by such officials, which are voluntarily disclosed to the Food and Drug Administration as part of cooperative law enforcement and regulatory efforts, shall be exempt from public disclosure to the same extent to which the records would be so exempt pursuant to §§ 4.61 and 4.64, as if they had been prepared by or submitted directly to Food and Drug Administration employees, except that investigatory records shall be exempt from disclosure for a longer period of time if the foreign government officials so require as a condition of their furnishing the information to the Food and Drug Administration.

(b) Disclosure of investigatory records compiled for law enforcement purposes by the Food and Drug Administration to foreign government officials who perform counterpart functions to the Food and Drug Administration in a foreign country as part of cooperative law enforcement efforts does not invoke the rule established in § 4.21 that such records shall be made available for disclosure to all members of the public.

§ 4.90 Use of data or information for administrative or court enforcement action.

Nothing in this part or this chapter shall prevent the Food and Drug Administration from using any data or information, whether obtained voluntarily or involuntarily and whether or not it is available for public disclosure, as the basis for taking any administrative or court enforcement action within its jurisdiction. Data and information otherwise exempt from public disclosure are nevertheless available for public disclosure to the extent necessary to effectuate such action, e.g., the brand name, code designation, and distribution information are released when a product is recalled.

Subpart F—Availability of Specific Categories of Records

§ 4.100 Applicability; cross-reference to other regulations.

(a) The provisions set forth in this subpart or cross-referenced in paragraph (c) of this section state the way in which specific categories of Food and Drug Administration records are handled upon a request for public disclosure. The exemptions established in Subpart D of this part and the limitations on exemptions established in Subpart E of this part shall be applicable to all Food and Drug Administration records, as provided in §§ 4.60 and 4.80. Accordingly, a record that is ordinarily available for public disclosure in accordance with this part or under other regulations is not available for such disclosure to the extent that it falls within an exemption contained in Subpart D of this part except as provided by the limitations on exemptions specified in Subpart E of this part.

(b) The Commissioner, on his own initiative or on the petition of any interested person, may amend this subpart or promulgate and cross-reference additional regulations to state the status of additional categories of documents to settle pending questions or to reflect court decisions.

(c) In addition to the provisions of this part, rules on the availability of the following specific categories of Food and Drug Administration records are established by regulations in this chapter:

(1) Section 305 hearing records, in § 1.6(c) of this chapter.

(2) Flavor ingredient records and notes, in § 1.12(i)(4)(iv) of this chapter.

(3) Environmental impact analysis reports and draft and final environmental impact statements, in §§ 6.1(h) and 6.6 of this chapter.

(4) Color additive petitions, in § 8.9 of this chapter.

(5) Food standard temporary permits, in § 10.5(k) of this chapter.

(6) Information on thermal processing of low-acid foods packaged in hermetically sealed containers, in § 90.20(c)(4) of this chapter.

(7) Food additive petitions, in § 121.51 (h) of this chapter.

(8) Action levels for natural and unavoidable defects in food for human use, in § 128.10(e) of this chapter.

(9) Drug establishment registrations and drug listings, in § 132.9 of this chapter.

(10) Investigational new animal drug notices, in § 135.33 of this chapter.

(11) New animal drug application files, in § 135.33a of this chapter.

(12) Investigational new animal drug notice and a new animal drug application file for an antibiotic drug, in § 146.16 of this chapter.

(13) Methadone patient records, in § 310.505(g) of this chapter.

(14) Investigational new drug notice, in § 312.5 of this chapter.

(15) Labeling for and lists of approved new drug applications, in § 314.10 of this chapter.

(16) Master files for new drug applications, in § 314.11 of this chapter.
(17) New drug application file, in § 314.14 of this chapter.
(18) Data and information submitted for in vitro diagnostic products, in § 328.4 of this chapter.
(19) Data and information submitted for OTC drug review, in § 330.10(a)(2) of this chapter.
(20) Investigational new drug notice for an antibiotic drug, in § 431.70 of this chapter.
(21) Antibiotic drug file, in § 431.71 of this chapter.
(22) Data and information submitted for biologics review, in § 601.25(b)(2) of this chapter.
(23) Investigational new drug notice for a biological product, in § 601.50 of this chapter.
(24) Applications for establishment and product licenses for biological products, in § 601.51 of this chapter.
(25) Cosmetic establishment registrations, in § 710.7 of this chapter.
(26) Cosmetic product ingredient and cosmetic raw material composition statements, in § 720.8 of this chapter.
(27) Cosmetic product experience reports, in § 730.7 of this chapter.
(28) Electronic product information, in §§ 1002.4 and 1002.42 of this chapter.

§ 4.101 Administrative enforcement records.

(a) All Food and Drug Administration records relating to administrative enforcement action disclosed to any member of the public, including the person who is the subject of such action, are available for public disclosure at the time such disclosure is first made. Such records include correspondence with companies following factory inspection, recall or detention requests, notice of refusal of admission of an imported product, regulatory letters, information letters, Forms FD–483 and FD–2275 furnished to companies after factory inspection, and similar records.

(b) To the extent that any of such records fall within the exemption for investigatory records established in § 4.64, the Commissioner determines that they are subject to discretionary release pursuant to § 4.82.

(c) Records relating to administrative enforcement action that are not disclosed to any member of the public constitute investigatory records that are subject to the rules for disclosure established in § 4.64. For example, an establishment inspection report is an investigatory record and thus subject to § 4.64 except insofar as the Commissioner exercises his discretion to release it pursuant to § 4.82.

§ 4.102 Court enforcement records.

(a) All records and documents filed in the courts are available for public disclosure unless the court orders otherwise. The Food and Drug Administration will make available for public disclosure such records or documents if the agency can determine that it has an accurate copy of the actual record or document filed in the court. If the Food and Drug Administration cannot determine whether it has an accurate copy of such a record or document, the person requesting a copy shall be referred to the court involved.

(b) After a recommendation for court action has been finally refused by a United States attorney, the correspondence with the United States attorney and the Department of Justice with respect to that recommendation, including the pleadings recommended for filing with the court, is available for public disclosure. Prior to disclosure of any record specifically reflecting consideration of possible criminal prosecution of any individual, all names and other information that would identify an individual who was considered for criminal prosecution but who was not prosecuted shall be deleted unless the Commissioner concludes that there is a compelling public interest in the disclosure of such names.

§ 4.103 Correspondence.

(a) All correspondence to and from members of the public, members of Congress, organization or company officials, or other persons, except members of the Executive Branch of the Federal Government and special government employees, is available for public disclosure.

(b) Any such correspondence is available for public disclosure at the time that it is sent or received by the Food and Drug Administration unless a different time for such disclosure is specified in other rules established or cross-referenced in this part, e.g., correspondence relating to an IND notice or an NDA in § 314.14(e)(7) of this chapter.

§ 4.104 Summaries of oral discussions.

(a) All written summaries of oral discussions, whether in person or by telephone, with members of the public, members of Congress, organization or company officials, or other persons, except members of the Executive Branch of the Federal government or special government employees, are available for public disclosure.

(b) Any such summary is available for public disclosure at the time that it is prepared by the Food and Drug Administration unless a different time for such disclosure is specified in other rules established or cross-referenced in this part, e.g., summaries of oral discussions relating to a food additive petition in § 121.51(h)(3) of this chapter.

(c) If more than one summary of an oral discussion exists in a Food and Drug Administration file, all such summaries shall be disclosed in response to any request for such summary.

§ 4.105 Testing and research conducted by or with funds provided by the Food and Drug Administration.

(a) Any list that may be prepared by the Food and Drug Administration of testing and research being conducted by or with funds provided by the Food and Drug Administration is available for public disclosure.

(b) Any contract relating to agency testing and research, and any progress report relating thereto, is available for public disclosure.

(c) The results of all testing or research conducted by or with funds provided by the Food and Drug Administration, such as toxicological testing, compliance assays, methodology studies, and product testing, are available for public disclosure when the final report is complete and accepted by the responsible Food and Drug Administration official, after deletion of any information that would reveal confidential investigative techniques and procedures, e.g., the use of "markers" to document adulteration of a product. If such results are disclosed in an authorized manner to any member of the public before the final report is available, they are immediately available for public disclosure to any member of the public who requests them.

(d) Access to all raw data, slides, worksheets, and other similar working materials shall be provided at the same time that the final report is disclosed.

§ 4.106 Studies and reports prepared by or with funds provided by the Food and Drug Administration.

(a) The following types of reports and studies prepared by or with funds provided by the Food and Drug Administration are available for public disclosure upon their acceptance by the responsible agency official:

(1) Quarterly and annual reports of the agency.
(2) External investigations or review of agency needs and performance.
(3) Surveys, compilations, and summaries of data and information.
(4) Consumer surveys.
(5) Compliance surveys.
(6) Compliance programs, except that names of specific firms, the location of specific activities, and details about sampling numbers or sizes shall be deleted until implementation of the program is completed.
(7) Work plans prepared by Food and Drug Administration bureaus, field offices, and other components, except that names of specific firms, the location of specific activities, and details about sampling numbers or sizes shall be deleted until implementation of the plan is completed.

(b) The following types of reports and studies prepared by or with funds provided by the Food and Drug Administration are not available for public disclosure:

(1) Internal audits of agency needs and performance.
(2) Records relating to the internal planning and budget process.
(3) Legislative proposals or comments prior to submission to Congress.

§ 4.107 Food and Drug Administration manuals.

(a) All Food and Drug Administration staff manuals and instructions to staff that affect a member of the public are available for public disclosure. An

index of all such manuals is available at the Food and Drug Administration Public Records and Documents Center in accordance with § 4.26.

(b) Manuals relating solely to internal personnel rules and practices are not available for public disclosure except to the extent that the Commissioner determines that they should be disclosed pursuant to § 4.82.

(c) All Food and Drug Administration action levels which are used to determine when the agency will take regulatory action against a violative product, limits of sensitivity and variablty of analytical methods which are used in determining whether a product violates the law, and direct reference levels above which Food and Drug Administration field offices may request legal action directly to the office of the General Counsel, are available for public disclosure.

§ 4.108 Agreements between the Food and Drug Administration and other departments, agencies, and organizations.

(a) All written agreements and understandings signed by the Food and Drug Administration and other departments, agencies, and organizations are available for public disclosure.

(b) A permanent file of all such agreements and understandings is available for public review during working hours in the Food and Drug Administration Public Records and Documents Center.

(c) In accordance with the notice published in the FEDERAL REGISTER of October 3, 1974 (39 FR 35697), all such agreements and understandings shall be published in the FEDERAL REGISTER.

§ 4.109 Data and information obtained by contract.

All data and information obtained by the Food and Drug Administration by contract, including all progress reports pursuant to a contract, are available for public disclosure when accepted by the responsible agency official except to the extent that they remain subject to an exemption established in Subpart D of this part, e.g., they relate to law enforcement matters as provided in § 4.88(b).

§ 4.110 Data and information about Food and Drug Administration employees.

(a) The name, title, grade, position description, salary, work address, and work telephone number for every Food and Drug Administration employee are available for public disclosure. The home address and home telephone number of any such employee are not available for public disclosure.

(b) Statistics on the prior employment experience of present agency employees, and subsequent employement of past agency employees, are available for public disclosure.

§ 4.111 Data and information submitted voluntarily to the Food and Drug Administration.

(a) The provisions of this section shall apply only to data and information submitted voluntarily to the Food and Drug Administration, whether in the course of a factory inspection or at any other time, and not as a part of any petition, application, master file, or other required submission or request for action. Data and information that may be required to be submitted to the Food and Drug Administration but that are submitted voluntarily instead are not subject to the provisions of this section and will be handled as if they had been required to be submitted.

(b) A determination that data or information submitted voluntarily will be held in confidence and will not be available for public disclosure shall be made only in the form of a regulation published or cross-referenced in this part or by a written determination pursuant to the procedure established in § 4.44.

(c) The following data and information submitted voluntarily to the Food and Drug Administration are available for public disclosure unless extraordinary circumstances are shown:

(1) All safety, effectiveness, and functionality data and information for a marketed ingredient or product, except as provided in § 330.10(a)(2) of this chapter for OTC drugs.

(2) A protocol for a test or study, unless it is shown to fall within the exemption established in § 4.61 for trade secrets and confidential commercial or financial information.

(3) Adverse reaction reports, product experience reports, consumer complaints, and other similar data and information shall be disclosed as follows:

(i) If submitted by a consumer or user of the product, the record is available for public disclosure after deletion of names and other information that would identify the person submitting the information.

(ii) If submitted by the manufacturer of the product, the record is available for public disclosure after deletion of:

(*a*) Names and any information that would identify the person using the product.

(*b*) Names and any information that would identify any third party involved with the report, such as a phsyician or hospital or other institution.

(*c*) Names and any other information that would identify the manufacturer or the brand designation of the product, but not the type of product or its ingredients.

(iii) If submitted by a third party, such as a physician or hospital or other institution, the record is available for public disclosure after deletion of:

(*a*) Names and any information that would identify the person using the product.

(*b*) Names and any information that would identify any third party involved with the report, such as a physician or hospital or other institution.

(iv) If obtained through a Food and Drug Administration investigation, the record shall have the same status as the initial report which led to the investigation, i.e., it shall be disclosed in accordance with paragraph (c)(3)(i) through (iii) of this section.

(v) Any compilation of data, information, and reports prepared in a way that does not reveal data or information which is not available for public disclosure under this section is available for public disclosure.

(vi) If a person requests a copy of any such record relating to a specific individual or a specific incident, such request will be denied unless accompanied by the written consent to such disclosure of the person who submitted the report to the Food and Drug Administration and the individual who is the subject of the report.

(4) A list of all ingredients contained in a food or cosmetic, whether or not it is in descending order of predominance, or a list of all active ingredients and any inactive ingredients previously disclosed to the public as defined in § 4.81 contained in a drug, or a list of all ingredients or components in a device. A particular ingredient or component or group of ingredients or components shall be deleted from any such list for a cosmetic or device prior to public disclosure upon a determination made pursuant to § 4.44 that the ingredient or ingredients fall within the exemption established in § 4.61 for trade secrets and confidential commercial information, and a notation shall be made that any such ingredient list is incomplete.

(5) An assay method or other analytical method, unless it serves no regulatory or compliance purpose and is shown to fall within the exemption established in § 4.61.

(d) The following data and information submitted voluntarily to the Food and Drug Administration are not available for public disclosure unless they have been previously disclosed to the public as defined in § 4.81 or they relate to a product or ingredient that has been abandoned and they no longer represent a trade secret or confidential commercial or financial information as defined in § 4.61:

(1) All safety, effectiveness, and functionality data and information for a developmental ingredient or product that has not previously been disclosed to the public as defined in § 4.81.

(2) Manufacturing methods or processes, including quality control procedures.

(3) Production, sales, distribution, and similar data and information, except that any compilation of such data and information aggregated and prepared in a way that does not reveal data or information which is not available for public disclosure under this provision is available for public disclosure.

(4) Quantitative or semiquantitative formulas.

(e) For purposes of this regulation, safety, effectiveness, and functionality data include all studies and tests of an ingredient or a product on animals and humans and all studies and tests on the ingredient or product for identity, stability, purity, potency, bioavailability, performance, and usefulness.

§ 4.112 Voluntary drug experience reports submitted by physicians and hospitals.

(a) A voluntary drug experience report to the Food and Drug Administration on Form FD-1639 shall be handled in accordance with the rules established in § 4.111(c)(3)(iii).

(b) If a person requests a copy of any such record relating to a specific individual or a specific incident, such request will be denied unless accompanied by the written consent to such disclosure of the person who submitted the report to the Food and Drug Administration and the individual who is the subject of the report.

§ 4.113 Voluntary product defect reports.

Voluntary reports of defects in products subject to the jurisdiction of the Food and Drug Administration are available for public disclosure:

(a) If the report is submitted by the manufacturer, after deletion of data and information falling within the exemptions established in § 4.61 for trade secrets and confidential commercial or financial information and in § 4.63 for personal privacy.

(b) If the report is submitted by any person other than the manufacturer, after deletion of names and other information that would identify the person submitting the report and any data or information falling within the exemption established in § 4.63 for personal privacy.

§ 4.114 Data and information submitted pursuant to cooperative quality assurance agreements.

Data and information submitted to the Food and Drug Administration pursuant to a cooperative quality assurance agreement shall be handled in accordance with the rules established in § 4.111.

§ 4.115 Product codes for manufacturing or sales dates.

Data or information in Food and Drug Administration files which provide a means for deciphering or decoding a manufacturing date or sales date or use date contained on the label or in labeling or otherwise used in connection with a product subject to the jurisdiction of the Food and Drug Administration are available for public disclosure.

§ 4.116 Drug listing information.

Information submitted to the Food and Drug Administration pursuant to section 510 of the act (21 U.S.C. 360) shall be subject only to the special disclosure provisions established in § 132.9 of this chapter.

§ 4.117 New drug information.

(a) The following computer printouts are available for public inspection in the Food and Drug Administration Public Records and Documents Center:

(1) A numerical listing of all new drug applications and abbreviated new drug applications approved since 1938, showing the NDA number, the trade name, the applicant, the approval date, and, where applicable, the date the approval was withdrawn and the date the Food and Drug Administration was notified that marketing of the product was discontinued.

(2) A numerical listing of all new drug applications and abbreviated new drug applications approved since 1938 which are still approved, showing the same information as is specified in paragraph (a)(1) of this section except that it does not show a withdrawal date.

(b) Other computer printouts containing IND and NDA information are available to the extent that they do not reveal data or information prohibited from disclosure under §§ 4.61, 312.5, and 314.14 of this chapter.

§ 4.118 Advisory committee records.

All advisory committee records shall be handled in accordance with the rules established in Part 2 of this chapter.

PART 8—COLOR ADDITIVES

4. In Part 8, by revising § 8.9 to read as follows:

§ 8.9 Confidentiality of data and information in color additive petitions.

(a) The following data and information in a color additive petition are available for public disclosure, unless extraordinary circumstances are shown, after the notice of filing of the petition is published in the FEDERAL REGISTER or, if the petition is not promptly filed because of deficiencies in it, after the petitioner is informed that it will not be filed because of the deficiencies involved:

(1) All safety and functionality data and information submitted with or incorporated by reference in the petition.

(2) A protocol for a test or study, unless it is shown to fall within the exemption established for trade secrets and confidential commercial information in § 4.61 of this chapter.

(3) Adverse reaction reports, product experience reports, consumer complaints, and other similar data and information, after deletion of:

(i) Names and any information that would identify the person using the product.

(ii) Names and any information that would identify any third party involved with the report, such as a physician or hospital or other institution.

(4) A list of all ingredients contained in a color additive, whether or not it is in descending order of predominance. A particular ingredient or group of ingredients shall be deleted from any such list prior to public disclosure if it is shown to fall within the exemption established in § 4.61 of this chapter, and a notation shall be made that any such ingredient list is incomplete.

(5) An assay method or other analytical method, unless it serves no regulatory or compliance purpose and is shown to fall within the exemption established in § 4.61 of this chapter.

(6) All records showing the Food and Drug Administration's testing of or action on a particular lot of a certifiable color additive.

(b) The following data and information in a color additive petition are not available for public disclosure unless they have been previously disclosed to the public as defined in § 4.81 of this chapter or they relate to a product or ingredient that has been abandoned and they no longer represent a trade secret or confidential commercial or financial information as defined in § 4.61 of this chapter:

(1) Manufacturing methods or processes, including quality control procedures.

(2) Production, sales, distribution, and similar data and information, except that any compilation of such data and information aggregated and prepared in a way that does not reveal data or information which is not available for public disclosure under this provision is available for public disclosure.

(3) Quantitative or semiquantitative formulas.

(c) All correspondence and written summaries of oral discussions relating to a color additive petition are available for public disclosure in accordance with the provisions of Part 4 of this chapter when the color additive regulation is published in the FEDERAL REGISTER.

(d) For purposes of this regulation, safety and functionality data include all studies and tests of a color additive on animals and humans and all studies and tests on a color additive for identity, stability, purity, potency, performance, and usefulness.

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 10—DEFINITIONS AND STANDARDS OF IDENTITY

5. In Part 10, by adding a new paragraph (k) to § 10.5 as follows:

§ 10.5 Temporary permits for interstate shipment of experimental packs of food varying from the requirements of definitions and standards of identity.

* * * * *

(k) All applications for a temporary permit, applications for an extension of a temporary permit, and related records are available for public disclosure when the notice of a permit or extension thereof is published in the FEDERAL REGISTER. Such disclosure shall be in accordance with the rules established in Part 4 of this chapter.

PART 90—EMERGENCY PERMIT CONTROL

6. In Part 90, by adding a new paragraph (l) to § 90.20 to read as follows:

§ 90.20 Thermal processing of low-acid foods packaged in hermetically sealed containers.

* * * * *

(l) The following data and information submitted to the Food and Drug Administration pursuant to this section are not available for public disclosure unless

they have been previously disclosed to the public as defined in § 4.81 of this chapter or they relate to a product or ingredient that has been abandoned and they no longer represent a trade secret or confidential commercial or financial information as defined in § 4.61 of this chapter:

(1) Manufacturing methods or processes, including quality control information.

(2) Production, sales, distribution, and similar data and information, except that any compilation of such data and information aggregated and prepared in a way that does not reveal data or information which is not available for public disclosure under this provision is available for public disclosure.

(3) Quantitative or semiquantitative formulas.

PART 121—FOOD ADDITIVES

7. In Part 121, by revising § 121.51(h) to read as follows:

§ 121.51 Petitions proposing regulations for food additives.

* * * * *

(h)(1) The following data and information in a food additive petition are available for public disclosure, unless extraordinary circumstances are shown, after the notice of filing of the petition is published in the FEDERAL REGISTER or, if the petition is not promptly filed because of deficiencies in it, after the petitioner is informed that it will not be filed because of the deficiencies involved:

(i) All safety and functionality data and information submitted with or incorporated by reference in the petition.

(ii) A protocol for a test or study, unless it is shown to fall within the exemption established for trade secrets and confidential commercial information in § 4.61 of this chapter.

(iii) Adverse reaction reports, product experience reports, consumer complaints, and other similar data and information, after deletion of:

(*a*) Names and any information that would identify the person using the product.

(*b*) Names and any information that would identify any third party involved with the report, such as a physician or hospital or other institution.

(iv) A list of all ingredients contained in a food additive, whether or not it is in descending order of predominance. A particular ingredient or group of ingredients shall be deleted from any such list prior to public disclosure if it is shown to fall within the exemption established in § 4.61 of this chapter, and a notation shall be made that any such ingredient list is incomplete.

(v) An assay method or other analytical method, unless it serves no regulatory or compliance purpose and is shown to fall within the exemption established in § 4.61 of this chapter.

(2) The following data and information in a food additive petition are not available for public disclosure unless they have been previously disclosed to the public as defined in § 4.81 of this chapter or they relate to a product or ingredient that has been abandoned and they no longer represent a trade secret or confidential commercial or financial information as defined in § 4.61 of this chapter:

(i) Manufacturing methods or processes, including quality control procedures.

(ii) Production, sales, distribution, and similar data and information, except that any compilation of such data and information aggregated and prepared in a way that does not reveal data or information which is not available for public disclosure under this provision is available for public disclosure.

(iii) Quantitative or semiquantitative formulas.

(3) All correspondence and written summaries of oral discussions relating to a food additive petition are available for public disclosure in accordance with the provisions of Part 4 of this chapter when the food additive regulation is published in the FEDERAL REGISTER.

(4) For purposes of this regulation, safety and functionality data include all studies and tests of a food additive on animals and humans and all studies and tests on a food additive for identity, stability, purity, potency, performance, and usefulness.

SUBCHAPTER C—DRUGS

PART 135—NEW ANIMAL DRUGS

8. In Part 135:

a. By revising § 135.33 to read as follows:

§ 135.33 Confidentiality of data and information in an investigational new animal drug notice.

(a) The existence of an INAD notice will not be disclosed by the Food and Drug Administration unless it has previously been publicly disclosed or acknowledged.

(b) The availability for public disclosure of all data and information in an INAD file shall be handled in accordance with provisions established in § 135.33a.

b. By adding new § 135.33a to read as follows:

§ 135.33a Confidentiality of data and information in a new animal drug application file.

(a) For purposes of this section the "NADA file" includes all data and information submitted with or incorporated by reference in the NADA, INAD's incorporated into the NADA, supplemental NADA's, reports under §§ 135.14a and 135.14b, master files, and other related submissions. The availability for public disclosure of any record in the NADA file shall be handled in accordance with the provisions of this section.

(b) The existence of an NADA file will not be disclosed by the Food and Drug Administration before an approval has been published in the FEDERAL REGISTER, unless it has previously been publicly disclosed or acknowledged.

(c) If the existence of an NADA file has not been publicly disclosed or acknowledged, no data or information in the NADA file is available for public disclosure.

(d) If the existence of an NADA file has been publicly disclosed or acknowledged before an approval has been published in the FEDERAL REGISTER, no data or information contained in the file is available for public disclosure before such approval is published, but the Commissioner may, in his discretion, disclose a summary of such selected portions of the safety and effectiveness data as are appropriate for public consideration of a specific pending issue, e.g., at an open session of a Food and Drug Administration advisory committee or pursuant to an exchange of important regulatory information with a foreign government.

(e) After an approval has been published in the FEDERAL REGISTER, the following data and information in the NADA file are immediately available for public disclosure unless extraordinary circumstances are shown:

(1) All safety and effectiveness data and information previously disclosed to the public, as defined in § 4.81 of this chapter.

(2) A summary or summaries of the safety and effectiveness data and information submitted with or incorporated by reference in the NADA file. Such summaries do not constitute the full reports of investigations under section 512(b)(1) of the act (21 U.S.C. 360b(b)(1)) on which the safety or effectiveness of the drug may be approved. Such summaries shall consist of the following:

(i) For an NADA approved prior to July 1, 1975, internal agency records that describe such data and information, e.g., a summary of basis for approval or internal reviews of the data and information, after deletion of:

(*a*) Names and any information that would identify the investigators.

(*b*) Any inappropriate gratuitous comments unnecessary to an objective analysis of the data and information.

(ii) For an NADA approved on or after July 1, 1975, a summary of such data and information prepared in one of the following two alternative ways shall be publicly released when the approval is published in the FEDERAL REGISTER.

(*a*) The Bureau of Veterinary Medicine may at an appropriate time prior to approval of the NADA require the applicant to prepare a summary of such data and information, which will be reviewed and, where appropriate, revised by the Bureau.

(*b*) The Bureau of Veterinary Medicine may prepare its own summary of such data and information.

(3) A protocol for a test or study, unless it is shown to fall within the exemption established for trade secrets and confidential commercial information in § 4.61 of this chapter.

(4) Adverse reaction reports, product experience reports, consumer complaints,

and other similar data and information, after deletion of:

(i) Names and any information that would identify the person using the product.

(ii) Names and any information that would identify any third party involved with the report, such as a physician, hospital, or other institution.

(5) A list of all active ingredients and any inactive ingredients previously disclosed to the public as defined in § 4.81 of this chapter.

(6) An assay method or other analytical method, unless it serves no regulatory or compliance purpose and is shown to fall within the exemption established in § 4.61 of this chapter.

(7) All correspondence and written summaries of oral discussions relating to the NADA, in accordance with the provisions of Part 4 of this chapter.

(f) All safety and effectiveness data and information not previously disclosed to the public are available for public disclosure at the time that any one of the following events occurs:

(1) The NADA has been abandoned and no further work is being undertaken with respect to it.

(2) A final determination is made that the NADA is not approvable, and all legal appeals have been exhausted.

(3) Approval of the NADA is withdrawn, and all legal appeals have been exhausted.

(4) A final determination has been made that the animal drug is not a new animal drug.

(5) A final determination has been made that the animal drug may be marketed without submission of such safety and/or effectiveness data and information.

(g) The following data and information in an NADA file are not available for public disclosure unless they have been previously disclosed to the public as defined in § 4.81 of this chapter or they relate to a product or ingredient that has been abandoned and they no longer represent a trade secret or confidential commercial or financial information as defined in § 4.61 of this chapter:

(1) Manufacturing methods or processes, including quality control procedures.

(2) Production, sales, distribution, and similar data and information, except that any compilation of such data and information aggregated and prepared in a way that does not reveal data or information which is not available for public disclosure under this provision is available for public disclosure.

(3) Quantitative or semiquantitative formulas.

(h) For purposes of this regulation, safety and effectiveness data include all studies and tests of an animal drug on animals and all studies and tests on the animal drug for identity, stability, purity, potency, and bioavailability.

PART 146—ANTIBIOTIC DRUGS FOR VETERINARY USE; PROCEDURAL AND INTERPRETIVE REGULATIONS

9. In Part 146, by adding the following new section:

§ 146.16 Confidentiality of data and information in an investigational new animal drug notice and a new animal drug application file for an antibiotic drug.

(a) The rules established in §§ 135.33 and 135.33a of this chapter with regard to the confidentiality of an investigational new animal drug notice and a new animal drug application file shall apply to such notices and files for antibiotic drugs for new animal drug use.

(b) All records showing the Food and Drug Administration's testing of and action on a particular lot of a certifiable antibiotic drug for veterinary use are immediately available for public disclosure.

SUBCHAPTER D—DRUGS FOR HUMAN USE

PART 312—NEW DRUGS FOR INVESTIGATIONAL USE

10. In Part 312, by adding new § 312.5 to read as follows:

§ 312.5 Confidentiality of data and information in an investigational new drug notice (IND).

(a) The existence of an IND notice will not be disclosed by the Food and Drug Administration unless it has previously been publicly disclosed or acknowledged.

(b) The availability for public disclosure of all data and information in an IND file shall be handled in accordance with the provisions established in § 314.14 of this chapter for the confidentiality of data and information in new drug applications.

(c) Notwithstanding the provisions of § 314.14 of this chapter, the Food and Drug Administration shall disclose upon request to an individual on whom an investigational new drug has been used a copy of any adverse reaction report relating to such use.

PART 314—NEW DRUG APPLICATIONS

11. In Part 314:

a. By revising the heading and paragraph (b) of § 314.11 to read as follows:

§ 314.11 Master files.

* * * * *

(b) Section 301(j) of the act makes it an offense to divulge to unauthorized persons any information acquired from a new-drug application concerning any method or process that is a trade secret. Basic manufacturers sometimes submit data to the Food and Drug Administration in the form of so-called master files for the purpose of establishing the safety of ingredients that may be used in new drugs and authorize specified applicants to incorporate by reference such data in support of their applications. The confidentiality of such data shall be determined in accordance with Part 4 of this chapter and § 314.14. Because the applicant is legally responsible for the composition of the new drug and all its ingredients and may require information in the master file for judicial or administrative proceedings concerning the drug, the Food and Drug Administration will not withhold such information from the applicant when his need for it arises and he submits a written request for it. The Food and Drug Administration will inform the person who submitted the data of any such requests.

b. By adding new § 314.14 to read as follows:

§ 314.14 Confidentiality of data and information in a new drug application (NDA) file.

(a) For purposes of this section the "NDA file" includes all data and information submitted with or incorporated by reference in the NDA, IND's incorporated into the NDA, supplemental NDA's; reports under §§ 310.300 and 310.310 of this chapter, master files, and other related submissions. The availability for public disclosure of any record in the NDA file shall be handled in accordance with the provisions of this section.

(b) The existence of an NDA file will not be disclosed by the Food and Drug Administration before an approvable letter has been sent to the applicant, unless it has previously been publicly disclosed or acknowledged. The Director of the Bureau of Drugs will maintain a list available for public disclosure of pending NDA's for which an approvable letter has been sent to the applicant.

(c) If the existence of an NDA file has not been publicly disclosed or acknowledged, no data or information in the NDA file are available for public disclosure.

(d) If the existence of an NDA file has been publicly disclosed or acknowledged before an approval letter has been sent to the applicant, no data or information contained in the file is available for public disclosure before such letter is sent but the Commissioner may, in his discretion, disclose a summary of such selected portions of the safety and effectiveness data as are appropriate for public consideration of a specific pending issue, e.g., at an open session of a Food and Drug Administration advisory committee or pursuant to an exchange of important regulatory information with a foreign government.

(e) After an approval letter has been sent to the applicant for a pending NDA, the following data and information in the NDA file are immediately available for public disclosure unless extraordinary circumstances are shown:

(1) All safety and effectiveness data and information previously disclosed to the public, as defined in § 4.81 of this chapter.

(2) A summary or summaries of the safety and effectiveness data and information submitted with or incorporated by reference in the NDA file. Such summaries do not constitute the full reports of investigations under section 505(b)(1) of the act (21 U.S.C. 355(b)(1)) on which the safety or effectiveness of the drug may be approved. Such summaries shall consist of the following:

(i) For an NDA approved prior to July 1, 1975, internal agency records that describe such data and information, e.g., a summary of basis for approval or internal reviews of the data and information, after deletion of:

(*a*) Names and any information that would identify patients or test subjects or the investigators.

(*b*) Any inappropriate gratuitous comments unnecessary to an objective analysis of the data and information.

(ii) For an NDA approved on or after July 1, 1975, a summary of such data and information prepared in one of the following two alternative ways shall be publicly released when the approval letter is sent.

(*a*) The Bureau of Drugs may at an appropriate time prior to approval of the NDA require the applicant to prepare a summary of such data and information, which will be reviewed and, where appropriate, revised by the Bureau.

(*b*) The Bureau of Drugs may prepare its own summary of such data and information.

(3) A protocol for a test or study, unless it is shown to fall within the exemption established for trade secrets and confidential commercial information in § 4.61 of this chapter.

(4) Adverse reaction reports, product experience reports, consumer complaints, and other similar data and information, after deletion of:

(i) Names and any information that would identify the person using the product.

(ii) Names and any information that would identify any third party involved with the report, such as a physician or hospital or other institution.

(5) A list of all active ingredients and any inactive ingredients previously disclosed to the public as defined in § 4.81 of this chapter.

(6) An assay method or other analytical method, unless it serves no regulatory or compliance purpose and is shown to fall within the exemption established in § 4.61 of this chapter.

(7) All correspondence and written summaries of oral discussions relating to the NDA file, in accordance with the provisions of Part 4 of this chapter.

(f) All safety and effectiveness data and information not previously disclosed to the public are available for public disclosure at the time that any one of the following events occurs:

(1) The NDA has been abandoned and no further work is being undertaken with respect to it.

(2) A final determination is made that the NDA is not approvable, and all legal appeals have been exhausted.

(3) Approval of the NDA is withdrawn, and all legal appeals have been exhausted.

(4) A final determination has been made that the drug is not a new drug.

(5) A final determination has been made that the drug may be marketed without submission of such safety and/or effectiveness data and information.

(g) The following data and information in an NDA file are not available for public disclosure unless they have been previously disclosed to the public as defined in § 4.81 of this chapter or they relate to a product or ingredient that has been abandoned and they no longer represent a trade secret or confidential commercial or financial information as defined in § 4.61 of this chapter:

(1) Manufacturing methods or processes, including quality control procedures.

(2) Production, sales, distribution, and similar data and information, except that any compilation of such data and information aggregated and prepared in a way that does not reveal data or information which is not available for public disclosure under this provision is available for public disclosure.

(3) Quantitative or semiquantitative formulas.

(h) The compilations of information specified in § 4.117 of this chapter are available for public disclosure.

(i) For purposes of this regulation, safety and effectiveness data include all studies and tests of a drug on animals and humans and all studies and tests on the drug for identity, stability, purity, potency, and bioavailability.

PART 431—CERTIFICATION OF ANTIBIOTIC DRUGS

12. In Part 431, by adding a new Subpart D to read as follows:

Subpart D—Confidentiality of Information

Sec.

AUTHORITY: Pub. L. 90-23, 81 Stat. 54-56, as amended by 88 Stat. 1561-1565 (5 U.S.C. 552).

Subpart D—Confidentiality of Information

§ 431.70 Confidentiality of data and information in an investigational new drug notice for an antibiotic drug.

(a) The existence of an IND notice for an antibiotic drug will not be disclosed by the Food and Drug Administration unless it has previously been publicly disclosed or acknowledged.

(b) The availability for public disclosure of all data and information in an IND file for an antibiotic drug shall be handled in accordance with the provisions established in § 431.71.

(c) Notwithstanding the provisions of § 431.71, the Food and Drug Administration shall disclose upon request to an individual on whom an investigational antibiotic has been used a copy of any adverse reaction report relating to such use.

§ 431.71 Confidentiality of data and information in an antibiotic drug file.

(a) For purposes of this section, an "antibiotic drug file" includes all data and information submitted with or incorporated by reference in any form submitted pursuant to §§ 431.50 or 431.60, IND's incorporated into any such form, master files, and other related submissions. The availability for public disclosure of any record in the antibiotic drug file shall be handled in accordance with the provisions of this section.

(b) The existence of an antibiotic drug file will not be disclosed by the Food and Drug Administration before an approvable letter has been sent to the applicant, unless it has previously been publicly disclosed or acknowledged. The Director of the Bureau of Drugs will maintain a list available for public disclosure of pending Forms 5 for which an approvable letter has been sent to the applicant.

(c) If the existence of an antibiotic drug file has not been publicly disclosed or acknowledged, no data or information in the antibiotic drug file is available for public disclosure.

(d) If the existence of an antibiotic drug file has been publicly disclosed or acknowledged before an approval letter has been sent to the applicant, no data or information contained in the file is available for public disclosure before such letter is sent, but the Commissioner may, in his discretion, disclose a summary of such selected portions of the safety and effectiveness data as are appropriate for public consideration of a specific pending issue, e.g., at an open session of a Food and Drug Administration advisory committee or pursuant to an exchange of important regulatory information with a foreign government.

(e) After an approval letter has been sent to the applicant for a pending antibiotic drug file, the following data and information in the NDA file are immediately available for public disclosure unless extraordinary circumstances are shown:

(1) All safety and effectiveness data and information.

(2) A protocol for a test or study, unless it is shown to fall within the exemption established for trade secrets and confidential commercial information in § 4.61 of this chapter.

(3) Adverse reaction reports, product experience reports, consumer complaints, and other similar data and information, after deletion of:

(i) Names and any information that would identify the person using the product.

(ii) Names and any information that would identify any third party involved with the report, such as a physician or hospital or other institution.

(4) A list of all active ingredients and any inactive ingredients previously disclosed to the public as defined in § 4.81 of this chapter.

(5) An assay method or other analytical method, unless it serves no regulatory or compliance purpose and is shown to fall within the exemption established in § 4.61 of this chapter.

(6) All correspondence and written summaries of oral discussions relating to the antibiotic file, in accordance with the provisions of Part 4 of this chapter.

(7) All records showing the testing of and action on a particular lot of a certifiable antibiotic drug by the Food and Drug Administration.

(f) The following data and information in an antibiotic drug file are not available for public disclosure unless they have been previously disclosed to the public as defined in § 4.81 of this chapter or they relate to a product or ingredient that has been abandoned and they no longer represent a trade secret or confidential commercial or financial information as defined in § 4.61 of this chapter:

(1) Manufacturing methods or processes, including quality control procedures.

(2) Production, sales, distribution, and similar data and information, except that any compilation of such data and information aggregated and prepared in a way that does not reveal data or information which is not available for public disclosure under this provision is available for public disclosure.

(3) Quantitative or semiquantitative formulas.

(g) For purposes of this regulation, safety and effectiveness data include all studies and tests of a drug on animals and humans and all studies and tests on the drug for identity, stability, purity, potency, and bioavailability.

SUBCHAPTER F—BIOLOGICS

PART 601—LICENSING

13. In Part 601, by adding a new Subpart F to read as follows:

Subpart F—Confidentiality of Information

Sec.

AUTHORITY: Pub. L. 90-23, 81 Stat. 54-56, as amended by 88 Stat. 1561-1564 (5 U.S.C. 552).

Subpart F—Confidentiality of Information

§ 601.50 Confidentiality of data and information in an investigational new drug notice for a biological product.

(a) The existence of an IND notice for a biological product will not be disclosed by the Food and Drug Administration unless it has previously been publicly disclosed or acknowledged.

(b) The availability for public disclosure of all data and information in an IND file for a biological product shall be handled in accordance with the provisions established in § 601.51.

(c) Notwithstanding the provisions of § 601.51, the Food and Drug Administration shall disclose upon request to an individual on whom an investigational biological product has been used a copy of any adverse reaction report relating to such use.

§ 601.51 Confidentiality of data and information in applications for establishment and product licenses.

(a) For purposes of this section the "biological product file" includes all data and information submitted with or incorporated by reference in any application for an establishment or product license, IND's incorporated into any such application, master files, and other related submissions. The availability for public disclosure of any record in the biological product file shall be handled in accordance with the provisions of this section.

(b) The existence of a biological product file will not be disclosed by the Food and Drug Administration before a product license has been sent to the applicant, unless it has previously been publicly disclosed or acknowledged. The Director of the Bureau of Biologics will maintain a list available for public disclosure of biological products for which a license has been issued.

(c) If the existence of a biological product file has not been publicly disclosed or acknowledged, no data or information in the biological product file is available for public disclosure.

(d) If the existence of a biological product file has been publicly disclosed or acknowleged before a license has been issued, no data or information contained in the file is available for public disclosure before such license is issued, but the Commissioner may, in his discretion, disclose a summary of such selected portions of the safety and effectiveness data as are appropriate for public consideration of a specific pending issue, e.g., at an open session of a Food and Drug Administration advisory committee or pursuant to an exchange of important regulatory information with a foreign government.

(e) After a license has been issued, the following data and information in the biological product file are immediately available for public disclosure unless extraordinary circumstances are shown:

(1) All safety and effectiveness data and information.

(2) A protocol for a test or study, unless it is shown to fall within the exemption established for trade secrets and confidential commerical or financial information in § 4.61 of this chapter.

(3) Adverse reaction reports, product experience reports, consumer complaints, and other similar data and information, after deletion of:

(i) Names and any information that would identify the person using the product.

(ii) Names and any information that would identify any third party involved with the report, such as a physician or hospital or other institution.

(4) A list of all active ingredients and any inactive ingredients previously disclosed to the public, as defined in § 4.81 of this chapter.

(5) An assay method or other analytical method, unless it serves no regulatory or compliance purpose and it is shown to fall within the exemption established in § 4.61 of this chapter.

(6) All correspondence and written summaries of oral discussions relating to the biological product file, in accordance with the provisions of Part 4 of this chapter.

(7) All records showing the manufacturer's testing of a particular lot, after deletion of data or information that would show the volume of the drug produced, manufacturing procedures and controls, yield from raw materials, costs, or other material falling within § 4.61 of this chapter.

(8) All records showing the testing of and action on a particular lot by the Food and Drug Administration.

(f) The following data and information in a biological product file are not available for public disclosure unless they have been previously disclosed to the public as defined in § 4.81 of this chapter or they relate to a product or ingredient that has been abandoned and they no longer represent a trade secret or confidential commercial or financial information as defined in § 4.61 of this chapter:

(1) Manufacturing methods or processes, including quality control procedures.

(2) Production, sales, distribution, and similar data and information, except that any compilation of such data and information aggregated and prepared in a way that does not reveal data or information which is not available for public disclosure under this provision is available for public disclosure.

(3) Quantitative or semiquantitative formulas.

(g) For purposes of this regulation, safety and effectiveness data include all studies and tests of a biological product on animals and humans and all studies and tests on the drug for identity, stability, purity, potency, and bioavailability.

SUBCHAPTER G—COSMETICS

PART 720—VOLUNTARY FILING OF COSMETIC PRODUCT INGREDIENT AND COSMETIC RAW MATERIAL COMPOSITION STATEMENTS

14. In Part 720, by revising § 720.8 to read as follows:

§ 720.8 Confidentiality of statements.

(a) The availability for public disclosure of all data and information contained in, attached to, or included with, Forms FD-2512, 2513, 2514, and amendments thereto, shall be handled in accordance with the provisions established in Part 4 of this chapter. All such data and information are submitted voluntarily to the Food and Drug Administration and are thus subject to the specific provisions for the presubmission review of a request for confidentiality of voluntarily submitted data under § 4.44 of this

chapter, and to the provisions concerning data and information submitted voluntarily to the Food and Drug Administration under § 4.111 of this chapter, as well as to the exemptions in Subpart D of Part 4 of this chapter and the limitations on exemptions in Subpart E of Part 4 of this chapter.

(b) A determination pursuant to § 4.44 of this chapter that an ingredient or ingredients is not a trade secret or confidential commercial information under § 4.61 of this chapter constitutes final agency action that is subject to judicial review pursuant to 5 U.S.C. chapter 7. If suit is brought within 10 days after such a determination, the Food and Drug Administration will not disclose the records involved or require that the disputed ingredient or ingredients be disclosed in labeling until the matter is finally determined in the courts.

PART 730—VOLUNTARY FILING OF COSMETIC PRODUCT EXPERIENCES

15. In Part 730, by revising § 730.7 to read as follows:

§ 730.7 Confidentiality of reports.

The availability for public disclosure of all data and information contained in, attached to, or included with Forms FD–2704, 2705, 2706, and amendments thereto, shall be handled in accordance with the provisions established in Part 4 of this chapter. All such data and information are submitted voluntarily to the Food and Drug Administration and are thus subject to the specific provisions concerning data and information submitted voluntarily to the Food and Drug Administration in § 4.111 of this chapter, as well as to the exemptions in Subpart D of Part 4 of this chapter and the limitations on exemptions in Subpart E of Part 4 of this chapter.

Effective date. This order shall be effective on (insert date 30 days after date of publication in the FEDERAL REGISTER). Interested persons may, on or before (insert date 60 days after date of publication in the FEDERAL REGISTER), file with the Hearing Clerk, Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20852, written comments (preferably in quintuplicate) regarding matters not raised in the proposal published in the FEDERAL REGISTER of May 5, 1972 (37 FR 9128) and considered in the preamble to this order. Comments received will be available for public inspection at the above office during working hours, Monday through Friday. Any changes in this order justified by such comments will be the subject of a further order amending the specific regulations involved.

(Sec. 201 et seq., Pub. L. 717, 52 Stat. 1040 et seq., as amended (21 U.S.C. 321 et seq.); sec. 1 et seq., Pub. L. 410, 58 Stat. 682 et seq., as amended (42 U.S.C. 201 et seq.); Pub. L. 90–23, 81 Stat. 54–56, as amended by 88 Stat. 1561–1565 (5 U.S.C. 552))

Dated: December 3, 1974.

A. M. SCHMIDT,
Commissioner of Food and Drugs.

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