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	HEW/FDA			HEW/FDA

Documents normally scheduled on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

ATTENTION: For questions, corrections, or requests for information please see the list of telephone numbers appearing on opposite page.

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Public entry and use; Sachuest Point National Wildlife Refuge, R.I. 52884; 12–2–76

Public entry and use; Salt Meadow National Wildlife Refuge, Conn. 52883; 12–2–76

Public entry and use; Truston Pond National Wildlife Refuge, R.I. 52884; 12–2–76

Sport fishing; certain national wildlife refuges in California 53486; 12–7–76

Sport fishing; certain national wildlife refuges in Nevada 53487; 12–7–76

Sport fishing; certain national wildlife refuges in Washington 53487; 12–7–76

Sport fishing; Iroquois National Wildlife Refuge, N.Y 52886; 12–2–76

Sport fishing; Monomoy National Wildlife Refuge, Mass 52885; 12–2–76

State—Visas; documentation of immigrants under the Immigration and Nationality Act 54927; 12–16–76

Treasury/ATF—Cordials and liqueurs; standards of identity 48120; 11–2–76

Treasury/Comptroller—National banks; form and content of annual report to shareholders 53977; 12–10–76

USDA/AMS—Milk marketing order; Middle Atlantic marketing area 46448; 10–21–76

APHIS—Standard requirements for biological products; miscellaneous amendments 53000; 11–14–75

FmHA—Guaranteed loan programs; rural housing program loans. 49109; 11–8–76

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REA bulletins; revision of REA specification U–5 for pad mounted transformers 26675; 6–29–76

List of Public Laws

This is a continuing numerical listing of public bills which have become law, together with the law number, the title, the date of approval, and the U.S. Statutes citation. The list is kept current in the FEDERAL REGISTER and copies of the laws may be obtained from the U.S. Government Printing Office.

rules and regulations

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

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

Title 1—General Provisions

CHAPTER III—ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

PART 305—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

PART 310—MISCELLANEOUS STATEMENTS

Miscellaneous Amendments

The Administrative Conference of the United States was established by the Administrative Conference Act, 5 U.S.C. 571–576, to study the efficiency, adequacy and fairness of the administrative procedure used by administrative agencies in carrying out administrative programs, and to make recommendations for improvement to administrative agencies, collectively or individually, to the President, Congress, and the Judicial Conference of the United States (5 U.S.C. 574(1)).

The Administrative Conference of the United States at its Fifteenth Plenary Session, held December 9–10, 1976, adopted two Recommendations and one formal Statement. Recommendation 76–4 recommends amendments to the judicial review provisions of the Clean Air Act and Federal Water Pollution Control Act. Recommendation 76–5 urges Federal agencies normally to employ pre-adoption or post-adoption comment procedures when promulgating an interpretive rule of general applicability or statement of general policy. The Conference Statement is addressed to procedures to deal with an emergency shortage of natural gas.

1. The table of contents to Part 305 of Title 1, Chapter III, CFR is amended to add the following sections:

Sec.

305.76–4 Judicial Review Under the Clean Air Act and Federal Water Pollution Control Act (Recommendation No. 76–4)

304.76–5 Interpretive Rules of General Applicability and Statements of General Policy (Recommendation No. 76–5)

2. Section 305.76–4 is added to Part 305 to read as follows:

§ 305.76–4 Judicial Review Under the Clean Air Act and Federal Water Pollution Control Act (Recommendation No. 76–4).

(a) The Congress has enacted provisions for judicial review in the Clean Air Act and the Federal Water Pollution Control Act (FWPCA) that are in some respects inconsistent, incomplete, ambiguous and unsound.

(b) Courts have sometimes felt constrained to stretch these statutes to achieve sensible results. In other instances, courts seem to have ignored sensible general congressional direction in an attempt to do justice in particular cases. On yet other occasions courts have felt compelled by unclear provisions to reach undesirable results that Congress probably did not intend.

(c) Experience under the two Acts has highlighted a variety of problems in the interpretation and application of the judicial review provisions, all of which are likely to be addressed by Congress in the near future.

(d) This series of recommendations urges that, when Congress reconsiders the judicial review provisions of the principal pollution statutes, it rationalize, alter and clarify them, guided especially by the principle that jurisdictional provisions should draw bright lines to minimize the waste and expense of litigation over whether a case has been brought in the right court. One recommendation is addressed to the Judicial Conference and calls upon the courts, pending congressional action to clarify their powers, to utilize their discretion to transfer judicial review proceedings where transfer will avoid undue duplication of litigation.

More specifically, the Conference has in view these considerations:

1. Section 509(b) of the FWPCA provides that all standards promulgated under it by the Environmental Protection Agency, including national standards, are to be reviewed in the United States Court of Appeals for a circuit in which the petitioner resides or transacts business. Under Section 307(b) of the Clean Air Act, on the other hand, certain nationally applicable standards are to be reviewed only in the Court of Appeals for the District of Columbia Circuit, but the EPA's actions in approving or promulgating state implementation plans are reviewable only "in the United States Court of Appeals for the appropriate circuit." Thus the FWPCA provides for a decentralized review of national standards, whereas the Clean Air Act requires that analogous standards be reviewed only in the D.C. Circuit. This inconsistency in approach should be resolved; the advantages of expeditious and authoritative review of all national standards in the D.C. Circuit suggests that it is the FWPCA's venue provision which should be amended. All national standards under the FWPCA should be made reviewable in the D.C. Circuit. Review of all other regulations, standards and determinations that are reviewable in the courts of appeals under the FWPCA should be in the circuit containing the affected state or facility. These amendments would entirely supplant the present provisions for review in the circuit in which the petitioner resides or transacts business.

The Clean Air Act's specification of "appropriate circuit" as the venue for review of state implementation plan approvals has also created uncertainties, especially when several plan approvals are challenged on identical grounds. Although a perfect resolution is impossible, an amendment, clarifying that the appropriate circuit is the one containing the state whose plan is challenged, would eliminate much of the prospect of threshold litigation over the question of which is the appropriate circuit, and would also avoid the splitting of cases into two different forums whenever local and national issues are present in the same case. The possibility of undue duplication of proceedings that might result can be met by increasing the flexibility of available transfer provisions to remove doubts about the authority of any court of appeals to transfer a case to any other court of appeals.

2. Section 304 of the Clean Air Act and Section 505 of the FWPCA authorize citizen suits in the district courts to require the EPA Administrator to perform "any act or duty under this Act which is not discretionary." Some district courts have accepted jurisdiction under Section 304 over cases that amount to challenges to the Administrator's approval and promulgation of state implementation plans, despite the provision of Section 307 for exclusive jurisdiction in the courts of appeals to review such action. The citizen-suit provisions should not furnish an alternative or premature method of review of questions that can be raised by direct review of the EPA's actions in the courts of appeals.

The proper scope of the present citizen-suit provisions is especially unclear in the context of standard-setting, where the line between failure to act and failure to act properly is dim. The difficulty of drawing such a distinction is ample reason for giving the courts of appeals exclusive jurisdiction of actions to compel or to postpone the issuance of regulations whose validity would properly be determined in a court of appeals. It is recognized that in its review of such issues a court of appeals might conclude that the administrative record requires amplification. Since courts of appeals normally do not hold evidentiary proceedings, provision should be made for prior resort or remand to the EPA (or, if that is inappropriate, to the district court) to meet that need.

To prevent unfairness from a litigant's choice of the wrong court, Congress

should provide for transfer between district courts and courts of appeals of petitions and complaints filed under the Acts. The Court of Claims transfer provision provides a good model.

3. Although both Acts provide expressly for review in the courts of appeals and for citizen suits in the district courts, it remains possible in some circumstances to obtain non-statutory review under general federal question jurisdictional statutes. But the citizen-suit provisions of both Acts require the plaintiff to give the EPA 60 days' notice of the intended district-court action. Congress should make clear that where a non-statutory review action is filed alleging grounds that correspond to those appropriate for the filing of an action under such citizen-suit provisions, failure to comply with the notice requirements of those provisions will require a dismissal of the case.

4. The Clean Air Act and the FWPCA provide that certain regulations reviewable by petition to the courts of appeals "shall not be subject to judicial review in civil or criminal proceedings for enforcement." Moreover, challenges to the validity of regulations must be made in the court of appeals within 30 days (air) or 90 days (water) after promulgation, unless the challenge is based "solely on grounds arising after" the statutory period. The express preclusion of review at the enforcement stage creates a highly unusual and unnecessary harsh restriction on the right to challenge the validity of a regulation to which one is subject. Congress should amend the Acts to allow the validity of a regulation to be challenged in defense to an enforcement proceeding. It should also amend the Clean Air Act to extend the time limit for filing petitions for review in the court of appeals to 60 days and, for consistency, amend the FWPCA to reduce the 90-day period for filing a petition thereunder to 60 days. Finally, the time limits in both Acts should be made inapplicable where the petitioner can show reasonable grounds for failure to file a timely petition.

5. Not every action of the EPA under the Clean Air Act or the FWPCA is made reviewable in the courts of appeals. Some of the omissions appear to be inconsistent with the general statutory plan, and corrective amendments are desirable.

6. Each of the four judicial review and citizen-suit provisions in the Clean Air Act and the FWPCA presents a different standard for who may petition for review or sue. This leads to undesirable confusion and inconsistency in the administration of the Acts.

RECOMMENDATION

A. *Venue in the Courts of Appeals*

1. Congress should provide for centralized review of national standards under the FWPCA, as is now provided under the Clean Air Act, by amending Section 509(b) [33 U.S.C. § 1369(b)] to provide for the review of all such national standards in the Court of Appeals for the District of Columbia Circuit.

2. Congress should further amend section 509(b) of the FWPCA to provide that review of regulations, standards or determinations affecting single states or facilities be had in the circuit containing the state or facility.

3. Congress should amend section 307 (b) of the Clean Air Act [42 U.S.C. § 1857 h–5(b)] to make explicit that the Administrator's action in approving or promulgating state implementation plans is reviewable in the circuit containing the state whose plan is challenged.

4. Courts of appeals, when reviewing cases arising under the Clean Air Act or FWPCA, should utilize existing transfer powers to avoid undue duplication of proceedings, and Congress should amend the Acts or the transfer statute [28 U.S.C. § 2112(a)] to remove doubts about the authority of any court of appeals to transfer such cases to any other court of appeals to avoid undue duplication and in the interest of the administration of justice.

B. *Choice between District Court and Court of Appeals for Review*

1. Congress should amend the citizen-suit provisions of the Clean Air Act [Section 304, 42 U.S.C. § 1857h–2] and FWPCA [Section 505, 33 U.S.C. § 1365] to make clear that, insofar as suits against the Administrator of the EPA are concerned, these sections do not provide an alternative or premature method of review of questions that can be raised under the sections that provide for direct review of the EPA's actions in the courts of appeals [Section 307(b), 42 U.S.C. § 1857h–5(b); Section 509, 33 U.S.C. § 1369].

2. Congress should amend the Clean Air Act and FWPCA to provide that courts of appeals have exclusive jurisdiction of actions to compel or to postpone the issuance or revision of regulations whose validity is to be determined in a court of appeals. The amendments should provide that where there is need for the development of a factual record, prior resort or remand shall be made to the EPA or, if that is inappropriate, to the district court.

3. Congress should provide, by analogy to 28 U.S.C. § 1506, for transfer between courts of appeals and district courts when a proceeding to review EPA action under the Clean Air Act or FWPCA is filed in the wrong forum.

C. *Limitation of Non-Statutory Review*

Congress should amend the statutes to make clear that when a non-statutory review action is filed alleging grounds that correspond to those appropriate for the filing of a citizen suit under Section 304 of the Clean Air Act [42 U.S.C. § 1857h–2] or Section 505 of the FWPCA [33 U.S.C. § 1365], failure to comply with the notice requirements of those sections will require a dismissal of the case.

D. *Raising Defenses at the Enforcement Stage*

1. Congress should amend the Clean Air Act and FWPCA to permit the validity of a regulation to be challenged in defense to an enforcement proceeding.

2. Congress should amend Section 307 (b) of the Clean Air Act [42 U.S.C. § 1857h–5(b)] and Section 509(b) of the FWPCA [33 U.S.C. § 1369(b)] to prescribe 60 days as the period within which, under both statutes, a petition for review must be filed in the courts of appeals.

3. Congress should amend the Clean Air Act and FWPCA to ensure that petitions for review of regulations may be filed after the expiration of the time limits of Sections 307(b) and 509(b), when the petitioner can show a reasonable ground for failure to file a timely petition.

E. *Actions Subject to Court-of-Appeals Review*

1. Congress should amend section 509 (b) of the FWPCA [33 U.S.C. § 1369(b)] to make clear that the following actions by the EPA are reviewable in the courts of appeals:

a. Promulgation or approval of water-quality standards under Section 303 [33 U.S.C. 1313].

b. Promulgation of effluent guidelines under section 304 [33 U.S.C. 1314].

c. Promulgation of regulations governing the discharge of oil or hazardous substances under section 311(b) [33 U.S.C. 1321(b)].

d. Promulgation of standards for marine sanitation devices under Section 312 [33 U.S.C. 1322] or determinations that a state may completely prohibit the discharge from all vessels of any sewage under Section 312(f) [33 U.S.C. § 1322(f)].

2. Congress should amend the Clean Air Act to make those new-car emission standards not now reviewable under section 307(b) [42 U.S.C. § 1857h–5(b)], reviewable in the courts of appeals.

F. *Standing*

Congress should adopt a single test of standing to govern all proceedings for judicial review under the Clean Air Act and FWPCA.

SEPARATE STATEMENT OF G. WILLIAM FRICK

(1) Recommendation A.2. should be amended to provide that where "national issues" are involved they should be reviewed in the D.C. Circuit. Recommendation A.3. should be amended in the same fashion.

Cases involving permits and permit programs under the FWPCA sometimes involve generic issues that apply to EPA's actions nationwide. For essentially the reasons discussed in our comments on recommendation A.3., below, we believe such issues should be reviewed in the D.C. Circuit. This result could be specified, without disturbing the general thrust of the Recommendation, by amending § 509 of the FWPCA as suggested in our comments of November 12, 1976.

Although approval and promulgation of State implementation plans (SIP's) under the Clean Air Act usually involve issues peculiar to the affected States, such actions sometimes involve generic deter-

minations of nationwide scope or effect. Examples include EPA's granting of two-year extensions of the date for attainment of national ambient air quality standards in a number of metropolitan areas[1] and its promulgation of generic regulations (applicable to all States) that require prevention of significant deterioration of air quality (40 CFR 52.21). We view such actions as virtually identical to promulagtion of "national standards",[2] as to which recommendation A.1. expresses a preference for review in the D.C. Circuit.

Under the existing law, it is possible to argue that the D.C. Circuit is the "appropriate circuit" for review of "national" SIP issues, and three courts of appeals have so held.[3] Recommendation A.3., however, would provide that such issues, together with all other SIP issues, must be in the local circuit. Although recommendation A.4. would promote transfer to avoid "undue duplication of proceedings", it would provide no basis for arguing that the D.C. Circuit is the appropriate transferee forum.

As indicated by Professor Currie in his report, Congress intended review in the D.C. Circuit of "matters on which national uniformity is desirable." Among the reasons for this are the D.C. Circuit's obvious expertise in administrative law matters and its sensitivity to Congressional mandates. In addition, the D.C. Circuit has become thoroughly familiar with the Clean Air Act—a very complex statute—and with its equally complex legislative history. We believe it makes sense to centralize review of "national" SIP issues in the D.C. Circuit, taking advantage of its administrative law expertise and facilitating an orderly development of the basic law under the Act, rather than to have such issues decided separately by a number of courts, some of which would probably lack frequent exposure to the Act and its legislative history. Moreover, the validity of a nationally applicable regulation will not turn on the particulars of its impacts within a given Circuit.

(2) Recommendation D.1., which would allow the challenge of validity of regulations in enforcement proceedings, should be deleted.

The "legislative history" of this recommendation suggests that it is inspired in part by a concern that the time limits for filing of petitions for review of the validity of regulations are too short, and in part by a concern that *any* time limit may unreasonably constrain the opportunity for such review.

As to the first factor we would much prefer the solution offered by Recommendation D.2. As to the second, we oppose the recommendation on several grounds. Permitting challenges to validity in enforcement would leave open the question of validity indefinitely, notwithstanding Congress' intent to have it decided expeditiously;[4] would require EPA to retain its often immense records indefinitely; would mean district court rather than court of appeals review of validity, notwithstanding the clear intent of Congress; and might very well lead to conflicting results, with resolution of conflicts (if at all) only after review by the courts of appeals and the Supreme Court. In our view, facial validity need be determined only once and should be determined expeditiously; there are other mechanisms for relief based on factors peculiar to individual sources (see comments on recommendation D.3.), and it makes no sense to require every district court presented with the issue of validity to engage in duplicative review of the often immense records involved.

The Recommendation glosses over that fact that State implementation plans, which have and will continue to make up the vast majority of onerous air pollution requirements, can be challenged facially and on grounds of infeasibility through administrative and judicial review channels in the States.[5]

Finally, as Professor Walter Gellhorn observed at the Plenary Session, there is an inherent contradiction between Recommendations D.1. and D.3., viz., the argument is for extending the deadlines for obtaining review while at the same time espousing that there should be no deadline for obtaining review. That the federal courts involved are at different levels does not cure this contradiction.

(3) Recommendation D.3., which would allow late filings of petitions for review upon reasonable grounds shown, should be deleted.

The "legislative history" of this recommendation suggests a number of concerns that may have prompted it: (a) the problem of short time limits; (b) the problem of persons who fail to file through carelessness; (c) lack of opportunity for consideration of individual factors that might affect validity; and (d) the problem of persons who are unaffected by a regulation until after the deadline for filing has passed. My comments are as follows:

(a) Short time limits. We prefer Recommendation D.2. as providing a more direct solution to this problem, if it is thought to be a problem. Protection of one's rights need not await detailed analysis of what EPA has actually done; common practice is to file one-paragraph petitions alleging that EPA's action was arbitrary or capricious, or similarly general grounds.

(b) Carelessness. The industries we regulate generally submit extensive comments on proposed regulations, sometimes "lobby" the agency extensively, often mount well-coordinated attacks on final regulations in court, and seem to follow the development of regulations rather well. And, even before publication of proposals in the FEDERAL REGISTER, they receive notice through EPA's gathering of supporting data from them, through trade associations, through industry representatives on EPA advisory committees, or during pre-publication review by other federal agencies. We believe the public interest in early resolution of validity (clearly intended by Congress) should outweigh the interests of those who fail to file timely petitions through carelessness.

(c) Individual factors that might affect validity. As Professor Currie seems to acknowledge in his report, individual factors are often if not always irrelevant to the validity of EPA regulations. Those cited as examples do not appear to be grounds for challenge of SIP approvals,[6] for example, or of national standards adopted under §§ 111 or 112 of the Clean Air Act (42 U.S.C. 1857c–6, 1857c–7). Relief based on such factors may be available through a variety of mechanisms,[7] but they do not go to the validity of the regulations.

(d) Previously unaffected parties. In our view, persons who choose to do business in a regulated industry (or to expand into a geographical area subject to controls) after the establishment of applicable regulations take the business (or the area) as they find it. If a company invents a new process that presents particular problems under an applicable regulation, it may petition for revision of the regulation.

Finally, we note that this recommendation would leave the question of validity open indefinitely, with all the problems that would entail (see discussion of Recommendation D.1.).

3. Section 305.76–5 is added to Part 305 to read as follows:

§ 305.76–5 Interpretive rules of general applicability and statements of general policy (recommendation 76–5).

(a) Agencies often explain their view of the meaning of statutes or rules by issuing interpretive rules of general ap-

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[1] See *NRDC* v. *EPA*, 475 F. 2d 968 (D.C. Cir. 1973).

[2] As with national standards, such actions typically involve establishment or application of uniform principles for all States, are taken on a single administrative record, and do not involve factual questions unique to particular geographical areas.

[3] *Dayton Power & Light Co.* v. *EPA*, 520 F. 2d 703, 706–07 (6th Cir. 1975) (regulations for prevention of significant deterioration); *NRDC* v. *EPA*, 475 F. 2d 968, 969–70 (D.C. Cir. 1973) (two-year extensions and similar issues); *NRDC* v. *EPA*, 465 F. 2d 492, 494 (1st Cir. 1972) (same).

[4] See *Kennecott Copper Corp.* v. *EPA*, 462 F. 2d 846, 849 & nn. 14–15 (D.C. Cir. 1972). Expeditious resolution of SIP issues is particularly important because Congress mandated attainment of the health-protective ambient air quality standards (via SIP's) by a time certain, regardless of economic or technical feasibility.

[5] See *Union Electric Co.* v. *EPA*, 96 S. Ct. 2518 (1976).

[6] See *Union Electric Co.* v. *EPA*, *supra*.

[7] Under the Clean Air Act, for example, relief may be available by way of SIP revisions (including variances) approved or promulgated by EPA, postponements of SIP requirements under 42 U.S.C. 1857c–5(f), enforcement orders fixing a "reasonable time" for compliance (42 U.S.C. 1857–c–8(a)(4)), equitable relief provided by court order in enforcement proceedings (*see* 42 U.S.C. 1857c–8(b)), waivers or exemptions under 42 U.S.C. 1857c–7, or petition for revision of any applicable regulation.

plicability, and agencies indicate how they will exercise discretion by announcing statements of general policy. The Administrative Procedure Act requires that these interpretive rules and policy statements be published in the FEDERAL REGISTER. But the Act does not require that interested persons be given advance notice and opportunity to comment upon interpretive rules and policy declarations. Courts, however, have occasionally imposed that requirement.

(b) At times policy statements and interpretive rules are barely distinguishable from substantive rules for which notice and comment is required. For that and other reasons many agencies have often utilized the notice-and-comment procedures set forth in Section 553 of the Act, without regard to whether their pronouncements fall into one category or another. This is, in general, beneficial to both the agencies and potentially affected elements of the public. Providing opportunity for comment upon interpretive rules and policy statements of general applicability, sometimes before and sometimes after their adoption, makes for greater confidence in and broader acceptance of the ultimate agency judgments. The following recommendations look toward wider voluntary adoption of such procedures by the agencies. Nothing here proposed would in any event alter the existing provisions of Administrative Procedure Act section 553(e), allowing any person to petition at any time for the amendment or repeal of a rule, including an interpretive rule or a statement of general policy. Moreover, the recommended procedures are not intended to apply to interpretations or policies set forth in opinions in formal or informal adjudications.

RECOMMENDATION

1. Before an agency issues, amends, or repeals an interpretive rule of general applicability or a statement of general policy which is likely to have substantial impact on the public, the agency normally should utilize the procedures set forth in Administrative Procedure Act subsections 553(b) and (c), by publishing the proposed interpretive rule or policy statement in the FEDERAL REGISTER, with a concise statement of its basis and purpose and an invitation to interested persons to submit written comments, with or without opportunity for oral presentation. If it is impracticable, unnecessary, or contrary to the public interest to use such procedures the agency should so state in the interpretive rule or policy statemnt, with a brief statement of the reasons therefor.

2. Where there has been no prepromulgation notice and opportunity for comment, the publication of an interpretive rule of general applicability or a statement of general policy, even one made effective immediately, should include a statement of its basis and purpose and an invitation to interested persons to submit written comments, with or without opportunity for oral presentation, within a following period of not less than thirty days. The agency should evaluate the rule or statement in the light of comments received. Not later than sixty days after the close of the comment period, the agency should indicate in the FEDERAL REGISTER its adherence to or alteration of its previous action, responding as may be appropriate to significant comments received. An agency may omit these post-adoption comment procedures when it incorporates in the interpretive rule or policy statement a declaration, with a brief statement of reasons, that such procedures would serve no public interest or would be so burdensome as to outweigh any foreseeable gain.

4. The table of contents of Part 310 of Title I, Chapter III, CFR is amended to add the following section:

Sec.
310.5 Statement on procedures to deal with emergency shortages of natural gas.

5. Section 310.5 is added to Part 310 to read as follows:

§ 310.5 Statement on procedures to deal with emergency shortages of natural gas.

(a) Consideration of procedures to deal with possible emergency shortages of natural gas involves the analysis and weighing of numerous and complex issues. The Congress is the proper body to consider the policy responses which may be appropriate for dealing with such an emergency. Of significance to the Administrative Conference is that, in any such deliberative process, Congress should consider from the beginning how to assure fair and effective administrative procedure in any program which it adopts. This statement is not intended to recommend any particular program or to go beyond procedural considerations.

(b) If the Congress believes an emergency shortage of natural gas is a significant possibility in the foreseeable future, then the necessary investigation and analysis of the issues noted in this Statement should be undertaken soon. By giving early consideration to the difficult issues which must be resolved, the Congress can enable the orderly development of fair and effective administrative procedures to be available in the case of need. The alternative to such prompt consideration is likely to be, in the event of an emergency, a hastily-established program which might not adequately provide for public participation in the development of policies and regulations nor for suitable procedures for the determination of matters involving identifiable parties. This might work unnecessary hardships, invite public distrust, and create more serious social and economic dislocations than necessary.

(1) At the present time the procedures by which government can deal with an emergency created by an undersupply of natural gas have severe limitations. Governmental authority over natural gas, to the extent it exists, is fragmented among the Federal Power Commission and the several States.

(a) The Natural Gas Act confines the Federal Power Commission's jurisdiction, and consequently its curtailment authority, mainly to the interstate sale and transportation of natural gas; the Commission does not exercise authority over natural gas that is produced and consumed within a single State, nor normally over the retail sale distribution of either intrastate or interstate gas.

(b) The procedures of the Federal Power Commission are largely designed for certification and ratemaking cases, and they are generally ill-suited for emergency situations. While the Commission has adopted an end-use curtailment policy, in fact it is without jurisdiction to enforce it at the State level. Nor does the Commission have the authority to order interconnections among pipelines and transfer of gas from one to another.

(c) The respective States have widely varying resources and interests. No procedures exist for them to distribute the burden of an emergency shortage of natural gas among themselves and throughout the nation.

(2) The range of possible legislative responses is wide, and the questions involved are of the highest complexity.

(a) The approaches which have been suggested include: complete reliance on the free market mechanism to bring supply and demand into balance; primary reliance on the free market mechanism, coupled with standby emergency procedures of some sort; an end-use allocation procedure administered jointly by a Federal agency and the States; a procedure in which States or regions or classes of users receive pro-rata portions of the gas used in a base period; incentives to conserve natural gas and other forms of energy; accelerated development of renewable forms of energy; extension of federal regulation to the intrastate gas market.

(b) Determination of the appropriate approach, from among the foregoing or others, is for Congress to resolve through the political process.

(3) Any Congressional action to institute Federal or Federal/State allocation procedures requires consideration of many complex subjects, several of which are noted below in Paragraphs 4–6. If, therefore, Congress determines (a) that an emergency shortage of natural gas is a significant possibility in the foreseeable future and (b) that its response will be some sort of allocation procedures, it should act promptly in view of the time involved in the legislative process and the lead time necessary to establish any new program. Adequate lead time should also be provided to allow States, gas users, and industry participants to plan on a sound, well-conceived basis.

(4) If Congress were to consider some sort of end-use allocation procedure, the following issues should be addressed in the legislative process:

(a) Comprehensive data are required for its organization and implementation, and such data do not appear to be readily available in sufficiently accurate, complete and compatible form.

(b) An end-use allocation procedure might adversely affect incentives for the conservation of natural gas by States, gas distributors, and users, and for the development of new sources of supply, so that care should be taken to minimize any such adverse affects.

(c) The sheer number of users of natural gas, each of which or each category of which might require consideration in an end-use allocation procedure, and each of which would incur particular economic and social consequences if the supply of natural gas were interrupted, means that it may be impractical to administer an end-use allocation procedure exclusively by a means of a centralized Federal agency.

(5) If Congress were to consider involving the States in the administration of an end-use allocation procedure, the following issues should be addressed in the legislative process:

(a) In some States, the authority to formulate and implement relevant energy policy resides in a public utilities commission, while in other States it resides in the Governor's office, and in still other States legislative provision for such authority does not currently exist. In some States, authority is divided between statewide and local governmental entities.

(b) Many State governments appear at present to lack the resources and expertise to administer an end-use allocation system. A comprehensive survey of the respective personnel and financial resources of the various States that would be needed to undertake an end-use allocation system apparently does not currently exist.

(c) Congress should consider whether and by what means the Federal Government may induce a State to take legislative action.

(d) Some States have taken measures to protect their respective economies from the adverse effects of natural gas shortages, and they would probably resist any Federal system which failed to recognize and reward such diligence.

(6) If Congress were to consider authorizing some Federal agency to order, as part of an allocation procedure, interconnections among interstate and intrastate pipelines and the mandatory transfer of gas from one to another, then the legislative process should address the fact that no comprehensive, accurate, compatible and readily available data concerning the existence and feasibility of interconnections among pipelines exist.

(7) Whatever action it takes, Congress should consider the relationship between that action and a number of laws, including the National Environmental Policy Act (NEPA) and existing antipullution statutes.

(a) The effect on the environment of requiring large users of natural gas to switch to alternative fuels may be substantial.

(b) Enivronmental impact statements may be time consuming and may be incompatible with the implementation of emergency procedures, if not their development.

(8) To the extent that it enacts legislation authorizing allocative procedures by government agencies, whether on the Federal, State, or local level, Congress should ensure the use of suitable and adequate administrative procedures.

(a) To the maximum extent feasible, each agency should develop its policies and regulations as far in advance of an actual emergency as possible and do so by using the procedures of § 553 of the Administrative Procedure Act and Recommendations 72-5 and 76-3 of the Administrative Conference.

(b) For the determination of matters that involve any specifically identifiable party, agencies should, to the maximum extent feasible, use procedures that assure the party adequate notice, opportunity to present facts and positions, a statement of the basis for decision, and reasonable administrative appeal.

Dated: December 27, 1976.

RICHARD K. BERG,
Executive Secretary.

[FR Doc. 76-38381 Filed 12-29-76;8:45 am]

Title 7—Agriculture

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Navel Orange Regulation 385, Amendment 1]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Minimum Size Requirement

This amendment extends the minimum size requirement of 2.32 inches in diameter currently in effect for navel oranges grown in Districts 1 and 3 of the production area, effective December 31, 1976, through July 15, 1977. The size requirement is designed to promote orderly marketing in the interest of producers and consumers.

On November 26, 1976, notice was published in the FEDERAL REGISTER (41 FR 52060) regarding a proposed amendment to be made effective pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. This notice allowed interested persons 21 days during which they could submit written data, views, or arguments pertaining to this proposed amendment. None were submitted. The amendment was proposed by the Navel Orange Administrative Committee established pursuant to the said marketing agreement and order. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

This action reflects the Department's appraisal of the need for regulation based on the current and prospective crop and market conditions. Shipments of navel oranges from Districts 1 and 3 of the production area are now in progress, and navel oranges in such shipments are required to be at least 2.32 inches in diameter through December 30, 1976. The amendment extends this minimum size requirement through July 15, 1977. The volume and size composition of the navel orange crop grown in Districts 1 and 3 is such that ample supplies of the more desirable sizes of fruit are available to satisfy the demand in regulated channels. The amendment is designed to permit shipment of ample supplies of navel oranges of acceptable sizes in the interest of both growers and consumers, and is necessary to maintain orderly marketing conditions, provide consumer satisfaction, and prevent shipment of fruit of less desirable sizes. Navel oranges which do not meet the minimum size requirement may be shipped to fresh export markets where smaller fruit is in demand, left on the trees to attain further growth, or utilized in processing. The amendment is consistent with the objectives of the act of promoting orderly marketing and protecting the interest of consumers.

After consideration of all relevant matter presented, including the proposal set forth in the aforesaid notice, the recommendation and information submitted by the committee, and other available information, it is hereby found and determined that the amendment, as hereinafter set forth, is in accordance with the provisions of the said amended marketing agreement and order and will tend to effectuate the declared policy of the act.

It is hereby further found that good cause exists for not postponing the effective date of this amendment until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) notice of this proposed amendment with an effective date of December 31, 1976, was published in the FEDERAL REGISTER and no objections were received; (2) the regulatory provisions in the amendment are the same as those now in effect through December 30, 1976, (3) compliance with these regulatory provisions will not require any special preparation on the part of navel orange handlers which cannot be completed by December 31, 1976; and (4) shipments of navel oranges from Districts 1 and 3 are now in progress, and insofar as practicable, the regulatory provisions should apply to all shipments of such oranges in order to effectuate the declared policy of the act.

Order. The provisions of § 907.385 Navel Orange Regulation 385 (41 FR 49824) are amended to read as follows:

§ 907.685 Navel Orange Regulation 385.

Order. (a) During the period December 31, 1976, through July 15, 1977, no handler shall handle any navel oranges grown in District 1 or District 3 which are of a size smaller than 2.32 inches in diameter, which shall be the largest

measurement at a right angle to a straight line running from the stem to the blossom end of the fruit: *Provided*, That not to exceed 5 percent, by count, of the navel oranges contained in any type of container may measure smaller than 2.32 inches in diameter.

(b) The terms "handler" and "handle" as used herein shall have the same meaning as is given to the respective terms in said marketing agreement and order.

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

Dated December 23, 1976, to become effective December 31, 1976.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.76-38286 Filed 12-29-76;8:45 am]

[Navel Orange Reg. 394]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

This regulation fixes the quantity of California-Arizona Navel oranges that may be shipped to fresh market during the weekly regulation period December 31, 1976–January 6, 1977. It is issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 907. The quantity of Navel oranges so fixed was arrived at after consideration of the total available supply of Navel oranges, the quantity currently available for market, the fresh market demand for Navel oranges, Navel orange prices, and the relationship of season average returns to the parity price for Navel oranges.

§ 907.694 Navel Orange Regulation 394.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of Navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for this regulation to limit the respective quantities of Navel oranges that may be marketed from District 1, District 2, and District 3 during the ensuing week stems from the production and marketing situation confronting the Navel orange industry.

(i) The committee has submitted its recommendation with respect to the quantities of Navel oranges that should be marketed during the next succeeding week. Such recommendation, designed to provide equity of marketing opportunity to handlers in all districts, resulted from consideration of the factors enumerated in the order. The Committee further reports that the fresh market demand for Navel oranges remains very dull. Prices f.o.b. averaged $4.07 a carton on a reported sales volume of 1,350 carlots last week, compared with $4.14 per carton on sales of 1,441 carlots a week earlier.

(ii) Having considered the recommendation and information submitted by the committee, and other available information, the Secretary finds that the respective quantities of Navel oranges which may be handled should be fixed as hereinafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of this regulation until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this regulation is based became available and the time this regulation must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this regulation effective during the period herein specified; and compliance with this regulation will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on December 28, 1976.

(b) *Order.* (1) The respective quantities of Navel oranges grown in Arizona and designated part of California which may be handled during the period December 31, 1976, through January 6, 1977, are hereby fixed as follows:

(i) District 1: 779,000 cartons;

(ii) District 2: 85,000 cartons;

(iii) District 3: 86,000 cartons."

(2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in said amended marketing agreement and order.

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

Dated: December 29, 1976.

DAVID A. PATTON,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.76-38474 Filed 12-29-76;12:42 pm]

[Lemon Reg. 73]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

This regulation fixes the quantity of California-Arizona lemons that may be shipped to fresh market during the weekly regulation period January 2–8, 1977. It is issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 910. The quantity of lemons so fixed was arrived at after consideration of the total available supply of lemons, the quantity of lemons currently available for market, the fresh market demand for lemons, lemon prices, and the relationship of season average returns to the parity price for lemons.

§ 910.373 Lemon Regulation 73.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for this regulation to limit the quantity of lemons that may be marketed during the ensuing week stems from the production and marketing situation confronting the lemon industry.

(i) The committee has submitted its recommendation with respect to the quantity of lemons it deems advisable to be handled during the ensuing week. Such recommendation resulted from consideration of the factors enumerated in the order. The committee further reports the demand for lemons continues good. Average f.o.b. price was $5.08 per carton the week ended December 25, 1976 compared to $4.82 per carton the previous week. Track and rolling supplies at 90 cars were 10 cars from last week.

(ii) Having considered the recommendation and information submitted by the committee, and other available information, the Secretary finds that the quantity of lemons which may be handled should be fixed as hereinafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the pub-

lic interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this regulation until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this regulation is based became available and the time when this regulation must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this regulation, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this regulation effective during the period herein specified; and compliance with this regulation will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on December 28, 1976.

(b) *Order.* (1) The quantity of lemons grown in California and Arizona which may be handled during the period January 2, 1977, through January 8, 1977, is hereby fixed at 200,000 cartons.

(2) As used in this section, "handled", and "carton(s)" have the same meaning as when used in the said amended marketing agreement and order.

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

Dated: December 29, 1976.

DAVID A. PATTON,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.76-38474 Filed 12-29-76; 12:42 pm]

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER A—GENERAL REGULATIONS

[FmHA Instruction 410.1]

PART 1801—RECEIVING AND PROCESSING APPLICATIONS

Receiving and Processing Applications

Section 1801.3(d) of Subpart A of Part 1801, Chapter XVIII, Title 7 of the Code of Federal Regulations (36 FR 15737; 37 FR 20105; 37 FR 21425; Redesignated at 38 FR 4772; 40 FR 26257) is amended, Paragraph (d)(4)(ii)(*d*) adds the requirement that the letter of rejection inform the applicant of the option to appeal the rejection directly to the State Director; the second sentence in paragraph (d)(5) is amended to further advise the applicant of the continuing right to appeal the rejection by including a statement to this effect in the letter of rejection.

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. These amendments, however, are not published for proposed rulemaking since the purpose of the change is to extend additional recourse to a rejected applicant and a delay in extending the recourse would be contrary to the public interest. For that reason, notice and public procedure thereon are unnecessary.

As added and amended, § 1801.3 (d)(4)(ii)(*d*) and (d)(5) read as follows:

§ 1801.3 **Processing applications.**

* * * * *

(d) * * *
(4) * * *
(ii) * * *

(*d*) A statement that the applicant has the option to appeal the rejection directly to the State Director, and the State Director's name and address.

(5) * * * Such a letter will, in addition to confirming the decision, advise the applicant of his continuing right to appeal by including the following statement:

* * * * *

(7 U.S.C. 1989; 42 U.S.C. 1480; 42 U.S.C. 2942; 5 U.S.C. 301; Sec. 10 P.L. 93-357; 88 Stat. 392; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70; delegations of authority by Director, Office of Economic Opportunity, 29 FR 14764, 33 FR 9850.)

Effective date. These amendments are effective December 30, 1976.

Dated: December 9, 1976.

FRANK B. ELLIOTT,
Administrator, Farmers Home Administration.

[FR Doc.76-38288 Filed 12-29-76;8:45 am]

[FmHA Instruction 443.2]

PART 1821—FARM PURCHASE AND DEVELOPMENT LOANS TO INDIVIDUALS

Subpart B—Soil and Water Loans

INCREASE INDEBTEDNESS—BORROWER ELIGIBILITY

Section 1821.55(c) and (f) of Subpart B of Part 1821, Title 7, Code of Federal Regulations (31 FR 14165, as Redesignated at 32 FR 7171) are revised. Paragraph (c) is revised to reflect the allowable limits for maximum unpaid indebtedness, against the security and farm. New Paragraph (c)(2) establishes ceilings for maximum unpaid principal balances for any combination of existing Soil and Water, Farm Ownership, Recreation, or Land Conservation and Development loans. Revised paragraph (c)(3) limits the amount of the loan and the unpaid principal balance plus any past-due interest of other liens against the farm, to the market value; the loan limitation contained in new paragraph (c)(4) has been transferred from the existing paragraph (c)(2) which is now divided into new paragraphs (c)(3) and (c)(4); the existing paragraph (c)(4) appears as (c)(5) and reflects the debt ceiling of $225,000. The revision of paragraph (f) incorporates by reference the provisions in paragraph (c) pertaining to the availability of Soil and Water loans to other FmHA borrowers.

These revisions reflect policy pertaining to Farm Ownership loan limitations contained in § 1821.8 of this part, and merely corrects and clarifies the Soil and Water loan limitations contained in this Subpart, and for this reason, it is unnecessary to give public notice and procedure thereon.

As revised, § 1821.55 (c) and (f) read as follows:

§ 1821.55 **Special requirements.**

* * * * *

(c) *Loan limitations.* A Soil and Water loan will not be approved if: (1) The borrower's unpaid indebtedness against the security and the farm if owned by him, whether or not it serves as security, plus the amount of the loan will exceed $225,000. In addition to the above limitation, if only nonreal estate items will serve as security, the borrower's unpaid indebtedness against the nonreal estate security plus the amount of the loan will exceed $25,000. The unpaid indebtedness in either case outlined above includes all FmHA's and any other lender's principal and any past-due interest on the existing and proposed security; or

(2) The borrower's unpaid principal balance on existing SW, Farm Ownership (FO), Recreation, or Land Conservation and Development loans, or any combination thereof, plus the amount of the proposed SW loan exceeds $100,000; or

(3) The amount of the loan and the unpaid principal balance plus any past-due interest of other liens against the farm will exceed the market value of the farm and when applicable, the market value of any other security, as determined by the loan approval official; or

(4) The loan exceeds the amount certified by the County Committee.

(5) A lien junior to the FmHA lien likely will be taken simultaneously with or immediately subsequent to the closing of the loan to secure any debt the borrower may have at the time of the loan closing or any indebtedness he may incur in connection with the SW loan, such as money borrowed from others for payments on debts against the farm, unless such a lien is within the $225,000 debt limit or the market value of the Security, whichever is less.

* * * * *

(f) *SW loans to other FmHA borrowers.* SW loans may be made to other FmHA borrowers subject to the limits in § 1821.55(c).

* * * * *

(7 U.S.C. 1989, 42 U.S.C. 1480, delegation of authority by the Secretary of Agriculture, 7 CFR 2.23, delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70.)

Effective date: December 30, 1976.

Dated: December 20, 1976.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc.76-38332 Filed 12-29-76;8:45 am]

[FmHA Instruction 444.3]

PART 1904—LOAN AND GRANT PROGRAMS (INDIVIDUAL)

Redesignation-Revision

Beginning on Page 46315 of the FEDERAL REGISTER dated October 20, 1976, there was published a notice of proposed rulemaking establishing under Chapter XVIII, Title 7, a new Part 1904—"Loan and Grant Programs (Individual)," Subparts A through G (§ 1904.1 through 1904.350) in the Code of Federal Regulations. This proposed Redesignation-Revision transfers Subpart B, "Section 504 Rural Housing Loan Policies, Procedures, and Authorizations," of Part 1822 to new Subpart G, "Section 504 Rural Housing Loans and Grants (§ 1904.301–1904.350)." This revision improves the operation and administration of the section 504 program and increases its effectiveness by including provisions for making grants or combinations of loans and grants. Also, included were editorial changes and a change in title to reflect the addition of grants.

Interested persons were given 30 days to submit written comments, suggestions or objections regarding the proposed revision. Written comments have been received and considered, and as a result the following changes from the original proposal are made:

1. Section 1904.305 is changed to include storm windows and doors, insulation, and needed heating facilities as examples of authorized loan and grant purposes.

2. Section 1904.306 is changed to require preparation of Form FmHA 431-3, "Family Budget," for applicants 62 years of age or older, rather than for all applicants. A guideline has been provided for County Supervisors to determine the applicant's repayment ability and when making partial grants, to determine the ratio of loan and grant.

3. Section 1904.309 includes instructions for determining the amortization period for the loan when making a combination loan and grant.

New Subpart G of Part 1904 is adopted with changes as set forth below.

Subpart G—Section 504 Rural Housing Loan and Grant Policies, Procedures, and Authorizations

Sec.

1904.301 General.
1904.302 Objectives.
1904.303 Amount of Section 504 loans and grants.
1904.304 Eligibility requirements.
1904.305 Loan and grant purposes
1904.306 Evaluating application and determining need for section 504 loans and grants.
1904.307 Limitations.
1904.308 Evidence of ownership.
1904.309 Terms and rates.
1904.310 Security.
1904.311 Approval of loan or grant.
1904.312 Supervised bank accounts.
1904.313 Nondiscrimination.
1904.314–1904.350 (Reserved.)
EXHIBIT A Agreement In Connection With A Section 504 Grant Authority.

AUTHORITY: (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.)

Subpart G—Section 504 Rural Housing Loans and Grants

§ 1904.301 General.

This Subpart sets forth policies and procedures and delegates authority for making initial and subsequent Rural Housing (RH) loans and/or grants under Section 504(a) of the Housing Act of 1949 (Section 504 loans). A Section 504 loan, combined loan and grant, or grant will be made in accordance with the provisions of Subpart A of Part 1822 of this Chapter (FmHA Instruction 444.1) as supplemented and modified by this Subpart.

§ 1904.302 Objectives.

The basic objective of the Farmers Home Administration (FmHA) in making Section 504 loans and grants is to assist owner-occupants in rural areas who do not qualify for Section 502 loans to repair or improve their dwellings to make such dwellings safe and sanitary and remove hazards to the health of the occupants, their families, or the community.

§ 1904.303 Amount of Section 504 loans and grants.

No initial or subsequent Section 504 loan, loan and grant, or grant may be made which will cause the total amount of Section 504 assistance extended to the applicant to exceed $5,000. Transferees assuming a Section 504 loan are limited to subsequent loans in an amount not to exceed the difference between the unpaid principal balance of the debt assumed and $5,000. The information will be compiled and retained indefinitely for all borrowers who have received Section 504 financial assistance.

§ 1904.304 Eligibility requirements.

(a) *Section 504 loan.* To be eligible for a Section 504 loan, an applicant must own and occupy a dwelling located in a rural area and meet the other eligibility requirements of Subpart A of Part 1822 of this Chapter, [FmHA Instruction 444.1] except that the applicant must:

(1) Be without sufficient income to qualify for a Section 502 loan.

(2) Have sufficient income, including any welfare-type payments, to repay the Section 504 loan, except that if the applicant's income is not sufficient to pay the loan, he/she may qualify for the loan by obtaining a cosigner or cosigners in accordance with § 1822.4(d) and § 1822.12(d) of this Chapter [Paragraphs IV D and XII D of FmHA Instruction 444.1].

(3) Need to make repairs or improvements to the dwelling which he/she owns and occupies to make it safe and sanitary and remove hazards to the health of the applicant, the applicant's family, or the community.

(b) *Combination loan and grant.* A combined loan and grant may be made to an applicant meeting the requirements of paragraph (a) of this section, provided the applicant is 62 years of age or older and has income so low that he/she is able to repay only a part of the total cost of the needed repairs or improvements. The portion of the assistance which the applicant can repay, as determined by the County Supervisor, will be made in the form of a loan. Only that portion of the assistance which is determined beyond the applicant's ability to repay will be in the form of a grant.

(c) *Section 504 grant (without loan).* A grant may be made to an applicant meeting the requirements of paragraph (a) of this section provided the applicant is 62 years of age or older; has an income so low that he cannot repay any part of a Section 504 loan; the repairs and improvements are not for cosmetic purposes, but are necessary to make the dwelling safe and sanitary and/or remove health hazards to the occupants, their families, or the community.

§ 1904.305 Loan and grant purposes.

Section 504 loan and/or grant funds may be used for paying the cost of repairs and improvements, including but not limited to:

(a) Repairing roofs.

(b) Supplying screens, storm windows and doors, insulation, and needed heating system for the dwelling.

(c) Repairing or providing structural supports.

(d) Adding a room to an existing dwelling in special cases when clearly necessary to remove hazards to the health of the family.

(e) Providing a sanitary water and waste disposal system. If funds are included in the loan for a water or waste disposal system, the system must meet local health department requirements.

(f) Providing other similar repairs or improvements.

(g) Paying fees and expenses in accordance with § 1822.6(a)(14) of this Chapter. [Paragraph VI A 14 of FmHA Instruction 444.1.]

§ 1904.306 Evaluating application and determining need for section 504 loans and grants.

(a)(1) Before a loan or grant may be made, the County Supervisor must document the evidence that the applicant meets all requirements of eligibility to

receive such loan or grant. For all applicants 62 years of age or older, Form FmHA 431–3, "Family Budget," will be prepared. For those applicants receiving grants or partial grants, the budget must evidence the applicant's inability to repay any part of the amount received as a grant.

(2) The maximum amortization periods set forth in § 1904.309 for amount of loan, and Form 431–3 will be used to determine the applicant's repayment ability for the total assistance being granted. For example: $2,300 is required for needed repairs. Form FmHA 431–3 indicates that the applicant can repay $8.00 each month on a Section 504 loan. [$1,300 amortized over 15 years @ 1% interest rate=$7.79 each month.] $1,000 would then be advanced as a Section 504 grant.

(b) The County Supervisor will visit the home of each applicant who appears to be eligible to determine whether the applicant meets the requirements of paragraph § 1904.304(a)(3). During the visit, information will be recorded in the loan docket on the following items, along with any additional pertinent facts:

(1) The nature of the health or safety hazard and how the proposed loan will remove such hazard.

(2) The specific repairs to be made and a list of items of materials and labor to be paid for with the proposed loan and/or grant.

(c) Itemized cost estimates will be obtained for all work to be performed. If in the judgment of the County Supervisor the cost estimate is not reasonable, additional cost estimates will be obtained.

(d) Information about cosigners will be obtained in accordance with § 1822.12 (d) of this Chapter [Paragraph XII D of FmHA Instruction 444.1].

§ 1904.307 Limitations.

A Section 504 loan or grant may *not* be made to:

(a) Assist in the construction of new dwellings.

(b) Improve the appearance of a dwelling or make facilities in the dwelling more convenient unless such changes are directly associated with removing hazards to health or safety.

(c) Make repairs to a dwelling of such poor condition and quality that when the repairs are completed the dwelling would likely continue to be a substantial hazard to the health and safety of the family.

(d) In addition to paragraphs (a), (b) and (c) of this section, a Section 504 grant may not be made to applicants under 62 years of age. Furthermore, a grant recipient must sign an agreement stating that he/she will not sell the property on which grant funds were utilized for a period of 3 years. Exhibit A may be used as a guide in preparing the agreement. In the event the property is sold before the end of said 3-year period, the agreement will provide that the grantee will reimburse the Government the full amount of the grant.

§ 1904.308 Evidence of ownership.

Each applicant will be required to submit evidence of ownership of the farm or nonfarm tract. This may be the original or a certified or photostatic copy of the deed, purchase contract, or other instrument evidencing ownership. When the County Supervisor is uncertain as to whether the applicant is a qualified owner, the County Supervisor will take such actions as he considers necessary, such as requiring the applicant to furnish additional information or obtaining the advice of the Office of the General Counsel regarding the evidence of ownership submitted, and any further information or action that may be needed. Proof of ownership need not be as much as that required by Part 1807 of this Chapter [FmHA Instruction 427.1]. It may consist of evidence which, considered as a whole, would be sufficient to convince a reasonably well informed and prudent person that the applicant is probably the owner. It may include, for example, such evidence as the levy and payment in the applicant's name of taxes on the real estate and affidavits by others in the community to the effect that the applicant has occupied the property as the apparent owner for a given length of time and is believed and generally reputed to be the owner.

§ 1904.309 Terms and rates.

A Section 504 loan will be scheduled for repayment in accordance with the applicant's ability to pay. Loans of not more than $1,500 may be amortized over a period not to exceed 10 years. Loans of more than $1,500 but not more than $2,500 may be amortized over a period not to exceed 15 years and loans of more than $2,500 may be amortized over a period not to exceed 20 years from the date of the note. For a combination grant and loan, the total amount of assistance needed will be used to determine the amortization period for the loan. The interest rate for Section 504 loans is 1 percent per annum.

§ 1904.310 Security.

(a) *Section 504 loans.* Section 504 loans of $2,500 or more will be secured by a mortgage on the borrower's real estate. Real estate security will also be taken for loans of less than $2,500 whenever the loan approval official determines that such security may be needed to reasonably assure repayment of the loan. For all Section 504 loans, the title requirements of Part 1807 of this Chapter, [FmHA Instruction 427.1] will not apply. However, the County Supervisor will use all practical means to verify that title and lien information furnished by the applicant is complete and accurate.

(b) *Section 504 grants or loans and grants.* County Supervisors are required to take steps, to the extent possible and practical, to protect the government's interest to promote FmHA's recovery of grant funds in the event of sale by the owner or foreclosure by other creditors. In addition, all persons receiving grants or partial grants will be required to sign an agreement (see Exhibit A) not to sell the property, for which the grant or partial grant was given for a period of 3 years. The agreement will provide that if the property is sold before the expiration of the 3-year period, the full amount of the grant will be repaid to the Government.

§ 1904.311 Approval of loan or grant.

Section 504 loans or grants may be approved in accordance with the authorizations of Subpart B of Part 1810 of this Chapter [FmHA Instruction 440.2].

§ 1904.312 Supervised Bank Accounts.

A Supervised bank account will be used for each section 504 loan and/or grant unless the entire proceeds will be disbursed to a supplier or contractor at closing.

§ 1904.313 Nondiscrimination.

Loans and/or grants under this program are subject to the nondiscrimination policies of the U.S. Department of Agriculture, and will be processed without regard to race, color, religion, sex, or national origin.

§§ 1904.314—1904.350 [Reserved]

EXHIBIT A—AGREEMENT

SECTION 504 GRANT

I (we) the undersigned, hereby agree not to sell the property located at_____ being repaired with grant funds provided by the Farmers Home Administration grant, for a period of three years from the date of this agreement. Should I (we) sell such property within three years, I (we) agree to repay to the grantor, at the time of the sale, the full amount of the grant, which is $_____.

_____
(Grantee)

_____ _____
(Date) (Grantee)

_____ _____
(Representative, Farmers Home Administration)

_____
(Date)

Effective date: December 30, 1976.

Dated: December 21, 1976.

FRANK W. NAYLOR, Jr.,
Acting Administrator
Farmers Home Administration.

[FR Doc. 76-38289 Filed 12-29-76;8:45 am]

Title 10—Energy

CHAPTER III—ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

Revision of Former AEC Regulations

The Energy Research and Development Administration (ERDA) was established by the Energy Reorganization Act of 1974, Pub. L. 93–438. Pursuant to that Act, as an interim measure, ERDA published a notice, continuing in effect, to the extent not inconsistent with applicable law and with certain clarifications, the regulations of the former Atomic Energy Commission (AEC) con-

tained in Chapter I of Title 10, Code of Federal Regulations. The notice also redesignated the regulations as Parts 700 through 870 of a new Chapter III.

Recently a number of regulations carried over from the AEC which pertained to the licensing and regulatory functions of the AEC were revoked by ERDA inasmuch as these functions were transferred to the Nuclear Regulatory Commission by the Energy Reorganization Act. There remain other former AEC regulations which continue in substantive effect as ERDA regulations. Because these remaining regulations are in terms of the AEC and its organizational structure, it is appropriate that they be revised to conform to ERDA and ERDA's organization.

Published herewith are seven ERDA regulations which are revised accordingly. The regulations are:

10 CFR part No.	Title	Former AEC part No.
706	Security policies and practices relating to labor-management relations	6
712	Grand Junction remedial action criteria	12
725	Permits for access to restricted data	25
760	Domestic uranium program	60
783	Waiver of patent rights	83
795	Safeguarding of restricted data	95
861	Control of traffic at Nevada test site	161

The revision consists essentially of changes in terminology. References to the AEC and its officials have been changed to ERDA and the appropriate ERDA officials. The revision to Part 760 also includes the deletion of former sec. 60.9 "Uranium prospecting permits and mining leases on lands administered by Federal agencies which do not have the authority to lease such lands."

Three other former AEC regulations are revoked. The regulations are:

10 CFR part No.	Title	Former AEC part No.
737	Radioisotope research support program	37
773	Physical protection of special nuclear material	73
830	Priorities regulations	130

The remaining ERDA regulations carried over from the AEC will require policy consideration and changes of a substantive nature. These are in the process of revision and will be published at a later date.

The regulations listed above as being revised are published as a document for codification to be effective as of the date of publication.

Because the changes in the regulations are procedural and editorial in nature, the notice and proposed rulemaking procedures are omitted as unnecessary.

Interested persons who desire to submit written comments or suggestions for consideration in connection with such regulations should send them before April 1, 1977, to the General Counsel, Energy Research and Development Administration, Washington, D.C. 20545.

Dated: December 27, 1976.

ALFRED D. STARBIRD,
Acting Administrator.

AUTHORITY: Pub. L. 93-438, § 105(a), 88 Stat. 1238, 42 U.S.C. 5815.

Chapter III is amended as follows:

1. 10 CFR Part 706 (formerly 10 CFR 6) is revised as follows.

2. 10 CFR Part 712 (formerly 10 CFR 12) is revised as follows.

3. 10 CFR Part 725 (formerly 10 CFR 25) is revised as follows.

4. 10 CFR Part 760 (formerly 10 CFR 60) is revised as follows including deletion of former §60.9, "Uranium prospecting permits and mining leases on lands administered by Federal agencies which do not have the authority to lease such lands".

5. 10 CFR Part 783 (formerly 10 CFR 83) is revised as follows.

6. 10 CFR Part 795 (formerly 10 CFR 95) is revised as follows including deletion: under sec. 795.40 of the last sentence thereof starting with the words "Permittees shall also report * * *" because this covers a reporting requirement no longer deemed to be needed under ERDA operations.

7. 10 CFR Part 861 (formerly 10 CFR 161) is revised as follows.

8. 10 CFR Part 737, Radioisotope Research Program (formerly 10 CFR 37) pertains to AEC programs not continued by ERDA, and is revoked.

9. 10 CFR Part 773, Physical Protection of Plants and Materials (formerly 10 CFR 73) pertains to licensing functions of the AEC not carried on by ERDA, and is revoked.

10. 10 CFR Part 830, Priorities Regulation (formerly 10 CFR 130) pertains to AEC programs not continued by ERDA, and is revoked.

PART 706—SECURITY POLICIES AND PRACTICES RELATING TO LABOR-MANAGEMENT RELATIONS

GENERAL

Sec.
706.1 Purpose.
706.2 Basis and scope.

SECURITY POLICIES AND PROCEDURES IN NATIONAL LABOR RELATIONS BOARD PROCEEDINGS

706.10 Policy.
706.11 Consent elections.
706.12 Administrative Law Judges.
706.13 Clearance of counsel.
706.14 ERDA's role in proceedings.

LOYALTY OF PARTICIPANTS

706.20 Policy.

CONTRACT NEGOTIATION AND ADMINISTRATION

706.30 Clearance of certain local union representatives.
706.31 Clearance of conciliators and arbitrators.
706.32 Security indoctrination of non-employee representatives.
706.40 Final responsibility of ERDA in security matters.

AUTHORITY: The provisions of this Part 706 issued under sec. 161, 68 Stat. 948, as amended; 42 U.S.C. 2201.

GENERAL

§ 706.1 Purpose.

The purpose of this part is to set forth Energy Research and Development Administration, hereinafter "ERDA," security policies and practices in the area of labor-management relations.

§ 706.2 Basis and scope.

The specific policies contained in this part are worked out within the framework of ERDA's general objectives for labor-management relations in the ERDA program, namely:

(a) Wholehearted acceptance by contractors and by labor and its representatives of the moral responsibility inherent in participation in the ERDA program;

(b) Development of procedures to assure (1) that all participants in the program are loyal to the United States including those whose participation involves the exercise of negotiating and disciplinary authority over bargaining units, and (2) that determination of unit, jurisdiction, and similar questions will not breach security;

(c) Continuity of production at vital ERDA installations;

(d) Consistent with ERDA's responsibility under the law, the least possible governmental interference with the efficient management expected from ERDA contractors;

(e) Minimum interference with the traditional rights and privileges of American labor.

SECURITY POLICIES AND PROCEDURES IN NATIONAL LABOR RELATIONS BOARD PROCEEDINGS

§ 706.10 Policy.

It is policy of ERDA that NLRB cases falling within the scope of the Labor Management Relations Act at the various ERDA installations should be conducted in normal fashion wherever possible, on the basis of open hearings unclassified records and published decisions. This policy does not preclude adoption of special arrangements which may be required for reasons of program security at any stage of the proceedings in particular areas.

§ 706.11 Consent elections.

In accordance with the recommendation of the President's Commission on Labor Relations in the Atomic Energy Installations, it is the policy of ERDA to encourage every effort by management and labor at ERDA installations to determine bargaining units and representatives by agreement and consent elections in preference to contested proceedings before the National Labor Relations Board.

§ 706.12 Administrative Law Judges.

By agreement with the National Labor Relations Board, a panel of cleared NLRB administrative law judges is maintained to facilitate resolution of questions as to the materiality of classified information in NLRB hearings and to facilitate preparation of an unclassified record. The assignment of individual administrative law judges to ERDA cases remains a matter within the discretion of the National Labor Relations Board.

§ 706.13 Clearance of counsel.

It is recognized that clearance of counsel for the parties is sometimes desirable

for proper preparation of a case even though the record is to be unclassified. Clearance of counsel makes possible their participation in any closed discussions needed preparatory to making an unclassified record. Each party is responsible for requesting clearance of its counsel well in advance so that clearance requirements will not delay the proceeding. The clearance of temporary special counsel will be terminated on completion of the proceeding.

§ 706.14 ERDA's role in proceedings.

If controversies within the scope of the Labor Management Relations Act arise which cannot be adjusted by mutual agreement, and contested proceedings before NLRB result, each party to such proceedings will present his own position and the evidence in support thereof with due regard for existing security rules. ERDA will be continuously informed of the progress of such proceedings and will act as may appear desirable (a) to assure the protection of classified information; (b) to assure that material and relevant information is not withheld from the record on grounds of security if such information can be supplied in unclassified form; and (c) to assist in determining appropriate action where a decision may turn on data which can be expressed only in classified form.

LOYALTY OF PARTICIPANTS

§ 706.20 Policy.

Loyalty to the United States is a paramount factor applicable to all participants in ERDA program including those whose participation (although not requiring access to restricted data) involves the exercise of administrative, negotiating and disciplinary authority over bargaining units composed of employees engaged on classified work. Individuals involved in questions of loyalty will be given full opportunity to explore the questions with ERDA. ERDA will take such further steps as may be appropriate in the circumstances.

CONTRACT NEGOTIATION AND ADMINISTRATION

§ 706.30 Clearance of certain local union representatives.

It is recognized that security clearance of certain union representatives may be necessary to assure opportunity for effective representation of employees in collective bargaining relationships with ERDA contractors. Accordingly, ERDA managers may authorize investigation for "Q" clearance of union officials whose functions as representatives of employees may reasonably be expected to require access to Restricted Data under NLRB and other procedures according to applicable law (LMRA, 1947); to effectively perform their representation functions in the resolution of grievances and in other collective bargaining relationships with contractors; to effectuate the recommendation of the President's Commission on Labor Relations in the Atomic Energy Installations in respect to integration of the union into the plant organization "as to two-way channel of communication and a medium of understanding between management and workers".

(a) In the pre-contract stage of union-management relations, the requirements of the Labor Management Relations Act normally will be the applicable criteria for determining which bargaining representatives, if any, will need access to classified material in the exercise of their functions as employee representatives.

(b) After a bargaining relationship has been established between the contractor and the representatives of its employees the nature of this relationship and the procedures followed in it normally will be the controlling criteria for determination of the access to be granted to particular persons in carrying out their functions as employee representatives. For example, many contract grievance procedures designate by title certain union and management officials who are to have definite roles in the resolution of grievances under the procedure. Investigation for "Q" clearance will normally be in order for such officials, both company and union, employee and non-employee. In addition, persons not so designated may be investigated for clearance where the company and the union advise ERDA manager that their established relationships contemplate access for such persons.

§ 706.31 Clearance of conciliators and arbitrators.

Conciliators and arbitrators who are regularly assigned to ERDA cases may be processed for "Q" clearance at the discretion of the local ERDA manager, either on the manager's initiative or at the request of a contractor.

§ 706.32 Security indoctrination of non-employee representatives.

All collective bargaining representatives, company and union, who are to have access to Restricted Data, will be given appropriate security indoctrination.

§ 706.40 Final responsibility of ERDA in security matters.

On all matters of security at all Government-owned, privately operated ERDA installations, ERDA retains absolute and final authority, and neither the security rules nor their administration are matters for collective bargaining between management and labor, insofar as ERDA security regulations affect the collective bargaining process, the security policies and regulations will be made known to both parties. To the fullest extent feasible ERDA will consult with representatives of management and labor in formulating security rules and regulations that affect the collective bargaining process.

PART 712—GRAND JUNCTION REMEDIAL ACTION CRITERIA

Sec.

712.1 Purpose.
712.2 Scope.
712.3 Definitions.
712.4 Interpretations.
712.5 Communications.
712.6 General radiation exposure level criteria for remedial action.
712.7 Criteria for determination of possible need for remedial action.
712.8 Determination of possible need for remedial action where criteria have not been met.
712.9 Factors to be considered in determination of order of priority for remedial action.
712.10 Selection of appropriate remedial action.

AUTHORITY: Sec. 203, 86 Stat. 226.

§ 712.1 Purpose.

(a) The regulations in this part establish the criteria for determination by ERDA of the need for, priority of and selection of appropriate remedial action to limit the exposure of individuals in the area of Grand Junction, Colo., to radiation emanating from uranium mill tailing which have been used as a construction-related material.

(b) The regulations in this part are issued pursuant to Pub. L. 92-314 (86 Stat. 222) of June 16, 1972.

§ 712.2 Scope.

The regulations in this part apply to all structures in the area of Grand Junction, Colo., under or adjacent to which uranium mill tailings have been used as a construction-related material between January 1, 1951, and June 16, 1972, inclusive.

§ 712.3 Definitions.

As used in this part:

(a) "Administrator" means the Administrator of Energy Research and Development or his duly authorized representative.

(b) "Area of Grand Junction, Colo.," means Mesa County, Colo.

(c) "Background" means radiation arising from cosmic rays and radioactive material other than uranium mill tailings.

(d) "ERDA" means the U.S. Energy Research and Development Administration or any duly authorized representative thereof.

(e) "Construction-related material" means any material used in the construction of a structure.

(f) "External gamma radiation level" means the average gamma radiation exposure rate for the habitable area of a structure as measured near floor level.

(g) "Indoor radon daughter concentration level" means that concentration of radon daughters determined by: (1) Averaging the results of 6 air samples each of at least 100 hours duration, and taken at a minimum of 4-week intervals throughout the year in a habitable area of a structure, or (2) utilizing some other procedure approved by the Commission.

(h) "Milliroentgen (mR) means a unit equal to one-thousandth (1/1000) of a roentgen which roentgen is defined as an exposure dose of X or gamma radiation such that the associated corpuscular emission per 0.001293 gram of air produces, in air, ions carrying one electrostatic unit of quantity of electricity of either sign.

(i) "Radiation" means the electromagnetic energy (gamma) and the particulate radiation (alpha and beta)

which emanate from the radioactive decay of radium and its daughter products.

(j) "Radon daughters" means the consecutive decay products of radon-222. Generally, these include Radium A (polonium-218), Radium B (lead-281), Radium C (bismuth-214), and Radium C' (polonium-214).

(k) "Remedial action" means any action taken with a reasonable expectation of reducing the radiation exposure resulting from uranium mill tailings which have been used as construction-related material in and around structures in the area of Grand Junction, Colo.

(l) "Surgeon General's guidelines" means radiation guidelines related to uranium mill tailings prepared and released by the Office of the U.S. Surgeon General, Department of Health, Education and Welfare on July 27, 1970.

(m) "Uranium mill tailings" means tailings from a uranium milling operation involved in the Federal uranium procurement program.

(n) "Working Level" (WL) means any combination of short-lived radon daughter products in 1 liter of air that will result in the ultimate emission of 1.3×10^5 MeV of potential alpha energy.

§ 712.4 Interpretations.

Except as specifically authorized by the Administrator in writing, no interpretation of the meaning of the regulations in this part by an officer or employee of ERDA other than a written interpretation by the General Counsel will be recognized to be binding upon ERDA.

§ 712.5 Communications.

Except where otherwise specified in this part, all communications concerning the regulations in this part should be addressed to the Director, Division of Safety, Standards, and Compliance, U.S. Energy Research and Development Administration, Washington, D.C. 20545.

§ 712.6 General radiation exposure level criteria for remedial action.

The basis for undertaking remedial action shall be the applicable guidelines published by the Surgeon General of the United States. These guidelines recommend the following graded action levels for remedial action in terms of external gamma radiation level (EGR) and indoor radon daughter concentration level (RDC) above background found within dwellings constructed on or with uranium mill tailings:

EGR	RDC	Recommendation
Greater than 0.1 mR/hr.	Greater than 0.05 WL.	Remedial action indicated.
From 0.05 to 0.1 mR/hr.	From 0.01 to 0.05 WL.	Remedial action may be suggested.
Less than 0.05 mR/hr.	Less than 0.01 WL.	No remedial action indicated.

§ 712.7 Criteria for determination of possible need for remedial action.

Once it is determined that a possible need for remedial action exists, the record owner of a structure shall be notified of that structure's eligibility for an engineering assessment to confirm the need for remedial action and to ascertain the most appropriate remedial measure, if any. A determination of possible need will be made if as a result of the presence of uranium mill tailings under or adjacent to the structure, one of the following criteria is met:

(a) Where ERDA approved data on indoor radon daughter concentration levels are available:

(1) For dwellings and schoolrooms: An indoor radon daughter concentration level of 0.01 WL or greater above background.

(2) For other structures: An indoor radon daughter concentration level of 0.03 WL or greater above background.

(b) Where ERDA approved data on indoor radon daughter concentration levels are not available:

(1) For dwellings and schoolrooms:

(i) An external gamma radiation level of 0.05 mR/hr. or greater above background.

(ii) An indoor radon daughter concentration level of 0.01 WL or greater above background (presumed).

(A) It may be presumed that if the external gamma radiation level is equal to or exceeds 0.02 mR/hr. above background, the indoor radon daughter concentration level equals or exceeds 0.01 WL above background.

(B) It should be presumed that if the external gamma radiation level is less than 0.001 mR/hr. above background, the indoor radon daughter concentration level is less than 0.01 WL above background, and no possible need for remedial action exists.

(C) If the external gamma radiation level is equal to or greater than 0.001 mR/hr. above background but is less than 0.02 mR/hr. above background, measurements will be required to ascertain the indoor radon daughter concentration level.

(2) For other structures: (i) An external gamma radiation level of 0.15 mR/hr. above background averaged on a room-by-room basis.

(ii) No presumptions shall be made on the external gamma radiation level/indoor radon daughter concentration level relationship. Decisions will be made in individual cases based upon the results of actual measurements.

§ 712.8 Determination of possible need for remedial action where criteria have not been met.

The possible need for remedial action may be determined where the criteria in § 712.7 have not been met if various other factors are present. Such factors include, but are not necessarily limited to, size of the affected area, distribution of radiation levels in the affected area, amount of tailings, age of individuals occupying affected area, occupancy time, and use of the affected area.

§ 712.9 Factors to be considered in determination of order of priority for remedial action.

In determining the order of priority for execution of remedial action, consideration shall be given, but not necessarily limited to, the following factors:

(a) Classification of structure. Dwellings and schools shall be considered first.

(b) Availability of data. Those structures for which data on indoor radon daughter concentration levels and/or external gamma radiation levels are available when the program starts and which meet the criteria in § 712.7 will be considered first.

(c) Order of application. Insofar as feasible remedial action will be taken in the order in which the application is received.

(d) Magnitude of radiation level. In general, those structures with the highest radiation levels will be given primary consideration.

(e) Geographical location of structures. A group of structures located in the same immediate geographical vicinity may be given priority consideration particularly where they involve similar remedial efforts.

(f) Availability of structures. An attempt will be made to schedule remedial action during those periods when remedial action can be taken with minimum interference.

(g) Climatic conditions. Climatic conditions or other seasonal considerations may affect the scheduling or certain remedial measures.

§ 712.10 Selection of appropriate remedial action.

(a) Tailings will be removed from those structures where the appropriately averaged external gamma radiation level is equal to or greater than 0.05 mR/hr. above background in the case of dwellings and schools and 0.15 mH/hr. above background in the case of other structures.

(b) Where the criterion in paragraph (a) of this section is not met, other remedial action techniques, including but not limited to sealants, ventilation, and shielding may be considered in addition to that of tailings removal. ERDA shall select the remedial action technique or combination of techniques, which it determines to be the most appropriate under the circumstances.

PART 725—PERMITS FOR ACCESS TO RESTRICTED DATA

GENERAL PROVISIONS

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APPLICATIONS

725.11 Applications.
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PERMITS

725.21 Issuance.
725.22 Scope of permit.
725.23 Terms and conditions of access.
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Sec.
725.25 Term and renewal.
725.26 Assignment.
725.27 Amendment.
725.28 ERDA action on application to renew or amend.
725.29 Suspension, revocation and termination of permits.
725.30 Exceptions and additional requirements.
725.31 Violations.

APPENDICES

Appendix A—Categories of Restricted Data Available. (Including scope notes for each category.)
Appendix B—ERDA's Operations Offices and Geographical areas of Responsibility.

AUTHORITY: Sec. 161, 68 Stat. 943; 42 U.S.C. 2201.

GENERAL PROVISIONS

§ 725.1 Purpose.

This part establishes procedures and standards for the issuance of an Access Permit to any person subject to this part who requires access to Restricted Data applicable to civil uses of atomic energy for use in his business, trade or profession; provides for the amendment, renewal, suspension, termination and revocation of an Access Permit; and specifies the terms and conditions under which the Administrator will issue the Permit.

§ 725.2 Applicability.

The regulations in this part apply to any person within or under the jurisdiction of the United States who desires access to Restricted Data for use in his business, profession or trade.

§ 725.3 Definitions.

As used in this part: (a) "Access Permit" means a permit, issued by the Administrator authorizing access by the named permittee to Restricted Data applicable to civil uses of atomic energy in accordance with the terms and conditions stated on the permit.

(b) "Act" means the Atomic Energy Act of 1954 (68 Stat. 919), including any amendments thereto.

(c) "Category" means a category of Restricted Data designated in Appendix "A" to the regulations in this part.

(d) "Administrator" means the Administrator of Energy Research and Development or his duly authorized representatives.

(e) "ERDA" means the Energy Research and Development Administration.

(f) "Permittee" means the holder of a permit issued pursuant to the regulations in this part.

(g) "Person" means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than ERDA, any state or any political subdivision of, or any political entity within a state, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

(h) "Restricted Data" means all data concerning (1) design, manufacture or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142 of the Act.

§ 725.4 Interpretations.

Except as specifically authorized by the Administrator in writing no interpretation of the meaning of the regulations in this part by any officer or employee of ERDA other than a written interpretation by the General Counsel will be recognized to be binding upon ERDA.

§ 725.5 Communications.

Communications concerning rulemaking, i.e., petition to change part 725, should be addressed to Administrator of Energy Research and Development, Energy Research and Development Administration, Washington D.C. 20545. Except with respect to category C–24, all other communications concerning the regulations in this part and applications filed under them, should be addressed to the ERDA Operations Office listed in Appendix "B" of this part responsible for the geographical area in which (a) the applicant's principal place of business is located, or (b) the principal place where the applicant will use the restricted data is located.

§ 725.6 Categories of available information.

For administrative purposes ERDA has categorized Restricted Data which will be made available to permittees in the categories as set forth in Appendix "A" to this part. Top Secret information; information pertaining to the design, manufacture or utilization of atomic weapons; and defense information other than Restricted Data are not included in these categories and will not be made available under this part.

§ 725.7 Specific waivers.

The Administrator may, upon application of any interested party, grant such waivers from the requirements of this part as he determines are authorized by law and will not constitute an undue risk to the common defense and security.

APPLICATIONS

§ 725.11 Applications.

(a) Any person desiring access to Restricted Data pursuant to this part should submit an application (Form ERDA 378), in triplicate, for an acess permit to the ERDA Operations Office, listed in Appendix "B" to this part, responsible for the area in which (1) the applicant's principal place of business is located, or (2) the principal place where the applicant will use the Restricted Data is located. Applications for access to Restricted Data in category C–24 isotope separation, should be submitted to the Oak Ridge Operations Office.

(b) Where an individual desires access to Restricted Data for use in the performance of his duties as an employee, the application for an access permit must be filed in the name of his employer.

(c) Self-employed private consultants, desiring access to Restricted Data, must file the application in their own name for an individual access permit.

(d) Each application should contain the following information:

(1) Name of applicant (unincorporated subsidiaries or divisions of a corporation must apply in the name of the corporation);

(2) Address of applicant;

(3) Description of business or occupation of applicant; and

(4) (i) If applicant is an individual, state citizenship.

(ii) If applicant is a partnership, state name, citizenship and address of each partner and the principal location where the partnership does business.

(iii) If applicant is a corporation or an unincorporated association, state:

(A) The state where it is incorporated or organized and the principal location where it does business;

(B) The names, addresses and citizenship of its directors and of its principal officers;

(C) Whether it is owned, controlled or dominated by an alien, a foreign corporation, or foreign government, and if so, give details.

(iv) If the applicant is acting as agent or representative of another person in filing the application, identify the principal and furnish information required under this subparagraph with respect to such principal;

(5) Total number of full-time employees;

(6) Classification of Restricted Data (Confidential or Secret) to which access is requested;

(7) Potential use of the Restricted Data in the applicant's business, profession or trade. If access to Secret Restricted Data is requested, list the specific categories by number and furnish detailed reasons why such access within the specified categories is needed by the applicant. The need for Secret information should be stated by describing its proposed use in specific research, design, planning, construction, manufacturing, or operating projects; in activities under licenses issued by Nuclear Regulatory Commission; in studies or evaluations planned or under way; or in work or services to be performed for other organizations. In addition, if access to secret restricted data in category C–65, plutonium production, or restricted data in category C–24, isotope separation, is requested, the application should also include sufficient information to satisfy the requirements of § 725.15(b) (2) or (3), as the case may be."

(8) Principal Location(s) at which Restricted Data will be used.

(e) Applications should be signed by a person authorized to sign for the applicant.

(f) Each application shall contain complete and accurate disclosure with respect to the real party or parties in interest and as to all other matters and things required to be disclosed.

§ 725.12 Noneligibility.

The following persons are not eligible to apply for an access permit:

(a) Corporations not organized under the laws of the United States or a political subdivision thereof.

(b) Any individual who is not a citizen of the United States.

(c) Any partnership not including among the partners one or more citizens of the United States; or any other unincorporated association not including one or more citizens of the United States among its principal officers.

(d) Any organization which is owned, controlled or dominated by the Government of, a citizen of, or an organization organized under the laws of a country or area listed as a Subgroup A country or destination in § 371.3 (15 CFR 371.3) of the Comprehensive Export Schedule of the United States Department of Commerce.

(e) Persons subject to the jurisdiction of the United States who are not doing business within the United States.

§ 725.13 Additional information.

The Administrator may, at any time after the filing of the original application and before the termination of the permit, require additional information in order to enable the Administrator to determine whether the permit should be granted or denied or whether it should be modified or revoked.

§ 725.14 Public inspection of applications.

Applications and documents submitted to ERDA in connection with applications may be made available for public inspection in accordance with the regulations contained in Part 702 of this chapter.

§ 725.15 Requirements for approval of applications.

(a) An application for an access permit authorizing access to confidential restricted data in the categories set forth in Appendix A of this part (except C–91 and C–24) will be approved only if the application demonstrates that the applicant has a potential use or application for such data in his busines, trade, or profession and has filed a complete application form.

(b) (1) An application for an access permit authorizing access to restricted data in category C–24 or secret restricted data in other categories will be approved only if the applicant has a need for such data in his business, trade, or profession and has filed a complete application form.

(2) An application for an access permit authorizing access to Secret Restricted Data in category C–65 Plutonium Production will be approved only if the application demonstrates also that the applicant:

(i) Is directly engaged in a substantial effort to develop, design, build or operate a chemical processing plant or other facility related to his participation in the peaceful uses of atomic energy for which such production rate and cost data are needed; or

(ii) Is furnishing to a permittee having access to C–65 under paragraph (b) (2) (i) of this section, substantial scientific, engineering or other professional services to be used by said permittee in carrying out the activities for which said permittee received access to category C–65.

(3) An application for an access permit authorizing access to restricted data in category C–24, isotope separation—subcategory A or B—will be approved only if the application demonstrates also that the applicant:

(i) Possesses qualifications demonstrating that the applicant is potentially capable of undertaking or participating significantly in the construction and operation of large, complex production or manufacturing facilities and offers reasonable assurance of adequacy of resources to carry on, alone or with others, uranium enrichment on a production basis or the large-scale manufacture or assembly of precision equipment systems; is not a corporation or entity owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; and

(A) For subcategory A, desires to determine its interest in participating significantly in a substantial effort to develop, design, build, and operate a uranium enrichment facility or a facility for the manufacture of uranium enrichment equipment.

(B) For subcategory B, proposes to participate significantly in, or is directly participating significantly in, a substantial effort to evaluate alternative processes, develop, design, build, and operate a uranium enrichment facility or a facility for the manufacture of uranium enrichment equipment, or

(ii) Is furnishing to a permittee having access to Category C–24 under the paragraph (b) (3) (i) of this section substantial scientific, engineering, or other professional services to be used by said permittee in carrying out the activities for which said permittee received access to Category C–24.

(4) An application for an access permit authorizing access to Confidential and Secret Restricted Data in C–91, Nuclear Reactors for Rocket Propulsion, will be approved only if the application demonstrates also that the applicant:

(i) Possesses qualifications demonstrating that he is capable of making a contribution to research and development in the field of nuclear reactors for rocket propulsion and is directly engaged in or proposes to engage in a substantial research and development program in such field of work; or

(ii) Is engaged in or proposes to engage in a substantial study program in the field of nuclear reactors for rocket propulsion preparatory to the submission of a research and development proposal to ERDA; or

(iii) Is furnishing to a permittee having access under subdivision (i) or (ii) of this subparagraph substantial scientific, engineering or other professional services to be used by that permittee in a study or research and development program for which said permittee received access.

PERMITS

§ 725.21 Issuance.

(a) Upon a determination that an application meets the requirements of this regulation, the Administrator will issue to the applicant an access permit on Form ERDA 379.

(b) An Access Permit is not an access authorization. It does not authorize any individual not having an appropriate ERDA access authorization to receive Restricted Data. See § 725.24 and Part 795 of this chapter.

§ 725.22 Scope of permit.

(a) All access permits will as a minimum authorize access, subject to the terms and conditions of the access permit to confidential restricted data in all of the categories set forth in Appendix A to this part, except C–91 and C–24.

(b) In addition, access permits may authorize access, subject to the terms and conditions of the access permit to such Secret Restricted Data as is included within the particular category or categories specified in the permit.

§ 725.23 Terms and conditions of access.

(a) Neither the United States, nor ERDA, nor any person acting on behalf of ERDA makes any warranty or other representation, express or implied, (1) with respect to the accuracy, completeness or usefulness of any information made available pursuant to an access permit, or (2) that the use of any such information may not infringe privately owned rights.

(b) The Administrator, on behalf of ERDA, hereby waives such rights with respect to any invention or discovery as it may have pursuant to section 152 of the Act by reason of such invention or discovery having been made or conceived in the course of, in connection with, or resulting from access to Restricted Data received under the terms of an access permit. (Note provisions of § 725.23(d).)

(c) Each permittee shall: (1) Comply with all applicable provisions of the Atomic Energy Act of 1954, as amended, and with parts 795 and 810 of this chapter and with all other applicable rules, regulations, and orders of ERDA, including such rules, regulations, and orders as ERDA may adopt or issue to effectuate the policies specified in the act directing ERDA to strengthen free competition in private enterprise and avoid the creation or maintenance of a situation inconsistent with the antitrust laws.

(2) Be deemed to have waived all claims for damages under section 183 of title 35 U.S. Code by reason of the imposition of any secrecy order on any patent application and all claims for just compensation under section 173 of the Atomic Energy Act of 1954, with respect to any invention or discovery made or conceived in the course of, in connection with or as

a result of access to Restricted Data received under the terms of the access permit;

(3) Be deemed to have waived any and all claims against the United States, ERDA and all persons acting on behalf of ERDA that might arise in connection with the use, by the applicant, of any and all information supplied by them pursuant to the access permit;

(4) Obtain and preserve in his files written agreements from all individuals who will have access to Restricted Data under his access permit. The agreement shall be as follows:

In consideration for receiving access to Restricted Data under the access permit issued by the Administrator of Energy Research and Development, I hereby agree to:

(a) Waive all claims for damages under section 183 of Title 35 U.S. Code by reason of the imposition of any secrecy order on any patent application, and all claims for just compensation under section 173 of the Atomic Energy Act of 1954, with respect to any invention or discovery made or conceived in the course of, in connection with or resulting from access to Restricted Data received under the terms of the access permit issued to (insert the name of the holder of the access permit);

(b) Waive any and all claims against the United States, ERDA, and all persons acting on behalf of ERDA that might arise in connection with the use, by me, of any and all information supplied by them pursuant to the access permit issued to (insert the name of the holder of the access permit).

(5) In case of an access permit authorizing access to restricted data in category C–24, isotope separation, the agreement shall also provide for such requirements as the permittee considers necessary for purposes of fulfilling its obligations under paragraph (d) of this section.

(6) Pay all established charges for personnel access authorizations, ERDA consulting services, publication and reproduction of documents, and such other services as ERDA may furnish in connection with the access permit.

(d) The following terms and conditions are applicable to an access permit authorizing access to restricted data in category C–24, isotope separation irrespective of whether access to ERDA's restricted data information is desired:

(1) The permittee agrees to grant a nonexclusive license at reasonable royalties to the United States and, at the request of ERDA, to domestic and foreign persons, to use in the production or enrichment of special nuclear material any U.S. patent or any U.S. patent application (otherwise in condition for allowance except for a secrecy order thereon) on any invention or discovery made or conceived by the permittee, its employees, or others engaged by the permittee in the course of the permittee's work under the access permit, or as a result of access to data or information made available by ERDA.

(2) The permittee agrees to grant to the United States, and, at the request of ERDA, to domestic and foreign persons, the right at reasonable royalties to use for research, development, or manufacturing programs for the production or enrichment of special nuclear material, any technical information or data, including economic evaluations thereof, of a proprietary nature developed by the permittee, its employees, or others engaged by the permittee in the course of the permittee's work under the access permit or as a result of access to data or information made available by ERDA and not covered by a U.S. patent or U.S. patent application referred to in paragraph (d)(1) of this section. If ERDA disseminates any such proprietary technical information or data in its possession to any of its contractors for use in any ERDA research, development, production, or manufacturing programs, it will do so under contractual provisions pursuant to which the contractor would undertake to use this information only for the work under the pertinent ERDA contract. Notwithstanding the foregoing provisions of this subparagraph, the permittee waives any claim against ERDA for compensation or otherwise, in connection with any use or dissemination of information or data not specifically identified and claimed by the permittee as proprietary in a written notice to ERDA at the time of the furnishing of the information or data to ERDA. As used in this subparagraph, the term "technical information or data, including economic evaluations thereof, of a proprietary nature" means information or data which:

(i) Is not the property of the Government by virtue of any agreement;

(ii) Concerns the details of trade secrets or manufacturing processes which the permittee has protected from us by others; and

(iii) (A) Is specifically identified as proprietary at the time it is made available to ERDA.

(B) Technical information or data shall not be deemed proprietary in nature whenever substantially the same technical information is available to ERDA which has been prepared, developed or furnished as nonproprietary information by another source independently of the proprietary information and data furnished by the permittee.

(3) If the amount of reasonable royalties provided for in paragraph (d) (1) and (2) of this section cannot be agreed upon, the permittee agrees that such amount shall be determined by the Administrator under the provisions of section 157c of the Atomic Energy Act of 1954, as amended.

(4) In the event domestic commercial uranium enriching services are provided by persons other than an agency of the United States, the permittee agrees not to require the United States to pay the royalties provided for in paragraph (d) (1) and (2) of this section.

(5) The acceptance, exercise, or use of the licenses or rights provided for in paragraph (d) (1) and (2) of this section shall not prevent the Government, at any time, from contesting their validity, scope or enforceability.

(6) The permittee agrees, during the term of the access permit, to make quarterly reports to ERDA in writing, in reasonable detail, respecting all technical information or data, including economic evaluations thereof, which the permittee or ERDA considers may be of interest to ERDA, including reports of patent applications on inventions or discoveries and of technical information and data of a proprietary nature. These reports will cover the results of the permittee's work under the access permit or as a result of data or information made available by ERDA. The foregoing provisions of this subparagraph shall be subject to the provisions of paragraph (d) (1) and (2) of this section.

(7) The permittee agrees to make available to ERDA, at all reasonable times during the term of the access permit, for inspection by ERDA personnel, or by mutual agreement, others on behalf of ERDA, all experimental equipment and technical information or data developed by the permittee, its employees, or others engaged by the permittee, in the course of the permittee's work under the access permit or as a result of data or information made available by ERDA. The foregoing provision of this subparagraph shall be subject to the provisions of paragraph (d) (1) and (2) of this section.

(8) The permittee agrees to pay such reasonable compensation as ERDA may elect to charge for the commercial use of its inventions and discoveries including related data and technology and, except for an applicant qualifying for a permit pursuant to § 725.15(b)(3)(ii), agrees to pay $25,000 for an access permit authorizing access to restricted data in subcategory B.

(9) Except as may be otherwise authorized by ERDA, the permittee agrees not to disseminate to persons not granted access by ERDA, restricted data made available to the permittee by ERDA or restricted data developed by the permittee, its employees, or others engaged by the permittee in the course of the permittee's work under the access permit or as a result of data or information made available by ERDA.

(10) The granting of an access permit does not constitute any assurance, direct or implied, that the Nuclear Regulatory Commission will grant the permittee a license for a production facility or any other license.

(11) In the event the permittee is engaged by ERDA to perform work for ERDA in the field of the separation of isotopes, the permittee agrees to undertake such measures as ERDA may require for the separation of its activities under the access permit from its work for ERDA.

§ 725.24 Administration.

With respect to each permit issued pursuant to the regulations in this part, the cognizant Operations Office will:

(a) Process all personnel access authorizations requested in connection with the permit;

(b) Review the procedures submitted by the Applicant, in accordance with

Part 795 of this chapter, for the safeguarding of Restricted Data; and

(c) Provide information to the permittee with respect to the sources and locations of Restricted Data available under this permit and to assist the permittee in other matters pertaining to the administration of his permit.

§ 725.25 Term and renewal.

(a) Each access permit will be issued for a two year term, unless otherwise stated in the permit.

(b) Applications for renewal shall be filed in accordance with § 725.11. Each renewal application must be complete, without reference to previous applications. In any case in which a permittee has filed a properly completed application for renewal more than thirty (30) days prior to the expiration of his existing permit, such existing permit shall not expire until the application for a renewal has been finally acted upon by the Administrator.

§ 725.26 Assignment.

An access permit is nontransferable and nonassignable.

§ 725.27 Amendment.

An access permit may be amended from time to time upon application by the permittee. An application for amendment may be filed, in triplicate, in letter form and shall be signed by an individual authorized to sign on behalf of the applicant. The term of an access permit shall not be altered by an amendment thereto.

§ 725.28 Administrator action on application to renew or amend.

In considering an application by a permittee to review or amend his permit, the Administrator will apply the criteria set forth in § 725.15. Failure of an applicant to reply to an ERDA request for additional information concerning an application for renewal or amendment within 60 days shall result in a rejection of the application without prejudice to resubmit a properly completed application at a later date.

§ 725.29 Suspension, revocation and termination of permits.

The Administrator may revoke or suspend any access permit for any material false statement in the application or in any report submitted to ERDA pursuant to the regulations in this part or because of conditions or facts which would have warranted a refusal to grant the permit in the first instance, or for violation of any of the terms and conditions of the Atomic Energy Act of 1954 or rules, regulations or orders issued pursuant thereto. A permittee should request termination of his permit when he no longer requires Restricted Data for use in his business, trade or profession.

§ 725.30 Exceptions and additional requirements.

Notwithstanding any other provision in the regulations in this part, the Administrator may deny an application for an access permit or suspend or revoke any access permit, or incorporate additional conditions or requirements in any access permit, upon finding that such denial, revocation or the incorporation of such conditions and limitations is necessary or appropriate in the interest of the common defense and security or is otherwise in the public interest.

§ 725.31 Violations.

An injunction or other court order may be obtained prohibiting any violation of any provision of the Act or any regulation or order issued thereunder. Any person who willfully violates any provision of the Act or any regulation or order issued thereunder may be guilty of a crime and, upon conviction, may be punished by fine or imprisonment or both, as provided by law.

APPENDIX A

Categories of Restricted Data Available (Including Scope Notes for Each Category).

C–24. Isotope separation.—This category is divided into subcategories A and B.

Subcategory A includes information in summary form concerning the status and potential of the gaseous diffusion and gas centrifuge processes for the separation of uranium isotopes.

Subcategory B includes information on the following:

a. Any aspect of separating one or more isotopes of uranium from a composition containing a mixture of isotopes of that element by the gas centrifuge or gaseous diffusion processes.

b. Design, construction, and operation of any plant, facility or device capable of separating by the gas centrifuge or gaseous diffusion processes one or more istotopes of uranium from a composition containing a mixture of isotopes of that element, including means and methods of transporting materials from one to another device.

C–44 Nuclear Technology. This category includes classified technical information concerning nuclear technology. It may contain information on the following:

a. Materials, including metals, ceramics, organic and inorganic compounds. Included are such technical areas as the technology and fabrication of fuel elements, corrosion studies, cladding techniques and radiation studies.

b. Chemistry, chemical engineering and radiochemistry of all the elements and their compounds. Included are techniques and processes of chemical separations, radioactive waste handling and feed material processing.

c. Reactor physics, engineering and technology including theory, design, criticality studies and operation of reactors, reactor systems and reactor components.

d. Reserved.

e. Lithium isotope separation technology. This subcategory includes classified technical information on the separation of lithium isotopes by using counter-current flows of lithium amalgam and aqueous lithium hydroxide solution in packed columns. Not included is information regarding plant design and operating conditions from which total production rates or design capacity of the lithium isotope separation plant (Colex) in Oak Ridge, Tennessee, can be inferred. In addition to the other requirements of this Part, access permits for Restricted Data in this subcategory will be approved, provided the permittee:

1. Demonstrates that it is not a corporation or entity owned, controlled or dominated by an alien, a foreign corporation, or a foreign government, and

2. Agrees to insertion in his access permit of the terms and conditions:

(i) Set forth in paragraphs (a) and (b) of § 725.23 of this Part;

(ii) Set forth in paragraph (c) of §725.23 of this Part, amended by deleting the phrase "category C–24, isotope separation," and inserting in lieu thereof the phrase "subcategory C–44e, lithium isotope separation technology";

(iii) Set forth in paragraph (d) of § 725.23 of this Part, amended by:

(A) Deleting the phrases "production or enrichment of special nuclear material" and "separation of isotopes" wherever they appear, and inserting in lieu thereof the phrase "separation of isotopes of lithium";

(B) Deleting the phrase "domestic commercial uranium enriching services are provided by," and inserting in lieu thereof the phrase "domestic lithium isotope separation capacity becomes available to."

This category does not include information which reveals or from which can be calculated actual or planned (as distinguished from design) capacities, production rates and unit costs for the plutonium production program.

C–65 Plutonium Production. This category includes information on reactor, fuel element and separations technology which reveals or from which can be calculated actual or planned (as distinguished from design) capacities, production rates and unit costs for the Hanford and Savannah River production facilities.

Technology which does not reveal or enable calculation of production rates and unit costs of Hanford or Savannah River production facilities is categorized in C–44 Nuclear Technology.

C–90 Nuclear Reactors for Ram-Jet Propulsion. This category includes information on:

a. Programs pertaining to the development of nuclear reactors for application to ram-jet propulsion systems including theory and/or design, test philosophy procedures and/or results.

b. Fabrication technology and evaluation of performance or characteristics of materials or components for such reactors.

c. Controls, control systems and instrumentation relating to the design or technology of such reactors.

d. Data pertaining to heat transfer, propellant kinetics or corrosion and erosion of materials under conditions of high temperature, high gas flows or other environmental conditions characteristic of ram-jet propulsion systems.

This category does not include information on:

a. Design details of weapons systems or nuclear warheads.

b. Military operational techniques or characteristics.

c. General aspects of nuclear ram-jet missiles, such as payload, aerodynamic characteristics, guidance systems, physical size, gross weight, thrust and information of this kind which is associated with utilization of a nuclear ram-jet propulsion system.

C–91 Nuclear Reactors for Rocket Propulsion. This category includes information on:

a. Programs pertaining to nuclear reactors for rocket propulsion, i.e., missile propulsion, theory and/design, test philosophy procedures and/or results.

b. Design, fabrication technology and evaluation of performance or characteristics of material, components, or subsystems or nuclear rocket reactors.

c. Controls, control systems and instrumentation relating to the design or technology of rocket reactor systems.

d. Data pertaining to heat transfer, propellant kinetics or corrosion and erosion of rocket reactor system materials under conditions of high temperature, high gas flows, or other environmental conditions characteristic of rocket reactors.

This category does not include information on:

a. Design details of weapons systems or nuclear warheads.

b. Military operational techniques or characteristics.

c. General aspects of payload and aerodynamic characteristics.

d. Design details and development, information of components and subsystems of the nuclear rocket engine other than that associated with the reactor system.

C–92 Systems for Nuclear Auxiliary Power (SNAP). This category includes information on:

a. Isotopic SNAP Program, including theory, design, research and development, fabrication, test procedures and results for the device, including power conversion device and the fuels used.

b. Reactor SNAP Program, including theory, design, research and development, fabrication, test procedures and results for the reactor, including the directly associated power conversion device when developed by ERDA.

This category does not include that technical and scientific data developed under the SNAP Advanced Concept Program which should be reported in C–93.

C–93 Advanced Concepts for Future Application.

C–93a Reactor Experiments. This category includes classified technical information developed in the pursuit of work on new or advanced concepts of reactors or components which ERDA considers essential to future growth or for general application to future generations of reactors. Classified information developed in the pursuit of work on the lithium cooled reactor experiment is an example of the type of information to be reported in this category, i.e., information resulting from an experimental reactor project or component development which may have many future applications but which is not currently being pursued to meet the specific needs of an approved requirement for which other information categories have been provided. For example, classified technical information developed in the pursuit of work on Naval, Ram-Jet or Rocket nuclear reactors would not be reported here but under their respective specific categories. This category will include classified technical information on the following:

a. Theory, design, and performance, either estimated or actual.

b. Design details, composition and performance characteristics of major components (e.g., fuel media, reflectors, moderators, heat exchangers, pressure shells or containment devices, control rods, conversion devices, instrumentation and shielding).

c. Material (metals, ceramics and compounds) development, alloying, cladding, corrosion, erosion, radiation studies and fabrication techniques.

d. Chemistry, including chemical engineering, processes and techniques. Reactor physics, engineering and criticality studies.

C–93b Conversion Devices. This category includes classified technical information developed in the pursuit of studies, designs, research and development, fabrication and operation of any energy conversion device to be used with nuclear energy sources which is not being applied to a specific system development project.

C–94 Military Compact Reactor (MCR). This category includes classified technical information on the actual or planned Military Compact Reactor and its components developed in the pursuit of studies, designs, research and development, fabrication, and operation of the reactor system or its components.

Examples of the areas of information included are:

a. Reactor core physics.

b. Fuel elements and fuel element components.

c. Moderator and reflector details.

d. Data on primary coolant system.

e. Radiation shield.

f. Controls and instrumentation.

This category does not include information on military operational characteristics or techniques.

APPENDIX B

ERDA'S OPERATIONS OFFICES AND GEOGRAPHICAL AREAS OF RESPONSIBILITIES

Albuquerque Operations Office, U.S. Energy Research and Development Administration, P.O. Box 5400, Albuquerque, New Mexico 87115: Arizona, Kansas, New Mexico, Oklahoma, and Texas.

Chicago Operations Office, U.S. Energy Research and Development Administration, 9800 South Cass Avenue, Argonne, Illinois 60439: Connecticut, Delaware, District of Columbia, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, North Dakota, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Dakota, Vermont, and Wisconsin.

Richland Operations Office, U.S. Energy Research and Development Administration, P.O. Box 550, Richland, Washington 99352: Alaska, Oregon, and Washington.

Oak Ridge Operations Office, U.S. Energy Research and Development Administration, P.O. Box E, Oak Ridge, Tennessee 37830: Arkansas, Kentucky, Louisiana, Mississippi, Missouri, Panama Canal Zone, Puerto Rico, Tennessee, Virginia, Virgin Islands, and West Virginia.

San Francisco Operations Office, U.S. Energy Research and Development Administration, 2111 Bancroft Way, Berkeley 4, California 94612: California, Colorado, Hawaii, Idaho, Montana, Nevada, Utah, Wyoming, and U.S. Pacific Territories.

Savannah River Operations Office, U.S. Energy Research and Development Administration, P.O. Box A, Aiken, South Carolina 29810: Alabama, Florida, Georgia, North Carolina, and South Carolina.

PART 760—DOMESTIC URANIUM PROGRAM

Sec.

760.1 Uranium leases on lands controlled by ERDA.

760.2 Reserved

AUTHORITY: Secs. 66, 161, 68 Stat. 933, 948, as amended; 42 U.S.C. 2096, 2201.

§ 760.1 Uranium leases on lands controlled by ERDA. (Domestic Uranium Program Circular No. 760.1, formerly (AEC) Domestic Uranium Program Circular 8, 10 CFR 60.8).

(a) What this section does. This section sets forth regulations governing the issuance of leases to permit the exploration for and mining of deposits containing uranium in public lands withdrawn from entry and location under the general mining laws for use of ERDA, and in certain other lands under ERDA control.

(b) Statutory authority. The Atomic Energy Act of 1954, as amended (68 Stat. 919, 42 U.S.C. 2011 et seq.) is the authority for this section.

(c) Who may hold leases. Only parties who are (1) citizens of the United States; (2) associations of such citizens; or (3) corporations organized under the laws of the United States or territories thereof, are eligible lessees under this section. Persons under 21 years of age or employees of ERDA are not eligible.

(d) Issuance of leases through competitive bidding. Except under special circumstances as provided in paragraph (u) of this section, each lease will be offered through competitive bidding and, except as otherwise provided in this paragraph (d), will be issued to the acceptable bidder offering the highest bid. The bid may be on a cash bonus, royalty bonus, or other basis as specified in the invitation to bid. Invitations to bid on some of the lands may be limited to small business concerns as defined by the Small Business Administration, and such invitations may limit the number of leases to be awarded to each bidder. In such cases ERDA will accept those bids which, in relation to other bids received pursuant to the invitation, are most advantageous to the Government. Before any lease is awarded, ERDA may require high bidders to submit a detailed statement of the facts as to such matters as their experience, organization, and financial resources. ERDA reserves the right to reject any and all bids.

(e) Solicitation of bids. Announcements of the availability of invitations to bid for a lease will be publicly posted and published. Copies of such announcements will also be mailed to parties who submit to ERDA's Grand Junction, Colorado, Office subsequent to publication in the FEDERAL REGISTER of this (ERDA) Domestic Uranium Program Circular 760.1, written requests that their names be placed on a mailing list for receipt of such announcements. The invitations containing information for preparation and submission of bids will be available at the Grand Junction Office, and will be mailed only on specific written request, following announcement of their availability. Invitations will specify the land to be leased, the basis on which bids are to be submitted, the amount of the monetary deposit which must be transmitted with the bid, the place and time the bids will be publicly opened, the term, royalty and other payments, performance requirements, and other payments, performance requirements, and other conditions which will become a part of the lease. In addition, data which have been assembled pertaining to the lands to be leased will be available for public inspection at the Grand Junction Office; copies will also be available for purchase.

(f) Bidding requirements; deposits. All bids must be filed at the place and prior to the time set forth in the invitation. Each bid must be sealed and accompanied by a deposit, in the form of a certified check, cashier's check, or bank draft, in an amount as specified in the

invitation to bid. Deposits of unsuccessful bidders will be returned. If the bidder is an individual, he must submit with his bid a statement of his citizenship and age. If the bidder is an association (including a partnership), the bid shall be accompanied by a certified copy of the articles of association together with a statement as to the citizenship and age of its members. If the bidder is a corporation, evidence that the officer signing the bid had authority to do so and a statement as to the State of incorporation shall also be submitted.

(g) Awarding of lease. Following public opening of the bids, ERDA, subject to the right to reject any and all bids, will determine the successful bidder. In the event the highest acceptable bids are tie bids, a public drawing will be held by ERDA to determine the successful bidder. After notice of award and within the time period prescribed in the invitation, the successful bidder shall execute and return to ERDA three (3) copies of the lease and shall remit payments due as prescribed in the invitation. Should the successful bidder fail to execute the lease, or make payments as required, in accordance with the terms of the invitation, or fail to otherwise comply with applicable regulations, he may be required to forfeit any payments previously made, and lose any further right or interest in the lease. In such event, ERDA may offer the lease to the next highest acceptable bidder, reoffer the lease for bidding, or take such other action as appropriate. If the awarded lease is executed by the bidder through an agent, evidence of authorization must be submitted.

(h) Dating of lease. A lease issued under this section will ordinarily be effective as of the date it is signed on behalf of ERDA.

(i) Term of lease. A lease shall be for the period specified in the invitation to bid. When deemed desirable by ERDA, the lease will provide that the lease term may be extended at the option of the lessee for a specified period and upon stipulated conditions.

(j) Payments to ERDA under lease. Royalty payments shall be specified in the invitation to bid; base royalty, minimum royalty, advance royalty, and rental payments, or a combination thereof may be required.

(k) Title to unshipped ore. ERDA, unless it approves otherwise, reserves all right and title to property in and to all ores and other uranium- or vanadium-bearing material not removed from the leased premises within 60 days after expiration or other termination of the lease. Unless ERDA approves otherwise, all material mined from the leased premises and not marketed by the lessee shall remain on the leased premises.

(l) Environmental controls. Each lease will contain such provisions as may be deemed necessary by ERDA with respect to the lessee's use of the leased lands. ERDA may require periodic submission of plans for exploration and mining activities including provisions for control of environmental impact. The lessee will be required to conduct operations so as to minimize adverse environmental effects, to comply with all applicable State and Federal statutes and regulations and to the extent stipulated in the lease agreement, will be held responsible for maintenance or rehabilitation of affected areas in accordance with plans submitted to and approved by ERDA.

(m) Performance requirements. A lease shall require that exploration, development, and mining activities, as appropriate, be conducted on the leased premises with reasonable diligence, skill, and care as required to achieve and maintain production of uranium ore at rates consistent with good and safe mining practice and with market conditions.

(n) Health and safety requirements. A lease (1) shall require that exploration, development, and mining activities, as appropriate, be conducted on the leased premises with due regard for the health and safety of those involved, and (2) shall include appropriate measures for the control of radiation exposure in the mines.

(o) Lessee's records. Leases shall provide that the lessee keep and make available to ERDA such records as ERDA deems necessary for the administration of the lease and its leasing program.

(p) Rights of ERDA. ERDA reserves the right to enter upon the leased property and into all parts of the mine for inspection and other purposes. ERDA also reserves the right to grant to other persons easements or rights of way upon, through, or in the leased premises. ERDA and the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of 3 years after termination or expiration of lease, have access to and the right to examine any directly pertinent books, papers, and records of the lessee involving transactions related to the lease.

(q) Relinquishment of leases. A lease may be surrendered by the lessee upon filing with and approval by ERDA of a written application for relinquishment. Approval of the application shall be contingent upon the delivery of the leased premises to ERDA in a condition determined to be satisfactory to ERDA. The lessee shall continue to be liable for the payment of all royalty and other debts due ERDA.

(r) Assignment of leases. Any transfer of a lease or any interest therein or claim thereunder, will not be recognized unless and until approved by ERDA in writing. Ordinarily, ERDA will not approve any transfer of a lease which involves overriding royalties or deferred payments of any kind to the transferor.

(s) Cancellation. Any lease may be cancelled by ERDA whenever the lessee fails to comply with the provisions of the lease. Failure of ERDA to exercise its right to cancel shall not be deemed a waiver thereof.

(t) Form of lease. Leases will be issued on forms prescribed by ERDA.

(u) Noncompetitive leases. Under special circumstances, where ERDA believes it to be in the best interest of the Government, ERDA at its discretion may award or extend leases on the basis of negotiation.

(v) ERDA decisions. All matters connected with the issuance and administration of leases will be determined by ERDA whose decisions shall be final and conclusive.

(w) Definitions. "ERDA" as used in this section means the United States Energy Research and Development Administration or its duly authorized representative or representatives.

(x) Multiple use of land. Leases issued under this section shall provide that operations under them will be conducted so as not to interfere with the lawful operations of any third party having a lease, permit, casemen or other right or interest in the premises

(y) Compliance with State and Federal Regulations. Every lease shall provide that the lessee is required to comply with all applicable State and Federal statutes and regulations.

§ 160.2 [Reserved].

PART 783—WAIVER OF PATENT RIGHTS

Sec.
783.1 Waiver.
783.2 Limitations.

AUTHORITY: Secs. 152, 161, 68 Stat. 944, 948, as amended; 42 U.S.C. 2182, 2201.

§ 783.1 Waiver.

The Energy Research and Development Administration, hereinafter "ERDA", waives its rights under section 152 of the Atomic Energy Act of 1954 (66 Stat. 944) with respect to inventions and discoveries resulting from the use of the following materials and services:

(a) Source materials, special nuclear materials, and heavy water distributed by ERDA in accordance with the "Schedules of Base Charges for Materials Sold of Leased by ERDA for Use in Private Atomic Energy Development and Base Prices Which ERDA Will Pay For Certain Products From Private Reactors."

(b) Radioactive and stable isotopes, irradiation services (this waiver does not include inventions or discoveries made by ERDA or ERDA contractor personnel in the course of or in connection with the performance of an irradiation service), and radioactive material resulting from the performance of an irradiation service sold or distributed by ERDA in accordance with the prices and charges established by:

(1) Oak Ridge National Laboratory Inventory and Price List of electromagnetically enriched and other stable isotopes.

(2) Oak Ridge National Laboratory Catalog and Price List of radioisotopes, special materials, and services.

(3) Idaho National Engineering Laboratory Catalog of Price and charges on irradiation services at the materials testing reactor. The waiver does include inventions or discoveries made by sponsor personnel in the course of their use of the Gamma Irradiation Facility at the Idaho National Engineering Laboratory.

(4) Argonne National Laboratory schedule of charges for irradiation services at its irradiation facilities.

(5) Brookhaven National Laboratory schedule of prices and charges for irradiation services and radioisotopes.

§ 783.2 Limitations.

(a) Except with regard to the use of the Gamma facility at the Idaho National Engineering Laboratory, nothing contained in this part shall be deemed to waive any rights in inventions or discoveries where a person or a group of persons acting on behalf of the person requesting the irradiation service works at the ERDA facility in connection with the irradiation service. In such event, special arrangements are made.

(b) Nothing contained in this part shall be construed to affect the provisions of any written agreement to which ERDA has or may become a party.

PART 795—SAFEGUARDING OF RESTRICTED DATA

GENERAL PROVISIONS

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AUTHORITY: Sec. 161i, 68 Stat. 948, 42 U.S.C. 2201.

GENERAL PROVISIONS

§ 795.1 Purpose.

The regulations in this part establish requirements for the safeguarding of Secret and Confidential Restricted Data received or developed under an Access Permit. This part does not apply to Top Secret Restricted Data.

§ 795.2 Scope.

The regulations in this part apply to all persons who receive access to Restricted Data under an Access Permit issued pursuant to the regulations in Part 725 of this chapter.

§ 795.3 Definitions.

As used in this part. (a) "Administrator" means the Administrator of Energy Research and Development or his designee.

(b) "Access authorization" means an administrative determination by ERDA that an employee or an ERDA contractor, an employee of a contractor of another Federal agency, or an employee of an Access Permittee is eligible for access to Restricted Data;

(c) "Act" means the Atomic Energy Act of 1954 (68 Stat. 919), including any amendments thereto;

(d) "ERDA" or "Administration" means the United States Energy Research and Development Administration or its duly authorized representatives;

(e) "Document" means any piece of recorded information regardless of its physical form or characteristics;

(f) "DOD" means the Department of Defense;

(g) "L(X) access authorization" means a determination by ERDA that an individual is eligible for access to Confidential Restricted Data under an Access Permit;

(h) "NASA" means the National Aeronautics and Space Administration;

(i) "Permittee" means the holder of an Access Permit issued pursuant to the regulations in Part 725 of this chapter;

(j) "Person" means (1) any individual, corporation, partnership, firm association, trust, estate, public or private institution, group, Government agency other than ERDA, any State or any political subdivision of, or any political entity within a State, or other entity; and (2) any legal successor, representative, agent or agency of the foregoing;

(k) "Q(X) access authorization" means a determination by ERDA that an individual is eligible for access to Secret and Confidential Restricted Data under an Access Permit;

(l) "Restricted Data" means all data concerning (1) design, manufacture or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy but shall not include data declassified or removed from the Restricted Data category pursuant to section 142 of the Act;

(m) "Security area" means a physically defined space, access to which is subject to security restrictions and control;

(n) "Security clearance" means an administrative determination by ERDA that an employee of ERDA or of another Federal agency is eligible for access to Restricted Data or defense information; and

(o) "United States," when used in a geographical sense, includes all Territories and Possessions of the United States, the Canal Zone and Puerto Rico.

§ 795.4 Communications.

Communications concerning rule making, i.e., petition to change Part 795 should be addressed to Assistant Administrator for National Security, U.S. Energy Research and Development Administration, Washington, D.C. 20545. All other communications concerning the regulations in this part should be addressed to the U.S. Energy Research and Development Administration at the Administration's Operations Office (listed in Appendix "B" of 10 CFR Part 725) administering Access Permits for the geographical area.

§ 795.5 Submission of procedures by Access Permit holder.

No Permittee shall have access to Restricted Data until he shall have submitted to ERDA a written statement of his procedures for the safeguarding of Restricted Data and for the security education of his employees and ERDA shall have determined and informed the Permittee that his procedures for the safeguarding of Restricted Data are in compliance with the regulations in this part and that his procedures for the security education of his employees assure that all his employees, who will have access to Restricted Data, are informed about and understand the regulations in this part.

§ 795.6 Specific waivers.

ERDA may, upon application of any interested party, grant such waivers from the requirements of this part as it determines are authorized by law and will not constitute an undue risk to the common defense and security.

§ 795.7 Interpretations.

Except as specifically authorized by the Administrator in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of ERDA other than a written interpretation by the General Counsel will be recognized to be binding upon ERDA.

PHYSICAL SECURITY

§ 795.21 Protection of Restricted Data in storage.

(a) Persons who possess Restricted Data pursuant to an Access Permit shall store Secret and Confidential documents and material when not in use in accordance with one of the following methods:

(1) In a locked vault, safe, or safe-type steel file cabinet having a 3-position dial-type combination lock; or

(2) In a dual key, Bank Safety Deposit Box; or

(3) In a steel file cabinet secured by a steel lock bar and a 3-position dial-type changeable combination padlock; or

(4) In a locked steel file cabinet when located in a security area established under § 795.23 or when the cabinet or the place in which the cabinet is located is under ERDA approved automatic alarm protection.

(b) Changes of combination: Each permittee shall change the combinations on locks of his safekeeping equipment whenever such equipment is placed in use, whenever an individual knowing the combination no longer requires access to the repository as a result of change in duties or position in the Permittee's or-

ganization, or termination of employment with the Permittee or whenever the combination has been subjected to compromise, and in any event at least once a year. Permittees shall classify records of combinations no lower than the highest classification of the documents and material authorized for storage in the safekeeping equipment concerned.

(c) The lock on safekeeping equipment of the type specified in paragraph (a)(4) of this section shall be replaced immediately whenever a key is lost.

§ 795.22 Protection while in use.

While in use, documents and material containing Restricted Data shall be under the direct control of an appropriately cleared individual and the Restricted Data shall be capable of being removed from sight immediately.

§ 795.23 Establishment of security areas.

(a) When, because of their nature or size, it is impracticable to safeguard documents and material containing Restricted Data in accordance with the provisions of §§ 795.21 and 795.22, a security area to protect such documents and material shall be established.

(b) The following controls shall apply to security areas:

(1) Security areas shall be separated from adjacent areas by a physical barrier designed to prevent entrance into such areas, and access to the Restricted Data within the areas, by unauthorized individuals.

(2) During working hours, admittance shall be controlled by an appropriately cleared individual posted at each unlocked entrance.

(3) During non-working hours, admittance shall be controlled by protective personnel on patrol, with protective personnel posted at unlocked entrances, or by such automatic alarm system as ERDA may approve.

(4) Each individual authorized to enter a security area shall be issued a distinctive badge or pass when the number of employees assigned to the area exceeds thirty.

§ 795.24 Special kinds of classified material.

When the Restricted Data contained in material is not ascertainable by observation or examination at the place where the material is located and when the material is not readily removable because of size, weight, radioactivity, or similar factors, ERDA may authorize the Permittee to provide such lesser protection than is otherwise required by §§ 795.21 to 795.23 inclusive, as ERDA determines to be commensurate with the difficulty of removing the material.

§ 795.25 Protective personnel.

Whenever protective personnel are required by § 795.23, such protective personnel shall:

(a) Possess a "Q" or "L" security clearance or access authorization or "Q(X)" or "L(X)" access authorization if the Restricted Data being protected is classified Confidential or a "Q" security clearance or access authorization or "Q(X)" access authorization if the Restricted Data being protected is classified Secret.

(b) Be armed with side-arms of not less than .38 caliber.

Control of Information

§ 795.31 Access to Restricted Data.

(a) Except as ERDA may authorize, no person subject to the regulations in this part shall permit any individual to have access to Secret or Confidential Restricted Data in his possession unless the individual has an appropriate security clearance or access authorization granted by ERDA, or has been certified by DOD or NASA through ERDA, and:

(1) The individual is authorized by an Access Permit to receive Restricted Data in the categories involved and, in the case of Secret Restricted Data, the Permittee determines that he requires the access in the course of his duties, or

(2) The individual needs such access in connection with his duties as an ERDA employee or ERDA contractor employee, or as certified by DOD or NASA.

(b) Inquiries concerning the clearance status of individuals, the scope of Access Permits, or the nature of contracts should be addressed to ERDA Office administering the Access Permit or the contract.

§ 795.32 Classification and preparation of documents.

(a) Classification. Restricted Data originated by an Access Permit holder must be appropriately classified. OC DOC-54, "Classification Guide for Use in the Civilian Application Program," will be furnished each Permittee. In the event an Access Permit holder originates information within the definition of Restricted Data (§ 795.3(k)) or information which he is not positive is not within that definition and OC DOC-54 does not provide positive classification guidance for such information, he shall designate the information as Confidential, Restricted Data and request classification guidance from the ERDA through the Classification Officer at the Operations Office administering the Permit, who will refer the request to the Director, Division of Classification, U.S. ERDA, Washington, D.C., if he does not have authority to provide the guidance.

(b) Classification consistent with content. Each document containing Restricted Data shall be classified Secret or Confidential according to its own content.

(c) Document which custodian believes improperly classified or lacking appropriate classification markings. If a person receives a document which in his opinion is not properly classified, or omits the appropriate classification markings, he shall communicate with the sender and suggest the classification which he believes to be appropriate. Pending final determination of proper classification, such documents shall be safeguarded with the highest classification in question.

(d) Classification markings. Unless otherwise authorized below, the assigned classification of a document shall be conspicuously marked or stamped at the top and bottom of each page and on the front cover, if any, and the document shall bear the following additional markings on the first page and on the front cover:

RESTRICTED DATA

This document contains Restricted Data as defined in the Atomic Energy Act of 1954. Its transmittal or the disclosure of its contents in any manner to an unauthorized person is prohibited.

(e) Documentation. (1) All Secret documents shall bear on the first page a properly completed documentation stamp such as the following: This document consists of ___ pages. Copy No.___ of ___ Series _____.

(2) The series designation shall be a capital letter beginning with the letter "A" designating the original set of copies prepared. Each subsequent set of copies of the same documents shall be identified by the succeeding letter of the alphabet.

(f) Letter of transmittal. A letter transmitting Restricted Data shall be marked with a classification at least as high as its highest classified enclosure. When the contents of the letter of transmittal warrant lower classification or require no classification, a stamp or marking such as the following shall be used on the letter:

When separated from enclosures handle this document as _____.

(g) Permanently fastened documents. Classified books or pamphlets, the pages of which are permanently and securely fastened together, shall be conspicuously marked or stamped with the assigned classification in letters at least one-fourth (¼) inch in height at the top and bottom on the outside front cover, on the title page, on the front page and on the inside and outside of the back cover. The additional markings referred to in paragraph (d) of this section shall be placed on the first page and on the front cover.

(h) Physically connected documents. The classification of a file or group of physically connected documents shall be at least as high as that of the most highly classified document therein. It shall bear only one over-all classification, although pages, paragraphs, sections, or components thereof may bear different classifications. Each document separated from the file or group shall be handled in accordance with its individual classification.

(i) Attachment of security markings. Documents which do not lend themselves to marking or stamping shall have securely affixed or attached a tag, sticker, or similar device bearing the appropriate security markings.

§ 795.33 External transmission of documents and material.

(a) Restrictions. (1) Documents and material containing Restricted Data shall be transmitted only to persons who

possess appropriate clearance or access authorization and are otherwise eligible for access under the requirements of § 795.31.

(2) In addition, such documents and material shall be transmitted only to persons who possess facilities for their physical security consistent with this part. Any person subject to the regulation in this part who transmits such documents or material shall be deemed to have fulfilled his obligations under this subparagraph by securing a written certification from the prospective recipient that such recipient possesses facilities for its physical security consistent with this part.

(3) Documents and material containing Restricted Data shall not be exported from the United States without prior authorization of ERDA.

(b) Preparation of documents. Documents containing Restricted Data shall be prepared for transmission outside an individual installation in accordance with the following:

(1) They shall be enclosed in two sealed opaque envelopes or wrappers.

(2) The inner envelope or wrapper shall be addressed in the ordinary manner and sealed with tape, the appropriate classification shall be placed on both sides of the envelope and the additional marking referred to in § 795.32(d) shall be placed on the side bearing the address.

(3) The outer envelope or wrapper shall be addressed in the ordinary manner. No classification, additional marking or other notation shall be affixed which indicates that the document enclosed therein contains classified information or Restricted Data.

(4) A receipt, which identifies the document, the date of transfer, the recipient and the person transferring the document shall accompany the document and shall be signed by the recipient and returned to the sender whenever the custody of a Secret document is transferred.

(c) Preparation of material. Material, other than documents, containing Restricted Data shall be prepared for shipment outside an individual installation in accordance with the following:

(1) The material shall be so packaged that the classified characteristics will not be revealed.

(2) A receipt which identifies the material, the date of shipment, the recipient, and the person transferring the material shall accompany the material and the recipient shall sign such receipt whenever the custody of Secret material is transferred.

(d) Methods of transportation. (1) Secret documents and material shall be transported only by one of the following methods:

(i) Registered mail.

(ii) Railway or air express in "Armed Guard Service" or "Armed Surveillance Service."

(iii) Individuals possessing appropriate ERDA security clearance or access authorization who have been given written authority by their employers.

(2) Confidential documents and material shall be transported by one of the methods set forth in subparagraph (1) of this paragraph or by one of the following methods:

(i) Certified or first-class mail, if approved by the Manager of Operations administering the Permit. Certified or first-class mail may not be used in any transmission of Confidential documents to Alaska, Hawaii, the Canal Zone, Puerto Rico, or any United States territory or possession.

(ii) Railway or air express "Protective Signature Service"; railway express "Recorded Tally Service"; airlines "Protective Signature Service," when available; rail or motor vehicles in sealed car or sealed van service; or services providing equivalent protection.

(iii) Material in less than carload, truckload, or planeload lots, by regular commercial carrier when the container and its contents weigh more than 500 pounds and such container is locked and sealed.

(e) Transmission by cryptographic means. Cryptographic systems shall not be used for the transmission of Restricted Data unless approved by ERDA.

(f) Telephone conversations. No discussion of classified information is permitted during a telephone conversation.

§ 795.34 Accountability for Secret documents.

Each permittee possessing documents containing a Secret Restricted Data shall establish a document accountability procedure and shall maintain records to show the disposition of all such documents which have been in his custody at any time.

§ 795.35 Authority to reproduce.

Nothing in this part shall be deemed to prohibit any person possessing documents containing Restricted Data from reproducing any Confidential documents, or any Secret documents originated by him. He shall not reproduce any other documents containing Secret Restricted Data without prior authorization from ERDA or from the originator of the document.

§ 795.36 Changes in classification.

Documents containing Restricted Data shall not be downgraded to a lower classification or declassified except as authorized by ERDA. Requests for downgrading or declassification shall be submitted to the ERDA Operations Office administering the Permit; the U.S. ERDA, Declassification Branch, Oak Ridge Operations Office, P.O. Box E, Oak Ridge, Tennessee; or U.S. ERDA, Washington, D.C. 20545. Attention: Division of Classification. If the Commission approves a change of classification or declassification, the previous classification marking shall be cancelled and the following statement, properly completed, shall be placed on the first page of the document:

Classification canceled (or changed to)

_____
(Insert appropriate classification)

by authority of _____
(Person authorizing change in classification)

by _____
(Signature of person making change and date thereof)

Any person making a change in classification or receiving notice of such a change shall forward notice of the change in classification to holders of all copies as shown on his records.

§ 795.37 Destruction of documents or material containing Restricted Data.

(a) Documents containing Restricted Data may be destroyed only by shredding and burning, pulping, or by any other method that assures complete destruction of the information. If the document contains Secret Restricted Data, a permanent record of the subject, title, or report number of the document, its date of preparation, its series designation and copy number, and the date of destruction shall be signed by the person destroying the document and shall be maintained in the office of the last custodian.

(b) Restricted Data contained in material, other than documents, may be destroyed only by a method that assures complete obliteration, removal, or destruction of the Restricted Data.

§ 795.38 Suspension or revocation of access authorization.

In any case where the access authorization of an individual subject to the regulations in this part is suspended or revoked in accordance with the procedures set forth in Part 710 of this chapter, such individual shall, upon due notice from ERDA of such suspension or revocation and demand by ERDA, deliver to ERDA any and all documents or materials in his possession containing Restricted Data for safekeeping and such further disposition as ERDA determines to be just and proper.

§ 795.39 Expiration, suspension or revocation of Access Permits.

(a) Upon expiration of an Access certificate of non-possession of Remit has been issued may, except as provided in paragraph (b) of this section, (1) deliver all documents or materials in his possession containing Restricted Data to ERDA or to a person authorized to receive them and file with ERDA a certificate of non-possession of Restricted Data; (2) destroy them, and file with ERDA a certificate of non-possession; or (3) file with ERDA a certified inventory of Restricted Data attached to a request for approval of retention of such data. A person retaining Restricted Data must maintain an active Access Permit unless otherwise authorized by ERDA.

(b) In any case where an Access Permit has expired or has been suspended or revoked and ERDA has determined that further possession by the former Access Permit holder of documents or materials containing Restricted Data would endanger the common defense

and security, such former Access Permit holder shall upon due notice from ERDA of such expiration, suspension, or revocation and of such determination, deliver to ERDA any and all documents or materials in his possession containing Restricted Data for safekeeping and such further disposition as ERDA determines to be just and proper.

§ 795.40 Termination of employment or change of duties.

Each Permittee shall furnish promptly to ERDA written notification of the termination of employment of each individual who possesses an access authorization under his Permit or whose duties are changed so that access to Restricted Data is no longer needed. Upon such notification, ERDA may, (a) terminate the individual's access authorization or (b) transfer the individual's access authorization to the new employer of the individual to allow continued access to Restricted Data where authorized pursuant to ERDA regulations.

§ 795.41 Continued applicability of the regulation in this part.

The expiration, suspension, revocation or other termination of a security clearance or access authorization or Access Permit shall not relieve any person from compliance with the regulations in this part.

§ 795.42 Reports.

Each Permittee shall report promptly to the ERDA office administering the Access Permit all losses of Restricted Data documents or material and to that ERDA office and the nearest office of the Federal Bureau of Investigation any alleged or suspected violation of the Atomic Energy Act or the Espionage Act.

§ 795.43 Inspection.

ERDA may make such inspections of the premises, activities, records, and procedures of any person subject to the regulations in this part as ERDA deems necessary to effectuate the purposes of the Act.

§ 795.44 Violations.

An injunction or other court order may be obtained prohibiting any violation of any provision of the Act or any regulation or order issued thereunder. Any person who willfully violates, attempts to violate or conspires to violate any provisions of the Act or any regulation or order issued thereunder, including the provisions of this part, may be guilty of a crime and upon conviction may be punished by fine or imprisonment, or both, as provided by law.

NOTE.—The record keeping and reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

PART 861—CONTROL OF TRAFFIC AT NEVADA TEST SITE

Sec.

861.1 Purpose.
861.2 Scope.
861.3 Definitions.
861.4 Use of site streets.
861.5 Penalties.
861.6 Posting and distribution.
861.7 Applicability of other laws.

Appendix A—Perimeter description of the Energy Research and Development Administration Nevada test site in the State of Nevada.

AUTHORITY: The provisions of this Part 861 issued under 62 Stat. 281, as amended; sec. 103, 63 Stat. 380, as amended, sec. 205, 63 Stat. 389; sec. 161, 68 Stat. 948, as amended, sec. 1, 81 Stat. 54; 40 U.S.C. 318; 42 U.S.C. 2201; 5 U.S.C. 552; Federal Property Management Regulations T.R. D-11, 34 F.R. 1997, and Delegation of Authority to Manager, Nevada Operations Office.

§ 861.1 Purpose.

The regulations in this part are designed to facilitate the control of traffic at the Nevada Test Site.

§ 861.2 Scope.

This part applies to all persons who use the streets of the Nevada Test Site.

§ 861.3 Definitions.

As used in this part:

(a) "ERDA" means the Energy Research and Development Administration.

(b) "Nevada Test Site" means ERDA's Nevada Test Site located in Nye County, Nev. A perimeter description is attached as Appendix A to this part.

(c) "Nevada Test Site Traffic Regulations" means the traffic directives promulgated by the Manager of the Nevada Operations Office pursuant to § 861.4.

(d) "Person" means every natural person, firm, trust partnership, association or corporation.

(e) "Street" means the entire width between the boundary lines of every way when any part thereof is open to the use of those admitted to the Nevada Test Site for purposes of vehicular travel.

(f) "Traffic" means pedestrians, ridden or herded animals, vehicles, and other conveyances, either singly or together, while using any roadway for purposes of travel.

(g) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a roadway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

§ 861.4 Use of site streets.

All persons using the streets of the Nevada Test Site shall do so in a careful and safe manner.

(a) The Nevada Test Site Traffic Regulations supplement this section by identifying the specific traffic requirements relating to such matters as:

(1) Enforcement and obedience to Traffic Regulations, including the authority of police officers and traffic regulations, and responsibility to report accidents.

(2) Traffic signs, signals, and markings, including required compliance with traffic lanes and traffic control devices, and prohibitions on display of unauthorized traffic signs, signals, or marking or interference with authorized traffic control devices.

(3) Speeding or driving under the influence of intoxicating liquor or drugs, including prohibitions on reckless driving, and promulgation of maximum permissible speeds.

(4) Turning movements, including required position and method of turning at intersections, limitations on turning around, and obedience to turning markers and no-turn signs.

(5) Stopping and yielding, including obedience to stop and yield signs, requirements when entering stop or yield intersections, emerging from alleys, driveways, or buildings, operation of vehicles on approach of authorized emergency vehicles and stops when traffic is obstructed.

(6) Pedestrians' rights and duties, including pedestrian's right-of-way in crosswalks, when a pedestrian must yield, required use or right half of crosswalks and requirements concerning walking along roadways and prohibited pedestrian crossings.

(7) Parking, stopping, and standing, specifying when parking, stopping, and standing are prohibited, including special provisions applicable to buses, requirements that parking not obstruct traffic and be close to curb, and concerning lamps on parked vehicles.

(8) Privileges of drivers of authorized emergency vehicles, including exemptions from parking and standing, stopping, speeding and turning limitations, under specified circumstances and within specified limitations.

(9) Miscellaneous driving rules, including requirements for convoys, and limitations on backing, opening and closing vehicle doors, following fire apparatus, crossing a fire hose, driving through a safety zone, through convoys, on sidewalks or shoulders of roadways, boarding or alighting from vehicles, passing a bus on the right, and unlawful riding.

(b) The Nevada Test Site Traffic Regulations, when posted and distributed as specified in § 861.6, shall have the same force and effect as if made a part hereof.

§ 861.5 Penalties.

Any person doing any act forbidden or failing to do any act required by the Nevada Test Site Traffic Regulations shall, upon conviction, be punishable by a fine of not more than $50 or imprisonment for not more than 30 days, or both.

§ 861.6 Posting and distribution.

Notices including the provisions of the Nevada Test Site Traffic Regulations will be conspicuously posted at the Nevada Test Site. Such other distribution of the Nevada Test Site Regulations will be made by the Manager as will provide reasonable assurance of notice to persons subject to the regulations.

§ 861.7 Applicability of other laws.

Nothing in this part shall be construed to affect the applicability of the provisions of State laws or of other Federal laws.

APPENDIX A

Perimeter Description of the Energy Research and Development Administration's Nevada Test Site in the State of Nevada

The Nevada Test Site, containing approximately 858,764 acres located in Nye County, Nev., is described as follows:

Beginning at the northwesterly corner of the tract of land hereinafter described, said corner being at latitude 37°20'45", longitude 116°34'20";
Thence easterly approximately 6.73 miles, to a point at latitude 37°20'45" longitude 116°27'00";
Thence northeasterly approximately 4.94 miles to a point at latitude 37°23'07", longitude 116°22'30";
Thence easterly approximately 4.81 miles to a point at latitude 37°23'07"; longitude 116°17'15";
Thence southeasterly approximately 6.77 miles to a point at latitude 37°19'47", longitude 116°11'10";
Thence southerly approximately 5.27 miles to a point at latitude 37°15'12.043", longitude 116°11'10";
Thence easterly approximately 14.21 miles to a point at latitude 37°15'07.268", longitude 115°55'42.268";
Thence southerly approximately 39.52 miles to a point at latitude 36°40'43.752", longitude 115°55'37.687";
Thence westerly approximately 2.87 miles to a point at latitude 36°40'40.227", longitude 115°58'43.956";
Thence southerly approximately 5.23 miles to a point at latitude 36°36'07.317", longitude 115°58'41.227";
Thence southwesterly along a perimeter distance approximately 5.82 miles to a point at latitude 36°34'39.754", longitude 116°-04'11.167";
Thence northerly approximately 3.20 miles to a point at latitude 36°37'26.804", longitude 116°04'11.355";
Thence northwesterly approximately 5.16 miles to a point at latitude 36°40'28.854", longitude 116°08'17.749";
Thence westerly approximately 8.63 miles to a point at latitude 36°40'23.246", longitude 116°17'37.466";
Thence southerly approximately 0.19 mile to a point at latitude 36°40'13.330", longitude 116°17'37.461";
Thence westerly approximately 8.49 miles to a point at latitude 36°40'13.666", longitude 116°26'47.915";
Thence northerly approximately 32.87 miles to a point at latitude 37°08'50", longitude 116°26'44.125";
Thence northwesterly approximately 15.37 miles to a point at latitude 37°20'45", longitude 116°34'20", the point of beginning herein.

[FR Doc.76-38349 Filed 12-29-76;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Airspace Docket No. 76-SO-96]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation of Transition Area

On October 21, 1976, a notice of Proposed Rulemaking was published in the FEDERAL REGISTER (41 FR 46459), stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would designate the Siler City, N.C., transition area.

Interested persons were afforded an opportunity to participate in the rulemaking through the submission of comments. All comments received were favorable.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 GMT, February 24, 1977, as hereinafter set forth.

In § 71.181 (41 FR 440), the following transition area is added:

SILER CITY, N.C.

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Siler City Municipal Airport (Lat. 35°42'10" N., Long. 79°30'22" W).

(Sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and of Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

The FAA has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Issued in East Point, Ga., on December 17, 1976.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc.76-38129 Filed 12-29-76;8:45 am]

[Airspace Docket No. 76-WA-20]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Atlanta Terminal Control Area (TCA)

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter a portion of the Atlanta Terminal Control Area (TCA). On September 13, 1976, an amendment was published in the FEDERAL REGISTER (41 FR 38760) that amended the description of the Atlanta, Ga., (Dobbins AFB/NAS Atlanta) control zone. Since the description of Area E of the Atlanta TCA is based, in part, on the Atlanta, Ga., (Dobbins AFB/NAS Atlanta) control zone, this amendment is necessary to properly describe Area E. A small amount of TCA airspace will be affected both to the east and west of Dobbins AFB/NAS.

Since this amendment is a minor adjustment upon which the public would have no particular desire to comment, notice and public procedure thereon are unnecessary. However, since it is necessary to reflect the amended description in Part 71 of the Federal Aviation Regulations, good cause exists for making this amendment effective immediately.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective upon publication of this amendment in the FEDERAL REGISTER, as hereinafter set forth.

In § 71.401(a) (42 FR 642) the description of Area E is amended by deleting coordinates "Lat. 33°54'35"N., Long. 84°23'40"W.," and substituting "Lat. 33°54'25"N., Long. 84°24'47"W.," therefor.

(Sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Washington, D.C., on December 20, 1976.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.76-38130 Filed 12-29-76;8:45 am]

[Airspace Docket No. 76-GL-24]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of VOR Federal Airway

On November 1, 1976, a Notice of Proposed Rule Making (NPRM) was published in the FEDERAL REGISTER (41 FR 47947) stating that the Federal Aviation Administration (FAA) was considering an amendment to Part 71 of the Federal Aviation Regulations that would realign V-97 between Janesville, Wis., and Lone Rock, Wis.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. The only comment received was favorable.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 GMT, February 24, 1977, as hereinafter set forth.

71.123 [Amended].

Section 71.123 (42 FR 307) is amended as follows:

In V-97 "INT Janesville 294° and Lone Rock, Wis., 147° radials; Lone Rock;" is deleted and "Lone Rock, Wis., including a W alternate via INT Janesville 281° and Lone Rock 147° radials;" is substituted therfore.

(Sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Washington, D.C., on December 20, 1976.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.76-38131 Filed 12-29-76;8:45 am]

[Airspace Docket No. 76-RM-24]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Extension of Federal Airway

On September 30, 1976, a Notice of Proposed Rule Making (NPRM) was published in the FEDERAL REGISTER (41 FR 43183) stating that the Federal Aviation Administration (FAA) was considering an amendment to Part 71 of the Federal Aviation Regulations that would extend V-247 from Douglas, Wyo., to Scottsbluff, Nebr.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. We received one response to the NPRM in which the commentator posed no objection to the proposal.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 GMT, February 24, 1977, as hereinafter set forth.

§ 71.123 [Amended].

Section 71.123 (42 FR 307) is amended as follows:

In V-247 "Douglas, Wyo.," is deleted and "Scottsbluff, Nebr., 75 MSL, INT Scottsbluff 307° and Douglas, Wyo., 109° radials, 75 MSL, Douglas;" is substituted therefor.

(Sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Washington, D.C., on December 20, 1976.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.76-38132 Filed 12-29-76;8:45 am]

[Airspace Docket No. 76-SW-44]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

PART 73—SPECIAL USE AIRSPACE

Designation of Temporary Restricted Areas

On November 4, 1976, a Notice of Proposed Rulemaking (NPRM) was published in the FEDERAL REGISTER (41 FR 48541) stating that the Federal Aviation Administration (FAA) was considering amendments to Parts 71 and 73 of the Federal Aviation Regulations that would designate temporary restricted areas adjacent to Fort Hood, Tex., for a joint military exercise "GALLANT CREW 77."

Interested persons were afforded an opportunity to participate in the proposed rulemaking through the submission of comments. Both comments received were favorable.

In consideration of the foregoing, Parts 71 and 73 of the Federal Aviation Regulations are amended, effective 0901 GMT, February 24, 1977, as hereinafter set forth.

§ 71.151 [Amended]

Section 71.151 (42 FR 345) is amended by adding "R-6315A GALLANT CREW 77, Tex." and "R-6315B GALLANT CREW 77, Tex."

§ 73.63 [Amended]

Section 73.63 (42 FR 696) is amended by adding the following.

1. R-6315A GALLANT CREW 77, TEX.

Boundaries. Beginning at Lat. 32°00'00"N., Long. 97°50'00"W.; to Lat. 32°10'00"N., Long. 98°32'00"W.; to Lat. 31°36'00"N., Long. 99°00'00"W.; to Lat. 31°00'00"N., Long. 99°00'00"W.; to Lat. 30°47'00"N., Long. 98°03'00"W.; to Lat. 30°48'00"N., Long. 97°38'00"W.; to Lat. 31°06'06"N., Long. 97°32'42"W.; to Lat. 31°13'45"N., Long. 97°32'35"W.; to Lat. 31°50'00"N., Long. 97°46'00"W.; to point of beginning, excluding the airspace 4,000 feet MSL and below within a 5 mile radius of the Hood, Tex., VOR, within a 5 mile radius of the Fort Hood AAF, (Lat. 31°08'15"N., Long. 97°42'50"W.) and within 5 miles each side of the Hood, Tex., VOR 102°T and 125°T radials extending from the VOR to V-17 airway, and also excluding the airspace 800 feet AGL and below within a 3 NM radius of the following airport coordinates:

City-County Airport, Gatesville, Tex., (Lat. 31°25'16"N., Long. 97°47'48"W.).
Moccasin Bend Airport, Gatesville, Tex., (Lat. 31°29'06"N., Long. 97°48'05"W.).
Hamilton Municipal Airport, Hamilton, Tex., (Lat. 31°40'15"N., Long. 98°08'45" W.).
Litch Field, Copperas Cove, Tex., (Lat. 31°-10'10"N., Long. 97°56'20"W.).
Dublin Jaycee Airport, Dublin, Tex., (Lat. 32°03'19"N., Long. 98°19'09"W.).
Dublin Municipal Airport, Dublin, Tex., (Lat. 32°04'05"N., Long. 98°19'30"W.).
Lee Campbell Ranch Airport, Dublin, Tex., (Lat. 32°01'57"N., Long. 98°25'09"W.).
DeLeon Municipal Airport, DeLeon, Tex., (Lat. 32°05'55"N., Long. 98°31'30"W.).
Comanche County-City Airport, Comanche, Tex., (Lat. 31°55'00"N., Long. 98°36'00" W.).
Dudley Airport, Comanche, Tex., (Lat. 31°-52'15"N., Long. 98°39'45"W.).
Mills County Airport, Goldthwaite, Tex., (Lat. 31°28'55"N., Long. 98°34'25"W.).
Bowie Memorial Airport, Brownwood, Tex., (Lat. 31°40'00"N., Long. 98°59'00"W.).
San Saba Municipal Airport, San Saba, Tex., (Lat. 31°14'06"N., Long. 98°43'00"W.).
Lampasas Airport, Lampasas, Tex., (Lat. 31°-06'27"N., Long. 98°11'45"W.).
Lometa Airport, Lometa, Tex., (Lat. 31°14'-00"N., Long. 98°28'00"W.).
Sybert Farm Airport, Jarrell, Tex., (Lat. 30°-47'20"N., Long. 97°39'17"W.).

Designated altitudes. 500 feet AGL to but not including FL 180.
Time of designation. Continuous, 0600 CST March 22 through 2400 CST March 31, 1977.
Controlling agency. Federal Aviation Administration, Houston ARTC Center.
Using agency. U.S. Air Force Tactical Air Command/USAF Readiness Command (TAC/USAFRED) Langley Air Force Base, Va. 23665

2. R-6315B GALLANT CREW 77, TEX.

Boundaries. Beginning at Lat. 32°10'00"N., Long. 98°32'00"W.; to Lat. 32°10'00"N., Long. 99°30'00"W.; to Lat. 31°10'00"N., Long. 99°30'00"W.; to Lat. 31°00'00"N., Long. 99°00'00"W.; to Lat. 30°47'00"N., Long. 98°03'00"W.; to Lat. 31°05'00"N., Long. 97°47'00"W.; to Lat. 31°50'00"N., Long. 97°46'00"W.; to Lat. 32°00'00"N., Long. 97°50'00"W.; to point of beginning.
Designated altitudes. FL 180 to and including FL 280.
Time of designation. Continuous, 0600 CST March 22 through 2400 CST March 31, 1977.
Controlling agency. Federal Aviation Administration, Houston ARTC Center.
Using agency. U.S. Air Force Tactical Air Command/USAF Readiness Command (TAC/USAFRED) Langley Air Force Base, Va. 23665

3. R-6315C GALLANT CREW 77, TEX.

Boundaries. Beginning at Lat. 30°47'00"N., Long. 98°03'00"W.; to Lat. 31°02'00"N., Long. 98°11'00"W.; to Lat. 31°27'00"N., Long. 98°11'00"W.; to Lat. 31°24'00"N., Long. 97°43'00"W.; to Lat. 31°22'33"N., Long. 97°42'45"W.; to Lat. 31°20'48"N., Long. 97°40'32"W.; to Lat. 31°19'37"N., Long. 97°40'32"W.; to Lat. 31°13'45"N., Long. 97°32'35"W.; to Lat. 31°06'06"N., Long. 97°32'42"W.; to Lat. 30°48'00"N., Long. 97°38'00"W.; to point of beginning, excluding that airspace within a 5 mile radius of the Hood, Tex., VOR, within a 5 mile radius of the Fort Hood AAF, (Lat. 31°08'15"N., Long. 97°42'50"W.), within 5 miles each side of the Hood, Tex., VOR 102°T and 125°T radials extending from the VOR to V-17 airway, and also excluding the airspace within a 3 NM radius of the following airport coordinates:

City-County Airport, Gatesville, Tex., (Lat. 31°25'16"N., Long. 97°47'48"W.);
Lampasas Airport, Lampasas, Tex., (Lat. 31°-06'27"N., Long. 98°11'45"W.);
Litch Field, Copperas Cove, Tex., (Lat. 31°-10'10"N., Long. 97°56'20"W.);
Sybert Farm, Jarrell, Tex., (Lat. 30°47'20" N., Long. 97°39'17"W.).

Designated altitudes. 100 feet AGL to and including 500 feet AGL.
Time of designation. Continuous, 0600 CST March 22 through 2400 CST March 31, 1977.
Controlling agency. Federal Aviation Administration, Houston ARTC Center.
Using agency. U.S. Air Force Tactical Air Command/USAF Readiness Command (TAC/USAFRED) Langley Air Force Base, Va. 23665

(Sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Washington, D.C., on December 20, 1976.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.76-38133 Filed 12-29-76;8:45 am]

[Airspace Docket No. 76-AL-11]

PART 73—SPECIAL USE AIRSPACE

Alteration of a Restricted Area

On October 28, 1976, a notice of proposed rule making (NPRM) was published in the FEDERAL REGISTER (41 FR 47265) stating that the Federal Aviation Administration (FAA) was considering an amendment to Part 73 of the Federal Aviation Regulations that would alter the lateral boundaries and operating hours of Restricted Area R-2211, Blair Lakes, Alaska.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. All comments received were favorable.

In consideration of the foregoing, Part 73 of the Federal Aviation Regulations is amended, effective 0901 Gmt, February 24, 1977, as hereinafter set forth.

§ 73.22 [Amended]

§ 73.22 (42 FR 658) R-2211, Blair Lakes, Alaska, is amended in its entirety to read as follows:

R-2211 Blair Lakes, Alaska.
Boundaries. Beginning at Lat. 64°30'00"N., Long. 147°44'00"W.; to Lat. 64°20'00"N., Long. 147°19'00"W.; to Lat. 64°13'30"N., Long. 147°32'00"W.; to Lat. 64°22'30"N., Long. 147°58'00"W.; to point of beginning.

Time of designation. 0800 to 1800, local time, Monday through Friday and at other times as activated by NOTAM issued by the using agency at least 24 hours in advance.
Designated altitudes. Surface to 18,000 feet MSL.
Controlling agency. Federal Aviation Administration Eielson RAPCON.
Using agency. Alaskan Air Command.

(Sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Washington, D.C., on December 23, 1976.

EDWARD J. MALO,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.76-38267 Filed 12-29-76;8:45 am]

[Docket No. 16389; Special Federal Aviation Reg. No. 33]

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS OF SMALL AIRCRAFT

Flight Recorders and Cockpit Voice Recorders

The purpose of this Special Federal Aviation Regulation is to permit, temporarily, certain large airplanes having a maximum passenger capacity of 30 seats or less, a maximum payload capacity of 7,500 pounds or less, and a maximum zero fuel weight of 35,000 pounds or less, to be operated under Parts 121 and 135 of the Federal Aviation Regulations without a flight recorder or a cockpit voice recorder. Certain airplanes are excluded as discussed herein.

Section 121.343 requires that no person may operate a large airplane that is certificated for operations above 25,000 feet altitude or is turbine engine powered, unless it is equipped with one or more flight recorders that meet the specifications set forth in Part 121. Section 121.359 requires that no person may operate a large turbine engine powered airplane or a large pressurized airplane with four reciprocating engines without an approved cockpit voice recorder. The requirements of §§ 121.343 and 121.359 apply to Part 135 certificate holders by virtue of § 135.2 which requires air taxi operators to comply with the certification and operations requirements of Part 121 applicable to supplemental air carriers for operations conducted with large aircraft. On the other hand, § 121.9 permits Part 121 certificate holders to comply with the requirements of Part 135 applicable to air taxi operators for operations conducted in small aircraft. A large aircraft is defined in § 1.1 as an aircraft of more than 12,500 pounds maximum certificated takeoff weight and a small aircraft as one of 12,500 pounds or less maximum certificated takeoff weight.

The use of the "12,500 pound" aircraft standard for purposes of operations under Parts 121 and 135 has been questioned and, based upon a preliminary review, the FAA believes that requiring an aircraft to be operated under the rules of Part 121 or 135 based on whether its maximum certificated takeoff weight is more or less than 12,500 pounds may no longer be appropriate or necessary in the interest of safety. Accordingly, the FAA has under consideration the development of new standards for operations conducted with large airplanes having a maximum passenger capacity of 30 seats or less, a maximum payload capacity of 7,500 pounds or less, and a maximum zero fuel weight of 35,000 pounds or less. The developent of new standards will be accomplished in the Part 135 Regulatory Review Program, public notice of which was published on September 13, 1976 (Notice No. 76-18, 41 FR 38778). A review conference, held in Denver, Colorado, during the period of November 8-11, 1976, was attended by approximately 400 persons. With the review conference having been completed, a notice of proposed rule making will be issued as soon as practicable with a 90-day comment period.

During the review conference, more than 100 proposals were discussed and the FAA pointed out that certain of the proposals might result in rule making which would delete the requirements for a flight recorder and cockpit voice recorder on large airplanes (excluding the Convair 240, 340, and 440; the Martin 202 and 404; the F-27 and FH-227; and the Hawker Siddeley 748) having a maximum passenger capacity of 30 seats or less, a maximum payload capacity of 7,500 pounds or less, and a maximum zero fuel weight of 35,000 pounds or less, operating under the rules of Part 135, as those rules may be revised in the Part 135 Regulatory Review Program. Various attendees commented on the flight recorder (FDR) and cockpit voice recorder (CVR). In summary, the comments noted that the FDR and CVR do not enhance the safety of a particular flight, but are useful only for accident investigation purposes. It was also stated that significant expense is incurred in the acquisition and maintenance of the FDR and CVR and that the weight of the equipment imposes a payload penalty on the operator. The general consensus of the persons commenting on the FDR and CVR was that the economic detriment resulting from the FDR and CVR requirements on airplanes of the size specified in the Part 135 Regulatory Review Program is significant. Concern also was expressed that continuation of these requirements during the process of rule making which might result in deletion of the requirements could cause needless expense to be incurred by air taxi operators. Several certificate holders have advised the FAA that they expect to acquire, imminently, large airplanes within the size specified herein which do not have an approved FDR or CVR installed. These certificate holders have stated that unless immediate relief from the FDR and CVR requirements is granted, they will be required to incur significant expenses.

It also is noted that the following pending petitions for exemption seek permission to operate certain large airplanes without a flight recorder or cockpit voice recorder: Usair Corporation, dated 5/30/75 (Docket 14716); World Aviation Services, dated 6/10/75 (Docket 14771); Thunderbird Airways, Inc., dated 7/28/75 (Docket 15056); Jet Fleet Corporation, dated 6/3/76 (Docket 15852); and Boise Cascade Aviation Division, dated 10/12/76 (Docket 15254). In addition, Lacy Aviation, Inc. (petition for exemption dated 4/25/75, Docket 14700), DeBoer Aviation Corporation (petition for exemption dated 5/6/75, Docket 14699), and American Jet Aviation (petition for rule making dated 2/27/75, Docket 14472) have requested relief including permission to operate certain large airplanes without a flight recorder or cockpit voice recorder.

Representatives of the National Transportation Safety Board (NTSB) were in attendance throughout the conference. At the close of the conference a representative of the NTSB stated that the Board was unable to comment at that time on the discussions of the FDR and CVR which took place at the conference.

In view of the foregoing, the FAA is concerned that an adverse economic impact may result from continuation of the FDR or CVR requirements for airplanes specified herein in view of the possibility that the FDR and CVR may not be required by rules developed in the Part 135 Regulatory Review Program. The FAA has considered the accident investigation usefulness of the FDR and CVR in relation to the possible adverse economic impact described above and has concluded that safety and the public interest do not require the installation of the flight recorder or cockpit voice recorder in the airplanes specified herein pending the development of new standards for operations conducted with those airplanes.

Therefore, this SFAR is adopted to permit, during this period, airplanes type certificated as large airplanes, having a maximum passenger capacity of 30 seats or less, a maximum payload capacity of 7,500 pounds or less, and a maximum zero fuel weight of 35,000 pounds or less to be operated under Parts 121 and 135 of the Federal Aviation Regulations without complying with the requirements for a flight recorder or a cockpit voice recorder. The SFAR does not apply to the Convair 240, 340, and 440; the Martin 202 and 404; the Fairchild F-27 and FH-227; or the Hawker Siddeley 748. Also, the SFAR does not apply to any airplane described in paragraph (a) of section 1 which, as of the effective date of the SFAR, is listed on the operations specifications of Part 121 or Part 135 certificate holders for operation as large airplanes and has an approved flight recorder and cockpit voice recorder installed.

Since this special regulation would avoid the probable imposition of an undue economic burden on certain certificate holders, would relieve a restriction and would not adversely affect safety, I find that notice and public proce-

dure are impracticable and that for good cause it may be made effective on less than 30 days notice. However, interested persons are invited to submit such written data, views, or arguments as they may desire regarding this SFAR. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue, SW., Washington, D.C. 20591. All communications received on or before January 31, 1977, will be considered by the Administrator and this SFAR may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

It should be noted that in Notice 76-29, issued on December 22, 1976, the FAA requests comments on a proposal to amend this SFAR and extend its relief to those airplanes currently excluded by paragraph (b) (2) of section 1.

(Secs. 313(a), 601, and 604 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1424), and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655 (c)).)

In consideration of the foregoing, the following Special Federal Aviation Regulation is adopted, effective December 22, 1976:

SPECIAL FEDERAL AVIATION REGULATION NO. 33

1. *Applicability.* Contrary provisions of Parts 121 and 135 of the Federal Aviation Regulations notwithstanding, large airplanes described in paragraph (a) of this regulation may be operated under Parts 121 and 135 of the Federal Aviation Regulations without a flight recorder or a cockpit voice recorder:

(a) Except as provided in paragraph (b) of this section, airplanes type certificated as large airplanes, having a maximum passenger capacity of 30 seats or less, a maximum payload capacity of 7,500 pounds or less, and a maximum zero fuel weight of 35,000 pounds or less.

(b) This regulation does not apply to the following airplanes:

(1) Convair 240, 340, and 440; Martin 202 and 404; Fairchild F-27 and FH-227; Hawker Siddeley 748; and

(2) Any airplane described in paragraph (a) of this section that on the effective date of this SFAR is listed on the operations specifications of a Part 121 or Part 135 certificate holder for operation as a large airplane and has an approved flight recorder and cockpit voice recorder installed.

2. *Definitions.* For purposes of this Special Federal Aviation Regulation, the following definitions apply:

(a) Except as provided in paragraph (b) of this section, the term "maximum payload capacity" means the maximum certificated takeoff weight of an airplane, less the empty weight, less all justifiable airplane equipment, and less the operating load (consisting of minimum fubel load, oil, flight crew, steward's supplies, etc.). The allowance for the weight of the crew, oil, and fuel is as follows:

(1) Crew—200 pounds per crew member required under the Federal Aviation Regulations.

(2) Oil—350 pounds.

(3) Fuel—the minimum weight of fuel required by the Federal Aviation Regulations for a flight between domestic points 174 nautical miles apart under VFR weather conditions and not involving extended overwater operations.

(b) In the case of an airplane for which a maximum zero fuel weight is prescribed in FAA technical specifications, maximum payload capacity means the maximum zero fuel weight, less the empty weight, less all justifiable airplane equipment, and less the operating load (consisting of minimum flight crew, steward's supplies, etc., but not including disposable fuel or oil).

(c) The term "empty weight" means the weight of the airframe, engines, propellers, and fixed equipment. Empty weight excludes the weight of the crew and payload, but includes the weight of all fixed ballast, unusable fuel supply, undrainable oil, total quantity of engine coolant, and total quantity of hydraulic fluid.

(d) The term "maximum zero fuel weight" means the maximum permissible weight of an airplane with no disposable fuel or oil. The zero fuel weight figure may be found in either the airplane type certificate data sheet or the approved airplane flight manual or both.

This Special Federal Aviation Regulation terminates June 30, 1978, unless sooner superseded or rescinded.

The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Issued in Washington, D.C., on December 22, 1976.

JOHN L. MCLUCAS,
Administrator.

[FR Doc.76-38228 Filed 12-29-76;8:45 am]

Title 18—Conservation of Power and Water Resources

CHAPTER I—FEDERAL POWER COMMISSION

[Docket Nos. R-393 and RM76-6]

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

Small Producer Regulation

DECEMBER 22, 1976.

On November 5, 1976, the Commission issued Opinion No. 770-A, *Opinion And Order On Rehearing Modifying In Part Opinion No. 770 And Granting Petitions For Intervention*, Docket No. RM75-14. That opinion promulgated § 2.56a(p) of the Commission's Regulations requiring the filing of certain specified information where a seller sought to obtain the new nationwide rate for the second well drilled in an established proration unit.

On December 1, 1976, Yucca Petroleum Co. (Yucca) filed in Docket No. RM75-14 a request for clarification of Opinion No. 770-A that § 2.56a(p) did not apply to small producers. Yucca asserts that the 56a(p).
subject section does not apply to small producers because these certificate holders were not made parties to the proceeding in Docket No. RM75-14 and, therefore, should not be bound by § 2.-

The Commission's reasons for enacting § 2.56a(p) are expressed in Opinion No. 770-A and the Commission there did not distinguish between large and small producers in the application of § 2.56a(p). The Commission's purpose in enacting § 2.56a(p) would be defeated if small producers were exempt from the requirements of § 2.56a(p), since small producers would then be able, where state authority permitted and without Commission review, to drill additional, and possibly unnecessary, wells solely in order to obtain the higher rate. The primary purpose of the 130% small producer incentive, which does not apply to the $1.42 per Mcf rate, was to compensate them for the increased risk of wildcat exploration,[1] not to increase the rate of delivery of established reservoirs. Secondly, although the Commission did not make small producers respondents to the rulemaking procedure in Docket No. RM75-14, participation was open to small producers who petitioned to intervene and the rates set in Opinion No. 770 were made applicable to small producers in Order No. 553-A,[2] to which Yucca did not object. For these reasons § 2.56a(p) applies to both large and small producers.

In Order No. 553-A § 157.40 of the Commission's Regulations was amended to add new subsection (c) (3) to permit small producers to collect 130% of the $1.01 per Mcf rate set in Opinion No. 770 for the 1973-1974 biennium. In Opinion No. 770-A this rate was recalculated and fixed at 93 cents per Mcf plus escalation as determined in § 2.56a(a)(4). Consistent with that redetermination, § 157.40(c)(3) will be amended by deleting the number $1.01 and substituting therefor 93 cents.

Filings made by small producers pursuant to § 2.56a(p) shall be limited to the submission of the statement of eligibility, since small producers are not required to make rate filings. The filings shall not include notices of change in rate. Collection by small producers of the rates authorized in Opinion No. 770-A will be made pursuant to the provisions of § 157.40, as amended.

[1] *Opinion No. 742, Opinion And Order Amending Section 157.40 Of The Regulations Under The Natural Gas Act*, Docket No. R-393, ____ FPC ____ (August 28, 1975), *rehearing denied*, Opinion No. 742-A (August 2, 1976), *order on clarification*, Opinion No. 742-C (September 9, 1976).

[2] *Order Clarifying Prior Order*, Docket No. RM76-5, ____ FPC ____ (September 9, 1976).

The Commission orders:

(A) The request for clarification by Yucca is granted to the extent that § 2.-56a(p) of the Commission's Regulations, as enacted in Opinion No. 770–A, applies to small producers, as that term is defined in § 157.40 of the Regulations, limited solely to the filing of the statement of eligibility required by § 2.56a(p).

(B) Ordering paragraph (A) of Order No. 553 and Order No. 553–A is further amended to revise paragraph (c)(3) of § 157.40 to read as follows:

§ 157.40 Exemption of small producers from certain filing requirements.

* * * * *

(c) * * *

(3) All sales of natural gas by small producers for resale ininterstate commerce that qualify for the base ceiling rate of 93 cents per Mcf set in Opinion No. 770–A shall be made at a maximum rate of 130% of that ceiling rate.

* * * * *

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76–38376 Filed 12–29–76;8:45 am]

Title 24—Housing and Urban Development

CHAPTER II—OFFICE OF THE ASSISTANT SECRETARY FOR HOUSING—FEDERAL HOUSING COMMISSIONER, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R–76–371]

MORTGAGE AND LOAN INSURANCE PROGRAMS UNDER THE NATIONAL HOUSING ACT

Assurance of Completion Requirements

On September 22, 1976, in Volume 41, Number 185 at page 41516 of the FEDERAL REGISTER, the Department of Housing and Urban Development amended Parts 207, 213, 221, 232, 241, 242 and 244 of Title 24 to change the assurance of completion requirements for multifamily housing projects, nursing homes, hospitals and group practice facilities, the construction or rehabilitation of which is financed through mortgages insured by the Department.

Subsequent to the issuance of the revised bonding requirements, we have received numerous inquiries from field office personnel and interested persons relative to the effective date of these changes. We are informed that numerous problems would result, if the newly enacted bonding requirements contained in the September 22, 1976 FEDERAL REGISTER did not provide sufficient lead time prior to becoming effective.

In order to provide for sufficient lead time prior to implementation, notice is hereby given that the regulations published on September 22, 1976, are applicable to all projects in which the initial application for mortgage insurance, accompanied by the appropriate fees, was received and date stamped by the HUD field office on or after September 22, 1976.

JOHN T. HOWLEY,
Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc.76–38347 Filed 12–29–76;8:45 am]

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

[Docket No. R–76–436]

PART 1905—STATEWIDE "FAIR" PLANS

Pursuant to Title XI and Title XII of the National Housing Act (added by the Urban Property Protection and Reinsurance Act of 1968, 12 U.S.C. 1749 bbb–1749 bbb–21), 5 U.S.C. 553, as amended by the National Insurance Development Act of 1975 (Pub. L. 9413, 89 Stat. 68, 12 U.S.C. 1749 bbb Note), and delegation of authority by the Secretary of Housing and Urban Development (34 FR 2680, February 27, 1969), the Federal Insurance Administrator published in the FEDERAL REGISTER (41 FR 1499, 1500, January 8, 1976) a notice of proposed rulemaking in which he proposed to issue the following regulation pertaining to Part A of the Act (12 U.S.C. 1749 bbb–1749 bbb–21) as a new § 1905.13 of Part 1905 of Chapter VII of Title 24.

The purpose of the new § 1905.13 is: to promulgate in regulatory form a requirement that each FAIR Plan offering insurance pursuant to the Act (12 U.S.C. 1749 bbb–1749 bbb–21) shall provide a notice to all FAIR Plan policyholders with all policies issued or renewed on and after July 1, 1976 that consumer oriented inquiries and complaints dealing with the policy issuance and/or claims handling performance of the FAIR Plan and its agents and employees may be directed by the policyholder to the State insurance regulatory body thus being available for Federal Insurance Administration audit; to implement the Department of Housing and Urban Development's commitment to a primary goal to assure that the rights and interests of consumers are fully considered and duly respected; and to comply with the spirit of President Ford's April 17, 1975, letter to the Congress stressing the importance of assuring that consumer interests "receive full consideration in all Government actions" and the President's Directive that each agency and Department undertake a review of its policies and procedures as they affect consumer representation in agency decision making.

Interested parties were given 60 days within which to submit written comments relative to the proposed rule and written comments were received from 10 State insurance authorities, 4 State FAIR Plans, 2 national trade associations, and 10 individual companies or associations of companies, a total of 26 written comments. All relevant comments were given full and careful consideration. While two State regulatory authorities endorsed the proposed rulemaking entirely, there was an expression in some of the comments that the Federal Insurance Administration should not be routinely informed of all consumer inquiries because the State insurance regulatory authorities are eminently able to protect the FAIR Plan consumer's interest and to evaluate and respond to consumer inquiries and complaints dealing with FAIR Plan activities in the jurisdictions of the insurance regulatory authorities of the several States. Such views are consistent with the Federal Insurance Administration's long-standing position that the public is best served by an insurance system under which the private insurance sector remains the principal provider, and the States the regulators of insurance. Accordingly, in order to accommodate the understandable concerns of State regulators with the needs of FIA, the provisions requiring inclusion of the Federal Insurance Administrator's name as a person to be contacted in respect to complaints has been eliminated in favor of a request to regulators to segregate and separately maintain inquiries and complaints dealing with FAIR Plans to the end that they may be readily available incident to FAIR Plan audits by FIA's Office of Review and Compliance.

There were questions raised in some of the written comments as to whether the Federal Insurance Administrator had authority to issue the proposed rule to effectuate the review, by the Federal Insurance Administration, of consumer oriented inquiries and complaints dealing with the performance of the FAIR Plans of the States in which such Plans are in effect. Such authority was clearly established by the 1970 amendments to the National Insurance Development Program which established the Office of Review and Compliance under the Federal Insurance Administrator (Sec. 603, Housing and Urban Development Act of 1970, Public Law 91–609, approved December 31, 1970, 84 Stat. 1770, 1791, added Section 1215 to Title XII—National Insurance Development Program). Under the Office of Review and Compliance such authority includes, among other things, the implementation of review, audit and public hearing functions by the Federal Insurance Administrator. This authority is fortified by the revised purpose clause of the National Insurance Development Act of 1975 extending the authority granted in the 1970 and 1968 Acts.

The comments and advice of interested parties have been fully taken into consideration in the preparation of the regulations which are hereby adopted.

To allow the various State FAIR Plans sufficient time to implement the resulting regulations, as revised, and in accordance with the provisions of 5 U.S.C. 553 (d), these regulations will become effective on April 15, 1977.

It has been determined that these amendments do not have a substantial effect upon the quality of the environment nor do they have an economic im-

pact as determined under OMB Circular A–107. Accordingly, findings of inapplicability have been prepared with respect to both environmental and economic considerations and copies of both these determinations are available for public inspection in the Office of the Rules Docket Clerk, Room 10141, Office of the Secretary.

Section 1905.13 of Part 1905—Statewide "FAIR" Plan is added to read as follows:

§ 1905.13 Notice to policyholders.

(a) Each participating or cooperating insurer offering insurance pursuant to this program (12 U.S.C. 1749 bbb–1749 bbb–21) shall provide a notice to all FAIR Plan policyholders with policies issued or renewed on and after January 15, 1977, containing the following information:

(1) Authority for issuance of policy.

(2) FAIR Plan name, address, and telephone numbers.

(3) State Insurance Department addresses and telephone numbers.

(b) Compliance with the requirements of paragraph (a) above will be satisfied provided the participating or cooperating insurer complies with a format of notice as designated by the Federal Insurance Administrator; such notices shall, as a minimum, include the following information employing the same terms or substantially similar terms.

Dear Policyholder: The attached FAIR Plan Insurance Policy, or renewal thereof, has been issued to you by the FAIR Plan in cooperation with your State Insurance Authority and the Federal Insurance Administration of the United States Department of Housing and Urban Development. The policy is serviced generally by the statewide FAIR Plan, as listed at the end of this Notice. The FAIR Plan or your insurance agent will assist you if you need to report a loss or if you have any questions pertaining to the premium charged or the scope of the coverage afforded under the policy. In addition, your State Insurance Department which has regulatory authority over the FAIR Plan is ready to be of assistance to you in these matters, if the FAIR Plan or agent cannot help you. Moreover, since the FAIR Plan Program is intended to provide you with the highest caliber of service, your State Insurance Department would welcome any suggestions you may have for improving the program. Please do not hesitate to write, for assistance, to:

(1) FAIR Plan: [Name, Address, Telephone Number].

(2) State Insurance Department [Name, Address, Telephone Number].

(Sec. 7(d), 70 Stat. 670 (42 U.S.C. 3535d); Sec. 1103, 82 Stat. 566 (12 U.S.C. 1749 bbb–17).)

Effective date: This section shall be effective on April 15, 1977.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-38348 Filed 12-29-76;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7452]

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

Temporary Regulations Relating to Definition of Qualified Possession Source Investment Income for Purposes of the Puerto Rico and Possession Tax Credit

This document contains temporary income tax regulations (26 CFR Part 7) under section 936 of the Internal Revenue Code of 1954 as added by section 1051 of the Tax Reform Act of 1976 (Pub. L. 95–455, 90 Stat. 1643) in order to provide rules with respect to the definition of qualified possession source investment income for purposes of the Puerto Rican and possession tax credit.

Section 936 (d)(2) defines "qualified possession source investment income" as gross income, less deductions properly apportioned or allocated thereto, which "(A) is from sources within a possession of the United States in which a trade or business is actively conducted, and (B) the taxpayer establishes to the satisfaction of the Secretary is attributable to the investment in such possession (for use therein) of funds derived from the active conduct of a trade or business in such possession, or from such investment." Section 1051 (i) of the Act provides that section 936 is, in general, effective for taxable years beginning after December 31, 1975, but provides that qualified possession source investment income shall include income from any source outside the United States earned before October 1, 1976. Investment income earned on or after October 1, 1976, must meet the requirements of section 936 (d)(2) in order to qualify for the credit provided by section 936.

The Secretary of the Treasury of the Commonwealth of Puerto Rico has issued Regulations (as amended on September 28, 1976), under the authority of section 2(j) of the Puerto Rico Industrial Incentive Act of 1963, as amended, providing certain conditions under which an exemption from Puerto Rican income tax is allowed for interest on deposits with Puerto Rican financial institutions. Such income tax exemption is conditioned, among other things, on the reinvestment of the funds, within specified periods not to exceed 6 months, in Puerto Rico in activities which directly tend to increase production, income and employment in Puerto Rico. It is contemplated that the final regulations, when issued, will substantially reduce this 6-month period as of a future date so that the Puerto Rican financial institutions will have an adequate period under which to adjust their practices. This reinvestment requirement is substantially similar to that provided in section 936 of the Code. The regulations further provide for monthly reporting by the financial institutions involved to the Secretary of the Treasury of Puerto Rico to insure compliance with the reinvestment requirements.

The Internal Revenue Service has recognized the need to provide guidance to taxpayers pending the issuance of proposed regulations under section 936 with respect to whether interest on deposits with Puerto Rican financial institutions (less applicable deductions) is qualified possession source investment income under section 936(d)(2). The temporary regulations provide that interest (less applicable deductions) earned by a domestic corporation engaged in the conduct of a trade or business in Puerto Rico which elects the application of section 936 with respect to deposits with Puerto Rican financial institutions which qualifies for exemption from Puerto Rican income tax under the regulations issued by the Secretary of the Treasury of Puerto Rico, as in effect on September 28, 1976, will be treated as qualified possession source investment income, provided that such interest is from sources within Puerto Rico (within the meaning of section 936(d)(2)(A)) and the funds with respect to which such interest is earned are derived from the active conduct of a trade or business in Puerto Rico or from investment of funds so derived.

Adoption of amendment to the regulations. In order to prescribe temporary income tax regulations relating to the definition of qualified possession source investment income with respect to the Puerto Rico and possession tax credit under section 936(d)(2), as added by section 1051 of the Tax Reform Act of 1976 (Pub. L. 95–455, 90 Stat. 1644), the following temporary regulations are hereby adopted:

§ 7.936–1 Qualified possession source investment income.

For purposes of this section, interest earned after September 30, 1976 (less applicable deductions), by a domestic corporation, engaged in the active conduct of a trade or business in Puerto Rico, which elects the application of section 936 with respect to deposits with certain Puerto Rican financial institutions will be treated as qualified possession source investment income within the meaning of section 936(d)(2) if (1) the interest qualifies for exemption from Puerto Rican income tax under regulations issued by the Secretary of the Treasury of Puerto Rico, as in effect on September 28, 1976, under the authority of section 2 (j) of the Puerto Rico Industrial Incentive Act of 1963, as amended, (2) the interest is from sources within Puerto Rico (within the meaning of section 936 (d)(2)(A)), and (3) the funds with respect to which the interest is earned are derived from the active conduct of a trade or business in Puerto Rico or from investment of funds so derived.

Because of the need for immediate guidance with respect to the provision contained in this Treasury Decision, it is found impracticable to issue it with notice and public procedure thereon under subsection (b) of section 553 of Title 5 of the United States Code or sub-

ject to the effective date limitation of subsection (d) of that section.

Sec. 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: December 23, 1976.

WILLIAM M. GOLDSTEIN,
Deputy Assistant Secretary of the Treasury.

[FR Doc.76-38379 Filed 12-29-76;8:45 am]

SUBCHAPTER F—PROCEDURE AND ADMINISTRATION

[T.D. 7453]

PART 404—TEMPORARY REGULATIONS ON PROCEDURE AND ADMINISTRATION UNDER THE TAX REFORM ACT OF 1976

Temporary Regulations Relating to Disclosures of Return Information by Internal Revenue Officers and Employees for Investigative Purposes

This document contains temporary regulations on procedure and administration (26 CFR Part 404) under section 6103(k)(6) of the Internal Revenue Code of 1954 as added by section 1202 of the Tax Reform Act of 1976 (Pub. L. 94-455, 90 Stat. 1679) in order to provide rules governing disclosures of return information (as defined by section 6103(b)(2)) by officers and employees of the Internal Revenue Service and office of the Chief Counsel therefor for investigative purposes authorized by section 6103(k)(6) of the Code.

The temporary regulations describe the circumstances and conditions under which such officers or employees are authorized to disclose return information to a person other than the taxpayer to whom such return information relates (or such taxpayer's representative) in connection with official duties relating to an examination, collection activity, civil or criminal investigation, enforcement activity, or other offense under the internal revenue laws or relating to certain personnel or claimant representative matters under such laws or 31 U.S.C. 1026.

These temporary regulations are effective on January 1, 1977.

Adoption of amendment to the regulations. In order to prescribe temporary regulations on procedure and administration relating to disclosures of return information by internal revenue officers and employees for investigative purposes authorized by section 6103(k)(6) of the Internal Revenue Code of 1954, as added by section 1202 of the Tax Reform Act of 1976 (Pub. L. 94-455, 90 Stat. 1679), the following temporary regulations are hereby adopted and added to Part 404 of Title 26 of the Code of Federal Regulations:

§ 404.6103(k)(6)-1 Disclosure of return information by internal revenue officers and employees for investigative purposes.

(a) *Disclosure of taxpayer identity information and fact of investigation in connection with official duties relating to examination, collection activity, civil or criminal investigation, enforcement activity or other offense under the internal revenue laws.* In connection with the performance of official duties relating to any examination, collection activity, civil or criminal investigation, enforcement actvity, or other offense under the internal revenue laws, or in connection with preparation for any proceeding (or investigation which may result in such a proceeding) described in section 6103(h)(2) of the Internal Revenue Code of 1954, an officer or employee of the Internal Revenue Service or office of the Chief Counsel therefor is authorized to disclose taxpayer identity information (as defined in section 6103(b)(6)), the fact that the inquiry pertains to the performance of official duties, and the nature of the official duties in order to obtain necessary information relating to performance of such official duties or where necessary in order to properly accomplish any activity described in subparagraph (6) of paragraph (b) of this section. Disclosure of taxpayer identity information to a person other than the taxpayer to whom such taxpayer identity information relates or such taxpayer's legal representative for the purpose of obtaining such necessary information or otherwise properly accomplishing such activities as authorized by this paragraph should be made, however, only if the necessary information cannot, under the facts and circumstances of the particular case, otherwise reasonably be obtained in accurate and sufficiently probative form, or in a timely manner, and without impairing the proper performance of the official duties, or if such activities cannot otherwise properly be accomplished without making such disclosure.

(b) *Disclosure of return information in connection with official duties relating to examination, collection activity, civil or criminal investigation, enforcement activity, or other offense under the internal revenue laws.* In connection with the performance of official duties relating to any examination, collection activity, civil or criminal investigation, enforcement activity, or other offense under the internal revenue laws, an officer or employee of the Internal Revenue Service or office of the Chief Counsel therefor is authorized to disclose return information (as defined in section 6103(b)(2)) in order to obtain necessary information relating to the following—

(1) To establish or verify the correctness or completeness of any return (as defined in section 6103(b)(1)) or return information;

(2) To determine the responsibility for filing a return, for making a return where none has been made, or for performing such acts as may be required by law concerning such matters;

(3) To establish or verify the liability (or possible liability) of any person, or the liability (or possible liability) at law or in equity of any transferee or fiduciary of any person, for any tax, penalty, interest, fine, forfeiture, or other imposition or offense under the internal revenue laws or the amount thereof to be collected;

(4) To establish or verify misconduct (or possible misconduct) or other activity proscribed by the internal revenue laws;

(5) To obtain the services of persons having special knowledge or technical skills (such as, but not limited to, knowledge of particular facts and circumstances relevant to a correct determination of a liability described in subparagraph (3) of this paragraph or skills relating to handwriting analysis, photographic development, sound recording enhancement, or voice identification) or having recognized expertise in matters involving the valuation of property where relevant to proper performance of a duty or responsibility described in this paragraph;

(6) To establish or verify the financial status or condition and location of the taxpayer against whom collection activity is or may be directed, to locate assets in which the taxpayer has an interest, to ascertain the amount of any liability described in subparagraph (3) of this paragraph to be collected, or otherwise to apply the provisions of the Code relating to establishment of liens against such assets, or levy on, or seizure, or sale of, the assets to satisfy any such liability; or

(7) To prepare for any proceeding described in section 6103(h)(2) or conduct an investigation which may result in such a proceeding,

or where necessary in order to accomplish any activity described in subparagraph (6) of this paragraph. Disclosure of return information to a person other than the taxpayer to whom such return information relates or such taxpayer's legal representative for the purpose of obtaining information necessary to properly carry out the foregoing duties and responsibilities as authorized by this paragraph or for the purpose of otherwise properly accomplishing any activity described in subparagraph (6) of this paragraph should be made, however, only if such necessary information cannot, under the facts and circumstances of the particular case, otherwise reasonably be obtained in accurate and sufficiently probative form, or in a timely manner, and without impairing the proper performance of such duties and responsibilities, or if the activities described in subparagraph (6) of this paragraph cannot otherwise properly be accomplished without making such disclosure.

(c) *Disclosure of return information in connection with certain personnel or claimant representative matters.* In connection with the performance of official duties relating to any investigation concerned with the enforcement of any provision of the Internal Revenue Code concerned with the enforcement of any rules, directives, or manual issuances prescribed by the Secretary under section 7803 or any other provision of the Code, which affects or may affect the personnel or employment rights or status, or civil or criminal liability, of any employee or former or prospective em-

ployee of the Department of the Treasury or the rights of any person who is or may be a party to an administrative action or proceeding pursuant to 31 U.S.C. 1026, an officer or employee of the Internal Revenue Service or office of the Chief Counsel therefor is authorized to disclose return information (as defined in section 6103(b)(2)) for the purpose of obtaining, verifying, or establishing other information which is or may be relevant and material to such investigation. Disclosure of return information to a person other than the taxpayer to whom such return information relates or such taxpayer's legal representative for the purpose of obtaining information necessary to properly carry out the foregoing duties and responsibilities as authorized by this paragraph should be made, however, only if such necessary information cannot, under the facts and circumstances of the particular case, otherwise reasonably be obtained in accurate and sufficiently probative form, or in a timely manner, and without impairing the proper performance of such duties and responsibilities.

Because of the need for immediate guidance with respect to the provisions contained in this Treasury decision, it is found impracticable to issue it with notice and public procedure thereon under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

(Secs. 6103(k)(6) and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1679, 68A Stat. 917; 26 U.S.C. 6103(k)(6), 7805).)

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: December 27, 1976.

WILLIAM M. GOLDSTEIN,
Deputy Assistant Secretary of the Treasury.

[FD Doc.76-38384 Filed 12-29-76;8:45 am]

Title 27—Alcohol, Tobacco Products and Firearms

CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

SUBCHAPTER M—ALCOHOL, TOBACCO AND OTHER EXCISE TAXES

[T.D. ATF-38]

PART 245—BEER

Reduction in Beer Tax for Small Brewers

The Director, Bureau of Alcohol, Tobacco and Firearms, with the approval of the Secretary of the Treasury or his delegate, is amending regulations in 27 CFR Part 245, Beer, in order to implement the provisions of Pub. L. 94-529, the Reduction in Beer Tax for Small Brewers Act.

Background. Pub. L. 94-529 amended 26 U.S.C. 5051, Imposition and Rate of Tax [on beer], by reducing the tax on beer for certain small brewers from $9.00 to $7.00 per barrel for the first 60,000 barrels of beer removed for consumption or sale in a calendar year. This law becomes effective January 1, 1977, and will apply to brewers or "controlled groups" of brewers who produce not in excess of 2,000,000 barrels of beer per year. In the case of "controlled groups" of brewers as defined at 26 U.S.C. 1563(a), the total production of all members cannot exceed 2,000,000 barrels, and the 60,000 barrels eligible for the $7.00 tax rate may apply once to the entire group, to be apportioned at the discretion of the member brewers. The reduced rate of tax applies only to beer produced at domestic breweries; thus, imported beer is not eligible for the reduced tax rate.

Qualification of Brewers. Pub. L. 94-529 allows qualified brewers to pay $7.00 tax per barrel (31 gallons) on the first 60,000 barrels of beer removed for consumption or sale in a calendar year. A new section, § 245.110a, is added outlining the criteria used to determine if a brewer is eligible to pay the reduced rate of tax. Section 245.110a requires:

(1) That the beer be produced at a qualified brewery in the United States.

(2) That the brewer not produce more than 2,000,000 barrels of beer in the calendar year.

(3) That the brewer not be a member of a "controlled group" of brewers who together produce more than 2,000,000 barrels of beer in a calendar year.

Although the tax reduction applies only to domestically produced beer, the House Committee Report accompanying H.R. 3605 states that, for purposes of determining whether a brewer is a small brewer entitled to the reduced tax rate, all of the brewer's production is to be taken into account, including its foreign production. The brewer shall use the quantity entered into his daily record and on his monthly report, Form 103 line 2, as the beer "produced" for determining compliance with the 2,000,000 barrel limitation; a brewer who operates two or more breweries must include the production of beer at all his breweries.

For purposes of both the 2,000,000 barrel limitation, and the 60,000 barrels of beer which may be taxpaid at the reduced rate of $7.00, a "controlled group" of brewers shall be treated as a single brewer. The production of all brewers in the group shall be added together to determine if the group produces not more than 2,000,000 barrels of beer, and the entire group of brewers is eligible for a total of 60,000 barrels of beer to be taxpaid at the $7.00 rate.

Controlled groups. A "controlled group" of brewers is a closely related group of brewers who have common ownership interests. There are several categories of controlled groups but a few of the most common are as follows:

(1) *Parent — subsidiary controlled group:* one or more chains of corporations connected through stock ownership (direct or indirect) with a common parent corporation.

(2) *Brother—sister controlled group:* two or more corporations owned (directly or indirectly) by the same five or fewer persons who are individuals, estates or trusts.

(3) *Combined group:* a group of three or more corporations in which each corporation is a member of a parent—subsidiary controlled group or a brother—sister controlled group, and at least one of such corporations is the common parent of a parent—subsidiary controlled group and also is a member of a brother—sister controlled group.

In general, ownership control is exercised by 51% stock ownership in a corporation. However, ownership in a corporation need not be direct and 51% constructive ownership may be acquired through: (1) an option to purchase stock in a corporation; (2) attribution from partnerships; (3) attribution from estates or trusts; (4) attribution from corporations; and (5) ownership by spouses, children, grandchildren, parents and grandparents. These examples of controlled groups are by no means complete and a more in-depth explanation of controlled groups of corporations may be found at Section 1563 of the Internal Revenue Code and regulations beginning at 26 CFR 1.1563.

Payment of reduced rate of tax by return. Revised § 245.117a of the regulations provides that qualified brewers who elect to pay tax at the reduced rate of tax of $7.00 by return, Form 2034, may do so by filing the notice described below with the copy of the tax return sent to the regional regulatory administrator (formerly regional director) in each region in which the brewer operates breweries. The brewer must file the notice annually, and must file the notice with the tax return for the first return period (or with the first prepayment return) in which the brewer pays tax at the lower rate. The brewer may then continue to pay tax at the $7.00 rate until the 60,000 barrel (or apportioned) limitation is reached in each calendar year.

A new section, § 245.110c, is added prescribing the information required on the notice to pay the reduced rate of tax. This information includes the following:

(1) A statement that the brewer will not or is not likely to produce more than 2,000,000 barrels of beer in the calendar year.

(2) A statement that the brewer is not a member of a controlled group of brewers, or if a member of a controlled group, a statement that the combined production of the group will not or is not likely to exceed 2,000,000 barrels of beer in the calendar year.

(3) If the brewer operates more than one brewery, a statement as to how the 60,000 barrels is to be apportioned among the breweries (for example: Plant No. 1, Baltimore, 30,000 barrels; Plant No. 2, Cincinnati, 30,000 barrels). If the brewer is a member of a controlled group of brewers, a list of the names and locations of all brewers in the group, and a statement as to how the 60,000 barrels is to be apportioned among the brewers (for example: RST Brewing Co., Newark, N.J. 40,000 barrels; UVW Brewing Co., Chicago, 20,000 barrels; XYZ Brewing Co., Los Angeles, no barrels).

The brewer must execute each notice under penalties of perjury. Notices shall

be prepared in duplicate, the original submitted to the regional regulatory administrator with the tax return and the copy retained with the brewer's records.

Foreign brewers' production statement. New section 245.110c contains a paragraph requiring any brewer which operates foreign breweries, or which is a member of a controlled group of breweries which has one or more foreign members, to submit to the regional regulatory administrator at the end of the calendar year, a notice stating the combined production of all brewers or breweries involved if the brewer paid tax at the reduced rate that calendar year. The reason for requiring this additional notice is to enable the regional regulatory administrator to verify that the brewer (or controlled group of brewers) did not produce more than 2,000,000 barrels of beer that year and was thus eligible to pay the reduced rate of tax. Section 245.110c requires that the brewer file this notice with the tax return, Form 2034, covering the last return period in the calendar year.

In the case of domestic brewers (or controlled groups of brewers) which operate no foreign plants, the production information is readily available to the regional regulatory administrator from the brewer's monthly report of operations, Form 103, which brewers file monthly.

Payment of reduced rate of tax by claim. A second method by which a brewer may pay the reduced rate of tax on beer is by filing a claim for tax excessively paid during the calendar year. The brewer must have been eligible to pay tax at the lower rate during the year but, instead, have paid the tax on beer at the $9.00 rate. In such cases, the brewer may file a claim for refund of tax on Form 843 with the regional regulatory administrator in the region in which his principal place of business is located, within the time limitation provided in 26 U.S.C. 6511(a). A new section, § 245.166, requires the following information in support of the claim:

(1) Name and address of the brewer.

(2) Quantity of beer covered by the claim, determined by the number of barrels of beer taxpaid at the $9.00 rate but which were eligible, within the 60,000 barrel or apportioned amount, to be taxpaid at the $7.00 rate. The brewer shall exclude the quantity of beer removed that calendar year on which credit or refund of tax of the $9.00 rate has been taken.

(3) Amount of tax paid in excess.

(4) The exact number of barrels of beer produced that calendar year.

(5) A statement as to the brewer's inclusion in a controlled group of brewers, similar to the statement made in the brewer's notice described earlier.

Claims for refund or credit of tax. Brewers filing claims for refund or credit of tax who pay the reduced rate of tax of $7.00 on beer, must establish the rate of tax paid or determined on beer which is voluntarily destroyed, returned to a brewery other than the one from which removed, or lost due to disaster or casualty. In order for a brewer to establish the rate of tax at which a particular lot of beer was taxpaid or determined, the brewer must know the exact date of removal from the brewery. In many cases, it may be impossible for the brewer to establish the date of removal of the beer or the rate of tax paid or determined. Therefore, amended sections 245.160 and 245.163 require a brewer who has paid tax on beer at the $7.00 rate during a year, to make claims for refund or credit at the $7.00 tax rate for all beer unless the brewer can establish that the beer was taxpaid at the $9.00 rate. The brewer may use shipping invoices, coding, or other methods in establishing the date of removal of beer; however, the regulations do not require that beer be so identified and the brewer may make all decreasing adjustments at the $7.00 tax rate.

Sections 245.148, 245.161, and 245.164 are amended to require a brewer making a claim for refund, credit, or remission of tax to specify the rate of tax paid or determined (or the rate of tax which would have been applicable) on beer covered by the claim. No change is made with respect to returned beer used to offset removals as provided in § 245.156.

Tax liability for brewers producing more than 2,000,000 barrels of beer in a year. Pub. L. 94-529 provides for a reduced rate of tax on beer for brewers who produce not more than 2,000,000 barrels of beer per calendar year. It is possible that a brewer, expecting to produce less than 2,000,000 barrels of beer, will file the required notice and pay beer tax at the $7.00 rate; however, that brewer may finally produce in excess of 2,000,000 barrels of beer that year. In this case, the brewer is ineligible to pay the $7.00 rate of tax on any beer removed that year. Therefore, new section 245.110d requires the brewer immediately to make an increasing tax adjustment of $2.00 for each barrel of beer on which tax was paid at the $7.00 rate that year. The brewer must make the tax adjustment not later than the return period (or prepayment return) in which he exceeds 2,000,000 barrels production, and shall include interest from the time at which the beer was taxpaid at the $7.00 rate.

Other changes. On December 1, 1976, the position of regional director was abolished and a new position, the regional regulatory administrator, was established to direct regulatory activities in each ATF region. Therefore, the definitions in § 245.5 are amended by including a definition of "regional regulatory administrator" and by cross-referencing the obsolete term "assistant regional commissioner" to mean a "regional regulatory administrator". Similar changes are made throughout the sections amended.

Numerous other changes have been made to reflect the status of the Bureau of Alcohol, Tobacco and Firearms as a Treasury bureau separate from the Internal Revenue Service. Section 245.5 is further amended by deleting obsolete definitions of "Commissioner", "regional commissioner", and "Director, Alcohol, Tobacco and Firearms Division", by adding definitions for "ATF officer", and "Director", and by updating the term "region" to specify a Bureau of Alcohol, Tobacco and Firearms region. Additionally, the term "this chapter" has been updated to reflect the recodification of the regulations in Title 27 Code of Federal Regulations.

Text of regulations. In view of the foregoing, 27 CFR Part 245 is amended to read as follows:

Paragraph 1. Section 245.5 is amended (1) by adding in alphabetical order, definitions for the terms "Director", ATF officer", and "regional regulatory administrator", (2) by deleting the obsolete terms "Commissioner", "regional commissioner", and "Director, Alcohol, Tobacco and Firearms Division", (3) by cross-referencing the obsolete term "assistant regional commissioner" to the term "regional regulatory administrator", and (4) by updating the definitions for "region" and "this chapter."

Par. 2. A new section, § 245.110a, is added immediately following § 245.110, which sets forth the provision for the payment of tax on beer at a reduced rate of tax, and establishes criteria for eligibility of brewers to pay reduced tax.

Par. 3. A new section, § 245.110b, is added which describes the manner by which an eligible brewer may pay the reduced rate of tax on beer.

Par. 4. A new section, § 245.110c, is added which prescribes a notice to be filed by brewers eligible to pay the reduced rate of tax on beer, in order for them to pay the reduced rate by tax return, Form 2034 (5130.7).

Par. 5. A new section, § 245.110d, is added which requires brewers who have paid the reduced rate of tax on beer during a calendar year, and who produce more than 2,000,000 barrels of beer in that year, to make a tax adjustment for the additional tax due on the beer tax paid at the reduced rate of tax.

Par. 6. Section 245.117a is revised (1) by including a requirement that brewers paying the reduced rate of tax on beer indicate the cumulative number of barrels of beer paid at the lower rate on the tax return, Form 2034 (5130.7), and (2) by rewriting and redesignating the paragraphs in the section for better understanding.

Par. 7. Section 245.148 is amended (1) by changing the term "assistant regional commissioner" wherever it appears to read "regional regulatory administrator," and (2) by adding a requirement that a claim for remission of tax include the rate of tax which would have been applicable to the beer for which the claim is filed.

Par. 8. Section 245.160 is revised (1) by including a requirement that a brewer who is paying the reduced rate of beer tax may only claim refund, credit or remission of tax at the lower rate, unless he can establish that the tax on the beer being returned was paid or determined at the higher rate, and (2) by dividing the section into paragraphs.

Par. 9. Section 245.161 is amended (1) by changing the term "assistant regional

commissioner", wherever it appears, to read "regional regulatory administrator", (2) by changing the terms "inspector" and "internal revenue officer", wherever they appear, to read "ATF officer", and (3) by adding a requirement that the brewer's notice contain a statement as to the rate of tax paid or determined on the beer.

Par. 10. Section 245.163 is amended (1) by including a requirement that a brewer who is paying the reduced rate of beer tax may only claim refund or credit of tax at the lower rate of tax, unless he can establish that the tax on the beer which was lost or rendered unmerchantable was paid or determined at the higher rate, and (2) by changing the term "assistant regional commissioner", wherever it appears, to read "regional regulatory administrator".

Par. 11. Section 245.164 is amended (1) by changing the term "assistant regional commissioner", wherever it appears, to read "regional regulatory administrator", and (2) by adding a requirement that the claim include a statement of the rate of tax paid or determined on the beer.

Par. 12. A new section, § 245.166, is added which describes the claim procedure to be used by a brewer who was eligible to pay the tax on beer at the reduced rate of tax, but who paid the tax at the higher rate during the calendar year.

Effective date: Because the amendments made by this Treasury decision allow small brewers to take advantage of the reduced rate of tax on beer effective January 1, 1977, and because of the need for immediate guidance with respect to eligibility for payment of tax at the reduced rate, it is found it is unnecessary to issue this Treasury decision with notice and public procedure thereon under 5 U.S.C. 553(b) or subject to the effective date limitations of 5 U.S.C. 553(d).

Accordingly, this Treasury decision shall become effective on January 1, 1977, which is the effective date of Public Law 94-529.

Authority. This Treasury decision issued under the authority contained in 26 U.S.C. 7805 (68A Stat. 917).

Inflation Impact. The Bureau of Alcohol, Tobacco and Firearms has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Signed: December 23, 1976.

JARVIS L. BREWER,
Assistant Director.

Approved: December 23, 1976.

JERRY THOMAS,
Under Secretary of the Treasury.

§ 245.5 Meaning of terms.

When used in this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meanings ascribed in this subpart, as follows:

ATF officer. An officer of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

Assistant regional commissioner. Whenever used in this part shall mean a regional regulatory administrator as defined in this section.

Beer. "Beer" shall mean beer, ale, porter, stout and other similar fermented beverages (including sake or similar products) of any name or description containing one-half of 1 percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor.

(68A Stat. 612; 26 U.S.C. 5052)

Bottle and bottling. "Bottle" shall mean a bottle, can, or similar container, and "bottling" shall mean the filling of bottles, cans, and similar containers.

Brewer. "Brewer" shall mean every person who brews or produces beer for sale.

(68A Stat. 617; 26 U.S.C. 5092)

Brewery. "Brewery" shall mean the land and buildings described as such in the brewer's notice on Form 27-C, where beer is to be produced and packaged.

(72 Stat. 1389, as amended; 26 U.S.C. 5402, 5411)

Brewing. "Brewing" shall mean the production of beer for sale.

Business day. "Business day" shall mean the 24-hour cycle of operations in effect at the brewery, which, if other than the calendar day, is subject to the approval of the assistant regional commissioner. The business day, having been once established, shall be applicable to all records and operations of the brewery, and shall not be changed without approval of the assistant regional commissioner.

Cereal beverage. "Cereal beverage" shall mean malt beverage, either fermented or unfermented, which contains, when ready for consumption, less than one-half of 1 percent of alcohol by volume.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, D.C.

Director of the service center. "Director of the service center" shall mean the director of the internal revenue service center in each of the internal revenue regions.

District director. "District director" shall mean a district director of internal revenue.

Executed under penalties of perjury. "Executed under penalties of perjury" shall mean signed with the prescribed declaration under the penalties of perjury as provided on or with respect to the return, claim, form, or other document or, where no form of declaration is prescribed, with the declaration: "I declare under the penalties of perjury that this _____ (insert type of document such as statement, report, certificate, application, claim, or other document), including the documents submitted in support thereof, has been examined by me and, to the best of my knowledge and belief, is true, correct and complete."

Gallon. "Gallon" shall mean the liquid measure containing 231 cubic inches.

(68A Stat. 612; 26 U.S.C. 5052)

Includes and including. "Includes" and "including" shall not be deemed to exclude things other than those enumerated which are in the same general class.

Inclusive language. Words in the plural form shall include the singular and vice versa, and words in the masculine gender shall include the feminine as well as individuals, trusts, estates, partnerships, associations, companies, corporations, and other legal entities.

I. R. C. "I. R. C." shall mean the Internal Revenue Code of 1954.

Package and packaging. "Package" shall mean a bottle, can, keg, barrel, or other original consumer container, and "packaging" shall mean the filling of any package.

(72 Stat. 1390, as amended; 26 U.S.C. 5416)

Person. "Person" shall mean and include an individual, a trust, estate, partnership, association, company, and corporation.

(68A Stat. 911; 26 U.S.C. 7701)

Region. A geographical region of the Bureau of Alcohol, Tobacco and Firearms.

Regional regulatory administrator. The principal regional official responsible for administering regulations in this part.

Removed for consumption or sale. "Removed for consumption or sale" (except when used with respect to beer removed without payment of tax as authorized by law) shall mean (a) the sale and transfer of possession of beer for consumption at the brewery or (b) any removal of beer from the brewery.

(72 Stat. 1333, as amended; 26 U.S.C. 5052)

Secretary. "Secretary" shall mean the Secretary of the Treasury.

This chapter. Chapter I, Title 27, Code of Federal Regulations.

U. S. C. "U. S. C." shall mean the United States Code.

[21 F.R. 8627, Nov. 9, 1956, as amended by T.D. 6384, 24 F.R. 4821, June 12, 1959; T.D. 6473, 25 F.R. 5963, June 29, 1960, as amended by T.D. 7008, 34 F.R. 3671, Mar. 1, 1969; T.D. 7113, 36 F.R. 8799, May 13, 1971; T.D. 7130, 36 F.R. 12856, July 8, 1971]

§ 245.110a Reduced rate of tax for certain brewers.

(a) *General.* Section 5051(a)(2) of Title 26 U.S.C. provides for a reduced rate of tax on the first 60,000 barrels of beer removed for consumption or sale by a brewer during a calendar year. To be eligible to pay the reduced rate of tax, a brewer must:

(1) brew or produce the beer at a qualified brewery in the United States;

(2) not produce more than 2,000,000 barrels of beer per calendar year; and

(3) not be a member of a "controlled group" of brewers whose members together produce more than 2,000,000 barrels of beer per calendar year.

(b) *Definitions.* For the purpose of determining eligibility for payment of the reduced rate of beer tax prescribed in paragraph (a) of this section, terms shall have the meaning ascribed below:

(1) *Controlled group.* A related group of brewers as defined in 26 U.S.C. 1563(a) and further modified by 26 U.S.C. 5051 (a)(2)(B). Controlled groups include, but are not limited to:

(i) Parent-subsidiary controlled groups as defined in 26 CFR 1.1563–1(a)(2).

(ii) Brother-sister controlled groups as defined in 26 CFR 1.1563–1(a)(3).

(iii) Combined groups as defined in 26 CFR 1.1563–1(a)(4). Stock ownership in a corporation need not be direct and 51% constructive ownership, defined in 26 CFR 1.1563–3, may be acquired through:

(iv) An option to purchase stock;

(v) Attribution from partnerships;

(vi) Attribution from estates or trusts;

(vii) Attribution from corporations; or

(viii) Ownership by spouses, children, grandchildren, parents, and grandparents.

(2) *Production of beer.* The production of beer as recorded in the brewer's daily records and reported in the monthly report, Form 103 line 2. For the purpose of determining compliance with the 2,000,000 barrel limitation, production of beer by a brewer or a controlled group of brewers shall include both beer produced at qualified breweries within the United States and beer produced outside the United States.

(c) *Brewers operating more than one brewery.* Brewers who operate more than one brewery must include the combined production of beer at all their breweries when determining eligibility under the 2,000,000 barrel per calendar year limitation. The reduced rate of tax shall apply to the first 60,000 barrels of beer removed for consumption or sale in a calendar year by the brewer; such brewer shall apportion the 60,000 barrels among his breweries in the manner described in his notice as provided by § 245.110c(b)(3).

(d) *Controlled groups of brewers.* Members of a controlled group of brewers must include the combined production of beer by all member brewers when determining eligibility under the 2,000,000 barrel per calendar year limitation. The reduced rate of tax shall apply to the first 60,000 barrels of beer removed for consumption or sale in a calendar year by the controlled group of brewers; such controlled group of brewers shall apportion the 60,000 barrels among member brewers in the manner described in each brewer's notice as provided by § 245.110c(b)(3).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1333, as amended (26 U.S.C. 5051, 5052).)

§ 245.110b Payment of reduced rate of tax.

(a) *By return, Form 2034 (5130.7).* A brewer who is eligible to pay the reduced rate of tax on beer may, upon filing the notice required by § 245.110c, pay the reduced rate of tax on beer by semimonthly return as provided in § 245.117a, or by prepayment return as provided in § 245.117c. Payment of the reduced rate of tax on beer by return, Form 2034 (5130.7), may commence with any tax return filed during a calendar year and shall continue until the brewer has taxpaid 60,000 barrels of beer at the lower rate of tax, or taxpaid the number of barrels of beer apportioned under § 245.110c(b)(3) for that calendar year.

(b) *By claim for refund of tax.* A brewer, eligible to pay the reduced rate of tax on beer during a calendar year, but who has not paid the reduced rate of tax by return during that year, may file a claim, Form 843, for refund of tax excessively paid on beer during that year. Claims for refund of tax shall be filed as provided in § 245.166.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1333, as amended (26 U.S.C. 5051).)

§ 245.110c Notice of brewer to pay reduced rate of tax.

(a) *Requirement to file notice.* Every brewer who desires to pay the reduced rate of tax on beer authorized by 26 U.S.C. 5051(a)(2) by tax return, Form 2034 (5130.7), shall prepare a notice, in duplicate, containing the information required by paragraph (b) of this section. The brewer shall file the original of the notice with the copy of the tax return sent to the regional regulatory administrator for the first return period (or prepayment return) during which the brewer pays tax on beer at the reduced rate. The brewer shall retain the copy of the notice with his records. The brewer shall file the notice each year in which he pays the reduced rate of tax on beer by return.

(b) *Information to be furnished.* Each notice described in paragraph (a) of this section shall contain the following information:

(1) A statement that the brewer will not or is not likely to produce more than 2,000,000 barrels of beer in the calendar year for which the notice is filed.

(2) A statement that the brewer is not a member of a controlled group of brewers, or if the brewer is a member of a controlled group of brewers, a statement that the controlled group will not or is not likely to produce more than 2,000,000 barrels of beer in the calendar year for which the notice is filed.

(3) If the brewer operates more than one brewery, a statement of the locations of all his breweries and a statement of how the 60,000 barrel limitation for the reduced rate of tax will be apportioned among his breweries. If the brewer is a member of a controlled group of brewers, a statement of the names and locations of all other brewers in the group and a statement of how the 60,000 barrel limitation will be apportioned among the brewers in the group.

(c) *Foreign brewer's production statement.* Each brewer who operates foreign breweries, or each brewer who is a member of a controlled group of brewers which has one or more foreign members, and who has paid the reduced rate of tax by return during a calendar year, shall prepare an additional notice, in duplicate. The brewer shall list all breweries which he operates, or all member brewers in the controlled group of brewers, and shall state their combined production (in barrels of 31 U.S. gallons) for the calendar year in which the brewer paid tax at the reduced rate. The brewer shall file the original copy of the notice with the regional regulatory administrator together with the tax return, Form 2034 (5130.7), covering the last return period in the calendar year. The brewer shall retain the copy of the notice with his records.

(d) *Perjury statement.* Each notice described in this section shall be executed by the brewer under penalties of perjury as required by § 245.231.

(Pub. L. 83–591, 68A Stat. 749 (26 U.S.C. 6065); Sec. 201, Pub. L. 85–859, 72 Stat. 1390, 1395 (26 U.S.C. 5415, 5555).)

§ 245.110d Tax liability for brewers who produce more than 2,000,000 barrels of beer.

Each brewer who has paid tax on beer by return, Form 2034 (5130.7), at the reduced rate of tax during a calendar year, but whose production (or the production of a controlled group of brewers of which the brewer is a member) exceeds 2,000,000 barrels of beer in that calendar year, shall no longer be eligible to pay tax on beer at the reduced rate of tax for any beer removed that calendar year for consumption or sale. Such brewer shall make a tax adjustment for the payment of additional tax no later than the return period in which his production (or the production of a controlled group of brewers of which the brewer is a member) exceeds 2,000,000 barrels of beer. The adjustment shall be determined by multiplying the difference between the higher and lower rates of tax applicable to beer by the number of barrels removed by the brewer that year at the reduced rate of tax. The brewer shall make tax adjustments for all breweries where he paid tax at the lower rate that year, and shall include interest payable from the date on which tax was paid at the lower rate. In the case of a controlled group of brewers whose production exceeds 2,000,000 barrels of beer, all member brewers who paid tax at the lower rate shall make tax adjustments as determined in this section.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1333, as amended (26 U.S.C. 5051).)

§ 245.117a Semimonthly return.

(a) *Requirement for filing.* Each brewer shall pay the tax on beer (unless prepaid) by semimonthly return on Form 2034 (5130.7). The brewer shall file a Form 2034 (5130.7) as a semimonthly return regardless of whether tax has been prepaid as provided in § 245.117c during the return period. The brewer shall file a return, Form 2034 (5130.7), for each return period even

though no beer was removed for consumption or sale.

(b) *Payment of tax.* The brewer shall include for payment with his return, the full amount of tax required to be determined (and which has not been prepaid) on all beer removed for consumption or sale during the period covered by the return. Prepayments made by the brewer during the semimonthly period shall be separately stated on the return.

(c) *Information to be furnished.* The brewer shall state on the return the quantities of keg and bottled beer removed daily for consumption or sale during the period covered by the return, and the total quantities removed during the period. In the case of a brewer who has filed the notice required by § 245.110c and is paying the tax on beer at a reduced rate, the brewer shall state the cumulative number of barrels of beer removed for consumption or sale during the calendar year at the reduced rate of tax.

(d) *Return periods.* Return periods shall run from the brewer's business day beginning on the first day of each month through the brewer's business day beginning on the 15th day of that month, and from the brewer's business day beginning on the 16th day of the month through the brewer's business day beginning on the last day of the month.

(e) *Time for filing returns and paying tax.* The brewer shall file the semimonthly tax return, Form 2034 (5130.7), for each return period, with remittance, not later than the last full calendar day of the return period next succeeding that period.

(f) *Timely filing.* (1) When the Brewer sends the semimonthly return and remittance to the office of the district director by U.S. mail, the date of the official postmark of the United States Postal Service stamped on the cover in which the return and remittance were mailed shall be considered the date of delivery of such return and remittance. When the postmark on the cover is illegible, the burden of proving when the postmark was made shall be on the brewer.

(2) When the return and remittance are sent by registered mail, the date of registry or, when the return and remittance are sent by certified mail, the date of the postmark on the sender's receipt, shall be treated as the postmark date of the return and remittance.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1335 (26 U.S.C. 5061).)

§ 245.148 Claims for remission of tax.

Claims for remission of tax on beer lost in transit between breweries of the same ownership shall be prepared on Form 2635 by the brewer or his duly authorized agent and submitted with Form 103 of the receiving brewery for the month in which the shipment is received. Where the loss is by casualty, the claim shall be submitted with the Form 103 for the month in which the loss is discovered. Where, for valid reason, the required claim cannot be submitted with such report, a statement shall be attached to the monthly report setting forth the reason why the claim cannot be filed at that time and specifying when it will be filed. No claim shall be allowed unless filed with the regional regulatory administrator within 6 months after the date of loss. The claim shall set out:

(a) The date and serial number of the shipment (as shown on the transfer paper).

(b) The quantity of beer lost (number and size of packages and their equivalent in barrels), and the rate of tax at which the beer would have been removed for consumption or sale.

(c) The percent of loss.

(d) The specific cause of the loss.

(e) The nature of the loss (leakage, breakage, casualty, etc.).

(f) Full information as to whether the claimant has been indemnified by insurance or otherwise in respect of the tax or has any claim for indemnification. Full details shall be furnished on losses due to casualty or accident, supported if possible, by statements of the carrier or other parties having personal knowledge of the loss.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended, 1389 (26 U.S.C. 5056, 5414).)
[T.D. 6473, 25 F.R. 5964, June 29, 1960]

§ 245.160 Refund or credit of tax on returned beer.

(a) *Refund, credit or relief of tax.* The tax paid by a brewer on beer produced in the United States and returned to any brewery of the brewer may be refunded or credited to him (without interest) or, if the tax has not been paid, he may be relieved of liability therefor. Similar refund, credit, or relief may be allowed the brewer in respect of the tax paid or determined on beer voluntarily destroyed as provided in this subpart.

(b) *Returns used to offset removals.* No refund, credit, or relief from tax shall be allowed on beer returned to the brewery for which an offset against, or deduction from, removals has been taken as provided in § 245.116.

(c) *Rate of tax.* Brewers who have filed the notice required by § 245.110c and who have paid the tax on beer at the reduced rate of tax shall make claims for refund, credit, or relief based upon the lower rate of tax. However, any such brewer may make claim for refund, credit, or relief of tax based on the higher rate of tax if the brewer can establish to the satisfaction of the regional regulatory administrator that he paid or determined the tax on the beer at the higher rate of tax.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5056).)

§ 245.161 Notice of brewer.

(a) *Beer to be destroyed.* When a brewer possesses beer on which he has paid or determined the tax and which he desires to destroy elsewhere than in any of his breweries, he shall give written notice of his intention, in triplicate, to the regional regulatory administrator of the region in which the beer is to be destroyed: *Provided,* That such notice may be submitted directly to an ATF officer at any of his breweries if the place of destruction and the brewery are in the same region. The notice, which shall be serially numbered, shall be executed under penalties of perjury as defined in § 245.5. The notice shall specify the date on which the beer is to be destroyed, which date shall not be less than 12 days from the date of the notice. If, before the date specified in the notice, an ATF officer has not supervised destruction of the beer, or the regional regulatory administrator has not advised the brewer to the contrary, the brewer may destroy the beer on the date and in the manner stated in the notice. Where the notice is given to an ATF officer at the brewery, the ATF officer may supervise the transaction or transmit the notice to the regional regulatory administrator. The notice shall contain the following information:

(1) The number and sizes of kegs and the actual quantity of beer contained therein expressed in barrels; or the number of cases, the number and size in ounces of the bottles comprising the cases, and the actual quantity of beer contained therein expressed in barrels. (The burden of proof of establishing the correct quantity of beer is on the brewer and where kegs or cases containing less than the original contents are involved, the actual quantity of beer shall be determined by weight unless the regional regulatory administrator has authorized the use of another method.)

(2) The date on which the beer was received for destruction.

(3) A statement that the tax on the beer has been fully paid or determined and the rate at which the tax on the beer was paid or determined.

(4) If the title to the beer has passed, the name and address of the person returning the beer.

(5) The location at which the brewer desires to accomplish destruction and the reason for not returning the beer to the brewery.

(b) *Additional notice requirements.* The regional regulatory administrator may, where he deems it necessary, require a brewer who desires to return beer on which he has paid or determined the tax to any of his breweries other than the brewery from which removed, to give written notice in the same manner as is required by paragraph (a) of this section with respect to beer which is to be destroyed elsewhere than in any of his breweries.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

§ 245.163 Beer lost by fire, theft, casualty, or act of God.

(a) *General.* In accordance with the provisions of this part the tax paid by any brewer on beer produced in the United States may be refunded or credited (without interest) or, if the tax

has not been paid, the brewer may be relieved of liability therefor if, before transfer of title thereto to any other person, such beer is lost, whether by theft or otherwise, or is destroyed or otherwise rendered unmerchantable by fire, casualty, or act of God. In any case in which beer is rendered unmerchantable by fire, casualty, or act of God, refund or credit, or relief from liability of tax shall not be allowed unless the brewer proves to the satisfaction of the regional regulatory administrator that such beer cannot be salvaged and returned to the market for consumption or sale. In any case in which beer is lost or destroyed, whether by theft or otherwise, the regional regulatory administrator may require the brewer to file a claim for relief from the tax and submit proof as to the cause of such loss. In every case where it appears that the loss was by theft, the tax shall be collected unless the brewer proves to the satisfaction of the regional regulatory administrator that such theft occurred before removal from the brewery and occurred without connivance, collusion, fraud, or negligence on the part of the brewer, consignor, consignee, bailee, or carrier, or the employees or agents of any of them.

(b) *Claims.* A brewer who sustains a loss of beer before transfer of title thereto to another person and desires to file a claim for refund or credit, or for relief from liability of tax, shall, on learning of such loss, immediately notify the regional regulatory administrator of the region in which the loss occurred of the nature, cause, and extent of the loss, and the place where such loss occurred. Statements of witnesses or other supporting documents should be furnished, if available. When such notice, and supporting documents where furnished, are received by the regional regulatory administrator, he will examine the reasons for the described loss and will cause such investigation to be made or require such additional evidence to be submitted as he may deem necessary for use in connection with the claim when it is submitted. The tax liability on excessive losses of beer from transfers between breweries of the same ownership may be remitted as provided in § 245.143.

(c) *Rate of tax.* Brewers who have filed the notice required by § 245.110c and who have paid the tax on beer at the reduced rate of tax shall make claims for refund, credit, of relief of tax based upon the lower rate of tax. However, any such brewer may make claim for refund, credit, or relief of tax based upon the higher rate of tax if the brewer can establish to the satisfaction of the regional regulatory administrator that he paid or determined the tax on the beer at the higher rate of tax.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

§ 245.164 Claims for refund of tax.

Claims for refund of tax shall be filed on Form 843. Such claims, if for refund of tax on beer returned to a brewery of the brewer or voluntarily destroyed at a location other than the brewery, shall show (a) the name and address of the brewer filing the claim, the address of the brewery from which the beer was removed, and the address of the brewery to which the beer was returned, as applicable, (b) the quantity of beer covered by the claim and the rate(s) of tax at which the beer was tax paid or determined, (c) the amount of tax for which the claim is filed, (d) the reason for return or voluntary destruction of the beer and the facts relating thereto, (e) whether the brewer is indemnified by insurance or otherwise in respect of the tax, and, if so, the nature of such indemnification, (f) the claimant's reasons for believing that the claim should be allowed, and (g) the date on which the beer was returned to the brewery (where applicable), the name of the person from whom the beer was received, and a statement that the tax has been fully paid or determined. If the claim is for refund of tax on beer lost, whether by theft or otherwise, or destroyed or otherwise rendered unmerchantable by fire, casualty, or act of God, it shall contain the information specified in paragraphs (a), (b), (c), (e), and (f) of this section, and a statement of the circumstances surrounding the loss, and, where applicable, the reason that the beer rendered unmerchantable cannot be salvaged and returned to the market for consumption or sale. The claim shall also show the date of the loss, and, if lost in transit, the name of the carrier. Notices required under § § 245.161 and 245.163 shall be incorporated, by reference, in claims. Claims covering losses shall be supported, whenever possible, by affidavits of persons having knowledge of the loss, unless such affidavits are contained in the notice given under § 245.163. The regional regulatory administrator may require the submission of additional evidence in support of any claim filed under this section when deemed necessary for proper action on the claim. Any claim on Form 843 shall be filed with the regional regulatory administrator of the region in which the beer was returned, lost, destroyed, or rendered unmerchantable, within 6 months after the date of such return, loss, destruction, or rendering unmerchantable. Such claims will not be allowed if filed after the prescribed time or if the claimant was indemnified by insurance or otherwise in respect of the tax.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

§ 245.166 Refund of beer tax excessively paid.

(a) *Eligibility.* A brewer who, under the provisions of § 245.110a, is eligible to pay the reduced rate of tax on beer prescribed by 26 U.S.C. 5051(a)(2), but who did not pay tax at the reduced rate by return, Form 2034 (5130.7), during the calendar year for which the brewer was eligible, may file a claim for refund of tax excessively paid on beer for that year. The brewer shall file the claim for refund of tax on Form 843 with the regional regulatory administrator in the region in which the brewer's principal place of business is located, within the period of limitation prescribed in 26 U.S.C. 6511(a). For rules relating to the period of limitation on filing claims, see 26 CFR 301.6511 (a)-1 and 301.6511 (b)-1.

(b) *Calculation of refund.* The brewer shall file the claim based on the quantity of beer eligible to be taxpaid at the lower rate of tax, but which was paid at the higher rate of tax, subject to a maximum of 60,000 barrels of beer per calendar year or the limitation as determined in § 245.110a(d). The brewer shall exclude from the claim the quantity of beer removed that calendar year on which a credit or refund at the higher rate of tax has been taken.

(c) *Information to be furnished.* Each claim for refund of tax filed under this section shall include the following information:

(1) Name and address of the brewer.

(2) Quantity of beer covered by the claim as determined in paragraph (b) of this section.

(3) Amount of tax paid in excess.

(4) A statement of the exact number of barrels of beer which the brewer produced during the calendar year.

(5) A statement that the brewer is not a member of a controlled group of brewers (as defined in § 245.110a(b)(1)) or, if the brewer is a member of a controlled group of brewers, a list of the names and addresses of all the members of the controlled group of brewers and a statement of the combined number of barrels of beer produced by all members of the controlled group in the calendar year.

(6) If the brewer is a member of a controlled group of brewers, a statement of how the 60,000 barrel limitation for the reduced rate of tax is to be apportioned among the members of the controlled group of brewers.

(Pub. L. 83-591, 68A Stat. 791 (26 U.S.C. 6402); Sec. 201, Pub. L. 85-859, 72 Stat. 1333, as amended (26 U.S.C. 5051))

[FR Doc.76-38271 Filed 12-29-76;8:45 am]

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JJUSTICE

[Order No. 676-76]

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Appendix to Subpart Q—Confinement of Persons in District of Columbia Correctional Institutions

REVISION OF FURLOUGH AUTHORITY OF THE DISTRICT OF COLUMBIA

This Order revises the terms of the current delegation of authority made by the Attorney General to the Mayor of the District of Columbia concerning extension of the limits of confinement for certain prisoners. The current delegation was made in Attorney General Orders No. 612-75, 40 FR 30977 (July 24, 1975), and 636-76, 41 FR 3289 (Jan. 22, 1976). It is now codified at 28 CFR Part 0 Appendix to Subpart Q.

The current delegation authorizes the Mayor or his authorized representative to extend the limits of confinement of prisoners in his custody for the purposes

specified, and within the limits established, by the Act of September 10, 1965 (18 U.S.C. 4082). With respect to a prisoner convicted of a crime of violence who is not within six months of a firm release date, the current delegation provides that an extension shall be granted only in exceptional circumstances, with the personal written approval of the Director of the District of Columbia Department of Corrections, and following prior notice of the proposed extension to the Mayor.

Federal officials with responsibility for various aspects of the criminal justice system in the District of Columbia have expressed concern over the operation of the Department of Corrections' furlough program under the foregoing delegation. This Department's investigation, conducted with the cooperation of the Mayor and District officials, disclosed that in a few cases the standards required by the delegation had not been observed, and that in many cases the Department of Corrections' interpretation of the terms "firm release date" and "exceptional circumstances" was out of accord with the criteria which the delegation intended to apply. As a result, a relatively large number of persons convicted of serious crimes of violence have been released daily into the community, without supervision, long before they were eligible for parole and long before they had served their minimum sentences of confinement. The situation has now been substantially corrected, but the inadequacies of the existing delegation which would permit it to recur must be eliminated.

This revised delegation has been adopted after extensive consideration of existing furlough policies and discussions with District of Columbia officials. It has the effect of extending—beyond what the current delegation, properly interpreted, would permit—the period prior to release or parole within which a prisoner convicted for a crime of violence can normally be furloughed; but of eliminating entirely any "exceptional circumstances" furloughs for such prisoners prior to that period. It also provides for annual reports to the Department of Justice concerning furloughs of prisoners convicted of crimes of violence, and adds to the list of offenses which come within the definition of "crimes of violence," extortion with threat or use of violence to person.

The premature release of violent criminals from prison poses grave risks to life and safety, and disrupts the equity of sentencing by the courts of the United States. For these reasons, the change effected by this Order should be implemented at once. The same disposition is suggested by the fact that prisoners who are continued on furlough during a period in which it is known this change is being proposed for adoption may have reduced incentive to return. I therefore find it impracticable and contrary to the public interest to stay the effective date of this Order or to provide for a period of notice and public comment before it is adopted, and I direct that this Order shall take effect immediately.

Written comments will be received and considered in determining whether further action is necessary or desirable. Such comments should be addressed to the Assistant Attorney General, Office of Legal Counsel, Department of Justice, 10th and Constitution Avenue, N.W., Washington, D.C. 20530. Comments should be submitted by the thirtieth day following the date of publication of this Order. No oral hearings are contemplated.

By virtue of the authority vested in me by the Act of September 1, 1916, 39 Stat. 711 (D.C. Code section 24–402), by Section 11 of the Act of July 15, 1932, as added by the Act of June 6, 1940, 54 Stat. 244 (D.C. Code section 24–425), and by the Act of September 10, 1965 (18 U.S.C. 4082), it is ordered that:

(1) Paragraph (b) of 28 CFR Part O, Appendix to Subpart Q, is revised to read as follows:

Appendix to Subpart Q

CONFINEMENT OF PERSONS IN DISTRICT OF COLUMBIA CORRECTIONAL INSTITUTIONS

* * * * *

(b) The authority conferred by subsection (a) shall not include any extension of the limits of confinement for any prisoner serving a sentence for a crime of violence and not participating in a furlough program as of December 22, 1976, unless such prisoner has served at least twelve months, has not been denied parole, without recommendation for furlough, at his most recent parole hearing (whether such hearing was held before or after extension of the limits of his confinement was granted), and

(1) Is within twelve months of the expiration of his maximum sentence, without reduction, or

(2) Is within twelve months of a date on which he will be eligible for parole from confinement, or

(3) Has served at least ninety percent of his minimum sentence, without reduction.

By October 15 of each year, there shall be submitted to the Deputy Attorney General a report concerning each prisoner serving a sentence for a crime of violence whose limits of confinement have been extended during the twelve-month period ending the preceding September 30, indicating the offense and term for which, and the court by which, the prisoner was sentenced with respect to his present confinement; all other criminal offenses of which the prisoner has been convicted; the date, duration and purpose of each extension of the limits of his confinement; all parole board actions with respect to the prisoner; and all infractions of the terms of extension, violations of prison rules, or criminal offenses with which the prisoner has been officially charged since the beginning of his confinement.

(2) Paragraph (d) of 28 CFR Part O, Appendix to Subpart Q, is amended by deleting the word "or" and inserting after the words "assault with intent to rob," the following:

, or extortion involving the threat or use of violence to person.

(3) This Order is effective immediately.

Dated: December 23, 1976.

EDWARD H. LEVI,
Attorney General.

[FR Doc.76-38243 Filed 12-29-76;8:45 am]

[Order No. 675-76]

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Director, Bureau of Prisons; Authority to Promulgate Rules

This order adds to the list of specific authorities delegated to the Director of the Bureau of Prisons the authority to promulgate rules governing the control and management of Federal penal and correctional institutions and providing for the classification, government, discipline, treatment, care, rehabilitation, and reformation of inmates.

By virtue of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, § 0.96 of Subpart Q of Part 0 of Chapter I of Title 28, Code of Federal Regulations, is amended by adding the following paragraph (t) at the end thereof:

§ 0.96 Delegations.

* * * * *

(t) Promulgating rules governing the control and management of Federal penal and correctional institutions and providing for the classification, government, discipline, treatment, care, rehabilitation, and reformation of inmates confined therein.

(18 U.S.C. 4001(b)(1) and (2)).

Dated: December 21, 1976.

EDWARD H. LEVI,
Attorney General.

[FR Doc.76-38333 Filed 12-29-76;8:45 am]

Title 32—National Defense

CHAPTER XVI—SELECTIVE SERVICE SYSTEM

PART 1611—DUTY AND RESPONSIBILITY TO REGISTER

PART 1631—ALLOCATION OF INDUCTIONS

Procedural Amendments

Whereas, on November 23, 1976, the Director of Selective Service published a notice of proposed amendments of Selective Service Regulations, 41 FR 51618 of November 23, 1976; and

Whereas such publication complied with the publication requirement of section 13(b) of the Military Selective Service Act (50 App. U.S.C. sections 451 et seq.) in that more than thirty days have elapsed subsequent to such publication during which period no comment from the public has been received; and I certify that I have requested the views of officials named in section 2(a) of Executive Order 11623 and none of them has

timely requested that the matter be referred to the President for decision.

The proposed revision of Part 1611 would eliminate obsolete language and the provisions for voluntary registration of certain persons and the special arrangements for registration of inmates of institutions.

The proposed revision of § 1631.1 would eliminate the requirements that the lottery to establish the random sequence for induction be conducted once each year in Washington, D.C.

Now therefore by virtue of the authority vested in me by the Military Selective Service Act, as amended (50 App. U.S.C. sections 451 et seq.) and Executive Order 11623 of October 12, 1971, the Selective Service Regulations, constituting a portion of Chapter XVI of Title 32 of the Code of Federal Regulations, are hereby amended, effective upon publication in the FEDERAL REGISTER, as follows:

Part 1611, *Duty and Responsibility to Register*, is amended to read as follows:

Sec.
1611.1 Persons required to register.
1611.2 Persons not required to register.
1611.3 Time of registration.
1611.4 Place of registration.

AUTHORITY: Military Selective Service Act, as amended (50 App. U.S.C. 451 et seq.).

§ 1611.1 Persons required to register.

Except as otherwise provided by the provisions of § 1611.2, it shall be the duty of each male citizen of the United States who shall have attained the 18th anniversary of the day of his birth and who shall not have attained the 26th anniversary of the day of his birth to present himself for and submit to registration under the provisions of the Military Selective Service Act.

§ 1611.2 Persons not required to register.

Persons in the following categories are not required to register under the Military Selective Service Act:

(a) Any alien lawfully admitted to the United States as a nonimmigrant under section 101(a)(15) of the Immigration and Nationality Act, as amended (66 Stat. 163; 8 U.S.C. 1101), for so long as he continues to maintain a lawful nonimmigrant status, in the United States; and

(b) Any person described in section 6 of the Military Selective Service Act as not being required to register.

§ 1611.3 Time of registration.

Persons required to register shall present themselves for and submit to registration on a day prescribed by the President.

§ 1611.4 Place of registration.

(a) Persons required to register shall present themselves for and submit to registration at the places indicated:

(1) Citizens of the United States shall present themselves for registration before a duly designated registration official in the area in which they have their permanent home or in which they may happen to be or before a diplomatic or consular officer of the United States who is a citizen of the United States or any other person who may be designated by the Director of Selective Service as registrar; and

(2) Persons residing in the United States other than citizens of the United States shall present themselves for registration before a duly designated registration official.

(b) The Director may authorize the registration of persons without their appearing before the officials specified in paragraph (a) of this section. Procedures authorized under this paragraph shall be uniform throughout the state(s) in which they apply.

Section 1631.1, *Random selection sequence for induction*, is amended to read as follows:

§ 1631.1 Random selection sequence for induction.

The Director of Selective Service shall establish a random selection sequence for induction. Such random selection sequence will be established by a drawing to be conducted in the place and, on a date the Director shall fix, and shall be applied nationwide. The random selection method shall use 365 days, or, when appropriate, 366 days to represent the birthdays (month and day only) of all registrants who, during the specified calendar year(s) attained their 18th year of age. The drawing commencing with the first day selected and continuing until all 365 days or, when appropriate, 366 days are drawn, shall be accomplished impartially. The random selection sequence thus obtained shall, in accordance with the Selective Service Regulations, determine the order of selection of such registrants. The random sequence number thus determined for any registrant shall apply to him so long as he remains subject to induction for military training and service by random selection. A random sequence number established for a registrant shall be equivalent, for purposes of selection, to the same random sequence established for other registrants in other drawings, including the drawings of December 1, 1969, and July 1, 1970, and the random selection sequences obtained in those drawings shall continue to determine the order of selection of the registrants covered thereby in accordance with the Selective Service Regulations. Selection among registrants who have the same random sequence number shall be based upon the supplemental drawing conducted December 1, 1969, which determined alphabetically a random selection sequence by name.

BYRON V. PEPITONE,
Director.

DECEMBER 27, 1976.

[FR Doc.76-38244 Filed 12-29-76;8:45 am]

Title 38—Pensions, Bonuses, and Veterans' Relief

CHAPTER I—VETERANS ADMINISTRATION

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

LIBERALIZATION OF PENSION BENEFITS

On page 49838 of the FEDERAL REGISTER of November 11, 1976, there was published a notice of proposed regulatory changes to 38 CFR Part 3 to implement provisions of Public Law 94-432 (90 Stat. 1369), which liberalizes pension benefits.

Interested persons were given 30 days in which to submit comments, suggestions, or objections regarding the proposed regulations.

No written comments have been received and the proposed regulations are hereby adopted without change and are set forth below.

Effective date. These VA regulations are effective January 1, 1977.

Approved: December 22, 1976.

By direction of the Administrator.

A. J. SCHULTZ, JR.,
Associate Deputy Administrator.

1. In § 3.3, paragraph (c)(3) is revised to read as follows:

§ 3.3 Pension.

* * * * *

(c) *Disability pension: Mexican border period, and later war periods.* Basic entitlement exists if the veteran:

* * * * *

(3) Is permanently and totally disabled from non-service-connected disability not due to his (or her) own willful misconduct or vicious habits, or by reason of having attained the age of 65 years, or by reason of having become unemployable after age 65. (38 U.S.C. 502, 521)

* * * * *

2. In § 3.252, paragraph (f) is added to read as follows:

§ 3.252 Annual income; pension; Mexican border period and later war periods.

* * * * *

(f) *Income over maximum; reduced aid and attendance allowance.* Beginning January 1, 1977, veterans in need of regular aid and attendance who are not receiving pension because their income exceeds the applicable statutory limitation may be eligible for a reduced aid and attendance allowance. The amount payable is the regular aid and attendance allowance authorized by 38 U.S.C. 521(d)(1) reduced by 16.6 percent for each $100, or portion thereof, by which the veteran's annual income exceeds the applicable maximum income limitation. The reduced aid and attendance allowance is payable when:

(1) A veteran in need of regular aid and attendance is denied pension under 38 U.S.C. 521 solely because the veteran's annual income exceeds the applicable maximum income limitation in 38 U.S.C. 521 (b)(3) and (c)(3); or

(2) Pension payable under 38 U.S.C. 521 to a veteran in need of regular aid and attendance is discontinued solely because the veteran's annual income exceeds the applicable maximum income limitation in 38 U.S.C. 521 (b)(3) or (c)(3); and

(3) The veteran's annual income exceeds the applicable maximum income limitation in 38 U.S.C. 521 (b)(3) or (c)

(3) by an amount not greater than the amount specified in 38 U.S.C. 521(d)(2).

CROSS REFERENCES: Basic pension determinations. See § 3.314.

Determination of permanent need for regular aid and attendance and "permanently bedridden". See § 3.352.

3. In § 3.314, paragraph (b)(2) is revised to read as follows:

§ 3.314 Basic pension determinations.

* * * * *

(b) *Mexican border period and later war periods.* * * *

(2) Determinations of permanent total disability for pension purposes will be based on non-service-connected disability or combined non-service-connected and service-connected disabilities not the result of willful misconduct or vicious habits. However, for pension under Pub. L. 86–211 (73 Stat. 432), permanent and total disability will be presumed where the veteran has attained age 65 or effective January 1, 1977, where the veteran became unemployable after age 65. (38 U.S.C. 502(a); 523(a))

* * * * *

4. In § 3.401, paragraph (i) is added to read as follows:

§ 3.401 Veterans.

Awards of pension or compensation payable to or for a veteran will be effective as follows:

* * * * *

(i) *Increased disability pension based on attainment of age 78.* First day of the month during which veteran attains age 78.

5. In § 3.552, paragraph (j) is added to read as follows:

§ 3.552 Adjustment of allowance for regular aid and attendance.

* * * * *

(j) The aid and attendance allowance authorized by § 3.252(f) is subject to reduction for hospitalization under the provisions of this section in the same manner as the regular aid and attendance allowance (38 U.S.C. 521). No hospital adjustment in the reduced aid and attendance allowance will be made when it is equal to or less than the rate authorized by § 3.351(d).

[FR Doc.76–38343 Filed 12–29–76;8:45 am]

Title 40—Protection of Environment

[FRL 659–4]

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Maryland State Implementation Plan, Approval of Revisions; Correction Notice

On March 2, 1976 (41 FR 8956), the Administrator of the Environmental Protection Agency amended the Identification of Plan sections for each subpart of 40 CFR Part 52. The amendment delineates a revised format which provides for a more detailed explanation of each approved revision submitted by the respective jurisdictions rather than merely listing the submittal dates of a State Implementation Plan (SIP) revision request.

On June 30, 1976 (41 FR 26901), EPA approved a revision of the Maryland SIP. The revision consisted of an amendment in Section .04J of Maryland Regulations 10.03.38 and 10.03.39, pertaining to control of evaporative emissions from gasoline facilities (vapor recovery, Stage I), and submitted by the State of Maryland on April 24, 1974 as amended on July 1, 1975. Accordingly, EPA amended 40 CFR Section 52.1070 by adding Paragraph (c)(16) to reflect the Administrator's limited approval.

On March 1, 1976 (41 FR 8769), EPA approved as a revision of the Maryland SIP an amendment in Sections .04B(1) and .04B(2) of Maryland Regulations 10.03.37, 10.03.40 and 10.03.41 pertaining to the allowable sulfur content in fuel and submitted by the State on July 1, 1975. Accordingly, Paragraph (c)(4) of 40 CFR § 52.1070 was amended to indicate that supplemental information to the approved Maryland SIP had also been submitted on July 1, 1975. Because this approval notice was published prior to the March 2, 1976 format change to 40 CFR 52.1070, EPA subsequently prepared a correction notice to incorporate the March 1, 1976 approval action into the new format. This notice was published on July 29, 1976 (41 FR 31574), but the description of the approved amendments was erroneously listed under 40 CFR 52.1070(c)(16).

In order to alleviate any confusion concerning EPA's recent actions with respect to the approval of revisions of the Maryland SIP, the Administrator hereby redesignates 40 CFR 52.1070(c)(16), promulgated on July 29, 1976 as 40 CFR 52.1070(c)(17). Accordingly, the amended paragraphs of 40 CFR 52.1070 reflecting the Administrator's approval actions of March 1, 1976 (as corrected on July 29, 1976) and June 30, 1976 are listed below.

(Authority: 42 U.S.C. 1857c–5)

Dated: December 23, 1976.

JOHN QUARLES,
Acting Administrator.

1. Part 52 of Title 40, Code of Federal Regulations Subpart v Maryland, is amended as follows: in § 52.1070, Paragraphs (c)(16) and (c)(17) are amended as follows:

§ 52.1070 Identification of plans.

* * * * *

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

* * * * *

(16) Amendment to Sections .04J(1) and .04J(2) of Maryland Regulations 10.03.38 and 10.03.39 (vapor recovery, Stage I); submitted on April 24, 1974, and amended on July 1, 1975 by the Governor.

(17) Amendment to Sections .04B(1) and .04B(2) of Maryland Regulations 10.03.37, 10.03.40 and 10.03.41 (allowable sulfur content in fuel); submitted on July 1, 1975 by the Governor.

[FR Doc.76–38385 Filed 12–29–76;8:45 am]

[FRL 662–2]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Massachusetts Revision

On May 31, 1972 (37 FR 10842), pursuant to Section 110 of the Clean Air Act and 40 CFR Part 51, the Administrator approved, with exceptions, the Massachusetts Implementation Plan for the attainment of national ambient air quality standards.

On June 4, 1976, the Secretary of Environmental Affairs completed submission of a revision to the Massachusetts Implementation Plan which would allow fuel burning sources in the Merrimack Valley Air Pollution Control District (MVAPCD) to burn a higher sulfur content fuel oil. The MVAPCD is the same geographic area as the Massachusetts portion of the Merrimack Valley-Southern New Hampshire Interstate Air Quality Control Region (AQCR). All residual fuel oil users in the District would be allowed to convert to fuel oil of up to 2.2 percent sulfur content by weight, except that residual fuel oil users in the City of Lawrence and the Towns of Andover, Methuen, and North Andover, and the Haverhill Paperboard Corporation in Haverhill, would remain constrained to 1 percent sulfur content fuel oil. Also, use of higher sulfur content fuel oil by fossil fuel utilization facilities of over 100×10^6 Btu/hr heat input would be contingent upon application for and receipt of written approval from the Department of Environmental Quality Engineering (the Department).

On September 20, 1976 the Regional Administrator published a notice of proposed rulemaking in the FEDERAL REGISTER (41 FR 40502), indicating that he was considering disapproval of the revision on the basis of calculations which predicted potential exceedences of the 24-hour National Ambient Air Quality Standards (NAAQS) for sulfur oxides in the Merrimack Valley Air Pollution Control District. He requested additional data or technical information and invited public comment on any pertinent issues related to the proposal.

During the 30-day comment period, the Department submitted additional data in response to the major concerns outlined in the Regional Administrator's notice. In reviewing the Department's submittal, EPA developed further information which shows the 24-hour sulfur oxide standards would not be violated in Lowell. Also, the Department's submittal included calculations which indicate that the impact of the proposed revision would not cause standards violations in the City of Lawrence.

Comments were also received from the Haverhill Paperboard Corporation, Haverhill, Massachusetts, which recommended approving the revision as submitted but also to include an approval

for Haverhill Paperboard Corporation to burn the higher sulfur fuel oil. No new information was provided which would show conclusively that the source would not cause a violation of the NAAQS, and therefore the Haverhill Paperboard Corporation cannot be approved at this time to burn higher sulfur content fuel. However, if the Department submits new information which demonstrates that Haverhill Paperboard Corporation could burn higher sulfur content fuel and not violate the NAAQS, the Regional Administrator will publish a Notice of Proposed Rulemaking in the FEDERAL REGISTER to solicit comments before a final determination is made.

After these further evaluations, the Administrator has determined that the proposed revision meets the requirements of the Clean Air Act and 40 CFR Part 51. Accordingly, this revision is approved and promulgated as a revision to the Massachusetts Implementation Plan.

The revision becomes effective January 31, 1977.

AUTHORITY: Section 110(a) of the Clean Air Act, as amended, 42 U.S.C. § 1857c-5(a).

Date: December 23, 1976.

JOHN QUARLES,
Acting Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations is amended as follows:

§ 52.1120 [Amended]

(1) In § 52.1120 paragraph (c) is hereby amended by inserting the phrase "A revision to Regulation 5.1, Sulfur Content of Fuels and Control Thereof, for the Merrimack Valley Air Pollution Control District, submitted on June 4, 1976 by the Secretary of Environmental Affairs" in the proper chronological order.

(2) Section 51.1126 is hereby amended by adding a new paragraph (e) to read as follows:

§ 52.1126 Control strategy: Sulfur oxides.

* * * * *

(e) Massachusetts Regulation 5.1 for the Merrimack Valley Air Pollution Control District, excluding the City of Lawrence and the Towns of Andover, Methuen, and North Andover, submitted on June 4, 1976, is approved except as to the following source which remains subject to the previously approved requirements of Regulation 5 which stipulate that sources are permitted to burn residual fuel oil having a sulfur content not in excess of 0.55 lb. per million Btu heat release potential (approximately equivalent to 1 percent sulfur content by weight):

Haverhill Paperboard Corporation,
Haverhill, Massachusetts.

[FR Doc.76-38386 Filed 12-19-76;8:45 am]

(FRL 665-1)

SUBCHAPTER C—AIR PROGRAMS

DELEGATION OF AUTHORITY—NEW SOURCE REVIEW

Delegation of Authority to the State of North Carolina

The amendments below institute certain address changes for reports and applications required from operators of new sources. EPA has delegated to the State of North Carolina authority to review new and modified sources. The delegated authority includes the reviews under 40 CFR Part 52 for the prevention of significant deterioration. It also includes the reviews under 40 CFR Part 60 for the standards of performance for new stationary sources and reviews under 40 CFR Part 61 for national emission standards for hazardous air pollutants.

A notice announcing the delegation of authority is published elsewhere in this issue of the FEDERAL REGISTER. These amendments provide that all reports, requests, applications, submittals, and communications previously required for the delegated reviews will now be sent instead to the North Carolina Environmental Management Commission, Department of Natural and Economic Resources, Division of Environmental Management, P.O. Box 27687, Raleigh, North Carolina 27611. Attention: Air Quality Section, instead of EPA's Region IV.

The Regional Administrator finds good cause for foregoing prior public notice and for making this rulemaking effective immediately in that it is an administrative change and not one of substantive content. No additional substantive burdens are imposed on the parties affected. The delegation which is reflected by this administrative amendment was effective on November 24, 1976, and it serves no purpose to delay the technical change of this addition of the State address to the Code of Federal regulations.

This rulemaking is effective immediately, and is issued under the authority of Sections 101, 110, 111, 112, and 301 of the Clean Air Act, as amended, 42 U.S.C. 1857, 1857c-5, 6, 7 and 1857g.

Dated: December 21, 1976.

JOHN A. LITTLE,
Deputy Regional Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. Part 52 of Chapter I, Title 40, Code of Federal Regulations, Subpart II—North Carolina, is amended as follows: § 52.1778 is amended by adding a new paragraph (c) as follows:

§ 52.1778 Significant deterioration of air quality.

* * * * *

(c) All applications and other information required pursuant to § 52.21 of this part from sources located or to be located in the State of North Carolina shall be submitted to the North Carolina Environmental Management Commission, Department of Natural and Economic Resources, Division of Environmental Management, P.O. Box 27687, Raleigh, North Carolina 27611. Attention: Air Quality Section, instead of the EPA Region IV office.

* * * * *

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

2. Part 60 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows: In § 60.4, paragraph (b) is amended by revising subparagraph (II) to read as follows:

§ 60.4 Address.

* * * * *

(b) * * *

(A)-(HH) * * *

(II) North Carolina Environmental Management Commission, Department of Natural and Economic Resources, Division of Environmental Management, P.O. Box 27687, Raleigh, North Carolina 27611. Attention: Air Quality Section.

* * * * *

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

3. Part 61 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows: In § 61.04, paragraph (b) is amended by revising subparagraph (II) to read as follows:

§ 61.04 Address.

* * * * *

(b) * * *

(A)-(HH) * * *

(II) North Carolina Environmental Management Commission, Department of Natural and Economic Resources, Division of Environmental Management, P.O. Box 27687, Raleigh, North Carolina 27611. Attention: Air Quality Section.

* * * * *

[FR Doc.76-38387 Filed 12-29-76;8:45 am]

SUBCHAPTER C—AIR PROGRAMS

[FRL 664-3]

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Delegation of Authority to State of Nebraska

Pursuant to the delegation of authority for the Standards of Performance for New Stationary Sources (NSPS), to the State of Nebraska on November 24, 1975, the Environmental Protection Agency (EPA) is today amending 40 CFR 60.4, [Address.], to reflect this delegation. A notice announcing this delegation is published (December 30, 1976), in the FEDERAL REGISTER. Effective immediately all requests, reports, applications, submittals, and other communications concerning the 12 source categories of the

NSPS which were promulgated December 23, 1971, and March 8, 1974, shall be sent to Nebraska Department of Environmental Control (DEC), P.O. Box 94653, State House Station, Lincoln, Nebraska 68509. However, reports required pursuant to 40 CFR 60.7(a) shall be sent to EPA, Region VII, 1735 Baltimore, Kansas City, Missouri 64108, as well as to the State.

The Regional Administrator finds good cause for forgoing prior public notice and making this rulemaking effective immediately in that it is an administrative change and not one of substantive content. No additional substantive burdens are imposed on the parties affected. This delegation, which is reflected by this administrative amendment, was effective on November 24, 1975, and it serves no purpose to delay the technical change of this addition of the State address to the Code of Federal Regulations.

This rulemaking is effective immediately, and is issued under the authority of Section 111 of the Clean Air Act, as amended.

(42 U.S.C. 1857c–6.)

Dated: December 20, 1976.

JEROME H. SVORE,
Regional Administrator.

Part 60 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. In § 60.4 paragraph (b) is amended by revising subparagraph (CC) to read as follows:

§ 60.4 Address.

* * * * *

(b) * * *

(A)–(BB) * * *

(CC) Nebraska Department of Environmental Control, P.O. Box 94653, State House Station, Lincoln, Nebraska 68509.

[FR Doc.76–38234 Filed 12–29–76;8:45 am]

[FRL 664–6]

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Delegation of Authority to the State of Iowa

Pursuant to the delegation of authority for New Source Performance Standards (NSPS) to the State of Iowa on June 6, 1975, the Environmental Protection Agency is today amending 40 CFR 60.4, [Address.] to reflect this delegation. A notice announcing this delegation is published (December 30, 1976), in the FEDERAL REGISTER.

The amended § 60.4 provides that all reports, requests, applications, submittals, and other communications required for the 11 source categories of the NSPS, which were delegated to the State, shall be sent to the Iowa Department of Environmental Quality (DEQ), 3920 Delaware Avenue, P.O. Box 3326, Des Moines, Iowa 50316. However, reports required pursuant to 40 CFR 60.7(a) shall be sent to EPA, Region VII, 1735 Baltimore, Kansas City, Missouri 64108, as well as to the State.

The Regional Administrator finds good cause to forgo prior public notice and make this rulemaking effective immediately in that it is an administrative change and not one of substantive content. The delegation was effective June 6, 1975, and it serves no purpose to delay the technical change of the addition of the State address to the Code of Federal Regulations.

This rulemaking is effective immediately and is issued under the authority of Section 111 of the Clean Air Act, as amended.

(42 U.S.C. 1857c–6.)

Dated: December 20, 1976.

JEROME H. SVORE,
Regional Administrator.

Part 60 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

1. In § 60.4, paragraph (b) is amended by revising subparagraph Q, to read as follows:

§ 60.4 Address.

* * * * *

(b) * * *

(A)–(P) * * *

(Q) State of Iowa, Department of Environmental Quality, 3920 Delaware, P.O. Box 3326, Des Moines, Iowa 50316.

* * * * *

[FR Doc.76–38241 Filed 12–29–76;8:45 am]

SUBCHAPTER E—PESTICIDE PROGRAMS

[FRL 664–4; PP6E1825/R119]

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Sodium Chlorate

On October 19, 1976, the Environmental Protection Agency (EPA) published in the FEDERAL REGISTER (41 FR 46011) a notice of proposed rulemaking pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, which proposed that 40 CFR 180.1020 be amended by exempting residues of the pesticide chemical sodium chlorate from the requirement of a tolerance in or on the raw agricultural commodity sunflower seeds when it is used in accordance with good agricultural practice as a desiccant in sunflower seed production.

This notice of proposed rulemaking was issued in response to a pesticide petition (PP 6E1825) submitted to the Agency by Dr. C. C. Compton, Coordinator, Interregional Research Project No. 4, New Jersey State Agricultural Experiment Station, PO Box 231, Rutgers University, New Brunswick, NJ 08903, on behalf of the IR–4 Technical Committee and the Agricultural Experiment Stations of North Dakota, South Dakota, Minnesota, and Texas. No comments or requests for referral to an advisory committee were received with regard to this notice of proposed rulemaking.

It has been concluded, therefore, that the proposed amendment to 40 CFR 180.1020 should be adopted as proposed. This amendment to the regulations will protect the public health.

Any person adversely affected by this regulation may, on or before January 31, 1977, file written objections with the Hearing Clerk, Environmental Protection Agency, East Tower, Rm. 1019, 401 M St. SW, Washington DC 20460. Such objections should be submitted in quintuplicate and should specify both the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Effective December 30, 1976, 40 CFR 180.1020 is amended as set forth below.

Dated: December 22, 1976.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

Part 180, Subpart D, § 180.1020 is amended by revising paragraph (b) to exempt residues of sodium chlorate in or on sunflower seeds from the requirement of a tolerance, to read as follows:

§ 180.1020 Sodium Chlorate; exemption from the requirement of a tolerance.

* * * * *

(b) Sodium chlorate is exempted from the requirement of a tolerance for residues in or on grain sorghum, fodder, and forage, rice and rice straw, and sunflower seeds, when used as a desiccant in accordance with good agricultural practice in the production of grain sorghum, rice, and sunflower seeds.

[FR Doc.76–38235 Filed 12–29–76;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[FCC 76–1178; Docket No. 20936]

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

SSB Equipped Vessels Operating Solely in Alaska Waters; Exemption From Mandatory VHF Capabilities

Adopted: December 21, 1976.

Released: December 30, 1976.

1. The Commission on September 28, 1976, adopted a Notice of Proposed Rule Making in the above-entitled matter (FCC 76–899) which made provisions for the filing of comments and reply comments. The Notice was published in the FEDERAL REGISTER on October 7, 1976, (41 FR 44194). The time for filing comments and reply comments has passed.

2. The proposed rule amendment would exempt single sideband (SSB) equipped vessels operating solely in Alaskan waters from mandatory VHF capabilities until January 1, 1982. Part 83 of the rules now requires that all SSB equipped vessels

have the capability to operate on VHF frequencies by January 1, 1977. It was felt that since only a small percent of the Alaska coast line had VHF coverage, the five-year extension of time would provide an opportunity for the establishment of additional VHF public coast and U.S. Coast Guard stations in Alaska.

3. Comments were received by SGC, Inc., Northwest Instrument Co., North Pacific Marine Radio Council, Commander, Seventeenth Coast Guard District, Alaska and the Commandant, U.S. Coast Guard, Washington, D.C. All of the commentators, except SGC, Inc., opposed the proposed rule amendment.

4. The Commandant, U.S. Coast Guard (Commandant) comments state that the majority of potential users of VHF service are confined to a limited portion of the total Alaskan coast line, and that the Coast Guard has concentrated its VHF coverage in these areas and have no plans to provide complete coverage of the total expanse of the Alaskan coast line in the future. The Commandant notes that over 90 percent of the vessels in Alaska are now being served by VHF and that while the Coast Guard VHF system will be upgraded and improved as necessary, no additional coverage of population or geographical areas is anticipated and therefore, no basis for delaying the January 1, 1977, implementation date appears to exist.

5. The Commander, Seventeenth Coast Guard District, Alaska, (Commander) comments also states that Coast Guard VHF stations cover only a small percent of the Alaska coast line, but that the areas of coverage reach a vast majority of the recreational and inshore commercial users. It is estimated that 10 percent or less of the registered vessels are in areas where VHF coverage will not be provided, and that by delaying the implementation date of mandatory VHF capabilities, the Commission will foster dependency on the inadequate 2 MHz system by failing to encourage VHF. In addition, the Coast Guard has programmed and budgeted, both in funds and personnel, in anticipation of the January 1, 1977, implementation date, and that a five-year delay could promote reallocation of Coast Guard resources to other more pressing and immediate projects. The Commander further states that because of the delay in construction of some sites and the undemonstrated success of new sites, some relief of the January 1, 1977, date is in order.

6. Northwest Instrument Co., (NI) and North Pacific Marine Radio Council (MPMRC) also opposed the proposed rule amendment for many of the reasons mentioned above. In addition, they state, as does the Commandant, that a distress system is based upon the vessel mutual assistance concept, and that while coast station coverage is important, it is not the only factor to be considered. If the five-year extension of time is granted, thousands of VHF fitted vessels could not communicate or depend on VHF exempted vessels during emergencies, or vice versa.

7. SGC, Inc., who describes itself as a "prominent manufacturer of marine single sideband, an appreciable part of which is sold in Alaska" supports the proposal. They feel that it will be a number of years before the coverage on VHF is commensurate with the contiguous 48 states. SGC offers nothing more definitive. It must be recognized that Alaska has an extremely large and rugged coast line and that total VHF coverage comparable to that in the contiguous 48 states is not feasible now or in the foreseeable future. However, it does appear that there is substantial VHF coverage of high density boating areas.

8. We are aware, however, that there are some areas of the Alaska shore line that may never have completely adequate VHF coverage, but we do not understand the failure of the Alaskan boating community to comment on these matters in this proceeding. A possible explanation may be the short interval between our Notice and the January 1977 implementation date. The Commission, however, remains concerned that the coverage and service be effective. Accordingly, we are providing a two-year exemption of the VHF requirement for SSB equipped vessels operating solely in Alaskan waters. Further, within one year the Commission will conduct a mandatory review of the progress in this area and will assess the adequacy of coverage and small boat compliance. An improved coverage plan from the Coast Guard is requested to be included as part of this review. Following such review and assessment of the adequacy and compliance, the Commission will, at the end of the first year, consider any further action that may be necessary to achieve its objective of adequate coverage in the Alaskan Maritime VHF service.

9. Accordingly, *It Is Ordered*, That pursuant to the authority contained in sections 4(i) and 303(c), (d), (f), and (r) of the Communications Act of 1934, as amended, Part 83 of the Commission's rules is amended, as set forth below, and inasmuch as this relieves a restriction, the provisions of 5 U.S.C. 553(d) are not applicable and the rule amendment shall become effective January 1, 1977.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082 (47 U.S.C. 154, 303).)

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

Part 83 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

Section 83.351(c)(3)(i) is amended to read as follows and the note deleted.

§ 83.351 Frequencies available.

* * * * *

(c) * * *

(3) * * *

(i) The ship station is equipped for use of F3 emissions on frequencies in the band 156–162 MHz, except for vessels bearing Alaska registration or documented vessels with a home port in Alaska and operating solely in waters off Alaska until January 1, 1979.

NOTE.—[Deleted.]

* * * * *

[FR Doc.76-38406 Filed 12-29-76;8:45 am]

Title 49—Transportation

CHAPTER I—MATERIALS TRANSPORTATION BUREAU, DEPARTMENT OF TRANSPORTATION

[Docket No. HM-134; Amdt. No. 178-40]

PART 178—SHIPPING CONTAINER SPECIFICATIONS

Hazardous Materials Regulations Reissuance—Correction

In FR Doc. 76-26376 appearing at pages 38175–38183 in the FEDERAL REGISTER of Thursday, September 9, 1976, amendment No. 46 appearing on page 38182, column 2, is corrected by changing "178.219-3" in the second and third lines to read "178.219-13."

(49 U.S.C. 1803, 1804, 1808 and 49 CFR 1.53 (e).)

Issued in Washington, D.C. on December 27, 1976.

GEORGE S. MOORE, JR.,
Acting Director,
Materials Transportation Bureau.

[FR Doc.76-38410 Filed 12-29-76;8:45 am]

SUBCHAPTER D—PIPELINE SAFETY

[Docket No. OPS-18; Amdt. 192-20A]

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

Line Markers for Mains and Transmission Lines

The purpose of this amendment to 49 CFR 192.707(d)(1) and (e)(2)(i), which is in response to a petition from the Exxon Pipeline Company (Docket No. 75-11W), is to permit certain wording on gas pipeline markers as an alternative to the wording presently required.

Section 192.707(d)(1) requires that gas pipeline markers located other than at navigable waterways display the words "Gas Pipeline." Likewise, § 192.707(e)(2)(i) requires that the words "Gas Pipeline Crossing" be displayed on markers at navigable waterways. The Materials Transportation Bureau (MTB) believes that permitting those markers to display the name of the gas being transported in a pipeline, in lieu of the word "gas," conveys the information intended to be provided. MTB therefore agrees with Exxon that § 192.707 should be amended to permit such identification.

Because this amendment establishes an alternative safety requirement without reducing the level of safety provided by the existing rule, and does not impose any additional burden on the affected public, MTB finds that notice and public procedure are unnecessary and good cause exists for making the amendment effective on less than 30 days' notice.

In consideration of the foregoing, 49 CFR 192.707 is amended effective December 31, 1976, by amending paragraphs (d) (1) and (e) (2) (i) to read as follows:

§ 192.707 Line markers for mains and transmission lines.

* * * * *

(d) * * *

(1) The word "Warning," "Caution," or "Danger" followed by the words "Gas (or name of gas transported) Pipeline" all of which, except for markers in heavily developed urban areas, must be in letters at least one inch high with one-quarter inch stroke.

* * * * *

(e) * * *

(2) * * *

(i) The word "Warning," "Caution," or "Danger," followed by the words "Do Not Anchor or Dredge" and the words "Gas (or name of gas transported) Pipeline Crossing"; and

* * * * *

(Sec. 3, Pub. L. 90-481, 82 Stat. 721, 49 USC 1672, 40 FR 43901, 49 CFR 1.53(a))

Issued in Washington, D.C. on December 22, 1976.

JAMES T. CURTIS, Jr.,
Director,
Materials Transportation Bureau.

[FR Doc.76-38269 Filed 12-29-76;8:45 am]

CHAPTER VI—URBAN MASS TRANSPORTATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 76-09]

PART 601—ORGANIZATION, FUNCTION, AND PROCEDURES

Miscellaneous Amendments

The purpose of the following is to amend 49 CFR Part 601, Subparts A and B to reflect modifications in the organization and distribution of functions as well as changes in the delegations of authority within the Urban Mass Transportation Administration.

Since these changes are solely matters of departmental management, procedures and practices, notice and public procedure thereon is unnecessary, and they may be made effective in less than thirty days after publication in the FEDERAL REGISTER.

49 CFR Part 601, is amended by revising Subparts A and B to read as follows:

Subpart A—General

Sec.
601.1 Purpose.
601.2 Organization of the Administration.
601.3 General responsibilities.
601.4 Responsibilities of the Administrator.

Subpart B—Delegations

601.10 Delegations of authority.

AUTHORITY: Sec. 9 of the Department of Transportation Act (49 U.S.C. 1657), Reorganization Plan No. 2 of 1968 (82 Stat. 1369), and Sec. 1.5. of title 49 CFR, unless otherwise noted.

Subpart A—General

§ 601.1 Purpose.

This part describes the organization of the Urban Mass Transportation Administration ("UMTA") an operating administration within the Department of Transportation. This part also describes the general responsibilities and authority of the officials directing the various offices of which UMTA is composed. In addition, this part describes the sources and locations of available UMTA program information.

§ 601.2 Organization of the Administration.

(a) The headquarters organization of UMTA is composed of ten principal offices which function under the overall direction of the Urban Mass Transportation Administrator ("the Administrator") and Deputy Administrator. These offices are:

(1) Office of the Administrator.

(2) Office of the Associate Administrator for Administration.

(3) Office of Chief Counsel.

(4) Office of Civil Rights.

(5) Office of Public Affairs.

(6) Office of the Associate Administrator for Transit Assistance.

(7) Office of the Associate Administrator for Policy and Program Development.

(8) Office of the Associate Administrator for Transportation Planning.

(9) Office of the Associate Administrator for Transportation Management and Demonstrations.

(10) Office of the Associate Administrator for Technology Development and Deployment.

The Administrator receives staff support from the Executive Secretariat which coordinates internal document dissemination and project assignments and ensures policy compliance.

(b) The Office of the Administrator and the Offices of Chief Counsel, Public Affairs, the Associate Administrator for Administration, the Associate Administrator for Transit Assistance, the Associate Administrator for Policy and Program Development, and the Associate Administrator for Transportation Planning are located in the Department of Transportation Building, 400 7th Street, S.W., Washington, D.C. 20590. The Offices of Civil Rights, the Associate Administrator for Technology Development and Deployment, and the Associate Administrator for Transportation Management and Demonstrations are located in the Transpoint Building, 2100 2nd Street, S.W., Washington, D.C. 20590.

(c) (1) In addition to its headquarters organization, UMTA has ten regional offices each headed by an UMTA Representative. These regional offices provide technical guidance and planning assistance to grantee and applicants; make on-site engineering inspections and evaluation analyses; conduct audits of grant projects; monitor ongoing projects; provide continuous liaison with local planning and transportation activities; provide support to the Secretarial Representative in each region; coordinate UMTA activities with those of other operating administrations within DOT; and provide information to the public concerning UMTA activities. (2) The location, mailing address, telephone number and jurisdiction of each of the ten UMTA regional offices follow:

Region/States	Office/address	Telephone No.
I—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.	UMTA Representative, c/o Transportation Systems Center, Kendall Square, Room 277, 55 Broadway, Cambridge, Mass. 02142.	617-494-2055
II—New York, New Jersey, Puerto Rico, and Virgin Islands.	UMTA Representative, 26 Federal Plaza, Suite 507, New York, N.Y. 10007.	212-264-8162
III—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.	UMTA Representative, 434 Walnut St., Suite 1010, Philadelphia, Pa. 19106.	215-597-8098
IV—Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.	UMTA Representative, 1720 Peachtree Rd., NW., Suite 400, Atlanta, Ga. 30309.	404-526-3948
V—Illinois, Indiana, Minnesota, Michigan, Ohio, and Wisconsin.	UMTA Representative, 300 South Wacker Dr., Suite 1740, Chicago, Ill. 60606.	312-353-0100
VI—Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.	UMTA Representative, 819 Taylor St., Suite 3A32, Fort Worth, Tex. 76102.	817-334-3787
VII—Iowa, Kansas, Missouri, and Nebraska	UMTA Representative, 6301 Pork Hill Rd., Room 303, Kansas City, Mo. 64131.	816-926-5053
VIII—Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.	UMTA Representative, Prudential Plaza, Suite 1822, 1050 17th St., Denver, Colo. 80202.	303-837-3242
IX—Arizona, California, Hawaii, Nevada, Guam, and American Samoa.	UMTA Representative, Two Embarcadero Center, Suite 620, San Francisco, Calif. 94111.	415-556-2884
X—Alaska, Idaho, Oregon, and Washington	UMTA Representative, Federal Bldg., Suite 3106, 915 2d Ave., Seattle, Wash. 98174.	206-442-4210

§ 601.3 General responsibilities.

The general responsibilities of each of the offices which comprise the headquarters organization of UMTA are:

(a) *Office of the Associate Administrator for Administration.* Directed by an Associate Administrator for Administration, this office provides general administrative support services for UMTA, including financial management, personnel administration, audit, procurement, logistical and management information systems.

(b) *Office of Chief Counsel.* Directed by a Chief Counsel, this office provides legal advice and services to the Administrator and other UMTA officials; coordinates with and provides support to the General Counsel of DOT on matters involving urban mass transportation; and provides liaison between UMTA and the Department of Labor regarding the administration of section 13(c) of Urban Mass Transportation Act of 1964, as amend ("the Act").

(c) *Office of Public Affairs.* Directed by a Director of Public Affairs, this office

advises and assists the Administrator in the area of public relations and in the dissemination to the public and the news media of information about UMTA programs, projects and activities.

(d) *Office of the Associate Administrator for Policy and Program Development.* Directed by an Associate Administrator for Policy and Development, this office advises and assists the Administrator in the development and evaluation of policies and plans for implementing the functions and programs authorized by the Act; coordinates UMTA activities with those of other agencies; and manages and administers the University Research Program under section 11 of the Act (49 U.S.C. 1607c). This office has three organizational components: the Office of Policy Development; the Office of Program Evaluation; and the Office of Policy Research.

(e) *Office of the Associate Administrator for Transit Assistance.* Directed by an Associate Administrator for Transit Assistance, this office reviews and processes all applications for urban mass transportation capital and operating assistance grants and loans under sections 3, 4, 5, 16 and 17 of the Act (49 U.S.C. 1602, 1603, 1604, 1612 and 1613); reviews and processes applications for Federal assistance to the Washington Metropolitan Area Transit Authority (WMATA) under the Transportation Act of 1972 and the National Capital Area Transit Act of 1972; directs the evaluation and analysis of proposed annual programs and individual programs and individual projects; and approves and recommends for approval annual programs and individual projects. This office has three operating components which direct and coordinate post-approval grant activities: the Office of Grant Assistance, the Office of Program Support, and the Office of Program Analysis.

(f) *Office of the Associate Administrator for Transportation Planning.* Directed by an Associate Administrator for Transportation Planning, this office assists the Administrator in directing, coordinating and controlling UMTA's transportation planning assistance and reviews planning activities both in relation to UMTA-supported State and local actions and planning policy interaction within the Department of Transportation and with other Federal agencies; and administers grants to States and local public bodies under section 9 of the Act (49 U.S.C. 1607a). This office has two organizational components: the Office of Planning Assistance and the Office of Planning Methodology and Technical Support.

(g) *Office of the Associate Administrator for Transportation Management and Demonstrations.* Directed by an Associate Administrator for Transportation Management and Demonstrations, this office assists the Administrator in directing, conducting and controlling research and demonstration activities, including information dissemination, to foster the development of methods for improving transit management and operations from the perspectives of the operator and the user; administers grant and procurement contracts to demonstrate facilities, methods and techniques under section 6(a) of the Act (49 U.S.C. 1605), and managerial training fellowship grants under section 10 of the Act (49 U.S.C. 1607b). This office has two organizational components: the Office of Transit Management and the Office of Service and Methods Demonstrations.

(h) *Office of the Associate Administrator for Technology Development and Deployment.* Directed by an Associate Administrator for Technology Development and Deployment, this office is responsible for developing and administering a program of research, development, testing, evaluation, operational demonstration, product qualification, standardization, analysis, and information exchange concerning new products intended for use in transportation systems assisted by UMTA. The office is also responsible for UMTA's safety and system assurance function and for advising the Administrator on matters relating to technology. This office administers research, development and demonstration projects under section 6(a) of the Act (49 U.S.C. 1605).

(i) *Office of Civil Rights.* Directed by a Director of Civil Rights, this office advises and assists the Administrator and other UMTA officials in implementing compliance with applicable laws and directives pertaining to civil rights and equal employment opportunity, both within UMTA and in the conduct of urban mass transportation projects and programs.

§ 601.4 Responsibilities of the Administrator.

The Administrator is responsible for the planning, direction and control of the activities of UMTA, and has authority to approve urban mass transportation grants, loans, and contracts. The Deputy Administrator is authorized to act for and on behalf of the Administrator during his absence or disability. In the event of the absence or disability of both the Administrator and the Deputy Administrator, the following officials shall, in the order named, assume and perform the duties of the Administrator:

(a) Chief Counsel.

(b) Associate Administrator for Policy and Program Development.

(c) Associate Administrator for Transportation Planning.

(d) Associate Administrator for Transit Assistance.

(e) Associate Administrator for Technology Development and Deployment.

(f) Associate Administrator for Administration.

Subpart B—Delegations

§ 601.10 Delegations of authority

(a) Pursuant to authority delegated to the Administrator by 49 CFR 1.45(b) and 1.51 of the regulations of the Office of the Secretary of Transportation, the following powers and duties of the Administrator are redelegated to the officials indicated—

(1) The Associate Administrator for Transit Assistance is delegated authority to execute grant contracts, loan agreements, and amendments thereto with respect to approved capital and operating grants, loans and advanced land acquisition loan projects under sections 3, 4, 5, 16 and 17 of the Act (49 U.S.C. 1602, 1603, 1604, 1612 and 1613); under limited circumstances review and approve applications for grants and grant amendments under the UMT Act and section 110 of the Federal-Aid Highway Act of 1976 and 121(a) of the Federal-Aid Highway Act of 1973, as amended (23 U.S.C. 103 (e) (4) and 142). The Associate Administrator is further authorized, in connection with the administration of those projects, to approve requisitions for funds, third-party contracts, and project budget amendments within previously authorized limits.

(2) The Associate Administrator for Policy and Program Development is delegated authority to execute and amend grant contracts and amendments for university research and training projects under section 11 of the Act (49 U.S.C. 1607c). The Associate Administrator is further authorized in connection with the administration of those projects to approve requisitions for funds, third-party contracts and project budget amendments within previously authorized limits.

(3) The Associate Administrator for Technology Development and Deployment is delegated authority to execute and amend grant contracts and procurement requests for approved projects under section 6(a) of the Act (49 U.S.C. 1605); The Associate Administrator is further authorized, in connection with the administration of grant contracts, procurement contracts, interagency reimbursable agreements and purchase orders, to approve requisitions for funds, third-party contracts, and project budget amendments within previously authorized limits.

(4) The Associate Administrator for Transportation Planning is delegated authority to execute and amend grant contracts and interagency agreements for planning, engineering, architectural feasibility and operational improvement study projects under section 9 of the Act (48 U.S.C. 1607a); review and approve grant applications and grant amendments requested pursuant to section 9 of the Act by urbanized areas of less than 500,000 population. The Associate Administrator is further authorized in connection with the administration of such contracts to approve requisitions for funds, third-party contracts and project budget amendments within previously authorized limits.

(5) The Associate Administrator for Transportation Management and Demonstrations is delegated authority to execute and amend grant contracts for projects designed to demonstrate facilities, methods and techniques of transit

management and operations under section 6(a) of the Act (49 U.S.C. 1605) and for approved managerial training fellowship projects under section 10 of the Act (49 U.S.C. 1607b). The Associate Administrator is further authorized, in connection with the administration of such projects to approve requisitions for project funds, third-party contracts and project budget amendments within previously authorized limits.

(b) All authority delegated to an official listed in paragraph (a) of this section may be redelegated by that official to one or more employees under his jurisdiction.

This amendment to 49 CFR Part 601, Subpart A and B is effective upon issuance.

Issued in Washington, D.C., on December 17, 1976.

ROBERT E. PATRICELLI,
Urban Mass Transportation Administrator.

[FR Doc.76-38250 Filed 12-29-76;8:45 am]

CHAPTER V—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 75-31; Notice 02]

PART 557—PETITIONS FOR HEARINGS ON NOTIFICATION AND REMEDY OF DEFECTS

Establishment of New Regulation

This notice amends Chapter V of Title 49 of the Code of Federal Regulations by the addition of a new Part 557, *Petitions for Hearings on Notification and Remedy of Defects*, governing petitions for hearings on whether or not a manufacturer has reasonably met its obligation to notify owners, dealers, and purchasers of a safety-related defect or noncompliance with a safety standard, or to remedy the defect or noncompliance. The new part also specifies the procedures to be followed in holding such a hearing.

The NHTSA proposed the regulation (40 FR 56926, December 5, 1975) to carry out a statutory provision concerning the hearing. Section 156 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1416) provides that "[u]pon petition of any interested person or on his own motion, the Secretary may hold a hearing in which any interested person (including a manufacturer) may make oral (as well as written) presentations of data, views, and arguments on the question of whether a manufacturer has reasonably met his obligation to notify under section 151 or 152, and to remedy a defect or failure to comply under section 154." Sections 151 and 152 require a manufacturer to notify owners, dealers, and purchasers of a safety-related defect or failure to comply with an applicable Federal motor vehicle safety standard in any motor vehicle or item of equipment manufactured by him. Section 154 requires a manufacturer to remedy without charge such defects or failures to comply. Section 156 also provides that

> [i]f the Secretary determines the manufacturer has not reasonably met such obligation, he shall order the manufacturer to take specified action to comply with such obligation; and in addition, the Secretary may take other action authorized by this title.

Five comments were received from private persons, five comments were received from manufacturers and trade associations, and two comments were received from consumer groups; the Consumer Protection Division of the County Manager's Office for Metropolitan Dade County; and the Center for Auto Safety (the Center). The National Motor Vehicle Safety Advisory Council did not take a position on the proposal. The Vehicle Equipment Safety Commission did not comment on the proposal.

Four of the comments received from private persons objected to the institution of hearings as meaningless or a waste of money. The fifth private party supported issuance of the regulation. The four commenters appeared to be unaware of the provision for these hearings mandated by section 156 of the Act, independent of the promulgation of Part 557. The agency does believe that the informal hearing minimizes the expense that will be involved in fulfilling this statutory mandate.

Walker Manufacturing objected that permitting "[a]ny interested person" to file a petition would invite spurious requests whose pursuit would be a waste of time and money. The agency conformed to the statutory language of section 156 that "any interested person" can petition for this hearing, and concludes that a narrowing of the language would be contrary to the intent of Congress in establishing the right.

The Consumer Protection Division for Metropolitan Dade County suggested that the Consumer Product Safety Commission (CPSC) would be a more suitable agency with which to vest this hearing procedure, because of better public identification with its consumer protection role. However, the jurisdiction of the CPSC under the Consumer Product Safety Act (15 U.S.C. 2051, et seq.) does not include motor vehicles or motor vehicle equipment (15 U.S.C. 2052), and the authority to carry out section 156 is vested in the Department of Transportation.

Firestone Tire and Rubber Company suggested that the hearing procedure could be consolidated with the hearing procedures set forth in Part 552 (*Petitions for Rulemaking, Defect, and Noncompliance Orders*) of NHTSA regulations (49 CFR Part 552). Part 552 addresses the procedures that arise from a request for the initiation of agency action in a rulemaking, defect, or noncompliance area. Unlike those situations, Part 557 addresses the different and more limited considerations of an evaluation of an ongoing action undertaken by persons outside the agency. The separation of these functions into different procedural regulations clarifies these distinct functions. Accordingly, the agency declines to adopt the Firestone suggestion.

The Center appeared to misunderstand why minimum qualification requirements were established for hearing petitions. The regulation states that, to be considered as a petition, a document must be written in English, have the word "petition" preceding its text, request a hearing, and contain a brief statement of the alleged failure and a summary of the data, views, or arguments that would be presented at the hearing. Reasonable considerations underlie these minimum qualification requirements. For example, the agency undertakes to respond to such petitions within 60 days, and the agency must be able to recognize a document as a petition if the writer wishes to have it treated as such. This is the basis for requiring that the word "petition" appear. The Center's request that the specifications be relaxed to recognize as petitions filings in Spanish as well as English from the Commonwealth of Puerto Rico and the Canal Zone does not detract from the intent of the qualification requirements, and the final regulation is accordingly modified.

The Center's more basic objection is that persons effectively will not be on notice that a request for a hearing must conform to the requirements of Part 557 to be treated as a petition. While it is true that it must so conform to achieve petition status (entitling it to a reply within 60 days), it is not true that a nonconforming request would not result in the calling of a hearing. Any complaint, request, or series of them, can result in the calling of a hearing on the Administrator's own motion. The Administrator is not precluded from deciding to hold a hearing simply because a person's complaint does not qualify as a petition. Thus, the agency disagrees with the Center's conclusion that Part 557 "denies an owner the right to a hearing unless he or she follows the regulation in every detail."

For this reason, the agency does not consider necessary the Center's request for an amendment of the newly-revised Part 557 (dealing with notification of safety-related defects or noncompliances) to include the detailed specifications for the content of a Part 557 petition. It is noted that the agency is unaware of any supplemental submission by the Center to the docket on revision of Part 577, either at the time the comments on that docket were evaluated, or as of this date. With regard to the Center's suggestion that each complainant be advised by return mail to resubmit any request for a hearing in the proper format, it is just this sort of response the agency intends to avoid by its flexible approach.

In a related matter, the Dade County Manager's office believed that a lawyer would be required to draft the petition specified by § 557.4. This is not the case. A normal letter format, preceded by the word "petition" and containing the petitioner's complaint and its reasons for the complaint are all that is required. In response to the point that every complaint should not precipitate a hearing, it is simply noted that the grant of a

petition is within the discretion of the Administrator under the statute, as set forth in § 557.6 of the new regulation.

Section 557.6 of the regulation sets forth the factors considered by the Administrator in determining whether to hold a hearing. The factors listed are: the nature of the complaint; the seriousness of the alleged breach of obligation to remedy; the existence of similar complaints; and the ability of the NHTSA to resolve the problem without holding a hearing. The Center considered the first factor (the nature of the complaint) to be meaningless, and suggested its clarification or deletion.

Stating the nature of the complaint is deemed necessary to allow NHTSA to judge whether the issues of fact or opinion are of a type that could be resolved by a hearing. In those cases where facts or engineering considerations are not at issue and only a policy decision remains to be made, the Administrator could make his finding without holding a hearing. A related factor (listed as § 557.6(a)(4)) is the NHTSA's ability to resolve a particular complaint without a hearing. Such a case would be when factual issues are in dispute, but the facts are already gathered. The agency therefore disagrees with the Center's assessment of § 557.6(a)(1) and declines to modify it or delete it.

The Center viewed the second factor listed in § 557.6 (the seriousness of the alleged breach of obligation to remedy) as impermissibly vague also. The Center's submission implies that only two types of "breach of obligation" exist: failure to repair and refusal to remedy without charge. In fact, every conceivable type of "alleged breach of obligation" exists, all with differing levels of seriousness. For example, in a recall to replace seat belts, an owner could object that a shortage of red seat belts resulted in installation of black seat belts in place of what had been originally fitted. Another example would be a failure of a notification letter to list the correct address of the dealer that will undertake a particular repair. The agency needs to exercise its discretion in such cases to decide whether the gravity of the objection merits a public hearing.

The Center also argued that § 557.6(4) (the ability of the NHTSA to resolve a problem without holding a hearing) constitutes an impermissible "escape hatch" from agency responsibilities. This comment ignores the language of the Act. Section 156 states that the Secretary "may hold a hearing," a statutory grant of discretion now properly reflected in the implementing regulation, and intended to expedite the agency's decisions in the public interest, not avoid them.

The Recreation Vehicle Industry Association (RVIA) requested that the information presented to the NHTSA in accordance with Part 573 (Defect Reports) be listed as a specific factor to be considered in deciding whether to hold a public hearing. The RVIA appears to be requesting that a particular body of information be singled out for review in reaching the decision. Of course, all information related to the case will enter into the decision, but the agency has sought to list in § 557.6 factors other than the information itself that would enter into the decision whether or not a hearing is necessary. This decision is separate from the decision of the adequacy of the notification and remedy itself. For this reason, the RVIA suggestion is not adopted.

The RVIA asked that a manufacturer be advised of the receipt of a petition and its eventual disposition. American Motors Corporation (AMC) also requested notification of receipt. The agency considers these requests reasonable, and will provide in its administrative practices for a copy of the petition acknowledgment and decision letters to be sent to the manufacturer involved.

Section 557.6 provides that the Administrator shall grant or deny the petition in time to notify the petitioner within 60 days of receipt of the petition. The Center argued for a 30-day limit, arguing that a longer period would necessarily have serious safety consequences in every case. The agency does not agree with this view. First, the decision on whether or not to hold a hearing is not the fundamental question of whether or not the manufacturer has taken the steps required of it by the statute. Also, the significance of the alleged failure to adequately meet responsibilities will vary from case to case, justifying differing periods of time in which to reach a decision. Finally, the 60-day period is a maximum, and a decision in situations in which significant safety gains are made by quick action can be made sooner. For these reasons, the Center's suggestion is not adopted.

The Center also believed that immediate publication of the reasons for denial of a petition would be necessary and desirable. The agency knows no reason why this would be the case, but rather concludes that notice to the petitioner within the allotted period is the significant step in the case of a denial. The publication only serves as a record function. Experience with a similar publication schedule for denial of rulemaking petitions has been satisfactory.

The Center further suggested that all hearings be conducted within 30 days of the decision to grant a hearing, and that a final decision on the adequacy of notification or remedy be made within 30 days of the hearing. The agency intends to schedule hearings within a reasonable time after the petition is granted, but is unable to assure that a hearing can always be held within a 30-day period. As for the request that a decision be reached within 30 days of the hearing, the agency relies on information other than that presented at the hearing and is not able to state unequivocally that the hearing will produce the information necessary to reach a decision within 30 days of holding the hearing. Accordingly, the Center's suggestions are not adopted.

Section 557.7 of the regulation sets forth the nature of the public hearing that is contemplated by the regulation. The section provides for submission of views orally or in writing, the maintenance of a transcript and exhibits, and the presence in some cases of a legal officer. The RVIA, AMC, and International Harvester Company (IH) asked that the informal non-adversarial hearings be revised to permit cross-examination of those who appear by those who disagree with them. IH also asked that, upon agreement of the petitioner and the manufacturer involved, the hearing be modified to conform to the adjudicatory specifications of sections 556 and 557 of the Administrative Procedures Act.

The agency will take into consideration these requests for possible future action. At this time, the NHTSA wishes to conform its regulation to the scope expressed in the proposal. The matter of upgrading hearings to a more adversarial level will be treated therefore at a later date. With regard to IH's request for the opportunity to further develop views on newly developed material, the agency will accept written supplemental views for attachment to the transcript of the hearing. Revision of the regulation to provide for this practice is not necessary.

The RVIA concluded its comments with the recommendation that, in the event of a finding that a manufacturer has not reasonably met its notification and remedy obligations, the finding be accompanied by a statement of the grounds upon which the Administrator based his determination. The agency does not contemplate the issuance of such a finding without stating its reasons, and therefore concludes that its contemplated actions will conform to the RVIA recommendation.

In accordance with Department of Transportation policy encouraging adequate analysis of the consequences of regulatory action (41 FR 16200, April 16, 1976), the agency herewith summarizes its evaluation of the economic and other consequences of this action on the public and private sectors, including possible loss of safety benefits. In this case, the new regulation merely establishes procedures to carry out the mandate of section 156 of the Act to provide for a possible hearing on the adequacy of notification and remedy in the case where any interested person requests such a hearing. The informal nature of the hearing should have minimal costs for those, including manufacturers, who participate. While minimum requirements for petitioning might result in some increase in time for assessing the adequacy of notification and remedy in some cases, it is believed that any consequent effect on highway safety was contemplated by Congress in providing for the hearings.

In consideration of the foregoing, a new Part 557, *Petitions for Hearings on Notification and Remedy of Defects*, is added to Title 49 of the Code of Federal Regulations, as set forth below.

Effective date: January 31, 1977. Because the regulation is procedural and does not create a burden upon any regu-

lated person, it is found for good cause shown that an effective date earlier than 180 days following issuance is in the public interest.

(Sec. 9, Pub. L. 89-670, 80 Stat. 931 (49 U.S.C. 1657); Sec. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); Sec. 156, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1416); delegation of authority at 49 CFR 1.50)

Issued on December 22, 1976.

JOHN W. SNOW,
Administrator.

PART 557—PETITIONS FOR HEARINGS ON NOTIFICATION AND REMEDY OF DEFECTS

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§ 557.1 Scope.

This part establishes procedures under section 156 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (88 Stat. 1470, 15 U.S.C. 1416), for the submission and disposition of petitions filed by interested persons for hearings on the question of whether a manufacturer has reasonably met his obligation to notify owners, purchasers, and dealers of a safety-related defect or failure to comply with a Federal motor vehicle safety standard, or to remedy such defect or failure to comply. This part also establishes procedures for holding a hearing on these questions.

§ 557.2 Purpose.

The purpose of this part is to enable the National Highway Traffic Safety Administration to identify and respond on a timely basis to petitions for hearings on whether a manufacturer has reasonably met his obligation to notify or remedy, and to establish the procedures for such hearings.

§ 557.3 General.

Any interested person may file with the Administrator a petition requesting him to hold a hearing on—

(a) Whether a manufacturer has reasonably met his obligation to notify owners, purchasers, and dealers of a safety-related defect in any motor vehicle or item of replacement equipment manufactured by him;

(b) Whether a manufacturer has reasonably met his obligation to notify owners, purchasers, and dealers of a failure to comply with an applicable Federal motor vehicle safety standard in any motor vehicle or item of replacement equipment manufactured by him;

(c) Whether the manufacturer has reasonably met his obligatino to remedy a safety-related defect in any motor vehicle or item of replacement equipment manufactured by him; or

(d) Whether the manufacturer has reasonably met his obligation to remedy a failure to comply with an applicable Federal motor vehicle safety standard in any motor vehicle or item of replacement equipment manufactured by him.

§ 557.4 Requirements for petition.

A petition filed under this part should be addressed and submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590. Each petition filed under this part must—

(a) Be written in the English or Spanish language;

(b) Have, preceding its text, the word "Petition";

(c) Contain a brief statement concerning the alleged failure of a manufacturer to meet reasonably his obligation to notify or remedy;

(d) Contain a brief summary of the data, views, or arguments that the petitioner wishes to present in a hearing on whether or not a manufacturer has reasonably met his obligations to notify or remedy;

(e) Specifically request a hearing.

§ 557.5 Improperly filed petitions.

(a) A petition that is not addressed as specified in § 557.4, but that meets the other requirements of that section, will be treated as a properly filed petition, received as of the time it is discovered and identified.

(b) A document that fails to conform to one or more of the requirements of paragraphs § 557.4(a) (1) through (5) will not be treated as a petition under this part. Such a document will be treated according to the existing correspondence and other procedures of the NHTSA, and any information contained in it will be considered at the discretion of the Administrator.

§ 557.6 Determination whether to hold a public hearing.

(a) The Administrator considers the following factors in determining whether to hold a hearing:

(1) The nature of the complaint;

(2) The seriousness of the alleged breach of obligation to remedy;

(3) The existence of similar complaints;

(4) The ability of the NHTSA to resolve the problem without holding a hearing; and

(5) Other pertinent matters.

(b) If, after considering the above factors, the Administrator determines that a hearing should be held, the petition is granted. If it is determined that a hearing should not be held, the petition is denied. In either case, the petitioner is notified of the grant or denial not more than 60 days after receipt of the petition by the NHTSA.

(c) If a petition submitted under this part is denied, a FEDERAL REGISTER notice of the denial is issued within 45 days of the denial, setting forth the reasons for it.

(d) The Administrator may conduct a hearing under this part on his own motion.

§ 557.7 Public hearing.

If the Administrator decides that a public hearing under this part is necessary, he issues a notice of public hearing in the FEDERAL REGISTER, to advise interested persons of the time, place, and subject matter of the public hearing and invite their participation. Interested persons may submit their views through oral or written presentation, or both. There is no cross-examination of witnesses. A transcript of the hearing is kept and exhibits may be accepted as part of the transcript. Sections 556 and 557 of Title 5, United States Code, do not apply to hearings held under this part. When appropriate, the Chief Counsel designates a member of his staff to serve as legal officer at the hearing.

§ 557.8 Determination of manufacturer's obligation.

If the Administrator determines, on the basis of the information presented at a hearing or any other information that is available to him, that the manufacturer has not reasonably met his obligation to notify owners, dealers, and purchasers of a safety-related defect or failure to comply with a Federal motor vehicle safety standard or to remedy such defect or failure to comply, he orders the manufacturer to take specified action to comply with his obligation, consistent with the authority granted the Administrator by the Act.

[FR Doc.76-38169 Filed 12-29-76;8:45 am]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Change of Addresses; Correction

In FR Doc. 76-35232, appearing at page 52880 in the issue of Thursday, December 2, 1976, an amendment of § 571.5 of 49 CFR Part 571 listed an incorrect name and address.

Accordingly, § 571.5(b)(3) is corrected to read:

§ 571.5 Matter incorporated by reference.

* * * * *

(b) * * *

(3) *Standards of the American National Standards Institute.* They are published by the American National Standards Institute. Information and copies may be obtained by writing to: American National Standards Institute, 1430 Broadway, New York, New York 10018.

* * * * *

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407) delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.)

Issued on December 22, 1976.

ROBERT L. CARTER,
Associate Administrator
Motor Vehicle Programs.

[FR Doc.76-38166 Filed 12-29-76;8:45 am]

[Docket No. 74-20; Notice 07]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Rearview Mirrors

This notice responds to petitions for reconsideration of a recent amendment of Standard No. 111, *Rearview Mirrors*, by reducing upcoming mirror size requirements to the level presently specified by the standard.

By notice published August 26, 1976 (41 FR 36023), paragraph S8.1 of Standard No. 111 (49 CFR 571.111) was established to increase from 50 square inches to 75 square inches the amount of reflective surface required for plane mirrors on multipurpose passenger vehicles and trucks with a GVWR of 25,000 pounds or more. The new requirement becomes effective February 26, 1977. In the same issue of the FEDERAL REGISTER the NHTSA published a proposal to further amend Standard 111 to provide for the optional use of plane and convex mirror combinations on multipurpose passenger vehicles and trucks with a GVWR of 25,000 pounds or more (41 FR 36037). The proposed requirements would allow manufacturers to equip their larger vehicles with either a 75-square-inch mirror of unit magnification or a combination mirror system comprised of a 45-square-inch plane mirror and a 25-square-inch convex mirror.

Mr. M. W. Urban and the White Motor Company petitioned the NHTSA to revoke the amendment requiring vehicles over 25,000 pounds to have plane mirrors with 75 square inches of reflective surface. Petitioners were concerned that the proposal to allow plane and convex combinations for the larger vehicles would not be made a final rule by the time of the February 26, 1977, effective date for the 75-square-inch plane mirror requirement. They noted that this would have the effect of prohibiting the use of combination mirrors after February 26, 1977, although they are presently allowed and would be allowed again in the future under the outstanding proposal.

The NHTSA has determined that petitioners' argument has merit. As stated in the preamble to the August 26, 1976, proposal, the NHTSA recognizes that the larger vehicles (GVWR greater than 25,000 pounds) have rearward visibility problems that can create potential safety hazards, and that the use of both plane and convex mirrors on these vehicles should help to increase rearward visibility. The NHTSA does not wish to preclude the combination mirror systems currently being used on the MPV's and trucks, since most of these systems would meet dimensional specifications set forth in the outstanding proposal.

While the NHTSA concluded that the larger plane mirrors are necessary on heavy vehicles not equipped with combination mirrors, many manufacturers are already equipping these vehicles with "West Coast" mirrors that have 96 square inches of reflective surface. Therefore, postponement of the 75-square-inch plane mirror requirement for heavy vehicles should not significantly reduce motor vehicle safety.

The rearview mirror amendments published on August 26, 1976, established the requirement that school buses be equipped with plane mirrors having 50 square inches of reflective surface. Mr. Urban's petition for reconsideration also requested that this requirement be postponed and modified to include separate requirements for small school buses. The petition stated that smaller plane mirrors in combination with convex mirrors should be allowed on van-type school buses on an optional basis.

The NHTSA considered all comments to the notice proposing these school bus requirements prior to issuance of the final rule. It was determined that 50-square-inch plane mirrors were necessary on school buses to provide the driver an adequate view to the rear along both sides of the vehicle. Since Mr. Urban did not submit his views regarding van-type school buses during the specified comment period, his comments will only be considered in future rulemaking on this subject.

In consideration of the foregoing, the number "75 in^2" in paragraph S8.1 of Standard No. 111 (as published August 26, 1976 (41 FR 36023) and effective February 26, 1976) is amended to read "50 in^2".

Effective date: The change may be made immediately to the FEDERAL REGISTER text published August 26, 1976 (41 FR 36023) and is effective February 26, 1977.

(Sec. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.50)

Issued on December 22, 1976.

JOHN W. SNOW,
Administrator.

[FR Doc.76-38167 Filed 12-29-76;8:45 am]

[Docket No. 75-10; Notice 02]

PART 577—DEFECT AND NONCOMPLIANCE NOTIFICATION

Defect and Noncompliance Notification Regulation

This notice amends 49 CFR Part 577, "Defect Notification", to conform to sections 151 through 160 of the National Traffic and Motor Vehicle Safety Act (the Act) (Pub. L. 93-492, 88 Stat. 1470, October 27, 1974; 15 U.S.C. 1411-1420).

The amendments of Part 577 were published as a notice of proposed rulemaking in the FEDERAL REGISTER on May 6, 1975 (40 FR 19651). Approximately 30 comments were received from vehicle and equipment manufacturers, equipment distributors, trade associations representing these groups, and the Center for Auto Safety. The National Motor Vehicle Safety Advisory Council did not take a position on this proposal. Interested persons are advised that NHTSA Dockets 75-30 (Defect and Noncompliance Responsibility), 75-31 (Petitions for Hearing on Notification and Remedy of Defects or Failure to Comply), and 74-7 (Defect and Noncompliance Reporting) are relevant to the subject matter of this rulemaking.

The agency is amending its earlier notification procedures to reflect the major expansion of manufacturer responsibilities under the Motor Vehicle and School-bus Safety Amendments of 1974 to notify vehicle and equipment owners or purchasers of noncompliances with safety standards and of defects that relate to motor vehicle safety (hereinafter referred to as defects), chief of which is that remedy shall be without charge in most cases.

The new regulation specifies the content, timing, and form of notification that complies with the requirements set forth in section 153 of the Act. Distinctions among notifications that arise under different circumstances are set forth in detail. Provisions concerning disclaimers in the notification and conformity to the statutory requirements are carried over from the former Part 577.

Comments on the proposal were generally in agreement with the revision of the regulation, in recognition that the revision reflects responsibilities already a matter of law. Several questions were raised with regard to the authority for or wisdom of specific provisions of the proposed regulation, and these are discussed below.

Motor vehicle manufacturers and the Motor Vehicle Manufacturers Association (MVMA) expressed strong support for modification of the statutory definitions of "original equipment" and "replacement equipment" that allocate responsibility for notification and remedy between vehicle and equipment manufacturers. The agency has issued a separate proposal to redistribute responsibility (40 FR 56930, December 5, 1975) which addresses the issues raised. Resolution of that proposal will be responsive to the issues raised by the MVMA and vehicle manufacturers. To simplify any future action in this area, the two terms are no longer set forth in Part 577.

In the definitions section of the regulation, the phrase "in good faith" has been added to the definition of "first purchaser" to conform to its meaning under § 108(b)(1) of the Act.

The Recreational Vehicle Industry Association (RVIA) requested that vehicle alterers be permitted to meet (assume) the obligations of manufacturers for notification and remedy on a voluntary basis. Without notice and opportunity for comment on this idea, the agency does not consider it wise to modify the regulation as suggested by the RVIA.

NOTIFICATION PURSUANT TO A MANUFACTURER'S DETERMINATION

Section 151 of the Act provides that a manufacturer who determines in good faith that a defect or noncompliance exists in its products

Shall furnish notification to the Secretary and to owners, purchasers, and dealers in accordance with section 153, and he shall remedy the defect or failure to comply in accordance with section 154.

Section 577.5 of Part 577 provides for manufacturer-initiated notifications in accordance with section 151. The section specifies, among other things, that a statement appear in the notification that the manufacturer has determined that a defect or noncompliance exists in identified vehicles or equipment. An additional statement may be made to indicate that the problem may not exist in each such vehicle or item of equipment. The MVMA and American Motors Corporation (AMC) believed that a better approach would be to state that the defect or noncompliance exists in some, but not all, vehicles or items of equipment (if such is the case), and that an owner should bring his vehicle in for inspection in any case. The agency does not believe that either the MVMA or AMC has an expertise in this area and declines to adopt the suggested modification.

Paragraph (e) of § 577.5 requires a clear description of the defect or noncompliance, including, among other things,

(e) * * *

(2) A description of any malfunction that may occur. The description of a noncompliance with an applicable standard shall include the difference between the performance of the noncomplying vehicle or item of replacement equipment and the performance specified by the standard;

The MVMA viewed the phrase "any malfunction" as overbroad and ambiguous, in that a manufacturer would be held to correctly anticipate a malfunction, whether or not related to safety or the noncompliance. The agency agrees that such a description would go beyond the purpose of the notification and therefore has narrowed somewhat the language proposed.

Vehicle manufacturers and the MVMA argued that the second sentence of paragraph (e)(2) should be deleted because an exact description of the difference in performance due to noncompliance would be too technical for comprehension by most owners, require extensive and expensive testing in some cases that would delay notification, and be the basis for a technical violation of the regulation. The agency believes that the description is valuable to vehicle or equipment owners in understanding the noncompliance, but agrees that a detailed description could delay notification unnecessarily. Accordingly, the phrase "in general terms" is added to modify the required description.

The Center for Auto Safety (the Center) believed that the statement required by (e) to minimize the chances of an accident before remedy failed to mention prior warnings that the vehicle's operating characteristics might offer. While prior warning is adequately covered by the "evaluation of risk" statement made regarding the possibility of vehicle crash (paragraph (f)(1)(ii)), the agency has added a comparable requirement to paragraph (f)(2) (that covers "noncrash" type defects and noncompliances).

The Specialty Equipment Manufacturers Association objected that any evaluation of the risk to motor vehicle safety would be speculative and therefore was unjustified. This requirement, however, is based on the specific requirement of section 153 (a) of the Act, and cannot be eliminated.

The Center believed that the evaluation of risk to motor vehicle safety is a discretionary statement that need not be made by a manufacturer. This is not the case. Section 577.5 is a requirement that the information (b) through (g) be listed and, under paragraph (f), the evaluation must either describe the crash hazard or be a description of the "general type of injury to occupants, or [others], that can result."

Paragraph (g) of § 577.5, dealing with measures to be taken by the owner, proved to be the greatest source of comments on the proposal. The paragraph is divided into subparagraphs dealing with notification of remedy without charge and notification of remedy for which the manufacturer will charge. This distinction is based on § 154(a)(4) of the Act which limits the "remedy without charge" to vehicles or equipment first purchased no more than 8 years (3 years in the case of tires) before notification in accordance with §§ 151 or 152.

Paragraph (g)(1) specifies requirements both for notification when the remedy must be undertaken and also notification when the manufacturer voluntarily decides to remedy without charge. The MVMA and General Motors (GM) felt that manufacturers undertaking voluntary remedy should not be subjected to the same notification requirements as those manufacturers required to remedy. The agency distinguishes between the separate duties of notification and remedy, however, and notes that the notification requirements of section 153 of the Act contain no exceptions for older vehicles and equipment. The MVMA's abbreviated list of requirements for a voluntary remedy do not fulfill the requirements of section 153. For example, section 153(a)(2) requires that the notification contain an evaluation of the risk to motor vehicle safety.

It is the agency's philosophy that a manufacturer undertaking a remedy should provide the same information to the owner whether or not the remedy is undertaken voluntarily. In this way, an owner will be apprised of the information necessary to make informed decision. Also, events beyond the manufacturer's control will not be able to negate the remedy without agency or manufacturer's knowledge. For these reasons, the agency does not modify the requirements as suggested.

Aside from the general suitability of paragraph (g)(1)'s requirements for a voluntary remedy, manufacturers raised more specific questions about the separate provisions.

International Harvester Company (IH) asserted with regard to paragraph (g)(1)(i) that no basis existed for the exception of replacement equipment from the right to refund as a means of remedy. In the agency's view, section 154 (2)(B) of the Act clearly limits the remedy for items of replacement equipment to either repair or replacement.

IH objected to the requirements that the earliest date for repair set under paragraph (g)(1)(ii) be premised on anticipated receipt by dealers of necessary parts for repair. The company pointed out that some repair parts would not typically be forwarded to a dealer for repair until a specific request has arisen. The agency would like to clarify that the "earliest date" can be established as a certain number of days following inspection of the defective or noncomplying vehicle. Thus a manufacturer need only calculate the time that it would take to get the parts to the dealer following an inspection and then state that the earliest date for repair will follow the date of inspection by that amount.

AMC argued that the requirement for a general description of the work and amount of time involved in a repair without charge by the manufacturer's dealer exceeded the authority of the Act and is unnecessary when the manufacturer undertakes repair. The same argument was made with regard to paragraphs (g)(1)(v) and (vi). The agency disagrees, and notes that the specific authority listed in section 153(a) is "in addition to such other matters as the Secretary may prescribe by regulation." As for the need for a general description, it is concluded that the owner would value knowledge of the time involved and the nature of the repair that is involved, to correctly weigh the gravity of the problem. Correspondingly, the offer of replacement or refund is more helpful to the owner if it includes the detail that has been specified.

In paragraph (g)(1)(iv), the MVMA asked for parallelism with the construction of paragraph (g)(1)(iii). It is accomplished by the addition of "or its dealers" following the word "manufacturer". IH suggested the addition of "authorized service centers" to the list, but this is unnecessary in view of the NHTSA's interpretation of "dealer" to include an authorized service center.

The Center, Mack Trucks, and Crane Carrier Corporation (CCC) commented on paragraph (g)(1)(iv)'s requirement that the method or basis for a manufacturer's assessment of depreciation be specified. The two manufacturers suggested use of a retailer's price guide as the basis. The Center suggested that a method for determination of depreciation be devised by a panel of industry, government, and consumer representatives. The legislative history indicates that retailer price guides should not be the sole criterion, and thus the Mack and CCC recommendations are not adopted. Until there is some indication that the manufacturers' chosen methods of assessment are unreasonable, the agency does not consider it necessary to exercise its authority in this area, and the Center's suggestion is also not adopted.

The greatest objections were raised regarding the statement advising an owner how to inform the NHTSA if he believes that the notification or remedy

is inadequate, or that the remedy was untimely or not made in accordance with the notification. PACCAR, AMC, Chrysler, GM, IH, the RVIA, and the MVMA considered the statement to be, in some respects, beyond the agency's statutory authority and not contemplated by Congress. As earlier noted, Section 153 is prefaced by a general grant of authority to the agency to specify the contents of the notification.

The agency has considered the objections in any case, particularly in view of the decision to require the same notification in the case of voluntary and mandatory remedy notices. It is concluded that modification of the statements to reflect the exact terms of section 154(a)(6) is appropriate.

Manufacturers objected to the language of paragraph (g)(1)(vii)(C) that invites owner complaints if a remedy is not effected within a reasonable period. The agency considers timeliness to be an aspect of whether a manufacturer has failed or is unable to provide a remedy as specified in section 153(a)(6) of the Act. The agency does agree that remedy by replacement or refund should not be limited to the first 60 days, since it might follow a failure to repair within that 60-day period. In conforming to section 154(b)(1), the agency substitutes "tender" for "first attempt". Also, reference to extension by the Administrator of the 60-day repair period has been added to paragraph (g)(1)(vii)(C)(1).

GM suggested that an additional statement be made to owners, advising them of recourse available with the manufacturer if the dealer's response is unsatisfactory. The agency considers this desirable but, without the benefit of notice and opportunity for comment, declines to make this addition. Paragraph (g)(1), of course, only sets forth what the manufacturer "shall include" in its notification, and it may make such additional statements as it deems necessary.

There was no comment on the second part of § 577.5 that deals with manufacturer notices in which remedy without charge is not required and is not volunteered. Accordingly, the paragraph is adopted as proposed.

Notification Pursuant to Administrator's Determination

Section 577.6 provides for Administration-ordered notifications in accordance with section 152. Paragraphs (a), (b), and (c) set forth requirements for the three types of notification contemplated by the Act. Manufacturers made no comment on the requirements for notification ordered by the Administrator in the first instance, and paragraph (a) is accordingly made final as proposed.

PACCAR objected to provisional notification as placing an unreasonable burden on the manufacturer, rendering any court decision in its favor meaningless. Section 155(b) of the Act clearly contemplates such an order, however, and the regulations consequently do provide for it.

Comments were received on the proposed content of the provisional notification. The MVMA pointed out that the requirement in paragraph (b)(2) should be clarified to permit a statement that the defect or non-compliance may not occur in all the described vehicles. The agency agrees and adds a paragraph similar to § 577.5(d).

With regard to the proposed paragraph (b)(4), the MVMA asked that reference to a "United States District Court" be broadened to "the Federal courts" and that the statement make clear that the NHTSA and not the court is ordering provisional notification. The agency concurs in these clarifications and they are made where appropriate in the final rule.

The requirements of paragraphs (b)(5), (6), and (7) provide for a description of the Administrator's determination, his evaluation of the hazard, and the recommended measures to avoid unreasonable hazard resulting from the defect or noncompliance. Fiat requested that the description, evaluation, and recommended measures be provided by the NHTSA. As specified in the requirements, it is the "Administrator's stated basis" that must be described, and the measures "stated in his order" that must be listed. The agency intends to include in each order a description, evaluation, and list of measures that permit quotation or paraphrase by the manufacturer.

Chrysler and the MVMA asked that a manufacturer be permitted more latitude to explain its position than provided for in paragraph (b)(8). The agency has considered this request, and concludes that extensive advocacy of the manufacturer's position would detract from the intent of the provisional notification to put the owner on notice of potential problems. The Chrysler and MVMA suggestion is therefore not adopted.

In the required statement dealing with availability of remedy and reimbursement in the event the court upholds the Administrator's determination (paragraph (b)(9)), Chrysler argued that the suggestion of reimbursement would generate poor customer relations if a repair were sought or undertaken during pendency of a court proceeding in which the manufacturer prevailed. The agency is aware of the possibility for some misunderstanding but is certain that the provisional notification was intended by the Congress to encourage owners to consider repair or other corrective action while the manufacturer contests the determination. For this reason, the notice of possible reimbursement remains in the regulation. The first statement in (b)(9)(i) has been clarified in one minor respect.

The MVMA requested that the phrase "for repair" be substituted for "in repairing" to permit manufacturers to make clear that reimbursement would only cover the repairs that were reasonable and necessary to correct the defect or noncompliance. The NHTSA believes that the term "reasonable and necessary" makes clear what repairs would be reimbursed should the court uphold an Administrator's determination.

The MVMA asked, and the agency agrees, that the reimbursement statement be qualified by the limitations that appear in the statute.

Paragraph (b)(10) requires a statement whether, in the manufacturer's opinion, a repair of the defect or noncompliance is possible. GM asked that "feasible" be substituted for "possible" and the agency makes the change in agreement that it more clearly reflects the judgment made by a manufacturer in choosing its preferred remedy. The MVMA and Chrysler made the more basic objection that (b)(10) assumes that a defect or noncompliance exists prior to the court's ruling, and that it requires unjustified effort to develop repair parts and facilities before a decision is reached on the validity of the Administrator's determination. The agency is of the view that the level of detail specified is justified in these cases and necessary to fulfill the purpose of provisional notification contemplated by Congress. The agency has modified the wording to make clear that reimbursement for expenses are limited to those necessary and reasonable for repair.

With regard to proposed paragraph (b)(12), the MVMA asked that only notification and not remedy be mentioned. There will be a discussion of remedy in the notification, however, and the owner should be encouraged to inquire further as to this aspect of the notification.

Firestone and the Automotive Parts and Accessories Association felt that the regulations should apply to the agency and that it should be required to advise the owner, purchaser, and dealer in the event its determination is not upheld by the courts. The statutory scheme being implemented by Part 577 concerns manufacturer obligations under §§ 151 through 160 of the Act to notify and remedy safety problems in vehicles. The agency does not consider an expansion of the regulations beyond this purpose as appropriate. Nothing, of course, prevents the manufacturer from making such a notice to the owner or others.

Paragraph (c) of § 577.6 deals with final notification following a court decision in the Administrator's favor and it is adopted, with corrections similar to those made in the other sections. Because the MVMA objected to reference to being "upheld in a proceeding in a United States District Court" as the basis for the post-litigation order, the agency has substituted the language of the Act. Also, reference to "a date" on which provisional notification was ordered is corrected to "the date" to reflect that it will in all cases be a specific date.

Time and Manner of Notification

The major problem with regard to the time and manner of notification concerned the statutory requirement (section 153(c)(1)) that notification be,

> Section 153 * * *
> (c) * * *
> (1) In the case of a motor vehicle, by first class mail to each person who is registered under State law as the owner of such vehicle and whose name and address is reasonably ascertainable by the manufacturer through

State records or other sources available to him;

PACCAR, Volkswagen, and IH expressed their doubts that all State records would be available or that alternative services would provide timely information. The agency has incorporated the statutory requirements in this regulation word-for-word and, on that basis, declines to modify it. As for the suggestion that "reasonably ascertainable" be defined, it is the agency's view that the phrase is only given meaning by the separate factual situations that arise. The agency cannot agree with PACCAR that records are not "reasonably ascertainable" simply by virtue of delay in retrieving them.

Sheller-Globe Corporation asked if certified mail would be considered the equivalent of first class mail for meeting the requirements. As a school bus manufacturer, Sheller-Globe wanted certainty of notification to school districts and other customers. The NHTSA does not consider them equivalent in view of relevant legislative history. Congress considered the U.S. Postal Service regulation that prohibits forwarding of certified mail and they concluded that first class mail would be a superior means of obtaining notification.

With regard to the maximum times permitted for issuance of notification, the Center asked that the period be reduced to 30 days in the case of all Administration-ordered notifications. Some manufacturers asked that the 30-day period for provisional notification be expanded to 60 days. B. F. Goodrich stated that notification letters cannot be printed in advance of actual mailing, because the date for earliest remedy must be included in the letter. The agency has weighed the conflicting views, and concludes that a 60-day period is justified for administration-ordered recalls. The provisional notification requirement is amended accordingly.

IH suggested that public notice of defects or noncompliances in items of replacement equipment would be adequate, and that notice to the most recent purchaser should be optional. The agency has simply conformed its regulation to the statutory requirements of section 153(c).

OTHER MATTERS

The MVMA suggested that the disclaimer section of the regulation could be clarified by an additional paragraph permitting manufacturer statements that a notification does not "constitute an admission by the manufacturer that it has been guilty of negligence or other wrong doing". The agency views this statement as exactly the type of disclaimer that could contribute to a reader's decision not to take action in response to notification and accordingly declines to adopt the MVMA recommendation.

With regard to the MVMA concern that technical violations of the regulations not be pursued as a violation of the Act under § 577.9, the agency expects to continue to enforce the Act and its regulations in a reasonable manner, calculated to avoid arbitrariness or irrationality.

After-market equipment manufacturers and their associations expressed the view that the notification scheme was unworkable for notice to equipment purchasers, that wear of parts in normal use conflicted with the concept of safety-related defects, and that the 8-year period for remedy without charge was too long. Also, the establishment of a cut-off based on the date of retail sale appeared impractical, because records of these transactions are not maintained. As a response, the agency notes that the regulation conforms to the statute's language and clearly-expressed Congressional intent. Experience to date with the requirements does not demonstrate that they are in fact unworkable. The issues of improper installation and remanufactured parts were not addressed by the statute, and resolution of these issues will require some experience with situations as they arise.

The RVIA asked that the agency exercise its authority to require the submission to manufacturers by dealers of the names and addresses of purchasers. The agency takes this recommendation under advisement but, as it is beyond the scope of Part 577, does not act on it in this notice.

In consideration of the foregoing, Part 577, "Defect Notification", of Title 49, Code of Federal Regulations, is renamed "Defect and Noncompliance Notification" and is amended to read as set forth below.

Effective date: June 28, 1977.

(Secs. 108, 112, 119, Pub. L. 89-563, 80 Stat. 718; Sec. 102, 103, 104, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1397, 1401, 1407, 1411-1420; delegation of authority at 49 CFR 1.50).)

Issued on December 22, 1976.

JOHN W. SNOW,
Administrator.

Sec.

577.1 Scope.
577.2 Purpose.
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577.5 Notification pursuant to a manufacturer's determination.
577.6 Notification pursuant to the Administrator's determination.
577.7 Time and manner of notification.
577.8 Disclaimers.
577.9 Conformity to statutory requirements.

AUTHORITY: Secs. 108, 112, 119, Pub. L. 89-563; 80 Stat. 718; Secs. 102, 103, 104, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1397, 1401, 1408, 1411-1420; delegations of authority at 49 CFR 1.51 and 49 CFR 501.8)

§ 577.1 Scope.

This part sets forth requirements for notification to owners of motor vehicles and replacement equipment about the possibility of a defect which relates to motor vehicle safety or a noncompliance with a Federal motor vehicle safety standard.

§ 577.2 Purpose.

The purpose of this part is to ensure that notifications of defects or noncompliances adequately inform and effectively motivate owners of potentially defective or noncomplying motor vehicles or items of replacement equipment to have such vehicles or equipment inspected and, when necessary, remedied as quickly as possible.

§ 577.3 Application.

This part applies to manufacturers of completed motor vehicles, incomplete motor vehicles, and replacement equipment. In the case of vehicles manufactured in two or more stages, compliance by either the manufacturer of the incomplete vehicle, any subsequent manufacturer, or the manufacturer of affected replacement equipment, shall be considered compliance by each of those manufacturers.

§ 577.4 Definitions.

For purposes of this part:

"Act" means the National Traffic and Motor Vehicle Safety Act of 1966, as amended, 15 U.S.C. 1391 et seq.

"Administrator" means the Administrator of the National Highway Traffic Safety Administration or his delegate.

"First purchaser" means the first purchaser in good faith for a purpose other than resale.

"Owners" includes purchaser.

§ 577.5 Notification pursuant to a manufacturer's determination.

(a) When a manufacturer of motor vehicles or replacement equipment determines that any motor vehicle or item of replacement equipment produced by him contains a defect which relates to motor vehicle safety, or fails to conform to an applicable Federal motor vehicle safety standard, he shall provide notification in accordance with paragraph (a) of § 577.7, unless the manufacturer is exempted by the Administrator (pursuant to section 157 of the Act) from giving such notification. The notification shall contain the information specified in this section. The information required by paragraphs (b) and (c) of this section shall be presented in the form and order specified. The information required by paragraphs (d) through (g) of this section may be presented in any order. Notification sent to an owner whose address is in either the Commonwealth of Puerto Rico or the Canal Zone shall be written in both English and Spanish.

(b) An opening statement: "This notice is sent to you in accordance with the requirements of the National Traffic and Motor Vehicle Safety Act."

(c) Whichever of the following statements is appropriate:

(1) "(Manufacturer's name or division) has determined that a defect which relates to motor vehicle safety exists in (identified motor vehicles, in the case of notification sent by a motor vehicle manufacturer; identified replacement equipment, in the case of notification sent by a replacement equipment manufacturer);" or

(2) "(Manufacturer's name or division) has determined that (identified motor vehicles, in the case of notification sent by a motor vehicle manufacturer; identified replacement equipment, in the case of notification sent by a replacement equipment manufacturer) fail to conform to Federal Motor Vehicle Safety Standard No. (number and title of standard)."

(d) When the manufacturer determines that the defect or noncompliance may not exist in each such vehicle or item of replacement equipment, he may include an additional statement to that effect.

(e) A clear description of the defect or noncompliance, which shall include—

(1) An identification of the vehicle system or particular item(s) of motor vehicle equipment affected.

(2) A description of the malfunction that may occure as a result of the defect or noncompliance. The description of a noncompliance with an applicable standard shall include, in general terms, the difference between the performance of the noncomplying vehicle or item of replacement equipment and tne performance specified by the standard;

(3) A statement of any operating or other conditions that may cause the malfunction to occur; and

(4) A statement of the precautions, if any, that the owner should take to reduce the chance that the malfunction will occur before the defect or noncompliance is remedied.

(f) An evaluation of the risk to motor vehicle safety reasonably related to the defect or noncompliance.

(1) When vehicle crash is a potential occurrence, the evaluation shall include whichever of the following is appropriate:

(i) A statement that the defect or noncompliance can cause vehicle crash without prior warning; or

(ii) A description of whatever prior warning may occur, and a statement that if this warning is not heeded, vehicle crash can occur.

(2) When vehicle crash is not a potential occurrence, the evaluation must include a statement indicating the general type of injury to occupants of the vehicle, or to persons outside the vehicle, that can result from the defect or noncompliance, and a description of whatever prior warning may occur.

(g) A statement of measures to be taken to remedy the defect or noncompliance, in accordance with paragraph (g)(1) or (g)(2) of this section, whichever is appropriate.

(1) When the manufacturer is required by the Act to remedy the defect or noncompliance without charge, or when he will voluntarily so remedy in full conformity with the Act, he shall include—

(i) A statement that he will cause such defect or noncompliance to be remedied without charge, and whether such remedy will be by repair, replacement, or (except in the case of replacement equipment) refund, less depreciation, of the purchase price.

(ii) The earliest date on which the defect or noncompliance will be remedied without charge. In the case of remedy by repair, this date shall be the earliest date on which the manufacturer reasonably expects that dealers or other service facilities will receive necessary parts and instructions. The manufacturer shall specify the last date, if any, on which he will remedy tires without charge.

(iii) In the case of remedy by repair through the manufacturer's dealers or other service facilities:

(A) A general description of the work involved in repairing the defect or noncompliance; and

(B) The manufacturer's estimate of the time reasonably necessary to perform the labor required to correct the defect or noncompliance.

(iv) In the case of remedy by repair through service facilities other than those of the manufacturer or its dealers:

(A) The name and part number of each part that must be added, replaced, or modified;

(B) A description of any modifications that must be made to existing parts, which shall also be identified by name and part number;

(C) Information as to where needed parts will be available;

(D) A detailed description (including appropriate illustrations) of each step required to correct the defect or noncompliance;

(E) The manufacturer's estimate of the time reasonably necessary to perform the labor required to correct the defect or noncompliance; and

(F) The manufacturer's recommendations of service facilities where the owner should have the repairs performed.

(v) In the case of remedy by replacement, a description of the motor vehicle or item of replacement equipment that the manufacturer will provide as a replacement for the defective or noncomplying vehicle or equipment.

(vi) In the case of remedy by refund of purchase price, the method or basis for the manufacturer's assessment of depreciation.

(vii) A statement informing the owner that he may submit a complaint to the Administrator, National Highway Traffic Safety Admjnistration, Washington, D.C. 20590, if the owner believes that—

(A) The manufacturer, distributor, or dealer has failed or is unable to remedy the defect or noncompliance without charge.

(B) The manufacturer has failed or is unable to remedy the defect or noncompliance without charge—

(*1*) (In the case of motor vehicles or items of replacement equipment, other than tires) within a reasonable time, which is not longer than 60 days in the case of repair after the owner's first tender to obtain repair following the earliest repair date specified in the notification, unless the period is extended by Administrator.

(2) (In the case of tires) after the date specified in the notification on which replacement tires will be available.

(2) When the manufacturer is not required to remedy the defect or noncompliance without charge and he will not voluntarily so remedy, the statement shall include—

(i) A statement that the manufacturer is not required by the Act to remedy without charge.

(ii) A statement of the extent to which the manufacturer will voluntarily remedy, including the method of remedy and any limitations and conditions imposed by the manufacturer on such remedy.

(iii) The manufacturer's opinion whether the defect or noncompliance can be remedied by repair. If the manufacturer believes that repair is possible, the statement shall include the information specified in paragraph (g)(1)(iv) of this section, except that—

(A) The statement required by paragraph (g)(1)(iv)(A) of this section shall also indicate the suggested list price of each part.

(B) The statement required by paragraph (g)(1)(iv)(C) of this section shall also indicate the manufacturer's estimate of the date on which the parts will be generally available.

§ 577.6 Notification pursuant to Administrator's determination.

(a) *Manufactured-ordered notification.* When a manufacturer is ordered pursuant to section 152 of the Act to provide notification of a defect or noncompliance, he shall provide such notification in accordance with §§ 577.5 and 577.7, except that the statement required by paragraph (c) of § 577.5 shall indicate that the determination has been made by the Administrator of the National Highway Traffic Safety Administration.

(b) *Provisional notification.* When a manufacturer does not provide notification as required by paragraph (a) of this section, and an action concerning the Administrator's order to provide such notification has been filed in a United States District Court, the manufacturer shall, upon the Administrator's further order, provide in accordance with paragraph (b) of § 577.7 a provisional notification containing the information specified in this paragraph, in the order and, where specified, the form of paragraphs (b)(1) through (b)(12) of this section.

(1) An opening statement: "This notice is sent to you in accordance with the requirements of the National Traffic and Motor Vehicle Safety Act."

(2) Whichever of the following statements is appropriate:

(i) "The Administrator of the National Highway Traffic Safety Administration has determined that a defect which relates to motor vehicle safety exists in (identified motor vehicles, in the case of notification sent by a motor vehicle manufacturer; identified replacement equipment, in the case of notification sent by a replacement equipment manufacturer);" or

(ii) "The Administrator of the National Highway Traffic Safety Adminis-

tration has determined that (identified motor vehicles, in the case of notification sent by a motor vehicle manufacturer; identified replacement equipment, in the case of notification sent by a replacement equipment manufacturer) fail to conform to Federal Motor Vehicle Safety Standard No. (number and title of standard)."

(3) When the Administrator determines that the defect or noncompliance may not exist in each such vehicle or item of replacement equipment, the manufacturer may include an additional statement to that effect.

(4) The statement: "(Manufacturer's name or division) is contesting this determination in a proceeding in the Federal courts and has been required to issue this notice pending the outcome of the court proceeding."

(5) A clear description of the Administrator's stated basis for his determination, as provided in his order, including a brief summary of the evidence and reasoning that the Administrator relied upon in making his determination.

(6) A clear description of the Administrator's stated evaluation as provided in his order of the risk to motor vehicle safety reasonably related to the defect or noncompliance.

(7) Any measures that the Administrator has stated in his order should be taken by the owner to avoid an unreasonable hazard resulting from the defect or noncompliance.

(8) A brief summary of the evidence and reasoning upon which the manufacturer relies in contesting the Administrator's determination.

(9) A statement regarding the availability of remedy and reimbursement in accordance with paragraph (9)(i) or (9)(ii) below, whichever is appropriate.

(i) When the purchase date of the vehicle or item of equipment is such that the manufacturer is required by the Act to remedy without charge or to reimburse the owner for reasonable and necessary repair expenses, he shall include—

(A) A statement that the remedy will be provided without charge to the owner if the Court upholds the Administrator's determination;

(B) A statement of the method of remedy. If the manufacturer has not yet determined the method of remedy, he shall indicate that he will select either repair, replacement with an equivalent vehicle or item of replacement equipment, or (except in the case of replacement equipment) refund, less depreciation, of the purchase price; and

(C) A statement that, if the Court upholds the Administrator's determination, he will reimburse the owner for any reasonable and necessary expenses that the owner incurs (not in excess of any amount specified by the Administrator) in repairing the defect or noncompliance following a date, specified by the manufacturer, which shall not be later than the date of the Administrator's order to issue this notification.

(ii) When the manufacturer is not required either to remedy without charge or to reimburse, he shall include—

(A) A statement that he is not required to remedy or reimburse, or

(B) A statement of the extent to which he will voluntarily remedy or reimburse, including the method of remedy, if then known, and any limitations and conditions on such remedy or reimbursement.

(10) A statement indicating whether, in the manufacturers opinion, the defect or noncompliance can be remedied by repair. When the manufacturer believes that such remedy is feasible, the statement shall include:

(i) A general description of the work and the manufacturer's estimate of the costs involved in repairing the defect or noncompliance;

(ii) Information on where needed parts and instructions for repairing the defect or noncompliance will be available, including the manufacturer's estimate of the day on which they will be generally available;

(iii) The manufacturer's estimate of the time reasonably necessary to perform the labor required to correct the defect or noncompliance; and

(iv) The manufacturer's recommendations of service facilities where the owner could have the repairs performed, including (in the case of a manufacturer required to reimburse if the Administrator's determination is upheld in the court proceeding) at least one service facility for whose charges the owner will be fully reimbursed if the Administrator's determination is upheld.

(11) A statement that further notice will be mailed by the manufacturer to the owner if the Administrator's determination is upheld in the court proceeding; and

(12) An address of the manufacturer where the owner may write to obtain additional information regarding the notification and remedy.

(c) *Post-litigation notification.* When a manufacturer does not provide notification as required in paragraph (a) of this section and the Administrator prevails in an action commenced with respect to such notification, the manufacturer shall, upon the Administrator's further order, provide notification in accordance with paragraph (b) of § 577.7 containing the information specified in paragraph (a) of this section, except that—

(1) The statement required by paragraph (c) of § 577.5 shall indicate that the determination has been made by the Administrator and that his determination has been upheld in a proceeding in the Federal courts; and

(2) When a provisional notification was issued regarding the defect or noncompliance and the manufacturer is required under the Act to reimburse—

(i) The manufacturer shall state that he will reimburse the owner for any reasonable and necessary expenses that the owner incurred (not in excess of any amount specified by the Administrator) for repair of the defect or noncompliance of the vehicle or item of equipment on or after the date on which provisional notification was ordered to be issued and on or before a date not sooner than the date on which this notification is received by the owner. The manufacturer shall determine and specify both dates.

(ii) The statement required by paragraph (g)(1)(vii) of § 577.5 shall also inform the owner that he may submit a complaint to the Administrator if the owner believes that the manufacturer has failed to reimburse adequately.

(3) If the manufacturer is not required under the Act to reimburse, he shall include—

(i) A statement that he is not required to reimburse, or

(ii) When he will voluntarily reimburse, a statement of the extent to which he will do so, including any limitations and conditions on such reimbursement.

§ 577.7 Time and manner of notification.

(a) The notification required by § 577.5 shall—

(1) Be furnished within a reasonable time after the manufacturer first determines the existence of a defect which relates to motor vehicle safety, or of a noncompliance.

(2) Be accomplished—

(i) In the case of a notification required to be sent by a motor vehicle manufacturer, by first class mail to each person who is registered under State law as the owner of the vehicle and whose name and address are reasonably ascertainable by the manufacturer through State records or other sources available to him. If the owner cannot be reasonably ascertained, the manufacturer shall notify the most recent purchaser known to the manufacturer.

(ii) In the case of a notification required to be sent by a replacement equipment manufacturer—

(A) By first class mail to the most recent purchaser known to the manufacturer, and

(B) (Except in the case of a tire) if determined by the Administrator to be necessary for motor vehicle safety, by public notice in such manner as the Administrator may determine after consultation with the manufacturer.

(iii) In the case of a manufacturer required to provide notification concerning any defective or noncomplying tire, by first class or certified mail.

(b) The notification required by any paragraph of § 577.6 shall be provided:

(1) Within 60 days after the manufacturer's receipt of the Administrator's order to provide the notification, except that the notification shall be furnished within a shorter or longer period if the Administrator incorporates in his order a finding that such period is in the public interest; and

(2) In the manner and to the recipients specified in paragraph (a) of this section.

§ 577.8 Disclaimers.

(a) A notification sent pursuant to § 577.5 or § 577.6 regarding a defect which relates to motor vehicle safety shall not, except as specifically provided in this part, contain any statement or implication that there is no defect, that the defect does not relate to motor ve-

hicle safety, or that the defect is not present in the owner's vehicle or item of replacement equipment.

(b) A notification sent pursuant to § 577.5 or § 577.6 regarding a noncompliance with an applicable Federal motor vehicle safety standard shall not, except as specifically provided in this part, contain any statement or implication that there is not a noncompliance or that the noncompliance is not present in the owner's vehicle or item of replacement equipment.

§ 577.9 Conformity to statutory requirements.

A notification that does not conform to the requirements of this part is a violation of the Act.

[FR Doc.76-38168 Filed 12-29-76;8:45 am]

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER C—ACCOUNTS, RECORDS AND REPORTS

[No. 32155 (Sub-No. 5)]

PART 1207—UNIFORM SYSTEM OF ACCOUNTS FOR CLASS I AND CLASS II COMMON AND CONTRACT MOTOR CARRIERS OF PROPERTY

Report and Order

Certain revised accounting regulations governing Class I and Class II common and contract motor carriers of property (49 CFR Part 1207) are adopted to be effective January 1, 1977.

REPORT OF THE COMMISSION

In June 1976, the American Trucking Association expressed the industry's concern over the ambiguous intent of Note A to account 4400, Other Fringes, and Instruction 29(c). The carriers cannot determine if they are required to maintain control accounts for each classification of fringe expenses.

Our review of the texts of Note A and Instruction 29(c) indicated the language is ambiguous. Accordingly, we decided these items should be revised. The revised texts will clarify that carriers may enter expenses directly into the appropriate activity or they may accumulate expenses in control accounts for later distribution.

In August 1976, the Household Goods Carriers' Bureau submitted the industry's request for consideration of a change in Instruction 2(f). The proposed change would allow carriers to obtain financial reports from their agents no later than May 15th of each year. Currently, Instruction 2(f) requires carriers to obtain reports from their agents no later than the time for filing of the carrier's annual report, March 31st of each year. The Household Goods Carriers' Bureau states the proposed change would allow the agents to prepare their reports after completion of their annual audit and tax filings. The carriers believe the extra 45 days would enable the agents to produce more accurate reports with less difficulty.

Our review of the proposal to change Instruction 2(f) indicates the change would have no adverse consequences. Furthermore, the general public will not be affected because agent reports are only available to carrier personnel and Commission examiners.

None of the proposed revisions will require any additional recordkeeping nor will they place any additional burden on the carriers. The proposed revisions of Note A to Account 4400 and Instruction 29(c) would not change existing regulations but only clarify their intent. In addition, the proposed revision of Instruction 2(f) does not directly affect the carriers but eases the burden on the carriers' agents. Thus, a rulemaking proceeding under sections 553 and 559 of the Administrative Procedure Act (5 U.S.C. 553 and 559) is not necessary.

FINDINGS

We find that Part 1207 of Chapter X of Title 49 of the Code of Federal Regulations should be amended as detailed in the appended statement of changes; and that such rules are reasonable and necessary to the effective enforcement of the provisions of Part II of the Interstate Commerce Act, as amended; that such rules are otherwise lawful and, to the extent so found in this report, consistent with the public interest and the national transportation policy; that for good cause notice and public procedure are unnecessary under the Administrative Procedure Act, 5 U.S.C. 553(b)(B); and that this decision is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

An appropriate order will be entered.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D.C. on the 9th day of December 1976.

Consideration having been given to the matters and things involved in this proceeding, and the said Commission, on the date thereof, having made and filed a report herein containing its findings and conclusions, which report is hereby made a part hereof:

It is ordered, That, effective January 1, 1977, the regulations prescribed in Part 1207, of Chapter X, Subchapter C of Title 49 of the Code of Federal Regulations be, and they are hereby, revised to read as shown in the appendix to the above mentioned report.

It is further ordered, That service of this order shall be made on all affected carriers; and to the Governor of every State and to Public Utilities Commissions or Boards of each State having jurisdiction over transportation; and that notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C. and by filing a copy with the Director, Office of the Federal Register, for publication in the FEDERAL REGISTER.

This decision is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 and that for good cause notice and public procedure are unnecessary under the Administrative Procedure Act, 5 U.S.C. 553(b)(B).

(49 U.S.C. 204)

By the Commission.

ROBERT L. OSWALD,
Secretary.

Amend Part 1207—Uniform System of Accounts for Class I and Class II Common and Contract Motor Carriers of Property:

CLASS I AND CLASS II MOTOR CARRIERS
INSTRUCTIONS

The text of Instruction 2(f), paragraph (1), is revised to read:

2. **Records.**

* * * * *

(f) Carriers classified as household goods carriers shall also comply with the following requirements.

(1) As evidence of the financial condition of agents required in § 1056.19(b) of this chapter, Required Filings Relating to Agency Agreements, the authorized carrier shall acquire from each of its agents (i) An income statement for the calendar year preceeding the effective date of the agency agreement and (ii) A balance sheet as of the last day of said year. Annually thereafter, for each year an agency agreement is in effect the authorized carrier shall acquire the required statements and a detailed schedule of operating revenues and expenses, from each of its agents no later than May 15th of each year. The required financial statement shall be prepared in accordance with the prescribed schedules for such statements in the annual report form filed with the Commission by the authorized carrier.

* * * * *

Instruction 29(c) is revised to read:

29. **Payroll related expenses.**

* * * * *

(c) Other fringes (account series 4400 for I-27 and I-28A carriers and account series 5100 and accounts 5010, 5020, 5030, 5040, and 5090 for I-28B carriers) may (1) be distributed within each natural classification directly to the appropriate activity without the use of control accounts, or (2) may be accumulated in the control account of each natural classification and distributed to the activities using one of the following techniques (in order of preference):

* * * * *

CLASS I AND CLASS II MOTOR CARRIERS

OPERATING EXPENSE ACCOUNT EXPLANATIONS

Instruction 27 and 28A Carriers

The text of Note A to Account 4400—Other Fringes, is revised to read:

4400—Other Fringes.

* * * * *

NOTE A.—Carriers may (1) distribute fringe expenses within each natural classification directly to the appropriate activity without the use of control accounts, or (2) they may accumulate them in the appropriate control accounts and distribute them to the activities using one of the techniques described in Instruction 29(c).

[FR Doc.76-38363 Filed 12-29-76;8:45 am]

Title 50—Wildlife and Fisheries

CHAPTER I—U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 26—PUBLIC ENTRY AND USE

Cibola National Wildlife Refuge, Ariz, and Calif.

The following special regulation is issued and is effective on January 1, 1977.

§ 26.34 Special regulations; public access, use, and recreation; for individual wildlife refuge areas.

ARIZONA AND CALIFORNIA

CIBOLA NATIONAL WILDLIFE REFUGE

The Cibola National Wildlife Refuge, Arizona and California, is open to public access, use, and recreational activity from January 1 through December 31, 1977, inclusive, subject to the provisions of Title 50, Code of Federal Regulations, and all applicable Federal and State laws and regulations and all official signs posted in the area. The public use area totals approximately 9,463 acres and is delineated on maps available at refuge headquarters, Blythe, California, and from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and subject to the following special conditions:

(1) The use of boats, rafts or any floating devices is permitted on Cibola Lake except during the periods January 1 through March 31, 1977, inclusive, and October 1 through December 31, 1977, inclusive.

(2) Waterskiing is permitted only on the Colorado River.

(3) All motorized vehicles, including motorcycles, are permitted only on developed roads. Driving off roads or on roads closed by sign or barrier is prohibited.

(4) Carrying, possessing, or discharging firearms on the Refuge is prohibited, except that legal firearms may be used during open hunting seasons.

(5) Campfires are permitted only in designated areas. All other open fires are prohibited.

(6) Wildlife observation is permitted at Cibola Lake during the closed period. Persons are permitted to use only established routes of travel.

The provisions of this special regulation supplement the regulations which govern public access, use and recreation on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 26, and are effective through December 31, 1977.

GORDON H. HANSEN,
Acting Regional Director,
Albuquerque, New Mexico.

DECEMBER 22, 1976.

[FR Doc.76-38327 Filed 12-29-76;8:45 am]

proposed rules

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 907]

HANDLING OF NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Proposed Minimum Size Requirement

This notice proposes the extension of the minimum size requirement of 2.32 inches in diameter currently in effect for navel oranges grown in District 2 of the production area, to be effective January 21, through July 15, 1977. The proposed requirement is designed to promote orderly marketing in the interest of producers and consumers.

The proposed amendment would continue in effect regulations, pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

All persons who desire to submit written data, views, or arguments in connection with the proposal should file the same with the Hearing Clerk, Room 112A, U.S. Department of Agriculture, Washington, D.C. 20250, not later than January 13, 1977. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendment was recommended by the Navel Orange Administrative Committee, and it reflects the committee's appraisal of the need for regulation based on the current and prospective crop and market conditions. Shipments of navel oranges from District 2 of the production area are now in progress, and such shipments are regulated by size through January 20, 1977, under Navel Orange Regulation 391, which requires such navel oranges to be at least 2.32 inches in diameter. The proposed amendment, which would become effective January 21, 1977, would cnotinue in effect this size requirement. The volume and size composition of the crop of navel oranges grown in District 2 is such that ample supplies of the more desirable sizes are available to satisfy the demand in regulated channels. The proposed amendment is designed to permit shipment of ample supplies of navel oranges of acceptable sizes in the interest of both growers and consumers, and is necessary to maintain orderly marketing conditions, provide consumer satisfaction, and prevent shipment of fruit of less desirable sizes. Navel oranges failing to meet the minimum size requirement may be shipped to fresh export markets where smaller fruit is in demand, left on the trees to attain further growth, or utilized in processing. The proposed amendment is consistent with the objective of the act of promoting orderly marketing and protecting the interest of consumers.

The proposal is that Navel Orange Regulation 391 (41 FR 54197) be amended to read as follows:

§ 907.691 Navel Orange Regulation 391.

Order. (a) During the period January 21, 1977, through July 15, 1977, no handler shall handle any navel oranges grown in District 2 which are of a size smaller than 2.32 inches in diameter, which shall be the largest measurement at a right angle to a straight line running from the stem to the blossom end of the fruit: *Provided*, That not to exceed 5 percent, by count, of the navel oranges contained in any type of container may measure smaller than 2.32 inches in diameter.

(b) The terms "handler" and "handle" as used herein shall have the same meaning as is given to the respective terms in said marketing agreement and order.

Dated: December 23, 1976.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.76-38787 Filed 12-29-76;8:45 am]

[7 CFR Part 1205]

DETERMINATION OF COTTON BOARD MEMBERSHIP

Extension of Comment Period

This notice extends the period for comments to the notice, published December 14, 1976 (41 FR 54494), proposing a revision in the regulations for the determination of Cotton Board membership.

The original notice invited comments on the proposed rule through December 28, 1976. Requests have been made on behalf of interested parties to extend the comment period to January 11, 1977, to provide additional time to prepare and submit comments.

Since a large portion of the comment period fell within the holiday season, as well as the heavy volume of holiday mail, we find it advisable to extend the comment period. Accordingly, the comment period is hereby extended and interested persons may submit written data, views, or arguments in triplicate to the Hearing Clerk, Room 112, U. S. Department of Agriculture, Washington, D.C. 20250, not later than January 11, 1977.

Dated: December 23, 1976.

DONALD E. WILKINSON,
Administrator.

[FR Doc.76-38285 Filed 12-29-76;8:45 am]

FEDERAL ENERGY ADMINISTRATION

[10 CFR Part 211]

ALTERNATIVE ENTITLEMENT PROGRAM ADJUSTMENTS FOR IMPORTED RESIDUAL FUEL OIL

Proposed Rulemaking and Public Hearing

On November 3, 1976 the Federal Energy Administration (the "FEA") held a public hearing as to the March 29, 1976 amendments to its domestic crude oil allocation program (the "entitlements program"), which amendments provided for certain entitlement adjustments for residual fuel oil, both imported and domestic, sold on the East Coast. As a result of this hearing, FEA has determined that it would be appropriate to propose for public comment certain further amendments in this regard that would achieve a result similar to that of the March 29 amendments and would eliminate certain undesirable effects of the current regulations on the domestic residual fuel oil markets.

These proposed modifications to the entitlements program are presented in three alternative proposals, each of which contemplates elimination of any entitlement loss (or the so-called "reverse entitlements") for domestic residual fuel oil sold on the East Coast, an increase of the amount of entitlement benefits for imported residual fuel oil, the receipt of these benefits for imports into PAD Districts I through IV and, finally, adjustment of the amount of these import benefits to operate in conjunction with the Mandatory Oil Import Program ("MOIP") to provide an 84¢ per barrel level of effective protection for domestic refiners that refine imported crude oil as compared with product importers. FEA has determined this amount to be appropriate for purposes of the MOIP (see 41 FR 30058; July 21, 1976).

FEA has utilized three alternative proposals to present these amendments for public comment, because of the direct relationship of both the entitlements program and the MOIP to competitive differentials between domestic and foreign refiners and since the agency is now in the process of determining what

recommendations for revisions to the MOIP should be submitted to the President. FEA believes that its proposed entitlement program amendments should be considered as they would interact with what now appear to be the three most likely MOIP fee structures for imported finished products. Therefore, in this proceeding FEA is requesting that comments address both the general restructuring of the entitlements program adjustments for imported residual fuel oil and the three alternatives proposed hereby for the MOIP.

I. Background

Entitlements Program. On March 29, 1976 FEA adopted amendments to the entitlements program which were designed to mitigate potential severe competitive imbalances in the East Coast residual fuel oil market. These amendments were necessitated by the removal in December 1975 of the $2 per barrel supplemental fee on imported crude oil and by the February 1, 1976 rollback in domestic crude oil prices under the Energy Policy and Conservation Act, the combined effect of which was to place importers of finished product at an approximate $3 per barrel raw material cost disadvantage as compared with domestic refiners.

The March 29 amendments basically provided for entitlement adjustments with respect to residual fuel oil imported into or produced by a domestic refiner for sale in the Bureau of Mines East Coast Petroleum Refining District (the "East Coast market"), commencing with such imports and production in February 1976. The East Coast market includes the states within PAD District I (except for the State of West Virginia and certain counties in Western New York and Pennsylvania) and does not include Puerto Rico or the U.S. Virgin Islands. Under these amendments, imports of residual fuel oil into the East Coast market result in the issuance to the importer of record of a fractional entitlement per barrel equal to 30% of the fractional entitlement value for each barrel of crude oil included in a refiner's crude oil runs to stills in the month in which the import takes place. As to domestically refined residual fuel oil produced for sale into the East Coast market, the refiner loses 50% of the applicable crude oil fractional entitlement value for each barrel of residual fuel oil so produced in excess of the first 5,000 barrels per day (B/D). The net effect of these adjustments is to preserve for domestic refiners a theoretical crude cost advantage for production in excess of the first 5,000 B/D equal to 20% of the per barrel crude oil entitlement value for the month in question (with the per barrel entitlement value of $2.30 for October 1976, for example, this advantage was equal to 46¢).

In the preamble to the March 29 amendments FEA indicated that it was aware that the amendments adopted were very complex and would require further review after the effect of their interaction with other FEA regulations was fully understood. In this regard, FEA stated that it intended to reassess the operation and effectiveness of the entitlements program before the end of 1976. Consistent with this commitment, FEA held the November 3, 1976 public hearing and requested comments generally as to the effectiveness of these amendments and specifically as to the extent to which entitlement benefits were being passed through, the proper advantage for domestic refiners, whether different adjustments were warranted for refiners located on the Gulf Coast that market in the East Coast and the reasons for recent price increases for residual fuel oil on the East Coast. FEA received a large number of written comments in this proceeding and a substantial number of firms made oral presentations at the public hearing.

Although there was some disagreement among the participants on certain issues, there was a relatively clear consensus to the effect that FEA's March 29 amendments, insofar as they provide for an entitlement loss for sales of domestic residual fuel oil in the East Coast market, have produced significant operational and marketing difficulties for affected firms and in certain cases have resulted in inequities as between consumers of residual fuel oil, depending on where they were located.

These amendments have severely impacted on the marketing operations of certain resellers located near the inland boundary of the East Coast market, as defined in the regulations. For example, FEA has received numerous complaints that the requirement that resellers certify to a refiner that the product purchased would not be resold into the East Coast market has adversely affected the marketing activities of these resellers. In general, however, the reverse entitlement provisions have created strong disincentives to sales of domestic residual fuel oil in the East Coast. For instance, the volumes of residual fuel oil produced by Gulf Coast refiners for sale into the Western Coast of Florida have been sharply reduced. FEA has also been advised that residual fuel oil actually refined on the East Coast has been shipped to the West Coast, and product refined in the Gulf Coast has been exchanged into the West Coast, so as to not give rise to an entitlement loss for the refiner concerned. Thus, the reverse entitlement provisions seem to be having the apparently anomalous effect of encouraging shipments into a marketing area where residual fuel oil is generally in surplus and which would not constitute a normal marketing outlet for the product. An analysis of residual fuel oil prices also shows that East Coast prices are higher than those prevailing in the rest of the United States, which is primarily due to the entitlement loss experienced for domestic product sold on the East Coast.

In addition, from its experience in administering this aspect of the entitlements program, FEA is in agreement that the reverse entitlement provisions present significant administrative and enforcement problems that could only be mitigated through the promulgation of a very complex and burdensome set of regulations. For example, after promulgation of the March 29 amendments, FEA was immediately required to issue complex reporting guidelines for firms selling residual fuel oil on the East Coast in order to enable them to report properly under the regulations, and further, more complex regulations are required if the current regulatory structure is not changed. In particular, administrative and enforcement problems are posed with respect to certifications by resellers as to where their sales of residual fuel oil purchased from domestic refiners will be made and with respect to use by a refiner that is a historical marketer on the East Coast of other domestic refiners' exemptions for the first 5,000 B/D of their residual fuel oil production sold into the East Coast market. To demonstrate the disincentives to sales of domestic residual fuel into the East Coast market and the resulting increase in the use of the 5,000 B/D exemption, the following table shows, for the reporting months February through October 1976, the total volumes of residual fuel oil reported as sold in the East Coast market, the volumes thereof reported as subject to entitlement loss under these provisions, the number of firms reporting volumes sold into the East Coast and the number of firms selling 5,000 B/D or less into that market.

Sales of domestic residual fuel oil into east coast market

1976	Total domestic barrels to east coast	Total domestic barrels subject to deduction	Number of firms selling in east coast	Number of firms selling 5,000 bbl/d or less
February	15,376,971	12,948,419	26	16
March	16,948,901	13,756,372	28	14
April	15,106,579	12,028,051	30	19
May	14,090,806	11,386,706	28	17
June	13,966,394	10,130,129	30	17
July	13,676,717	9,455,383	35	23
August	16,197,088	11,830,068	34	21
September	13,463,380	8,862,944	37	21
October	17,425,589	12,960,362	39	26

FEA believes that it is especially significant that 14 of the firms included in the table did not report any volumes sold into the East Coast in the first four months shown above. Of these firms, one is located in PAD District I, nine are located in Districts II through IV, and four are located in District V.

For the reasons outlined above, FEA's preliminary determination is that the reverse entitlements rule should be eliminated and that the entitlement benefits for imports of residual fuel oil should be increased so that firms' relative competitive positions in the domestic residual fuel oil markets would be adjusted

through product import entitlement issuances alone.

The MOIP. In its analysis of these proposed amendments to the entitlements program, FEA has recognized that any proposal with respect thereto should take into account FEA's conclusion that 84¢ per barrel is the proper level of protection for domestic refiners under the MOIP and of any possible changes to the MOIP. In other words, FEA's entitlement adjustments must operate in conjunction with the MOIP to achieve the proper level of protection for domestic refiners.

On July 16, 1976 FEA issued a notice providing for a public hearing, which was held on August 19 and 20, 1976, as to tentative revisions to the MOIP that FEA proposed to recommend to the President. The July 16 notice set forth FEA's initial conclusions that the current level of protection for domestic refiners under the entitlements program (between $2 and $3 per barrel) is substantially in excess of that required to provide an effective incentive for locating incremental refinery capacity within the United States, while at the same time the level of protection under the current MOIP (between 42¢ and 58¢ per barrel, disregarding the effects of fee free allocations) is too low. In this regard, FEA has since concluded that this level of protection should approximate 84¢ per barrel for a domestic refiner refining a barrel of imported crude oil as compared with an offshore refiner.

In the July 16 notice, FEA also discussed certain aspects of the current MOIP that in effect discriminate in favor of historical marketers and increase the administrative complexities associated with administering the program. FEA accordingly announced in this notice its tentative conclusion that a revised version of the MOIP be adopted, which would increase effective protection for domestic refining in the long term, suspend the product fees during the period of continued price controls on domestic crude oil, apply the crude oil import fees in a uniform manner, separate fees and tariffs, and simplify the administration of the MOIP.

II. Alternative Amendments Proposed

Given FEA's current evaluation of possible revisions to the MOIP, for purposes of this notice of proposed rulemaking FEA has concluded that it should receive comments both on its proposed amendments to the entitlements program, as they would be implemented in conjunction with three different possible structures for the MOIP, and on the three alternatives for the MOIP as set forth herein.

FEA's initial conclusion is that the appropriate raw material cost differential between importers and domestic refiners in the East Coast residual fuel oil market should be equivalent to the level of protection determined to be proper under the MOIP, i.e., 84¢ per barrel. Therefore, FEA is proposing for public comment in this notice alternative amendments to the entitlements program that would eliminate any entitlement loss for production of domestic residual fuel oil sold in the East Coast market and that would increase the entitlement value awarded to imports of residual fuel oil, the amount of the entitlement value being fixed so as to produce the desired 84¢ per barrel advantage for domestic refiners.

Under each of these proposals the East Coast would receive additional benefits for its residual fuel oil imports, and prices for this product would be lowered to be equivalent to those in other areas. FEA felt that this particular facet of the proposal, i.e. an increase in the amount of the regional transfers into the East Coast under the entitlements program, called for coverage of residual fuel oil imports into PAD Districts II through IV, as well as District I, in order to treat all of these regions on the same basis under the program. In this regard, however, FEA wishes to distinguish its analysis from the rationale underlying its March 29 amendments, which provided entitlement benefits only for imports into the East Coast and were directed at resolving specific potential competitive problems and market distortions in that area. Imports into PAD District V, however, where domestic residual fuel oil is currently in surplus, would not be eligible for entitlement issuances. FEA invites comments as towhether coverage of imports into PAD Districts II through IV is appropriate, and especially as to whether imports into PAD District V should also be so covered.

Under Alternative Proposals No. 1 through No. 3 described in greater detail below, FEA has set forth the proposed interaction of the entitlements program with each of three possible forms for the MOIP. Under Alternative No. 1, the product import fees are suspended for the duration of the entitlements program, and the 84¢ per barrel advantage for domestic refiners is provided for by the entitlements program alone through May 1979. Under Alternative No. 2, the MOIP is left unchanged and the protection for domestic refiners is provided for initially by the entitlements program alone, and then by both the entitlements program and the MOIP, as the average level of fee payments increases as fee free allocations are phased out, and finally by the MOIP alone when the entitlements program expires. Alternative No. 3 assumes an immediate change in the MOIP to provide for the 84¢ per barrel advantage for domestic refiners by an increase in the fees on finished products and elimination of fee free allocations, together with the grant of the full crude oil entitlement value for imports of residual fuel oil.

FEA wishes to emphasize that it is seeking comments from interested parties on all three of the alternative proposals set forth below, since it has not yet made any final determination on the form that the MOIP should take in the future. In particular, FEA requests comments as to whether the proposed 84¢ per barrel advantage for domestic refiners on all products is appropriate, or whether it should be set at some lower figure solely with respect to residual fuel oil produced by established refineries in the Caribbean (including Venezuela), which have historically accounted for a significant portion of the residual fuel oil sold in the East Coast market. Since one of the purposes of the March 29 amendments was to maintain the economic viability of domestic marketers reliant on these Caribbean refineries, while providing an incentive for domestic refiners to meet any increased demand, FEA invites comments on whether any such differentiation in the level of protection as between imports from historical and non-historical suppliers of imported products is appropriate and feasible. In this regard, FEA invites comments on whether the volumes of residual fuel oil receiving this special treatment should be limited by reference to historical import volumes and, if so, what is the most appropriate manner of prescribing such historical volumes.

Alternative Proposal No. 1. Under this first alternative proposal, all import fees on finished products, including residual fuel oil, would be suspended for the duration of the period in which the entitlements program will be in effect i.e. through May 1979, and entitlement benefits would be provided to imports of residual fuel oil into PAD Districts I through IV at a level that is 84¢ lower than that earned by domestic refiners for refining a barrel of crude oil. This alternative would utilize the entitlements program (while it is in effect) to fulfill the dual regulatory objectives of crude cost equalization and incentives for domestic refining, rather than utilizing two separate regulatory programs in this period. The alternative also necessarily assumes elimination of the competitive advantages accruing to firms possessing fee free allocations under the MOIP and treats imports of residual fuel oil into PAD District I through IV on a comparable basis. For imported products other than residual fuel oil that is imported into those PAD Districts, the domestic refiners' advantage would be higher than the 84¢ per barrel, amount while the entitlements program remains in effect, and would be equal to the entitlement value for a barrel of crude oil processed by a domestic refiner.

Alternative Proposal No. 2. Under the second alternative, the current import fees on refined products would not immediately be changed, and the fee free allocations would also be retained with the present phase-out schedule. To obtain the 84¢ per barrel level of protection for domestic refiners (measured in PAD District I), the entitlements program would operate as a supplement to the MOIP to provide for this advantage through May 1979 to the extent that the 84¢ advantage is not provided for by the MOIP. Prior to a point in time in 1977 or 1978 to be determined, the full domestic advantage would be provided for under the entitlements program, when fee free allocations still exceed the volume of imports. However, FEA estimates

that sometime in the period May 1977 through April 1978 (the next allocation period for the MOIP), some importers of residual fuel oil on the East Coast will be paying the 63¢ fee on incremental volumes above those represented by fee free allocations, and that East Coast residual fuel oil prices would then commence to reflect the full payment of the fee on these incremental volumes. This would amount to effective protection for domestic refiners of 42¢ per barrel, taking into account the 21¢ per barrel fee on imported crude oil. Therefore, at this time, to obtain the 84¢ per barrel advantage with respect to these incremental volumes, the entitlements program would grant to imports of residual fuel oil a per barrel crude oil value equal to the per barrel crude oil value less 42¢ (the difference between the 42¢ per barrel effective level of protection under the MOIP and the required 84¢ advantage). After expiration of the entitlements program in May 1979, the product import fee levels would be increased to provide for the entire domestic refiners' 84¢ per barrel advantage.

FEA recognizes that, to the extent fee free allocations continue to be available, the domestic refining advantage may not exist as between certain firms; however, FEA believes that prices for imported residual fuel oil on the East Coast will reflect the cost of the marginal barrel of imports and that domestic refiners will possess the same advantage as would be possessed were no fee free allocations in effect. Under these assumptions, firms with fee free allocations would, of course, receive a special benefit as compared with their competitors equal to the amount of fees exempted. Under this alternative the level of effective protection would also necessarily differ in PAD District I, Districts II through IV, and District V, due to the applicability of fee free allocations to District I importers alone. Finally, under this option FEA would monitor the market prices for residual fuel oil imported into the East Coast, as well as the market value of import licenses, to determine at what point in time to implement its adjustments under the entitlements program and as to whether any adjustments made continued to achieve their intended purpose.

Alternative Proposal No. 3. Under FEA's third alternative proposal, the finished product import fees would be immediately increased to 84¢ per barrel, and the entitlements program would be amended simultaneously to provide for the full per barrel crude oil entitlement value for imports of residual fuel oil into PAD Districts I through IV. This alternative in essence provides for the domestic refining advantage for residual fuel oil in these Districts to be effected through the import program alone, and would require immediate amendment of the MOIP to eliminate all fee free allocations and to increase the finished product import fees to the 84¢ per barrel level.

This alternative, as is the case with Alternative No. 1, would remove the inequities inherent in the current MOIP fee free allocations, which favor historical marketers. In addition, the immediate institution of an 84¢ per barrel product import fee would tend to provide domestic refiners with more certainty as to their future status under Federal programs relating to petroleum imports, as contrasted with Alternative No. 1, under which the fees would initially be suspended and later reimposed upon expiration of the entitlements program. Finally, under this alternative the U.S. Treasury would initially realize a higher level of revenues from the import fees that would implement the domestic refining advantage.

III. Written Comment and Public Hearing Procedures

Written comments regarding the subject matter of this notice will be accepted and considered if filed by January 21, 1977. Comments should be submitted to Executive Communications, Room 3309, Federal Energy Administration, Box JW, the Federal Building, 12th and Pennsylvania Avenue, N.W., Washington, D.C. 20461. Comments should be identified on the outside of the envelope and on documents submitted to FEA with the designation "Imported Residual Fuel Oil Adjustments under Entitlements Program." Fifteen copies should be submitted.

A public hearing on the subject matter of this notice will be held beginning at 9:30 a.m., e.s.t., on January 27, 1977, in Room 2105, 2000 M Street, N.W., Washington, D.C., to receive comments from interested persons.

Any person who has an interest in the subject matter of this notice, or who is a representative of a group or class of persons which has such an interest, may make a written request for an opportunity to make an oral presentation. Such a request should be directed to Executive Communications, FEA, and must be received before 4:30 p.m., e.s.t., January 13, 1977. Such a request may be hand-delivered to Room 3309, Federal Building, 12th and Pennsylvania Avenue, N.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., e.s.t., 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 reached through January 26, 1977. Each person selected to be heard will be notified by FEA before 4:30 p.m., e.s.t., January 17, 1977, and must submit 100 copies of his or her statement to Allocation Regulation Development Office, FEA, Room 2214, 2000 M Street, N.W., Washington, D.C., before 4:30 p.m., e.s.t., on January 26, 1977.

FEA reserves the right to select the persons to be heard at this 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. This 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. 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 21, 1977. 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. 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 answer.

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

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing in accordance with the procedures stated in 10 CFR 205.9(f). FEA reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

The transcript of the public hearing will be available for public review at the FEA, Freedom of Information Library, Room 2107, Federal Building, 12th and Pennsylvania Avenue, N.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcript from the reporter.

In compliance with the requirements of the National Environmental Policy Act (42 U.S.C. 4321) FEA is reviewing the proposed amendments with respect to possible impacts on the quality of the human environment. Because it is difficult to determine accurately the possible impacts such amendments could have on fuel oil supply and tanker traffic patterns, if any, FEA is currently undertaking an environmental assessment to determine whether an environmental impact statement is needed. FEA invites public comments on any environmental aspects of this proposal. After the completion of that assessment and consideration of the public comments received, FEA will determine whether an environmental impact statement is required to be prepared. Such steps shall be completed prior to issuance of any final rule.

As required by section 7(c)(2) of the Federal Energy Administration Act of 1974, Pub. L. 93-275, a copy of this notice has been submitted to the Administrator of the Environmental Protection Agency

for his comments concerning the impact of this proposal on the quality of the environment. The Administrator had no comments.

The FEA has determined that this document contains a major proposal requiring preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A-107, and certifies that an inflation impact statement has been prepared.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159; as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133 and Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-385; Energy Policy and Conservation Act Pub. L. 94-163, as amended, Pub. L. 94-385; E.O. 11790, 39 FR 23185).

In consideration of the foregoing, it is proposed to amend Part 211 of Chapter II, Title 10, Code of Federal Regulations, as set forth below.

Issued in Washington, D.C., December 23, 1976.

MICHAEL F. BUTLER,
General Counsel.

1. Section 211.62 is amended to delete the definition of "East Coast market" and in the definitions of "eligible firm", "eligible product", and "national domestic crude oil supply ratio" as follows:

ALTERNATIVE No. 1

§ 211.62 Definitions.

* * * * *

"Eligible firm" means any firm that imports an eligible product into PAD Districts I through IV for sale or use in those Districts, that is the importer of record under a license issued pursuant to Part 213 of this chapter and that owns the eligible product at the time of importation thereof pursuant to that license. Importation for the purpose hereof shall be as defined in paragraph (j) of § 213.27 of Part 213 of this chapter.

"Eligible product" means residual fuel oil imported into PAD Districts I through IV, except that an import of residual fuel oil into United States customs territory from the U.S. Virgin Islands shall not be considered an eligible product.

* * * * *

"National domestic crude oil supply ratio" means, for a particular month, (i) the sum of (A) the volume of deemed old oil (as defined in § 211.67(b)) included in the aggregate adjusted crude oil receipts of all refiners and (B) the total volume of imports of eligible products by eligible firms for that month, multiplied by 84 cents and divided by the entitlement price for that month, decreased by (ii) a number of barrels of deemed old oil equal to the number of entitlements issuable to small refiners under § 211.67 (e), divided by (iii) the sum of the total volume of the crude oil runs to stills for all refiners for that month and the total volume of imports of eligible products by eligible firms for that month. The calculation of the national domestic crude oil supply ratio for each month shall take into account entitlement purchase or sale requirements resulting from the correction of reporting errors pursuant to paragraph (j) of § 211.67.

* * * * *

ALTERNATIVE No. 2

§ 211.62 Definitions.

* * * * *

"Eligible firm" means any firm that imports an eligible product into PAD Districts I through IV for sale or use in those Districts, that is the importer of record under a license issued pursuant to Part 213 of this chapter and that owns the eligible product at the time of importation thereof pursuant to that license. Importation for the purpose hereof shall be as defined in paragraph (j) of § 213.27 of Part 213 of this chapter.

"Eligible product" means residual fuel oil imported into PAD Districts I through IV, except that an import of residual fuel oil into United States customs territory from the U.S. Virgin Islands shall not be considered an eligible product.

* * * * *

"National domestic crude oil supply ratio" means, for a particular month, the (i) sum of (A) the volume of deemed old oil (as defined in § 211.67(b)) included in the aggregate adjusted crude oil receipts of all refiners and (B) the total volume of imports of eligible products by eligible firms for that month, multiplied by the difference between 84 cents and the then current amount of effective import fee protection for domestic refiners for imported crude oil as compared with the marginal barrel of residual fuel oil imports into PAD District I, as determined by the FEA, and divided by the entitlement price for that month, decreased by (ii) a number of barrels of deemed old oil equal to the number of entitlements issuable to small refiners under § 211.67 (e), divided by (iii) the sum of the total volume of the crude oil runs to stills for all refiners for that month and the total volume of imports of eligible products by eligible firms for that month. The calculation of the national domestic crude oil supply ratio for each month shall take into account entitlement purchase or sale requirements resulting from the correction of reporting errors pursuant to paragraph (j) of § 211.67.

* * * * *

ALTERNATIVE No. 3

§ 211.62 Definitions.

* * * * *

"Eligible firm" means any firm that imports an eligible product into PAD Districts I through IV for sale or use in those Districts, that is the importer of record under a license issued pursuant to Part 213 of this chapter and that owns the eligible product at the time of importation thereof pursuant to that license. Importation for the purpose hereof shall be as defined in paragraph (j) of § 213.27 of Part 213 of this chapter.

"Eligible product" means residual fuel oil imported into PAD Districts I through IV, except that an import of residual fuel oil into United States customs territory from the U.S. Virgin Islands shall not be considered an eligible product.

* * * * *

"National domestic crude oil supply ratio" means, for a particular month, the volume of deemed old oil (as defined in § 211.67(b)), included in the aggregate adjusted crude oil receipts of all refiners, decreased by a number of barrels of deemed old oil equal to the number of entitlements issuable to small refiners under § 211.67(e), divided by the sum of the total volume of the crude oil runs to stills for all refiners for that month and the total volume of imports of eligible products by eligible firms for that month. The calculation of the national domestic crude oil supply ratio for each month shall take into account entitlement purchase or sale requirements resulting from the correction of reporting errors pursuant to paragraph (j) of § 211.67.

* * * * *

2. Section 211.66 is revised in paragraph (j) to read as follows:

§ 211.66 Reporting requirements.

* * * * *

(j) *Monthly report by eligible firms.* On or prior to the fifth day of each month, commencing with the month of April 1976, each eligible firm that has imported an eligible product in the second month preceding that month shall file with the FEA a report certifying the following:

(1) The identity, volumes and ports of origin and entry of any eligible products imported by that eligible firm in that preceding month.

(2) That the eligible product was imported for sale in the geographic area coextensive with PAD Districts I through IV.

(3) Such other information as the FEA may request.

3. Section 211.67 is revised in subparagraph (3) of paragraph (a) to read as follows:

ALTERNATIVE No. 1

§ 211.67 Allocation of domestic crude oil.

(a) *Issuance of entitlements.*

* * *

(3) For each month, commencing with the month of February 1976, each eligible firm that has imported an eligible product in that month shall be issued a number of entitlements so as to result in the receipt of a per barrel entitlement value for its eligible product imports that is 84 cents less than would be received by a refiner (without giving effect to the provisions of § 211.67(e)) in that month with respect to inclusion of a barrel of crude oil in that refiner's crude oil runs to stills. An eligible product is imported for purposes of this paragraph (a)(3) in the month, as specified on Customs Forms 7501 or 7505, as appropriate, in which importation takes place. For purposes of this paragraph (a)(3), "importation" means that term as defined

in paragraph (j) of § 213.27 of Part 213 of this chapter.

* * * * *

ALTERNATIVE #2

§ 211.67 Allocation of domestic crude oil.

(a) Issuance of entitlements.

* * *

(3) For each month, commencing with the month of February 1976, each eligible firm that has imported an eligible product in that month shall be issued a number of entitlements so as to result in the receipt of a per barrel entitlement value for its eligible product imports that is less than that per barrel amount received by a refiner (without giving effect to the provisions of § 211.67(e)) in that month with respect to inclusion of a barrel of crude oil in that refiner's crude oil runs to stills by an amount representing the difference between 84 cents and the then current amount of effective import fee protection for domestic refiners for imported crude oil as compared with the marginal barrel of residual fuel oil imports into PAD District I, has determined by the FEA. An eligible product is imported for purposes of this paragraph (a)(3) in the month, as specified on Customs Forms 7501 or 7505, as appropriate, in which importation takes place. For purposes of this paragraph (a)(3), "importation" means that term as defined in paragraph (j) of § 213.27 of Part 213 of this chapter.

ALTERNATIVE #3

§ 211.67 Allocation of domestic crude oil.

(a) *Issuance of entitlements.*

* * *

(3) For each month, commencing with the month of February 1976, each eligible firm that has imported an eligible product in that month shall be issued a number of entitlements equal to the number of entitlements that would be received by a refiner (without giving effect to the provisions of § 211.67(e)), in that month with respect to inclusion of a number of barrels of crude oil in that refiner's crude oil runs to stills equal to the number of barrels of that eligible product imported by that eligible firm. An eligible product is imported for purposes of this paragraph (a)(3) in the month, as specified on Customs Forms 7501 or 7505, as appropriate, in which importation takes place. For purposes of this paragraph (a)(3), "importation" means that term as defined in paragraph (j) of § 213.27 of Part 213 of this chapter.

* * * * *

[FR Doc.76-38295 Filed 12-29-76;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 76-NE-38]

OXFORD, CONNECTICUT, 700-FOOT TRANSITION AREA

Extension

The Federal Aviation Administration is considering amending Section 71.181 of Part 71 of the Federal Aviation Regulations so as to extend the Oxford, Connecticut, 700-foot Transition Area.

A review of airspace requirements has determined that a one-half mile (.5) extension to the existing 700-foot transition extension area is required to provide controlled airspace for aircraft executing a new NDB approach procedure to Runway 18 at the Waterbury-Oxford Airport, Oxford, Connecticut.

Interested persons may submit such written data or views as they may desire. Communications should be submitted in triplicate to the Director, New England Region, Attention: Chief, Air Traffic Division, Department of Transportation, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803. All communications received on or before January 31, 1977 will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements may be made for informal conferences with Federal Aviation Administration officials by contacting the Chief, Operations, Procedures and Airspace Branch, New England Region.

Any data or views presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested persons at the Office of the Regional Counsel, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts.

The Federal Aviation Administration, having completed a review of the airspace requirements for the terminal area of Oxford, Connecticut, proposes the airspace action hereinafter set forth:

§ 71.181 [Amended]

1. Amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to delete the description of the Oxford, Connecticut, 700-foot Transition Area and add in lieu thereof the following description:

That airspace extending upward from 700 feet above the surface within a 7-mile radius area of the center of latitude 41°28'45" N, longitude 73°08'10" W of Waterbury-Oxford Airport, Oxford, Connecticut, and within 4.5 miles each side of the Oxford, Connecticut, Waterbury NDB (latitude 41°31'45" N, longitude 73°08'36" W) 354° bearing extending from the 7-mile radius area to 11 miles north of the NDB.

(Sec. 307(a) of the Federal Aviation Act of 1958 [72 Stat. 749; 49 U.S.C. 1348] and Sec. 6(c) of the Department of Transportation Act [49 U.S.C. 1655(c)].)

Issued in Burlington, Massachusetts, on December 9, 1976.

QUENTIN S. TAYLOR,
Director,
New England Region.

[FR Doc.76-38134 Filed 12-29-76;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 76-WE-32]

VOR FEDERAL AIRWAY

Designation

The Federal Aviation Administration (FAA) is considering an amendment to Part 71 of the Federal Aviation Regulations that would designate a VOR Federal Airway from Seal Beach, Calif., VORTAC to Hector, Calif., VORTAC via direct March, Calif., VOR and March VOR 352° magnetic radial to intercept VOR airways V8/V21 thence direct to Hector.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Western Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, P.O. Box 92007, Worldway Postal Center, Los Angeles, Calif. 90009. All communications received on or before January 31, 1977 will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue, S.W., Washington, D.C. 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

Request for copies of this Notice of Proposed Rule Making should be addressed to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, S.W., Washington, D.C. 20591. The FAA has determined that this document does not contain a major proposal requiring preparation of an Inflationary Impact Statement under Executive Order 11821 and OMB Circular A-107.

The proposed amendment would designate an airway from Seal Beach, Calif., VORTAC to Hector, Calif., VORTAC via direct March, Calif., VOR and March VOR 352° magnetic radial to intercept VOR airway V8/V21 thence direct to Hector. The proposed new airway would

avoid a high-density traffic area and reduce controller workload by relieving the controller from issuing extensive radar vectors. The proposed routing has been in operation for some time and is operationally satisfactory.

(Sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Washington, D.C., on December 22, 1976.

DAVID F. SOLOMON,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.76-38266 Filed 12-29-76;8:45 am]

[14 CFR Parts 121 and 135]

[Docket No. 16388; Notice No. 76-29]

CERTAIN LARGE AIRPLANES WITHOUT A FLIGHT RECORDER OR A COCKPIT VOICE RECORDER

Operation

The Federal Aviation Administration is considering amending Special Federal Aviation Regulation No. 33 to delete paragraph (b)(2) of section 1 of the SFAR. The effect of that provision is to require continued use and maintenance of flight recorder and cockpit voice recorder installations in existence on certain airplanes on the effective date of the SFAR.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue, SW., Washington, D.C. 20591. All communications received on or before January 31, 1977, will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Any person may obtain a copy of this notice of proposed rule making (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

SFAR No. 33 was issued on December 22, 1976, and provided immediate relief to the extent and for the reasons explained in the preamble. By virtue of section 1(b)(2) of the SFAR, airplanes of the size covered by section 1(a), that had flight recorders and cockpit voice recorders installed on the effective date of the SFAR, were not included in the relief provided by the SFAR. As mentioned in the preamble to SFAR No. 33, various attendees at the Part 135 Regulatory Review Program conference, held in Denver, Colorado, during the period November 8-11, 1976, commented on the flight recorder and the cockpit voice recorder. According to the comments, the flight and cockpit voice recorder do not enhance the safety of a particular flight, but are useful only for accident investigation purposes. The comments also noted that significant expense is incurred in the maintenance and servicing of the flight recorder and cockpit voice recorder which must be accomplished at periodic intervals. The FAA has considered the accident investigation usefulness of the flight recorder and cockpit voice recorders in relation to the maintenance and servicing expenses and has concluded that safety and the public interest do not require continued maintenance and servicing of the recorders currently installed on airplanes of the size covered by section 1(a) SFAR No. 33 during the time required for completion of rule making in the Part 135 Regulatory Review Program. Accordingly, it is proposed to amend SFAR No. by deleting paragraph (b)(2) of section 1.

(Secs. 313(a), 601, and 604 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1424), and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

In consideration of the foregoing, it is proposed to amend SFAR No. 33 by revising paragraph (b) of section 1 to read as follows:

1. *Applicability.* * * *

(b) This regulation does not apply to Convair 240, 340, and 440; Martin 202 and 404; Fairchild F-27 and FH-227; and Hawker Siddeley 748 airplanes.

The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Issued in Washington, D.C., on December 22, 1976.

RICHARD P. SKULLY,
Director, Flight Standards Service.

[FR Doc.76-38227 Filed 12-29-76;8:45 am]

DEPARTMENT OF STATE

[22 CFR Part 6a]

[Docket No. SD-127]

PRIVACY ACT POLICIES AND PROCEDURES

Proposed Systems Exemptions

The Department of State proposes to amend Title 22, Part 6a of the Code of Federal Regulations (40 FR 45606, October 2, 1975) by exempting two systems of records from certain provisions of the Privacy Act of 1974 (5 U.S.C. 552a). The two systems are the Public Affairs Records (STATE-35) and the Privacy Act Requests Records (STATE-40). The proposed regulations would exempt the two systems from the provisions of subsections (c)(3) and (4); (d); (e)(1) and (e)(4)(G), (H), and (I); and (f) of 5 U.S.C. 552a.

In the course of processing requests for access to or correction of records pursuant to the Privacy Act of 1974, it is frequently necessary to search for records in systems of records for which exemptions have been claimed pursuant to 5 U.S.C. 552a (j) or (k). When records are located in these systems, it is often necessary to prepare copies to use when consulting with agency personnel or with other agencies concerning disclosure, access, correction or review of the records in question. If records otherwise exempt pursuant to published rules should lose their exempt character when taken from such exempt systems for the purpose of compliance with the Privacy Act, the purpose of the Privacy Act in providing such exemptions would be defeated and nullified and the efficient and timely processing of Privacy Act requests would be impeded.

Written comments on the proposed exemptions should be clearly labeled "Privacy Act Exemption Comments" and sent to the Director, Foreign Affairs Document and Reference Center, Room 1239, Department of State, 2201 C Street, NW., Washington, D.C. 20520. All comments received on or before January 31, 1977 will be considered before action is taken on the amendment.

The proposed amendment would add the following new paragraph (k) to § 6a.6:

§ 6a.6 Exemptions.

* * * * *

(k) Portions of certain documents in the following systems of records are exempted pursuant to the provisions of 5 U.S.C. 552a (j) and (k) from subsections (c)(3) and (4); (d); (e)(1) and (e)(4)(G), (H), and (I); and (f) of 5 U.S.C. 552a:

Public Affairs Records—STATE-35.
Privacy Act Requests Records—STATE-40

These exemptions apply only to the extent that the records contained in the system have been obtained from other systems of records maintained by the Department of State for which exemptions from one or more provisions of the Privacy Act of 1974 have been promulgated. The exemptions claimed for these systems apply only to the records obtained from other Departmental systems and only to the extent that the records contained in such other systems have been exempted.

(5 U.S.C. 552a, as amended by Pub. L. 93-579.)

Dated: December 14, 1976.

For the Secretary of State.

LAWRENCE S. EAGLEBURGER,
Deputy Under Secretary for Management.

[FR Doc.76-38307 Filed 12-29-76;8:45 am]

INTER-AMERICAN FOUNDATION

[22 CFR Part 1004]

GOVERNMENT IN THE SUNSHINE ACT

Implementation

Notice is given that the Inter-American Foundation is considering promulgating the following rules for implementing Pub. L. 94–409 of September 13, 1976. Section 3 amends title 5, United States Code by adding after section 552a a new section 552b.

Interested persons are invited to submit written comments, suggestions or objections regarding the proposals to the Executive Officer, Inter-American Foundation, 1515 Wilson Blvd., Rosslyn, Virginia 22209. All relevant material received on or before January 31, 1977 will be considered. All written comments received will be available for public inspection at the above address only between the hours of 8:30 a.m. to 5:00 p.m. Monday through Friday (except holidays) during the mentioned 30-day period.

WILLIAM M. DYAL, Jr.,
President.

DECEMBER 22, 1976.

PART 1004—RULES FOR IMPLEMENTING OPEN MEETINGS WITHIN THE INTER-AMERICAN FOUNDATION

Sec.
1004.1 General policies.
1004.2 Definitions.
1004.3 Requirement of open meetings.
1004.4 Grounds on which meetings may be closed.
1004.5 Procedures for announcing meetings.
1004.6 Procedures for closing meetings.
1004.7 Reconsideration of opening or closing a meeting.
1004.8 Transcripts, recordings of closed meetings.

AUTHORITY: Pub. L. 91–175, 83 Stat. 821 (22 U.S.C. 290f).

§ 1004.1 General policies.

The Inter-American Foundation will provide the public with the fullest practical information regarding its decision-making processes while protecting the rights of individuals and its abilities to carry out its responsibilities.

§ 1004.2 Definitions.

The following definitions apply:

(a) The term "agency" includes any executive department, military department, government corporation, government controlled corporation or other establishment in the executive branch of the government (including the Executive Office of the President) or any independent regulatory agency, and is headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of the agency. The Inter-American Foundation is a government corporation headed by a 7-member Board of Directors, all of whom are appointed by the President with the advice and consent of the Senate, and is therefore an "agency" under these terms.

(b) The term "meeting" means the deliberation of this Board of Directors where such deliberations determine or result in the joint conduct or disposition of official IAF business.

(c) The term "member" means an individual who belongs to the IAF Board of Directors.

§ 1004.3 Requirement of open meetings.

Members shall not jointly conduct or dispose of agency business other than in accordance with this section. Except as provided in § 1004.4 every portion of every meeting of the agency shall be open to public observation.

§ 1004.4 Grounds on which meetings may be closed.

The IAF shall open every portion of every meeting of the agency for public observation except where the agency determines that such portion or portions of its meeting or the disclosure of such information is likely to:

(a) Disclose matters that are:

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and

(2) In fact properly classified pursuant to such Executive order;

(b) Relate solely to the internal personnel rules and practice of the agency;

(c) Disclose matters specifically exempted from disclosure by statute, provided that such statute:

(1) Requires that the matters be withheld from the public in such manner as to leave no discretion on the issue, or

(2) Established practical criteria for withholding or refers to particular types of matters to be withheld;

(d) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Involve accusing any person of a crime, or formally censuring any person;

(f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:

(1) Interfere with enforcement proceedings,

(2) Deprive a person of a right to a fair trial of 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 source,

(5) Disclose investigative techniques and procedures, or

(6) Endanger the life or physical safety of law enforcement personnel;

(h) Disclose information the premature disclosure of which would be likely to significantly guarantee implementation of a proposed agency action. This shall not apply in any instance where the IAF has already disclosed to the public the content or nature of its proposed action, or where the IAF is required by law to make such disclosure on its own initiative prior to taking final IAF action on such proposal;

(i) Specifically concern the IAF's issuance of a subpoena, or the IAF's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the IAF of a particular case of formal agency adjudication pursuant to the procedures in section 554, of this title or otherwise involving a determination on the record after opportunity for a hearing; or

(j) Disclose information the premature disclosure of which would be likely to significantly guarantee implementation of a proposed IAF action. This shall not apply in any instance where the IAF has already disclosed to the public the content or nature of its proposed action, or where the IAF is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal.

§ 1004.5 Procedures for announcing meetings.

(a) In the case of each meeting, the IAF shall make public, at least one week before the meeting, of the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the IAF to respond to requests for information about the meeting. Such announcement shall be made unless a majority of the Board of Directors of the IAF determines by a recorded vote that the IAF requires that such a meeting be called at an earlier date, in which case the IAF shall make public announcement of the time, place and subject matter of such meeting and whether open or closed to the public, at the earliest practical time.

(b) Immediately following the public announcement, the IAF will publish it in the FEDERAL REGISTER.

§ 1004.6 Procedures for closing meetings.

(a) The closing of a meeting shall occur only when:

(1) A majority of the membership of the IAF Board votes to take such action. A separate vote of the Board members shall be taken with respect to each Board meeting a portion or portions of which are proposed to be closed to the public pursuant to § 1004.4, or with respect to any information which is proposed to be withheld under § 1004.4. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is sched-

uled to be held no more than thirty days after the initial meeting in such series. The vote of each Board member participating in such vote shall be recorded and no proxies shall be allowed.

(2) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the IAF close such portion to the public for any of the reasons referred to in 1004.4 (e), (f) or (g), the IAF, upon request of any one of its Board members, shall take a recorded vote, whether to close such portion of the meeting.

(b) Within one day of any vote taken, the IAF shall make publicly available a written copy of such vote reflecting the vote of each member on the question and full written explanation of its action closing the entire or portion of the meeting together with a list of all persons expected to attend the meeting and their affiliation.

(c) The IAF shall announce the time, place and subject matter of the meeting at least 8 days before the meeting.

(d) For every closed meeting, the General Counsel of the IAF shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the IAF.

§ 1004.7 Reconsideration of opening or closing a meeting.

The time or place of a Board meeting may be changed following the public announcement only if the IAF publicly announces such change at the earliest practicable time. The subject matter of a meeting, or the determination of the agency to open or close a meeting, or portion of meeting, to the public, may be changed following the public announcement only if a majority of the Board of Directors determines by a recorded vote that IAF business so requires and that no earlier announcement of the change was possible, and the IAF publicly announces such change and the vote of each member upon such change at the earliest practicable time.

§ 1004.8 Transcripts, recording of closed meetings.

(a) The IAF shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public.

(b) The IAF, after review by the General Counsel shall make promptly available to the public in a place easily accessible to the public, the transcript or electronic recording of the discussion of any time on the agenda, or any item of the testimony of any witness received at the Board meeting, except for such item or items of such discussion or testimony as the IAF determines to contain information which may be withheld under § 1004.4. Copies of such transcript, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription. The IAF shall maintain a complete verbatim copy of the transcript or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any IAF proceeding with respect to which the meeting or portion was held, whichever occurs later.

[FR Doc.76-38317 Filed 12-29-76;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[24 CFR Part 880]

[Docket No. R-76-380]

SECTION 8 HOUSING ASSISTANCE PAYMENTS, NEW CONSTRUCTION

Requests for Rent Increase

On April 26, 1976, the Department published in the FEDERAL REGISTER (41 FR 17468) and made effective revised final regulations for the section 8 Housing Assistance Payments Program—New Construction, 24 CFR Part 880, under section 8 of the United States Housing Act of 1937. Miscellaneous amendments and corrections were published on September 29, 1976.

Notice is hereby given that the Department is proposing to amend these regulations by revising § 880.209(b).

The purpose of the proposed amendment is to revise the circumstances and limitations under which HUD may approve a request for a rent increase submitted by an Owner with the Final Proposal or architect's certification.

The proposed amendment would allow HUD to approve such requests for rent increase if the need for increased rents results from circumstances beyond the developer's control and if rents were not a deciding factor in competitive selection. The principal change is deletion of the limitation in the present regulations which requires that rents may not exceed those rents proposed by the Owner in his Preliminary Proposal. The requirements that the requested rents be determined reasonable and not exceed the Fair Market Rent limitation would remain the same.

Interested parties are invited to submit written comments, suggestions and objections to the proposal amendment on or before January 31, 1977.

Submittals should refer to the above Docket Number and date of publication and be addressed to the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. All relevant material will be considered before adoption of the final rule. A copy of each communication will be available for public inspection during regular business hours at the above address.

A Finding of Inapplicability regarding the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A Finding of Inapplicability of inflation impact statement requirements has also been made in accordance within HUD procedures. A copy of these findings will be available for public inspection during regular business hours at the address set forth in the preceding paragraph. It is therefore proposed to amend title 24 of the Code of Federal Regulations by revising § 880.209 (b) to read as follows:

§ 880.209 Final proposals.

* * * * *

(b) *Consistency with preliminary proposal.* The Final Proposal shall be consistent with the HUD approved Preliminary Proposal. Any material deviations from the Preliminary Proposal in the Final Proposal will cause reconsideration by HUD of such Final Proposal and may result in its rejection. However, the Owner may request, with the submission of his Final Proposal or architect's certification, an increase in Contract Rents over those approved in the Preliminary Proposal; and HUD, in its discretion, may approve such an increase if HUD determines that (1) the need for increased rents is due to factors beyond the Owner's control which he could not have reasonably foreseen; (2) the requested rents are reasonable (see § 881.108(b)); (3) (i) there was sufficient contract authority to select all approvable Preliminary Proposals, or (ii) it is specifically determined by HUD, based upon the record of the ranking of all the approvable Proposals, that the Preliminary Proposal clearly would have been selected even without regard to any weight being given by reason of its rents; and (4) the requested rents do not exceed the Fair Market Rent limitations in effect at the time of submission of the Preliminary Proposal (see § 880.108(a)). The Owner shall submit documentation justifying his request and evidencing the need for increased rents.

(Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)); sec. 5(b) of the United States Housing Act of 1937 (42 U.S.C. 1437c(b)); sec. 8 of the United States Housing Act of 1937 (42 U.S.C. 1437(f).)

NOTE.—It is hereby certified that the economic and inflationary impacts of this regulation have been carefully evaluated in accordance with OMB Circular A-107.

Issued at Washington, D.C., December 23, 1976.

JOHN T. HOWLEY,
Acting Assistant Secretary for Housing — Federal Housing Commissioner.

[FR Doc.76-38346 Filed 12-29-76;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 221]

IRRIGATION OPERATION AND MAINTENANCE CHARGES

Basic and Other Water Charges; Fort Hall Irrigation Project, Idaho

These proposed regulations are being considered for issuance under the authority delegated to the Commissioner of Indian Affairs by the Secretary of the Interior in 230 DM 1 and redelegated by the Commissioner to the Area Director 10 BIAM 3.

Notice is hereby given that it is proposed to modify § 221.32 of Part 221, Subchapter T, Chapter I, of Title 25 of the Code of Federal Regulations by changing the basic rates for annual operation and maintenance assessments on the Fort Hall Project for Calendar Year 1977 and subsequent years.

The purpose of this modification is to increase the assessment rates to cover the actual operation and maintenance costs based on the previous year's operating experience and the anticipated program of work.

The public is welcome to participate in the rule making process of the Department of the Interior. Accordingly, interested persons may submit written comments, views or arguments with respect to the proposed rates to the Area Director, Portland Area Office, Bureau of Indian Affairs, Post Office Box 3785, Portland, Oregon 97208, on or before January 31, 1977.

Section 221.32 of Chapter I, Title 25 of the Code of Federal Regulations is revised to read as follows:

§ 221.32 Basic and other water charges.

(a) In compliance with the provisions of the Acts of March 1, 1907 (34 Stat. 1024), and the August 31, 1954 (68 Stat. 1026), the annual basic water charges for the operation and maintenance of the lands in non-Indian ownership and Indian-owned lands leased to a non-Indian or a non-member of the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation, Idaho, to which water can be delivered for irrigation are hereby fixed for the Calendar Year 1977 and subsequent years until further notice as follows:

(1) Fort Hall Project: Basic rate; $12.50 per acre.

(2) Michaud Division, Fort Hall Project: Basic rate; $16.75 per acre. Additional rate for sprinkler irrigation when pressure is supplied by the project; $6.25 per acre.

(3) Minor Units, Fort Hall Reservation: Basic rate; $10.00 per acre.

(b) In addition to the foregoing charges, there shall be collected a minimum charge of $5 for the first acre or fraction thereof on each tract of land for which operation and maintenance bills are prepared. The minimum bill issued for any area will, therefore, be the basic rate per acre plus $5.

DOYCE L. WALDRIP,
Acting Area Director.

[FR Doc.76-38319 Filed 12-29-76;8:45 am]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Parts 1 and 7]

INCOME TAX

Temporary regulations relating to definition of qualified possession source investment income for purposes of the Puerto Rico and possession tax credit; Invitation for comments; Public hearing

Temporary regulations under section 936 of the Internal Revenue Code of 1954 relating to the definition of qualified possession source investment income for purposes of the Puerto Rico and possession tax credit are published in the Rules Section in today's FEDERAL REGISTER (see FR Doc. 76-38379). As indicated, such regulations are temporary and it is contemplated that they will be replaced by permanent regulations. To assist in the development of the permanent regulations, the Internal Revenue Service would appreciate receiving views from members of the public, by way of written comments and suggestions and also oral comments at a public hearing, as to the desirability of including in the final regulations the substance of the temporary regulations. Such written comments or suggestions should be submitted in writing (preferably 6 copies) to the Commissioner of Internal Revenue Attention: CC:LR:T, Washington, D.C. 20224, by February 9, 1977.

A public hearing to receive oral comments with respect to the desirability of including the substance of the temporary regulations in final regulations will be held on February 23, 1977, beginning at 10 a.m. in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, D.C. 20224.

To the extent pertinent, the rules of § 601.601 (a) (3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to such public hearing. Copies of these rules may be obtained by a request directed to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, or by telephoning (Washington, D.C.) 202-566-3935. Under such § 601.601 (a) (3), persons who have submitted written comments or suggestions by February 9, 1977, and who desire to present oral comments at the hearing on such temporary regulations, should submit an outline of the comments to be presented at the hearing and the time they wish to devote to each subject by February 9, 1977. Such outlines should be submitted to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224. Under § 601.601 (a) (3) (26 CFR Part 601) each speaker will be limited to 10 minutes for an oral presentation exclusive of time consumed by questions from the panel for the Government and answers thereto.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of this agenda will be available free of charge at the hearing, and information with respect to its contents may be obtained on February 22, 1977, by telephoning (Washington, D.C.) 202-566-3935.

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

[FR Doc.76-38380 Filed 12-27-76;4:49 pm]

DEPARTMENT OF THE INTERIOR

Geological Survey

[30 CFR Part 211]

Bureau of Land Management

[43 CFR Part 3041]

SURFACE MANAGEMENT COAL MINING OPERATING REGULATIONS

Steep Slopes

On May 17, 1976, a complete revision of 30 CFR Part 211, Coal Mining Operating Regulations, and a new 43 CFR Part 3041, Surface Management, were published in the FEDERAL REGISTER (41 FR 20252) and were made effective on that date.

At that time, it was noted in the preamble to the rulemaking that specific performance standards relating to operations conducted on land configurations commonly referred to as "steep slopes" would be prepared and published as proposed rulemaking amendments to the regulations promulgated at that time.

The following proposed rulemaking has been prepared for this purpose, and are published for public comment at this time.

Interested persons are invited to submit their comments in writing on the proposed rulemaking on or before January 24, 1977. Comments on the proposed amendments should be submitted to the Director, United States Geological Survey, The National Center, Reston, Virginia 22092; and to the Director, Bureau of Land Management (210), Washington, D.C. 20240.

It is proposed that 30 CFR Part 211 and 43 CFR Subpart 3041 be amended as follows:

§ 3041.0-6 [Amended].

§ 211.2 [Amended].

1. The provisions of 43 CFR 3041.0-6 and 30 CFR 211.2 are amended by insertion of the following language as a new subparagraph 3041.0-6 (11) and 211.2 (mm), respectively, and the renumbering of succeeding subparagraphs accordingly:

Steep Slopes. As used herein, the term 'steep slopes' shall refer to a land surface

configuration of a slope of 20° or greater, but shall not apply to flat or gently rolling terrain, nor to occasional such slopes which may be encountered in an operation in which mining proceeds in predominantly flat or gently rolling terrain.

§ 3041.3–2 [Amended]

§ 211.40 [Amended]

2. The provisions of 43 CFR 3041.2–2(f) and 30 CFR 211.40(a) are amended by the insertion of the following language as a new subparagraph 3041.2–2(18) and 211.40(a)(18), respectively:

In surface coal mining operations conducted on steep slopes,

(__) No spoil material waste, or debris may be placed on the slope below the bench or outslope used in mining, except that a variance may be granted in accordance with 30 CFR 211.74 to allow for soil or other overburden material from a cut to be placed on the downslope in a limited manner. Spoil material in excess of that required for reclamation to approximate original contour may be permanently stored in spoil storage areas such as head of hollow fill. Approximate original contour reclamation procedures are not to exclude such reclamation methods or techniques in which a terrace of some form remains or where the original bench is located to permit more effective utilization of the land. Any such placement may occur only in accordance with all other requirements of this part, including but not limited to those relating to stability, prevention of erosion, and approximate original contour.

(__) Head of hollow fill or other permanent spoil storage areas may be approved as part of the mining plan and shall be graded, compacted, stabilized, and shaped in a way to protect against slides, subsidence, erosion, and water pollution. Head of hollow fill shall normally be placed with a french drain constructed through the complete height of the fill, the drain to be constructed of coarse material that will permit water to flow through.

(__) The land above the top of a highwall may not be disturbed except to facilitate compliance with the performance standards, and disturbance of the land proposed for above the highwall shall be included as part of the approved mining plan.

§ 3041.8 [Amended]

3. The provisions of 43 CFR 3041.8 are amended by the striking from subparagraph 3041.8(a)(1) of the language "(12) or (13) of this subpart" from the first sentence thereof, and the substitution therefor of the following language: "(12), (13) or (18) of this subpart".

§ 211.74 [Amended]

4. The provisions of 30 CFR 211.74 are amended by the striking from subparagraph 211.74(a)(1) of the language "(12), or (13) of this Part" from the first sentence thereof, and the substitution therefor of the following language: "(12), (13) or (18) of this Part".

Dated: DECEMBER 23, 1976.

W. W. LYONS,
Deputy Under Secretary.

[FR Doc. 76–38318 Filed 12–29–76;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 663–8]

STATE OF MARYLAND

Proposed Revision of Implementation Plan

On October 14, 1975, the State of Maryland submitted to the Regional Administrator, EPA Region III, a request for a variance from the air pollution regulations governing Maryland Area I [Maryland portion of the Cumberland-Keyser Interstate Air Quality Control Region (AQCR)]. The State asked that this variance request be reviewed and processed as a revision to the Maryland State Implementation Plan for the attainment and maintenance of national ambient air quality standards.

The variance would exempt the Kelly-Springfield Tire Company of Cumberland, Maryland from compliance with Maryland Regulations 10.03.36.02C(2) [Control and Prohibition of Visible Emissions] and 10.03.36.03B(2)c(3) [Control of Particulate Matter from Fuel Burning Equipment] until September 24, 1977, contingent on the purchase of high-efficiency (99%) electrostatic precipitators (ESP). The exception request further permits Kelly-Springfield to burn coal in boilers No. 61 and No. 62 immediately after the boilers are converted to dual firing capability (coal or oil) and temporarily equipped with refurbished medium efficiency mechanical dust collectors. Prior to this request, the Kelly-Springfield company was burning 1.0% sulfur residual oil.

The State of Maryland and the Kelly-Springfield Company justify the variance request with the following:

1. Kelly-Springfield's Cumberland plant represents a substantial economic factor in the Western Maryland area.

2. The competitive position of the Cumberland plant is in jeopardy because of the increase in the cost of fuel oil. The uncertainty of foreign fuel oil supply creates a continuous production threat to the company.

3. Conversion from fuel oil to Western Maryland coal as a primary fuel will significantly reduce manufacturing costs and in turn stimulate the Western Maryland economy.

4. An analysis by the Company's consultant indicates that the impact of emissions into the ambient air from the coal fired boilers during the two year conversion period may not significantly affect ambient air particulate concentrations.

The State of Maryland submitted proof that a public hearing was held on July 25, 1975 in Cumberland, in accordance with the requirements of 40 CFR 51.4.

A preliminary technical review performed by EPA indicates that if the variance request were approved, the annual particulate concentration levels would increase in an AQCR that is presently not attaining the annual national ambient air quality standard for particulates. Furthermore, if certain meteorological conditions occur, ambient particulate concentration levels could increase to a point at which human health could be imminently and substantially endangered. For these reasons EPA informed Maryland in March, 1976 that the variance request could not be approved. No withdrawal action has been taken by the State.

On September 16, 1976, a Notice of Violation under section 113(a) of the Clean Air Act was issued to the Kelly-Springfield Company because of its violations of the Maryland SIP. A conference was held with Kelly-Springfield in accordance with section 110(a)(4) of the Clean Air Act. The Company could be the subject of future enforcement action under section 113(a) if it is found to still be in violation of the federally-approved SIP regulations cited in the Notice of Violation.

The public is invited to submit comments on whether the variance request submitted by the State of Maryland should be approved or disapproved as a revision to the Maryland State Implementation Plan. Only those comments received on or before January 31, 1977 will be considered.

The Administrator's decision to approve or disapprove this proposed SIP revision will further be based on whether it meets the requirements of section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of Implementation Plans.

Copies of the proposed SIP revision and the analysis on which it is based are available for public inspection during normal business hours at the following locations:

United States Environmental Protection Agency, Region III, Curtis Building, Tenth Floor, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106. ATTN: Mr. Harold Frankford.

Maryland Bureau of Air Quality and Noise Control, 201 West Preston Street, Baltimore, Maryland 21201. ATTN: Mr. George Ferreri.

Public Information Reference Unit, Room 2922—EPA Library, United States Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460.

All comments should be submitted to:

Mr. Howard Heim (3AH10), Chief, Air Programs Branch, Air and Hazardous Materials Division, U.S. Environmental Protection Agency, Region III, Curtis Building, Tenth Floor, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106. ATTN: AH007MD.

(42 U.S.C. 1857c–(5))

Dated: December 14, 1976.

DANIEL L. SNYDER III,
Regional Administrator.

[FR Doc.76–38236 Filed 12–29–76;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[43 CFR Part 3041]

SURFACE MANAGEMENT COAL MINING

Operating Regulations

CROSS REFERENCE: For a document issued by Geological Survey and the Bureau of Land Management affecting Title 43, Part 3041, see FR Doc. 76–38318 appearing under Department of the Interior, Geological Survey in the Proposed Rules section of this issue.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social and Rehabilitation Service

[45 CFR Part 206]

APPLICATION, DETERMINATION OF ELIGIBILITY AND FURNISHING ASSISTANCE—PUBLIC ASSISTANCE PROGRAMS

Dissemination of Information on Public Assistance

The Administrator, Social and Rehabilitation Service, with the approval of the Secretary of Health, Education, and Welfare, proposes to amend § 206.10 of Part 206, Chapter II, Title 45 of the Code of Federal Regulations.

The purpose of the amendment is to make clear that information concerning the public assistance programs under Titles I, IV–A, X, XIV, XVI (AABD), and XIX of the Social Security Act must be furnished not only to applicants but to any individual who seeks such information.

The basis of the amendment is the Department's belief that clarification is needed of the intent of the current regulation to prevent further misinterpretation by State and local agencies and to ensure that any individual who wishes information receives it.

The proposed amendment is responsive to reports from recipient group representatives that some State and local agencies have interpreted the furnishing of information provision under § 206.10 (a)(1) to mean that only individuals who have made a signed application for public assistance shall be given information about the programs. Thus, the agencies have not made printed or oral information about the programs available to persons seeking such information unless they are, in fact, applicants as defined in § 206.10(b)(1).

The Department's intent in the current regulation is that information about the financial assistance and medical assistance programs be made available to all individuals, whether they are actual or potential applicants or merely individuals seeking information.

Accordingly, § 206.10(a)(1) and (2)(i) is being revised to specify that information concerning the program shall be provided to any individual who requests it, and applicants and all individuals who inquire about the programs shall be informed of the eligibility requirements and their rights and obligations under the programs.

Prior to the adoption of the proposed amendments, consideration will be given to written comments, suggestions, or objections thereto received by the Administrator, Social and Rehabilitation Service, Department of Health, Education, and Welfare, P.O. Box 2382, Washington, D.C. 20013, on or before February 19, 1977. In order to assure prompt handling of comments, please refer to "PCO–153–P." Agencies and organizations are requested to submit their comments in duplicate.

Comments will be available for public inspection, beginning approximately 2 weeks after publication, in Room 5225 of the Department's offices at 330 C Street, SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (area code 202–245–0950).

Answers to specific questions may be obtained by calling Miss Helen Hamilton, 202–245–1721.

(Section 1102, 49 Stat. 647 (42 U.S.C. 1302).)

(Catalog of Federal Domestic Assistance Program No. 13.761, Public Assistance—Maintenance Assistance (State Aid) and Program No. 13.714, Medical Assistance Program.)

The Social and Rehabilitation Service has determined that this document does not require preparation of an Inflationary Impact Statement under Executive Order 11821 and OMB Circular A–107.

Dated: December 6, 1976.

ROBERT FULTON,
Administrator, Social and Rehabilitation Service.

Approved: December 22, 1976.

MARJORIE LYNCH,
Acting Secretary.

Part 206, Chapter II, Title 45 of the Code of Federal Regulations is amended by revising paragraph (a)(1) and (a)(2)(i) of § 206.10 to read as set forth below:

§ 206.10 Application, determination of eligibility and furnishing of assistance.

(a) *State plan requirements.* A State plan under title I, IV–A, X, XIV, XVI, or XIX of the Social Security Act shall provide that:

(1) Each individual wishing to do so shall have the opportunity to apply for assistance under the plan without delay and information concerning the program shall be provided to any individual who requests it. Under this requirement:

(i) Each individual may apply under whichever of the State plans he chooses;

(ii) The agency shall require a written application, signed under a penalty of perjury, on a form prescribed by the State agency, from the applicant himself, or his authorized representative, or, where the applicant is incompetent or incapacitated, someone acting responsibly for him;

(iii) An applicant may be assisted, if he so desires, by an individual(s) of his choice (who need not be a lawyer) in the various aspects of the application process and the redetermination of eligibility and may be accompanied by such individual(s) in contacts with the agency and when so accompanied may also be represented by them; and

(iv) (A) Individuals found eligible for financial assistance under a State plan for title I, IV–A, X, XIV, or XVI (AABD) are eligible for medical assistance without a separate application.

(B) Aged, blind, or disabled individuals found eligible for Supplementary Security Income benefits under title XVI of the Act or for State supplemental payments are eligible for medical assistance without a separate application to the extent provided for in agreements between the individual's State of residence and the Social Security Administration; and

(C) Individuals not found eligible as specified in paragraph (a)(1)(iv) (A) or (B) of this section must file a separate application for medical assistance.

(v) (A) For assistance under title XIX, the agency shall request on the application the social security number (SSN) of each individual (including children) for whom assistance is requested. Under this requirement, the agency shall advise the applicant whether disclosure of such number is mandatory or voluntary, by what statute or other authority such number is requested, and what uses will be made of it. Disclosure of the SSN may be made mandatory only if the State had in existence and operating prior to January 1, 1975, a system of welfare or Medicaid records for which disclosure of the SSN was required, by statute or regulation, in order to verify the identity of the individual. If any individual cannot provide a SSN either because he has not been issued one or he does not know his SSN, and wishes to secure one, the agency shall assist him in filling out an application for such number on such forms and under such procedures as may be required by the Social Security Administration (SSA) and shall transmit it to the SSA. Under this requirement, the agency shall also obtain such evidence as may be required under SSA regulations to establish the age, citizenship or alien status, and true identity of such applicant, and, where the case record attests that a previous social security number has been issued, request verification of the number by SSA. Where disclosure of the SSN is voluntary, no individual who is otherwise eligi-

ble shall be denied assistance because of failure or refusal to disclose or apply for a SSN, and the individual shall be so informed.

(B) The provisions of paragraph (a) (1) (v) (A) of this section shall apply to title IV–A for the period prior to July 1, 1975.

(C) The agency shall not deny or delay assistance to an eligible individual pending issuance by SSA or verification by the agency of his SSN.

(2) (i) Applicants and all individuals who inquire about the program shall be informed about the eligibility requirements and their rights and obligations under the program. Under this requirement individuals are given information in written form, and orally as appropriate, about coverage, conditions of eligibility, scope of the program, and related services available, and the rights and responsibilities of applicants for and recipients of assistance. Specifically developed bulletins or pamphlets explaining the rules regarding eligibility and appeals in simple, understandable terms, are publicized and available in quantity.

* * * * *

[FR Doc.76-38209 Filed 12-29-76;8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[46 CFR Part 4]

[CGD 76-149]

MARINE INVESTIGATION REGULATIONS

Proposed Coast Guard-National Transportation Safety Board Marine Casualty Investigations

The Coast Guard is proposing an amendment to the Marine Investigation Regulations in 46 CFR Part 4 to include a new Subpart 4.40, Coast Guard-National Transportation Safety Board Marine Casualty Investigation. The National Transportation Safety Board (Board) is proposing identical regulations, as an amendment to 49 CFR Part 850 on page 56837 of this issue of the FEDERAL REGISTER.

Interested parties are invited to participate in the proposed rulemaking by submitting written data, views, or arguments to the Commandant (G-CMC/81), U.S. Coast Guard, Washington, D.C. 20590. Each person submitting a comment should include his name, address, identify the notice (CGD 76-124), and give reasons in support of his comment. Comments received before March 1, 1977, will be considered before final action is taken on this proposal. Copies of all written comments received will be available for examination in Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street, SW., Washington, D.C. The proposal may be changed in light of the comments received.

No public hearing is planned, but one may be held at a time and place to be set in a later notice in the FEDERAL REGISTER if requested in writing by an interested person raising a genuine issue and desiring to comment orally at a public hearing.

This proposed amendment would implement a requirement of § 304 of the Independent Safety Board Act of 1974 (Pub. L. 93–633, 88 Stat. 2166, 49 U.S.C. 1901 et seq.), (The Act). That requirement is as follows:

The Board shall—

(1) Investigate or cause to be investigated (in such detail as it shall prescribe), and determine the facts, conditions, and circumstances and the cause or probable cause or causes of any * * *

(e) Major marine casualty, except one involving only public vessels, occurring on the navigable waters or territorial seas of the United States, or involving a vessel of the United States, in accordance with regulations to be prescribed jointly by the Board and the Secretary of the Department in which the Coast Guard is operating. Nothing in this subparagraph shall be construed to eliminate or diminish any responsibility under any other Federal statute of the Secretary of the Department in which the Coast Guard is operating: *Provided*, That any marine accident involving a public vessel and any other vessel shall be investigated and the facts, conditions, and circumstances, and the cause or probable cause determined and made available to the public by either the Board or the Secretary of the Department in which the Coast Guard is operating * * *

Furthermore, under Section 304, the Board may request that a designee of the Secretary of Transportation make the investigation, except where Federal Government misfeasance or nonfeasance is alleged, and report the findings to the Board so that it can determine cause or probable cause.

This proposal contains the procedures under which the Board and the Coast Guard would investigate, under the Act, major marine casualties, as defined in § 4.40–5 of this proposal, and casualties involving a public and non-public vessel. Under § 4.40–15 of this proposal, the Board would conduct its inquiries under the existing Board rules of practice for surface transportation accident hearings in 49 CFR Part 845.

Under § 4.40–25 of this proposal, the Coast Guard may conduct the fact-finding inquiry if requested by the Board when the Board does not conduct an inquiry. Under § 4.40–30 of this proposal, the Coast Guard would use the existing marine casualty investigation procedures in 46 CFR Part 4, which are for 46 U.S.C. 239 investigations. The Board may designate a person or persons to participate in an inquiry under 46 CFR Subpart 4.07 or 4.09.

Public vessel is defined under proposed § 4.40–5 as a vessel owned by the United States, except one to which 46 U.S.C. 363 applies. 46 U.S.C. 363 applies to vessels owned and operated by the Department of Commerce. These vessels are controlled by the Federal Maritime Administration of the Department of Commerce and are chartered for commercial use. If one of these vessels were involved in a casualty, it would be, for the purposes of these proposed regulations, a vessel of the United States as defined under proposed § 4.40–5(g).

The Coast Guard and the Board intend to annually review these regulations. Conforming amendments to the existing rules in 46 CFR Part 4 would be promulgated by the Coast Guard when the procedures of the Coast Guard and the Board are published as rules.

In consideration of the foregoing, it is proposed to amend Part 4 of Title 46, Code of Federal Regulations, by adding a new Subpart 4.40 to read as follows:

Subpart 4.40—Coast Guard—National Transportation Safety Board Marine Casualty Investigations

Sec.

4.40–1 Purpose and applicability.
4.40–5 Definitions.
4.40–10 Preliminary fact-finding by the Coast Guard.
4.40–15 Marine casualty inquiry by the Board.
4.40–20 Cause or probable cause determinations from Board inquiry.
4.40–25 Coast Guard marine casualty inquiry for the Board.
4.40–30 Procedures for Coast Guard inquiry.
4.40–35 Records of the Coast Guard and the Board.

AUTHORITY: 5 U.S.C. 552, 14 U.S.C. 2, 633, 46 U.S.C. 239, 375, 416, 49 U.S.C. 1655(b)(1), 1903(a)(1)(E); 49 CFR 1.46(b).

Subpart 4.40—Coast Guard—National Transportation Safety Board Marine Casualty Investigations

§ 4.40–1 Purpose and applicability.

This subpart prescribes the joint regulations of the National Transportation Safety Board and the Coast Guard for the investigation of—

(a) A major marine casualty, as defined under § 4.40–5(e), that occurs on the navigable waters or territorial seas of the United States or that involves a vessel of the United States, except one involving only public vessels; and

(b) A casualty involving public and non-public vessels.

§ 4.40–5 Definitions.

As used in this subpart:

(a) "Act" means Title III of Public Law 93–633, the Independent Safety Board Act of 1974, (49 U.S.C. 1901, et seq.).

(b) "Board" means the National Transportation Safety Board.

(c) "Chairman" means the Chairman of the National Transportation Safety Board.

(d) "Commandant" means the Commandant of the Coast Guard.

(e) "Major marine casualty" means a casualty involving a vessel, other than a public vessel, that results in—

(1) The loss of six or more lives;

(2) The loss of a mechanically propelled vessel of 100 or more gross tons;

(3) Property damage initially estimated as $500,000 or more; or

(4) Serious threat, as determined by the Commandant and concurred in by the Chairman, to life, property, or the environment by hazardous materials.

(f) "Public vessel" means a vessel owned by the United States, except a vessel to which the Act of October 25,

1919, c.82, (41 Stat. 305, 46 U.S.C. 363) applies.

(g) "Vessel of the United States" means a vessel—

(1) Documented or required to be documented under the laws of the United States;

(2) Owned in the United States; or

(3) Owned by a citizen or resident of the United States and not registered under a foreign flag.

§ 4.40–10 Preliminary fact-finding by the Coast Guard.

(a) The Coast Guard conducts the preliminary fact-finding of marine casualties.

(b) The Commandant determines from the preliminary fact-finding whether—

(1) The casualty is a major marine casualty; or

(2) The casualty involves public and non-public vessels.

(c) The Commandant notifies the Board of a casualty described in paragraph (b) (1) or (2) of this section.

§ 4.40–15 Marine casualty inquiry by the Board.

The Board may conduct an inquiry under the Act for any major marine casualty or any casualty involving public and non-public vessels under the Board's rules of practice for surface transportation accident hearings in 49 CFR Part 845.

§ 4.40–20 Cause or probable cause determinations from Board inquiry.

After an inquiry conducted by the Board under § 4.40–15, the Board determines cause or probable cause and issues a report of that determination.

§ 4.40–25 Coast Guard marine casualty inquiry for the Board.

(a) If the Board does not conduct an inquiry under § 4.40–15 and if requested by the Board, the Coast Guard may conduct an inquiry under the Act unless there is an allegation of Federal Government misfeasance or nonfeasance.

(b) The Board requests the Coast Guard to conduct an inquiry under paragraph (a) within 48 hours of receiving notice under § 4.40–10(c).

(c) The Coast Guard advises the Board within 24 hours of receipt of a request under paragraph (b) whether the Coast Guard will conduct an inquiry under the Act.

§ 4.40–30 Procedures for Coast Guard inquiry.

(a) The Coast Guard conducts an inquiry under § 4.40–25 using the procedures in 46 CFR 4.01–1 through 4.23–1.

(b) The presiding Coast Guard officer for an inquiry conducted under 46 CFR Subpart 4.07 or 4.09 has the following powers:

(1) To open, continue, or adjourn the inquiry.

(2) To issue subpoenas.

(3) To call witnesses and administer oaths.

(4) To determine the admissibility of and to receive evidence and to regulate the course of the hearing.

(5) To rule on procedural requests and similar matters.

(6) To take any other action necessary for the orderly conduct of the inquiry.

(c) The Board may designate a person or persons to participate in every phase of an inquiry, including on scene investigation, that is conducted under the procedures in 46 CFR Subpart 4.07 or 4.09.

(d) Consistent with paragraph (b), the person or persons designated by the Board under paragraph (c) may:

(1) Make recommendations about the scope of the inquiry.

(2) Call and examine witnesses.

(3) Submit or request additional evidence.

(e) The Commandant reports to the Board the facts, conditions, and circumstances of a major marine casualty determined under an inquiry under paragraph (a).

(f) The Board, under the Act, determines cause or probable cause of a major marine casualty using the report of the Commandant under paragraph (d), and any additional evidence the Board may acquire under its own authority.

(g) An inquiry under this section is both an inquiry under the Act and under R.S. 4450 (46 U.S.C. 239) and the record of an inquiry under this section is also the report of the facts for:

(1) A report of investigation under 46 CFR 4.07–10; or

(2) A record of proceedings under 46 CFR 4.09–20.

§ 4.40–35 Records of the Coast Guard and the Board.

(a) Records of the Coast Guard made under § 4.40–30 are available to the public under 49 CFR Part 7.

(b) Records of determinations of cause or probable cause made by the Board under §§ 4.40–20 and 4.40–30 are available to the public under 49 CFR Part 801.

(5 U.S.C. 552, 14 U.S.C. 2, 633, 46 U.S.C. 239, 375, 416, 49 U.S.C. 1655(b)(1), 1903(a)(1)(E); 49 CFR 1.46(b).)

Dated: December 23, 1976.

O. W. SILER,
Admiral, U.S. Coast Guard Commandant.

[FR Doc.76-38144 Filed 12-23-76;12:23 pm]

Office of Pipeline Safety Operations

[49 CFR Parts 192 and 195]

[Docket No. OPSO–39, Notice 76–3]

PIPELINE OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Advance Notice of Proposed Rulemaking

The materials Transportation Bureau (MTB) is considering the issuance of additional standards governing occupational safety and health for the protection of employees engaged in the construction, operation, and maintenance of pipeline facilities used in the transportation of hazardous materials in or affecting interstate or foreign commerce. The impact of facility design on employee protection will be considered in the issuance of any such standards. This advance notice of proposed rulemaking provides the general public an opportunity for early participation in the rulemaking process.

Parts 192 and 195 now provide occupational safety and health protection in some areas, but the coverage is not complete. The anticipated standards would apply to working conditions and work places for pipeline system employees who are directly involved in the physical transportation or storage of hazardous gas and liquid materials. For example, this includes such areas and facilities as compressor and pump stations, pipe and appurtenances along the right of way, meter stations, storage facilities, and LNG plants. It would not include buildings which are not directly used in the physical transportation or storage of a hazardous material.

MTB is exploring different approaches it can take to define those areas where MTB standards apply, so that employers and employees of the pipeline industry will better understand the respective responsibilities of MTB and the Occupational Safety and Health Administration (OSHA) respecting employee safety and health. The application of MTB standards could be defined to apply either geographically, functionally, or operationally. The perimeter of MTB coverage could also be identified by utilizing classifications of facilities and equipment. MTB invites comments on this matter.

MTB also invites public comment on the following matters of concern:

1. Identification of occupational safety and health areas that are not covered by MTB's existing regulations.
2. Identification of areas where MTB's existing regulations are not adequate for occupational safety and health, and
3. Discussion of means to correct these deficiencies.

Specific advice and recommendations are requested to identify:

1. Standards adopted by the OSHA which may have significant application to working conditions on pipelines;
2. OSHA standards which should be adopted by MTB without change;
3. OSHA standards which should be revised in whole or in part before their adoption by MTB for the pipeline industry;
4. OSHA standards which should not be adopted by MTB for the pipeline industry;
5. Occupational safety or health standards not adopted by OSHA and not presently included under Parts 192 and 195 which may be necessary or appropriate for the pipeline industry;
6. Serious occupational safety and health problems existing in the pipeline industry; and
7. Priorities MTB should adopt in the promulgation of pipeline occupational and health standards.

Further, MTB is seeking public comment and suggestions as to the appropriate format by which additional standards for occupational safety and health protection could be incorporated into the Code of Federal Regulations. One alternative is to amend as necessary existing sections of Parts 192 and 195 of Title 49 CFR or add new sections to include

standards relating to occupational safety and health. Another alternative would be to assign a new part in Title 49 CFR to contain occupational safety and health standards exclusively. Another consideration in the format is whether there should be a distinct division between employee occupational safety and employee occupational health or whether the safety and health of the employee should be treated as a single concept.

MTB policy is to seek information from all knowledgeable sources so that regulations will be founded on a broad base of facts. This policy gives everyone—industry, other Federal and State agencies, and the general public—an opportunity to participate in the identification and definition of occupational safety and health problems unique to pipelines, the development and evaluation of alternative solutions for those problems, and the choice of the proper solution for each problem. An advance notice of proposed rulemaking, inviting public participation early in the rulemaking process, is an application of that policy.

MTB invites interested persons to participate in the development of additional standards by submitting in writing, by April 1, 1977, such information and comments as they may desire. Comments received after that date will be considered so far as practicable. Communications should identify the docket and notice numbers (Docket No. OPSO-39, Notice 76-3) and be submitted in triplicate to the Acting Director, Office of Pipeline Safety Operations, 2100 Second Street, S.W., Washington, D.C. 20590. All comments received will be available for inspection and copying in Docket Room 6500.

Again, this notice is a request for information, not a proposal to amend the regulations. After analyzing the response to this notice, MTB may issue another notice (or notices), proposing specific amendments to Title 49 CFR. Interested persons will then have an opportunity to comment on the specific proposals.

(Sec. 3 of the Natural Gas Pipeline Safety Act of 1968 (49 USC 1672); sec. 105 of the Hazardous Materials Transportation Act (49 USC 1804); sec. 834, Title 18, United States Code, sec. 6(e)(4) of the Department of Transportation Act (49 USC 1655(e)(4)); § 1.53 of the regulations of the Office of the Secretary of Transportation (49 CFR 1.53), and the redelegation of authority to the Director, Office of Pipeline Safety Operations, set forth in Appendix A to Part 102 of the regulations of the Office of the Director, Materials Transportation Bureau (49 CFR Part 102).)

Issued in Washington, D.C. on December 22, 1976.

CESAR DELEON,
Acting Director, Office of Pipeline Safety Operations.

[FR Doc.76-38268 Filed 12-29-76;8:45 am]

National Highway Traffic Safety Administration

[49 CFR Part 571]

[Docket No. 1-5; Notice 23]

BRAKE HOSES

Modification of Labeling Requirements

This notice proposes amendments of Standard No. 106-74, *Brake Hoses*, that would modify the requirement to label brake hose assemblies, the definition of "permanently attached end fitting", and the test temperature for brake fluid compatibility testing of hydraulic brake hose, and would also eliminate one requirement for certain coiled tubing and one requirement for hydraulic brake hose used with "keyed" end fittings.

Brake hose assembly labeling. Standard No. 106-74 (49 CFR 571.106-74) requires the manufacturer of a brake hose assembly, except a vehicle manufacturer who assembles and installs it in a vehicle manufactured by him, to affix a band to his product. The band must be labeled with the date of assembly, a designation identifying him as the assembler, and symbol "DOT" as a certification that the assembly meets all applicable safety standards. Since the inception of the requirement, manufacturers have asked for elimination of the requirement, arguing that the costs of banding are not justified by the benefit that results from being able to identify the hose assembler in the event a safety-related defect or a noncompliance necessitates recall. Some manufacturers have recommended stamping of the end fitting in place of the band in cases where the end fitting is attached by crimping or swaging.

The NHTSA has weighed the usefulness of the assembly labeling requirement in the light of defect and noncompliance experience since implementation of Standard No. 106-74. The agency proposed and subsequently made final an amendment of the definition of "brake hose assembly" that had the effect of eliminating this labeling requirement in the case of assemblies made in the field from all new components for repair service (41 FR 28505, July 12, 1976). The agency found that the burden of affixing a band and certifying compliance with the requirements of the standard was not commensurate with the relatively small number of assemblies prepared by such manufacturers.

In response to several petitions, the agency has reevaluated the effectiveness of the requirement in the case of manufacturers and distributors that manufacture brake hose assemblies for purposes other than repair. The data demonstrates that the majority of assembly failures are the result of improper installation or damage in service, not the result of the original assembly operation.

In recent practice, identification by production lot number rather than the date of assembly has been utilized for safety-related defect recalls. Also, the lower-than-projected rate of failure supports a less expensive method of manufacturer identification, where achievable. Finally, alternative means exist to fulfill the certification responsibility represented by the existing requirement for the "DOT" symbol on the band. With these factors in mind, the agency granted petitions for elimination of the banding requirement.

A reasonable alternative for assembler identification that entails modest cost is the stamping of the assembler's designation on end fittings which are crimped or swaged to the hose in a permanent operation. As proposed in this notice, this method of identification would be limited to assemblies involving crimped or swaged fittings, because of the greater expense and potential for confusion in identification that would exist when used with renewable or reusable fittings. This identification method is proposed along with a provision that makes continued use of banding permissible so that existing supplies of banding materials may be depleted. The requirement for assembly date would be eliminated to conform the banding requirement to the stamping option.

Brake fluid compatibility test temperature. The American Society for Testing and Materials (ASTM) petitioned for a minor change in the test temperature used to evaluate the brake fluid compatibility of hydraulic brake hose (S5.3.9 of the standard). As part of the requirement, brake hose is filled with brake fluid and subjected to a temperature to 200°F. for a period of 70 hours. The ASTM requested a small increase in the temperature to 212°F. so that it would be compatible with the equivalent 100° Celsius value that has been proposed for adoption as a standard test temperature by the International Standards Organization (ISO).

The NHTSA concluded that the small increase in test temperature would not significantly affect the stringency of the test requirement and therefore granted the ASTM petition. The change is proposed in this rulemaking, and comments are solicited on whether the agency's tentative conclusion is justified.

Coiled nylon tubing. Standard No. 106-74 recognizes the distinctive construction of the coiled nylon tubing that is used in air brake lines between truck tractors and trailers, by excluding it from two requirements of the standard (S7.3.10 and S7.3.11) if it complies with Bureau of Motor Carrier safety regulations. Parker-Hannifin Corporation suggested in a letter to the NHTSA that a third requirement of the standard (S7.3.6's limitation on elongation or shrinking of air brake hose length) is also inappropriate for coiled tubing because the coiled construction makes the absolute length of the tubing noncritical. The agency agrees that the problems of fatigue through expansion and

contraction would not be critical in the case of coiled tubing and therefore proposes to exclude these hose assemblies from the length change requirement of S7.3.6. Comments on the wisdom of the proposed changes are solicited.

In response to Parker-Hannifin's second question, a manufacturer's responsibility to certify its products' compliance to applicable standards is established by Section 114 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1403). "Certification" encompasses certification to the standard as a whole, and the fact that a particular brake hose assembly is not required to meet every requirement set forth in a standard is irrelevant to the duty of certification. The fact that coiled tubing is excluded from two of the air brake assembly requirements does not excuse it from certification.

End fitting labeling requirements. Standard No. 106–74 requires labeling of end fittings except for those fittings that are attached by deformation of the fittings about a hose by crimping or swaging. Mercedes-Benz petitioned for a modification of this labeling requirement to also exclude fittings that are attached by heat shrinking or dimensional interference fit to vacuum brake hose. These methods are used in plastic vacuum hose assemblies utilized by Mercedes, and the company only uses them in cases where fully assembled brake hose assemblies are installed as original equipment or stocked as spare parts. The NHTSA considered the modification to have merit and granted the Mercedes petition.

The agency's further consideration of the use of these joining methods indicates that, at least in the case of dimensional interference fit, the possibility exists that reuse of the fitting (with consequent need to know dimensional and use characteristics) could occur. The agency considers the possibility for reuse to be remote, but comments are requested on the issue of possible reuse.

Striping of hydraulic hose. Standard No. 106–74 requires that hydraulic hose be labeled with two stripes along opposite sides of the hose to aid in the installation of hose without twisting. Twisting can lead to fatigue and early failure of the hose assembly in operation.

Alfred Teves GMBH (Teves) petitioned for elimination of the striping requirement in case of hose used in assemblies that have "keyed" end fittings at both ends, i.e., fittings that can be installed in only one or possibly several orientations to the vehicle. Teves argued that twisting in the installation of such assemblies would be improbable because 360 degrees of twisting would be required in the case of those assemblies manufactured by Teves that can be installed in only one orientation at each end.

The agency tentatively agrees that the likelihood of twisting in relatively short assemblies of this construction is improbable. Teves claims that cost would be reduced by the elimination of such assemblies from the striping requirement. It appears that a limited exclusion for hose used in such installations is justified. On the other hand, some keyed assemblies might permit more than one installation orientation, thus increasing the possibility for twisting. It is also clear that any exception for this type of construction must be limited to hose that actually is assembled into keyed assemblies.

Therefore, the NHTSA tentatively proposes that, notwithstanding the other requirements of S5.2.1, hose that is assembled into an assembly whose fittings permit their installation into the vehicle in only one orientation need not meet the requirements of S5.2.1. Comments on the practical usefulness of such an exclusion are requested.

General matters. The Rubber Manufacturers Association has asked for the substitution of a new adhesion test for the existing requirements of S7.3.7 in the case of air brake hose that is reinforced with wire. Problems encountered in preparing a test specimen were detailed in the RMA request as the basis for the change.

The agency has, through experience gained since implementation of the requirement, also concluded that the adhesion test does not give sufficiently repeatable results in the case of wire-reinforced air brake hose. Substitution of the "vacuum ball" test suggested by the RMA appears to be practicable, but the agency has not completed analysis of the new test at this time. Until that analysis is complete, the agency proposes elimination of the adhesion requirements of S7.3.7 in the case of wire-reinforced air brake hose.

The agency estimates that the environmental effects of this proposal would be positive. Elimination of the banding requirement is estimated to save approximately 30,000 pounds of material, with associated energy savings and air, noise, and water quality improvement.

The economic and inflationary impacts of this rulemaking have been carefully evaluated in accordance with the Office of Management and Budget Circular A–107, and an Inflation Impact Statement is not required.

In consideration of the foregoing, it is proposed that Standard No. 106–74 (49 CFR 571.106–74) be amended as follows:

1. Section S5.2.1 would be amended by the addition of a sentence at the end of the text to read:

However, hydraulic brake hose, manufactured for use only in an assembly whose end fittings permit their installation in the vehicle in only one orientation, need not meet the requirements of S5.2.1.

2. In S5.2.3, the words "heat shrinking, or dimensional interference fit to plastic vacuum brake hose without a fastener, or" would be added to the first sentence following the phrase "is attached by".

3. Section S5.2.4 would be amended in part by the revision of the first sentence, deletion of paragraph (c), and by the addition of a new subsection S5.2.4.1, to read:

S5.2.4. Each hydraulic brake hose assembly that has end fittings attached by deformation of the fitting about the hose by crimping or swaging shall be labeled by means of a band around the brake hose assembly as specified in this section or, at the option of the manufacturer, by means of labeling as specified in S5.2.4.1.

* * * * *

(a) * * *

(c) [Reserved]

S5.2.4.1 At least one brake hose end fitting shall be permanently etched, embossed, or stamped, with a designation that identifies the manufacturer of the hose assembly and is filed in accordance with S5.2.4(b).

4. The temperature of 200°F. in S5.3.9 would be increased to 212°F.

5. The parenthetical phrase "(other than a coiled nylon tube for use in an assembly that meets the requirements of § 393.45 of this title)" would be added to S7.3.6 following the phrase "An air brake hose".

6. The temperature of 200°F. in S6.7.2(a) would be increased to 212°F.

7. Section S7.3.7 would be amended by the addition of "Except for hose reinforced by wire," at the beginning of the text.

Interested persons are invited to submit comments on the proposal. 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 before the close of business on the comment closing date indicated below will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons coninue to examine the docket for new material.

Comment closing date: February 14, 1977.

Proposed effective date: Date of publication of the final rule in the FEDERAL REGISTER.

(Sec. 103, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.)

Issued on December 22, 1976.

ROBERT L. CARTER,
Associate Administrator,
Motor Vehicle Programs.

[FR Doc.76–38165 Filed 12–29–76;8:45 am]

[49 CFR Part 571]

[Docket No. 71–1; Notice 5]

GLAZING MATERIALS

Permitted Use

This notice proposes the amendment of Standard No. 205, Glazing Materials, to permit the use of rigid plastic glazing in all doors and windows of buses that have a gross vehicle weight rating (GVWR) of more than 10,000 pounds, other than in the windshields or in windows to the immediate right or left of the driver.

Currently, Standard No. 205, (49 CFR 571.205) permits plastic glazing materials only in standee windows of buses and in readily removable windows of buses having a GVWR of more than 10,000 pounds. General Motors has requested that the standard be amended to permit the use of rigid plastic glazing materials in all bus windows except windshields and windows to the immediate right or left of the driver.

Standard No. 205 incorporates by reference the American National Standard "Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways," Z26.1–1966 (ANS Z26). General Motors pointed out that use of plastic glazing in bus windows was limited in ANS Z26 to assist passenger egress in emergency situations in which it might be necessary to break the glazing to expedite occupant removal. It was judged that plastic glazing would be difficult to break. Since the issuance of the glazing standard, however, a new Standard No. 217, Bus Window Retention and Release, 49 CFR 571.217, has been implemented to provide unobstructed openings in buses for emergency exit purposes. For this reason General Motors contends that a restriction on the use of plastic glazing in buses to assure emergency egress is no longer necessary. In further support of its petition, General Motors maintains that the use of rigid plastic glazing would result in less breakage of bus windows, thereby reducing maintenance costs and the potential hazards associated with the operation of buses with broken glazing.

The National Highway Traffic Safety Administration agrees with petitioner's arguments regarding the use of rigid plastics in buses. Use of plastics in bus side-windows should reduce the safety hazards and maintenance costs resulting from the deliberate breakage of bus windows. Since Standard No. 217 now provides for emergency occupant egress, there is no compelling reason to prohibit the use of plastic glazing in locations not requisite for driving visibility.

The economic impact of this proposed amendment would be minimal since it does not create additional requirements, but rather provides manufacturers with an option. The proposed rule would have negligible effect on the environment.

In consideration of the foregoing, it is proposed that Standard No. 205 (49 CFR 571.205) be amended as follows:

1. Paragraph S 5.1.1.2 would be revised in part to read:

S 5.1.1.2 The following locations are added to the lists specified in ANS Z26 in which item 4 and item 5 safety glazing may be used:

* * * * *

(1) Windows and doors in buses having a GVWR of more than 10,000 pounds, except for the windshield, windows to the immediate right or left of the driver, and rearmost windows if used for driving visibility.

2. Existing paragraphs S 5.1.1.4 and S 5.1.1.5 would be renumbered S 5.1.1.5 and 5.1.1.6, respectively, and a new paragraph S 5.1.1.4 would be added to read:

S 5.1.1.4 The following locations are added to the lists specified in ANS Z26 in which item 8 and item 9 safety glazing may be used:

(f) Windows and doors in motor homes, except for the windshield and windows to the immediate right or left of the driver.

(g) Windows and doors in slide-in campers and pickup covers.

3. A new sub-section (h) would be added to paragraph S 5.1.2.1 to read:

(h) Windows and doors in buses having a GVWR of more than 10,000 pounds, except for the windshield and windows to the immediate right or left of the driver.

Interested persons are invited to submit comments on the proposal. 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 before the close of business on the comment closing date indicated below will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Comment closing date. March 30, 1977.

Proposed effective date. The amendments would be effective upon publication of the final rule.

(Sec. 103, 19, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.)

Issued on December 22, 1976.

ROBERT L. CARTER,
Associate Administrator,
Motor Vehicle Programs.

[FR Doc.76–38164 Filed 12–29–76;8:45 am]

NATIONAL TRANSPORTATION SAFETY BOARD

[49 CFR Part 850]

MARINE CASUALTIES

Rules Pertaining to Investigations

The National Transportation Safety Board (Board) is proposing regulations to implement the requirements of § 304 (a)(1)(E) of the Independent Safety Board Act of 1974 (Pub. L. 93–633, 88 Stat. 2168 (49 U.S.C. 1903)) (Act) which concerns investigation of marine casualties. The requirements are as follows:

The Board shall—

(1) Investigate or cause to be investigated (in such detail as it shall prescribe), and determine the facts, conditions, and circumstances and the cause or probable causes of any—

* * * * *

(E) Major marine casualty, except one involving only public vessels, occurring on the navigable waters or territorial seas of the United States, or involving a vessel of the United States, in accordance with regulations to be prescribed jointly by the Board and the Secretary of the department in which the Coast Guard is operating. Nothing in this subparagraph shall be construed to eliminate or diminish any responsibility under any other Federal statute of the Secretary of the department in which the Coast Guard is operating: *Provided*, That any marine accident involving a public vessel and any other vessel shall be investigated and the facts, conditions, and circumstances, and the cause or probable cause determined and made available to the public by either the Board or the Secretary of the Department in which the Coast Guard is operating * * *

The United States Coast Guard (Coast Guard), on page 56833 of this issue of the FEDERAL REGISTER, is proposing identical regulations as an amendment to 46 CFR Part 4—Marine Investigation Regulations.

Interested persons are invited to participate in the proposed rulemaking by submitting written data, views, or arguments to the General Counsel, National Transportation Safety Board, 800 Independence Avenue, SW., Washington, D.C. 20594. Comments received on or before March 1, 1977, will be considered before final action is taken on this proposal. Copies of all written comments received will be available for examination in Room 804, at the above address.

This proposal contains the procedures under which the Board and the Coast Guard would investigate, under the Act, major marine casualties, as defined in § 850.5 of this proposal, and casualties involving a public and nonpublic vessel. Under § 850.15 of this proposal, the Board would conduct its inquiries under the existing Board rules of practice for surface transportation accident hearings in 49 CFR Part 845.

Under § 850.25 of this proposal, the Coast Guard may conduct the factfinding inquiry if requested by the Board when the Board does not conduct an inquiry. Under § 850.30 of this proposal, the Coast Guard would use the existing marine casualty investigation procedures in 46 CFR Part 4, which are for 46 U.S.C.

239 investigations. The Board may designate a person or persons to participate in an inquiry under 46 CFR Subpart 4.07 or 4.09.

Public vessel is defined under proposed § 850.5 as a vessel owned by the United States, except one to which 46 U.S.C. 363 applies. 46 U.S.C. 363 applies to vessels owned and operated by the Department of Commerce. These vessels are controlled by the Federal Maritime Administration of the Department of Commerce and are chartered for commercial use. If one of these vessels were involved in a casualty, it would be, for the purposes of these proposed regulations, a vessel of the United States as defined under proposed § 850.5(g).

The Coast Guard and the Board intend to annually review these regulations. Conforming amendments to the existing rules in 46 CFR Part 4 would be promulgated by the Coast Guard when the procedures of the Coast Guard and the Board are published as rules.

In consideration of the foregoing, the National Transportation Safety Board proposes to establish Part 850 of Chapter VIII, Title 49, Code of Federal Regulations, to read as follows:

PART 850—COAST GUARD-NATIONAL TRANSPORTATION SAFETY BOARD MARINE CASUALTY INVESTIGATIONS

Sec.

850.1 Purpose and applicability.
850.5 Definitions.
850.10 Preliminary factfinding by the Coast Guard.
850.15 Marine casualty inquiry by the Board.
850.20 Cause or probable cause determinations from Board inquiry.
850.25 Coast Guard marine casualty inquiry for the Board.
850.30 Procedures for Coast Guard inquiry.
850.35 Records of the Coast Guard and the Board.

AUTHORITY: Sec. 304(a)(1)(E) of the Independent Safety Board Act of 1974 (Pub. L. 93-633, 88 Stat. 2168, (49 U.S.C. 1903)).

PART 850—COAST GUARD-NATIONAL TRANSPORTATION SAFETY BOARD MARINE CASAULTY INVESTIGATIONS

§ 850.1 Purpose and applicability.

This part prescribes the joint regulations of the National Transportation Safety Board and the Coast Guard for the investigation of—

(a) A major marine casualty, as defined under § 850.5(e), that occurs on the navigable waters or territorial seas of the United States or that involves a vessel of the United States, except one involving only public vessels; and

(b) A casualty involving public and nonpublic vessels.

§ 850.5 Definitions.

As used in this part:

(a) "Act" means Title III of Pub. L. 93-633, the Independent Safety Board Act of 1974 (49 U.S.C. 1901, et seq.).

(b) "Board" means the National Transportation Safety Board.

(c) "Chairman" means the Chairman of the National Transportation Safety Board.

(d) "Commandant" means the Commandant of the Coast Guard.

(e) "Major marine casualty" means a casualty involving a vessel, other than a public vessel, that results in—

(1) The loss of six or more lives;

(2) The loss of a mechanically propelled vessel of 100 or more gross tons;

(3) Property damage initially estimated as $500,000 or more; or

(4) Serious threat, as determined by the Commandant and concurred in by the Chairman, to life, property, or the environment by hazardous materials.

(f) "Public vessel" means a vessel owned by the United States, except a vessel to which the Act of October 25, 1919, c. 82 (41 Stat. 305, 46 U.S.C. 363) applies.

(g) "Vessel of the United States" means a vessel—

(1) Documented or required to be documented under the laws of the United States;

(2) Owned in the United States; or

(3) Owned by a citizen or resident of the United States and not registered under a foreign flag.

§ 850.10 Preliminary factfinding by the Coast Guard.

(a) The Coast Guard conducts the preliminary factfinding of marine casualties.

(b) The Commandant determines from the preliminary factfinding whether—

(1) The casualty is a major marine casualty; or

(2) The casualty involves public and nonpublic vessels.

(c) The Commandant notifies the Board of a casualty described in paragraph (b)(1) or (2) of this section.

§ 850.15 Marine casualty inquiry by the Board.

The Board may conduct an inquiry under the Act for any major marine casualty or any casualty involving public and nonpublic vessels under the Board's rules of practice for surface transportation accident hearings in 49 CFR Part 845.

§ 850.20 Cause or probable cause determinations from Board inquiry.

After an inquiry conducted by the Board under § 850.15, the Board determines cause or probable cause and issues a report of that determination.

§ 850.25 Coast Guard marine casualty inquiry for the Board.

(a) If the Board does not conduct an inquiry under § 850.15 and if requested by the Board, the Coast Guard may conduct an inquiry under the Act unless there is an allegation of Federal Government misfeasance or nonfeasance.

(b) The Board requests the Coast Guard to conduct an inquiry under paragraph (a) within 48 hours of receiving notice under § 850.10(c).

(c) The Coast Guard advises the Board within 24 hours of receipt of a request under paragraph (b) of this section whether the Coast Guard will conduct an inquiry under the Act.

§ 850.30 Procedures for Coast Guard inquiry.

(a) The Coast Guard conducts an inquiry under § 4.40-25 using the procedures in 46 CFR 4.01-1 through 4.23-1.

(b) The presiding Coast Guard officer for an inquiry conducted under 46 CFR Subpart 4.07 or 4.09 has the following powers:

(1) To open, continue, or adjourn the inquiry.

(2) To issue subpoenas.

(3) To call witnesses and administer oaths.

(4) To determine the admissibility of and to receive evidence and to regulate the course of the hearing.

(5) To rule on procedural requests and similar matters.

(6) To take any other action necessary for the orderly conduct of the inquiry.

(c) The Board may designate a person or persons to participate in every phase of an inquiry, including on scene investigation, that is conducted under the procedures in 46 CFR Subpart 4.07 or 4.09.

(d) Consistent with paragraph (b) of this section, the person or persons designated by the Board under paragraph (c) of this section may:

(1) Make recommendations about the scope of the inquiry.

(2) Call and examine witnesses.

(3) Submit or request additional evidence.

(e) The Commandant reports to the Board the facts, conditions, and circumstances of a major marine casualty determined under an inquiry under paragraph (a) of this section.

(f) The Board, under the Act, determines cause or probable cause of a major marine casualty using the report of the Commandant under paragraph (d) of this section, and any additional evidence the Board may acquire under its own authority.

(g) An inquiry under this section is both an inquiry under the Act and under R.S. 4450 (46 U.S.C. 239) and the record of an inquiry under this section is also the report of the facts for—

(1) A report of investigation under 46 CFR 4.07-10; or

(2) A record of proceedings under 46 CFR 4.09-20.

§ 850.35 Records of the Coast Guard and the Board.

(a) Records of the Coast Guard made under § 850.30 are available to the public under 46 CFR Part 7.

(b) Records of determination of cause or probable cause made by the Board under §§ 850.20 and 950.30 are available to the public under 49 CFR Part 801.

Signed at Washington, D.C. this 22nd day of December, 1976.

WEBSTER B. TODD, JR.,
Chairman.

[FR Doc.76-38147 Filed 12-23-76;1:31 pm]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR Parts 17 and 222]

TOTOABA

Proposed "Endangered" Species

The Director, National Marine Fisheries Service and the Director, U.S. Fish and Wildlife Service hereby issue a notice of proposed rulemaking that would list the totoaba (*Cynoscion macdonaldi*), a marine finfish found only in Mexican waters, as an endangered species throughout its range, pursuant to section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (hereinafter the "Act"). This proposed rulemaking would add this fish to the List of Endangered and Threatened Wildlife found in 50 CFR 17.11 and would reference such listing in 50 CFR 222.23. This proposed listing is based on a preliminary determination by the Director, National Marine Fisheries Service (hereinafter the "Director" and the "NMFS," respectively) that the fish is an endangered species. The totoaba, or MacDonald weakfish, is found only in the northern Gulf of California and is most often encountered in the general vicinity of San Felipe, Mexico.

BACKGROUND

Section 4(a) of the Act states: *General.* The Secretary shall by regulation determine whether any species is an endangered species or a threatened species because of any of the following factors:

(1) The present or threatened destruction, modification, or curtailment of its habitat or range;

(2) Overutilization for commercial, sporting, scientific, or educational purposes;

(3) Disease or predation;

(4) The inadequacy of existing regulatory mechanisms; or

(5) Other natural or man-made factors affecting its continued existence.

With the exception of enforcement responsibilities for certain plants, the Act defines "Secretary" to mean either the Secretary of the Interior or the Secretary of Commerce (as program responsibilities are vested pursuant to the provisions of Reorganization Plan Number 4 of 1970). Most marine species are the sole responsibility of the Secretary of Commerce. The authority of the Secretary has been delegated to the Director, NMFS.

The totoaba is found only in the northern Gulf of California, as indicated above, and spawns at the mouth of the Colorado River. More specifically, the range of the totoaba includes the waters of the Gulf of California from the mouth of the Colorado River to the Rio Fuerte, Sinaloa, on the eastern coast, and from the Colorado River to the Bay of Concepcion, Baja California, on the western coast. The maximum length is reported at almost 2 meters and maximum weights are reported to exceed 135 kg.

The catch of totoaba, a fishery of sport and commercial importance, has been declining sharply over the past decade. Protective measures instituted by Mexico (e.g., the establishment of a refuge zone where all fishing was forbidden; a seasonal closure of totoaba fishing in the entire Gulf of California) were not adequate in stemming the decline in the catch, so on June 19, 1975, the Mexican government proclaimed a 2-year ban on both sport and commercial fishing. Then on August 2, 1975, Mexico declared an indefinite closed season on the totoaba. The species has a restricted range of distribution with a known migration pattern. This fact coupled with a concentrated spawning area makes the totoaba highly vulnerable to commercial and sport fishery pressures. It should be noted that a major portion of the catch is exported from Mexico to the United States (principally San Diego) where it is popular in seafood restaurants in Southern California.

Mexican and U.S. biologists claim that overfishing and the diversion of the Colorado River have so drastically reduced the totoaba population that the species is in danger of extinction. NMFS scientists and Dr. Robert B. Brownell of the Smithsonian Institution initially submitted information and requested a review of the status of the totoaba. Many of the statements and facts cited below are based on the publication, "Observations on the commercial fishery and reproductive biology of the totoaba, *Cynoscion macdonaldi*, in the northern Gulf of California" (Fishery Bulletin 74(3), July 1976), by Drs. Christine A. Flanagan and John R. Hendrickson of the University of Arizona. These individuals and others facilitated the preparation of the status review of the totoaba, which led to the determination by NMFS to propose an endangered species listing in support of protective measures taken by Mexico.

The totoaba was in serious trouble once before in the late 1950's. After fluctuating wildly in the late 1930's, the annual catch of totoaba began to decrease constantly in 1942 from a level of 2,250 metric tons (t) and by 1957–58 only about 250 t of this species were caught each year. Various conservation measures brought the annual catch back to almost 1,500 t in 1966; however, the totoaba catch has again continued to decline steadily.

In order to support Mexico's stringent conservation measures to ensure the recovery of the totoaba resource, the NMFS and the U.S. Fish and Wildlife Service propose to list the totoaba as an endangered species. This action would facilitate enforcement of Mexican laws by removing much of the stimulus for poaching and smuggling. This action would also be consistent with section 4 of the Endangered Species Act of 1973 which directs NMFS to consider efforts made by foreign countries to protect endangered species and section 8 of that Act which directs NMFS to encourage foreign international cooperation in the conservation of endangered species. In addition, the listing of the totoaba on the U.S. Endangered Wildlife List would complement our proposal to the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora to list the totoaba on Appendix I of that Convention.

SUMMARY OF FACTORS AFFECTING THE SPECIES

The findings in support of the Director's proposal are summarized herein and described under each of the five criteria of section 4(a) of the Act.

(1) The present or threatened destruction, modification, or curtailment of its habitat or range. The degradation and loss of spawning grounds is believed to be an important factor in the decline of the totoaba. The totoaba spawns in large schools in the shallow marshes at the mouth of the Colorado River. The quality of the spawning grounds has deteriorated due to a significant flow reduction in the annual Colorado River flow. The diversion of the Colorado River into the Mexicali Valley, after the Morelos Dam was built, is the major cause for the flow reduction. This resulted in: (a) A significant reduction of the totoaba's spawning grounds as marshes began drying up; and (b) a replacement of brackish waters by saline waters in and around the mouth of the Colorado River. This flow reduction can be correlated with the declining totoaba catch and assuredly has lessened reproductive success. The totoaba are only known to congregate in the Colorado River estuary which until recently was unlike other estuaries in the northern Gulf of California in that it was the recipient of large quantities of fresh water from the Colorado River. With changes in the spawning grounds, it is also possible that olfactory cues may have been weakened, thereby contributing to the totoaba's decline. Another alarming circumstance is that the length of the totoaba breeding period has shortened considerably in recent years.

Flow-related degradation of the nursery grounds in the northern Gulf of California has probably not played a significant role in the fish's decline. Apparently, the salinity changes in the nursery grounds have not adversely affected larvae and small juveniles. In some ways, such as reduced predation and abundant food resources, reduced flow into the shallow nursery grounds may have benefited the recruits.

(2) Overutilization for commercial, sporting, scientific, or educational purposes. Overfishing is the major reason for the decline in totoaba stocks.

Catches of totoaba in excess of 2,000 metric tons (t) were reported in the early 1940's. Since 1966, however, these catches continued to decline sharply and amounted to only 200 t in 1973. Subsequent catches have reportedly declined significantly.

The limited range of the totoaba coupled with the intense exploitation of the species on its spawning grounds, nursery grounds, and migratory routes, has taken a heavy toll on the totoaba.

(3) Disease or predation. This factor is not known to be a cause of the totoaba's decline.

(4) The inadequacy of existing regulatory mechanisms. As noted above, we believe it important to provide controls on illegal trade in totoaba which may enter the United States from Mexico.

(5) Other natural or man-made factors affecting its continued existence. It has been reported that the totoaba may have also been affected by insecticides used by U.S. and Mexican farmers along the Colorado River.

EFFECT OF THIS RULEMAKING

Section 9(a) of the Act sets forth a series of general prohibitions which apply to all endangered species of fish and wildlife.

With respect to any endangered species listed pursuant to section 4 of the Act, it is unlawful for any person subject to the jurisdiction of the United States to:

(1) Import any such species into, or export any such species from, the United States;

(2) Take any such species within the United States or the territorial sea of the United States;

(3) Take any such species upon the high seas;

(4) Possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of (2) and (3) above;

(5) Deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(6) Sell or offer for sale in interstate or foreign commerce any such species; or

(7) Violate any regulation pertaining to such species and promulgated by the Secretary pursuant to authority provided by the Act.

The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

The Act further provides certain limited exceptions to those general prohibitions. These exceptions include: a grandfather clause for species held in captivity or a controlled environment on December 28, 1973, and not for commercial purposes (section 9(b) of the Act); a one-year limited exemption to minimize undue economic hardship tied to a previous contract commitment (section 10(b) of the Act); and permits for scientific purposes or enhancement of propagation or survival of the species (section 10(a) of the Act).

In addition, NMFS regulations published in Parts 217–222 and Part 225 of Title 50 of the Code of Federal Regulations, set forth rules and procedures which apply to all endangered species under the jurisdiction of the Secretary of Commerce. These regulations provide for general provisions, civil procedures, seizure and forfeiture procedures, importation and exportation at designated ports, general and specific permit provisions, and Federal/State cooperation and financial assistance. In the event that the totoaba is listed as an endangered species, these regulations would be applicable to the species.

INTERAGENCY COOPERATION

The listing herein proposed would make available the protection afforded by section 7 of the Act. That section reads as follows:

Section 7. The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

No "critical habitat" will be determined by NMFS for the totoaba since this fish is found only in a foreign country. However, the other provisions of section 7 would be applicable.

PUBLIC COMMENTS SOLICITED

Pursuant to section 4(b) of the Act, the Director is notifying the Government of Mexico, in cooperation with the Secretary of State, with respect to this proposal and requesting any comments and recommendations before making a final determination on listing.

The Director intends that the rules finally adopted be as accurate and effective as possible in the conservation of any endangered or threatened species. Therefore, any written comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of this proposed rulemaking are solicited. Comments are particularly sought concerning:

1. The existence of any other living members of this species;

2. Biological or other relevant data concerning any threat (or the lack thereof) to the totoaba; and

3. Additional information concerning the range and distribution of the totoaba.

Written comments, views, and other documents should be submitted, preferably in duplicate, to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235. All comments and other documents received no later than March 1, 1977 will be considered. The Director will consider requests for a public hearing, provided such requests are received by February 14, 1977. The holding of a public hearing is at the discretion of the Director.

The Director has determined that the proposed designation of the non-resident totoaba as an endangered species is not a major Federal action which would significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA). Furthermore, the President's Council on Environmental Quality has indicated that environmental assessments and impact statements are not required by NEPA for listing species as endangered or threatened which are not resident in the United States. Accordingly, neither, the preparation of an environmental assessment nor the preparation of an environmental impact statement on the proposed action is required. Comments and other documents received pertaining to the proposed listing are available for public review in the Marine Mammal and Endangered Species Division, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C., or may be obtained by writing the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235.

Dated: DECEMBER 16, 1976.

ROBERT W. SCHONING,
Director,
National Marine Fisheries Service.

LYNN A. GREENWALT,
Director,
U.S. Fish and Wildlife Service.

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Accordingly, it is proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations by adding to § 17.11(i) under the class entitled "Fishes" and immediately after "Topminnow, Gila" the following:

§ 17.11 Endangered and threatened wildlife.

* * * * *

Species			Range				
Common name	Scientific name	Population	Known distribution	Portion of range where threatened or endangered	Status	When listed	Special rules
*	*	*	*	*	*		
Totoaba	*Cynoscion macdonaldi*	NA	Mexico (northern Gulf of California).	Entire	E	17	NA
*	*	*	*	*			

(41 FR ?; Dec. 30, 1976.)

PART 222—ENDANGERED FISH OR WILDLIFE

§ 222.23 [Amended]

In addition, it is proposed to amend § 222.23(a) of Subpart C, Part 222 of Chapter II, Title 50 of the Code of Federal Regulations by adding "Totoaba (*Cynoscion macdonaldi*)" immediately after "Shortnose sturgeon (*Acipenser brevirostrum*)" in the second sentence.

[FR Doc.76-38161 Filed 12-29-76;8:45 am]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Parts 17 and 222]

TOTOABA

Proposed "Endangered" Species

CROSS REFERENCE: For a document issued jointly by the Department of Interior, U.S. Fish and Wildlife Service, and the Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, on the subject of the totoaba (*Cynoscion macdonaldi*) as a proposed "Endangered" Species, see FR Doc 76-38161, appearing in the proposed rules section of this issue under the Department of Commerce, National Oceanic and Atmospheric Administration.

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.

FEDERAL ENERGY ADMINISTRATION

INDIANA GAS CO.

Petition for Assignment of Synthetic Natural Gas Feedstocks and Construction and Operation of SNG Plant

The Federal Energy Administration (FEA) hereby gives notice that written comments will be received and a public hearing held regarding the October 18, 1974, petition under 10 CFR 211.29 and Special Rule No. 1 issued thereunder, of the Indiana Gas Company (Indiana Gas), a proposed new synthetic natural gas (SNG) manufacturer, for the assignment of a supplier and base period use of naphtha for SNG feedstock use after construction of its SNG plant. FEA will also receive testimony at the public hearing and written comments on the draft environmental impact statement (EIS), which FEA has prepared on construction and operation of the proposed Indiana Gas SNG plant.

The volume of naphtha requested for SNG feedstock is 158,623,416 gallons (3,776,748 barrels) of naphtha per year commencing upon completion of the plant, which is estimated for the summer of 1979.

The Indiana Gas SNG plant as proposed will initially produce 60,000 thousand cubic feet (mcf) of SNG per day or 28,820,000 mcf per year based on 347 days of operation. La Gloria Oil and Gas Company, the proposed supplier, has agreed to supply the entire requested annual volume of naphtha for SNG feedstock use.

A file containing all information and data filed in conjunction with the Indiana Gas petition, other than confidential information which FEA has determined to be exempt from the disclosure requirements of 5 U.S.C. 522, is available for public inspection and copying at the FEA Freedom of Information Library, Room 2107, Federal Building, 1200 Pennsylvania Avenue NW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., e.s.t., Monday through Friday, except Federal holidays. Copies of the draft EIS will also be available for public review at this location. A limited number of single copies of the draft EIS are available and may be obtained from FEA, Office of Communications and Public Affairs, Room 3138, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20461.

Written comments regarding the Indiana Gas petition will be accepted and considered if filed by January 24, 1977, and written comments regarding the draft EIS will be accepted and considered if filed by February 17, 1977. Any person submitting written comments with respect to the Indiana Gas petition or the EIS should, as required by 10 CFR 205.33 (b) of FEA's Administrative Procedures and Sanctions, send a copy of his or her comments to the applicant and certify to the FEA that he or she has complied with this requirement. Comments should be submitted to the Office of Product Allocations, Specialty Fuels Branch, Federal Energy Administration, Room 6318, 2000 M Street, N.W., Washington, D.C. 20461, attention: Mr. Finn Neilsen. Comments should be identified on the outside envelope and on documents submitted to FEA with the designation "Allocation of Feedstock for the Indiana Gas SNG Plant" or "Draft EIS—the Indiana Gas SNG Plant." Five copies should be submitted to FEA and one copy to Indiana Gas Company, 1630 North Meridan Street, Indianapolis, Indiana 46202, Attention: Mr. William V. Bell, and one copy to each other person identified as having an interest in the proceeding.

FEA believes that factual disputes between interested parties respecting this petition or EIS are likely and that a public hearing on this petition will materially advance consideration of the issues involved. Therefore, a public hearing on the Indiana Gas petition and draft EIS will be held beginning at 9:30 a.m., e.s.t., on January 25, 1977, in Room 2105, 2000 M Street, N.W., Washington, D.C. to receive comments from interested persons. If necessary the hearing will be continued at the same location at 9:30 a.m., e.s.t., on January 26, 1977.

Any person who has an interest in the petition or EIS or who is a respresentative of a group or class of persons which has an interest in the petition or EIS may make a written request for an opportunity to make oral presentation. Such a request should be directed to Executive Communications, FEA, Room 3309, Federal Building, 1200 Pennslyvania Avenue, N.W., Washington, D.C. 20461, and must be received before 4:30 p.m., e.s.t., January 19, 1977. Such a request may be hand delivered to Room 3309, Federal Building, 1200 Penslyvania Avenue, N.W., Washington, D.C., between the hours of 8:00 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 concise summary of the proposed oral presentation and a phone number where he or she may be reached through January 24, 1977. Each person selected to be heard will be notified by FEA before 4:30 p.m., e.s.t., January 21, 1977, and must submit 50 copies of his or her statement to Allocation Regulations Development Office, FEA, Room 2214, 2000 M Street, N.W., Washington, D.C. 20461 before 4:30 p.m., e.s.t., on January 24, 1977.

The FEA reserves the right to select the persons to be heard at this 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. This 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. 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, Room 3309, Federal Building, 12th and Pennsylvania Avenue, N.W., Washington, D.C. 20461, before 4:30 p.m., e.s.t., January 24, 1977. Any person who makes an oral statement and who wishes at the hearing to ask a question of another person making an oral statement 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 answer.

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

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing in accordance with the procedures stated in 10 CFR 205.9(f). FEA reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

It is expected that the public hearing will initiate requests by the hearing panel for certain factual information and data which will not be immediately available for inclusion in the hearing record. Consequently, the hearing record will remain open to receive such information until 4:30 p.m., February 3, 1977, after which the hearing record will be closed.

Additional public comment on all written and oral presentations received by February 3, 1977, will be permitted through 4:30 p.m., February 17, 1977. Comments should be submitted to the Office of Product Allocations, Specialty Fuels Branch, Room 6318, 2000 M Street, N.W., Washington, D.C. 20641, attention: Mr. Finn Neilsen. Persons submitting comments during this additional period must send five copies to FEA and one copy each to Indiana Gas and to all persons who participated in the public hearing or who submitted written comments prior to the hearing. A list of such persons will be made available for public viewing on January 27, 1977, at the FEA Freedom of Information Library, Room 2107, Federal Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The transcript of the public hearing will be available for public review at the FEA Freedom of Information Library, Room 2107, Federal Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcript from the reporter.

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.

MICHAEL F. BUTLER,
General Counsel.

DECEMBER 27, 1976.

[FR Doc.76-38378 Filed 12-27-76;4:43 pm]

ISSUANCE OF DECISIONS AND ORDERS BY THE OFFICE OF EXCEPTIONS AND APPEALS

Week of November 1 Through November 5, 1976

Notice is hereby given that during the week of November 1 through November 5, 1976, the Decisions and Orders summarized below were issued with respect to Appeals and Applications for Exception or other relief filed with the Office of Exceptions and Appeals of the Federal Energy Administration. The following summary also contains a list of submissions which were dismissed by the Office of Exceptions and Appeals and the basis for the dismissal.

APPEALS

Edward Albert Applegate; South Orange, N.J.; FEA-0979; Freedom of Information

Edward Albert Applegate (Applegate) appealed from an Order which had been issued to him by the FEA Information Access Officer denying in part a Request for Information which Applegate had filed under the Freedom of Information Act (the Act). In response to Applegate's Request, the Information Access Officer released copies of documents which described the procedures which FEA officials had implemented in determining the base period use of motor gasoline for a new retail outlet that Applegate was operating. However, the Information Access Officer deleted from the documents the names and locations of three retail motor gasoline outlets which had been used for comparative purposes. The FEA Information Access Officer found that this information, in combination with the base period uses of the three outlets which had been released to Applegate, was proprietary information which was exempt from disclosure under the provisions of section 552(b)(4) of the Act. In considering the Applegate Appeal, the FEA determined that the material which had been deleted was "commercial or financial information" which had been obtained from a "person" as that term is defined by the Administrative Procedure Act. The FEA further determined that the deleted information was "confidential," as that term was interpreted by the Court of Appeals in *National Parks and Conservation Ass'n* v. *Morton*, 489 F.2d 765 (D.C. Cir 1974), because disclosure of the names and locations of the comparable stations would be likely to cause substantial harm to the competitive position of the three firms in question. Finally, the FEA determined that in view of the potential competitive harm, disclosure of the deleted information would not be in the public interest. On the basis of these findings, the FEA concluded that the Information Access Officer had correctly withheld the information identifying the three comparable outlets, and the Applegate Appeal was therefore denied.

Farmland Industries, Inc.; Kansas City, Mo.; FEA-0894; Natural Gas Liquid Products

Farmland Industries, Inc. (Farmland) appealed from a Decision and Order which had been issued to it by the Federal Energy Administration on June 7, 1976. Farmland Industries, Inc., 3 FEA Par. 83,214 (June 7, 1976). In the June 7 Order, the FEA permitted Farmland to increase the prices which it charges for natural liquid products produced at its Gillette, Lamont and Mertzon plants above the levels specified in 10 CFR 212.165 to reflect certain non-product cost increases. However, the June 7 Order also denied exception relief with respect to Farmland's Quitman plant on the grounds that the non-product cost increases incurred at that plant were not materially in excess of the $.005 per gallon passthrough permitted under § 212.165. The Appeal, if granted, would permit Farmland to increase its prices for natural gas liquid products by an additional amount to reflect non-product cost increases incurred at the Lamont and Mertzon plants which had been disallowed by the FEA. Farmland would also be permitted to increase its prices for the natural gas liquid products produced at the Quitman plant. In considering Farmland's Appeal, the FEA determined that Farmland had made a convincing showing that the increased labor costs of $.09653 and $.04824 per gallon which it incurred at the Lamont and Mertzon plants represent a legitimate and necessary business expense and Farmland should therefore be permitted to reflect those increased costs in its selling prices. In addition, the FEA found that in the June 7 Decision the amount of depreciation expenses disallowed at the Lamont, Mertzon and Quitman plants had been calculated incorrectly. The FEA therefore concluded that Farmland's Appeal should be granted and approved additional exception relief for the Lamont, Mertzon and Quitman plants which permits the firm to increase the prices for its natural gas liquid products to recover the revenues which it would have received if the FEA had properly calculated the level of exception relief in the June 7 proceeding.

REQUESTS FOR EXCEPTION

Brinkerhoff Drilling Co., Inc.; Roosevelt County, Mont.; FEE-2847; Crude Oil

The Brinkerhoff Drilling Company, Inc. (Brinkerhoff) filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, which, if granted, would permit Brinkerhoff to sell the crude oil produced from the Track Lease, Well No. 1, Tule Creek South Field located in Roosevelt County, Montana at upper tier ceiling prices. In considering the Brinkerhoff Application, the FEA determined that the costs of producing crude oil from the Track Lease increased significantly in 1974, 1975 and 1976 and the firm's current production costs exceed the lower tier ceiling price which Brinkerhoff is permitted to charge. Consequently, the FEA found that Brinkerhoff does not have an economic incentive to continue to operate the Track Lease and if Brinkerhoff abandoned the Lease, a significant quantity of otherwise recoverable domestic crude oil would not be produced. On the basis of previous precedents involving similar factual situations, the FEA granted exception relief to Brinkeroff which permits the firm to sell for a six month period 21.1127 percent of the crude oil produced from the Track Lease for the benefit of the working interest owners at upper tier ceiling prices.

Central Carolina Farmers, Inc.; Durham, N.C.; FEE-2793; Propane

Central Carolina Farmers, Inc. (Central) filed an Application for Exception from the provisions of 10 CFR 211.9 which, if granted, would result in the assignment of a new, lower-priced supplier of propane to replace Central's base period suppliers, American Oil Company (American) and Mobil Oil Company (Mobil). In considering the exception request, the FEA determined that no significant disparity existed between the prices charged by Central's base period suppliers and the prices charged by other propane suppliers in Central's market area. The FEA further determined that Central's propane sales volume had increased significantly since 1973 while its markup on sales had remained relatively constant. Furthermore, although the financial data submitted by Central did indicate that the firm's propane division had been operating at a loss, the financial data contained certain questionable cost allocations between Central's propane division and its other divisions which could account for the loss position reported for the propane division. Based upon these considerations, the FEA concluded that Central failed to establish that the application to it of the provisions of 10 CFR 211.9 constitutes a serious hardship or a gross inequity. Consequently, Central's exception application was denied.

Cities Service Co.; Tulsa, Okla.; FEE-2849 (Adair) FEE-2850 (Bluitt), FEE-2851 (Bryans Mill), FEE-2852 (Chico), FEE-2853 (Citronelle), FEE-2854 (Crowley), FEE-2854 (Dollarhide), FEE-2856 (East Texas), FEE-2857 (Garrett), FEE-2858 (Halley), FEE-2859 (Lapeyrouse), FEE-2860 (Lejors), FEE-2861 (Lehman), FEE-2862 (May), FEE-2863 (Maysville), FEE-2864 (Mermentau), FEE-2865 (Myrtle Springs), FEE-2866 (North Cowden), FEE-2867 (North Rincon), FEE-2868 (Pampa), FEE-2869 (Price), FEE-2870 (Rio Grande), FEE-2871 (Robstown), FEE-2872 (Rodman), FEE-2873 (St. Amelia), FEE-2874 (San Antonio), FEE-2875 (Stonewall), FEE-2876 (Waco), FEE-2877 (Wichita), FEE-2895 (Ambrose), FEE-2896 (Kimball), FEE-2897 (Midway); Natural Gas Liquid Products

Cities Service Company (Cities) filed Applications for Exception from the provisions of 10 CFR 212.165 which, if granted, would

permit the firm to increase the prices it charges for natural gas liquid products to reflect the non-product cost increases which the firm has incurred at 32 of its natural gas processing plants. In considering the applications, the FEA noted that as a general rule exception relief will be granted to any natural gas processor which can demonstrate that the non-product costs which it has experienced since May 1973 have increased substantially in excess of the $.005 per gallon passthrough for natural gas liquid products permitted under § 212.165. *See Superior Oil Co.*, 2 FEA Par. 80,271 (August 29, 1975). The FEA found that Cities had made such a showing with respect to 30 of the 32 gas plants and therefore granted Cities appropriate exception relief for those 30 plants. However, the FEA denied exception relief for the remaining two plants on the grounds that the adjusted non-product unit cost increase experienced by Cities with respect to the Adair and Ambrose plants was not materially in excess of the $.005 per gallon passthrough permitted by § 212.165.

Doric Petroleum, Inc; Houston, Tex.; FEE–3140 (Newcastle), FEE–3230 (Hennessey); Natural Gas Liquid Products

Doric Petroleum, Inc. (Doric) filed Applications for Exception from the provisions of 10 CFR 212.165 which, if granted, would permit the firm to increase the prices it charges for natural gas liquid products to reflect the non-product cost increases which the firm has incurred at its Newcastle and Hennessey natural gas processing plants. In considering the applications, the FEA noted that as a general rule exception relief will be granted to any natural gas processor which can demonstrate that the non-product costs which it has experienced since May 1973 have increased substantially in excess of the $.005 per gallon passthrough for natural gas liquid products permitted under § 212.165. *See Superior Oil Co.*, 2 FEA Par. 80,271 (August 29, 1975). The FEA found that Doric had made such a showing with respect to its Newcastle and Hennessey gas plants and granted Doric appropriate exception relief for those plants.

Independent Refining Corp.; Winnie, Tex.; FEE–2952; Motor Gasoline; Natural Gasoline

Independent Refining Corporation (IRC) filed a submission with the FEA requesting various types of administrative relief in connection with its acquisition on August 25, 1976 of the Winnie refinery and related assets previously owned by the Union Texas Petroleum Division of the Allied Chemical Corporation (Union Texas). In considering IRC's submission, the FEA determined that in order to avoid a disruption in the refinery's operations and supply dislocations to purchasers of motor gasoline from the refinery, IRC should be assigned to supply the base period purchasers of motor gasoline from the refinery. The FEA also determined that Union Texas should be permitted to sell the inventories of natural gasoline and motor gasoline at the Winnie refinery directly to IRC without including those products in its allocable supply and that Union Texas should be assigned to supply IRC with the same quantity of natural gasoline which the Winnie refinery used during the base period. With respect to the Old Oil Entitlements Program, the FEA determined that IRC should be permitted to earn entitlements beginning in November 1976 for its September 1976 crude oil runs to stills. In the Decision which it issued, the FEA noted that the Order would have prospective effect only and was not intended to ratify any unlawful conduct or improper practices in which either IRC or Union Texas may have engaged prior to the issuance of the Decision.

James Andros d/b/a Jim's Mobil; Rolling Meadows, Ill.; FEE–2779; Motor Gasoline

James Andros (Andros), a gasoline retailer doing business as Jim's Mobil, filed an Application for Exception from the provisions of 10 CFR 211.9 which, if granted, would have resulted in the assignment of the Shell Oil Company as the firm's new base period supplier in place of Nicot Oils Company (Nicot). In its submission, Andros asserted that his relationship with Nicot had deteriorated to the extent where he no longer purchased any product from Nicot and that he would be required to declare bankruptcy unless he were assigned a new supplier. Andros alleged that Nicot had overcharged him, manipulated records, fraudulently caused his supply contract to be cancelled and refused to cash credit card invoices. In considering Andros' exception request, the FEA determined that Andros had failed to submit any documentation which demonstrated that Nicot had defrauded Andros or intentionally violated any legal or contractual obligation to Andros. The FEA also determined that, although some of the issues which Andros raised in his exception application were currently the subject of a lawsuit, a court of law had not made any findings with respect to any of Andros' allegations. The FEA therefore concluded that Andros' claims were unsubstantiated and that exception relief was not warranted under the precedents established in *Eagle Point School District*, 2 FEA Par. 80,622 (July 1, 1975); and *George P. Rios*, 4 FEA Par. 83,008 (July 15, 1976).

Joe Webster d/b/a JW Oil Co.; Casper, Wyo.; FEE–3142; Crude Oil

Joe Webster d/b/a JW Oil Company (JW) filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The request, if granted, would result in an extension of the exception relief previously granted to JW on August 19, 1976 and would permit the firm to continue to sell a portion of the crude oil produced from the Buffalo 016999(a) Lease (the Lease) at upper tier ceiling prices. *See Joe Webster d/b/a JW Oil Co.*, 4 FEA Par. 83,060 (August 19, 1976). In considering the exception application, the FEA found that JW was continuing to incur operating costs which exceeded the revenues which the firm was able to obtain from selling crude oil at the required lower tier ceiling prices. On the basis of that analysis, the FEA concluded that the firm does not have an economic incentive to produce and sell crude oil from the property at the lower tier ceiling price. In view of this situation and on the basis of the operating data presented for the Lease for the previous six months, the FEA further concluded that JW should be permitted to sell 44.22 percent of the crude oil produced from the Lease for the benefit of the working interest owners at upper tier ceiling prices for a period of six months.

Livingston's Service Station, Inc.; Columbus, Ga.; FEE–2823; Motor Gasoline

Livingston's Service Station, Inc. (Livingston) filed an Application for Exception which, if granted, would result in the assignment of a new, lower-priced supplier of motor gasoline to replace Livingston's base period supplier, Hi-Octane Terminal Company (Hi-Octane). In considering the exception request, the FEA found that Livingston had relied upon supplies of surplus motor gasoline almost exclusively since June returning to its base period supplier only in certain summer months when adequate supplies of surplus gasoline were unavailable. The FEA determined that this operating procedure had enabled Livingston to increase the quantity of motor gasoline which it sold by more than 75 percent on a monthly basis between 1972–73 and 1974–76. Moreover, Livingston's monthly average profits during the first eight months of 1976 were significantly greater than the firm's monthly average profits during the previous four years. The Livingston financial data therefore failed to substantiate the firm's claim that it was experiencing a serious financial hardship as a result of the application to it of the provisions of 10 CFR 211.9 and the exception application was accordingly denied.

Maurice L. Brown Co.; Kansas City, Mo.; FEE–2712; Crude Oil

The Maurice L. Brown Company (Brown) filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D which, if granted, would permit the firm to sell at upper tier ceiling prices all of the crude oil which would be produced from a well which currently is inoperative. In considering Brown's Application, the FEA determined that the substantial investment which is necessary to repair the well would be uneconomical under the provisions of 10 CFR 212.73 which require that the crude oil produced from the repaired well be sold at lower tier prices. The FEA also determined that if the well were not repaired, substantial quantities of crude oil would not be recovered from the reservoir. On the basis of these findings, the FEA concluded that the working interest owners should be granted exception relief which provides a sufficient economic incentive to undertake the capital investment required to repair the well. At the same time the relief approved should not permit the firm to earn windfall profits. The FEA concluded that these objectives would be effectuated if Brown were permitted to sell the first 23,729 barrels of crude oil produced from the well on behalf of the working interest owners at upper tier ceiling prices, and appropriate exception relief was therefore granted.

Pioneer Operations Co., Inc.; Russell, Kans.; FEE–3152; Crude Oil

Pioneer Operations Company, Inc. (Pioneer) filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, which, if granted would permit the firm to sell at exempt prices the crude oil that it will produce from a well which the firm plans to drill on the Dalton Lease. In considering Pioneer's application, the FEA determined that the crude oil produced from the well would qualify as new crude oil and could be sold at upper tier ceiling prices. The FEA also determined that those price levels would provide Pioneer with sufficient economic incentive to undertake the crude oil recovery project. On the basis of these findings, the FEA concluded that exception relief should be denied.

Shell Oil Co.; Houston, Tex.; FEE–3044 (Altamont), FEE–3045 (Calumet), FEE–3046 (Fashing), FEE–3047 (Grand Chenier), FEE–3048 (West Lake Verret); Natural Gas Liquid Products

Shell Oil Company (Shell) filed Applications for Exception from the provisions of 10 CFR 212.165 which, if granted, would permit the firm to increase the prices it charges for natural gas liquid products to reflect non-product cost increases which the firm has incurred at five of its nautral gas processing plants. In considering the applications, the FEA noted that as a general rule exception relief will be granted to any natural gas processor which can demonstrate that the non-product costs which it has experienced since May 1973 have increased substantially in excess of the $.005 per gallon passthrough

for natural gas liquid products permitted under § 212.165. *See Superior Oil Co.*, 2 FEA Par. 80,271 (August 29, 1975). The FEA found that Shell had made such a showing with respect to four of the five gas plants and granted Shell appropriate exception relief for those plants. However, the FEA denied exception relief for the West Lake Verret plant on the grounds that the non-product unit cost increase experienced by Shell with respect to that plant was not materially in excess of the $.005 per gallon passthrough for natural gas liquid products permitted under § 212.165.

Standard Oil Co. of California; San Francisco, Calif.; FEE–2556; Crude Oil

The Standard Oil Company of California (Socal) filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, which, if granted, would permit the firm to sell at upper tier ceiling prices the crude oil produced from the Tognazzini Lease located in Santa Barbara, California. Socal based its request for exception on its contention that unless exception relief were granted it would have no economic incentive to comply with an Order issued to it by the County of Santa Barbara Air Pollution Control District requiring the firm to install gas treating equipment on the Tognazzini Lease in order to comply with statutorily prescribed air quality standards. In considering the exception request, the FEA determined that there is little economic incentive for Socal to make the investment under current FEA crude oil pricing regulations and it is likely that Socal will abandon the lease in the absence of exception relief. The FEA also determined that if the lease were abandoned significant quantities of domestic crude oil would be lost. On the basis of past precedents and in view of the fact that the investment would further important national policy objectives, including the attainment of statutory air quality standards and the encouragement of domestic crude oil production, the FEA concluded that exception relief was warranted on the grounds that the application of the lower tier ceiling price rule to Socal with respect to the Tognazzini Lease resulted in a gross inequity. Accordingly, exception relief was granted which would enable Socal to undertake the pollution control project while at the same time avoiding the possibility that windfall profits would be obtained. In this particular case, the FEA determined that these objectives would be achieved if Socal were permitted to recover its investment in the air pollution control equipment by selling a sufficient quantity of crude oil produced for the benefit of the working interest owners at upper tier ceiling prices.

REQUEST FOR STAY

Little America Refining Co.; Evansville, Wyo.; FES–0973; Crude Oil

Little America Refining Company (Larco) requested that its obligation to purchase entitlements be stayed pending a determination of the firm's Appeal from a Decision and Order issued to it by the Federal Energy Administration on September 10, 1976. *Little America Refining Co.*, 4 FEA, Par. 83,082 (September 10, 1976). On July 1, 1976, Larco and an affiliated firm, Holdings Little America, formed a jointly-owned subsidiary corporation, Sinclair Oil Company (Sinclair), for the purpose of acquiring the refinery operations and related assets of Pasco, Inc. The September 10 Order granted in part the Application for Exception from the Old Oil Entitlements Program (10 CFR 211.67) which Larco had filed with respect to its expanded operations. In considering the stay request, the FEA determined that Larco had failed to make a *prima facie* showing that it was inappropriate for the FEA to have combined historical financial data for the separate Larco and Sinclair operations in order to determine whether exception relief should be granted to the entire Larco firm. The FEA also determined that Larco had not made a convincing showing that certain adjustments to the Larco historical financial data were necessary to accurately reflect the firm's operations. Consequently, the FEA found that Larco had failed to make the type of substantial *prima facie* showing of success on the merits which had in the past warranted the approval of a stay. In addition, the FEA found that a stay of Larco's obligation to purchase entitlements would prevent other refiners from receiving the full benefits of access to old crude oil and thereby effectively frustrate the purpose of the Entitlements Program. The Request for Stay was therefore denied.

The Refinery Corp.; Denver Colo.; FES–3276 Crude Oil

The Refinery Corporation (TRC) requested that its obligations under the provisions of 10 CFR 211.67 (the Old Oil Entitlements Program) be stayed pending a final determination on an Appeal and Application for Exception which the firm had filed. The firm's request, if granted, would stay TRC's obligation to purchase entitlements issued by the FEA pursuant to § 211.67(j)(2) and the "Notice of Revised Special Correction Amounts Under Entitlements Program." 41 FR 42700 (September 28, 1976). In considering TRC's Application for Stay, the FEA concluded that the firm had failed to demonstrate that the denial of the stay would cause TRC to incur an irreparable injury. The FEA noted that if it determined, upon full consideration of TRC's Appeal and Application for Exception, that the firm was entitled to relief from the Entitlements Program, TRC's future obligations could be adjusted to compensate it for any purchases which it had made in the past. The FEA also held that TRC had failed to make a substantial prima facie showing that it was likely that the firm would succeed on the merits of its Appeal or Application for Exception and also failed to make any other type of showing that a stay was appropriate. The Application for Stay was therefore denied.

REQUEST FOR MODIFICATION OR RESCISSION

Tenneco Oil Co.; Houston, Tex.; FMR–0063 Crude Oil

On June 8, 1976 the FEA issued a Remedial Order to Tenneco Oil Company (Tenneco). In the Remedial Order the Regional Administrator of FEA Region IV found that during the period October 1973 through June 1975 Tenneco had charged unlawfully high selling prices for certain crude oil which it produced and sold to West Coast Oil Company (West Coast) and Kern County Refinery, Inc. (Kern). The FEA further found that Tenneco had unlawfully terminated its supplier/purchaser relationship with West Coast. On the basis of these findings, Tenneco was ordered to immediately reinstate its supplier/purchaser relationship with West Coast and to make refunds to West Coast and Kern for the overcharges. On July 12, 1976 the FEA stayed those provisions of the Remedial Order which required Tenneco to reinstate its supplier/purchaser relationship with West Coast and to make refunds to West Coast and Kern. The approval of the stay was conditioned, however, upon Tenneco placing the funds involved in an escrow account pending the final determination of its Appeal of the Remedial Order. Tenneco was further required to deposit into the account on a weekly basis a sum of money equal to the number of barrels of crude oil which it would otherwise have been required to supply to West Coast, multiplied by the differenoe between West Coast's current weighted average cost of crude oil minus Tenneco's lower tier ceiling price at the property in question. *Tenneco Oil Co.*, 4 FEA Par. 85,006 (July 12, 1976). On October 4, 1976 Tenneco requested that the FEA issue a Supplemental Order which would relieve the firm of the escrow requirements specified in the July 12 Stay Order. In considering Tenneco's request, the FEA determined that Tenneco had made a convincing showing that a significant change had occurred in the circumstances which led to the issuance of the July 12 Order. Tenneco established a very strong probability that it will succeed on the merits of its Appeal with respect to the finding in the June 8 Remedial Order that Tenneco had charged Kern prices for crude oil which were in excess of the lower tier ceiling price. Tenneco also provided evidence that it had reinstated its supplier/purchaser relationship with West Coast. Consequently, the provisions of the July 12 Stay Order were modified to permit Tenneco to recover the funds which it had placed in escrow for the alleged overpayments to Kern. Tenneco was also relieved of the requirement that it make weekly deposits into the account since it had, in fact, reinstated its supplier/purchaser relationship with West Coast.

SUPPLEMENTAL ORDERS

Beacon Oil Co.; Hanford, Calif.; FEX–0059.
Delta Refining Co.; Memphis, Tenn.; FEX–0060.
EDG, Inc.; Los Angeles, Calif., FEX–0061.
Fletcher Oil & Refining Co.; Wilmington, Calif.; FEX–0062.
Good Hope Industries; Springfield, Mass.; FEX–0063.
Husky Oil Co. of Delaware; Washington, D.C.; FEX–0064.
Lunday-Thagard Oil Co.; Irvine, Calif.; FEX–0065.
Midland Cooperatives, Inc.; Minneapolis, Minn.; FEX–0066.
Mohawk Petroleum Corp.; Bakersfield, Calif.; FEX–0067.
Newhall Refining Co., Inc.; Newhall, Calif.; FEX–0068.
Pasco, Inc.; Washington, D.C.; FEX–0069.
Powerine Oil Co.; Washington, D.C.; FEX–0070.
Rock Island Refining Corp.; Indianapolis, Ind.; FEX–0071.
Southland Oil Co.; Washington, D.C.; FEX–0072.
Tosco, Inc.; Washington, D.C.; FEX–0073.
Warrior Asphalt Co. of Alabama; Washington, D.C.; FEX–0074.
West Coast Oil Co.; Newport Beach, Calif.; FEX–0075.
Young Refining Corp.; Douglasville, Ga.; FEX–0076.
Famariss Oil Corp.; Washington, D.C.; FEX–0077.
Laketon Asphalt Refining, Inc.; Evansville, Ind.; FEX–0078.
Navajo Refining Co.; Washington, D.C.; FEX–0079.
North American Petroleum Corp.; Abilene, Tex.; FEX–0080.
OKC Corp.; Washington, D.C.; FEX–0081.
San Joaquin Refiining Co.; Newport Beach, Calif.; FEX–0082.
Sound Refining, Inc.; Tacoma, Wash.; FEX–0083.
Wicket Refining Co.; Midland, Tex.; FEX–0084 Crude Oil.

On August 30, 1976, the FEA published a Notice in the FEDERAL REGISTER indicating that it had reviewed the exception relief from the purchase requirements of the Entitlements Program granted to small refiners during 1975 in view of the actual financial

results achieved by each firm for the year. 41 FR 36540 (August 30, 1976). Based on that review, a preliminary determination was reached with respect to each small refiner that had received exception relief as to whether the firm had obtained excessive benefits from the relief provided and should therefore be required to purchase entitlements or whether the firm had received an insufficient measure of exception relief and should therefore be granted additional benefits. The Notice described the manner in which the FEA had determined each firm's particular entitlement purchase obligation or sales requirement and invited comments from interested persons on the action which the FEA proposed to take. The firms which submitted comments raised a number of general issues concerning the FEA's proposal as well as arguments relating specifically to the FEA's calculation of the particular entitlement obligation or benefit. The FEA addressed the specific arguments raised by individual firms in letters to those firms. The general issues were considered in a Supplemental Order which also set forth the adjustments to the 1975 exception relief which the FEA will implement beginning with the month of November 1976. In the Supplemental Order, the FEA reached the following conclusions:

(1) The small refiners involved in the review proceeding have had a number of opportunities in the past to present arguments that the historical profit margin or return on invested capital calculated by the FEA for purposes of the exceptions analysis is inordinately low or unrepresentative of normal operations and to seek appropriate adjustments. Under the circumstances, a request to adjust historical profitability is not timely and a firm which is now seeking an adjustment will, as a general rule, be required to satisfy the standards which have been established for the approval of retroactive exception relief.

(2) There is considerable merit to the argument that financial results for the month of December 1975 and any subsequent month in the twelve month period under review in which a small refiner was exempt from purchasing entitlements under the provisions of Special Rule No. 6 should be excluded from the determination as to whether the firm received an excessive measure of exception relief in order to avoid depriving firms of the benefits which they realized as a result of the statutory exemption. Thus, if a small refiner files an Appeal from the FEA's determination of the adjustment to be made in the exception relief granted in 1975 and in connection with the Appeal provides full financial data for the period under review reporting separately its results for December 1975 and any subsequent month in the period in which it was exempt from purchasing entitlements, the FEA will eliminate those months from the determination and, if appropriate, will grant additional relief in a future Entitlement Notice.

(3) The firms which contended that the months in which they were fully or partially exempt from purchasing entitlements under the provisions of Special Rule No. 3 should also be excluded from the review did not present any convincing arguments in support of their position. The FEA observed that, unlike the situation with respect to Special Rule No. 6, the benefits which small refiners received under Special Rule No. 3 were not required by statute. Additionally, since the beginning of the Entitlements Program, it has been clear that the FEA woud consider financial results achieved during the period in which Special Rule No. 3 was in effect in evaluating exception requests from the purchase requirements of the Entitlements Program.

(4) As set forth in *Beacon Oil Co.*, 3 FEA Par. 83,209 (June 8, 1976) and other Decisions, a rational basis exists for the FEA's use of a cash method of accounting in analyzing a firm's entitlement expenses in 1975 even though an accrual method of accounting was used in assessing exception applications submitted by small refiners in 1976. As indicated in the *Beacon* Decision, because the FEA assumed that the Entitlements Program would end in December of 1975, it was appropriate to review claims of serious hardship advanced by small refiners in terms of the immediate financial burden which the Entitlements Program would impose on those firms. In measuring the financial burden which small refiners would experience, it was appropriate to utilize a cash basis of accounting since that method most accurately reflected the immediate impact of the Entitlements Program on small refiners.

(5) Several firms did not receive any exception relief from their entitlement purchase obligations after the publication of the criteria for the approval of exception relief set forth in *Delta Refining Co.*, 2 FEA Par. 83,275 (September 11, 1975) and, consequently, it appears to be unfair to apply those criteria in reviewing the appropriateness of the relief granted to those firms in 1975. However, the firms which received exception relief from the Entitlements Program after the *Delta* standards were announced voluntarily brought themselves under those standards and accepted the benefits conferred upon them as a result of the application of the standards. Thus, it is not improper to review the financial results which those firms achieved for the entire year under the *Delta* criteria.

(6) As a general rule, small refiners whose individual purchase obligations are $500,000 or less will be permitted to consummate their purchases over a period of six months, while those firms whose purchase obligations exceed $500,000 will have their obligations distributed evenly over a twelve month period. All entitlement sales requirements will be satisfied over a period of three months.

(7) The contention that the 1975 entitlements review did not satisfy the requirements of due process is wholly without foundation. Each exception Decision which was issued in 1975 contemplated that a further review would be performed of the relief granted and the FEA could simply have issued a Supplemental Order to each small refiner setting forth the determination as to whether the firm had obtained an excessive or insufficient measure of relief in 1975 and directing the firm to purchase or sell entitlements. Instead, each firm affected by the review was afforded an ample opportunity to participate in the review proceeding and to have its position on both general and specific matters fully considered.

Class Exception—Retroactive Application of the Separate Inventories Amendment; FEX-0094; Refined Petroleum Products

On September 24, 1976 the Federal Energy Administration issued a Decision and Order denying class exception relief which, if granted, would have permitted certain categories of resellers to calculate their cost of product in inventory on a retroactive basis utilizing separate inventory computations. *Class Exception—Retroactive Application of the Separate Inventories Amendment*, 4 FEA Par. 83,099 (September 24, 1976). For periods subsequent to May 1, 1976, this practice was permitted under the FEA regulations by virtue of an amendment to § 212.92. Subsequent to the issuance of the September 24 Decision and Order, various parties informed the FEA that they intended to appeal that determination and requested additional time in order to gather, prepare and file the necessary materials in connection with their appeals. After considering these requests, the FEA determined that in view of the importance of having complete and accurate evidence in the appeal proceeding and the reasonable basis for the requests for extension which had already been filed, a general extension of time until December 10, 1976 to appeal the September 24 Decision was approved. In addition, the FEA specified that any appeals from the September 24 Decision and Order should be formulated so as to cover two separate issues: (i) Whether a class has been properly formed; and (ii) whether sufficient evidence exists to demonstrate that the class will be subject to a serious hardship or a gross inequity as a result of the separate inventories rule. The FEA also listed various categories of data which should be included in any appeal submission.

Melton Auto Service; Petersburg, Va.; FEX-0095 Motor Gasoline

On September 20, 1976 the Federal Energy Administration issued a Decision and Order to Melton Auto Service (Melton) granting the firm's Petition for Special Redress Relief with respect to an Assignment Order issued to it by the FEA Region III. In the September 20 Order, the matter was remanded to the Regional Administrator of Region III with instructions to issue a revised Assignment Order to Melton within 45 days. *Melton Auto Service*, 4 FEA Par. 87,015 (September 20, 1976). On remand, all interested parties were requested to submit additional information and comments in connection with the preparation and issuance of a new Assignment Order. Since that information had not yet been received by the Regional Administrator, the FEA on its own motion modified the September 20 Order to specify that the Regional Administrator shall issue a new Assignment Order to Melton within 75 days of the issuance of the September 20, 1976 Order.

Westla Oil Co.; Maryland Heights, Mo.; FEX-0096 Motor Gasoline

On September 21, 1976 the Federal Energy Administration issued a Decision and Order to the Westla Oil Company (Westla) granting the firm's Petition for Special Redress Relief with respect to an Assignment Order issued to it by FEA Region IX with instructions to issue a revised Assignment Order to Westla within 45 days. *Westla Oil Co.*, 4 FEA Par. 87,013 (September 21, 1976). On remand, all interested parties were requested to submit additional information and comments in connection with the preparation and issuance of a new Assignment Order. Since that information had not yet been received by the Regional Administrator, the FEA on its own motion modified the September 21 Order to specify that the Regional Administrator shall issue a new Assignment Order to Westla within 75 days of the issuance of the September 21, 1976 Order.

DISMISSALS

The following submissions were dismissed following a statement by the applicant indicating that the relief requested was no longer needed:

Basic Earth Science Systems; Denver, Colo.; FEE-3159.

Pryor Enterprises, Inc.; Griffin, Ga.; FMR-0060.

Sav-Mor Oil Co.; Los Angeles, Calif.; FEE-3080.

The following submissions were dismissed for failure to correct deficiencies in the firm's filing as required by the FEA Procedural Regulations:

Fred Goodstein; Casper, Wyo.; FEE-2899.

Hennessey-Freda, Inc.; Larchmont, N.Y.; FEE-3163.

The following submission was dismissed after the applicant repeatedly failed to respond to requests for additional information: *Luke Bros., Inc.; Oklahoma City Okla.; FES–1004.*

Copies of the full text of these Decisions and Orders are available in the Public Docket Room of the Office of Private Grievances and Redress, Room B–120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., e.s.t., except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

MICHAEL F. BUTLER,
General Counsel.

DECEMBER 23, 1976.

[FR Doc.76–38293 Filed 12–27–76;1:23 pm]

FEDERAL POWER COMMISSION

[RP 72–110; (PGA77–4a)]

ALGONQUIN GAS TRANSMISSION CO.

Rate Change Pursuant To Purchased Gas Cost Adjustment Provision

DECEMBER 21, 1976.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas"), on December 13, 1976, tendered for filing Substitute Twenty-Fifth Revised Sheet No. 10 to its FPC Gas Tariff, First Revised Volume No. 1.

This sheet is being filed pursuant to Algonquin Gas' Purchased Gas Cost Adjustment Provision set forth in Section 17 of the General Terms and Conditions of its FPC Gas Tariff, First Revised Volume No. 1. The rate change is being filed to reflect revised purchased gas costs filed by its sole supplier of natural gas, Texas Eastern Transmission Corporation.

The proposed effective date of Substitute Twenty-Fifth Revised Sheet No. 10 is January 1, 1977.

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 January 4, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant 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.76–38272 Filed 12–29–76;8:45 am]

[Docket Nos. E–8071, etc.]

ARKANSAS POWER & LIGHT CO.

Filing

DECEMBER 22, 1976.

Take notice that on December 10, 1976, Arkansas Power & Light (AP&L) tendered for filing a compliance report pursuant to the Order issued November 15, 1976, approving a Settlement Agreement reached in the above numbered dockets. AP&L states that the Report shows monthly billing determinants and revenues under prior, present and settlement rates; monthly settlement increase, monthly rate refund, monthly interest computation, and summarized information for the total refund period in each docket. Further, AP&L tendered for filing revised U–4 and B–4 rate schedules.

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, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 11, 1977. 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.76–38281 Filed 12–29–76;8:45 am]

CAROLINA POWER AND LIGHT CO.

Order Approving Settlement Regarding Electric Rates

DECEMBER 22, 1976.

On September 15, 1976, Carolina Power and Light Company (CP&L) presented a Stipulation and Agreement of Settlement (Stipulation) which, if approved by the Commission, would dispose of all issues raised in this proceeding. For the reasons set forth below, the Commission shall approve the Stipulation.

By letter order of December 24, 1975, the Commission directed CP&L to file by January 15, 1976, a revised fuel adjustment clause conforming to § 35.14 of the Commission's Regulations as amended by FPC Order No. 517. The Commission directed further that this revised fuel adjustment clause have an effective date of January 1, 1976.

On January 15, 1976, as completed on March 3, 1976, CP&L tendered for filing a proposed fuel adjustment clause in purported compliance with Order No. 517. It was estimated that the revised fuel clause would increase 1976 jurisdictional revenues by about $180,000. Subsequently, by order issued March 31, 1976, in Docket No. ER76–338, CP&L's proposed fuel clause was suspended for one day, until January 2, 1976, and a hearing was ordered to resolve issues raised by the North Carolina Electric Membership Corporation, the Four County Electric Membership Corporation (EMC's), the Electri-Cities of North Carolina, and the Cities of Bennetsville and Camden, South Carolina (ElectriCities).

The issues raised by the intervenors dealt primarily with whether the proposed fuel clause was to become effective for bills rendered in January or service rendered in January, for the period January 2, 1976, to May 1, 1976, that locked-in period of the fuel clause. The intervenors argued that in applying the clause the company stated that it intended to use it on bills rendered on and after the effective date of January 2, 1976, and that this would include some service rendered in December 1975. The intervenors contended that the proposed clause should be effective only for service rendered after the effective date established by the Commission. In addition, the intervenors questioned the calculation of CP&L's base rate for the proposed fuel clause.

A settlement conference was convened on September 15, 1976, at which time the proposed Stipulation was presented to the Administrative Law Judge (ALJ) requesting that it be certified to the Commission. The ALJ certified the settlement agreement to the Commission on September 20, 1976, stating that all parties and Staff concur in the certification of the settlement agreement, which resolves all conflicts among the company and its wholesale customers arising from the application of CP&L's fuel adjustment clause. The terms and conditions of the Stipulation are summarized as follows:

(1) The revised fuel clause shall not apply to bills rendered during January 1976.

(2) With respect to revenue increases collected as a result of application of the amended fuel clause to January billing, CP&L shall refund such increases to the customers with interest at the rate of 9% per annum from the date of original payment until such repayment.

(3) All other fuel adjustment clause revenues billed by CP&L to the wholesale customers on and after January 2, 1976, are permanent revenues of the company not subject to refund.

Although the Stipulation does not specifically mention the calculation of CP&L's base rate for the proposed fuel clause, the intervenors have accepted CP&L's calculation for purposes of the proposed Stipulation.

Public notice of certification of the Stipulation was issued on October 1, 1976, with comments due by October 15, 1976. On October 15, 1976, Staff filed comments in support of the Stipulation. No other comments were received.

The Commission's review of the subject Stipulation indicates that the terms and conditions proposed therein are equitable to all parties concerned and are otherwise consistent with the public interest. Accordingly, the Stipulation shall be incorporated herein by reference, accepted and approved, subject to the conditions set forth below.

The Commission finds: Approval, as hereinafter ordered and conditioned, of the Stipulation submitted by CP&L in this docket on September 15, 1976, is just and reasonable and in the public interest in carrying out the provisions of the Federal Power Act.

The Commission orders: (A) The Stipulation and Agreement of Settlement presented in this proceeding on September 15, 1976, is incorporated herein by reference, accepted and approved.

(B) Within 30 days of the date of issuance of this order, CP&L shall file its billing methods and procedures entitled "Application of Wholesale Fuel Adjustment Clause" to effectuate the provisions of the Stipulation.

(C) Within 30 days after the compliance rate schedule is accepted for filing, CP&L shall make refunds to appropriate customers of all amounts collected in excess of the settlement rates provided for in the Stipulation and approved herein. Said refunds shall be made in accordance with the terms of the Stipulation and shall bear interest at the rate of 9% per annum.

(D) Within 15 days after refunds are made, CPL shall file a refund report with the Commission, shall serve a copy thereof upon all affected customers, and shall furnish a copy to each State Commission within whose jurisdiction the wholesale customers distribute and sell electric energy at retail. Such report shall show monthly billing determinants and revenues under prior, present and settlement rates; the monthly settlement rate change; the monthly rate refund; and the monthly interest computation together with a summary of such information for the total refund period.

(E) This order is without prejudice to any findings or orders which have been made or which may hereafter be made by the Commission, and is without prejudice to any claims or contentions which may be made by the Commission, its Staff, or any party or person affected by this order in any proceeding now pending or hereafter instituted by or against CP&L or any other person or party.

(F) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-38282 Filed 12-29-76;8:45 am]

[Docket Nos. CP76-206, etc.]

CITIES SERVICE GAS CO.

Order Consolidating Proceedings, Granting Interventions, and Prescribing Hearing

DECEMBER 21, 1976.

These proceedings involve three applications filed pursuant to sections 7(b) and 7(c) of the Natural Gas Act[1] by Cities Service Gas Company (Cities Service) to abandon in place or to reclaim certain pipeline, compressor, and appurtenant facilities and to install additional and replacement pipeline, compressor, and appurtenant facilities and to drill new injection wells to enhance its ability to provide adequate peak day service to customers in its curtailment priorities 1, 2, and 3 by increasing the peak day deliverability of certain storage fields by a total of 115,600 Mcf at the same wellhead shut-in pressure and storage inventory. General Motors Corporation (GM) filed a protest, petition to intervene and request for formal hearing in each of these dockets.[2] For the reasons set forth below, the public interest requires that these proceedings be consolidated and that a public hearing be held.

Cities Service's application in Docket No. CP76-206 was filed on December 22, 1975, and requests authorization to:

i. Construct approximately 12.96 miles of 6-inch to 26-inch diameter loop pipeline and appurtenant facilities in the McLouth Storage Field, Jefferson and Leavenworth Counties, Kansas;

ii. Abandon in place or reclaim approximately 5.54 miles of 2-inch to 20-inch diameter pipeline and construct approximately 4.80 miles of 4-inch to 26-inch diameter pipeline and appurtenant facilities in the North Welda Storage Field, Anderson County, Kansas; and

iii. Abandon in place or reclaim approximately 6.64 miles of 3-inch to 16-inch diameter pipeline and construct approximately 6.18 miles of 4-inch to 26-inch pipeline and appurtenant facilities in South Welda Storage Field, Anderson County, Kansas.

The proposed facilities at the McLouth Storage Field will loop the existing pipeline to and from the Tonganoxie Compressor Station[3] and the main pipeline laterals within the field to correct excessive pressure drops which presently exist in the storage field pipeline system and thereby increase peak day deliverability from 120,000 Mcfd to 138,000 Mcfd or a net increase of 18,000 Mcfd. The proposed facilities in the North Welda and South Welda Storage Fields will replace deteriorated pipelines in these fields[4] and correct excessive pressure drops in part of the storage field pipeline system thereby increasing peak deliverability from 70,000 Mcfd to 81,000 Mcfd for the North Welda Storage Field and from 72,000 Mcfd to 92,500 Mcfd for the South Welda Storage Field, or a total of 31,500 Mcfd. However, as a result of the increased intake pressure at the Welda Compressor Station, the peak day deliverability of the Colony Storage Field will be reduced from 108,000 Mcfd to 91,500 Mcfd or 16,500 Mcfd.[5] Thus, the net increase in peak day deliverability from these three fields is 15,000 Mcfd. Total estimated cost of the proposed facilities is $3,358,100.

Cities Service states that these projects are necessary to increase present peak day deliverability to meet demands during the 1976-77 winter heating season and to provide additional operating flexibility and future deliverability increases. No service will be abandoned as a result of the abandonment of the facilities described above.

This application was noticed on January 22, 1976 (41 FR 4648 (January 30, 1976)). GM filed an untimely protest, petition to intervene and request for hearing on April 7, 1976. Cities Service filed its answer in opposition to GM's petition on May 7, 1976. On May 25, 1976, The Gas Service Company (Gas Service) filed an untimely petition to intervene in response to GM's protest of the subject application.

On July 26, 1976, Cities Service filed an application for a temporary certificate. By letter dater September 10, 1976, the Secretary of the Commission issued a temporary certificate which Cities Service accepted by letter dated October 8, 1976. By letter dated November 11, 1976, Cities Service advised that construction of these facilities commenced on October 27, 1976.

Cities Service's application in Docket No. CP76-335 was filed on April 14, 1976, and requests authorization to:

i. Abandon in place or reclaim 7.77 miles of 3-inch to 16-inch pipeline and construct approximately 7.77 miles of 4-inch to 20-inch pipeline and appurtenant facilities in the Craig Storage Field, Johnson County, Kansas;

ii. Abandon and reclaim three 230 horsepower compressor units and install and operate two 660 horsepower compressor units and appurtenant facilities at the Craig Compressor Station, Johnson County, Kansas;

iii. Install and operate one 2,400 horsepower compressor unit and appurtenant facilities at the Tonganoxie Compressor Station, Leavenworth County, Kansas; and

iv. Abandon and reclaim one 2,400 horsepower compressor unit at Haysville Compressor Station, Sedgwick County, Kansas.

The pipe to be installed in the Craig Storage Field will replace deteriorated

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[1] 15 U.S.C. 717f(b), (c).

[2] GM's petition in Docket No. CP76-206 was filed subsequent to the date established by the Commission for the filing of such petition.

[3] The Tonganoxie Compressor Station compresses gas in and out of the McLouth Storage Field as required.

[4] This pipeline was originally installed in 1934-1937 using bare pipe.

[5] Withdrawals from the North Welda, South Welda, and Colony Storage Fields feed into a common intake at the Welda Compressor Station which compresses the gas into Cities Service's 26-inch diameter Welda-Ottawa pipeline.

pipe originally installed in 1943 and correct excessive pressure drops in the field gathering facilities. The two 660 horsepower compressor units installed at the Craig Compressor Station will replace three deteriorated 230 horsepower units, which no longer provide adequate service, and increase the peak day deliverability of the Craig Storage Field from 32,000 Mcfd to 43,000 Mcfd, or a net increase of 11,000 Mcfd. The transfer of one 2,400 horsepower compressor unit from the Haysville Compressor Station, where it is no longer necessary for adequate service due to declining volumes, to the Tonganoxie Compressor Station will increase the peak day deliverability of the McLouth Storage Field from 138,000 Mcfd to 156,000 Mcfd, or a net increase of 18,000 Mcfd. Total estimated cost of the facilities is $2,656,283.

Cities Service states that the proposed increase in peak day deliverability is required to serve both customers existing as of December 31, 1976, and projected new customers added after that date by Cities Service's distributor customers during the 1977–78 winter heating season. During subsequent years, Cities Service's declining gas supplies will allegedly require that these facilities be used solely to meet the peak day demands of customers existing as of December 31, 1976.

The application in Docket No. CP76–335 was noticed on April 23, 1976 (41 FR 18160 (April 30, 1976)). On May 19, 1976, GM filed a protest, petition to intervene, and request for formal hearings, and, on May 25, 1976, Gas Service filed a petition to intervene. Cities Service filed an answer in opposition to GM's petition on June 4, 1976.

On July 2, 1976, in Docket Nos. CP76–206 and CP76–335, GM filed a reply to Cities Service's answers in opposition to GM's petitions to intervene and a motion to consolidate the proceedings in these two dockets. Cities Service, on August 2, 1976, filed a motion to strike GM's reply and motion for consolidation and for the issuance of permanent certificates in both dockets pursuant to § 1.32 of the Commission's Rules of Practice and Procedure.*

Cities Service's application in Docket No. CP63–188 (Phase II) was filed on September 27, 1976, and requests authorization to:

i. Drill ten (10) gas injection and withdrawal wells, install appurtenant facilities and operate the same as gas storage facilities in its Webb Storage Field, Grant County, Oklahoma; and

ii. Construct 1.39 miles of 6-inch to 16-inch diameter pipeline from the 10 new wells to the existing storage field pipelines which lead to the Webb Compressor Station.

These facilities will increase the peak day deliverability of the Webb Storage Field from 216,400 to 270,000 Mcfd, or a net increase of 53,600 Mcfd. The total estimated cost of the facilities is $1,400,900.

*18 CFR 1.32.

Cities Service states that these facilities will enhance its ability to provide adequate peak day service to customers in its curtailment priorities 1, 2, and 3. Unlike the applications in Docket Nos. CP76–206 and CP76–335, Cities Service does not state whether these facilities are needed for either the 1976–77 or 1977–78 winter heating season.

This application was noticed on October 6, 1976 (41 FR 45049 (October 14, 1976)). On October 28, 1976 GM filed a protest, petition to intervene, and motion for formal hearings and consolidation with the proceedings in Docket Nos. CP76–206 and CP76–335.

We find that these three proceedings should be consolidated for purposes of hearing and disposition. The applications represent separate, but related, projects to increase Cities Service's peak day deliverability from storage by 115,600 Mcfd or 18.7 percent of the existing peak day deliverability of 618,400 Mcfd for these fields. The proposed replacement and rearrangement of facilities in Docket No. CP76–335 is stated in part to permit a second increase in peak day deliverability after the peak day deliverability is increased as a result of the proposal in Docket No. CP76–206. The proposed facilities in Docket No. CP63–188 (Phase II) are designed to provide a third increment to Cities Service's storage capability. In addition, Cities Service's August 2, 1976, motion in Docket Nos. CP76–206 and CP76–335 states that, subsequent to the 1977–78 winter heating season, the increases in peak day deliverability provided in those dockets will be required to meet the peak demands of firm customers existing as of December 31, 1976, due to declining gas supplies. Thus, there are common issues which require that these proceedings be consolidated.

GM's pleadings in these proceedings raise the issue of whether a pipeline, which is presently curtailing its firm customers, should be permitted to increase its storage capacity and/or peak day deliverability from storage to meet the additional demands of its distributor customers resulting from their attachment of new high-priority customers. We believe that this question should be explored at a hearing since a portion of the increased peak day deliverability proposed in Docket Nos. CP76–206 and CP 76–335 is to serve new customers added after December 31, 1976, at least through the 1977–78 winter heating season. While the Commission has consistently required pipelines to husband existing supplies of gas through the use of storage and has favored the development of new storage projects to assist pipelines in meeting existing peak day requirements, the question of whether pipelines should be permitted to increase storage to meet the demands of new high-priority customers has not been resolved. If gas supplies continue to decline, then all increased storage capability will ultimately be needed to meet the demands of existing customers. However, if growth occurs in the interim, the new customers will be assigned to the appropriate curtailment priorities with existing customers and curtailed proportionately. This could lead to a situation where other existing high-priority users, such as industrial feedstock consumers, are curtailed significantly in advance of the date that they would otherwise be curtailed because a pipeline has used its expanded storage capability to permit its distributors to add new residential and small commercial customers.

Because growth is a factor in these proceedings, we believe the hearings established below should address the question of whether Cities Service should be permitted to increase its storage capability to satisfy additional demands representing growth and, if the question is answered negatively, what conditions should be attached to any permanent certificates issued in these proceedings to prohibit such use. Thus the hearing, prescribed in these consolidated proceedings is to develop a record regarding the following issues:

i. How is the public convenience and necessity advanced by the construction and operation of these proposed facilities?

ii. What customers and which markets will be served if the proposed facilities are constructed?

iii. What effect would the construction and operation of the proposed facilities have on existing customers?

iv. Who should pay the cost of the proposed facilities and service?

v. Described the impact of diverting additional gas supplies to storage during the summer period on existing customers.

vi. Identify Cities Service's Order No. 467–B priority 1 and 2 peak day requirements and priority 1 and 2 daily contract demand. Identify the maximum volume of gas which could be delivered by Cities Service during a period of peak demand, with and without the proposed facilities?

vii. Will any existing customers of Cities Service receive less gas on an annual and peak day basis as a result of the proposed facilities?

viii. If new customers are proposed to be served, identify these customers and their peak day and annual requirements according to the priorities prescribed in 18 CFR 2.78 (a)(1).

ix. Does the continued addition of new customers advance the public interest?

x. What conditions, if any, should be attached to the permanent certificates, if any, issued in these proceedings?

The responses to these issues should give consideration to the Commission's determination in *Northern Natural Gas Company*, Opinion No. 773, __ F.P.C. __ (August 13, 1976), wherein we stated (*id.* at 2–3):

In general, we agree with the conclusion of the Administrative Law Judge, that a pipeline presently curtailing existing customers should not be authorized to attach new customers regardless of the priority of use to which the new customers would put any natural gas which they receive. In the absence of some compelling public interest consideration, existing customers should not be cut off in order that new customers may receive service who had never previously received natural gas deliveries. In addition we agree with the Judge that the *de minimis* nature of the proposed new service cannot be controlling since one *de minimis* approval

after another can accumulate to the point where there is a substantial effect on the other customers of the pipeline. We further agree with the Judge that the availability of alternate fuels is not controlling where the customers' facilities for using gas or other fuels have not yet even been installed and no determination on either an absolute or economic basis can be made.

The Commission finds: (1) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that a public hearing be held on the matters involved and the issues presented in these proceedings as hereinbefore described.

(2) Due to the related nature of the applications and since there may be common questions of law or fact involved, it is appropriate to consolidate the proceedings in Docket Nos. CP76–206, and CP76–335, and CP63–188 (Phase II).

(3) Participation in these proceedings by General Motors Corporation and The Gas Service Company may be in the public interest. Permitting the filing of the late petitions to intervene in Docket Nos. CP76–206 and CP76–335 will not delay the proceedings and may be in the public interest.

The Commission orders: (A) The proceedings in Docket Nos. CP76–206, CP76–335, and CP63–188 (Phase II) are hereby consolidated for purposes of hearing and disposition.

(B) Pursuant to the authority of the Natural Gas Act, particularly sections 7 and 15 thereof, the Commission's Rules of Practice and Procedure (18 CFR Part 1), and the Regulations under the Natural Gas Act (18 CFR Chapter I, Subchapter E), a prehearing conference shall be held on January 17, 1977, commencing at 10:00 a.m. in a hearing room of the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, to discuss procedural issues and the clarification of issues.

(C) An Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose (See Delegation of Authority, 18 CFR 3.5 (d)), shall preside at the prehearing conference in this proceeding, with authority to establish and change all procedural dates, and to rule on all motions (with the sole exception of petitions to intervene, motions to consolidate and sever, and motions to dismiss), as provided for in the Rules of Practice and Procedure.

(D) The direct case of Cities Service, including testimony on the issues raised by this order, shall be filed and served on all parties, the Presiding Administrative Law Judge, and the Commission Staff on or before January 3, 1977. All supporting intervenors, shall file testimony and exhibits comprising their cases in chief on or before January 3, 1977.

(E) The above-mentioned intervenors are permitted to intervene in the instant consolidated proceeding subject to the rules and regulations of the Commission; *Provided, however,* That participation of such intervenors shall be limited to matters affecting asserted rights and interests as specifically set forth in the petitions to intervene; and *Provided, further,* That the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order of the Commission entered in the proceeding.

(F) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76–38273 Filed 12–29–76;8:45 am]

[Docket No. ER77–115]

COMMONWEALTH EDISON CO.

Tariff Change

DECEMBER 22, 1976.

Take notice that Commonwealth Edison Company, on December 15, 1976, tendered for filing proposed changes in its FPC Electric Tariff. The proposed changes revise the Electric Service Contract between Commonwealth Edison Company and the City of Geneva, Illinois, to provide for a sixth point of electric supply to the City by the Company.

A copy of the filing has been served upon the City of Geneva, Illinois.

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, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 10, 1977. 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.76–38283 Filed 12–29–76;8:45 am]

[Docket No. ER77–108]

DUKE POWER CO.

Supplement to Electric Power Contract

DECEMBER 21, 1976.

Take notice that Duke Power Company tendered on December 13, 1976, a supplement to Duke Power Company Rate Schedule FPC No. 230, which is to become effective on January 19, 1977. The customer affected by the supplement is the Town of Landis (customer).

Duke Power's contract supplement, agreed to by the customer, provides for an increase in contract demand from 5,500 KW to 6,500 KW. These figures were based on an estimate of sales and revenues for the 12 months immediately preceding and for the 12 months immediately succeeding the effective date.

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, N.W., 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 January 11, 1977. 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.76–38275 Filed 12–29–76;8:45 am]

[Docket ER77–110]

DUKE POWER CO.

Supplement to Electric Power Contract

DECEMBER 21, 1976.

Take notice that Duke Power Company tendered on December 13, 1976, a supplement to Duke Power Company Rate Schedule FPC No. 145. The customer affected by the supplement is Little River Electric Cooperative, Inc. (customer). The dates on which these documents are to become effective are December 20, 1976 for Delivery Points No. 1 and 8 and January 19, 1977 for Delivery Point No. 5. Delivery Point No. 5 provides for an increase in demand from 2700 KW to 3000 KW. Delivery Points No. 1 and 8 respectively, provide only for a reallocation of SEPA (Southeastern Power Administration) preference customer capacity and energy. These estimates are based on sales and revenues for the 12 months immediately preceding and for 12 months immediately succeeding the effective date. Requisite agreement of Duke Power and customer has been obtained.

Duke Power, in addition, requests a waiver of the notice requirement as the reallocation by SEPA was made effective December 20, 1976 and notification from SEPA was not received until December 1, 1976.

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, N.E., Washington, D.C. 20426, in accordance with § 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 11, 1977. 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.76–38277 Filed 12–29–76;8:45 am]

[Docket No. ER77-111]

DUKE POWER CO.

Supplement to Electric Power Contract

DECEMBER 21, 1976.

Take notice that Duke Power tendered on December 13, 1976, a supplement to Duke Power Rate Schedule FPC No. 142 which is to become effective on January 19, 1977. The customer affected by the supplement is Blue Ridge Electric Co-operative, Inc. (customer). Duke Power's contract supplement, agreed to by the customer, provides for increases in demand as follows:

Delivery point No.:	Designated KW From	To
1	1,700	2,500
7	9,000	9,600
8	1,700	3,200
9	6,800	8,000
11	4,200	6,000

These figures were based on estimates of sales and revenues for the 12 months immediately preceding and for the 12 months immediately succeeding the effective date.

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, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 11, 1977. 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.76-38274 Filed 12-29-76;8:45 am]

[Docket No. ER77-112]

DUKE POWER CO.

Supplement to Electric Power Contract

DECEMBER 21, 1976.

Take notice that Duke Power Company tendered on December 13, 1976 a supplement to Duke Power Rate Schedule FPC No. 138 which is to become effective on January 19, 1977. The customer affected by the supplement is Piedmont Electric Membership Corporation (customer). Duke Power's contract supplement, agreed to by the customer, provides for increases in demand as follows:

Delivery point No.:	Designated KW From	To
2	5,000	7,000
3	2,700	3,700
5	1,400	7,000
6	6,000	6,500

These figures were based on estimates for the 12 months immediately preceding and for the 12 months immediately succeeding the effective date.

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 Capital Street, N.E. 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 January 11, 1977. 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.76-38276 Filed 12-29-76;8:45 am]

[Docket No. ER77-113]

DUKE POWER CO.

Supplement to Electric Power Contract

DECEMBER 21, 1976.

Take notice that Duke Power tendered on December 13, 1976, a supplement to Duke Power Rate Schedule FPC No. 144 which is to become effective on January 19, 1977. The customer affected by the supplement is Laurens Electric Cooperative, Inc. (customer). Duke Power's contract supplement, agreed to by the customer, provides for increases in demand as follows:

Delivery point No.:	Designated KW From	To
1	1,100	1,400
4	2,600	3,200
6	2,500	3,300
7	3,000	4,000
10	3,000	3,600
12	2,500	2,800
13	2,200	2,500
20	2,400	3,600
21	2,800	3,600
24	1,200	2,200

These figures were based on estimates for the 12 months immediately preceding and for the 12 months immediately succeeding the effective date.

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, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 11, 1977. 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.76-38278 Filed 12-29-76;8:45 am]

[Docket No. RP76-90]

KANSAS-NEBRASKA NATURAL GAS CO., INC.

Order Providing for Evidentiary Hearing, Prescribing Procedures and Granting Petitions to Intervene Regarding Abandonment; Curtailment

DECEMBER 21, 1976.

On August 29, 1975, Kansas-Nebraska Natural Gas Company, Inc. (K–N), pursuant to Section 4 of the Natural Gas Act, filed in Docket No. RP76–8 proposed tariff sheets[1] reflecting increased rates, changes in the jurisdictional zone boundaries, consolidation of the rates charged for service to each rate zone from various tariff sheets to one sheet, changes in determination of contract demand and winter period demand, and revisions in the General Terms and Conditions section concerning definitions, measurement, and restrictions on new, additional, and existing service.

After due notice of the K–N filing, several petitions to intervene in opposition to K–N's tariff proposals were received, including that of The Central Kansas Power Company, Inc. (Central Kansas) which raised specific objection to Sections 1 and 13(b) of the General Terms and Conditions. By order issued October 10, 1975, the Commission accepted for filing the proposed tariff sheets and suspended their effectiveness until March 14, 1976. With regard to Central Kansas' objections, the Commission stated:

> Central Kansas argues that certain words and phrases contained in Sections 1 and 13b of the General Terms and Conditions applicable to the various jurisdictional tariffs must be deleted inasmuch as they relate to the terms of service for direct-industrial sales made by K–N, such service not being subject to the jurisdiction of the Federal Power Commission. Central Kansas seems to be suggesting that our acceptance and suspension of the General Terms and Conditions as filed would somehow give K–N the power or authority to effect modifications in terms of its service to direct industrial customers which it could not otherwise do without the consent of the Kansas Corporation Commission (KCC). Central Kansas' assertions notwithstanding, we find nothing in the above-mentioned Section that would allow K–N to charge, by virtue of our acceptance of the General Terms and Conditions, rates to direct industrial users different from those on file with the KCC, or perform under terms different from those on file with the KCC. As pointed out by Central Kansas, we have no jurisdiction over the rates and terms of such sales, our authority and responsibility in this area being limited under section 7 of the Natural Gas Act to certification of all transportation facilities used to make such sales. The relevancy of the aforementioned Sections to wholesale rates and service may, in any event, be fully examined at the hearing to be established herein.

On May 9, 1975, K–N filed in Docket No. CP75–334 an application for authorization to develop the Big Springs storage

[1] K–N proposed changes in its FPC Gas Tariff, Third Revised Volume No. 1.

field in Deuel County, Nebraska. Nebraska Public Power District (NPPD) expressed opposition to the Big Springs storage project claiming that K–N's source of gas for the storage project would be those volumes K–N serves to its five largest electric generation customers which service is proposed to be abandoned in Docket No. CP74–299. By order of April 26, 1976, in Docket No. CP75–334, et al., the Commission certificated the Big Springs storage project, but addressed separately NPPD's question. The Commission found that the abandonment and curtailment issues raised in Docket No. CP75–334 overlapped with the question raised by Central Kansas in Docket No. RP76–8 concerning the appropriateness of certain limitations of deliveries specified in K–N's originally proposed Tariff.

Accordingly, by order dated April 26, 1976, the Commission severed from consideration in Docket No. RP76–8 issues related to certain of K–N's tariff sheets proposed therein providing for certain limitations on K–N's obligations to its customers.[3] The Commission directed that such severed issues be redocketed in Docket No. RP76–90 and that the relevant tariff sheet filings be renoticed for the purpose of receiving comments relative to their justness and reasonableness.

At issue, in Docket No. RP76–90 are, interalia,[3] the proposals in Section 13(b) of K–N's Tariff which provide limitations on gas deliveries in four following instances. First, the making of new or additional sales of gas is limited to a total annual volume of 50,000 Mcf delivered in any calendar year after 1975 to any new customer connected on or after the effective date of the tariff. Any existing customers are limited to a total annual volume of not more than the sum of the volume used in 1975 and 50,000 Mcf. Second, each customer using gas for generation of electricity served directly by K–N or by a buyer with gas purchased under rate schedules in K–N's FPC Gas Tariff shall be limited annually to the volume used during 1974 or the average of the volumes of the five calendar years 1970 through 1974, whichever is greater. No new or additional sale of gas for electric generation is permitted. Third, K–N may reduce deliveries to customers served directly by K–N on an interuptible basis or under an interruptible rate schedule in K–N's FPC Gas Tariff whenever gas supplies available to K–N are not adequate to permit injection of gas into gas storage reservoirs at required rates. These reductions shall be made in whatever manner which, in K–N's discretion, is required by system operating conditions to avoid to the maximum extent possible any undue discrimination among customers having similar characteristics. Fourth, K–N is not required to remove gas from gas storage reservoirs for delivery to consumers served by K–N on an interruptible basis or under interruptible service rate schedules in its FPC Gas Tariff.

By publication in the FEDERAL REGISTER on June 16, 1976 (41 FR 24423), K–N's proposed changes in section 13 of the General Terms and Conditions of its FPC Gas Tariff were renoticed. Timely petitions for leave to intervene have been filed by Central Kansas,[4] NPPD, City of Grand Island, Nebraska (Grand Island), Utilities Section of the League of Nebraska Municipalities, City of Hastings, Nebraska (Hastings), Minnesota Gas Company (Minnesota Gas), Northwest Public Service Company, and Farmland Industries, Inc. Untimely petitions for leave to intervene have been filed by Central Nebraska Public Power and Irrigation District, Natural Gas Distributing Company (Natural Distributing), City of Alma, Nebraska (Alma), Central City, Nebraska (Central City), Iowa Electric Light and Power Company and The Great Western Sugar Company (Great Western).[4] Untimely notices of intervention have been filed by the States of Oklahoma and Kansas.

In their filings, Central Kansas, Grand Island, NPPD, Central District and Great Western, interruptible customers of K–N, made the following allegations: They allege that the provision permanently restricting the use of natural gas for electric generation as proposed is in violation of existing certificates of public convenience and necessity, and appears to constitute an abandonment of service without proper section 7(b) approval. Furthermore, they assert the proposed volume limitations imposed on electric generation service at a time when K–N specifically permits the addition of new loads and/or increased usage by existing customers is unduly discriminatory and inconsistent with existing case law. They object to the stipulation that K–N will not have to serve interruptible loads out of storage arguing it is inconsistent with past Commission decisions. The provision in the subject tariff sheets calling for reductions in deliveries is characterized as being inconsistent with existing direct sales contracts as reflected in tariffs or rate schedules on file with state commissions and thus is invalid and of no effect. Moreover, the necessity for curtailment of any type by K–N at this time is questioned. Finally, it is claimed that certain terms within K–N's tariff require specific definition.

Central Kansas and Great Western indicate that K–N previously curtailed customer deliveries on the basis of the terms of section 13(b) of its Tariff even before Commission acceptance thereof and even though no interruptions were required to provide service to other customers. Central Kansas alleges that this action constitutes an unlawful abandonment and pleads that the Commission expand this proceeding to consider these possible discriminatory, arbitrary or unlawful actions taken by K–N. In an answer filed on July 8, 1976, K–N indicates its disagreement with the aforementioned charge but withholds further comment at this time.

Central Kansas, Natural Distributing, Alma, Hastings, Central City and Minnesota Gas all request evidentiary hearing in this proceeding. Of those requesting hearing, all but Central Kansas are distributor customers of K–N. These distributors state they have a direct and substantial economic interest in the possibility of initial curtailments on the K–N system and have filed their hearing requests in order to insure the development of an evidentiary record to determine more clearly K–N's present and future gas supply service requirements relationship.

We find that the tariff provisions hereinbefore described should be the subject of an evidentiary hearing to develop an official record as a basis for determining their justness and reasonableness. Without intending to limit the issues developed at hearing, the Commission presently envisions the resolution of the following matters: (1) K–N's present and future gas supply balanced against system requirements; (2) the role market growth plays in K–N's curtailment policy; (3) K–N's intentions regarding the filing of a comprehensive curtailment plan; (4) the clarification of present tariff language to avoid confusion as to the intent and scope of K–N's proposed restrictions; and (5) the legal applicability of the proposed tariff provisions permanently limiting volumes to certain K–N direct industrial and wholesale customers absent any section 7(b) action when K–N appears to be in a gas supply position not as yet dictating curtailment.

The Commission finds: (1) The tariff sheets filed by K–N on August 29, 1975, constituting sections 1 and 13 of the General Terms and Conditions of the Third Revised Volume No. 1 to K–N's FPC Gas Tariff may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful under the Natural Gas Act.

(2) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, particularly sections 4, 5, and 15 thereof, that a prehearing conference be convened in this proceeding for the purpose of setting the issues involved for hearing and establishing the procedures for such hearing as hereinafter provided.

(3) The participation of the above-named petitioners in this proceeding may be in the public interest, and the participation of those who filed untimely petitions will not delay the subject proceeding.

[3] Original Sheet Nos. 22, 23 and 24 to K–N's FPC Gas Tariff, Third Revised Volume No. 1 which sheets relate to section 13 of the General Terms and Conditions.

[3] To the extent provisions in other sections of K–N's tariff contribute to the implementation of the provisions of section 13(b), such other sections may also be the subject of consideration at the hearing hereinafter provided for.

[4] Central Kansas and Great Western also filed protests.

(4) Good cause, as defined in § 1.8(d) of the Commission's Rules of Practice and Procedure, exists to permit the filing of the late petitions to intervene and notices of intervention.

The Commission orders: (A) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 5 and 15 thereof, the Commission's Rules of Practice and Procedure (18 CFR Chapter 1), and the Regulations under the Natural Gas Act, a prehearing conference shall be held on January 4, 1977, at 10:00 a.m. (EST) in a hearing room of the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, concerning the procedures to be adopted for the disposition of the issues relating to the aforementioned tariff sheets of K–N.

(B) An Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose (See Delegation of Authority (18 CFR 3.5(d)), shall preside at the prehearing conference in this proceeding, with authority to establish all procedural dates and to rule on all motions (with the sole exception of petitions to intervene, motions to consolidate and sever, and motions to dismiss), as provided for in the Rules of Practice and Procedure.

(C) The petitioners hereinabove set forth are permitted to intervene in this proceeding subject to the Rules and Regulations of the Commission: *Provided, however,* That the participation of such intervenors shall be limited to matters affecting asserted rights and interests specifically set forth in the petitions to intervene; and *Provided, further,* That the admission of said intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order of the Commission entered in this proceeding.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-38279 Filed 12-29-76;8:45 am]

[Docket No. ER77-117]

NEW ENGLAND POWER POOL

Filing

DECEMBER 21, 1976.

Take notice that, on December 15, 1976, New England Power Pool (NEPOOL) tendered for filing an amendments to its NEPOOL Agreement. By the Amendment NEPOOL seeks to include five municipal systems, i.e., Town of Middleton Municipal Light Department, Town of Georgetown Municipal Light Department, Town of Ipswick Municipal Light Department, Town of Groton Electric Light Department, and Village of Hyde Park, Inc., Water and Light Department, under its Agreement commencing December 1, 1976.

NEPOOL states that the five municipal systems request service to commence December 1, 1976, but, because of the delays in securing the necessary approvals and execution of the documents, the filing was delayed. NEPOOL, therefore, requests waiver of notice requirements to permit the filing to be effective December 1, 1976.

NEPOOL states that the amendment does not change in any manner the NEPOOL Agreement as previously filed wtih the Commission other than to make the five municipals additional participants in the power pool.

NEPOOL also states that copies of the proposed amendment have been mailed to all systems rendering or reciving service under the NEPOOL Agreement.

Any person desiring to be heard or to make protest with reference to this filing should, on or before January 12, 1977, file with the Federal Power Commission, 825 North Capitol Street, Washington, D.C. 20426, petitions to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All 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 the filing and supporting documents are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-38280 Filed 12-29-76;8:45 am]

[Docket No. CP77-82]

COLUMBIA GAS TRANSMISSION CORP. AND INLAND GAS CO., INC.

Application

DECEMBER 22, 1976.

Take notice that on December 9, 1976, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, and the Inland Gas Company, Inc. (Inland), 340–17th Street, Ashland, Kentucky 41101, filed a joint application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction of an interconnecting measuring facility and the exchange of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Columbia and Inland presently exchange gas in accordance with Commission orders issued July 20, 1970, in Docket No. CP70–246 (44 FPC 124) and September 1, 1972, in Docket No. CP72–285 (48 FPC 426) at interconnections located near the southern end of Inland's pipeline system in Floyd County, Kentucky, in the northern part of Inland's system in Boyd County, Kentucky, and at the intersection of existing transmission facilities in Boyd County, Kentucky. Inland states that it is engaged in a drilling program on previously unoperated leaseholds located in Knott County, Kentucky, having a present deliverability of 2,500 Mcf per day for which Inland does not have capacity to transport. It is asserted that the proposed interconnection to be located at the terminus of Columbia's pipeline facilities in northern Knott County, Kentucky, would provide Inland with a means of making this new supply available to its existing markets.

Columbia estimates the cost of the proposed interconnecting measuring facility would be $9,600.00 and the estimated annual operating expense would be $250.00. Columbia further states that it would be reimbursed by Inland for the total cost of the construction of the proposed facility.

Inland projects a deficiency of approximately 12,600 Mcf per day for the first quarter of 1977 and states that the 2,500 Mcf of gas per day available herein would offset a portion of such deficiency.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 12, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party to any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-38367 Filed 12-29-76;8:45 am]

[Project No. 2338]

CONSOLIDATED EDISON CO. OF NEW YORK

Order Denying Motions To Terminate License, Denying Without Prejudice Motions to Reopen Record, and Establishing Expedited Procedures

DECEMBER 22, 1976.

Presently before the Commission are alternative motions to either terminate a

pumped storage hydroelectric project license or reopen the entire licensing proceeding, as well as the question of scheduling further hearings in this docket on certain specific environmental issues. We find that these motions to terminate the license should be denied; however, the altrenative motions to reopen the record should be denied without prejudice. We shall hereinafter prescribe a procedural schedule for determining whether the record should be reopened. This order establishes a hearing schedule on the remaneded fishery issue.

The Commission initially granted a license to Consolidated Edison Company of New York (Con Ed) to construct the Cornwall (or Storm King) Project—a pumped storage hydroelectric project to be constructed on the Hudson River near Cornwall, New York—in March of 1965 (33 FPC 428). That license was set aside by the Court of Appeals for the Second Circuit in December 1965, and remanded to us for further proceedings.[1] Following further proceedings, we again issued to Con Ed a license to construct the Project (44 FPC 350 (1970)), and on that occasion our action was affirmed by the Court of Appeals.[2] Thereafter, in connection with appeals filed with it by Scenic Hudson and the Hudson River Fishermen's Association, intervenors herein, the Court of Appeals turned again to the Cornwall Project and, prompted by fisheries information elicited in 1972 and 1973 in a proceeding before the Atomic Energy Commission, concluded that the Cornwall licensing proceeding should again be remanded to us, this time for our further consideration of the fisheries question.[3] Specifically the court asked us to consider further the question of "the extent to which the [Cornwall] plant poses a danger to fish life and whether such danger can, as a practical matter, be eliminated or greatly minimized." Supra note 3, 498 F.2d at 835. The court further stated that if we had not "affirmatively found fish protection and preservation adequate by January 1, 1975," then the petition filed with the court by Scenic Hudson to reopen the proceeding for the consideration of other issues could be renewed.

In response to the court's remand for further consideration of the fisheries question the Commission ordered hearings for late 1974, but, as these hearings progressed, it became evident that the court's timetable could not be met. As a result, the order of January 30, 1975, deferred further hearings until no earlier than October 1, 1976, in order to allow Con Ed sufficient time in which to complete analysis of its river sampling collections performed through 1975. In this same order the Commission denied intervenors' motions to vacate Con Ed's license for the Cornwall Project, although it did recognize that the parties could raise at a later date questions concerning the continued validity of the license. Finally, the Commission directed Con Ed to file by August 16, 1976, a report concerning Con Ed's continued need for the project, its financing plan, and the results of Con Ed's fisheries study. It also permitted all parties to comment on this report and to file motions by September 15, 1976, noting that thereafter the Commission would schedule further hearings and procedures. The court of appeals on August 8, 1975, in substance approved the Commission's timetable and stayed further construction.

Con Ed filed its report pursuant to the January 30, 1975, Commission order on August 16, 1976. In essence Con Ed concluded that the Cornwall Project remained necessary to its long-term power needs, that it will be capable of financing the project, and that the impact of the project upon the Hudson River striped bass will not be significant or irreversibly adverse. It noted, however, that its final fisheries report will not be available until January 1977. Con Ed concluded by requesting that a prehearing conference be convened for the establishment of hearing procedures, and in this regard it points out that ongoing proceedings before both the Environmental Protection Agency (EPA) and the Nuclear Regulatory Commission (NRC) involve the same parties presently before the Commission, thereby necessitating coordination of scheduling.

New York City, New York State, the Department of the Interior (Interior) and the environmental intervenors, Scenic Hudson Preservation Conference and Hudson River Fishermen's Association (Scenic Hudson and Fishermen), all responded in September 1976, in opposition to the conclusions reached in Con Ed's August 16, 1976, report that the Cornwall Project is needed, can be financed, and will not impact excessively upon the fish population. They refer to events following the licensing of the Cornwall Project in 1970 which indicate that it is no longer needed, uneconomical, and no longer feasible to finance. Scenic Hudson and Fishermen, Interior and New York State in addition move in the alternative for either termination of the license or a reopening of the record to reconsider these questions. Staff also responded to Con Ed's report. While it concluded that the Cornwall Project was still needed, can be financed by Con Ed, and is the most practical means for adding capacity, Staff agreed with the other parties that this August 16, 1976, report is much too general to adequately address the fisheries question. Staff requests that Con Ed be ordered to complete its fisheries study forthwith so that hearings can be reconvened.

Con Ed responded on September 28, 1976, in opposition to these motions for termination of its license or reopening of the record on other issues than fisheries. It argues that either action is legally impermissible, as well as being factually unsupported. On October 14, 1976, Con Ed likewise responded in opposition to New York City's unfavorable comments as to its August 16, 1976, report.

Finally, on October 21, 1976, Staff Counsel responded in support of the several motions to reopen the record for additional evidence, not only on the fisheries issue, but also as to need, financing and economic feasibility in light of the passage of time. Staff also notes the related proceedings before the NRC and EPA, and it suggests that hearings be scheduled for after the completion of those proceedings.

We begin by rejecting the several motions to terminate Con Ed's license for the Cornwall Project. With the possible exception of the fisheries question our licensing of the Cornwall Project was properly founded on substantial record evidence. With that exception, we do not have before us at this time record evidence which would indicate that we erred in that decision to grant the license. Accordingly, it would not be in the public interest to terminate this license on the basis of arguments made by several parties, and the license, although construction has been stayed, remains in the same posture as it has since "Hudson River Fishermen, supra" note 3.

Turning to the motions to reopen the record to consider the need for, financing of, and economic feasibility of the Cornwall Project, while a number of averments have been made in support thereof, we cannot act upon such an important issue as this with the case in its present posture. It would not be in the public interest to rule on these motions on the mere basis of pleaded allegations. It must be remembered that in licensing the Cornwall Project in 1970, as found in Opinion No. 584, we performed exhaustive analysis of the economic feasibility of the project "vis-a-vis" every conceivable alternative source of peaking power. The questions of need for and financing of the project received the same in depth scrutiny. Reopening of this record cannot be taken lightly. Accordingly, we shall not rule upon these motions and instead shall establish an expedited procedural schedule that will permit the issues to be framed in a better context.

Con Ed notes in its August 16, 1976, report to the Commission that a comprehensive report summarizing Hudson River ecological studies will be available in January 1977. We share Staff's desire for expedition in having this study completed, and our January 30, 1975, order contemplated that Con Ed would have completed the fisheries study by August 1976. In establishing a hearing schedule for the fisheries question, we must be cognizant of the ongoing proceeding before the Nuclear Regulatory Commission (NRC) and the scheduled proceeding before the Environmental Protection Agency (EPA), both concerning the impact of Con Ed's operations on the Hudson River and involving many of the

[1] *Scenic Hudson Preservation Conference* v. *FPC*, 354 F. 2d 608 (2d Cir. 1965), cert. denied, 384 U.S. 941 (1966).

[2] *Scenic Hudson Preservation Conference* v. *FPC*, 453 F. 2d 463 (2d Cir. 1971), *cert. denied*, 407 U.S. 926 (1972).

[3] *Hudson River Fishermen's Association* v. *FPC*, 498 F.2d 827 (2d Cir. 1974), *rehearing denied*, 498 F.2d 835.

parties to the instant proceeding in Project No. 2338. We shall order a prehearing conference to be convened on February 23, 1977, which will follow Con Ed's filing and service of its fisheries study on or before January 21, 1977. The Administrative Law Judge presiding over this conference shall establish an expedited schedule for presentation of evidence and hearing on the fisheries question at that time. Some flexibility is required to accommodate the aforementioned hearings before our sister agencies. In scheduling the presentation of prepared testimony and exhibits Con Ed should make the first filing, to be followed by all other parties with Con Ed having an opportunity for a rebuttal case. In so providing we are not assigning to Con Ed any ultimate burden of proof not otherwise attributable to it. Instead we are merely recognizing that Con Ed has the best access to the relevant facts in the first instance. Finally, we agree with Staff that striped bass are not to be the sole subject of the fisheries inquiry.[4]

It is clear from the court of appeals remand in "Hudson River Fishermen, supra" note 3, that, if the Commission finds after completion of the reopened proceeding on the fisheries question that operation of the project poses substantial danger to the fish population which cannot be eliminated or minimized, the Commission must consider a further reopening of the record. In light of this fact together with the need to comply with the court of appeals remand and to complete this lengthy proceeding as expeditiously as possible, we find that, pursuant to § 1.30(c)(2) of our Rules of Practice and Procedure and section 8(a) of the Administrative Procedure Act, "due and timely execution of [our] functions imperatively and unavoidably" requires that the intermediate decision in Project No. 2338 be waived. At the close of this expedited hearing on the fisheries question the Presiding Administrative Law Judge shall promptly certify the record to the Commission.

The following briefing schedule to the Commission will follow certification of the record: (1) The filing of initial briefs to the Commission within 30 days of the certification of the record, such briefs to consider (a) the remanded fish questions, and (b) the further questions, if any, that the filing party believes should be considered in reopened hearings before an Administrative Law Judge on Project No. 2338, together with an offer of proof of what such party proposes to offer concerning such questions; (2) The filing of reply briefs within 20 days from the date of filing of initial briefs; and (3) Oral argument before the Commission, to be held within 30 days from the date of the filing of reply briefs, on the issues presented in such briefs, to be followed by such further order as the Commission may issue. Inasmuch as this project has a substantial impact upon consumers in the State of New York, we encourage the Public Service Commission of the State of New York to become a party to this proceeding and to file briefs, with offers of proof, as to the economic and supply questions raised by parties to this proceeding (as well as any other issues it deems relevant) in order to aid the Federal Power Commission in making a final determination in this proceeding.

We feel that this procedure will both expedite resolution of the fisheries remand and also best focus the controversy over the need to reopen the record as to other matters.

The Commission further finds: (1) Motions to vacate the Cornwall Project license, filed by Scenic Hudson and Fishermen, Interior and New York State should be denied as explained in the body of this order.

(2) Motions to reopen the record to take evidence as to the continued need for, financing of, and economic feasibility of the Cornwall Project, also filed by Scenic Hudson and Fishermen, Interior and New York State, should be denied without prejudice as explained in the body of this order.

The Commission orders: (A) Motions to vacate the Cornwall Project license are hereby denied.

(B) Motions to reopen the record are denied without prejudice.

(C) Con Ed shall file with the Commission and serve upon all parties its final fisheries study on or before January 21, 1977.

(D) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge shall preside at a conference to be held on February 23, 1977, at 10:00 A.M. in a hearing room of the Federal Power Commission, 825 N. Capitol St., N.E., Washington, D.C. for the purpose of prescribing expedited hearing procedures whereby evidence may be presented as to the question of adverse impact on the Hudson River fish population from the Cornwall Project.

(E) Due and timely execution of the Commission's functions imperatively and unavoidably requires omission of the intermediate decision.

(F) Upon completion of the reopened fisheries record the Presiding Administrative Law Judge shall certify the record to the Commission.

(G) Within 30 days of such certification the parties shall file initial briefs, to be followed 20 days thereafter by reply briefs, within 30 days of which the Commission shall hold oral argument.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.78-38368 Filed 12-29-76;8:45 am]

[4] *Hudson River Fishermen, supra* note 3, 498 F.2d at 830, n. 2.

[Project No. 2232]

DUKE POWER CO.

Application for Approval of Easement Over Project Lands

DECEMBER 22, 1976.

Public notice is hereby given that an application was filed on October 8, 1976, under the Federal Power Act, 16 U.S.C. 791a–825r, by Duke Power Company (Correspondence to: Mr. William L. Porter, Associate General Counsel, Duke Power Company, Box 2178, Charlotte, North Carolina 28242) for Commission approval of the grant of an easement over certain lands of the Bridgewater Development of the Catawba-Wateree Project, FPC No. 2232, to the State of North Carolina for the construction and maintenance of a highway bridge and its approaches. The affected project lands are located in McDowell County, North Carolina, on the Catawba River.

The proposed bridge would replace the existing steel truss and beam span bridge over which State Road 1501 crosses the Catawba River. Applicant states that the existing one-lane bridge is in poor structural condition and is considered a safety hazard to the public. The new bridge would be 30 feet wide and 480 feet long, and would accommodate two lanes of traffic. The right-of-way for the new bridge would be 140 feet wide, and the approaches from the north and south would be 800 feet long and 500 feet long, respectively.

Upon completion of the new bridge, the superstructure and a portion of the substructure of the old bridge would be removed, and the remaining portion of the substructure would be left intact. The new bridge would be located about 100 feet upstream (northwest) of the old bridge.

Applicant has requested the shortened procedure provided for under Section 1.32(b) of the Commission's Rules of Practice and Procedure, 18 CFR 1.32(b) (1976).

Any person desiring to be heard or to make any protest with reference to said application should, on or before February 11, 1977, file with the Federal Power Commission, 825 N. Capitol St. N.E., Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 C.F.R. 1.8 or § 1.10 (1976). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and conferred upon the Federal Power Commission by sections 308 and 309 of the Federal Power Act, 16 U.S.C. section 825g and section 825h, and the Commission's Rules of Practice and Procedure, specifically § 1.32(b), a hearing on this application may be held before the Commission without further notice if no issue of substance is raised by any request to be heard, protest, or petition filed subsequent to this notice within the time required herein. If an issue of substance is so raised, further notice of hearing will be given.

Under the shortened procedure herein provided for, unless otherwise advised,

it will not be necessary for Applicant to appear or be represented at the hearing before the Commission.

The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-38369 Filed 12-29-76;8:45 am]

[Docket No. E-9575]

GEORGIA POWER CO.

Filing of Application to Sell Facilities

DECEMBER 22, 1976.

Take notice that on December 9, 1976, Georgia Power Company tendered for filing an application for an order authorizing the sale of approximately 435 miles of 230 kV transmission lines and two substations to the Municipal Electric Authority of Georgia ("MEAG").

The Company states that the parties have entered into an Integrated Transmission System Agreement (the "Transmission Agreement") providing for the establishment of an integrated transmission system to be operated by the Company and MEAG to carry the loads of both the Company and MEAG free of charge (subject to the conditions of the Transmission Agreement) and requiring an aggregate investment by each party in transmission facilities comprising the integrated transmission system in the proportion the load of each (as defined in the Transmission Agreement) bears to the aggregate load on such system. The Company further states that MEAG desires to purchase certain transmission facilities presently owned by the Company which after such sale shall become MEAG Transmission Facilities under the provisions of the Transmission Agreement.

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, N.E., Washington, D.C. 20426, in accordance with the §§ 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 January 27, 1977. 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.76-38370 Filed 12-29-76;8:45 am]

[Project No. 2004]

HOLYOKE WATER POWER CO.

Application for Approval of Easements Over Project Lands

DECEMBER 22, 1976.

Public notice is hereby given that an application was filed on October 27, 1976, under the Federal Power Act, 16 U.S.C. 791a–825r, by Holyoke Water Power Company (Correspondence to: Mr. Leon E. Maglathlin, Vice President, Holyoke Water Power Company, One Canal Street, Holyoke, Massachusetts 01040; and Maurice L. Zilber, Esq., Peabody, Brown, Rowley & Storey, One Boston Place, Boston, Massachusetts 02108) for Commission approval of the grant of easements over certain lands of the Hadley Falls Project, FPC No. 2004, to the City of Holyoke, Massachusetts, for the construction, operation, and maintenance of sanitary sewer lines.

Applicant requests approval eleven easements across the canal system in the City of Holyoke, which is part of Project No. 2004. Ten of the sewers to be constructed on the easements would be installed in the bed of the canal; and one would be installed in the superstructure of an existing bridge over the canal. The latter sewer line would be a gravity sewer. Seven of the ten submerged lines would operate on the syphon principal, and the remaining three would be force mains pressurized to a maximum of 10 psi.

The sewer lines would carry sanitary and process wastewaters generated by industries located on the canal system to a nearby treatment plant. These wastewaters are currently discharged directly into the canal system.

The U.S. Environmental Protection Agency and the Commonwealth of Massachusetts, Division of Water Pollution Control have jointly issued National Pollutant Discharge Elimination System Permit No. MA010630 to the City of Holyoke pursuant to Section 402 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1342. This permit outlines the timetable pursuant to which the City must proceed with the construction under the approved water pollution control program.

Applicant has requested the shortened procedure provided for under § 1.32(b) of the Commission's Rules of Practice and Procedure, 18 CFR 1.32(b) (1976).

Any person desiring to be heard or to make any protest with reference to said application should, on or before February 7, 1977, file with the Federal Power Commission, 825 N. Capitol St. N.E., Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1976). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and conferred upon the Federal Power Commission by sections 308 and 309 of the Federal Power Act, 16 U.S.C. 825g and 825h, and the Commission's Rules of Practice and Procedure, specifically § 1.32(b), a hearing on this application may be held before the Commission without further notice if no issue of substance is raised by any request to be heard, protest, or petition filed subsequent to this notice within the time required herein. If an issue of substance is so raised, further notice of hearing will be given.

Under the shortened procedure herein provided for, unless otherwise advised, it will not be necessary for Applicant to appear or be represented at the hearing before the Commission.

The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-38371 Filed 12-29-76;8:45 am]

[Docket No. ES77-6]

IOWA POWER & LIGHT CO.

Application

DECEMBER 22, 1976.

Take notice that on December 2, 1976, Iowa Power & Light Company (Applicant) of Des Moines, Iowa, filed an application, pursuant to section 204 of the Federal Power Act, for authorization for authority to negotiate privately with the City of Council Bluffs, Iowa, for the purpose of financing the Company's undivided interest in certain pollution control facilities at Council Bluffs Power Station Unit 3 through the issuance of the City's Pollution Control Revenue Bonds. A loan agreement between the City and the Applicant would commit the City to issue and sell to underwriters its Pollution Control Bonds in an aggregate principal amount equal to the cost of the Company's ownership interest in such facilities and to loan the proceeds from the sale of such Revenue Bonds to the Applicant. The repayment obligation of the Applicant would be evidenced by debt obligations bearing identical terms with, and pledged to support the payment of, such Revenue Bonds.

Applicant is incorporated under the laws of the State of Iowa with its principal office at Des Moines, Iowa, and is engaged in the electric and gas utility business within the State of Iowa.

Any person desiring to be heard or to make any protest with reference to the Application should on or before January 4, 1977, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. 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 and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-38372 Filed 12-29-76;8:45 am]

[Docket No. ER76-678]

MAINE ELECTRIC POWER CO.

Order Granting Late Interventions Regarding Electric Rates

Issued December 22, 1976.

On November 9, 1976, the Connecticut Light and Power Company, the Hartford Electric Light Company, Holyoke Water Power Company and Western Massachusetts Electric Company (collectively "the Northeast Utilities Companies") filed an untimely petition to intervene in the instant proceeding. On November 26, 1976, Cetral Maine Power Company (Central Maine) filed a similar untimely petition to intervene. For the reasons set forth hereinafter the Commission will grant these petitions to intervene

Each of the Northeast Utilities Companies and Central Maine are parties to the Power Purchase and Transmission Agreement dated December 1, 1971, which has been filed by Maine Electric Power Company (MEPCO) in this docket. Pursuant to the Power Purchase and Transmission Agreement, the Northeast Utilities Companies, Central Marine and certain other New England utilities have agreed to purchase a portion of the power which MEPCO has agreed to purchase from the New Brunswick Electric Power Commission (New Brunswick), pursuant to a Unit Participation Agreement dated November 15, 1971, which has also been filed in this docket.

By order issued September 15, 1976, the Commission, inter alia, instituted an investigation and hearing regarding the aforementioned agreements. By motion dated November 4, 1976, New England Power Company (NEP) requested that the Presiding Administrative Law Judge proceed to establish procedural dates regarding the aforementioned investigation and hearing to determine appropriate conditions, if any, to be imposed by the Commission upon the importation by MEPCO of power from New Brunswick and upon the resale of such power to purchasers under the Power Purchase and Transmission Agreement.

As purchasers under the Power Purchase and Transmission Agreement, the Northeast Utilities Companies and Central Maine state that they will be directly and substantially affected by the Commission's imposition of any condition upon the importation and resale by MEPCO of New Brunswick power. Furthermore, the Northeast Utilities Companies and Central Maine state that their interests cannot be adequately represented by any of the existing parties and that they may be bound by the Commission's action in this proceeding. The Northeast Utilities Companies and Central Maine also state that they became aware that an active effort had been undertaken to impose conditions on the importation of New Brunswick Power only upon receipt of NEP's November 4 motion.

Pursuant to a formal Prehearing Conference held on November 9, 1976, in this docket, the Presiding Administrative Law Judge issued a notice dated November 11, 1976, of the contents of NEP's motion to all the signatory parties to the Power Purchase and Transmission Agreement in order to give these parties the opportunity to take such action as they deemed appropriate. A similar notice was published by the Commission in the FEDERAL REGISTER on November 24, 1976.

In light of the foregoing, the Commission concludes that the Northeast Utilities Companies and Central Maine should be permitted to intervene in this proceeding.

The Commission finds: Participation in this proceeding by the Northeast Utilities Companies and Central Maine is in the public interest.

The Commission orders: (A) The Northeast Utilities Companies and Central Maine are hereby permitted to intervene in this proceeding subject to the rules and regulations of the Commission: *Provided, however*, That participation of these companies shall be limited to matters affecting asserted rights and interests as specifically set forth in their petition to intervene; and *Provided, further*, That the admission of these companies shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(B) The intervention granted herein shall not be the basis for delaying or deferring any procedural schedules heretofore established for the orderly and expeditious disposition of this proceeding.

(C) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-38373 Filed 12-29-76;8:45 am]

[Docket No. CP77-83]

NORTHERN NATURAL GAS CO.

Notice of Application

DECEMBER 22, 1976.

Take notice that on December 9, 1976, Northern Natural Gas Company (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP77-83 an application pursuant to section 7 (b) of the Natural Gas Act for authorization to abandon the transportation and delivery of natural gas to Eveleth Taconite Company (Eveleth) and to abandon certain pipeline and sales measuring facilities, located in St. Louis County, Minnesota, used in the transportation and delivery to Eveleth, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that it was authorized by the Commission's order issued December 21, 1964 in Docket No. CP64-255 to transport and deliver to Eveleth a contract demand of 5,700 Mcf per day and to construct and operate 1.2 miles of 6-inch branchline and a sales measuring station located in St. Louis County, Minnesota and that by Commission authorization granted in Docket CP68-57 the contract demand was increased to the presently effective volume of 6,400 Mcf per day. Applicant further states that due to a shortage of natural gas in the lower 48 states it is experiencing extreme difficulty in meeting its firm peak day obligations. In order to bring its peak day obligations into balance with available supply, it is stated, Applicant has proposed that all firm consumers listed in the Directory of Consumers Served in Applicant's F.P.C. Gas Tariff whose contract demand is 3,000 Mcf per day or greater, with the exception of consumers who use natural gas for feedstock purposes, be allowed to receive their contract demand volumes only during the summer period (March 27 through September 26). It is stated that according to this proposal, Applicant, through its Peoples Division, transmitted a notice of cancellation to Eveleth has refused to execute a new contract.

Applicant proposes to abandon and remove 1.0 miles of 6-inch branchline and a sales measuring station and to abandon, cut and cap for abandonment in place 0.2 miles of 6-inch branchline. Applicant estimates the cost of the proposed removal, cutting and capping to be $20,800 to be financed from cash on hand. It is indicated that measures are being taken by Eveleth to have sufficient alternate fuel capabilities to meet its total energy requirements.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 11, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a

formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-38374 Filed 12-29-76;8:45 am]

[Docket No. CP77-81]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Application

DECEMBER 22, 1976.

Take notice that on December 8, 1976, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77001, filed in Docket No. CP77-81 an aplication pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to $600,000,000 Btu's of natural gas per day on an interruptible basis for Union Gas Company (Union), a customer of Applicant, for a period commencing with the issuance of such certificate and ending April 30, 1977, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Union would purchase 600,000,000 Btu's of synthetic natural gas (SNG) from Algonquin Gas Transmission Company (Algonquin) which would make an equivalent quantity of gas available to Texas Eastern Transmission Corporation (Texas Eastern), on the basis of heat value, by reducing its purchases from Texas Eastern, and Texas Eastern would make an equivalent quantity available during the same time period to Applicant, on the basis of heat value, at a mutually agreeable existing and authorized point of interconnection with Applicant in the New Jersey-Pennsylvania area, for transportation and delivery to Union by Applicant. Applicant states that the proposed service is provided for in an agreement among Applicant, Algonquin, Texas Eastern and Union dated October 22, 1976. It is also stated that no additional facilities are required by the proposed service. Union, it is asserted, agrees to pay Applicant an initial charge of 9.75 cents per Mcf transported, which charge represents Applicant's estimated average unit cost of transporting gas within its Rate Zone 3 where the proposed service would be rendered.

It is stated that the additional gas made available by Algonquin would help offset curtailments experienced by Union from Applicant due to the shortage of flowing gas supplies on Applicant's system.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 11, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-38375 Filed 12-29-76;8:45 am]

[Docket Nos. CP74-160, CP-207, and CP75-83-3]

PACIFIC INDONESIA LNG CO., AND WESTERN LNG TERMINAL ASSOCIATES, PACIFIC INDONESIA PROJECT

Environmental Impact Statement, Availability

DECEMBER 30, 1976.

Notice is hereby given in the above dockets that on December 30, 1976, as required by § 2.82(b) of Commission's Rules of Practice and Procedure (18 CFR 2.82(b)), a Final Environmental Impact Statement (FEIS) prepared by the staff of the Federal Power Commission was made available. This FEIS deals with applications by Pacific Indonesia LNG Company requesting authorization pursuant to Sections 3 and 7 of the Natural Gas Act to import (CP74-160) liquefied natural gas (LNG) from the Republic of Indonesia to a proposed LNG terminal in Oxnard, California, and to sell (CP74-207) the imported natural gas to Southern California Gas Company and Pacific Gas and Electric Company. Concurrent with these applications, Western LNG Terminal Associates has filed an application seeking certification (CP75-83-3) pursuant to Section 7 of the Natural Gas Act to construct and operate certain facilities necessary to unload, store, revaporize, and transport the revaporized gas. This latter application seeks approval for the construction and operation of an unloading dock and trestle, two 550,000-barrel LNG storage tanks, seawater vaporizer units, 12.4 miles of 42-inch diameter pipeline, and other appurtenant facilities.

This statement has been placed in the public files of the Commission and is available for public inspection both in the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. and at its regional office located at 555 Battery St., San Francisco, CA 94111. Copies of the FEIS are available in limited quantities from the Federal Power Commission's Office of Public Information, Washington, D.C. 20426.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-38423 Filed 12-29-76;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse, and Mental Health Administration

COMMITTEE ON MENTAL HEALTH AND ILLNESS OF THE ELDERLY

Meeting

In acordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following National Advisory body scheduled to assemble during the month of February 1977:

COMMITTEE ON MENTAL HEALTH AND ILLNESS OF THE ELDERLY

February 10-11; 9:00 a.m. Open meeting: Rooms 503A-507A, South Portal Building, HEW, 200 Independence Ave., N.W., Washington, D.C. Contact Dr. Carole B. Allan, Room 18-97, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301-443-3349.

Purpose: The Committee on Mental Health and Illness of the Elderly will study and make recommendations to the Secretary, HEW, respecting: (1) The future needs for mental health facilities, manpower, research, and training to meet the mental health care needs of elderly persons; (2) the appropriate care of elderly persons who are in mental institutions or who have been discharged from such institutions; and (3) proposals for implementing the recommendations of the 1971 White House Conference on Aging respecting the mental health of the elderly. A report on the findings and recommendations of this Committee shall be submitted by the Secretary, HEW, to the Senate Committee on Labor and Public Welfare and to the House Committee on Interstate and Foreign Commerce; the Committee shall terminate 30 days after submission of the report.

Agenda: The February 10-11 meeting of the Committee (the fourth of five 2-day meetings planned to accomplish its purpose) will be open to the public. On Thursday, February 10, discussion will include the development and preparation of its final report and presentations by outside resource persons. On Friday, February 11, the entire day will be devoted to general mental health issues in the area of aging as they relate to the work of the Committee, including attention to proposals for implementing the recommendations on mental health concerns of the 1971 White House Conference on Aging.

Attendance by the public will be limited to space available.

Substantive information may be obtained from the contact person listed above.

The NIMH Information Officer who will furnish summaries of the meeting and rosters of the Committee members is Mr. Edwin Long, Deputy Director, Division of Scientific and Public Information, NIMH, Room 15–105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: December 23, 1976.

CAROLYN T. EVANS,
Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc.76–38356 Filed 12–29–76;8:45 am]

Center for Disease Control

COAL MINE HEALTH RESEARCH ADVISORY COMMITTEE

Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), the Center for Disease Control announces the following National Institute for Occupational Safety and Health Committee meeting:

Name: Coal Mine Health Research Advisory Committee.

Date: February 4, 1977.

Place: Conference Room G, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Time: 9 a.m.

Type of meeting: Open: 9 a.m. to 2:30 p.m., on February 4. Closed: Remainder of meeting.

Contact person: Marilyn K. Hutchison, M.D., Executive Secretary, Park Building, Room 3–14, NIOSH, 5600 Fishers Lane, Rockville, Maryland 20857. Phone: 301–443–6377.

Purpose: The Committee is charged with advising the Secretary Department of Health, Education and Welfare, on matters involving or relating to coal mine health research, including grants and contracts for such research.

Agenda: Agenda items for the open portion of the meeting will include announcements, consideration of minutes of previous meeting, administrative and staff reports, reports on the National Advisory Committee on Occupational Safety and Health, coal dust levels in coal mines, rulemaking for medical examinations of coal miners, status of third round of the National Coal Study, pathology standards of coal workers' pneumoconiosis, and coal miner protective equipment. During the closed session beginning at 2:45 p.m., the Committee will be performing the final review of a coal research grant application for Federal assistance, and will not be open to the public, in accordance with the provisions set forth in Section 552(b)(5) and (6), Title 5, U.S. Code, and the Determination by the Director, Center for Disease Control, pursuant to Public Law 92–463. Agenda items are subject to change as priorities dictate.

The portion of the meeting so indicated is open to the public for observation and participation. Anyone wishing to make an oral presentation should notify the contact person listed above as soon as possible before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the presentation. Oral presentations will be scheduled at the discretion of the Chairman and as time permits. Anyone wishing to have a question answered during the meeting by a scheduled speaker should submit the question in writing, along with his or her name and affiliation, through the Executive Secretary to the Chairman. At the discretion of the Chairman and as time permits, appropriate questions will be asked of the speakers.

A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: December 23, 1976.

DAVID J. SENCER, M.D.,
Director, Center for Disease Control.

[FR Doc.76–38315 Filed 12–29–76;8:45 am]

Center for Disease Control

COAL MINE HEALTH RESEARCH ADVISORY COMMITTEE

Rechartering

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, the Center for Disease Control announces the rechartering by the Secretary, DHEW, on December 13, 1976, of the Coal Mine Health Research Advisory Committee.

Dated: December 23, 1976.

DAVID J. SENCER,
Director, Center for Disease Control.

[FR Doc.76–38443 Filed 12–29–76;8:45 am]

Federal Council on the Aging

RESEARCH AND MANPOWER COMMITTEE

Meeting

The Federal Council on the Aging was established by the 1973 amendments to the Older Americans Act of 1965 (Pub. L. 93–29) for the purpose of advising the President, the Secretary of Health, Education, and Welfare, the Commissioner on Aging, and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to Pub. L. 92–463 that the Council's Research and Manpower Committee will meet on January 24, 1977 from 9:30 a.m. to 5 p.m. in Room 4131 HEW-North Building, 330 Independence Ave., S.W., Washington, D.C. 20201. The agenda will consist of: Status of Health Manpower Project; Frail Elderly Research Considerations; Status of AoA Manpower Activities and FCA Research Priorities.

This meeting will be open for public observation.

Further information on the Council may be obtained from: Cleonice Tavani, Executive Director, Federal Council on the Aging, Washington, D.C. 20201, telephone: (202) 245–0441.

CLEONICE TAVANI,
Executive Director, Federal Council on the Aging.

DECEMBER 20, 1976.

[FR Doc.76–38261 Filed 12–29–76;8:45 am]

Office of Education

FOLLOW THROUGH PROGRAM

Closing Date for Receipt of Applications

Notice is hereby given that pursuant to the authority contained in Title V, Parts B and C of the Economic Opportunity Act, as amended by section 8(a) of Pub. L. 93–644, applications are being accepted for Follow Through grants or contracts for technical assistance to Follow Through projects.

In order to be assured of consideration for funding from appropriations for Fiscal Year 1977, all applications must be received by the U.S. Office of Education Application Control Center on or before February 3, 1977.

Processing of all applications will be subject to the availability of funds. In Fiscal Year 1977 for the 1977–78 school year, it is expected that approximately $725,000 will be available for approximately 52 new awards.

A. *Applications sent by mail.* An application sent by mail should be addressed as follows: U.S. Office of Education, Application Control Center, Grant and Procurement Management Division, 400 Maryland Avenue, S.W., Washington, D.C. 20202, Attention: 13.433. 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 January 31, 1977, 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 date by either the Department of Health, Education, and Welfare, or the U.S. Office of Education mail room 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, S.W., Washington, D.C. Hand delivered applications will be accepted daily between the hours of 8:00 a.m. and 4:00 p.m. Washington, D.C. time except Saturdays, Sundays, or Federal holidays. Applications will not be accepted after 4:00 p.m. on the closing date.

C. *Program information and forms.* Information and application forms may

be obtained from the Division of Follow Through, Bureau of Elementary and Secondary Education, 400 Maryland Avenue, S.W. (Regional Office Building Three, Room 3624), Washington, D.C. 20202.

D. *Applicable regulations.* The regulations applicable to this program include the Office of Education General Provisions Regulations (45 CFR Part 100a) and the Follow Through Regulations (45 CFR Part 158) published in the FEDERAL REGISTER on April 21, 1975 at 40 FR 17712 et. seq. The Office of Education intends that all Fiscal Year 1977 Follow Through grants and contracts be governed by the amendments to 45 CFR Part 158 which were published in the FEDERAL REGISTER as a Notice of Proposed Rulemaking November 30, 1976 at 41 FR 52488 in the event that these amendments are adopted as final regulations.

(Title V, Parts B and C of the Economic Opportunity Act, as amended by Pub. L. 93-644, Section 8(a), 42 U.S.C. 2929 et. seq.)

(Catalog of Federal Domestic Assistance Number 13.433; Follow Through Program.)

Dated: December 16, 1976.

EDWARD AGUIRRE,
U.S. Commissioner of Education.

[FR Doc.76-38262 Filed 12-29-76; 8:45 am]

FOLLOW THROUGH PROGRAM

Closing Date for Receipt of Applications for Non-competing Continuation Awards

Notice is hereby given that pursuant to the authority contained in Title V, Parts B and C of the Economic Opportunity Act as amended by section 8(a) Pub. L. 93-644, applications are being accepted for Follow Through grants or contracts in the following two categories: (1) Non-competing continuation grants for carrying out Follow Through projects, and (2) non-competing grants or contracts for research and demonstration.

In order to be assured of consideration for funding from appropriations for Fiscal Year 1977, all applications should be received by the U.S. Office of Education Application Control Center on or before February 3, 1977.

Processing of all applications will be subject to the availability of funds. In Fiscal Year 1977 for the 1977-78 school year, it is expected that approximately $45 million will be available for an estimated 146 refundings under the first category of grants and approximately $6 million will be available for an estimated 20 refundings under the second category.

Those applicants in the first category of applications who are rated satisfactory according to the funding criteria stated in § 158.15 (a) through (k), (m), and (n) of the Follow Through Regulations (45 CFR Part 158) and who are also rated outstanding according to the criteria stated in § 158.15 (l) and (o) of the Follow Through Regulations (45 CFR Part 158) may later be invited to apply for additional Fiscal Year 1977 funds for the purpose of conducting expanded demonstration activities. The regulatory authority for grants of those additional funds and the funding criteria which would govern those grants were published as a Notice of Proposed Rulemaking in the FEDERAL REGISTER of Tuesday, November 30, 1976 (41 FR 52488). If the Office of Education decides to invite applications for those additional funds under the proposed regulations, a separate Notice of Closing Date for applications for those funds will be published in the FEDERAL REGISTER after all applications in the first category covered by this Notice have been received and reviewed by the Office of Education. Grants for those additional funds would be made only if and when the regulations governing those grants become effective as final regulations. Sections 431(b) and 431(d) of the General Education Provisions Act, 20 U.S.C. sections 1232(b) and 1232(d).

A. *Applications sent by mail.* An application sent by mail should be addressed as follows: U.S. Office of Education, Application Control Center, Grant and Procurement Management Division, 400 Maryland Avenue, S.W., Washington, D.C. 20202, Attention: 13.433. 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 January 31, 1977, 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 date by either the Department of Health, Education, and Welfare, or the U.S. Office of Education mail room 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, S.W., Washington, D.C. Hand delivered applications will be accepted daily between the hours of 8:00 a.m. and 4:00 p.m. Washington, D.C. time except Saturdays, Sundays, or Federal holidays.

C. *Program information and forms.* Information and application forms may be obtained from the Division of Follow Through, Bureau of Elementary and Secondary Education, 400 Maryland Avenue, S.W. (Regional Office Building Three, Room 3624), Washington, D.C. 20202.

D. *Applicable regulations.* The regulations applicable to this program include the Office of Education General Provisions Regulations (45 CFR Part 100a) and the Follow Through Regulations (45 CFR Part 158) published in the FEDERAL REGISTER on April 21, 1975 at 40 FR 17712 et. seq. The Office of Education intends that all Fiscal Year 1977 Follow Through grants and contracts be governed by the amendments to 45 CFR Part 158 which were published in the FEDERAL REGISTER as a Notice of Proposed Rulemaking November 30, 1976 at 41 FR 52488 in the event that these amendments are adopted as final regulations.

(Title V, Parts B and C of the Economic Opportunity Act, as amended by Pub. L. 93-644, Section 8(a), 42 U.S.C. 2929 et. seq.)

(Catalog of Federal Domestic Assistance Number 13.433; Follow Through Program.)

Dated: December 16, 1976.

EDWARD AGUIRRE,
U.S. Commissioner of Education.

[FR Doc.76-38263 Filed 12-29-76; 8:45 am]

NATIONAL ADVISORY COUNCIL ON EXTENSION AND CONTINUING EDUCATION

Correction

The FEDERAL REGISTER notice on Tuesday, December 21, (page 55612, FR Doc. 76-37454) of the meeting of The National Advisory Council on Extension and Continuing Education incorrectly stated the date the Council meeting would meet at the conclusion of the Conference.

The Council meeting will continue on Tuesday, January 11, (not January 10) until 6:00 p.m.; and on Wednesday morning, from 8:30 a.m. to Noon.

The Council regrets the error.

Dated: December 22, 1976.

JAMES A. TURMAN,
Executive Director.

[FR Doc.76-38335 Filed 12-29-76; 8:45 am]

Public Health Service

QUALIFIED HEALTH MAINTENANCE ORGANIZATIONS

List

Notice is hereby given, pursuant to 42 CFR 110.605, that in the month of November 1976 the following entities have been determined to be qualified health maintenance organizations under section 1310(d) of the Public Health Service Act (42 U.S.C. 300e-9(d)).

A. LIST OF QUALIFIED HEALTH MAINTENANCE ORGANIZATIONS—NAME, ADDRESS, SERVICE AREA, AND DATE OF QUALIFICATION

(OPERATIONAL QUALIFIED HEALTH MAINTENANCE ORGANIZATIONS: 42 CFR 110.603(a))

1. Community Group Health Plan, D.B.A. PRIME HEALTH, 605 West 47th, Suite 208, Kansas City, Missouri 64112. Service area: The zip codes included in the area are as follows:

STATE OF MISSOURI

64012, 64030, 64031, 64034, 64050, 64052, 64053, 64054, 64055, 64062, 64063, 64065, 64078, 64083, 64101, 64102, 64105, 64106, 64108, 64109, 64110, 64111, 64112, 64113, 64114, 64120, 64123, 64124, 64125, 64126, 64127, 64128, 64129, 64130, 64131, 64132, 64133, 64134, 64136, 64137, 64138, 64139, 64145, 64146, 64147, 64149, 64701, 64702.

STATE OF KANSAS

66030, 66061, 66083, 66084, 66085, 66180, 66202, 66203, 66204, 66205, 66206, 66207, 66208, 66209, 66210, 66211, 66212, 66213, 66214, 66215, 66216, 66217, 66218, 66219, 66220, 66221, 66223 66224.

Date of Qualification: November 26, 1976.

2. Marion Health Foundation, Incorporated, 142 South Prospect Street, Box 14, Marion, Ohio 43302. Service area: Marion County and the township of Clairbourne in adjoining Union County. Date of Qualification: November 30, 1976.

(TRANSITIONALLY QUALIFIED HEALTH MAINTENANCE ORGANIZATIONS: 42 CFR § 110.603(B))

1. Health Alliance of Northern California, Incorporated, 377 South Daniel Way, San Jose, California 95128. Service area: Bounded by the Santa Clara County line on the north, west and east of the County. The southern boundary is continguous with the south limits of the cities of Los Gatos and San Jose. This boundary is roughly delineated by streets in a line running from west to east along Highway 17, Main Street, Los Gatos Boulevard, Shannon-Hicks Road, McKean Road, Bailey Avenue, Monterey Highway, Metcalf Road, San Felipe Road, White Road, Alum Rock Avenue, Mt. Hamilton Road, to the east County boundary. Date of Qualification: November 29, 1976.

B. REVISED SERVICE AREA—HEALTH CARE PLAN OF NEW JERSEY, INC.

The zip codes set forth below which are denoted by an asterisk (*) have been added to the service area published on November 30, 1976 in the FEDERAL REGISTER (41 FR 52544) with respect to Health Care Plan of New Jersey, Inc., 123 North Church Street, Moorestown, New Jersey 08057. Revised service area:

BURLINGTON COUNTY

08010, 08011, 08015, 08016, 08019, 08022, 08036, 08041, 08042, 08046, 08048, 08052, 08053, 08054, 08055, 08057, 08060, 08064, 08065*, 08068, 08073, 08075, 08077, 08088, 08215*, 08224*, 08505, 08511, 08515*, 08518, 08534, 08562, 08620*.

CAMDEN COUNTY

08002*, 08003*, 08004, 08007, 08009, 08021*, 08026, 08033, 08034, 08035, 08043*, 08045, 08049, 08078*, 08083, 08084, 08091, 08106, 08107*, 08108*.

Files containing detailed information regarding the qualified health maintenance organizations will be available for public inspection between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, at the Office of Quality Standards, Office of the Assistant Secretary for Health, Department of Health, Education, and Welfare, Room 14A-27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20852.

Questions about the review process or requests for information about qualified health maintenance organizations should be sent to the same office.

Dated: December 21, 1976.

JOHN A. O'ROURKE,
Acting Director,
Office of Quality Standards.

[FR Doc.76-38316 Filed 12-29-76;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[A 9744]

ARIZONA

Airport Lease Application

DECEMBER 23, 1976.

Notice is hereby given that pursuant to the Act of May 24, 1928 (49 U.S.C. 211-213), Robert Sparrow, Sandy, Utah, has applied for an airport lease for the following lands:

GILA AND SALT RIVER MERIDIAN, ARIZONA

T. 40 N., R. 15 W.,
Sec. 7, S½.
T. 40 N., R. 16 W.,
Sec. 12, S½.

The purpose of this notice is to inform the public that the filing of this application segregates the described lands from all other forms of use or disposal under the public land laws.

Interested persons desiring to express their views should promptly send their name and address to the undersigned officer of the Bureau of Land Management, Department of the Interior, 2400 Valley Bank Center, Phoenix, Arizona 85073.

MILDRED C. KOZLOW,
Acting Chief, Branch of Lands
and Minerals Operations.

[FR Doc.76-38320 Filed 12-29-76;8:45 am]

[CA 3977]

CALIFORNIA

Application

DECEMBER 20, 1976.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), the Shell Oil Company has applied for a one inch steel oil pipeline, a two inch steel gas pipeline and a two inch steel water pipeline, across the following described public lands:

MOUNT DIABLO BASE AND MERIDIAN

CALIFORNIA

T. 32 S., R. 33 E.,
Sec. 35, E½NE¼.

These pipelines will carry oil, gas and water across national resource land in Kern County, California.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the State Office, Bureau of Land Management, Room E-2841, 2800 Cottage Way, Sacramento, California 95825.

WALTER F. HOLMES,
Chief, Branch of Lands
and Minerals Operations.

[FR Doc.76-38321 Filed 12-29-76;8:45 am]

[M 31621]

MONTANA

Application

DECEMBER 21, 1976.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 574), Northern Natural Gas Company has applied for a 6-inch natural gas pipeline right-of-way across the following lands:

PRINCIPAL MERIDIAN, MONTANA

T. 25 N., R. 19 E.,
Sec. 27, NW¼NW¼.

This pipeline will be a natural gas gathering line across .338 miles of national resource lands in Blaine County, Montana.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, Bank Electric Building, Drawer 1160, Lewistown, Montana 59457.

ROLAND F. LEE,
Chief, Branch of Lands
and Minerals Operations.

[FR Doc.76-38322 Filed 12-29-76;8:45 am]

(NM 29290)

NEW MEXICO

Application

DECEMBER 23, 1976.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for one 10¾-inch natural gas pipeline right-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 18 S., R. 27 E.,
Sec. 6, lot 6, E½SW¼ and SW¼SE¼;
Sec. 7, N½NE¼ and SE¼NE¼;
Sec. 8, SW¼NW¼, W½SW¼ and SE¼SW¼;
Sec. 17, SW¼NE¼, E½NW¼, E½SE¼ and NW¼SE¼;
Sec. 20, NE¼NE¼;
Sec. 21, W½NW¼ and SW¼SW¼;
Sec. 28, W½W½;
Sec. 29, SE¼SE¼;
Sec. 32, NE¼NE¼;
Sec. 33, W½W½ and SE¼SW¼.

T. 19 S., R. 27 E.,
Sec. 4, lot 3, SE¼NW¼, E½SW¼ and SW¼SE¼;
Sec. 9, W½NE¼, NW¼SE¼ and E½SE¼;
Sec. 15, SW¼NW¼ and W½SW¼;
Sec. 22, N½NW¼, SE¼NW¼, E½SW¼ and SW¼SE¼;
Sec. 27, W½NE¼, E½SE¼ and NW¼SE¼;
Sec. 34, NE¼NE¼;
Sec. 35, W½W½ and SE¼SW¼.

T. 20 S., R. 27 E.,
Sec. 2, lot 3, SW¼NE¼, SE¼NW¼, NE¼SW¼, W½SE¼;
Sec. 11, NE¼ and E½SE¼;
Sec. 12, SW¼SW¼;
Sec. 13, W½NW¼, N½SW¼ and SE¼SW¼.

This pipeline will convey natural gas across 15.138 miles of national resource lands in Eddy County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their

name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.76-38323 Filed 12-29-76;8:45 am]

(NM 29293)

NEW MEXICO

Application

DECEMBER 20, 1976.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for one 6⅝-inch natural gas pipeline right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN,
NEW MEXICO

T. 19 S., R. 27 E.,
Sec. 34, N½NE¼ and NE¼NW¼.
This pipeline will convey natural gas across .674 of a mile of national resource land in Eddy County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.76-38325 Filed 12-29-75;8:45 am]

(NM 28357)

NEW MEXICO

Proposed Withdrawal and Reservation of Lands; Correction

DECEMBER 22, 1976.

The Notice of Proposed Withdrawal under serial number NM 28357 dated December 10, 1976 appearing in the December 16, 1976 issue of the FEDERAL REGISTER, at pages 54994–54995 is hereby corrected as follows:

Paragraph one is corrected to show that the lands are withdrawn from settlement, sale, location or entry under the General Land Laws, including the mining and mineral leasing laws and the Geothermal Steam Act of 1970, instead of from all forms of appropriation. Paragraph one is further corrected to delete the reference to grazing and casual mineral exploration.

Paragraph six is corrected to read: For a period of two years from December 16, 1976 the lands shall be segregated to the extent mentioned above unless the application is rejected or the withdrawal is approved prior to that time. If the withdrawal is approved, the segregation will remain in effect for a period of 20 years from the date of such approval.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.76-38324 Filed 12-29-76;8:45 am]

[NM 29327]

NEW MEXICO

Application

DECEMBER 20, 1976.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Natural Gas Pipeline Company of America has applied for three 4-inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN,
NEW MEXICO

T. 19 S., R. 25 E.,
Sec. 31, SE¼SW¼.
T. 20 S., R. 25 E.,
Sec. 6, E½W½ and W½SE¼.
T. 24 S., R. 26 E.,
Sec. 34, SE¼SE¼
Sec. 35, S½SW¼ and N½SE¼.
T. 25 S., R. 26 E.,
Sec. 3, lot 1.

These pipelines will convey natural gas across 2.459 miles of national resource lands in Eddy County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.76-38246 Filed 12-29-76;8:45 am]

[M 141]

SOUTH DAKOTA

Transfer of Submarginal Lands Cheyenne River Indian Reservation

DECEMBER 21, 1976.

1. Pursuant to Pub. L. 94–114 (89 Stat. 577) and section 2 thereof the land described in paragraph 3 of this notice, together with all minerals underlying this land, whether acquired or otherwise owned by the United States, are hereby declared to be held by the United States in trust for the use and benefit of the Cheyenne River Sioux Tribe of South Dakota. The land shall be a part of the established Cheyenne River Indian Reservation. These lands were submarginal lands acquired under Title II of the National Industrial Recovery Act of June 16, 1933 (48 Stat. 200), the Emergency Relief Appropriation Act of April 8, 1935 (49 Stat. 115), and section 55 of the Act of August 24, 1935 (49 Stat. 750, 781). This notice is issued under the authority delegated to me by Bureau Order No. 701, dated July 23, 1946, as amended.

2. All existing mineral leases, including oil and gas leases, which have been issued on this land will remain in force and effect in accordance with the terms and provisions of the Act under which the leases were issued. The lease files will be transferred to the Office of the Area Director, Bureau of Indian Affairs, Aberdeen, South Dakota. Future rentals for these leases will be paid to and collected by that office. Jurisdiction of these mineral leases is transferred from the Bureau of Land Management to the Bureau of Indian Affairs in trust for the Cheyenne River Sioux Tribe.

3. Black Hills Meridian, South Dakota

T. 16 N., R. 28 E.,
Sec. 7, lot 3 and NE¼SW¼.
T. 16 N., R. 29 E.,
Sec. 3, SW¼NW¼, W½SW¼, N½NE¼SW¼, SW¼NE¼SW¼, N½SE¼NE¼SW¼, SW¼SE¼NE¼SW¼, NW¼SE¼SW¼, W½NE¼SE¼SW¼, and S½SE¼SW¼;
Sec. 9, NE¼NE¼, E½NW¼NE¼, NW¼NW¼NE¼, N½SW¼NW¼NE¼, SW¼SW¼NE¼, N½SE¼NE¼, S½NW¼SW¼NE¼, NE¼SW¼SE¼NE¼, N½SE¼SE¼NE¼, and SE¼SE¼SE¼NE¼;
Sec. 10, NW¼NE¼NE¼NW¼, S½NE¼NE¼NW¼, NW¼NE¼NW¼, S½NE¼NW¼, NW¼NW¼, NW¼SW¼NW¼, S½SW¼NW¼, SW¼SE¼NW¼, S½SE¼SE¼NW¼, N½SE¼SW¼, NE¼NW¼SW¼, N½NW¼NW¼SW¼, and SE¼NW¼NW¼SW¼;
Sec. 11, SE¼NE¼SW¼SE¼, S½SE¼SW¼SE¼, NE¼SE¼SW¼SE¼, SW¼NW¼SE¼SE¼, W½SW¼SE¼SE¼, and SE¼SW¼SE¼SE¼;
Sec. 14, NE¼NW¼NE¼, E½NW¼NW¼NE¼, NE¼SW¼NW¼NE¼, S½SW¼NW¼NE¼, W½SE¼NW¼NE¼, W½NE¼SW¼NE¼, W½SW¼NE¼, SW¼SE¼SW¼NE¼, S½SE¼NW¼, E½SW¼, NW¼NE¼NW¼SE¼, S½NE¼NW¼SE¼, W½NW¼SE¼, SE¼NW¼SE¼, SW¼SE¼, and SW¼SE¼SE¼;
Sec. 21, S½NW¼NE¼SW¼ and S½NE¼SW¼;
Sec. 23, N½NE¼ and N½S½NE¼;
Sec. 25, NW¼;
Sec. 26, NW¼;
Sec. 28, S½NW¼ and SW¼;
Sec. 29, SE¼NE¼ and NE¼SE¼;
Sec. 32, NE¼ and that portion of the NW¼ lying East of the railroad right-of-way; and
Sec. 33, NW¼.
T. 16 N., R. 30 E.,
Sec. 24, SW¼;
Sec. 25, SW¼ and W½SE¼;
Sec. 26, E½;
Sec. 30, NE¼;
Sec. 31, lots 1, 2, 3, and 4 and E½W½; and
Sec. 33, SE¼.
T. 16 N., R. 31 E.,
Sec. 8, W½NE¼NE¼, NW¼NE¼, S½NE¼, E½NE¼NE¼NW¼, SE¼SW¼NE¼NW¼, SE¼NE¼NW¼, N½NW¼NW¼, N½SW¼NW¼NW¼, NE¼SE¼NW¼, E½NW¼SE¼NW¼, SW¼NW¼SE¼NW¼, S½SE¼NW¼, NE¼NE¼SW¼, E¼NW¼NE¼SW¼, S½NE¼SW¼, and SE¼;

Sec. 17, N½NE¼NE¼NE¼, NW¼NE¼NE¼, N½NE¼NW¼NE¼, and NE¼NW¼NW¼NE¼; and
Sec. 21, NW¼NW¼SE¼.

The areas described aggregate 3,738.47 acres.

EDWIN ZAIDLICZ,
State Director.

[FR Doc.76-38245 Filed 12-29-76;8:45 am]

[Wyoming 56834]

WYOMING

Application

DECEMBER 20, 1976.

Notice is hereby given that pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Phillips Petroleum Company of Denver, Colorado filed an application for a right-of-way to construct a 6 inch pipeline for the purpose of transporting natural gas across the following described National Resource Lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING
T. 45 N., R. 76 W.,
Sec. 8, N½SW¼;
Sec. 9, NE¼NE¼ and SW¼NW¼;
Sec. 10, NW¼NE¼ and N½NW¼.
T. 46 N., R. 77 W.,
Sec. 10, E½SE¼;
Sec. 11, N½SW¼ and SE¼SW¼;
Sec. 23, W½NE¼, SE¼NE¼, and NE¼SE¼.

The pipeline will transport natural gas from points in the NW¼SE¼ of sec. 12, T. 45 N., R. 76 W., and the SE¼SE¼ sec. 10, T. 46 N., R. 77 W., to a point in the NW¼SE¼ of sec. 36, T. 46 N., R. 77 W., in Johnson County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their view should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 100 East "B" Street, P.O. Box 2834, Casper, Wyoming 82601.

GLENNA M. LANE,
Acting Chief, Branch of Lands Minerals Operations.

[FR Doc.76-38247 Filed 12-29-76;8:45 am]

PACIFIC OUTER CONTINENTAL SHELF

Approval of Outer Continental Shelf Official Protraction Diagrams

1. Notice is hereby given that, effective with this publication, the following OCS Official Protraction Diagrams approved on the date indicated, are available, for information only, in the Pacific Outer Continental Shelf Office, Bureau of Land Management, Los Angeles, CA. In accordance with Title 43, Code of Federal Regulations, these protraction diagrams are the basic record for the description of mineral and oil and gas lease offers in the geographic areas they represent.

OUTER CONTINENTAL SHELF OFFICIAL PROTRACTION DIAGRAMS

Description:	Approval date
NI 10-5, Arguello Fan	Nov. 10, 1976
NI 10-8	Do.
NI 10-9, Santa Rosa Island	Do.
NJ 9-3, Delgada Fan	Do.
NJ 9-6	Do.
NJ 10-1, NOYO Canyon	Nov. 2, 1976
NJ 10-2, Ukiah	Do.
NJ 10-4, Navarro Canyon	Do.
NJ 10-5, Santa Rosa	Do.
NJ 10-7	Mar. 26, 1976
NJ 10-8, San Francisco	Nov. 2, 1976
NJ 10-10, Taney Seamount	Do.
NK 9-12, Escanaba Trough	Do.
NK 10-4, Cape Blanco	Nov. 10, 1976

2. Copies of these diagrams are for sale at two dollars ($2.00) per sheet by the Manager, Pacific Outer Continental Shelf Office, Bureau of Land Management, 300 N. Los Angeles St., Room 7127, Los Angeles, CA 90012. Checks or money orders should be made payable to the Bureau of Land Management.

WILLIAM E. GRANT,
Manager, Pacific Outer Continental Shelf Office.

[FR Doc.76-38326 Filed 12-29-76;8:45 am]

Geological Survey

COLORADO

Known Recoverable Coal Resource Area

Pursuant to authority contained in the Act of March 3, 1879 (43 U.S.C. 31), as supplemented by Reorganization Plan No. 3 of 1950 (43 U.S.C. 1451, note), 203 Departmental Manual No. 1, Secretary's Order No. 2948, and section 8A of the Mineral Leasing Act of February 25, 1920, as added by section 7 of the Federal Coal Leasing Amendments Act of 1975 (Pub. L. 94-377, August 4, 1976), Federal lands within the State of Colorado have been classified as subject to the coal leasing provisions of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 201). The name of the area, effective date, and total acreage involved are as follows:

(6) COLORADO

Revised Danforth Hills (Colorado) Known Recoverable Coal Resource Area (KRCRA); March 1, 1976; 126 acres previously within the KRCRA were deleted, and 41,328 acres were added. Total area now classified for leasing is 171,590 acres.

A diagram showing the revised boundary and acreage has been filed with the appropriate land office of the Bureau of Land Management. Copies of the diagram and land description may be obtained from the Conservation Manager, Central Region, U.S. Geological Survey, Stop 609, Box 25046, Federal Center, Denver, Colorado 80225.

Dated: December 20, 1976.

W. A. RADLINSKI,
Acting Director.

[FR Doc.76-38328 Filed 12-29-76;8:45 am]

Office of Hearings and Appeals

[Docket No. M 77-52]

CLINCHFIELD COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Clinchfield Coal Company has filed a petition to modify the application of 30 CFR 75.1100-2(b) to its Moss No. 3 Mine Portal "D", located in Dickenson County, Virginia.

30 CFR 75.1100-2(b) provides:

In all coal mines, waterlines shall be installed parallel to the entire length of belt conveyors and shall be equipped with firehose outlets with valves at 300-foot intervals along each belt conveyor and at tailpieces. At least 500 feet of firehose with fittings suitable for connection with each belt conveyor waterline system shall be stored at strategic locations along the belt conveyor. Waterlines may be installed in entries adjacent to the conveyor entry belt as long as the outlets project into the belt conveyor entry.

The substance of Petitioner's statement is as follows:

1. Petitioner seeks modification of the regulation as it relates to the installation of a fire suppression system and a belt automatic sensoring device for one 48-inch belt that is in operation and located in the 1 East area of the Moss No. 3 Portal "D" Mine.

2. The Petitioner is the operator of bituminous coal mines which are subject to the Mandatory Safety Standards for Underground Mines, in particular 30 CFR 75.1100-2b.

3. The Moss No. 3 Mine Portal "D" is located in a combination of the Upper and Lower Tiller Seams, is opened by drifts and operates a total of three mechanized units on a multiple shift operation. The mine employs approximately 175 men and has a daily estimated production of 1,800 tons of coal. The mine has been in operation for approximately 20 years.

4. Petitioner has established a portal, namely, 10 East Portal, on the back side of the mine property and has recently installed approximately 7,700 feet of outside belt structure in order to transport the coal being produced at the 10 East Portal. Of the 7,700 feet of belt approximately 7,300 feet is located on the surface. The remaining 400 feet, approximate, is tunneled through a point where the coal had been mined (first mining).[1] The belt drive at that operates this 400+ feet in question, as well as the tail section, are located on the surface.

5. Petitioner requests relief from being required to install a fire suppression system and an automatic sensoring system in the area of approximately 400 feet for the following reasons:

(a) The seam height in this area is 12 to 15 feet, or more. With a distance

[1] A mine map is available for inspection at the address listed in the last paragraph of this notice.

of approximately 400 feet, one can see from one end of the tunnel to the other.

(b) The area where the belt is located is completely isolated from the rest of the mine and no workmen work in the tunnel area or any area adjacent to the tunnel.

(c) Fireproof seals have been installed on the left and right sides of the belt line by the use of fire proof stoppings, closing off all entries from all active areas in the mine.

(d) In such an isolated area and due to such a short distance through the so-called tunnel, the Petitioner will continuously face the danger of freezing and bursting of water lines during the winter months, if a water line were to be installed.

(e) Prior to the installation of this 7,700 feet of coal hauling belt line the Petitioner had to haul the coal produced at the 10 East Portal by truck, which necessitated the traveling over one large mountain, which, even though all safety precautions were followed, created a much more hazardous means of transporting the coal than by locating the belt through this 400 feet isolated area.

(f) In the event that any work has to be done in this area, such as belt maintenance or repair, cleaning up of loose coal, rock dusting, or additional roof support, this 400± foot section of belt will be stopped and the control line deenergized prior to the beginning of the work.

(g) Should a fire occur in this area, no persons will be exposed due to the isolated location of the belt.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before January 31, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

DAVID TORBETT,
Acting Director,
Office of Hearings and Appeals.

DECEMBER 22, 1976.

[FR Doc.76-38329 Filed 12-29-76;8:45 am]

[Docket No. M 77-53]

CLINCHFIELD COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Clinchfield Coal Company has filed a petition to modify the application of 30 CFR 75.1103-1 to its Moss No. 3 Mine Portal D, located in Dickenson County, Virginia.

30 CFR 75.1103-1 provides:

A fire sensor system shall be installed on each underground belt conveyor. Sensors so installed shall be of a type which will (a) give warning automatically when a fire occurs on or near such belt; (b) provide both audible and visual signals that permit rapid location of the fire.

The substance of Petitioner's modification is as follows:

1. Petitioner seeks modification of the regulation as it relates to the installation of a fire suppression system and a belt automatic sensoring device for one 48-inch belt that is in operation and located in the 1 East area of the Moss No. 3 Portal D Mine.

2. The Petitioner is the operator of bituminous coal mines which are subject to the Mandatory Safety Standards for Underground Mines, in particular 30 CFR 75.1103-1.

3. The Moss No. 3 Mine Portal D is located in a combination of the Upper and Lower Tiller Seams, is opened by drifts and operates a total of three mechanized units on a multiple shift operation. The mine employs approximately 175 men and has a daily estimated production of 1,800 tons of coal. The mine has been in operation for approximately 12 years.

4. Petitioner has established a portal, namely 10 East Portal, on the back side of the mine property and has recently installed approximately 7,700 feet of outside belt structure in order to transport the coal being produced at the 10 East Portal. Of the 7,700 feet of belt approximately 7,300 feet is located on the surface. The remaining 400 feet, approximately, is tunneled through a point where the coal had been mined (first mining). The belt drive that operates this 400+ feet in question, as well as the tail section, are located on the surface.

5. Petitioner requests relief from being required to install a fire suppression system and an automatic sensoring system in the area of approximately 400 feet for the following reasons:

(a) The seam height in this area is 12 to 15 feet or more. With a distance of approximately 400 feet, one can see from one end of the tunnel to the other.

(b) The area where the belt is located is completely isolated from the rest of the mine and no workmen work in the tunnel area or any area adjacent to the tunnel.

(c) Fireproof seals have been installed on the left and right sides of the belt line by the use of fireproof stoppings. This closes off all entries from all active areas in the mine.

(d) In such an isolated area and due to such a short distance through the so called tunnel, the Petitioner will continuously face the danger of freezing and bursting of water lines during the winter months, if a water line were to be installed.

(e) Prior to the installation of this 7,700 feet of coal hauling belt line the Petitioner had to haul the coal produced at the 10 East Portal by truck, which necessitated the traveling over one large mountain, which, even though all safety precautions were followed, created a much more hazardous means of transporting the coal than by locating the belt through this 400 feet isolated area.

(f) In the event that any work has to be done in this area, such as belt maintenance or repair, cleaning up of loose coal, rock dusting, or additional roof support, this 400+ foot section of belt will be stopped and the control line deenergized prior to the beginning of the work.

(g) Should a fire occur in this area, no one will be exposed due to the isolated location of the belt.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before January 31, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

DECEMBER 22, 1976.

DAVID TORBETT,
Acting Director, Office of Hearings and Appeals.

[FR Doc.76-38330 Filed 12-29-76;8:45 am]

[Docket No. M 77-54]

CLINCHFIELD COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Clinchfield Coal Company has filed a petition to modify the application of 30 CFR 75.1100-2(b) to its Open Fork No. 2 Mine, located in Dickenson County, Virginia.

30 CFR 75.1100-2(b) provides:

In all coal mines, waterlines shall be installed parallel to the entire length of belt conveyors and shall be equipped with firehose outlets with valves at 300-foot intervals along each belt conveyor and at tailpieces. At least 500 feet of firehose with fittings suitable for connection with each belt conveyor waterline system shall be stored at strategic locations along the belt conveyor. Waterlines may be installed in entries adjacent to the conveyor entry belt as long as the outlines project into the belt conveyor entry.

The substance of Petitioner's statement is as follows:

1. The Petitioner seeks modification of the regulation as it relates to the installation of a fire suppression system for one 36-inch belt that is commonly known as the "tunnel belt" and is used to transport coal from the Open Fork No. 2 Mine surface stock pile to the railroad loading out facilities for Open Fork No. 2 Mine.

2. The Petitioner is the operator of bituminous coal mines which are subject to the Mandatory Safety Standards for Underground Mines, in particular 30 CFR 75.1100-2(b).

3. The Open Fork No. 2 Mine is located in the Upper Banner Seam, is opened by drifts and operates a total of five mechanized units on a multiple shift operation.

4. The mine employs approximately 200 men and has a daily estimated production of 1,800 tons of coal. The mine has

been in operation for approximately 10 years.

5. Coal is transported from the working sections of Open Fork No. 2 Mine to the surface stock pile where it is stored. From the stock pile the coal is then loaded onto a 36-inch belt and transported an additional 800 feet on the surface, where, at this point, it is discharged onto the tunnel belt which is approximately 1,700 feet in length, at which point it is discharged onto a 36-inch belt located on the surface, a distance of approximately 850 feet into the railroad loading out facilities.

6. The 1,700 feet of the "tunnel belt" traverses through a portion of an abandoned and inactive mine, which is completely isolated from the active mine workings at the Open Fork No. 2 Mine.

7. The Petitioner has no intent of ever connecting the "tunnel belt" area with the Open Fork No. 2 Mine.[1] The belt drive and the tail section for the "tunnel belt" are both located on the surface.

8. The Petitioner requests relief from being required to install a fire suppression system on the 36-inch belt that is located through the isolated and inactive mine for the following reasons:

(a) "The tunnel belt" area is completely isolated from the Open Fork No. 2 Mine and no workmen working in the Open Fork No. 2 Mine would be exposed to any hazard, should a fire occur.

(b) In such an isolated area, and due to such a short distance through the so-called "tunnel," the Petitioner will continuously face the danger of freezing and bursting of water lines during the winter months, if a water line were to be installed.

9. In lieu of the provision listed under § 75.1100-2(b) the Petitioner proposes the following safeguards:

(a) Three 10-pound all-purpose fire extinguishers will be furnished and maintained at this "tunnel belt" area at all times and they will be located in the following manner:

One ten-pound fire extinguisher at each end of the "tunnel" entrance and one ten-pound fire extinguisher located near the center of the tunnel.

(b) The belt line will be equipped with a fire sensoring system which will give warning to the responsible person located on the surface at the Open Fork No. 2 Mine portal.

(c) A fan has been installed at the entrance of the "tunnel belt" area to ventilate the tunnel belt.

(d) "The tunnel belt" area will be examined in accordance with the Mandatory Provisions as outlined in § 75.303 (Pre-shift Examinations).

(e) In the event that any work has to be done in this area, such as belt maintenance or repair, rock dusting, or additional roof support, this 1,700-foot section of belt will be stopped and the control line deenergized prior to the beginning of the work.

[1] A mine map is available for inspection at the address listed in the last paragraph of this notice.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before January 31, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

DAVID TORBETT,
Acting Director, Office of Hearings and Appeals.

DECEMBER 22, 1976.

[FR Doc.76-38331 Filed 12-29-76;8:45 am]

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-76-5B]

GOVERNMENT IN THE SUNSHINE

Additional Agenda Item

At its meeting of December 23, 1976, the United States International Trade Commission, acting on the authority of 19 U.S.C. 1335 in conformity with proposed 19 CFR 201.38, voted to add the following item to its agenda for the meeting of December 28, 1976:

7. Consideration of an appeal filed pursuant to the Privacy Act.

Commissioners Minchew, Parker, Leonard, Moore, and Ablondi voted by unanimous consent, that Commission business requires the change in subject matter by addition of the agenda item, affirmed that no earlier announcement of the addition to this agenda was possible, and directed the issuance of this notice at the earliest practicable time. (Commissioner Bedell was not present for the vote.)

On the authority of 19 U.S.C. 1335 and in conformity with proposed 19 CFR 201.39(a), when a person's privacy interests may be directly affected by holding a portion of a Commission meeting in public, that person may request the Commission to close such portion to public observation. Such requests should be communicated to the Office of the Chairman of the Commission.

Issued: December 27, 1976.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc.76-38292 Filed 12-29-76;8:45 am]

[AA1921-162]

MELAMINE IN CRYSTAL FORM FROM JAPAN

Determination

DECEMBER 20, 1976.

On September 20, 1976, the United States International Trade Commission received advice from the Department of the Treasury that melamine in crystal form from Japan, is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)). Accordingly, on October 6, 1976, the Commission instituted investigation No. AA1921-162 under section 201(a) of said act to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

Notice of the institution of the investigation and of a public hearing to be held in connection therewith was published in the FEDERAL REGISTER on October 14, 1976 (41 FR 45062). On November 9, 1976, a hearing was held in accordance with the notice at which all persons who requested the opportunity were permitted to appear by counsel or in person.

In arriving at its determination, the Commission gave due consideration to all written submissions from interested parties and information adduced at the hearing as well as information obtained by the Commission's staff from questionnaires, personal interviews, and other sources.

On the basis of the investigation, Vice Chairman Parker and Commissioners Moore and Bedell determined that an industry in the United States is being injured and is likely to be injured by reason of the importation of melamine in crystal form from Japan that is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended. Chairman Minchew and Commissioners Leonard and Ablondi, on the other hand, determined that an industry in the United States is not being injured and is not likely to be injured by reason of the importation of melamine in crystal form from Japan that is being, or is likely to be sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended.[1]

STATEMENT OF REASONS FOR AFFIRMATIVE DETERMINATION OF VICE CHAIRMAN JOSEPH O. PARKER AND COMMISSIONERS GEORGE M. MOORE AND CATHERINE BEDELL

In our opinion an industry in the United States is being injured and is likely to be injured by reason of the importation into the United States of melamine in crystal form (melamine) from Japan which, according to the finding of the Department of the Treasury (Treasury), is being, or is likely to be, sold at less than fair value (LTFV) within the meaning of the Antidumping Act, 1921, as amended. Our reasons in sup-

[1] Vice Chairman Parker and Commissioners Moore and Bedell found in the affirmative, and Chairman Minchew and Commissioners Leonard and Ablondi found in the negative (see attached statements of reasons). Pursuant to section 201(a) of the Antidumping Act, 1921, as amended, the Commission is deemed to have made an affirmative determination if the Commissioners of the Commission voting are evenly divided as to whether its determination should be in the affirmative or in the negative.

port of this determination are set forth below.

THE PRODUCT

The imported product found to be sold at LTFV by Treasury is melamine from Japan. Although there are differing manufacturing processes by which melamine is produced and various raw materials used in its production, by and large, is a uniform end product.

THE U.S. INDUSTRY

In this determination we have considered the industry in the United States which is being injured and which is likely to be injured by reason of sales at LTFV to consist of the facilities devoted to the production of melamine. Three firms have produced melamine in the United States since 1973. These firms are Melamine Chemicals, Inc. (MCI), American Cyanamid Co., and Allied Chemical Corp. A major portion of the production of American Cyanamid and Allied Chemical is retained for captive use. However, all of MCI's production is sold in the open market. It is significant that, in the domestic open market, in competition with the LTFV imports from Japan, MCI production represents 50 percent of domestic open-market sales.

LTFV SALES

Treasury examined LTFV sales of melamine from Japan during July-December 1975. In that period one Japanese firm, Nissan Chemical Industries, Ltd. (Nissan), was found to have sold melamine in the United States. Fair-value comparisons were made on 99 percent of the melamine from Japan sold in the United States during the period of investigation, and 100 percent of the sales compared were found to be at LTFV prices. Margins, as calculated by Treasury, ranged from 50 to 70 percent, with a weighted average margin of 60 percent. The Commission's investigation disclosed that this large LTFV margin more than equaled the amount by which these imports undersold domestically produced melamine.

MARKET PENETRATION BY LTFV IMPORTS

Imports of melamine from Japan increased from 300,000 pounds (or 7.8 percent of total U.S. imports from all sources) in 1973 to 5.1 million pounds (or 80 percent of total U.S. imports from all sources) in 1975. Imports of melamine from Japan amounted to 1.7 million pounds in July-December 1974 but increased to 4 million pounds in July-December 1975. Moreover, these imports from Japan in July-December 1975 were all sold at LTFV.

The ratio of Japanese imports of melamine to U.S. consumption rose from less than 1 percent in 1973 to more than 6 percent in 1975—the year in which at least four-fifths of such imports were sold at LTFV. In July-December 1974, imports from Japan accounted for less than 3 percent of U.S. apparent consumption. That ratio nearly tripled in July-December 1975, the period when all import sales were made at LTFV prices.

The sales impact of Japanese melamine is directed to open-market consumption, which accounts for about half of total U.S. production. The remainder is captive production used by Allied Chemical and American Cyanamid. Thus, the ratio of LTFV imports to open-market consumption is substantially greater than the ratio of LTFV imports to total consumption. For example, the ratio of imports from Japan to U.S. open-market consumption increased from less than 5 percent in July-December 1974 to 15–20 percent during July-December 1975, when all such imports were sold in the United States at LTFV.

The 1975 surge in imports occurred at a time when U.S. production was 34 percent below the level of 1974 and U.S. consumption was 37 percent below its 1974 level. The rate at which the U.S. industry operated its melamine facilities declined from 77 percent of capacity in 1974 to 51 percent of capacity in 1975. Thus, the increase in LTFV imports clearly were more injurious because the U.S. industry was already suffering from the economic recession in 1975.

Under the law, injury or likelihood of injury must have occurred "by reason of the importation of" LTFV merchandise into the United States. However, it is not necessary that importation of LTFV merchandise be a principal cause, a major cause, or a substantial cause of injury to an industry.[2] Even where several factors that may cause injury, other than LTFV sales, are present, all that is required for an affirmative determination is that the LTFV merchandise contributed to more than an inconsequential injury.[3] It is clear from the following indicators of injury that more than inconsequential injury was suffered by the U.S. melamine-producing industry by reason of sales and increased penetration of Japanese melamine in the United States at LTFV prices.

PRICE DEPRESSION RESULTING FROM LTFV IMPORTS

Imports of Japanese melamine were priced substantially higher than domestically produced melamine during most of 1974, were priced about the same as domestically produced melamine during the first few months of 1975, and were priced substantially lower than domestically produced melamine during the remainder of 1975 (including all of the LTFV period) and the early part of 1976. The underselling during the period of LTFV sales was equivalent to as much as 7.5 cents per pound, or 22 percent below the U.S. producers' prices in some instances. This underselling contributed to reductions of about 6 percent in U.S. producers' prices, beginning early in 1975 and continuing throughout the year. During the period of LTFV imports, the LTFV margin was greater in all instances than the margin of underselling. The underselling by the LTFV imports contributed to the price depression in the domestic market.

SALES LOST TO LTFV IMPORTS

Substantial evidence was obtained by the Commission that domestic sales which would have been made by all three U.S. producers of melamine (MCI, Allied, and American Cyanamid) were lost to LTFV imports of melamine from Japan. Many purchasers that had formerly obtained little or none of their melamine requirements from Japan suppliers bought substantial quantities of LTFV Japanese melamine during July–December 1975. In fact, two of the largest U.S. users of melamine first began to use Japan melamine in 1975; neither firm had used foreign melamine prior to that time. More than 70 percent of U.S. imports of LTFV melamine from Japan during July–December 1975 were sold to these two customers.

Prior to 1975, when U.S. suppliers at times could not fulfill domestic demand for melamine, Japanese melamine was sold in the United States at prices substantially higher than U.S.-produced melamine. However, during 1975, especially during the latter half of the year, and during early 1976, U.S. producers were capable of supplying virtually all of U.S. requirements of melamine. LTFV sales of Japanese melamine resulted in lost sales for U.S. producers solely because of LTFV pricing that allowed Japanese melamine to undersell the domestic product. All the U.S. purchasers that commented on this question stated that in the U.S. market the price of melamine is the controlling factor in making purchases.

DECLINE IN EMPLOYMENT RESULTING FROM LTFV IMPORTS

The employment of U.S. production and related workers producing melamine declined by 38 percent from 1974 to 1975 (or from 331 workers to 204 workers). During July–December 1974, such employment amounted to 238 workers but declined to 207 workers during July–December 1975, the period of LTFV sales. While part of the decline is probably due to such causes as the recession, the presence of LTFV imports certainly contributed to increased unemployment in the U.S. melamine industry.

PROFIT AND LOSS EFFECTS OF LTFV IMPORTS

Between 1974 and 1975 the ratio of net operating profits (before taxes) to net

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[2] U.S. Senate, *Trade Reform Act of 1974; Report of the Commitee on Finance* * * *, S. Rept. No. 93–1298, (93d Cong., 2d sess.), 1974, p. 180.

[3] *Elemental Sulfur from Mexico, Determination* * * * *in Investigation No. AA1921–92* * * *, TC Publication 484, 1972 (statement of reasons for affirmative determination of Chairman Bedell and Commissioners Sutton and Moore, at p. 3); *Bicycle Speedometers from Japan, Determination* * * * *in Investigation No. AA192198* * * *, TC Publication 513, 1972 (statement of reasons for affirmative determination of Chairman Bedell, Vice Chairman Parker, and Commissioners Leonard and Moore, at p. 7). See also *Water-Circulating Pumps, Wet-Motor Type, From the United Kingdom, Determination* * * *, *in Investigation No. AA1921–152* * * *, USITC Publication 777, 1976 (statement of reasons of Chairman Will E. Leonard, at pp. 10–11).

sales for the three U.S. producers of melamine declined by 28 percent. The decline in the ratio of net operating profits to net sales between July–December 1974 and the corresponding period in 1975 (when all Japanese imports were being sold at LTFV) was even more substantial—67 percent.

Of greater significance, however, is the effect of LTFV imports on the U.S. industry measured by the ratio of industry profitability to capital investment. The melamine industry is extremely capital intensive. When profitability is evaluated in terms of return on capital investment rather than return on sales, the profitability was low. Obviously, U.S. industry profitability, by whatever measure, was impaired by LTFV imports which resulted in reduced U.S. sales and depressed prices for U.S. producers.

LIKELIHOOD OF INJURY FROM LTFV SALES

The Japanese industry has the capacity to almost double its 1975 production of melamine. The ability and willingness of the Japanese industry to penetrate the U.S. market by selling melamine at LTFV prices (with margins ranging up to 70 percent as calculated by Treasury) has been clearly demonstrated. Unless effective action is taken to prevent the continuation of such unfair practices the injury found to have been suffered by the domestic industry will intensify.

CONCLUSION

We have determined that an industry in the United States is being injured and is likely to be injured by reason of the importation of melamine from Japan found by Treasury to be, or likely to be, sold at LTFV.

STATEMENT OF REASONS FOR NEGATIVE DETERMINATION OF CHAIRMAN DANIEL MINCHEW AND COMMISSIONERS WILL E. LEONARD AND ITALO H. ABLONDI

On the basis of the reasons cited below, we have determined that an industry in the United States is no being injured and is not likely to be injured [1] by reason of the importation of melamine crystals (hereinafter referred to as melamine) from Japan which the Department of the Treasury (Treasury) has found are being, or are likely to be, sold at less than fair value (LTFV).

The LTFV determination by Treasury is based upon an examination of 99 percent of exports of such melamine from Japan to the United States during the period July 1, 1975, to December 31, 1975. Dumping margins ranged from 50 to 70 percent, according to the advice the Commission received from Treasury. All the imported melamine found to be sold at LTFV prices during July–December 1975 was manufactured by Nissan Chemical Industries, Inc. (Nissan), one of three Japanese producers of melamine.

U.S. INDUSTRY

Melamine, the imported article under investigation, is a fine white crystalline powder produced from urea and ammonia, both products of natural gas. Melamine is used to manufacture amino (melamine-formaldehyde) resins. These resins are in turn used in the following specific classes of products: High-pressure laminates used extensively in the construction industry (i.e., kitchen and bathroom counter tops); molding compounds (e.g., dinnerware); surface-coating resins (e.g., automotive topcoats); textile treating resins used primarily to impart wrinkle resistance to cotton; and paper treating resins used primarily to provide wet strength to paper towels.

The U.S. industry most likely to be impacted by the LTFV imports in question consists of domestic facilities devoted to the production of melamine. This is the only industry with respect to which evidence regarding alleged injury was presented to the Commission in this investigation.

Melamine is currently manufactured by the American Cyanamid Co. (American Cyanamid), the Allied Chemical Corp. (Allied), and the complainant before Treasury, Melamine Chemicals, Inc. (MCI). American Cyanamid and Allied retain a significant portion of their production for captive use. The remainder is sold in the U.S. merchant market and in export sales. MCI sells exclusively to the U.S. merchant market and the export market.

NO INJURY BY REASON OF LTFV IMPORTS

In this investigation, evidence of alleged injury to the domestic industry tended to focus on the year 1975. After careful examination of the evidence, we have concluded that any injury which the domestic industry did incur in 1975 and previous years was not by reason of LTFV sales. Such sales are not an identifiable cause of any such injury; rather, the recession in the markets for end products using melamine accounts for any such injury.

The decline in domestic production of melamine in 1975 is attributable to depressed conditions in the end-use markets for melamine and not to LTFV imports. U.S. melamine production fell by 34.3 percent between 1974 and 1975; however, most of this decrease occurred in the first 6 months of 1975, before the period of the Treasury investigation. Domestic production increased during the 6 months of 1975 (the period of Treasury-determined LTFV sales) by 97 percent over what it was in the first 6 months of 1975. Production slipped by less than 9 percent between the last 6 months of 1975 and the corresponding period in 1974.

Sharply reduced demand in two key sectors of the economy, the construction and automobile industries, led to production cutbacks in melamine in early 1975. The construction and automobile industries, which constitute over 50 percent of the end-use markets for melamine, were severely affected by recessionary influences in 1974 and 1975. Expenditures for new housing units declined more than 20 percent between 1973 and 1974, and 16 percent between 1974 and 1975. In 1975, private housing starts amounted to less than half the 1972 level. In the automobile industry, sales fell 24 percent in 1974 from the previous year's level. Sales again dropped in 1975, giving the automobile business its poorest sales record in many years.

The decline in employment at U.S. melamine facilities in 1975 was not related to LTFV imports, but rather to depressed economic conditions and a strike at American Cyanamid's Fortier plant. Although the number of domestic workers engaged in melamine production dropped in 1975 from what it was in 1974, the reduction in employment occurred principally in the first 6 months of 1975. The number of production workers at malamine facilities which did not experience strikes in 1975 remained constant or increased during the second 6 months of 1975, compared with the corresponding period in 1974. The total number of man-hours expended in the domestic production of melamine during the period in which Treasury found there to be LTFV sales (280,000 hours) was almost identical to the number of man-hours worked during the last 6 months of 1974 (281,000 hours). LTFV import sales thus had virtually no impact on domestic employment.

Melamine prices fell in 1975 because of oversupply and reduced demand in the construction and automobile industries. In 1974, shortages of melamine caused by a tight supply of urea (a primary raw material in malamine manufacture) resulted in a sharply upward trend in prices for melamine, which was reversed in 1975 as urea became more available and the supply of melamine correspondingly increased. Substantial decreases in U.S. producers' melamine prices occurred in the first quarter of 1975, before known LTFV sales. In the first 3 months of 1975, melamine imports from Japan totaled only 330,000 pounds, and were priced above prevailing domestic prices. LTFV sales cannot be considered to have had an impact upon the substantial decreases in prices made by domestic producers in the early months of 1975.

Although U.S. imports from Japan increased substantially in 1975, the increase only reflects the increased availability of melamine worldwide after the acute shortages of melamine in 1973 and 1974. The ratio of U.S. imports from Japan to consumption in 1975 was lower than the corresponding ratio in 1971.

Although net operating profits of U.S. melamine producers decreased between 1974 and 1975, the decline can be attributed to recessionary conditions in the economy rather than to LTFV sales. A comparison of the net profits before income taxes for producers of melamine with the pre-tax net profits for all manufacturers of industrial chemical synthetics revealed a downward trend for both groups over the period 1973–75; melamine producers, however, showed much higher profits. The profit-to-sales ratio for the melamine industry in 1975 was 24 percent; for all manufacturers of industrial chemicals and synthetics, the ratio was 11 percent. LTFV sales thus did not have an identifiable effect on the

[1] Prevention of establishment of an industry is not an issue in the instant case and will not be discussed further.

profitability of U.S. melamine manufacturers.

Although two U.S. melamine producers claim loss of sales because of LTFV imports from Japan, the issue is not clear cut. A large purchaser of Nissan melamine in 1975 developed credit problems with a domestic producer at the end of 1974. As a result of this credit dispute, the purchaser sought other suppliers, both domestic and foreign. Other companies that purchased Nissan melamine did not substantially reduce purchases from domestic sources between 1974 and 1975.

In addition, the U.S. industry has apparently had little trouble competing in export markets in view of the fact that U.S. exports have increased each year since 1971, and U.S. exports during the first 9 months of 1976 were greater than U.S. exports during all of 1975. During July–December 1975, the LTFV period, U.S. exports were nearly three times as much as during the corresponding period of 1974.

NO LIKELIHOOD OF INJURY BY REASON OF LTFV IMPORTS

Although Nissan has recently installed a new melamine production facility with enlarged capacity, there is no substantial evidence that Nissan's exports to the United States will increase as a result. In 1977 and future years, Nissan will be required to supply a greater share of melamine demand within Japan. Of the two other manufacturers of melamine in Japan, one company (Nippon Carbide) announced an indefinite cessation of melamine production, and the other company (Mitsui-Toatsu) has an unstable production schedule which necessitates that it purchase some of its melamine needs from Nissan. Because of the increased demand within Japan and its present export commitments, Nissan has stated that it will be unable to supply melamine to new customers overseas. These factors make it unlikely that Nissan will enlarge its market in the United States. In addition, Nissan has indicated that it will, in the future, sell melamine in the U.S. market at fair value.

Both the Japanese and U.S. melamine industries had substantial over-capacity in 1975. However, the current economic recovery, particularly in the construction industry, which is underway in both Japan and the United States, will result in greater utilization of melamine productive capacity in both countries in 1976 and 1977. The domestic melamine industry is performing well in 1976, with domestic producers strongly rebounding from the economic recession. U.S. demand for melamine increased substantially in 1976, with melamine production in the first 6 months of 1976 up almost 138 percent from the level in the corresponding period in 1975. The recovery in the end-use markets for melamine indicates a favorable outlook for domestic production.

CONCLUSION

All this information leads to the conclusion that an industry in the United States is not being injured and is not likely to be injured by reason of LTFV imports of melamine from Japan.

Issued: December 20, 1976.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc.76-38291 Filed 12-29-76;8:45 am]

REPORT TO THE PRESIDENT

[TA-201-15]

Results of Investigation Regarding Plant Hangers

DECEMBER 22, 1976.

To the President: In accordance with section 201(d)(1) of the Trade Act of 1974 (88 Stat. 1978), the U.S. International Trade Commission herein reports the results of an investigation made under section 201(b)(1) of that act, relating to "plant hangers."

The investigation to which this report relates was undertaken to determine whether—

plant hangers, made of wood; of vegetable fibers, of wool, or of manmade fibers; of iron or steel or of copper; or of leather or of shell; all the foregoing of the types provided for in items 206.95 and 206.98; 365.78, 365.82, 365.86, 366.79, 366.84, 367.30, and 367.60; 653.95, 654.00, and 654.05; and 741.50, 791.90, and 792.50 of the Tariff Schedules of the United States (TSUS),

are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

The investigation was instituted by the Commission on its own motion on June 22, 1976, in view of submissions received from the firm of Knots To You, Inc., Van Nuys, Calif., and others. Notice of the institution of the investigation and the public hearings was published in the FEDERAL REGISTER of July 2, 1976 (41 FR 27449).[1]

Hearings were held on August 24, 1976, in Los Angeles, Calif., and on August 31, 1976, in Washington, D.C. All interested parties were afforded an opportunity to be present, to produce evidence, and to be heard. A transcript of the hearings and copies of briefs submitted by interested parties in connection with the investigation are attached.[2]

The information for this report was obtained from fieldwork, from responses to questionnaires sent to domestic manufacturers, retailers, and importers, and from the Commission's files, other Government agencies, and evidence presented at the hearings and in briefs filed by interested parties.

DETERMINATION OF THE COMMISSION

On the basis of its investigation, the Commission determines that plant hangers of wood; of vegetable fibers, of wool, or of fibers; of iron or steel or of copper; or of leather or of shell; provided for in items 206.95 and 206.98; 365.78, 365.82, 365.86, 366.79, 366.84, 367.30, and 367.60; 653.95, 654.00, and 654.05; and 741.50, 791.90, and 792.50 of the Tariff Schedules of the United States, are not being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

VIEWS OF THE COMMISSION

After considering a complaint received from the firm of Knots to You, Inc., Van Nuys, Calif., and other submissions, the United States International Trade Commission upon its own motion, on June 22, 1976, instituted an investigation under section 201(b) of the Trade Act of 1974 (Trade Act) to determine whether—

plant hangers, of wood; of vegetable fibers, of wool, or of manmade fibers; of iron or steel or of copper; or of leather or of shell, provided for in items 206.95 and 206.98; 365.78, 365.82, 365.86, 366.79, 366.84, 367.30 and 367.60; 653.95, 654.00, and 654.05; and 741.50, 791.90, and 792.50 of the Tariff Schedules of the United States

are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article. The Trade Act requires that each of the following conditions be met before an affirmative determination of eligibility of an industry for relief from imports can be made in this investigation:

(1) Imports of the articles concerned must be entering into the United States in increased quantities;

(2) The domestic industry producing articles like or directly competitive with the imported articles must be experiencing serious injury, or the threat thereof; and

(3) The increased imports of the articles concerned must be a substantial cause of the serious injury, or the threat thereof, to the domestic industry producing articles like or directly competitive with the imported articles.

DETERMINATION

On the basis of the evidence obtained by the Commission in this investigation, we have determined that the plant hangers described above are not being imported into the United States in such increased quantities as to be a substantial cause of serious injury or the threat thereof to the domestic industry producing like or directly competitive products.

DOMESTIC INDUSTRY

In considering whether increased imports are a substantial cause of serious injury, or the threat thereof, to the domestic industry, it is first appropriate

[1] Item 741.50 of the Tariff Schedules of the United States was added to the scope of the investigation on August 23, 1976. Notice of the amendment of the scope of the investigation was published in the FEDERAL REGISTER of August 26, 1976 (41 FR 36091).

[2] Attached to the original report sent to the President, and available for inspection at the U.S. International Trade Commission, except for material submitted in confidence.

to determine what is "the domestic industry" which may be suffering the requisite injury. The Trade Act does not expressly define the term "domestic industry," but rather provides guidelines and permits the Commission to use its best judgment within those guidelines and the relevant economic factors in a given case.

In this investigation several possible industries or combinations thereof might be included in the definition of the scope of the domestic industry. One such industry is that which produces textile plant hangers. A second industry is that which produces nontextile plant hangers, and a third industry is that which produces hanging planters. The definition of the scope of the industry could be limited to textile plant hangers or it could include, in addition to textile plant hangers, nontextile plant hangers only or both nontextile plant hangers and hanging planters. Whatever the definition, however, the Commission's determination would not be affected. For purposes of this opinion, the data relied upon is mainly with respect to textile plant hangers since textile-plant-hanger manufacturers account for approximately 75 percent of U.S. production of plant hangers. Trends in any of the possible industries essentially parallel those of the textile-plant-hanger industry.

INCREASED IMPORTS ARE NOT A SUBSTANTIAL CAUSE OF SERIOUS INJURY, OR THE THREAT THEREOF, TO THE DOMESTIC INDUSTRY

Textile-plant-hanger imports first entered the United States in significant volume in 1972. Imports of these articles increased from 13,000 pieces in that year to about 21 million pieces in 1975 and continued to increase in the first 6 months of 1976 as compared with the same period of 1975. However, estimates of imports for the full year 1976 show a decrease to an estimated 10 million pieces. Many major importers reduced their orders in the second half of 1976 to negligible or nil amounts. Notwithstanding the increase in imports during the period 1972–75, there is no indication that the domestic industry producing like or directly competitive products was being seriously injured by imports at any time during this period. Since plant hangers were introduced into the U.S. market in volume as recently as 1972 and there were no substantial imports prior to that time, it is not surprising that imports have increased substantially.

Prior to 1972, there were no firms primarily involved in the production of textile plant hangers. In 1972, three firms began producing textile plant hangers in large quantities. The number of manufacturers producing in significant quantities increased steadily to 22 in 1975. Although five firms ceased production in 1976, their output in 1975 accounted for less than 3 percent of total U.S. production. Textile-plant-hanger production by reporting firms increased from less than 100,000 pieces in 1972 to 2.5 million pieces in 1975, and was 15 percent higher during January–June 1976 than it had been during the same period of 1975.

Of the 11 manufacturers of textile hangers for which profit and loss data are available, both total sales and profits increased without interruption during 1972–75. Net operating profits or losses for reporting firms rose from a small loss in 1972 to a profit of $417,000 in 1975. In addition, the ratio of net profits to net sales was 24 percent higher in 1975 than it had been in 1974 and also represented a great improvement over the loss reported for 1972. After 1972, only one individual firm for which data are available experienced a loss in any year.

Evidence obtained from responses by textile-plant-hanger manufacturers to the Commission's questionnaires indicates that the total number of workers employed by these manufacturers increased steadily from 1972 to 1975. Total man-hours worked by production and related workers producing textile plant hangers in these firms also increased without interruption from 1972 to 1975. In the first 6 months of 1976, the average total number of employees producing textile plant hangers was greater than the average number so employed in the corresponding period in 1975. Total man-hours worked on textile plant hangers by production and related workers for reporting firms also increased in the first 6 months of 1976 over the total they worked in the corresponding period of 1975.

In short, the domestic industry producing textile plant hangers has experienced a period of tremendous growth since its beginnings in 1972. The number of firms has increased, production and employment have increased, and the profitability of the reporting firms has improved. On the basis of these factors we have determined that increased imports are not a substantial cause of serious injury to the domestic industry.

With respect to the last half of 1976 and the future, there is no evidence that increased imports are a substantial cause of threat of serious injury to the domestic industry. Although U.S. manufacturers' shipments by reporting firms dropped slightly in the first 6 months of 1976 from what they were in the corresponding period of 1975, no evidence has been presented by producers of textile plant hangers that indicates that increased imports are a substantial cause of a threat of serious injury to the domestic industry.

Many factors may have led to the decline in shipments by the domestic industry. However, the major reason is a decline in U.S. consumption, as evidenced by the movement of almost all new supply (both imported and domestically produced hangers) into inventories. In the first 6 months of 1976, importers' inventories increased to 74 percent of imports and domestic manufacturers' inventories increased to 22 percent of production, compared with 28 and 8 percent, respectively, for the corresponding period in 1975. If any threat of serious injury does exist, increased imports are not a substantial cause of it, as they must be if the relevant industry is to receive relief.

CONCLUSION

As a result of the foregoing considerations, the Commission has concluded that increased imports of plant hangers are not a substantial cause of serious injury or the threat thereof to the domestic industry producing like or directly competitive products.

Issued: December 22, 1976.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc.76-38290 Filed 12-29-76;8:45 am]

[TA-503(a)-3 and 332-81]

PRESIDENT'S LIST OF ARTICLES WHICH MAY BE DESIGNATED AS ELIGIBLE ARTICLES FOR PURPOSES OF GENERALIZED SYSTEM OF PREFERENCES

Removal of Certain Articles; Public Hearing

On December 7, 1976, notice of the institution of the above-captioned investigations and of a public hearing to be held in Houston, Texas, on January 4, 1977, in connection with these investigations, was published in the FEDERAL REGISTER (41 FR 5347). That notice also listed those articles furnished the United States International Trade Commission by the Special Representative for Trade Negotiations which will be considered for designation as eligible articles for purposes of the Generalized System of Preferences set forth in title V of the Trade Act of 1974.

On December 13, 1976, the Commission received a request from the Special Representative for Trade Negotiations that certain citrus fruits entering the United States under item numbers 147.16 and 147.31 of the Tariff Schedules of the United States be deleted from the aforementioned list of articles. Accordingly, no further consideration will be given to these articles in connection with the captioned investigations.

Notice is also given that the United States Internatonal Trade Commission's public hearing scheduled to be held in Houston, Texas, on January 4, 1977, in connection with these investigations, will instead be held in the Fish and Game Building, 600 South Walnut St., Boise, Idaho, 83707, beginning at 10:00 a.m., m.s.t., Tuesday, January 4, 1977.

Requests for appearances at the hearing should be received in writing by the Secretary of the Commission at his office in the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436.

By order of the Commission.

Issued: December 27, 1976.

KENNETH R. MASON,
Secretary.

[FR Doc.76-38403 Filed 12-29-76;8:45 am]

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

NATIONAL CRIME INFORMATION CENTER ADVISORY POLICY BOARD

Meeting

Pursuant to the provisions of Pub. L. 92–463, notice is hereby given that a meeting of the National Crime Information Center (NCIC) Advisory Policy Board will be held on February 16, 1977, at the Washington Hilton Hotel, Washington, D.C. The meeting will commence at 9 a.m. and conclude at 5 p.m.

The main topic of this meeting will concern the NCIC Stolen Article File and the inclusion of items bearing Owner-Applied Numbers in this file.

The meeting will be open to the public. Persons who wish to make statements and ask questions of the Board members must file written statements or questions at least twenty-four hours prior to the beginning of each meeting. All questions or statements shall be delivered to the person of the Designated Federal Employee or the Assistant Director, Administrative Services Division, FBI, Washington, D.C.

Additional information may be obtained from Mr. Frank B. Buell, Chief, NCIC Section, Administrative Services Division, FBI Headquarters, Washington, D.C. 20535, at telephone number 202/324–2606.

Minutes of the meeting will be available upon request from the above-designated FBI official.

CLARENCE M. KELLY,
Director.

[FR Doc.76–38344 Filed 12–29–76;8:45 am]

Immigration and Naturalization Service

[File No. CO 845–P]

IMMIGRATION AND NATIONALITY ACT AMENDMENTS OF 1976 (PUBLIC LAW 94–571)

Questions and Answers Setting Forth Service Interpretation

DECEMBER 27, 1976.

The following questions and answers are being published as a notice in the FEDERAL REGISTER in order to provide the general public with Service interpretation of the Immigration and Nationality Act Amendments of 1976 (Pub. L. 94–571). The questions and answers set forth below are believed to describe typical situations that may arise under the amendments. However, insofar as some answers may relate to proposed regulations, they would necessarily be subject to modification in accordance with any changes made in the proposed regulation as finally adopted.

1. Q. When do the provisions of Pub. L. 94–571 become effective?

A. January 1, 1977.

2. Q. What are the major changes effected in the Immigration and Nationality Act by the amendments contained in Pub. L. 94–571?

A. There are three major changes. Pub. L. 94–571 removes natives of independent countries of the Western Hemisphere and of the Canal Zone from the "special immigrant" classification and extends to the Western Hemisphere: the seven-category preference system, the 20,000 per country annual limitation on the number of immigrant visas available, and the provisions of section 245 for adjustment of status, all of which are presently in effect for Eastern Hemisphere countries.

3. Q. Is there any change in the overall annual numerical ceilings on the number of immigrant visas available for the Eastern and Western Hemispheres?

A. No, the overall annual numerical ceilings of 170,000 for the Eastern Hemisphere and of 120,000 for the Western Hemisphere remain unchanged. However, the current annual allocation of 200 immigrant visas (exclusive of "special immigrants" and "immediate relatives") available to natives of a colony or dependent area of a foreign state is increased to 600. In addition, the 20,000 per country annual limitation is now applicable worldwide.

4. Q. Are visas that are allocated to a dependent area or colony chargeable to the mother country as well as the colony or dependent area?

A. Yes, but they also will be chargeable to the annual numerical ceiling of the hemisphere in which the dependent area or colony is located, rather than the hemisphere of the mother country.

5. Q. Under existing law, the percentages allotted annually to each preference category (e.g., first preference, 20 percent; second preference, 20 percent, etc.) are applicable to the annual numerical ceiling of the Eastern Hemisphere as a whole, and not to the individual countries in the Western Hemisphere. Is this annual preference category percentage allocation altered in any manner?

A. Under the provisions of Pub. L. 94–571, this preference category percentage allotment of the annual numerical ceiling as a whole is retained for the Eastern Hemisphere and is extended to the Western Hemisphere.

6. Q. Is there a special provision for distribution of visa numbers to a country that uses the maximum annual number allowable?

A. Whenever the maximum of visas are made available to natives of any foreign state (20,000) or a dependent area (600) in any fiscal year, annual visa percentage allotments for preference categories (including conditional entries) will become applicable to that country or dependent area in the next following fiscal year. The percentage formula will be identical to the Hemisphere formula, with any visa numbers unused by the preference categories available to nonpreference aliens in that country or dependent area. This provision will not increase or decrease the total number of visas available to the country or dependent area to which it applies or to the Hemisphere in which the country or dependent area is located. Its aim is to insure distribution of visa numbers to all eligible preference categories in that country or dependent area when the special visa distribution system is triggered. The reason for this change in the law is to prevent the higher preferences in any particular country or dependent area from continually consuming the maximum allowable visa numbers, leaving no numbers for the lower preferences, e.g. the Philippines, Hong Kong.

7. Q. Does Pub. L. 94–571 alter the entitlement to immigrant status which natives of the Eastern Hemisphere had on December 31, 1976?

A. No. The savings clause contained in section 9 of Pub. L. 94–571 preserves the entitlement of any such alien to the immigrant status he had on December 31, 1976. However, in order to be considered eligible for the benefits of the savings clause, an alien must show that the facts established prior to January 1, 1977, upon which the entitlement to such immigrant status was based, continue to exist.

8. Q. How does Pub. L. 94–571 affect the immigrant status which natives of the Western Hemisphere had on December 31, 1976?

A. An alien chargeable to the annual numerical ceiling of the Western Hemisphere who has established a priority date at a consular office on the basis of entitlement to immigrant status under statutory or regulatory provisions in existence on December 31, 1976, is assimilated to the status of a nonpreference immigrant under section 203(a)(8) of the Immigration and Nationality Act, as amended, on January 1, 1977 and shall be accorded the priority date he had previously established.

9. Q. On January 1, 1977, does such a Western Hemisphere native assimilated to nonpreference status, who was previously exempt from the labor certification requirement of section 212(a)(14) when registered on a consular waiting list, continue to be exempt from the labor certification requirement as a nonpreference immigrant?

A. A native of the Western Hemisphere who established a priority date prior to January 1, 1977 and who was found to be entitled to an exemption from the labor certification requirement of section 212(a)(14) of the Act under the law in effect prior to January 1, 1977 as the parent, spouse or child of a United States citizen or lawful permanent resident alien, shall continue to be exempt from that requirement for so long as the relationship upon which the exemption was based continues to exist.

10. Q. May a Western Hemisphere native with such established priority date, who acquires nonpreference status on January 1, 1977, be the beneficiary of a visa petition to accord him a preference classification under section 203(a) of the Immigration and Nationality Act?

A. Yes, a visa petition may then be filed to accord him any preference classification under section 203(a) to which he may be entitled on the basis of relationship or occupation; and upon approval, it will be deemed to have been filed as of

the priority date previously established by such alien.

11. Q. Although not approvable until on or after January 1, 1977, may such a preference petition be filed by or on behalf of a Western Hemisphere native prior to January 1, 1977?

A. No.

12. Q. Pending revisions of Forms I–130 and I–140, may such preference visa petitions be accepted if filed on presently existing edition of these Forms?

A. Yes.

13. Q. Will preference petitions filed by or on behalf of Western Hemisphere natives be accorded priority handling?

A. No, they shall be processed in chronological order according to date of receipt pursuant to outstanding Service policy.

14. Q. A third or sixth preference visa petition is filed on behalf of a Western Hemisphere native who acquires non-preference status on January 1, 1977 and who was exempt from the labor certification requirement of section 212(a)(14) of the Act under the law in effect prior to January 1, 1977. Is the beneficiary exempt from the labor certification requirement?

A. No. He is not exempt from the labor certification requirement. A third or sixth preference visa petition must be accompanied by an individual labor certification unless the beneficiary is qualified for and will be engaged in an occupation which is listed in the Department of Labor's Schedule A. This is true notwithstanding the beneficiary may have been exempt from the labor certification requirement under the law in effect prior to January 1, 1977, on the basis of relationship to a United States citizen or permanent resident alien.

15. Q. What new factor must be taken into consideration in determining the filing date of a preference visa petition on behalf of a native of the Western Hemisphere?

A. Pub. L. 94–571 provides that any visa petition filed by, or in behalf of, a native of the Western Hemisphere to accord him a preference status under section 203(a) shall, upon approval, be deemed to have been filed as of any priority date previously established by such alien at a consular office under statutory or regulatory provisions in existence on December 31, 1976.

16. Q. Will Forms I–550 relating to Western Hemisphere natives which are on file with American consular offices on December 31, 1976, be treated as approved second preference visa petitions?

A. No. Such aliens will acquire non-preference status on January 1, 1977; however, in order for them to be accorded a preference classification on the basis of relationship to a lawful permanent resident, the appropriate relative petition must be filed on their behalf and approved.

17. Q. What modifications in the preference categories are effected by Pub. L. 94–571?

A. Third preference classification for members of the professions and persons of exceptional ability in the sciences and the arts is amended to require that their services be sought by an employer in the United States; the fifth preference category is amended to require that a United States citizen must be at least 21 years of age in order to file a visa petition on behalf of a brother or sister.

18. Q. Will a third or fifth preference visa petition filed prior to but pending with a Service office on January 1, 1977, be subject to the provisions of Pub. L. 94–571?

A. No, the entitlement to immigrant status on the basis of a petition filed prior to January 1, 1977 is preserved by the savings clause of section 9 of Pub. L. 94–571. The petition will be adjudicated under the law and regulations in effect prior to January 1, 1977.

19. Q. Since the services of the beneficiary of a third preference visa petition must be sought by a U.S. employer, can an alien still file a third preference visa petition on his own behalf on and after January 1, 1977?

A. Yes, however, in addition to the other required supporting documentation, the Form I–140 must also be supported by the Department of Labor Job Offer for Alien Employment form (MA7–50B).

20. Q. In view of the foregoing, will a third preference visa petition be filed with the Service office having jurisdiction over the intended place of residence of the beneficiary or over the beneficiary's intended place of employment?

A. On and after January 1, 1977, a third preference visa petition shall be filed with the Service office having jurisdiction over the beneficiary's intended place of employment.

21. Q. How does the employment offer requirement for third preference classification affect the period of validity of an approved third preference petition filed on or after January 1, 1977?

A. A job offer must remain in effect. Unless revoked, the approval of a third preference petition shall remain valid for as long as the supporting labor certification is valid and unexpired provided there is no change in the respective intentions of the prospective employer and the beneficiary that the beneficiary will be employed by the employer in the capacity indicated in the supporting job offer.

22. Q. Where an alien files a third preference visa petition on his own behalf and subsequent to approval of the petition he acquires a new job offer, what effect does this have on the validity of the approved petition? Is a new visa petition required?

A. When the beneficiary of an approved third preference petition no longer intends to accept employment with the prospective employer or the offer of employment is withdrawn, the petition shall be deemed invalid and the beneficiary shall no longer be entitled to a priority as of the date of filing of the petition. However, upon submission of a new Job Offer for Alien Employment, and a certification under section 212(a)(14) in the case of an occupation not listed in Schedule A, the petition shall be deemed reinstated with the original priority date. The filing of a new petition is not required in such case.

23. Q. Under the law in effect on December 31, 1976, the Secretary of State may in his discretion, terminate the registration on a consular waiting list of any alien who fails to evidence his continued intention to apply for a visa. Is there any change in this regard?

A. Yes, termination becomes mandatory, instead of discretionary. Section 203(e) of the Immigration and Nationality Act is amended to require the Secretary of State to terminate the registration of any alien who fails to apply for an immigrant visa within one year following notification to him of the availability of such visa; however, the alien's registration shall be reinstated if he establishes within two years following notification of visa availability that his failure to apply was due to circumstances beyond his control.

24. Q. Will the validity of an approved preference visa petition be affected by the Secretary of State's termination of registration of the beneficiary pursuant to section 203(e) of the Act, as amended by Pub. L. 94–571?

A. Yes, the approval of such a visa petition shall be automatically revoked as of the date of approval upon termination of registration of the beneficiary by the Secretary of State.

25. Q. Is there any additional change or modification concerning automatic revocation of approved visa petitions?

A. Yes, a regulatory modification. The approval of a relative petition will not be automatically revoked upon the death of the petitioner if the Attorney General, in his discretion, determines that revocation would be inappropriate because of humanitarian reasons.

26. Q. Will 7th preference classification be available to natives of the Western Hemisphere under section 203(a)(7)?

A. For aliens chargeable to the Western Hemisphere, an annual total of 7,200 visa numbers are authorized for conditional entry of aliens found qualified under section 203(a)(7). Since Cuba is the only Communist-dominated country in the Western Hemisphere, only natives of that country will be able to qualify for conditional entry. Consultation is being had with the Department of State concerning the initiation of negotiations with the Government of Spain to obtain permission for the Service to process applicants for conditional entry in that country.

27. Q. Are there any modifications of the existing labor certification requirement of section 212(a)(14) of the Act?

A. Yes, in order for a labor certification to be issued in the case of an alien who is a member of the teaching profession or who has exceptional ability in the sciences or the arts, the alien must be better qualified than available domestic workers. Also, the shortage of workers must be at the place of intended employment rather than in the United

States. In addition, the existing exemption from labor certification applicable to natives of the Western Hemisphere on the basis of close relationship to a U.S. citizen or permanent resident, is eliminated. Under Pub. L. 94–571, the labor certification requirement is applicable to immigrants from both hemispheres entering under the third and sixth preference categories, and under the nonpreference category if entering to work.

28. Q. An alien is admitted to the United States as a conditional entrant under the provisions of section 203(a)(7) of the Act. Two or more years following his admission, he applies for permanent resident status. Is he then subject to the labor certification requirement of section 212(a)(14) of the Act?

A. No. The labor certification requirement is not applicable to him.

29. Q. What, if any, changes are proposed in Department of Labor regulations concerning the Schedule A blanket certification?

A. Proposed Schedule A. (20 CFR Part 656) has been expanded to consist of four categories of employment for which the Secretary of Labor has, in effect, issued a blanket certification, and existing categories have been modified. As proposed, Group I of the categories in Schedule A has been modified to encompass only persons who have received an advanced degree (equivalent to U.S. Ph.D. or master's degree) in dietetics or physical therapy; Group II category consists of certain persons of exceptional ability in the sciences or the arts; Group III, aliens who seek admission to perform a religious occupation; and Group IV, aliens admitted as L nonimmigrants and currently working with same organization in positions that are managerial or executive in nature or require specialized knowledge. These regulations are not yet final and the Service has filed formal representations with respect to them.

30. Q. What changes are proposed in Labor Department procedures for applying for an individual labor certification?

A. Any alien requiring a labor certification, except an alien whose occupation is listed in Schedule A, must have an employer or prospective employer apply through the local state employment service office for a labor certification on his behalf by filing Department of Labor forms entitled Statement of Qualifications of Alien (hereafter referred to as MA 7–50A) and Job Offer for Alien Employment (hereafter referred to as MA 7–50B), and, in addition, Supplemental Statement for Live-at-Work Job Offers (hereafter referred to as MA 7–50C) if the application involves a job offer as a live-in domestic. Application for labor certification for a Schedule A occupation by a third or sixth preference or nonpreference alien shall be made directly to the Service or an American consular officer, who shall determine whether the alien is a qualified member of and intends to pursue the Schedule A occupation. While an advisory opinion may be requested of the regional office of the Employment and Training Administration as to whether the alien is qualified for the Schedule A occupation when a Service officer is unable to resolve the matter on the basis of the evidence submitted, the ultimate decision rests with the Service (or the State Department) and that decision shall be conclusive and final. (While the Department of Labor has advised that the form numbers MA 7–50A, MA 7–50B, and MA 7–50C will be changed, it is not anticipated that the change will be effected in the near future.)

31. Q. How does the foregoing affect the procedure for filing third and sixth preference petitions?

A. Forms MA 7–50A and MA 7–50B are an integral part of each third and sixth preference visa petition. Each third and sixth preference petition must be supported by Form MA 7–50A, and supporting evidence, and Form MA 7–50B, to which the individual labor certification under section 212(a)(14) of the Act has been affixed by the Secretary of Labor or his designated representative, except that such certification may be omitted if the beneficiary is qualified for and will be engaged in an occupation currently listed in the Department of Labor's Schedule A (20 CFR Part 656). Thus, a third or sixth preference petition filed on or after January 1, 1977, on behalf of an alien who is a member of the professions or who possesses exceptional ability in the sciences or the arts and whose profession or occupation is not listed on Schedule A, will no longer be referred to the Labor Department by the Service for an individual certification. In such a case, the individual-issued labor certification must accompany the petition. If it does not accompany the petition, the petition and supporting documents shall be returned to the petitioner with instructions as to the manner to apply for certification through the local state employment service office, and the petitioner shall be advised that he may not file the petition with the Service until Forms MA 7–50A and MA 7–50B have been returned to him with the required certification.

32. Q. Are there any circumstances under which a third or sixth preference visa petition filed on or after January 1, 1977, will be referred to the Department of Labor by the Service for a certification?

A. No.

33. Q. Under existing Labor Department regulations, individually-issued labor certifications are valid indefinitely except in the cases of teachers and live-in domestics. Is there any change in this regard?

A. Yes. Under the proposed amendments, all certifications will be valid indefinitely, unless invalidated subsequent to issuance because of fraud or willful misrepresentation of a material fact involving the labor certification application.

34. Q. In preference and nonpreference cases where a previously issued individual labor certification was of limited validity (teachers and live-in domestics), how will its revalidation be accomplished on and after January 1, 1977?

A. A previously issued labor certification of limited validity shall be considered to be revalidated indefinitely upon the district director establishing that there has been no significant change in the proposed employment conditions and intentions of the employer and the alien. This shall be accomplished by the use of Form I–71 to return Forms MA 7–50A, MA 7–50B, and MA 7–50C, as applicable, to the employer with appropriate instructions concerning notations as to any change(s).

35. Q. Since Pub. L. 94–571 removes the statutory bar in section 245 of the Act to adjustment of status by natives of the Western Hemisphere while in the U.S. if an immigrant visa is immediately available for that purpose, when can such application be filed with the Service?

A. On or after January 1, 1977.

36. Q. Do alien crewmen constitute the only class of aliens precluded from section 245 adjustment?

A. No. Pub. L. 94–571 adds two additional classes: Aliens who enter the U.S. in transit without visas (a group already barred by regulations), and aliens, other than "immediate relatives", who after January 1, 1977, continue in or accept unauthorized employment prior to filing a section 245 adjustment application.

37. Q. An alien has already been granted a labor certification or is granted a labor certification after December 31, 1976, but is ineligible to apply for adjustment of status because an immigrant visa is not immediately available. May the issued labor certification be equated to authorized employment for section 245 purposes?

A. No. The authority to grant or deny aliens permission to work lies with the Service. If an alien desires permission to engage in employment, he should request such permission of the Service. If permission is granted, his Form I–94 will be stamped to indicate his employment authorization.

38. Q. Will an alien who qualifies for the "investor exemption" from the labor certification requirement under 8 CFR 212.8(b)(4) be considered to have continued in or accepted unauthorized employment by reason of having acted as a principal manager in connection with his investment?

A. An alien who fully qualifies for the investor exemption will not be considered as performing employment. However, an alien who unsuccessfully seeks the investor exemption runs the risk that work performed in connection with his nonqualifying investment may be considered to be unauthorized employment.

39. Q. Section 245 of the Act, as amended by Pub. L. 94–571, requires that an immigrant visa must be immediately available to the applicant as of the date the application is filed, rather than as of

the date the application is approved. When is an immigrant visa considered to be immediately available?

A. An immigrant visa is considered immediately available for accepting and processing a section 245 adjustment application if the preference or nonpreference category applicant has a priority date on the waiting list which is no later than the date shown in the current Visa Office Bulletin on Availability of Immigrant Visa Numbers, or the Bulletin reflects that numbers for applicants in his category are current.

40. Q. Under existing Service policy, voluntary departure may be granted a statutorily eligible native of an independent country of the Western Hemisphere or the Canal Zone who is admissible to the United States as an immigrant and who has been in the United States since a date prior to April 11, 1973, and who immediately prior to April 11, 1973 was and continues to be an immediate relative of a United States citizen, or the unmarried son or unmarried daughter of a United States citizen, or the spouse or unmarried son or unmarried daughter of a lawful permanent resident alien. Is there any change in this policy in the light of Pub. L. 94–571?

A. Yes, the crucial date of April 11, 1973 for a grant of extended voluntary departure is extended to January 1, 1977.

41. Q. Are applicants for adjustment of status as Cuban refugees under section 1 of the Act of November 2, 1966 chargeable to any annual numerical limitation?

A. No. Pub. L. 94–571 made statutory the administrative determination in that regard concerning any such Cuban refugee applicant physically present in the United States on or before January 1, 1977.

42. Q. Is an H–1 alien engaging in unauthorized employment if he continues to work after filing a timely application for extension of stay?

A. An H–1 alien whose authorized stay has expired, but who has filed a timely application for extension of H–1 stay with the same employer, may continue to perform previously authorized work for that employer while his application for extension is pending, and such employment will not be considered as unauthorized.

43. Q. What is considered to be "continuation of unauthorized employment" within the meaning of the provision of law that bars an alien from adjustment of status to permanent resident (Sec. 245)?

A. An alien who stops his unauthorized employment prior to January 1, 1977, and who properly files an application for adjustment of status after January 1, 1977, and resumes his unauthorized employment after filing this application will not be considered by the Service to have continued in unauthorized employment. It should be noted, however, that if this alien's adjustment application is subsequently rejected or denied, he will be barred by law from submitting a new application for adjustment. The bar to adjustment on the ground of unauthorized employment does not apply to the spouse or child of a United States citizen or the parent of an adult United States citizen.

Dated: December 23, 1976.

JAMES F. GREENE,
Acting Commissioner of Immigration and Naturalization.

[FR Doc.76–38254 Filed 12–29–76;8:45 am]

NATIONAL SCIENCE FOUNDATION

RESEARCH ADVISORY COMMITTEE, TASK GROUP NO. 15

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Task Group No. 15 of the Advisory Committee for Research.
Place: Room 405, 5225, Wisconsin Avenue North West, Washington, D.C. 20015.
Date: January 27–28, 1977.
Time: 9:00 a.m. each day.
Type of Meeting: Open.
Contact Person: Mr. Leonard F. Gardner, Executive Secretary, Advisory Committee for Research, National Science Foundation, Room 307, Washington, D.C. 20550—Telephone (202) 632–4278.
Purpose of Task Group: The purpose of the Task Group, composed of members of the Advisory Committee for Research, is to provide the full Committee with a mechanism to consider numerous issues of interest to the Committee that have been assigned by the National Science Foundation.
Summary Minutes: May be obtained from the Committee Management Coordination Staff, Div. of Personnel and Mgmt., Rm. 248, National Science Foundation, Washington, D.C. 20550.

JANUARY 27–28

To examine the various NSF programs and opportunities for undergraduate teaching faculty to participate in research or otherwise upgrade his/her potential, taking into consideration the possible improvements that could be recommended in undergraduate teaching faculty program.

M. REBECCA WINKLER,
Acting Committee Management Officer.

DECEMBER 27, 1976.

[FR Doc.76–38336 Filed 12–29–76;8:45 am]

RESEARCH ADVISORY COMMITTEE, TASK GROUP NO. 17

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Task Group No. 17 of the Advisory Committee for Research.
Place: Room 338, National Science Foundation, 1800 G Street N.W., Washington, D.C. 20550.
Date: January 27–28, 1977.
Time: 9:00 a.m. each day.
Type of Meeting: Open.
Contact Person: Mr. Leonard F. Gardner, Executive Secretary, Advisory Committee for Research, National Science Foundation, Room 307, Washington, D.C. 20550—Telephone (202) 632–4278.
Purpose of Task Group: The purpose of the Task Group, composed of members of the Advisory Committee for Research, is to provide the full Committee with a mechanism to consider numerous issues of interest to the Committee that have been assigned by the National Science Foundation.
Summary Minutes: May be obtained from the Committee Management Coordination Staff, Div. of Personnel and Mgmt., Rm. 248, National Science Foundation, Washington, D.C. 20550.

TENTATIVE AGENDA

JANUARY 27–28

To consider the potential advantages of a formula program for support of science at universities and the kinds of limitations that should be placed on the use of such funds.

M. REBECCA WINKLER,
Acting Committee Management Officer.

DECEMBER 27, 1976.

[FR Doc.76–38337 Filed 12–29–76;8:45 am]

SUBPANEL FOR MINORITY INSTITUTION GRADUATE TRAINEESHIP PROGRAM OF THE ADVISORY PANEL ON SCIENCE EDUCATION PROJECTS

Notice of Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Subpanel for Minority Institution Graduate Traineeship Program ADVISORY PANEL ON SCIENCE EDUCATION PROJECTS
Date and Time: January 21–22, 1977—January 21, 7:00 p.m. to 9:00 p.m.—January 22, 8:30 a.m. to 5:00 p.m.
Place: National Science Foundation, 5225 Wisconsin Avenue, N.W., Washington, D.C., Rm. 651.
Type of Meeting: Closed.
Contact Person: Dr. Douglas S. Chapin, Director, Graduate and Postdoctoral Programs, Room 478, National Science Foundation, 5225 Wisconsin Avenue, N.W., Washington, D.C. telephone (202) 282–7154.
Purpose of Panel: To provide advice and recommendations concerning support for science education.
Agenda: To review and evaluate science education proposals and projects as part of the selection process for awards.
Reason for Closing: The proposals and projects being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals and projects. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(b). Freedom of Information Act. The rendering of advice by the panel is considered to be a part of the Foundation's deliberative process and is thus subject to exemption (5) of the Act.
Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make determinations by the Director, NSF, on February 11, 1976.

DECEMBER 27, 1976.

M. REBECCA WINKLER,
Acting Committee Management Officer.

[FR Doc.76–38338 Filed 12–29–76;8:45 am]

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

GRAIN STANDARDS

Louisiana Grain Inspection Point

Notice is hereby given pursuant to § 26.99 of the regulations (7 CFR 26.99) under the U.S. Grain Standards Act (7 U.S.C. 71 *et seq.*) that on November 8, 1976, there was published in the FEDERAL REGISTER (41 FR 49188) a notice announcing a request by the Louisiana Department of Agriculture, Baton Rouge, Louisiana, that its assignment of inspection points be amended to revoke Opelousas, Louisiana, as a designated inspection point and to add Eunice, Louisiana, as a designated inspection point.

No comments were received with respect to the November 8, 1976, notice in the FEDERAL REGISTER. After due consideration of market needs and circumstances and other material available to the Department, the assignment of the Louisiana Department of Agriculture, Baton Rouge, Louisiana, is amended to revoke Opelousas, Louisiana, as a designated inspection point without prejudice and to add Eunice, Louisiana, as a designated inspection point.

Effective date: This notice shall become effective December 30, 1976.

Done in Washington, D.C. on: December 23, 1976.

DONALD E. WILKINSON,
Interim Administrator.

[FR Doc.76-38284 Filed 12-29-76;8:45 am]

Forest Service

FIRE MANAGEMENT IN THE SELWAY-BITTERROOT WILDERNESS—A PROPOSED POLICY CHANGE

Availability of Final Environmental Statement

DECEMBER 21, 1976.

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a final environmental statement for Fire Management in the Selway-Bitterroot Wilderness—A Proposed Policy Change, Forest Service Report Number USDA-FS-FES (Adm.) R1-76-12.

The environmental statement discusses a proposal to allow some lightning-caused fires in the Selway-Bitterroot Wilderness to go unsuppressed so that fire, a recognized environmental force, may more nearly play a natural role in shaping, maintaining, and directing ecosystem development in that Wilderness. The statement explores the ways in which the proposal can be implemented to be compatible with the wilderness concept, responsible to human safety, private property, and resources outside the Wilderness. The proposal involves the 1,239,840 acre Selway-Bitterroot Wilderness located in Ravalli and Missoula Counties, Montana, and Idaho County, Idaho. Selway-Bitterroot Wilderness lands are administered by the Bitterroot, Clearwater, Nezperce and Lolo National Forests.

This final environmental statement was filed with CEQ on December 21, 1976.

Copies are available for inspection during regular working hours at the following locations:

USDA Forest Service, South Agriculture Bldg., Room 3230, 12th Street and Independence Avenue SW., Washington, D.C. 20250.
USDA Forest Service, Northern Region, Federal Building, Missoula, MT 59801.
USDA Forest Service, Bitterroot National Forest, 316 North Third Street, Hamilton, MT 59840.
USDA Forest Service, Clearwater National Forest, Route 4, Ahsahka Road, Orofino, Idaho 83544.
USDA Forest Service, Nezperce National Forest, 319 East Main, Grangeville, Idaho 83530.
USDA Forest Service, Lolo National Forest, Building 24, Fort Missoula, Missoula, MT 59801.

A limited number of single copies are available upon request to the above National Forest offices and:

Stevensville District Ranger, Stevensville, MT 59870.
Darby District Ranger, Darby, MT 59829.
Sula District Ranger, Sula, MT 59871.
West Fork District Ranger, Darby, MT 59829.
Lochsa District Ranger, Kooskia, ID 83539.
Powell District Ranger, Powell Ranger Station, Lolo, MT 59847.
Missoula District Ranger, 2801 Russell, Missoula, MT 59801.
Moose Creek District Ranger, Grangeville, ID 83530.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the CEQ guidelines.

KEITH M. THOMPSON,
Acting Regional Forester, Northern Region, Forest Service.

[FR Doc.76-38308 Filed 12-29-76;8:45 am]

Forest Service

MEDICINE BOW NATIONAL FOREST GRAZING ADVISORY BOARD

Cancellation of Meeting

The annual meeting of the Medicine Bow National Forest Grazing Advisory Board will not be held as previously scheduled for January 11, 1977. The Charter for this Advisory Board will expire effective January 5, 1977.

Dated: December 23, 1976.

LADD G. FRARY,
Acting Forest Supervisor.

[FR Doc.76-38352 Filed 12-29-76;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket No. 29740]

BELIZE AIRWAYS LTD.

Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a public hearing in the above-entitled proceeding is assigned to be held on January 25, 1977, at 9:30 a.m. (local time) in Room 1003, Hearing Room B, Universal North Building, 1875 Connecticut Avenue, N.W., Washington, D.C., before the undersigned Administrative Law Judge.

For information concerning the issues involved and other details of this proceeding, interested persons are referred to the various documents which are in the docket of this case on file in the Docket Section of the Civil Aeronautics Board.

Dated at Washington, D.C., December 23, 1976.

ARTHUR S. PRESENT,
Administrative Law Judge.

[FR Doc.76-38357 Filed 12-29-76;8:45 am]

[Docket No. 22493 et al.]

HUGHES AIRWEST

Oral Argument Regarding Los Angeles-Boise/Spokane Service

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that oral argument in this proceeding is assigned to be held before the Board on January 5, 1977, at 2:00 p.m. (local time), in Room 1027, Universal Building, 1825 Connecticut Avenue, N.W., Washington, D.C.

The Board, by Order 76-12-137, dated December 23, 1976, (a) granted discretionary review of the Initial Decision, (b) dispensed with the filing of briefs to the Board, and (c) limited the issue to be presented at oral argument to the question of carrier selection for the Los Angeles Boise market. Accordingly, Hughes Airwest and United Air Lines, Inc., will each be granted 15 minutes in that order to present oral argument to the Board on this limited issue.

Dated at Washington, D.C., December 23, 1976.

ROSS I. NEWMANN,
Chief Administrative Law Judge.

[FR Doc.76-38360 Filed 12-29-76;8:45 am]

[Docket No. 29323]

INTERNATIONAL AIR SERVICE CO., LTD.

Prehearing Conference Regarding Acquisition of Control of Aloha Airlines, Inc.

Notice is hereby given that a prehearing conference in this proceeding is assigned to be held on February 28, 1977, at 9:30 a.m. (local time), in Room 1003, Hearing Room B, North Universal Building, 1875 Connecticut Avenue, N.W., Washington, D.C., before Administrative Law Judge Stephen J. Gross.

In order to facilitate the conduct of the conference, parties are instructed to submit one copy to each party and six copies to the Judge of (1) proposed statements of issues; (2) proposed stipulations; (3) proposed requests for information and for evidence; (4) statements of positions; and (5) proposed procedural dates. The Bureau of Operating

Rights will circulate its material on or before January 25, 1977, and the other parties on or before February 15, 1977. The submissions of the other parties shall be limited to points on which they differ with the Bureau, and shall follow the numbering and lettering used by the Bureau to facilitate cross-referencing.

Dated at Washington, D.C., December 23, 1976.

ROSS I. NEWMANN,
Chief Administrative Law Judge.

[FR Doc.76-38358 Filed 12-29-76;8:45 am]

[Dockets Nos. 24778 and 28308]

SOUTHERN AIRWAYS, INC. AND PIEDMONT AVIATION, INC.

Greenville/Spartanburg-Washington, D.C., New York/Newark Service; Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that hearing in the above-entitled matter is assigned to be held on February 8, 1977, at 9:30 a.m. (local time), in Room 1003, Hearing Room B, Universal North Building, 1875 Connecticut Avenue, N.W., Washington, D.C., before Administrative Law Judge William A. Kane, Jr.

Dated at Washington, D.C., December 23, 1976.

ROSS I. NEWMANN,
Chief Administrative Law Judge.

[FR Doc.76-38359 Filed 12-29-76;8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

PURDUE UNIVERSITY ET AL

Applications Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Special Import Programs Division, Office of Import Programs, Washington, D.C. 20230, on or before January 18, 1977.

Amended regulations issued under cited Act, (15 CFR 301) 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: 77-00052. Applicant: Purdue University, ADMS Building, West Lafayette, Ind. 47907. Article: Ion Production and Delivery System, Model 30kv. Manufacturer: Danfysik A/S, Denmark. Intended use of article: The article is intended to be used in the preparation of surfaces, for use as potential catalytic analogues by deposition of ionic species on or very near the surface (e.g., 1-3 atomic layers) of catalyst support materials (e.g., silica or aluminum). The experiments will involve the production of ion beams of platinum, palladium, iridium and similar materials from Group VIII elements in the Periodic Table. Other experiments will deal with ion/surface interactions. Specifically, the experiments will deal with (a) changes in oxidation state caused by ion interactions with surface species; (b) compositional changes caused by differential sputtering; and (c) interactions between ions and the lattice materials. Application received by Commissioner of Customs: December 1, 1976.

Docket Number: 77-00053. Applicant: Vanderbilt University, Department of Molecular Biology, P.O. Box 1820, Station B. Nashville, Tennessee 37235. Article: Rapid Pressure Filtration Apparatus with automatic electronic timing device; mechanical component and electrical component. Manufacturer: Werkstatt fur Feinmechanik und Elektronik, West Germany. Intended use of article: The article is intended to be used for rapid filtration (time in seconds) so that kinetic studies can be carried out for enzyme reactions and for biological transport studies. The objectives of the experiments are to define the mechanism of active transport in natural biological membranes and to learn how to make membranes in the test tube with similar and new properties. The article will also be used to teach students to carry out research in molecular biology in the courses, Molecular Biology 390 (Special Topics and Advanced Techniques) and 399 (Ph.D. Dissertation Research). Application received by Commissioner of Customs: December 1, 1976.

Docket Number: 77-00054. Applicant: National Radio Astronomy Observatory Associated Universities, Inc., P.O. Box 1000 Bullock Blvd., Socorro, New Mexico 87801. Article: (1000 pieces) Circular Waveguide, Model TE_{01} and (1025 each) Coupling sleeves. Manufacturer: Furukawa Electro Co. Ltd., Japan. Intended use of article: The article is intended to be used as part of the very Large Array radio telescope to transmit radio wavelength radiation received from extraterrestrial objects to recording apparatus. The study of this radiation enables astronomers to study the sources of energy, origin, and evolution of the universe. Application received by Commissioner of Customs: December 1, 1976.

Docket Number: 77-00055. Applicant: University of Chicago, Operator of Argonne National Laboratory, 9700 South Cass Avenue, Argonne, Illinois 60439. Article: Oxygen Meter Probe. Manufacturer: Interatom, West Germany. Intended use of article: The article is intended to be used to measure the concentration of oxygen in liquid sodium, as a means of detecting a leak of water into Na in a fast breeder reactor steam generator. Experiments will be conducted to develop an accurate reliable method for detecting water leaks into sodium, for use in the CRBR and future IMFBR sodium-heated steam generators. Application received by Commissioner of Customs: December 1, 1976.

Docket Number: 77-00056. Applicant: University of Pennsylvania, Department of Physics, DRL/E1—209 S. 33rd St., Philadelphia, Pennsylvania 19174. Article: Mass Spectograph, Micromass Model 622. Manufacturer: V. G. Micromass, United Kingdom. Intended use of article: The article is intended to be used for measuring the ^{13}C-^{12}C stable isotopic rations of carbon in the form of CO_2. ^{13}C-^{12}C ratios will be measured as a check on fractionation of natural ^{14}C in plants and other carbon compounds as well as possible laboratory fractionation in the course of processing the samples. The article will also be used for educational purposes in the following courses:

(a) Anthropology 502.
(b) Anthropology 515.
(c) Anthropology 600.
(d) Geology 407.
(e) Geology 501.
(f) Metallurgy 585.
(g) Geology 511/Regional Planning.
(h) Geology 528/Regional Planning.
(i) Chemistry 223/224.
(j) Chemistry 999.
(k) Classical Archeology 405.

Application received by Commissioner of Customs: December 1, 1976.

Docket Number: 77-00057. Applicant: University of Utah, College of Pharmacy, Salt Lake City, Utah 84112. Article: Mass Spectrometer, Model MAT 713 and accessories. Manufacturer: Varian MAT, West Germany. Intended use of article: The article is intended to be used in research dealing with the structure elucidation of nucleotides and nucleosides of natural origin, development of mass spectrometric techniques for analysis of nucleotides and studies of the applications of field desorption mass spectrometry to involatile molecules of natural origin. The principal method used will be photographic recording of complete high resolution mass spectra from microgram-level samples which have been introduced into the mass spectrometer by gas chromatograph or by thermal or field desorption methods. Of particular interest are naturally modified nucleofrom transfer rebonucleic acid which are of high molecular weight (>500). Application received by Commissioner of Customs: December 1, 1976.

Docket Number: 77-00058. Applicant: North Carolina State University, Department of Geosciences, P.O. Box 5966, Raleigh, North Carolina 27607. Article: Lightweight, portable, rock coring drill, Model GSC with standard equipment included. Manufacturer: Diamond Products Ltd., Canada. Intended use of article: The article is intended to be used for educational purposes in the following ways: (a) obtaining fresh rock samples for thin sectioning to be used in course laboratories, and (b) obtaining fresh

rock samples to be used by graduate students in thesis preparation. Application Received by Commissioner of Customs: December 1, 1976.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Special Import Programs Division.

[FR Doc.76-38309 Filed 12-29-76;8:45 am]

Maritime Administration

[Docket No. S-530]

AMERICAN EAGLE TANKER CORP.

Application

Notice is hereby given that American Eagle Tanker Corp. (American Eagle), has applied for written permission under section 805(a) of the Merchant Marine Act, 1936, as amended, in connection with its application for operating-differential subsidy with respect to bulk cargo carrying service in the U.S. foreign trade, principally between the United States and the Union of Soviet Socialist Republics, to expire unless extended, on or before December 31, 1977, or upon completion of a voyage(s) then in progress. Previous written permission under section 805(a) was granted to American Eagle in connection with this application by the Assistant Secretary for Maritime Affairs/Maritime Subsidy Board on December 15, 1976, for the American Hawk to be operated in U.S. domestic trade by its owner, American Foreign Steamship Corporation, parent company of the applicant.

American Eagle now requests written permission pursuant to section 805(a) for the possible operation from time to time of its owned tanker, American Eagle, by itself or by a charterer, in domestic intercoastal or coastwise service. Such written permission is required notwithstanding the fact that a voyage in the proposed service for which subsidy is sought would not be eligible for subsidy if the vessel engages in the domestic commerce of the United States on that voyage.

Any person, firm, or corporation having any interest (within the meaning of section 805(a)) in such application and desiring to be heard on issues pertinent to section 805(a) and desiring to submit comments or views concerning the application must, by close of business on January 10, 1977 file same with the Secretary, Maritime Administration/Maritime Subsidy Board, in writing, in triplicate, together with petition for leave to intervene which shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petitions for leave to intervene are received within the specified time or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operation (a) could result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic trade operations.

(Catalog of Federal Domestic Assistance Program No. 11.504 Operating-Differential Subsidies (ODS))

By Order of the Maritime Subsidy Board/Maritime Administration.

Dated: December 27, 1976.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.76-38353 Filed 12-29-76;8:45 am]

[Docket No. S-482—Sub. 1]

PACIFIC FAR EAST LINE, INC.

Amended Application

Notice is hereby given that Pacific Far East Line, Inc., (PFEL) has filed an amendment dated November 18, 1976, as supplemented by an amended application, Form MA-632, dated December 7, 1976, and as further amended by a letter dated December 15, 1976, to its application of December 18, 1975, for a new 20-year operating-differential subsidy contract to cover the operation of its vessels on Trade Routes Nos. 27 and 29, as extended. Notice of the original application was published in the FEDERAL REGISTER on February 2, 1976 (41 FR 4843), titled Docket No. S-482.

The amendment of November 18, 1976, proposes to change the service description relevant to the services to be performed by PFEL on Trade Route 29 (U.S.-Transpacific Freight Service, as extended). As originally published, the service description reads as follows:

Trade Route No. 29 (U.S.-Transpacific Freight Service, as etxended) Freight service with four owned LASH vessels with a maximum of 36 sailings annually between ports in California, Oregon, Washington, Alaska, British Columbia and ports[1] in the following areas: Japan, Hong Kong, Philippine Islands, Vietnam, Cambodia, Thailand, China (including Manchuria), Taiwan, Korea, Okinawa, the Marshall and Midway Islands, U.S.S.R. in Asia, Indonesia, Singapore, Malaysia, Burma, Bangladesh, India, Sri-Lanka, Pakistan, and ports in the Persian Gulf—Gulf of Oman. The operator may also make calls at Ensenada, Mexico for the purpose of carrying cargo between said port and foreign ports on the service.

PFEL now proposes to convert its four existing LASH vessels into full containerships of approximately 1904 Twenty-foot Equivalent Units capacity each. Conversion is to begin in the spring of 1977. PFEL plans to change the mode of its operations as follows:

[1] Including island ports adjacent thereto.

Phase I—PFEL will modify its LASH vessels to full container vessels commencing in the spring of 1977. After conversion, the vessels will be used in subsidized service in keeping with its present contract serving trade between California and the Far Eastern area of Trade Route No. 29, Indonesia/Malaysia and Ports in the Persian Gulf/Gulf of Oman area. Cargo moving beyond the Hong Kong area—i.e., cargo for Indonesia/Malaysia/Persian Gulf/Gulf of Oman—will be relayed from the main-line vessels, to feeder vessels, in Hong Kong or Taiwan. This U.S.-flag feeder service will be maintained by three existing vessels which will be acquired by PFEL for this purpose. The Philippines may also be served by these feeder vessels.

Phase II—Upon award of a renewal 20-year Operating-Differential Subsidy Agreement, PFEL will contract to construct a fifth vessel, with cargo carrying capabilities comparable to the converted LASH vessels, to operate on the main-line service in conjunction with the four converted LASH vessels. Upon the entry into service of the fifth main-line vessel, PFEL will extend its main-line service beyond Hong Kong to include the Singapore area. Relay operations will be transferred to that area and, thereafter, PFEL will utilize the feeder vessels to serve ports in Indonesia/Malaysia, ports in Burma, Bangladesh, India, Sri-Lanka, Pakistan and ports in the Persian Gulf/Gulf of Oman/Gulf of Aden area. Service to the Gulf of Aden is in addition to the services requested in PFEL's original application.

Phase III—Since the feeder vessels acquired in Phase I represent, for all practical purposes, an extension of its main-line service—during the life of the renewed 20-year Operating-Differential Subsidy Agreement, PFEL will arrange to replace those vessels with new U.S.-flag vessels built and operated under the subsidy program.

As indicated under Phase I, the converted LASH vessels and the feeder vessels will be used in PFEL's subsidized service, in keeping with its current contract to provide service from California ports to the regular portion of TR 29 and from California and Pacific Northwest ports to ports on the current extended portion of TR 29 (Indonesia, Malaysia and the Persian Gulf/Gulf of Oman). PFEL is not now permitted to serve Singapore via Indonesia or Malaysian ports. PFEL intends to maintain this service under its new long-term ODSA until delivery of the proposed fifth container vessel. Thereafter, PFEL will extend its service to include Singapore and ports, including island ports adjacent thereto, in India, Sri-Lanka, Burma, Pakistan, Bangladesh and the Gulf of Aden.

Interested parties may inspect this amendment in the Office of the Secretary, Maritime Subsidy Board, Room 3099-B, Department of Commerce Building, 14th & E Streets NW., Washington, D.C. 20230.

Any person, firm or corporation having an interest in such amendment and who desires to offer views and comments thereon for consideration by the Maritime Subsidy Board should submit them in writing, in triplicate, to the Secretary, Maritime Subsidy Board, by the close of business on January 10, 1977. The Maritime Subsidy Board will consider such views and comments, and will take such

action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 11.504, Operating-Differential Subsidy (ODS).)

By Order of the Maritime Subsidy Board.

Dated: December 23, 1976.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.76-38355 Filed 12-29-76;8:45 am]

[Docket No. S-531]

SUN TRANSPORT, INC.

Application

Notice is hereby given that application has been filed under the Merchant Marine Act, 1936, as amended (the Act), for operating-differential subsidy to engage in bulk cargo carrying service in the U.S. foreign trade, principally between the United States and the Union of Soviet Socialist Republics, to expire on or before December 31, 1977, unless extended, or upon completion of a voyage(s) then in progress.

Inasmuch as the applicant, and/or related persons or firms, employ or may employ ships in the domestic intercoastal or coastwise service, written permission of the Maritime Administration under section 805(a) of the Act will be required if Sun Transport, Inc.'s application for operating-differential subsidy is to be granted.

The following vessels are operated by Sun Transport, Inc. and may engage in the domestic intercoastal and coastwise trades of the United States, excepting trade between United States Pacific Coast ports and ports of the State of Hawaii:

America Sun, Pennsylvania Sun, Texas Sun, New England Sun, Hartford Sun, Albany Sun, Chesapeake Sun, Newark Sun, Eastern Sun, Western Sun, New Jersey Sun, Delaware Sun, Toledo Sun, Corpus Christi Sun, Seminole Sun, Providence Sun, Revere Sun.

The following vessels are owned or operated by a related party of Sun Transport Inc. and may engage in the domestic intercoastal and coastwise trades of the United States, excepting trade between United States Pacific Coast ports and ports in the State of Hawaii:

Vessel:	*Owner and/or charterer*
Joseph D. Potts	Kee Leasing Co.
Ponce de Leon	Sun Leasing Co.
Great Land	Totem Ocean Trailer Express, Inc.
Eric Holzer	650 Leaing Co.
Sohio Intrepid	652 Leasing Co.
Sohio Resolute	653 Leasing Co.
Notre Dame Victory	660 Leasing Co.
Fortaleza	663 Leasing Co.
El Taino	666 Leasing Co.
Puerto Rico	670 Leasing Co.
Caribe Sun	Puerto Rico Sun.
Island Sun	Puerto Rico Sun.
Puerto Rico Sun	Puerto Rico Sun.
Prince William Sound	Sound Shipping, Inc.

In addition, Sun Shipbuilding & Dry Dock Company holds a 100 percent stock interest in GTS Venture Corporation which is a 50 percent participant with Export Venture Corporation in Sunexport Company, a joint venture which is bareboat charterer of the vessel, Admiral William M. Callabhan, subchartered to the Military Sealift Command. Sun Shipbuilding & Dry Dock Company also holds a 95 percent stock interest in TTT, Inc., which bareboat charters-in the vessel EL TAINO and bareboat subcharters the vessel Fortaleza, and a small minority stock interest in Ecological Shipping Corporation, which bareboat subcharters the vessel, Notre Dame Victory.

Such written permission is now required under section 805(a) notwithstanding the fact that a voyage in the proposed service on which the vessel engaged in domestic intercoastal or coastwise trade would not be eligible for subsidy.

Any person, firm, or corporation having any interest (within the meaning of section 805(a)) in such application and desiring to be heard on issues pertinent to section 805(a) and desiring to submit comments or views concerning the application must, by close of business on January 10, 1977 file same with the Secretary, Maritime Administration, in writing, in triplicate, together with petition for leave to intervene which shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petitions for leave to intervene are received within the specified time or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operation (a) could result in unfair competition to any person, firm or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic trade operations.

(Catalog of Federal Domestic Assistance Program No. 11.504 Operating Differential Subsidies (ODS)).

By Order of the Maritime Subsidy Board/Maritime Administration.

Dated: December 27, 1976.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.76-38354 Filed 12-29-76;8:45 am]

National Bureau of Standards

I/O CHANNEL INTERFACE

Proposed Federal Information Processing Standard

Under the provisions of Pub. L. 89-306 and Executive Order 11717, the Secretary of Commerce is authorized to establish uniform Federal Automatic Data Processing (ADP) Standards. The proposed standard for I/O Channel Interface is being recommended for Federal use. The technical specifications contained in this proposed standard were developed under the auspices of the American National Standards Institute, Technical Subcommittee X3T9, and have been published in ANSI document number X3T9/600, Rev. 2, "Draft Proposed American National Standard Specifications for I/O Channel Interface."

Prior to the submission of this proposal to the Secretary of Commerce for approval, it is essential to assure that proper consideration is given to the needs and views of the public, state and local governments, and manufacturers. The purpose of this notice is to solicit such views.

The proposed Federal Information Processing Standard contains two basic sections: (1) An announcement section which provides information concerning the applicability and implementation of the standard and (2) a specification section which defines the technical parameters of the standard. Only the announcement section is provided in this notice.

Interested parties may obtain copies of the specification section from and submit their comments to the Associate Director for ADP Standards, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234. Comments to be considered must be submitted on or before March 31, 1977.

Dated: December 23, 1976.

ERNEST AMBLER,
Acting Director.

FEDERAL INFORMATION PROCESSING STANDARDS PUBLICATION

(Date)

ANNOUNCING THE STANDARD FOR I/O CHANNEL INTERFACE

Federal Information Processing Standards Publications are issued by the National Bureau of Standards pursuant to the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89-306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973) and Part 6 of Title 15 Code of Federal Regulations (CFR).

Name of Standard. I/O Channel Interface (FIPS PUB ——).

Category of Standard. Hardware Standard, Interface.

Explanation. This standard is one of a family that defines the functional, electrical, and mechanical interface specifications for attaching computer peripheral devices through their control units to the input/output channel of an ADP system. This standard does not include definitions of other interface parameters (such as the power control and operation specifications) that may be needed to achieve full plug-to-plug interchangeability at the I/O channel interface level; these other specifications as well as standards for other interfaces are presently being developed and will be considered for future adoption as Federal Information Processing Standards.

This series of standards is intended to ensure the economic procurement and effective utilization of Federal ADP systems by enabling these systems to be configured with components:

(1) Procured from independent competitive sources.

(2) Drawn from the Federal inventory.

In the acquisition of ADP systems and components, Federal agencies shall reference this standard for specifying the I/O channel-to-peripheral controller interface.

Approving Authority. Secretary of Commerce.

Maintenance Agency. Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

Cross Index. American National Standards Institute document X3T9/600, Rev. 2, Draft Proposed American National Standard Specifications for I/O Channel Interface.

Applicability. This standard is applicable to the acquisition of all Automatic Data Processing Systems by the Federal Government except those systems that are commonly referred to as minicomputer and microcomputer systems.

Specifically, this standard is applicable to:

New Systems. Whenever a new ADP system is being configured for acquisition by the Federal Government.

Replacement of Existing Systems. Whenever computer systems (CPU's and related peripheral components) are being replaced in an existing installation.

Augmentation of Existing Systems. Whenever an existing installation is being augmented either through add-on equipment or replacement of components for technological advantages, and the equipment originally installed meets the provisions of this standard.

Specifications. This standard incorporates by reference the technical specifications of ANSI document X3T9/600, Rev. 2, affixed.

Implementation. The provisions of this standard are effective January 1, 1978. All applicable equipment ordered on or after this date must conform to the provisions of this standard unless a waiver has been granted in accordance with the procedure described elsewhere in this publication.

Exceptions. Exceptions to the provisions of this FIPS PUB are made in the following cases:

a. For equipment installed or on order prior to the effective date of this standard.

b. Where procurement actions are in solicitations phase (i.e., Requests for Proposals or Invitations for Bids have been issued) and the alteration of the procurement would be detrimental to the acquisition process.

Waivers. Heads of agencies are permitted to waive the requirements stated in this publication provided a comparative analysis shows that the advantages inherent in the use of Federal Standard I/O Channel Interface are clearly offset by an even greater advantage obtainable through the use of an alternative standard or equipment specification. Consideration of an alternative should be made consistent with the Government's overall objectives for the economic acquisition and efficient utilization of ADP systems employed by the Federal Government.

Proposed waivers to the Federal Standard I/O Channel Interface shall be coordinated in advance with the National Bureau of Standards. Letters should be addressed to the Associate Director for ADP Standards, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234. They should describe the nature of the waiver and set forth the reasons therefor. The supporting documentation should include:

a. Relevant documentation considered by the head of the agency in authorizing the waiver.

b. Detailed technical specifications of the components for which the deviation is sought.

c. Possible recommendations for action by NBS concerning the improvement or future development of Computer Peripheral Interface standards, relative to the waiver, should be included.

Sixty days should be allowed for review and response by the National Bureau of Standards. However, the final decision for granting the waiver is the responsibility of the agency head.

Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161. When ordering, refer to Federal Information Processing Standards Publication——(NBSFIPSPUB——), title, and Accession Number. When microfiche is desired, this should be specified. Payment may be made by check, money order, or deposit account.

[FR Doc.76-38258 Filed 12-29-76;8:45 am]

National Oceanic and Atmospheric Administration

MID-ATLANTIC REGIONAL FISHERY MANAGEMENT COUNCIL

Meeting Date Changed

Notice is hereby given of a change in the meeting January 12 and 13, 1977, 10 a.m. to 5 p.m., and 9 a.m. to 3 p.m., respectively, at the Sheraton Beach Inn, 36th Street, Virginia Beach, Virginia, of the Mid-Atlantic Regional Fishery Management Council which was published in the FEDERAL REGISTER, December 17, 1976, Volume 41, No. 244.

The meeting is now scheduled for January 13 and 14, 1977, 10 a.m. to 5 p.m., and 9 a.m. to 3 p.m., respectively, at the Sheraton Beach Inn., 36th Street, Virginia Beach, Virginia.

Dated: December 22, 1976.

WINFRED H. MEIBOHM,
Associate Director,
National Marine Fisheries Service.

[FR Doc.76-38251 Filed 12-29-76;8:45 am]

PACIFIC FISHERY MANAGEMENT COUNCIL'S SCIENTIFIC AND STATISTICAL COMMITTEE

Meeting Date Change

Notice is hereby given that the announcement pertaining to the Pacific Fishery Management Council's Scientific and Statistical Committee meeting published in the FEDERAL REGISTER December 23, 1976, Volume 41, Number 248, is amended. The Committee meeting originally scheduled to be held January 12 and 13, 1977, in the Bahia Motor Hotel, 998 West Mission Bay, San Diego, California from 8:00 a.m. until 5:00 p.m., each day, will now be held January 11 and 12, 1977, at the same location and times. The Pacific Fishery Management Council, Salmon Advisory Panel, and Anchovy Advisory Panel meetings also mentioned in the previously cited notice remain unchanged.

Dated: December 23, 1976.

WINFRED H. MEIBOHM,
Associate Director,
National Marine Fisheries Service.

[FR Doc.76-38252 Filed 12-29-76;8:45 am]

SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL

Public Meeting

Notice is hereby given of a meeting of the South Atlantic Fishery Management Council established by section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265).

The South Atlantic Council will have authority, effective March 1, 1977, over fisheries within the fishery conservation zone adjacent to the east coast of Florida, Georgia, North Carolina, and South Carolina. The Council will, among other things, prepare and submit to the Secretary of Commerce fishery management plans with respect to the fisheries within its area of authority, prepare comments on applications for foreign fishing, and conduct public hearings.

This is the fifth organizational meeting of the Council. The meeting will be held Tuesday, Wednesday and Thursday, January 25, 26 and 27, 1977, in the Polk Room at the Howard Johnson's Motor Lodge, Motor Inn Plaza, Lake Buena Vista, Florida. The meeting will convene at 9:00 a.m. and adjourn at approximately 5:00 p.m. each day, except as otherwise noted. The meeting may be extended or shortened depending on progress on the agenda.

Proposed Agenda:

1. Council Organization and Administration Procedures.
2. Technical Procedures Including Fishery Management Plan Development.

This meeting is open to the public and there will be seating for a limited number of public members available on a first-come, first-served basis. Members of the public having an interest in specific items for discussion are also advised that agenda changes are at times made prior to the meeting. To receive information on changes, if any, made to the agenda, interested members of the public should contact, on or about January 18, 1977:

Mr. Robert Cummins, Special Assistant to the Regional Director, South Atlantic Fishery Management Council, National Marine Fisheries Service, Duval Building, 9450 Gandy Boulevard, St. Petersburg, Florida 33702.

At the discretion of the Council, interested members of the public may be permitted to speak at times which will allow the orderly conduct of Council business. Interested members of the public who wish to submit written comments should do so by addressing Mr. Robert Cummins at the above address. To receive due consideration and facilitate inclusion of these comments in the rec-

ord of the meeting, typewritten statements should be received within 10 days after the close of the Council meeting.

Dated: December 27, 1976.

WINFRED H. MEIBOHM,
Associate Director,
National Marine Fisheries Service.

[FR Doc.76-38253 Filed 12-9-76;8:45 am]

AUDUBON PARK AND ZOOLOGICAL GARDENS

Issuance of Permit to Take Marine Mammals

On October 18, 1976, notice was published in the FEDERAL REGISTER (41 FR 45893), that an application had been filed with the National Marine Fisheries Service by Audubon Park and Zoological Gardens, PO Box 4327, New Orleans, Louisiana 20118, for a Permit to take six (6) California sea lions (*Zalophus californianus*) for the purpose of public display.

Notice is hereby given that on December 23, 1976, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking to Audubon Park subject to certain conditions set forth therein. The Permit is available for review by interested persons in the following offices:

Director, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.;

Regional Director, National Marine Fisheries Service, Southeast Region, Duval Building, 9450 Gandy Boulevard, St. Petersburg, Florida 33702; and

Regional Director, Natioanl Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: December 23, 1976.

WINFRED H. MEIBOHM,
Associate Director,
National Marine Fisheries Service.

[FR Doc.76-38351 Filed 12-29-76;8:45 am]

SEA WORLD, INC.

Modification of Permit

Notice is hereby given that, pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Public Display Permit issued to Sea World, Incorporated, 1720 South Shores Road, San Diego, California 92109, on May 7, 1974, as modified on August 23, 1974 (31 FR 30522), March 3, 1975, (40 FR 8846), October 2, 1975, (40 FR 45458), and September 3, 1976 (41 FR 37385), is further modified by means of Modification No. 5, in the following manner:

The period of validity, during which the authorized marine mammals may be taken, is extended from December 31, 1976, to December 31, 1979.

This modification is effective on December 30, 1976.

The Permit, as modified and documentation pertaining to the modification, are available for review in the following offices:

Director, National Marine Fisheries Service, Department of Commerce, 3300 Whitehaven Street, N.W., Washington, D.C.;

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731;

Regional Director, National Marine Fisheries Service, Northwest Region, Lake Union Building, 1700 Westlake Avenue North, Seattle, Washington 98109; and

Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99801.

WINFRED H. MEIBOHM,
Associate Director,
National Marine Fisheries Service.

DECEMBER 23, 1976.

[FR Doc.76-38350 Filed 12-29-76;8:45 am]

FOREIGN VESSELS FISHING IN U.S. WATERS

Amendment to Draft Fee Schedule

On December 23, 1976, a notice was published in the FEDERAL REGISTER (41 FR 55925) describing a proposed fee schedule for fishing by foreign vessels in waters under the jurisdiction of the United States of America, pursuant to section 204(b)(10) of the Fishery Conservation and Management Act of 1976.

The following table was inadvertently left out of the section on page 55926, "Bases of Fees", that provides the exvessel prices (U.S. or foreign) for surplus species allocated to foreign nations. The table is essential to determine that part of the fee which relates to the surpluses available for allocation to foreign nations.

Prices in the table are calculated as average annual prices from commercial landings in the Unitel States and in foreign countries, in 1975. In general, U.S. exvessel prices are used wherever applicable. For species that were not fished by U.S. fishermen, or species with a different utilization (food fish versus fish for conversion to animal feed), foreign exvessel prices are applied. The 1975 prices are adjusted by using a factor of 1.315 to account for trends in 1976.

ESTIMATED AVERAGE EXVESSEL VALUE OF SURPLUS SPECIES

Species	*Average exvessel value (dollars per metric ton)*
Armorheads, pelagic	[1] 600
Cod, Pacific	330
Crab, tanner	580
Flounders, Pacific (except halibut)	418
Hake, Pacific	[1] 348
Hake, red	204
Hake, silver	[1] 329
Herring, Atlantic	[1] 352
Herring, Pacific	[1] 292
Mackerel, atka	[1] 172
Mackerel, Atlantic	335
Other Finfish, Atlantic	433
Other Groundfish, Pacific	421
Pollock, Alaska	[1] 158
Rockfish, Pacific	460
Sablefish	489
Snails (meats)	[1] 1,000
Squids	544

[1] Foreign price.

Dated: December 28, 1976.

JACK GEHRINGER,
Deputy Director,
National Marine Fisheries Service.

[FR Doc.76-38435 Filed 12-29-76;8:45 am]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

HAITI

Establishing Import Levels for Certain Cotton and Man-Made Fiber Textile Products Effective January 1, 1977

DECEMBER 27, 1976.

On March 23, 1976, in furtherance or the objectives of, and under the terms of, the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, the Governments of the United States and Haiti concluded a comprehensive bilateral textile agreement concerning exports of cotton, wool and man-made fiber textile products from Haiti to the United States over a period of three years beginning on January 1, 1976 and extending through December 31, 1978. The agreement was amended on September 14, 1976 to increase the level of restraint for man-made fiber textile products in Category 238 by 1,000,000 square yards equivalent and reduce the consultation limit for Category 237 by the same amount.

Among the provisions of the agreement, as amended, are those establishing specific levels of restraint for cotton textile products in Categories 39, 45/46/47, and 63 and man-made fiber textile products in Categories 219, 222, 224, 225, 228, 229, 233, 238, and 239 for the twelve-month period beginning on January 1, 1977. The agreement also establishes consultation levels for cotton textile products in Categories 51, 53, 54, and 55 and man-made fiber textile products in Categories 214, 215, 216, 217, 223, 230, 235, and 237 for the twelve-month period beginning on January 1, 1977 and extending through December 31, 1977.

Accordingly, there is published below a letter of December 27, 1976 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, directing that the amounts of cotton textile products in Categories 39, 45/46/47, 51, 53, 54, 55, and 63 and man-made fiber textile products in Categories 214, 215, 216, 217, 219, 222, 223, 224, 225, 228, 229, 230, 231, 233, 235, 237, 238, and 239, produced or manufactured in Haiti, which may be entered or withdrawn from warehouse for consumption in the United States during the twelve-month period begin-

ning on January 1, 1977, be limited to the designated levels. The level of restraint for Category 238 has been reduced by 18,876 dozen to account for carryforward used during the agreement year which began on January 1, 1976.

The letter published below and the actions taken pursuant thereto are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229.

DECEMBER 27, 1976.

DEAR MR. COMMISSIONER: Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of March 23, 1976, as amended, between the Governments of the United States and Haiti, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective on January 1, 1977, and for the twelve-month extending through December 31, 1977, entry into the United States for consumption of cotton textile products in Categories 39, 45/46/47, 51, 53, 54, 55, and 63 and man-made fiber textile products in Categories 214, 215, 216, 217, 219, 222, 223, 224, 225, 228, 229, 230, 231, 233, 235, 237, 238, and 239 produced or manufactured in Haiti in excess of the following levels of restraint:

Category	*Twelve-Month Level of Restraint*	
39	303,374	dozen pairs
45/46/47	2,140,000	square yards equivalent
51	56,189	dozen
53	22,075	dozen
54	40,000	dozen
55	13,725	dozen
63	465,217	pounds
214	566,572	dozen pairs
215	152,174	dozen pairs
216	44,150	dozen
217	38,491	dozen
219	276,825	dozen
222	222,416	dozen
223	125,000	dozen
224	631,026	pounds
225	720,842	dozen
228	272,471	dozen
229	106,352	dozen
230	55,188	dozen
231	13,725	dozen
233	205,962	dozen
235	81,766	dozen
237	22,222	numbers
238	317,753	dozen
239	247,437	dozen

In carrying out this directive, entries of cotton and man-made fiber textile products in all of the foregoing categories except Categories 55 and 231, produced or manufactured in Haiti, which have been exported to the United States prior to January 1, 1977, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the twelve-month period beginning on January 1, 1976. In the event the levels of restraint established for these goods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter. Entries of cotton textile products in Category 55 and man-made fiber textile products in Category 231 which have been exported to the United States from Haiti prior to January 1, 1977, shall not be subject to this directive.

Cotton textile products in Category 55 and man-made fiber textile products in Category 231 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) before the effective date of this directive shall not be denied entry under this directive.

The levels of restraint set forth above are subject to adjustment in the future pursuant to the provisions of the bilateral agreement of March 23, 1976, as amended, between the Governments of the United States and Haiti which provide, in part, that: (1) the aggregate, group and specific limits will be increased 7 percent annually; (2) specific ceilings may be increased for carryover and carryforward up to 11 percent of the applicable category limit; (3) consultation levels may be increased within the aggregate and applicable group limits upon agreement between the two governments; and (4) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement referred to above will be made to you by letter.

A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on February 3, 1975 (40 FR 5010), as amended on December 30, 1975 (40 FR 60220).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Haiti and with respect to imports of cotton and man-made fiber textile products from Haiti 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. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce.

[FR Doc.76-38311 Filed 12-29-76;8:45 am]

MALAYSIA

Establishing Import Control Levels for Certain Cotton and Man-Made Fiber Textile Products effective January 1, 1977

DECEMBER 27, 1976.

On January 8 and May 16, 1975, in furtherance of the objectives of, and under the terms of, the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973, the Governments of the United States and Malaysia concluded a comprehensive bilateral agreement concerning exports of cotton, wool, and man-made fiber textile products from Malaysia to the United States over a period of three years beginning on January 1, 1975. Among the provisions of the agreement are those establishing specific levels of restraint for Categories 9/10, 18/19, 22/23, 26, 39, 45/46/47, 49, 50/51, 60, 229, and 234/235 for the agreement year beginning on January 1, 1977.

Accordingly, there is published below a letter of December 27, 1976, from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs directing that for the twelve-month period beginning on January 1, 1977 and extending through December 31, 1977, entry into the United States for consumption and withdrawal from warehouse for consumption of textile products in Categories 9/10, 18/19, 22/23, 26, 39, 45/46/47, 49, 50/51, 60, 229, and 234/235 be limited to the designated levels.

This letter and the actions taken pursuant thereto are not designed to implement all of the provisions of the bilateral agreement but are designed to assist only in the implementation of certain of its provisions.

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229.

DECEMBER 27, 1976.

DEAR MR. COMMISSIONER: Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of January 8 and May 16, 1975, between the Governments of the United States and Malaysia, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective on January 1, 1977 and extending through December 31, 1977, entry into the United States for consumption of textile products in Categories 9/10, 18/19, 22/23, 26, 39, 45/46/47, 49, 50/51, 60, 229 and 234/235 in excess of the following levels of restraint:

Category	*Twelve-Month Level of Restraint*
9/10	1,602,860 square yards
18/19	2,633,270 square yards
22/23	2,747,760 square yards
26	6,296,950 square yards
39	457,960 dozen pairs
45/46/47	4,808,580 square yards equivalent
49	28,182 dozen
50/51	70,984 dozen (of which not more than 44,365 dozen may be in either Category 50 or in Category 51)
60	45,803 dozen
229	28,161 dozen
234/235	2,976,740 square yards equivalent

In carrying out this directive, entries of cotton and man-made fiber textile products in the foregoing categories, produced or manufactured in Malaysia and exported to the United States during the twelve-month period beginning on January 1, 1976 and extending through December 31, 1976, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during that period. In the event those levels have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The levels of restraint set forth above are subject to future adjustment pursuant to the provisions of the bilateral agreement of January 8 and May 16, 1975 between the Governments of the United States and Malaysia which provide, in part, that: (1) within the aggregate and applicable group limits, specific levels of restraint may be exceeded by designated percentages; (2) these same levels may be increased for carryover and carryforward up to 11 percent of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Appropriate adjustments under the foregoing provisions of the bilateral agreement will be made to you by letter.

A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on February 3, 1975 (40 FR 5010), as amended on December 30, 1975 (40 FR 60220).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Malaysia and with respect to imports of cotton, wool, and man-made fiber textile products from Malaysia 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,

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.76-38310 Filed 12-29-76;8:45 am]

TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED

Correlation of Textile and Apparel Categories

DECEMBER 27, 1976.

There is published below a list of the Tariff Schedules of the United States Annotated numbers citing changes in the arrangement of the cotton, wool, and man-made fiber textile product categories used by the United States in administering the textile trade agreements program. A full description of the textile products falling within each of the cotton, wool and man-made fiber textile product categories may be obtained by using the Tariff Schedules of the United States Annotated which also provides category placement for the item numbers covered by the program. The list of Tariff Schedules of the United States Annotated numbers published in the FEDERAL REGISTER on February 3, 1975 (40 FR 5010), as amended on December 30, 1975 (40 FR 60220), is hereby amended effective January 1, 1977.

Copies of the complete Correlation as amended are available upon request to the Office of Textiles, BRTA/DIBA, Room 2815, U.S. Department of Commerce, Washington, D.C. 20230.

ROBERT E. SHEPHERD,
Acting Chairman, Committee for the Implementation of Textile Agreements, and Acting Deputy Assistant Secretary for Resources and Trade Assistance, U.S. Department of Commerce.

List of the Tariff Schedules of the United States annotated numbers specifying changes in the arrangement of textile categories used by the United States in administering the textile trade agreements program

Category	Old TSUSA	New TSUSA	Description
39			Gloves and mittens:
	704.4510		Without fourchettes or sidewalls:
	704.4525		Of cotton:
		704.4502	Terry cloth type, looped pile fabric.
		704.4504	Jersey type, brushed or napped fabric.
		704.4506	Lisle type, no pile, not brushed or napped.
		704.4508	Other.
			With fourchettes or sidewalls:
		704.4522	Jersey type, brushed or napped fabric.
		704.4524	Lisle type, no pile, not brushed or napped.
		704.4526	Other.
49			Coats, other, not knit:
	376.5400 (pt)	376.5410	Coats and jackets designed for hunting and fishing.
62			Wearing apparel, knit, n.e.s.:
	382.0034		Other wearing apparel:
		382.0036	Infants' sets up to and including 24 mo.
		382.0038	Other.
	382.0695		Other wearing apparel:
		382.0696	Infants' sets up to and including 24 mo.
		382.0698	Other.
	702.0520	702.0600	Headwear, of cotton, knit.
64			Other textile articles n.s.p.p.
	727.8020	727.8210	Pillows and cushions.
	727.8040	727.8220	Other.
200			Textured yarns:
			Singles not over $1/lb:
	310.0108		Polyamide.
		310.0109	Nylon.
	310.0112	310.0113	Other.
			Singles, over $1/lb:
	310.0208		Polyamide.
		310.0209	Nylon.
	310.0212	310.0213	Other.
			Plied over $1/lb:
	310.1108		Polyamide.
		310.1109	Nylon.
	310.1112	310.1113	Other.
202			Yarns, wholly of continuous filament, other:
			Not over $1/lb:
	310.0148		Polyamide.
		310.0149	Nylon.
	310.0152	310.0153	Other.
			Over $1/lb:
	310.0248		Polyamide.
		310.0249	Nylon.
	310.0252	310.0253	Other.
206			Woven fabrics, cellulosic, wholly continuous:
	338.3039	338.3040	Necktie fabric.
208			Woven fabrics, other, wholly continuous:
			Not bleached and not colored:
	338.3024		Polyamide.
		338.3027	Nylon.
	338.3025	338.3028	Polyester.
	338.3026	338.3030	Acrylic.
	338.3029	338.3031	Other.
			Necktie fabric:
	338.3035		Polyamide.
		338.3037	Nylon.
	338.3036	338.3038	Polyester.
			Other:
	338.3053		Polyamide.
		338.3056	Nylon.
	338.3054	338.3057	Polyester.
	338.3055	338.3058	Acrylic.
	338.3059	338.3060	Other.
211			Knit fabrics:
			Wholly continuous:
			Not bleached and not colored:
	345.5026		Polyamide.
		345.5027	Nylon.
	345.5029	345.5030	Other.
			Other:
	345.5046		Polyamide.
		345.5047	Nylon.
	345.5049	345.5050	Other.
			Other:
			Not bleached and not colored:
	345.5066		Polyamide.
		345.5067	Nylon.
	345.5069	345.5070	Other.
			Other:
	345.5086		Polyamide.
		345.5087	Nylon.
	345.5089	345.5090	Other.
214			Gloves and mittens:
	704.3535	704.3220	Made from preexisting fabric.
	704.3545	704.3240	Other.

List of the Tariff Schedules of the United States annotated numbers specifying changes in the arrangement of textile categories used by the United States in administering the textile trade agreements program

Category	Old TSUSA	New TSUSA	Description
240			Other wearing apparel:
	376.5600 (pt)...	376.5620.....	Other garments designed for hunting and fishing:
			Men's and boys':
			Ornamented:
	380.0474 (pt)...	380.0465.....	Swim trunks and other swimwear.
	380.0472.....	No change.....	Judo, Karate, Kung Fu, and other martial art uniforms.
	380.0474(pt)...	380.0475.....	Other.
			Not ornamented:
	380.8485(pt)...	380.8453.....	Swim trunks and other swimwear.
	380.8460.....	No change.....	Judo, Karate, Kung Fu, and other martial art uniforms
	380.8485(pt)...	380.8486.....	Other.
			Women's, girls' and infants':
			Ornamented:
	382.0486(pt)...	382.0479.....	Swimming suits and other swimwear.
	382.0484.....	No change.....	Judo, Karate, Kung Fu, and other martial art uniforms.
	382.0486(pt)...	382.0487.....	Infants' sets up to and including 24 mo.
	382.0486(pt)...	382.0488.....	Other.
			Not ornamented:
	382.8152(pt)...	382.8135.....	Swimming suits and other swimwear.
	382.8148.....	No change.....	Judo, Karate, Kung Fu, and other martial art uniforms.
	382.8152(pt)...	382.8153.....	Infants' sets up to and including 24 mo.
	382.8152(pt)...	382.8156.....	Other.

[FR Doc.76-38255 Filed 12-29-76;8:45 am]

CONSUMER PRODUCT SAFETY COMMISSION

NATIONAL ADVISORY COMMITTEE FOR THE FLAMMABLE FABRICS ACT

Meeting

Notice is given that a meeting of the National Advisory Committee for the Flammable Fabrics Act will be held on Tuesday, February 1, 1977 (9:00 a.m.—5:00 p.m.) and Wednesday, February 2, 1977 (9:00 a.m.—4:00 p.m.) in the Third Floor Hearing Room, 1111-18th Street, N.W., Washington, D.C.

The National Advisory Committee provides advice and recommendations on Commission proposals and plans for reducing the frequency and severity of burn injuries involving flammable fabrics.

Agenda topics tentatively scheduled include a discussion of the product profiles in the burn/fire hazard category and flammability of upholstered furniture. Additionally, at the request of a Committee member, there will be a discussion of possible modification of the children's sleepwear standard.

Persons wishing to make oral or written presentations to the National Advisory Committee should notify the Secretary at least 5 days in advance of the meeting.

The meeting is open to the public; however, space is limited. Further information concerning this meeting and the final agenda may be obtained from the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, phone (202) 634-7700.

Dated: December 27, 1976.

SHELDON D. BUTTS,
Acting Secretary.

[FR Doc.76-38362 Filed 12-29-76;8:45 am]

POISON PREVENTION PACKAGING (TECHNICAL ADVISORY COMMITTEE)

Meeting

Notice is given that the Technical Advisory Committee on Poison Prevention Packaging will meet on Tuesday, January 18, 1977 (9:00 a.m. to 5:00 p.m.) and Wednesday, January 19, 1977 (9:00 a.m. to 4:00 p.m.) in Room 440, 5401 Westbard Avenue, Bethesda, Maryland.

The Purpose of the Technical Advisory Committee is to provide advice and recommendations on the types and kinds of packaging that will protect children from injury or illness resulting from handling or ingestion of household substances.

The tentative agenda includes consideration of a toxic level for aspirin, a proposed regulation for aspirin substitutes, FDA proposed release of antihistamines from prescription drug requirements, possible PPPA coverage of pump-type spray containers, TAC resolution concerning contrasting colors for child-resistant closures, and a review of the McDonald-Little advertising agency contract concerning poison prevention.

Persons wishing to make oral or written presentations to the Committee should notify the Secretary of the Consumer Product Safety Commission at least 5 days in advance of the meeting. The meeting is open to the public; however, space is limited. Further information concerning this meeting and the final agenda may be obtained from the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, phone (202) 634-7700.

Dated: December 27, 1976.

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

[FR Doc.76-38361 Filed 12-29-76;8:45 am]

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF SCIENTIFIC ADVISORY BOARD

Meeting

DECEMBER 20, 1976.

The USAF Scientific Advisory Board, Science and Technology Advisory Group, Air Force Systems Command, will hold a meeting on 25 January 1977 from 8:30 a.m. to 4:30 p.m. at Wright Patterson AFB, Ohio, in Area B, Bldg. 32, Auditorium.

The Group will discuss the Air Force Laboratories research programs, their management, and their interaction with the research community.

The meeting will be open to the public.

For further information contact the Scientific Advisory Board Secretariat at 202-697-8404.

FRANKIE S. ESTEP,
Air Force Federal Register Liaison Officer, Directorate of Administration.

[FR Doc.76-38313 Filed 12-29-76;8:45 am]

DELAWARE RIVER BASIN COMMISSION

PUBLIC HEARING

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, January 12, 1977, commencing at 2 p.m. The hearing will be held in the Raphael Peale Room (second floor) of the Holiday Inn-Penn Center, 1800 Market Street, Philadelphia, Pa. The subjects of the hearing will be as follows:

1. Applications for approval of the following projects as amendments to the Comprehensive Plan pursuant to Article 11 of the Compact and/or as project approvals pursuant to Section 3.8 of the Compact:

A. *Borough of Ambler (D-75-16 CP).* Expansion and upgrading of the existing "South" plant serving the Borough of Ambler and several adjacent municipalities in Montgomery County, Pa. The improved facility will be designed to remove 95 percent of BOD_5 and 92 percent of suspended solids a sewage flow of 6.5 million gallons per day. Treated effluent will discharge into Wissahickon Creek. The Borough's existing "North" plant will be abandoned.

B. *Perkiomen Woods Development (D-76-104 CP).* A well water supply project to serve the Perkiomen Woods Development in Upper Providence Township, Montgomery County, Pa. Designated as Well No. 3, the new facility is expected to yield approximately 270,000 gallons per day.

C. *Carmen Petrongio (D-76-68).* A farm well water supply project in Vineland, Cumberland County, N.J. The new well is expected to yield approximately 432,000 gallons per day and will be used for irrigating crops.

D. *J. G. Townsend Jr., Inc. (D-76-119).* An industrial waste discharge at the company's plant in Sussex County, Del. The treatment facility will provide removal of 92 percent of BOD_5 from an average wastewater flow of 433,000 gallons per day. Treated effluent will discharge to Savannah Ditch, a tributary of the Broadkill River.

E. *Getty Oil Co. (D-76-120).* A wastewater treatment facility to treat ship ballast water at the company's refinery in Delaware City, New Castle County, Del. Treatment facilities will operate intermittently to remove oil and grease from an average flow of about 5,000 gallons per minute. Treated effluent will discharge to Dragon Run, a tributary of the Delaware River.

F. *Colonial Pipeline Co. (D-76-114).* Relocation of 3,000 feet of the company's eight-inch diameter pipeline in Cinnaminson Township, Burlington County, N.J. About 750 feet of the pipeline will be located in North Branch Pennsauken Creek and its adjacent wetlands. Relocation is caused by construc-

tion of Route 90 through Cinnaminson and Moorestown Townships.

G. *Bethlehem Steel Corp.* (*D–76–59–Phase II*). An industrial waste treatment project at the company's plant in the City of Bethlehem, Northampton County, Pa. Designated as Phase II, the project will provide for treatment of about 33.4 million gallons per day from a total of eight outfalls discharging to the Lehigh River, Lauback and Saucon Creeks, tributary to the Lehigh River. Treatment will remove suspended solids and oil to the limits provided by the Commission's water quality guidelines.

II. *Water supply contract.* A proposed water supply contract between the Commission and Public Service Electric and Gas Co. of New Jersey for the sale of water supplies to the company for use at the Salem Nuclear Generating Station, Units 1 and 2, located on the Delaware River at River Mile 50.23, Lower Alloways Creek Township, Salem County, N.J. The contract provides for minimum payments to the Commission by the company for water to be used for cooling a 2100-megawatt nuclear generating station. Annual payments will be in accord with the terms and conditions of the Commission's water supply policy and regulations as adopted by Resolution Nos. 71–4 and 74–6.

Documents relating to the items on this hearing notice may be examined at the Commission's offices. Persons wishing to testify are requested to notify the Secretary prior to the hearing.

W. BRINTON WHITALL,
Secretary.

DECEMBER 23, 1976.

[FR Doc.76–38312 Filed 12–29–76;8:45 am]

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

PRIVACY ACT OF 1974

Notice of Systems of Records; Correction

The notice for system ERDA 42 was inadvertently omitted from the annual notice of the agency's systems of records under the Privacy Act published at 41 FR 48272, November 2, 1976. The text of the system is set forth below. The Clinch River Breeder Reactor Plant Project has been added under "System Location" and "Notification Procedure" for this system.

Dated: December 27, 1976.

RUSSELL RITCHIE,
Associate Assistant Administrator, Headquarters Operation.

ERDA 42

System name:

Document Distribution System—ERDA.

System location:

U.S. Energy Research and Development Administration (Headquarters), Washington, D.C. 20545.

U.S. Energy Research and Development Administration, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, New Mexico 87115.

U.S. Energy Research and Development Administration, Bartlesville Energy Research Center, Box 1398, Bartlesville, Oklahoma 74003.

U.S. Energy Research and Development Administration, Chicago Operations Office, 9800 South Cass Avenue, Argonne, Illinois 60439.

U.S. Energy Research and Development Administration, Grand Forks Energy Research Center, University Station, Box 8213, Grand Forks, North Dakota 58201.

U.S. Energy Research and Development Administration, Idaho Operations Office, 550 2nd Street, Idaho Falls, Idaho 83401.

U.S. Energy Research and Development Administration, Laramie Energy Research Center, P.O. Box 3395, University Station, Laramie, Wyoming 82071.

U.S. Energy Research and Development Administration, Morgantown Energy Research Center, Box 880, Morgantown, West Virginia 26505.

U.S. Energy Research and Development Administration, Nevada Operations Office, P.O. Box 14100, Las Vegas, Nevada 89114.

U.S. Energy Research and Development Administration, Oak Ridge Operations Office, P.O. Box E, Oak Ridge, Tennessee 37830.

U.S. Energy Research and Development Administration, Pittsburgh Energy Research Center, 4800 Forbes Avenue, Pittsburgh, Pennsylvania 15213.

U.S. Energy Research and Development Administration, Richland Operations Office, P.O. Box 550, Richland, Washington 99352.

U.S. Energy Research and Development Administration, San Francisco Operations Office, 1333 Broadway, Wells Fargo Building, Oakland, California 94612.

U.S. Energy Research and Development Administration, Savannah River Operations Office, P.O. Box A, Aiken, South Carolina 29801.

Categories of individuals covered by the system:

Persons who have requested information which is distributed by ERDA on a routine basis.

Categories of records in the system:

One record containing name and address and selection criteria.

Authority for maintenance of the system:

Pub. L. 93–438.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

For additional routine uses see Appendix AA.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Paper, punched cards, magnetic tape and disk, and microfiche.

Retrievability:

Records are retrieved by record identification code number and normally by type of information being disseminated, e.g., solar, nuclear, etc., or by the occupation, profession or other stated interest of an individual, or by selective distributions such as high schools interested in films or public interest organizations in a specific Federal Region.

Safeguards:

Access limited to employee's with need in performance of duties. System maintained in buildings with controlled access. Computer information is controlled through established ERDA computer center procedures of personnel screening and physical security in secure building.

Retention and disposal:

Records retention and disposal authorities are contained in ERDA, Manual Appendix 0230, "Records Disposition." Records within ERDA are destroyed by shredding, burning, or burial in a sanitary landfill as appropriate.

System manager(s) and address:

Agency system manager—The Director, Division of Administrative Services, Energy Research and Development Administration, Washington, D.C. 20545.

The managers and directors of field locations listed under notification procedures below are designated system managers for their respective operations of this system.

Notification procedure:

a. U.S. Energy Research and Development Administration, Privacy Act Administration Officer's Mail Adresses:

U.S. Energy Research and Development Administration (Headquarters), Washington, D.C. 20545.

U.S. Energy Research and Development Administration, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, New Mexico 87115.

U.S. Energy Research and Development Administration, Bartlesville Energy Research Center, Box 1398, Bartlesville, Oklahoma 74003.

U.S. Energy Research and Development Administration, Chicago Operations Office, 9800 South Cass Avenue, Argonne, Illinois 60439.

U.S. Energy Research and Development Administration, Grand Forks Energy Research Center, University Station, Box 8213, Grand Forks, North Dakota 58201.

U.S. Energy Research and Development Administration, Idaho Operations Office, 550 2nd Street, Idaho Falls, Idaho 83401.

U.S. Energy Research and Development Administration, Laramie Energy Research Center, P.O. Box 3395, University Station, Laramie, Wyoming 82071.

U.S. Energy Research and Development Administration, Morgantown Energy Research Center, Box 880, Morgantown, West Virginia 26505.

U.S. Energy Research and Development Administration, Nevada Operations Office, P.O. Box 14100, Las Vegas, Nevada 89114.

U.S. Energy Research and Development Administration, Oak Ridge Operations Office, P.O. Box E, Oak Ridge, Tennessee 37830.

U.S. Energy Research and Development Administration, Pittsburgh Energy Research Center, 4800 Forbes Avenue, Pittsburgh, Pennsylvania 15213.

U.S. Energy Research and Development Administration, Richland Operations Office, P.O. Box 550, Richland, Washington 99352.

U.S. Energy Research and Development Administration, San Francisco Operations Office, 1333 Broadway, Wells Fargo Building, Oakland, California 94612.

U.S. Energy Research and Development Administration, Savannah River Operations Office, P.O. Box A, Aiken, South Carolina 29801.

b. Required Identifying Information: Name as it appears on the mailing list or number as it appears on the mailing label.

Record access procedures:

Refer to Notification Procedure.

Contesting record procedures:

Refer to Headquarters.

Record source categories:

Self-supplied by requestors.

NOTE: There will be no new ERDA rules or changes to previously published rules resulting from the addition of this new system of records.

APPENDIX AA.—Additional Routine Uses

The following routine uses apply to and are incorporated by reference into each system of records as stated therein:

1. In the event that a record within this system of records maintained by this agency indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be referred as a routine use to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

2. A record from this system of records may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, if necessary to obtain information relevant to an Agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

3. A record from this system of records may be disclosed, as a routine use, to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. A record from this system of records may be disclosed, as a routine use, in response to a court subpoena, to appropriate parties engaged in litigation or in preparation of possible litigation such as potential witnesses for the purpose of securing their testimony when necessary to courts, magistrates or administrative tribunals, to parties and their attorneys for the purpose of proceeding with litigation or settlement of disputes, to individuals seeking information by using established discovery procedures, whether in connection with civil, criminal, or regulatory proceedings.

5. A record maintained by this agency to carry out its functions which relates to civil and criminal proceedings may be disclosed to the news media in accordance with guidelines contained in Department of Justice regulations 28 C.F.R. 50.2.

6. A record maintained by this agency to carry out its functions may be disclosed to foreign governments in accordance with treaty obligations.

7. A record from this system of records may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

8. A record from this system of records may be disclosed, as a routine use, to ERDA contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties subject to the same limitations applicable to ERDA officers and employees under the Privacy Act.

9. Congressional Inquiries—disclosure may be made to congressional office from the record of an individual in response to inquiries from the congressional office made at the request of that individual.

[FR Doc.76–38345 Filed 12–29–76;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 664–7]

APPROVAL AND PROMULGATION OF STATE IMPLEMENTATION PLANS

Adequacy of SO_2 Emission Limitations and Control Strategy in Kentucky Implementation Plan; Comment Period

On May 10, 1976 (41 FR 19105), the Administrator published approval/disapproval action on revisions in the Kentucky State implementation plan. Subsequent to this rulemaking notice, the Natural Resources Defense Council (NRDC), under section 307 of the Clean Air Act, petitioned the U.S. Court of Appeals for the Sixth Circuit for review of the Administrator's action. NRDC believed that several of the emission limits were not sufficient to protect ambient air quality standards. On December 14, 1976, both parties agreed that the Agency would solicit additional comments on the adequacy of the revised emission limits now in effect.

All comments received on or before March 1, 1977 will be carefully evaluated by the Agency, which will respond to them as appropriate in the FEDERAL REGISTER by June 2, 1977, and describe any action contemplated as a result of its review of the comments received. Such action, if any, will be taken by August 1, 1977. This solicitation of comments on the revised emission limitations of the Kentucky implementation plan does not invalidate any emission limit, standard, or compliance date, in whole or in part. The Agency is always interested in additional information on the adequacy of state implementation plans. In the meantime, the Kentucky implementation plan remains in effect and is fully enforceable. Moreover, the presentation here of the issues detailed below does not constitute a determination by the Environmental Protection Agency as to the legal relevance of these issues.

BACKGROUND

On August 15, 1974 (39 FR 29357), the Administrator published approval/disapproval action on the resubmitted Kentucky implementation plan to attain and maintain the national ambient air quality standards, his original approval of May 31, 1972, having been vacated by the U.S. Court of Appeals for the Sixth Circuit. In his rulemaking notice of August 15, 1974, the Administrator, in keeping with the Agency's clean fuels policy, encouraged the Kentucky Division of Air Pollution to reexamine its sulfur dioxide control strategy to determine if it could be modified without jeopardizing the attainment and maintenance of the national ambient standards for that pollutant. This step was also consistent with the amendments made in section 110 of the Clean Air Act by the Energy Supply and Environmental Coordination Act of 1974. With the assistance of the Agency's Region IV staff, the Kentucky Division of Air Pollution developed a new body of control regulations which was formally adopted on July 2, 1975.

On August 30, 1975, the Commonwealth of Kentucky submitted these new regulations to EPA as proposed revisions in Chapter 7 of the Kentucky implementation plan. The analytical material justifying the revised regulations was incorporated in the proposed revisions as Chapters 4 and 5 of the plan, and these were also submitted for the Agency's approval, specifically, on September 16, 1975.

It should be noted that many of the Kentucky air pollution control regulations were not affected or modified by the changes just described, and thus, required no action by EPA since they had already been approved on August 15, 1974.

Following review by the Agency, approval/disapproval action was taken on these three chapters of the Kentucky plan on May 10, 1976. All three chapters were approved, with the exception of the sulfur dioxide regulations for Boyd County and an interpretation of the application of certain regulations adopted to provide equivalents to the Agency's New Source Performance Standards (40 CFR Part 60).

ISSUES

The specific issues to which comments should be directed are as follows:

(a) Whether the "background levels" of SO_2 used by the Commonwealth of Kentucky in developing the control strategy and associated emission limitations or by EPA in approving such control strategy and limitations are adequate to demonstrate attainment and maintenance of ambient air quality standards for SO_2.

(b) Whether (and by what amount) any relevant mathematical modeling results for any power plant sources of SO_2 in Kentucky require emission limitations more stringent than those adopted by Kentucky and approved by EPA on May 10, 1976, in order to ensure the attainment and maintenance of ambient air quality standards for SO_2.

(c) Whether EPA's Stack Height Guidelines, (41 FR 7450; February 18, 1976), require use of a different "credit" for stack height than the one used for any of the following power plants: Reid, Coleman, Ghent.

(d) Whether the control strategy demonstration for the approved emission limitations for power plants in the Kentucky implementation plan requires surveillance for compliance on an "instantaneous" basis or on an "average" basis.

(e) Whether appropriate consideration was given to the heat value of coal supplies in generating or applying the mathematical modeling results for power plant sources of SO_2.

COMMENTS

Comments relating to the above issues should be addressed to the Air Programs Branch, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30308, Attention: Mr. John Eagles. Comments must be received on or before March 1, 1977 to receive consideration. All pertinent documents will be available to the public at the above address throughout the comment period during normal business hours (8:15 a.m.–4:45 p.m., Monday-Friday).

Dated: December 22, 1976.

JOHN A. LITTLE,
Acting Regional Administrator.

[FR Doc.76-38390 Filed 12-29-76;8:45 am]

[FRL 664-8]

PREVENTION OF SIGNIFICANT DETERIORATION, STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES AND NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

Delegation of Authority to State of North Carolina

On December 5, 1974 (39 FR 42510), and June 12, 1975 (40 FR 25004) and September 10, 1975 (40 FR 42011), pursuant to Section 110 of the Clean Air Act, as amended, the Administrator promulgated regulations for the prevention of significant air quality deterioration (PSD). On December 23, 1971 (36 FR 24876) and March 8, 1974 (39 FR 9808), and August 6, 1974 (39 FR 33152), and September 23, 1975 (40 FR 43850), and January 15, 1976 (41 FR 2231, 2332), and January 26, 1976 (41 FR 3826), pursuant to section 111 of the Clean Air Act, as amended, the Administrator promulgated regulations establishing standards of performance for five categories, seven categories, one category, five categories, four categories, and one category of new stationary sources subject to New Source Performance Standards (NSPS), respectively. On April 6, 1973 (38 FR 8820) and May 3, 1974 (30 FR 15396), and October 14, 1975 (40 FR 48291), pursuant to Section 112 of the Clean Air Act, as amended, the Administrator promulgated national emission standards for three hazardous air pollutants (NESHAPS). Section 301 in conjunction with sections 101 and 110 authorizes the Administrator to delegate his authority to implement and enforce PSD to any State which has submitted adequate implementation and enforcement procedures. Sections 111(c) and 112(d) direct the Administrator to delegate his authority to implement and enforce NSPS and NESHAPS to any State which has submitted adequate procedures. Nevertheless, under § 111(c)(2) and 112(d)(2), the Administrator is not prohibited from enforcing the standards.

During discussions held in the spring of 1975 with regard to the fiscal year 1976 program plan, EPA furnished to the State of North Carolina information setting forth the reuireqments for an adequate procedure for implementing and enforcing the standards for PSD, NSPS, and NESHAPS. On June 24, 1976, Mr. George W. Little, Secretary, North Carolina Department of Natural and Economic Resources, acting in behalf of the North Carolina Environment Management Commission, submitted to the EPA Regional Office a request for delegation of authority to implement and enforce NSPS and NESHAPS, and to implement the administrative and technical portions of PSD. On September 16, 1976, Mr. James A. McColman, Chief, Air Quality Section, North Carolina Department of Natural and Economic Resources, submitted additional information on his agency's procedures and resources for implementation of PSD, NSPS, and NESHAPS, and for enforcement of NSPS and NESHAPS. Submitted at the time of the initial request were copies of North Carolina regulations which incorporate by reference the Federal emission standards and testing procedures set forth in 40 CFR Parts 60 and 61, with certain exceptions. After a thorough review of the request and information submitted, the Regional Administrator has determined that for the source categories set forth in the following official letters to the Chairman of the North Carolina Environmental Management Commission, delegation is appropriate subject to the conditions set forth in detail in these letters:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IV

NOVEMBER 24, 1976.

Mr. JOHN W. THOMAS, Jr.,
Chairman, North Carolina Environmental Management Commission, P.O. Box 27687, Raleigh, N.C.

DEAR MR. THOMAS: This is in response to Mr. George W. Little's letter of June 24, 1976, and Mr. James A. McColman's letter of September 16, 1976, requesting responsibility for implementation and enforcement of the Standards of Performance for New Stationary Sources (NSPS) and the National Emission Standards for Hazardous Air Pollutants (NESHAPS).

We have reviewed the pertinent laws of the State of North Carolina and the rules and regulations thereof, and have determined that they provide an adequate and effective procedure for implementation and enforcement of the NSPS and NESHAPS by the State of North Carolina. Therefore, pursuant to Section 111 and Section 112 of the Clean Air Act, as amended, P.L. 91-604, we hereby delegate our authority for implementation and enforcement of the NSPS and NESHAPS to the State of North Carolina as follows:

A. EPA delegates its authority for the following sources located or to be located in the State of North Carolina subject to the standards of performance for new stationary sources promulgated in 40 C.F.R. Part 60 and amendments thereto as published in the FEDERAL REGISTER as of the date of this letter: fossil-fuel steam generators; incinerators; portland cement plants; nitric acid plants; sulfuric acid plants; asphalt concrete plants; petroleum refineries; storage vessels for petroleum liquids; secondary brass and bronze ingot production plants; iron and steel plants; sewage treatment plants; secondary lead smelters; phosphate fertilizer plants; primary aluminum plants; coal preparation plants; electric arc furnaces; and primary copper, zinc, and lead smelters. EPA does not delegate its authority for ferroalloy production facilities at this time.

B. EPA delegates its authority for all sources located or to be located in the State of North Carolina subject to the national emission standards for hazardous air pollutants promulgated in 40 CFR Part 61 as of the date of this letter. The three hazardous air pollutants covered by this authority are: asbestos, beryllium, and mercury. EPA does not delegate its authority for vinyl chloride at this time.

This delegation is based upon the following conditions:

1. Existing quarterly reports normally submitted to EPA through program plan reporting will be expanded to contain pertinent information relating to the status of sources subject to 40 CFR Parts 60 and 61. As a minimum, the following information should be provided to EPA: the name, address, type and size of each facility subject to the standards, the compliance status of each facility with accompanying explanations of non-compliance where applicable, notice of enforcement actions brought against facilities subject to 40 CFR Parts 60 and 61, surveillance actions undertaken for each facility, and the results of all reports relating to emissions data.

2. Enforcement of NSPS and NESHAPS in the State of North Carolina will be the primary responsibility of the Environmental Management Commission. If the State determines that such enforcement is not feasible and so notifies EPA, or where the State acts in a manner inconsistent with the terms of

this granted authority, EPA will exercise its concurrent enforcement authority pursuant to Section 113 of the Clean Air Act, as amended, with respect to sources within the State of North Carolina subject to the NSPS and NESHAPS.

3. Acceptance of this delegation of presently promulgated NSPS and NESHAPS does not commit the State of North Carolina to request or accept enforcement authority of future standards and requirements. A new request for enforcement authority will be required for any standards not included in Paragraphs A and B above.

4. Upon approval of the Regional Administrator of Region IV, the Chairman of the North Carolina Environmental Management Commission may subdelegate his authority to implement and enforce the NSPS and NESHAPS to air pollution control authorities in the State when such authorities have demonstrated that they have equivalent or more stringent programs in force.

5. This enforcement authority to the State of North Carolina does not include the authority to implement and enforce NSPS (40 CFR Part 60) and NESHAPS (40 CFR Part 61) for sources owned or operated by the United States, which are located in the State. This condition in no way relieves any Federal facility from meeting the requirements of 40 CFR Parts 60 and 61.

6. The State of North Carolina will at no time grant a waiver of compliance with NESHAPS (40 CFR 61.11). The State of North Carolina will at no time grant a variance or other temporary or permanent exemption from compliance with NSPS (40 CFR Part 60) and NESHAPS (40 CFR Part 61) regulations. Should the State grant such a variance or other exemption, EPA will consider the source receiving the variance or exemption to be in violation of the applicable Federal regulations and may initiate enforcement action against the source pursuant to Section 113 of the Clean Air Act. The granting of such variances by the State shall also constitute ground for revocation of delegation by EPA.

7. If at any time there is a conflict between a State regulation and a Federal regulation (40 CFR Parts 60 and 61), the Federal regulation must be applied if it is more stringent than that of the State. If the State does not have the authority to enforce a Federal regulation that is more stringent than the applicable State regulation, the pertinent portion of the delegation may be revoked.

8. Performance tests shall be conducted in accordance with the procedures set forth in 40 CFR Parts 60 and 61 unless alternate methods or procedures are approved by the EPA Administrator. Although the Administrator retains the exclusive right to approve equivalent and alternative test methods as specified in 40 CFR 60.8(b) (2) and (3), the State may approve minor changes in methodology provided these changes are reported to EPA. The Administrator also retains the right to change an opacity standard as specified in 40 CFR 60.11(e).

9. Alternatives to continuous monitoring procedures or reporting requirements, as outlined in 40 CFR 60.12(h) (i), may be approved by the State with the prior concurrence of the EPA Administrator.

10. If the Regional Administrator determines that the State procedure for enforcing or implementing the NSPS or NESHAPS is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the North Carolina Environmental Management Commission.

11. Information shall be made available to the public in accordance with 40 CFR 60.9(b) and 61.15(b). Any records, reports or information provided to, or otherwise obtained by the State in accordance with the provisions of these Sections shall be made available to the designated representative of EPA upon request.

The State and EPA will develop a system of communication sufficient to guarantee a program that includes the items described below:

a. Each agency is informed of the current compliance status of subject sources in the State of North Carolina;

b. Prior EPA concurrence is obtained on any matter involving interpretation of 40 CFR Parts 60 and 61 (including unique questions of applicability of the standards), and

c. Enforcement actions (including requests for information and enforcement actions based thereon) already initiated by EPA prior to this delegation, shall be completed by EPA.

A notice announcing this delegation will be published in the FEDERAL REGISTER in the near future. The notice will state, among other things, that, effective immediately, all reports required pursuant to the Federal NSPS and NESHAPS by sources located or to be located in the State of North Carolina should be submitted to North Carolina Environmental Management Commission, Department of Natural and Economic Resources, Division of Environmental Management, P.O. Box 27687, Raleigh, North Carolina 27611, Attention: Air Quality Section. Any such reports which have been or may be received by EPA, Region IV, will be promptly transmitted to the State agency.

Since this delegation is effective immediately, there is no requirement that the State notify EPA of its acceptance. Unless EPA receives from the State written notice of objections within 10 days of the date of receipt of this letter, the North Carolina Environmental Management Commission will be deemed to have accepted all of the terms of the delegation.

Sincerely yours,

JACK E. RAVAN,
Regional Administrator.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

NOVEMBER 24, 1976.

MR. JOHN W. THOMAS, Jr.,
Chairman, North Carolina Environmental Management Commission, P.O. Box 27687, Raleigh, N.C.

DEAR MR. THOMAS: This is in response to Mr. George W. Little's letter of June 24, 1976, and Mr. James A. McColman's letter of September 16, 1976, requesting responsibility for implementation of the technical and administrative portions of the Prevention of Significant Air Quality Deterioration. (PSD) program.

We have reviewed the procedures for new source review of the State of North Carolina and have determined that they provide an adequate and effective procedure for the implementation of the technical and administrative portions of the PSD program by the State of North Carolina. Therefore, pursuant to 40 CFR 52.01 and 52.21 (1975) and 40 FR 42012 (September 10, 1975) amending 40 CFR 52.21, and hereinafter referred to as 40 CFR 52.01 and 52.21, we hereby delegate our authority for the technical and administrative portions of the federal PSD program, as described in 40 CFR 52.01 and 52.21 (d) and (e), to the State of North Carolina as follows:

A. EPA delegates its authority for all sources located or to be located in the State of North Carolina subject to review under the federal regulations for the prevention of significant air quality deterioration promulgated in 40 CFR 52.21(d). The categories of new sources covered by the delegation are: fossil-fuel steam electric plants of more than 1000 million BTU per hour heat input; coal cleaning plants; kraft pulp mills; Portland cement plants; primary zinc smelter; iron and steel mills; primary aluminum ore reduction plants; primary copper smelters; municipal incinerators capable of charging more than 250 tons of refuse per 24-hour day; sulfuric acid plants; petroleum refineries; lime plants; phosphate rock processing plants; by-product coke oven batteries; sulfur recovery plants; carbon black plants (furnace process); primary lead smelters; fuel conversion plants; and ferroalloy production facilities.

B. EPA delegates to the State of North Carolina its authority and procedures for public participation promulgated in 40 CFR 52.21(e), but not its authority under 40 CFR 52.21(e)(1)(v) to take final action on an application, nor its authority to take enforcement action under 40 CFR 52.21(e)(2).

C. For purposes of and in accordance with paragraph B above, the State of North Carolina shall follow the procedures in 40 CFR 52.21(e), except that the word "State" shall be substituted for the word "Administrator." A copy of the State's preliminary determination, a copy of all materials submitted by the owner or operator, a copy or summary of other materials (if any) considered by the State in making its preliminary determination, and a copy of the notice pursuant to 40 CFR 52.21(e)(ii) (b) and (c) shall be sent to the EPA regional office within 30 days after receipt of a complete application. Within 30 days after the close of the public comment period, the State shall forward a copy of the final analysis to the EPA regional office. Upon receipt of the State's final analysis, the EPA regional office shall take final action on an application pursuant to 40 CFR 52.21(e)(1)(v).

D. This delegation is based upon the following conditions:

1. Quarterly reports containing pertinent information relating to the status of sources subject to 40 CFR 52.21 (or other reports as required by the Regional Administrator) will be submitted to EPA by the State of North Carolina as part of the existing quarterly reports normally submitted to EPA through program plan reporting.

2. Upon approval of the Regional Administrator of Region IV, the Chairman of the Environmental Management Commission may subdelegate his authority to implement the technical and administrative portions of PSD to local air pollution control

authorities in the State when such authorities have demonstrated that they have equivalent or more stringent programs in force.

3. This technical and administrative authority delegated to the State of North Carolina does not include the authority to implement PSD for sources owned or operated by the United States, which are located in the State. This condition in no way relieves any Federal facility from meeting the requirements of 40 CFR 52.21.

4. If at any time there is a conflict between a State regulation and a federal regulation (40 CFR 52.01 and 52.21), the federal regulation must be applied if it is more stringent than that of the State. If the State does not have the authority to implement a federal regulation that is more stringent than the applicable State regulation, the pertinent portion of the delegation may be revoked.

5. If the Regional Administrator determines that the State procedure for implementing the technical and administrative portions of PSD is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the Environmental Management Commission.

6. Acceptance of this delegation of presently promulgated PSD regulations does not commit the State of North Carolina to request or accept technical and administrative review authority of future standards and requirements. A new request for authority will be required for any standards not included in Paragraph A above.

7. Public availability of information shall be in accordance with 40 CFR 52.21(e)(1)(ii)(b).

The State and EPA will develop a system of communication sufficient to guarantee a program that includes the items described below:

a. Each agency is informed of the current compliance status of subject sources in the State of North Carolina;

b. Prior EPA concurrence is obtained on any matter involving interpretation of 40 CFR 52.01 and 52.21 (including unique questions of applicability of the standards);

c. PSD reviews (including requests for information and enforcement actions based thereon) already initiated by EPA prior to this delegation, shall be completed by EPA;

d. The State is informed of the date of receipt by EPA, of any and all completed applications for PSD review affecting a source owned or operated by the United States and located or to be located in the State, and of the results of each such PSD review conducted; and EPA is informed of any State PSD reviews and progress that might affect the PSD review conducted by EPA.

A notice announcing this delegation will be published in the FEDERAL REGISTER in the near future. The notice will state, among other things, that, effective immediately, all reports required pursuant to PSD by sources located or to be located in the State of North Carolina should be submitted to the North Carolina Environmental Management Commission, Department of Natural and Economic Resources, Division of Environmental Management, P.O. Box 27687, Raleigh, North Carolina 27611, Attention: Air Quality Section. Any such reports which have been or may be received by EPA, Region IV, will be promptly transmitted to the State agency.

Since this delegation is effective immediately, there is no requirement that the State notify EPA of its acceptance. Unless EPA receives from the State written notice of objections within ten (10) days of the date of receipt of this letter, the State will be deemed to have accepted all of the terms of the delegation.

Sincerely yours,

JACK E. RAVAN,
Regional Administrator.

Therefore, pursuant to the authority delegated to him by the Administrator, the Regional Administrator notified the Chairman of the North Carolina Environmental Managemen Commission on November 24, 1976, that authority to implement the administrative and technical portions of the Prevention of Significant Deterioration (PSD), and authority to implement and enforce New Source Performance Standards (NSPS) and National Emissions Standards for Hazardous Air Pollutants (NESHAPS), were delegated to the State of North Carolina.

Copies of the request for delegation of authority are available for public inspection at the Environmental Protection Agency, Region IV Office, 345 Courtland Street, N.E., Atlanta, Georgia 30308.

Effective immediately, all reports required pursuant to the delegated Prevention of Significant Deterioration (PSD), New Source Performance Standards (NSPS), and National Emission Standards for Hazardous Air Pollutants (NESHAPS) should not be submitted to the EPA Region IV Office, but instead should be submitted to the State agency at the following address:

North Carolina Environmental Management Commission, Department of Natural and Economic Resources, Division of Environmental Management, P.O. Box 27687, Raleigh, N.C. 27611.

Applications for PSD, NSPS, and NESHAPS review in process at the time of this delegation shall be processed through to completion by the EPA Region IV Office.

This notice is issued under the authority of Sections 110, 111, 112, and 301 of the Clean Air Act, as amended, 42 U.S.C. 1857, 1857c-5, 6, 7 and g.

Dated: December 21, 1976.

JOHN A. LITTLE,
Deputy Regional Administrator.

[FR Doc.76-38389 Filed 12-29-76;8:45 am]

[FRL 663-4]

CHESAPEAKE BAY PROGRAM

Policy Advisory Committee (Proposed)

Open Meeting

Pursuant to Pub. L. 92-463, notice is hereby given that a preliminary meeting of the (proposed) Chesapeake Bay Program Policy Advisory Committee will be held on January 19, 1977. The meeting will begin at 10:30 a.m. in Room 2123, Waterside Mall West Tower, 401 M Street, SW, Washington, DC.

The agenda includes discussion on Program Plan elements for Fiscal Year 1977, citizen participation status and technical program activities.

Currently, this Committee and its functions are under review by the Office of Management and Budget (OMB). EPA is continuing to coordinate with OMB to assure the most expeditious review and concurrence of this Committee.

The meeting is open to the public. Any member of the public wishing to attend, participate, present a paper, or obtain additional information should contact Mr. Leonard Mangiaracina, Executive Secretary, Policy Advisory Committee (215) 597-9872, no later than January 10, 1977.

DANIEL J. SNYDER, III,
Regional Administrator,
Region III.

DECEMBER 22, 1976.

[FR Doc.76-38238 Filed 12-29-76;8:45 am]

[FRL 663-6; OPP-180103]

HAWAII

Issuance of Specific Exemption to Control Carmine Mite on Papaya on Island of Maui

Pursuant to the provisions of section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.), notice is hereby given that the Environmental Protection Agency (EPA) has granted a specific exemption to the State of Hawaii (hereafter referred to as the "Applicant") to use Morestan 25W in ground applications to control an outbreak of carmine mite on sixty (60) acres of papaya on the Island of Maui. This exemption was granted in accordance with, and is subject to, the provisions of 40 CFR Part 166, issued December 3, 1973 (38 FR 33303), which prescribes requirements for exemption of Federal and State agencies for use of pesticides under emergency conditions.

This notice contains a summary of certain information required by regulation to be included in the notice. For more detailed information, interested parties are referred to the application on file with the Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M Street, SW, Room E-315, Washington, D.C. 20460.

According to the Applicant, carmine mite (*Tetranychus cinnabaricus*) infestation is prevalent during summer months when conditions are dry and dusty. Approximately sixty (60) acres of new nonbearing papaya, located in the 300 acre Princess Orchard on the Island of Maui, are infested. Monitored population of the pest indicated 70 adult carmine mites per square inch on foliage. The Applicant stated that present applications of malathion and sulfur have proven ineffective; a resistance buildup has been noted. There appear to be no registered pesticides nor alternative methods of control available to suppress this pest. The Applicant stated that there could be a potential yield loss of $675,000 if this pest is not controlled.

The Applicant proposed to use Morestan 25W at an application rate of twenty-four (24) ounces (six ounces A.I.) in three hundred gallons of water per acre. One application will be made; a follow-up application would be made three months later, if necessary. All applications will be made using ground power sprays. Personnel from the University of Hawaii, Cooperative Extension Service and the Hawaii Department of Agriculture will supervise and monitor the operations. The University of Hawaii Biochemistry laboratory will sample and analyze fruit ready for harvest about March 1977 for Morestan residues.

Morestan is not registered for control of the carmine mite on papaya. However, it is registered for control of mites on nonbearing cherries, peaches, pears, plums, prunes, and nectarines. The Applicant felt that this pesticide would be effective against this pest on papaya. Based on a petition now under review by this Agency that calls for a sixty (60) day preharvest interval after application of Morestan, EPA has granted a one-half (0.5) ppm tolerance for residues of the pesticide on papaya, a citrus plant. No adverse effects on man and the environment are anticipated as a result of use of this pesticide on papaya in Princess Orchard, located in an isolated area on the Island of Maui.

After reviewing the application and other available information, EPA has determined that (a) a pest outbreak of carmine mite has occurred; (b) there is no pesticide presently registered and available for use to control the carmine mite on the Island of Maui, Hawaii; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if the carmine mites are not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until December 1, 1976, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. The rate of application will not exceed six (6) ounces A.I. of Morestan per acre;

2. No more than two (2) applications of Morestan will be made;

3. A ninety (90) day preharvest interval will be observed after the second application. The first application of Morestan will be to nonbearing plants; however, if the second application becomes necessary, Morestan would be applied to papaya bearing fruit;

4. Application of Morestan is limited to sixty (60) acres of papaya on the Island of Maui;

5. All applications will be under the supervision of the University of Hawaii Cooperative Extension Service and the Hawaii Department of Agriculture;

6. Papayas with residue levels not exceeding 0.5 ppm Morestan may be offered in interstate commerce. The Food and Drug Administration of the U.S. Department of Health, Education, and Welfare has been advised of this action; and

7. The University of Hawaii will submit to EPA residue data obtained from the March 1977 harvest of Morestan-treated papaya.

Dated: December 22, 1976.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.76-38239 Filed 12-29-76;8:45 am]

[FRL 663-5]

PROPOSED STAGE II VAPOR RECOVERY REGULATIONS

Hearing

Notice is hereby given, pursuant to the provisions of the Clean Air Act of 1970, as amended, that a hearing on the proposed Stage II vapor recovery regulations is assigned to be held on Thursday, January 27, 1977, at 7:00 pm and Friday, January 28, 1977 at 9:30 am (local time) in room 269 of the U.S. Post Office, 1823 Stout Street, Denver, Colorado 80202

For information concerning the proposed regulations, interested persons are referred to the November 1, 1976 FEDERAL REGISTER (41 FR 48044), copies of which are available from the Office of Public Affairs, Environmental Protection Agency, Region VIII, 1860 Lincoln Street, Denver, Colorado 80295. The proposed regulations will require the recovery of gasoline vapors emitted during vehicle refuelings in the metropolitan Denver Air Quality Control Region (AQCR).

All persons desiring to comment on the proposed regulations are requested to submit their names and affiliations along with a written summary of comments, to the Office of Public Affairs before January 24, 1977. All written comments postmarked no later than January 31, 1977, will be considered for the record.

Date: December 21, 1976.

ROGER WILLIAMS,
Acting Regional Administrator.

[FR Doc.76-38237 Filed 12-29-76;8:45 am]

[FRL 664-5]

STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Notice of Delegation to the State of Iowa

On December 23, 1971 (36 FR 24876), and March 8, 1974 (39 FR 9308), pursuant to Section 111 of the Clean Air Act, as amended, the Administrator of the Environmental Protection Agency (EPA) promulgated regulations establishing standards of performance for five categories and seven categories of new stationary sources, respectively. Section 111(c) authorizes the Administrator to delegate his authority to implement and enforce New Source Performance Standards (NSPS), except as they may apply to any source owned or operated by the United States, to any state which has submitted adequate procedures. Nevertheless the Administrator retains authority to implement and enforce the standards following delegation of authority to the State.

On February 25, 1975, Mr. Elmer H. Vermeer, Administrative Assistant to the Governor of the State of Iowa, submitted to the EPA Regional Office a request for delegation of authority. Included in that request were copies of the Iowa Department of Environmental Quality (DEQ) regulations which incorporate, by reference, the federal emission standards and testing procedures set forth in 40 CFR Part 60, with certain exceptions. Also included were copies of Iowa statutes which provide the DEQ with the requisite authority to enforce the NSPS. After a thorough review of that request, the Regional Administrator has determined that for the source categories listed in the following letter to the office of the Governor of Iowa, delegation is appropriate, subject to the conditions set forth in paragraphs 1. through 9. of that letter.

JUNE 6, 1975.

MR. ELMER H. VERMEER,
Administrative Assistant, Office of the Governor, State Capital, Des Moines, Iowa.

DEAR MR. VERMEER: This letter is in response to your request dated February 27, 1975, for delegation of authority for implementation and enforcement of the New Source Performance Standards (NSPS) for 11 of the 12 source categories promulgated by the Environmental Protection Agency (EPA) prior to April 1, 1974.

The EPA has determined that the following Iowa statutes and regulations for the Department of Environmental Quality (DEQ), generally, provide for adequate and effective procedures for implementation and enforcement of NSPS by the DEQ: Code of Iowa 1974, 455B.12(9), 455B.13(6), 455B.17, 455B.18, 455B.20 and 455.25; and Rules and Regulations Relating to Air Pollution Control 2.1(3), 2.1(4), 2.1(5), 2.1(6), 4.1 and 7.1(3). The EPA hereby delegates to the State of Iowa on behalf of the DEQ, subject to the conditions set forth, the authority for:

All sources in Iowa included in the list of source categories noted below which are subject to the standards of performance for new stationary sources promulgated in 40 CFR Part 60 prior to April 1, 1974. The 11 categories of new sources covered by the delegation are: Incinerators, Portland cement plants, nitric acid plants, sulfuric acid plants, asphalt concrete plants, petroleum refineries, secondary lead smelters, secondary brass and bronze ingot production plants, iron and steel plants, sewage treatment plants and fossil fuel-fired steam generators.

This delegation is based upon the following condtions:

1. Sources subject to NSPS shall be excluded from Rule 3.2 which provides for variances from limitations contained in Rule 4 (40 CFR 60.01 does not allow for variance from emission limitations.)

2. Enforcement of the NSPS in Iowa will be the primary responsibility of the Iowa DEQ. If the state determines that such enforcement is not feasible and so notifies EPA, or where the state acts in a manner inconsistent with the terms of this delegation, the EPA may exercise its concurrent enforcement authority pursuant to Section 113 of the Clean Air Act, as amended, with respect to sources which are subject to the NSPS.

3. Acceptance of the delegation of presently promulgated NSPS does not commit the state

of Iowa and the DEQ to request or accept delegation of future standards and requirements. A new request for delegation will be required for any standards not included in the state's request of February 27, 1975.

4. The DEQ will use the methods specified in 40 CFR Part 60 in performing tests pursuant to the regulations.

5. The DEQ will develop a system of communication sufficient to guarantee that the Region VII office is informed of the current compliance status of the subject sources and of interpretation of laws or regulations to which NSPS review procedures may apply. The DEQ shall immediately forward to EPA copies of all requests for determinations of whether the NSPS review procedures apply to a particulate source, and EPA concurrence shall be obtained on any such determinations before they are issued by the DEQ.

6. The delegation to the State of Iowa does not include the authority to implement and enforce NSPS for sources owned or operated by the United States which are located in Iowa.

7. If, at any time, there is a conflict between a state regulation and a federal regulation (40 CFR Part 60), the federal regulation must be applied if it is more stringent than that of the state.

8. Section 60.9 requires that all information concerning a source subject to the NSPS must be made available to the public unless it would divulge methods or processes entitled to protection as a trade secret. It appears that the Iowa interpretation of "privileged communication" might prevent the DEQ from releasing to the public certain information which must be released in accordance with § 60.9; therefore, any request for information with which the DEQ cannot comply because of its confidentiality laws must be forwarded to the Region VII office.

9. If the Regional Administrator determines that a state procedure for enforcing or implementing the NSPS is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a "Notice of Revocation" to the Governor of the State of Iowa.

A notice announcing this delegation will be published in the FEDERAL REGISTER in the near future. The notice will state, among other things, that effective immediately, all reports required pursuant to the federal NSPS (except storage vessels for petroleum liquids) from sources located in Iowa should be submitted to the Iowa DEQ, Des Moines, Iowa, as well as to the EPA, Region VII office. However, the reports required pursuant to 40 CFR 60.7(c) (excess emissions and malfunctions) will be submitted to the state agency only. Any reports which have been or may be received in this office prior to the publication of the notice will be forwarded to the Iowa DEQ.

In order to indicate your concurrence in this delegation, we would appreciate your signature of approval on this original letter. A copy is enclosed for your records. We would appreciate it if you could return the original to this office by July 15, 1975.

Sincerely yours,

JEROME H. SVORE,
Regional Administrator.

cc: Iowa Department of Environmental Quality

Signature of approval:

(Signed)

ELMER H. VERMEER (Date),
Administrative Assistant,
Office of the Governor,
State of Iowa.

Therefore, pursuant to the authority delegated to him by the Administrator, the Regional Administrator notified Mr. Vermeer, Administrative Assistant to the Iowa Governor, that authority to implement and enforce the NSPS for the 11 source categories listed in the above letter was delegated to the State of Iowa.

Copies of the request for delegation of authority are available for public inspection at the EPA, Region VII office, 1735 Baltimore, Kansas City, Missouri 64108.

Effective immediately, all reports required pursuant to the NSPS for the sources listed above shall be submitted to the Iowa Department of Environmental Quality, 3920 Delaware Avenue, P.O. Box 3326, Des Moines, Iowa 50316. However, reports required pursuant to 40 CFR 60.7(a) shall be submitted to the EPA, Region VII office as well as to the State.

This notice is issued under the authority of section 111 of the Clean Air Act, as amended. (42 U.S.C. 1857c–6)

Dated: December 20, 1976.

JEROME H. SVORE,
Regional Administrator.

[FR Doc.76-38240 Filed 12-29-76; 8:45 am]

[FRL 664-2]

STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Notice of Delegation of Authority to State of Nebraska

On December 23, 1971 (36 FR 24876), and March 8, 1974 (39 FR 9308), pursuant to section 111 of the Clean Air Act, as amended, the Administrator of the Environmental Protection Agency (EPA) promulgated regulations establishing standards of performance for five categories and seven categories of new stationary sources, respectively. These standards are commonly referred to as the New Source Performance Standards (NSPS). Section 111(c) authorizes the Administrator to delegate his authority to implement and enforce the NSPS to any State which he finds has submitted adequate procedures. Nevertheless, the Administrator retains concurrent authority to implement and enforce the NSPS following the delegation of authority to the State.

On July 18, 1973, and September 29, 1975, the State of Nebraska submitted to the EPA, Region VII office requests for the delegation of authority for the NSPS which were promulgated on December 23, 1971, and March 8, 1974, respectively. Included in those requests were copies of the State of Nebraska regulations which incorporate by reference the federal emission standards and testing procedures set forth in 40 CFR Part 60 (with certain exceptions). Also included with the most recent requests were copies of State statutes which provide the State with the requisite authority to enforce the NSPS. After a thorough review of that request, the Regional Administrator determined that for the source categories set forth in the following letter to the Governor of the State of Nebraska, delegation is appropriate subject to the conditions set forth in paragraphs 1. through 13. of that letter:

HON. J. JAMES EXON,
Goveror of Nebraska,
State Capitol,
Lincoln, Nebr.

DEAR GOVERNOR EXON: This letter is in response to the Department of Environmental Control (DEC) request of July 18, 1973, and your request dated September 29, 1975, for delegation to the DEC of authority for implementation and enforcement of the standards of performance for stationary sources, commonly referred to as the New Souce Performance Standards (NSPS), for the 12 source categories promulgated on December 23, 1971, and March 3, 1974. Your request for the delegation of Environmental Protection Agency (EPA) authority to conduct the preconstruction review and approval requirements, as promulgated in the prevention of significant deterioration regulations on December 5, 1974 (39 FR 52510) and the DEC request for EPA authority to implement and enforce the National Emission Standards for Hazardous Air Pollutants (NESHAPS) are being handled separately.

The EPA has determined that the following statutes for the State of Nebraska and the following regulations for the DEC, generally, provide for an adequate and effective procedure for implementation and enforcement of the NSPS by the State of Nebraska and the DEC: Revised Statutes of Nebraska, 1974 Cumulative Supplement (R.S. Suppl., 1974) 81–1504(15), 81–1505(15), 81–1508, and 81–1527; Nebraska Air Pollution Control Rules and Regulations Rule 4, Rule 17, Rule 22 and Rule 24. The EPA hereby delegates to the State of Nebraska on behalf of the DEC, subject to the conditions set forth below, the authority for:

Review and control of all sources in the State included in the list of source categories noted below, which are subject to 40 CFR Part 60. The 12 categories of new sources covered by the delegation are: fossil fuel-fired steam generators; incinerators; Portland cement plants; nitric acid plants; sulfuric acid plants; asphalt concrete plants; petroleum refineries; storage vessels for petroleum liquids; secondary lead smelters; secondary brass and bronze ingot production plants; iron and steel plants (basic oxygen furnaces); and sewage treatment plants.

This delegation is based upon the following conditions:

1. All sources in the categories specified above shall conduct performance tests in accordance with the procedure specified at 40 CFR 60.8. The DEC shall only allow the use of testing methods or procedures specified in each applicable subpart of Part 60, unless prior approval for the use of some alternative or equivalent method has received the prior approval of the EPA Administrator.

2. The definitions of the source categories in 40 CFR 60.50 and 60.130 shall be used in lieu of the listing of affected source categories in Rule 4(a), which lists the second category as "municipal incinerators" while 40 CFR 60.50 is not confined to "municipal" incinerators, but includes all incinerators within the definition of § 60.51. Also Rule 4(a) omits the word "bronze" which should appear before the word "ingot" in the phrase "secondary brass and ingot production."

3. All sources subject to the NSPS must monitor emissions as specified by the revised 40 CFR Part 60 regulations which were promulgated on October 6, 1975 (40 FR 46240). In addition, these continuous monitoring instruments must be tested according to the performance specifications of 40 CFR

60.13. If the DEC finds that a testing method for emission monitoring equipment other than that specified in the applicable part of 40 CFR Part 60 is necessary, EPA concurrence shall be obtained prior to notifying the owner or operator of the acceptance of the alternative test method.

4. The DEC shall obtain the prior concurrence of the EPA, Region VII Regional Administrator prior to issuing any determination of the applicability which is questionable or is not covered in the list of applicability determinations we have previously forwarded to the DEC. This EPA concurrence is necessary to ensure that the NSPS will be uniformly enforced in all regions.

5. Enforcement of NSPS in the State will be the primary responsibility of the Nebraska DEC. If the State determines enforcement of its regulations is not feasible and so notifies the EPA, or if the State acts in a manner inconsistent with the terms of this delegation, or if the DEC fails to obtain satisfactory compliance, the EPA may exercise its concurrent enforcement authority pursuant to section 113 of the Clean Air Act, as amended, with respect to sources which are subject to NSPS.

6. Upon express, prior approval of the Regional Administrator of Region VII, the Director of the DEC may sub-delegate his authority to implement and enforce the NSPS to local air pollution control agencies in the State, when such agencies have demonstrated that they have equivalent or more stringent programs in force.

7. Acceptance of this delegation of NSPS does not commit the State of Nebraska and the DEC to request or accept delegation of future standards and requirements. A new request for delegation will be required for any standards not included in the State's requests of July 18, 1973, and September 29, 1975.

8. The DEC and the EPA will develop a system of communication sufficient to guarantee that each office is always fully informed regarding the compliance status of the subject sources and interpretations of the regulations to which NSPS review procedures apply.

9. Section 60.9 requires that all information concerning a source subject to NSPS must be made available to the public unless it would divulge methods or processes entitled to protection as a "trade secret." It appears that the DEC Rule 22 gives broader protection from public disclosure than is contemplated by the NSPS; therefore, any requests for information pertaining to sources subject to NSPS, with which the DEC cannot comply because of its confidentiality laws, must be forwarded to the Region VII office.

10. If it is necessary to obtain an injunction against the operation of a source found to be in violation of the NSPS, the approach provided in section 81-5108(3) of the Nebraska statute shall be used. The direct approach of section 81-5108 is preferable because it permits an injunction to be obtained without the lengthy administrative hearing process, which may result if Rule 24 and section 81-5107 are followed.

11. The delegation to the State of Nebraska does not include the authority to implement and enforce NSPS for sources owned or operated by the United States which are located in Nebraska.

12. If, at any time, there is a conflict between a Nebraska regulation and a federal regulation (40 CFR 60 or amendments thereto), the federal regulation must be applied if it is more stringent than the state regulation.

13. If the Regional Administrator determines that a state procedure for enforcing or implementing the NSPS is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a "Notice of Revocation" to the State of Nebraska.

A notice announcing this delegation will be published in the FEDERAL REGISTER in the near future. The notice will state, among other things, that effective immediately, all reports required pursuant to federal NSPS for the 12 source categories previously mentioned from sources located in Nebraska should be submitted to the Nebraska DEC, Lincoln, Nebraska. Any reports which have been, or may be, received in this office prior to the publication of the notice will be forwarded to the DEC.

In order to indicate your concurrence in this delegation, we would appreciate your approval on this original letter. We would appreciate return of the original to this office by December 24, 1975.

Sincerely yours,

JEROME H. SVORE,
Regional Administrator.

Signature of Approval:

J. JAMES EXON,
Governor of Nebraska

Therefore, pursuant to the authority delegated to him by the Administrator, the Regional Administrator notified Governor Exon on November 24, 1975, that authority to implement and enforce the NSPS for the 12 categories of sources listed in the above letter was delegated to the State of Nebraska.

Copies of the requests for delegation of authority are available for public inspection at EPA, Region VII office, 1735 Baltimore, Kansas City, Missouri 64108.

Effective immediately, all reports required pursuant to the NSPS for the new stationary sources listed above shall be submitted to the Nebraska Department of Environmental Control, P.O. Box 94653, State House Station, Lincoln Nebraska 68509. However, reports required pursuant to 40 CFR 60.7(a) shall be submitted to the EPA, Region VII office as well as to the State.

This notice is issued under the authority of section 111 of the Clean Air Act, as amended.

(42 U.S.C. 1857c-6)

Dated December 20, 1976.

JEROME H. SVORE,
Regional Administrator.

[FR Doc.76-38242 Filed 12-29-76;8:45 am]

MARINE MAMMAL COMMISSION

MARINE MAMMAL COMMISSION AND COMMITTEE OF SCIENTIFIC ADVISORS ON MARINE MAMMALS

Meetings

Pursuant to the notice published in the FEDERAL REGISTER on November 12, 1976, further notice is hereby given that the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals will meet on January 13, 14, and 15, 1977, at the Tampa Airport Resort Hotel, 2222 North Westshore Boulevard, Tampa, Florida 33607.

The Commission and Committee will meet together in public session from 11:00 a.m. to 4:00 p.m. on January 13, and from 9:00 a.m. to 5:00 p.m. on January 14, to discuss and consider the status of activities and problems affecting marine mammals, including matters relating to:

(1) The taking of porpoises incidental to commercial yellowfin tuna fishing;
(2) The status of *Tursiops truncatus* in Florida waters;
(3) The status of *Trichecus manatus* in Florida waters;
(4) Harassment of *Megaptera novaeangliae* in Hawaiian waters;
(5) Harassment of *Eschrichtius robustus;*
(6) Research relating to *Enhydra lutris;*
(7) The marine mammal research activities of the National Marine Fisheries Service;
(8) The marine mammal research activities of the Fish and Wildlife Service;
(9) The concept of optimum sustainable populations;
(10) Special activities of subcommittees of the Committee of Scientific Advisors on Marine Mammals; and
(11) Such other matters as may appropriately come before the meeting.

These sessions will be open to the public, and seating will be available to accommodate those who are interested.

The remainder of the meeting will consist of executive sessions of the Commission and Committee. These sessions will be devoted to the review of memoranda, and exchange of opinions and deliberations concerning internal operations, budget, personnel, policy, interagency liaison, and the evaluation of proposals to conduct research related to marine mammal protection and conservation. Participants will be candidly discussing and appraising the professional qualifications and competence of the proposers, their potential contribution to the research program, and information given to the Commission and Committee in confidence.

Executive sessions will be held as follows:

January 13, from 9:00 a.m. to 10:40 a.m. and from 4:00 p.m. to 5:00 p.m.; and
January 15, from 9:00 a.m. to 12:00 noon.

These sessions are concerned with matters listed in 5 U.S.C. 552(b)(2), (3), (4), (5) and (6), and therefore will not be open to the public.

DECEMBER 22, 1976.

JOHN R. TWISS, Jr.,
Executive Director,
Marine Mammal Commission.

[FR Doc.76-38334 Filed 12-29-76;8:45 am]

NUCLEAR REGULATORY COMMISSION

INTERNATIONAL ATOMIC ENERGY AGENCY DRAFT SAFETY GUIDE

Availability of Draft for Public Comment

The International Atomic Energy Agency (IAEA) is developing a limited number of internationally acceptable codes of practice and safety guides for

nuclear power plants. These codes and guides will be developed in the following five areas: Government Organization, Siting, Design, Operations and Quality Assurance. The purpose of these codes and guides is to provide IAEA guidance to countries beginning nuclear power programs.

The IAEA Codes of Practice and Safety Guides are developed in the following way. The IAEA receives and collates relevant existing information used by member countries. Using this collation as a starting point, an IAEA Working Group of a few experts then develops a preliminary draft. This preliminary draft is reviewed and modified by the IAEA Technical Review Committee to the extent necessary to develop a draft acceptable to them. This draft Code of Practice or Safety Guide is then sent to the IAEA Senior Advisory Group which reviews and modifies the draft as necessary to reach agreement on the draft and then forwards it to the IAEA Secretariat to obtain comments from the member states.

As a part of this program, Safety Guide, SG–04, "Commissioning Procedures," has been developed and the NRC is soliciting U.S. public comment on it.

An IAEA Working Group, consisting of Mr. G. V. Nadkarny, India; Mr. M. Shibata, Japan; and Mr. G. B. T. Camsey, United Kingdom, developed this draft from an IAEA collation during a meeting on November 8, 1976.

An opportunity for public comment exists prior to review of this draft at the next meeting of the IAEA Technical Review Committee on Operation. Opportunities for public comments on later drafts will also be presented as this draft is later sent to the IAEA Senior Advisory Group, then to the member states.

Comments on this draft Safety Guide are requested by March 18, 1977. Single copies of this draft may be obtained by a written request to the Director, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(5 U.S.C. 522(a))

Dated at Rockville, Maryland, this 17th day of December 1976.

For the Nuclear Regulatory Commission.

RAY G. SMITH,
Acting Director,
Office of Standards Development.

[FR Doc.76-38302 Filed 12-29-76;8:45 am]

[Docket No. RM-50-5]

GENERIC ENVIRONMENTAL STATEMENT ON MIXED OXIDE FUEL

Order Concerning Resumption of Hearing January 11, 1977

The legislative type hearing called for by the Commission's Notice of Hearing published January 6, 1976 (41 FR 1133) began on November 30, 1976. It will resume at 9:30 a.m. on Tuesday, January 11, 1977 at Room 1046 at the offices of the Nuclear Regulatory Commission at 1717 H Street NW., Washington, D.C. At that time, the Board will continue its questioning of NRC Staff witnesses on the Final Generic Environmental Statement on the Use of Recycle Plutonium in Mixed Oxide Fuel in Light Water Cooled Reactors (Health, Safety and Environment), NUREG 0002, ES ("final GESMO I") and on the related notice of proposed rulemaking, Licensing of Production and Utilization Facilities, Licensing and Regulatory Policy and Procedures for Environmental Protection, Use of Mixed Uranium-Plutonium Oxide Fuels in Light-Water Nuclear Power Reactors, 41 FR 40506 (September 20, 1976).

The Board's Order Concerning Questioning of NRC Staff, Supplementing Final GESMO I, and Other Hearing Procedures docketed November 19, 1976 (p. 20) stated that we would postpone the date for full participants to file written testimony until 14 days after the questioning of the NRC Staff on final GESMO I was completed, if we were unable to complete such questioning in December. In our three weeks of questioning in December, we were able to complete about half of final GESMO I. It therefore appears that written testimony by full participants will not be due before some time in the latter part of February of 1977. The Board will issue an Order later providing deadlines for submission of written testimony by full participants, and for the subsequent steps described in our Order After Prehearing Conference docketed September 21, 1976 (pp. 6–7).

When the Board resumes questioning NRC Staff witnesses on January 11, 1977, we will continue the procedure in effect since the beginning of the hearing. The questions will be asked by Board Members, not by other full participants or their counsel. We believe the proceeding is progressing satisfactorily in this fashion. All full participants have had an opportunity to suggest questions to the Board to be asked of NRC Staff witnesses. We have not proposed any special procedure for full participants to use if they feel Board Members have not asked a question based on their suggestions, or, having asked such a question, have not followed up on the responses where a follow up was appropriate. However, as indicated in our Order of November 19, 1976 (p. 18) there is available for this purpose the general provision for motions in the Notice of Hearing January 6, 1976 (par. 7). Such a motion may be filed by a full participant and should be filed as soon as practicable after testimony has been completed on a subject by the witness of whom further questioning is desired by the full participant. In addition, each full participant will have an opportunity to suggest further questions for the Board to ask the NRC Staff concerning the Staff's written testimony after that testimony is submitted. Each full participant will also have an opportunity to submit its own written testimony on the subject.

It is so ordered.

Dated: December 21, 1976.

For the Gesmo Hearing Board.

GEORGE BUNN,
Chair.

[FR Doc.76-38297 Filed 12-29-76;8:45 am]

[Docket No. 50-331]

IOWA ELECTRIC LIGHT AND POWER CO., ET AL.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 25 to Facility Operating License No. DPR–49 issued to Iowa Electric Light and Power Company, Central Iowa Power Cooperative, and Corn Belt Power Cooperative, which revised Technical Specifications for operation of the Duane Arnold Energy Center, located in Linn County, Iowa. The amendment is effective as of its date of issuance.

The amendment will revise the Technical Specifications by reducing the Minimum Critical Power Ratios (MCPR) for the last 1000 MWD/T in their fuel cycle. The reduction is based on full scale test data which demonstrated that the fuel bundle bypass flow is greater than was assumed in previous analysis.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated November 9, 1976, (2) Amendment No. 25 to License No. DPR–49, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Cedar Rapids Public Library, 426 Third Avenue, S.E., Cedar Rapids, Iowa 52401.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 22nd day of December 1976.

For the nuclear regulatory commission.

JAMES J. SHEA,
Acting Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc.76-38300 Filed 12-29-76;8:45 am]

[Docket No. 50-17]

INDUSTRIAL REACTOR LABORATORIES, INC. AND N. L. INDUSTRIES, INC.

Proposed Issuance of Order Authorizing Termination of Facility License

The Nuclear Regulatory Commission (the Commission) is considering issuance of an order to Industrial Reactor Laboratories, Inc. and N. L. Industries, Inc. (the licensees), authorizing termination of Facility License No. R-46 for the deactivated Industrial Reactor Laboratory Research Reactor (the facility), located in Plainsboro Township, Middlesex County, New Jersey.

Prior to issuance of the order, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By January 14, 1977, the licensees may file a request for a hearing and any person whose interest may be affected by this proceeding may file a request for a hearing in the form of a petition for leave to intervene with respect to the issuance of the order in connection with the licensees' application. Petitions for leave to intervene must be filed under oath or affirmation in accordance with the provisions of § 2.714 of 10 CFR Part 2 of the Commission's regulations. A petition 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 this FEDERAL REGISTER notice and § 2.714, and must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, by the above date. A copy of the petition and/or request for a hearing should be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

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 licensing board, designated by the Commission or 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 termination dated June 12, 1975, as supplemented November 26, 1976, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C.

Dated at Bethesda, Maryland this 20th day of December 1976.

For the nuclear regulatory commission.

VERNON L. ROONEY,
Acting Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc.76-38298 Filed 12-29-76;8:45 am]

[Docket No. 50-30]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 6 to Amended Facility License No. TR-3, issued to the National Aeroautics and Space Administration (the licensee), which revised the license and Technical Specifications for the deactivated Plum Brook Reactor Facility (the facility) located near Sandusky, Ohio. The amendment is effective as of its date of issuance.

The amendment excludes certain areas from the controlled area of the Plum Brook Reactor Facility and from licensing requirements.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated October 27, 1976, (2) Amendment No. 6 to License No. TR-3, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 17th day of December 1976.

For the nuclear regulatory commission.

V. L. ROONEY,
Acting Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc.76-38301 Filed 12-29-76;8:45 am]

[Docket Nos. 50-514 and 50-515]

PORTLAND GENERAL ELECTRIC CO., ET AL.

Order Convening Hearing

In the matter of Portland General Electric Co., Puget Sound Power and Light Company, and Pacific Power and Light Company, (Pebble Springs Nuclear Plant, Units 1 and 2).

The Atomic Safety and Licensing Board has been advised by Portland General Electric Company, et al. (Applicants), the Oregon Department of Energy, and the Regulatory Staff of the Commission, that the Board's suggestion of March 1, 1977 is a convenient date to resume the evidentiary hearings respecting the need for power issue in this proceeding. No obligation to this date has been received from other parties to the proceeding.

The Board will schedule this hearing to convene on the same time, date, and at the same place that the Skagit Board has set for the resumption of the evidentiary hearing for the consideration of the need for power issue in that proceeding. The two hearings will constitute a joint session but there is not any consolidation of the proceedings. The procedures therefore will be similar to those had in the August 1976 joint session of evidentiary hearings.

The Regulatory Staff has requested that February 15, 1977 be designated as the date on or before which all statements proposed to be offered as evidence in the proceeding shall be prepared and served upon all parties and the Board. From today's date, February 15, 1977 appears to be well enough in advance to provide adequate opportunity for preparation and service of such statements. The Board finds that good cause has been shown to adopt February 15th and the Board, therefore, orders that February 15, 1977 is the date on or before which all proposed statements intended to be offered as evidence, either orally or by documents, shall be served upon all parties to the proceeding and to the Board and filed with the Commission.

Additional dates for specific submittals will be provided by a subsequent order.

Wherefore, It Is Ordered, in accordance with the Atomic Energy Act, as amended, and the Rules of Practice of the Nuclear Regulatory Commission, that the evidentiary hearings to consider the need for power issue in this proceeding shall resume and shall commence at 9:00 a.m. on Tuesday, March 1, 1977, in Room 514 of the New Federal Building, 915 Second Avenue, Seattle, Washington 98174.

Issued: December 20, 1976, Bethesda, Maryland.

ATOMIC SAFETY AND LICENSING BOARD,
JAMES R. YORE,
Chairman.

[FR Doc.76-38303 Filed 12-29-76;8:45 am]

[Docket No. 50-278]

PHILADELPHIA ELECTRIC CO. ET AL.

Proposed Issuance of Amendments to Facility Operating Licenses

The Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License No. DPR-56 issued to Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company (the licensees), for operation of the Peach Bottom Atomic Power Station, Unit No. 3, located in Peach Bottom, York County, Pennsylvania.

The proposed amendment would modify the provisions in the Technical Specifications to authorize operation with (1) up to 188 GE 8 X 8 reload fuel assemblies, (2) one Pressurized Test Assembly, (3) one Fast Scram Control Rod Drive, (4) holes drilled in the lower tieplate of all reload 8 X 8 fuel bundles and (5) a modified Rod Sequence Control System, in accordance with the licensees' application for amendment, dated November 17, 1976.

Prior to issuance of the proposed license amendment, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's rules and regulations.

By January 31, 1977, the licensee may file a request for a hearing and any person whose interest may be affected by this proceeding may file a request for a hearing in the form of a petition for leave to intervene with respect to the issuance of the amendment to the subject facility operating license. Petitions for leave to intervene must be filed under oath or affirmation in accordance with the provisions of § 2.714 of 10 CFR Part 2 of the Commission's regulations. A petition 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 this FEDERAL REGISTER notice and § 2.714, and must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, by the above date. A copy of the petition and/or request for a hearing should be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Troy B. Conner, Jr., Esquire, Conner and Knotts, 1747 Pennsylvania Avenue, N.W., Washington, D.C. 20006, the attorney for the licensees.

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 licensing board, designated by the Commission or 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 November 17, 1976, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Martin Memorial Library, 159 E. Market Street, York, Pennsylvania 17401.

Dated at Bethesda, Maryland, this 22d day of December 1976.

For the Nuclear Regulatory Commission.

GEORGE LEAR,
Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc.76-38299 Filed 12-29-76;8:45 am]

[Docket Nos. STN 50-522 and STN 50-523]

PUGET SOUND POWER AND LIGHT CO., ET AL.

Order Convening Hearing

In the Matter of Puget Sound Power and Light Co., Portland General Electric Company, Pacific Power and Light Company, and the Washington Water Power Company (Skagit Nuclear Power Project, Units 1 and 2).

The Atomic Safety and Licensing Board has been advised by Puget Sound Power and Light Company, et al. (Applicants), the Oregon Department of Energy, and the Regulatory Staff of the Commission, that the Board's suggestion of March 1, 1977 is a convenient date to resume the evidentiary hearings respecting the need for power issue in this proceeding. No objection to this date has been received from other parties to the proceeding.

The Board will schedule this hearing to convene on the same time, date, and at the same place that the Pebble Springs Board has set for the resumption of the evidentiary hearing for the consideration of the need for power issue in that proceeding. The two hearings will constitute a joint session but there is not any consolidation of the proceedings. The procedures therefore will be similar to those had in the August 1976 joint session of evidentiary hearings.

The Regulatory Staff has requested that February 15, 1977 be designated as the date on or before which all statements proposed to be offered as evidence in the proceeding shall be prepared and served upon all parties and the Board. From today's date, February 15, 1977 appears to be well enough in advance to provide adequate opportunity for preparation and service of such statements. The Board finds that good cause has been shown to adopt February 15th and the Board, therefore, orders that February 15, 1977 is the date on or before which all proposed statements intended to be offered as evidence, either orally or by documents, shall be served upon all parties to the proceeding and to the Board and filed with the Commission. Additional dates for specific submittals will be provided by a subsequent order.

Wherefore, it is Ordered, in accordance with the Atomic Energy Act, as amended, and the Rules of Practice of the Nuclear Regulatory Commission, that the evidentiary hearings to consider the need for power issue in this proceeding shall resume and shall commence at 9:00 a.m. on Tuesday, March 1, 1977, in Room 514 of the New Federal Building, 915 Second Avenue, Seattle, Washington 98174.

Issued: December 20, 1976, Bethesda, Maryland.

ATOMIC SAFETY AND LICENSING BOARD,
SAMUEL W. JENSCH,
Chairman.

[FR Doc. 76-38304 Filed 12-29-76; 8:45 am]

[Docket No. 50-573]

WESTINGHOUSE ELECTRIC CORP.

Application for and Consideration of Issuance of Facility Export License

Please take notice that Westinghouse Electric Corporation, Pittsburgh, Pennsylvania, submitted to the Nuclear Regulatory Commission an application for a license to authorize the export of a pressurized water reactor with a thermal power level of 1876 megawatts to the Republic of Korea and that the issuance

of such license is under consideration by the Nuclear Regulatory Commission.

No license authorizing the proposed reactor export will be issued until the Nuclear Regulatory Commission determines that such export is within the scope of and consistent with the terms of an applicable agreement for cooperation arranged pursuant to section 123 of the Atomic Energy Act of 1954, as amended (Act), nor until the Nuclear Regulatory Commission has found that:

(a) The application complies with the requirements of the Act, and the Commission's regulations set forth in 10 CFR, Chapter 1, and

(b) The reactor proposed to be exported is a utilization facility as defined in said Act and regulations.

In its review of applications solely to authorize the export of production or utilization facilities, the Nuclear Regulatory Commission does not evaluate the health and safety characteristics of the facility to be exported. Consequently, there are no safety analysis or Advisory Committee on Reactor Safeguards reports.

Unless on or before January 31, 1977, a request for a hearing is filed with the Nuclear Regulatory Commission by the applicant, or a petition for leave to intervene is filed by any person whose interest may be affected by the proceeding, the Director of the Office of International Programs may, upon the determinations and findings noted above, cause to be issued to Westinghouse Electric Corporation a facility export license and may cause to be published in the FEDERAL REGISTER a notice of issuance of the license. If a request for a hearing or a petition for leave to intervene is filed within the time prescribed in the notice, the Nuclear Regulatory Commission will issue a notice of hearing or an appropriate order.

A copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, N.W., Washington, D.C.

Dated at Bethesda, Maryland this 20th day of December, 1976.

For the Nuclear Regulatory Commission.

MICHAEL A. GUHIN,
Assistant Director, Export/Import and International Safeguards, Office of International Programs.

[FR Doc.76-38305 Filed 12-29-76;8:45 am]

[Docket No. 50-574]

WESTINGHOUSE ELECTRIC CORP.

Application for and Consideration of Issuance of Facility Export License

Please take notice that Westinghouse Electric Corporation, submitted to the Nuclear Regulatory Commission an application for a license to authorize the export of a pressurized water reactor with a thermal power level of 1876 megawatts to the Philippines and that the issuance of such license is under consideration by the Nuclear Regulatory Commission.

No license authorizing the proposed reactor export will be issued until the Nuclear Regulatory Commission determines that such export is within the scope of and consistent with the terms of an applicable agreement for cooperation arranged pursuant to section 123 of the Atomic Energy Act of 1954, as amended (Act), nor until the Nuclear Regulatory Commission has found that:

(a) The application complies with the requirements of the Act, and the Commission's regulations set forth in 10 CFR, Chapter 1, and

(b) The reactor proposed to be exported is a utilization facility as defined in said Act and regulations.

In its review of applications solely to authorize the export of production or utilization facilities, the Nuclear Regulatory Commission does not evaluate the health and safety characteristics of the facility to be exported. Consequently, there are no safety analysis or Advisory Committee on Reactor Safeguards reports.

Unless on or before January 31, 1977, a request for a hearing is filed with the Nuclear Regulatory Commission by the applicant, or a petition for leave to intervene is filed by any person whose interest may be affected by the proceeding, the Director of the Office of International Programs may, upon the determinations and findings noted above, cause to be issued to Westinghouse Electric Corporation a facility export license and may cause to be published in the FEDERAL REGISTER a notice of issuance of the license. If a request for a hearing or a petition for leave to intervene is filed within the time prescribed in the notice, the Nuclear Regulatory Commission will issue a notice of hearing or an appropriate order.

A copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, N.W., Washington, D.C.

Dated at Bethesda, Maryland this 17th day of December, 1976.

For The Nuclear Regulatory Commission.

MICHAEL A. GUHIN,
Assistant Director, Export/Import and International Safeguards, Office of International Programs.

[FR Doc.76-38306 Filed 12-29-76;8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS; SUBCOMMITTEES ON THE CHEROKEE NUCLEAR STATION, UNITS 1, 2, AND 3 AND THE PERKINS NUCLEAR STATION, UNITS 1, 2, AND 3

Meeting

In accordance with the purposes of sections 29 and 182 b. of the Atomic Energy Act (42 U.S.C. 2039, 2232 b.), the ACRS Subcommittees on the Cherokee Nuclear Station, Units 1, 2, and 3 and the Perkins Nuclear Station, Units 1, 2, and 3, will hold a meeting on January 19, 1977 at the Roadway Inn/Airport, 4040 I-85 and Little Rock Road, Charlotte, NC (704/394-4111) to review the application of the Duke Power Company for a permit to construct Units 1, 2, and 3 of these Stations.

The agenda for subject meeting shall be as follows:

WEDNESDAY, JANUARY 19, 1977

8:30 A.M.—9:00 A.M. (OPEN)

The Subcommittees with any of their consultants who may be present will meet in Executive Session to explore their preliminary opinions, based upon their independent review of safety reports, regarding matters which should be considered in order to formulate a report and recommendations to the full Committee.

9:00 A.M. UNTIL THE CONCLUSION OF BUSINESS (OPEN)

The Subcommittees will hear presentations by representatives of the NRC Staff, the Duke Power Company, and their consultants, and will hold discussions with these groups pertinent to this review.

At the conclusion of this session, the Subcommittees may caucus to determine whether the matters identified in the initial session have been adequately covered and whether the project is ready for review by the full Committee. Upon conclusion of this caucus, the Subcommittees will announce their determination.

It may be necessary for the Subcommittees to hold one or more closed sessions for the purpose of exploring with the NRC Staff and Applicant matters involving proprietary information, particularly with regard to specific features of plant design and plans related to plant security.

I have determined, in accordance with subsection 10(d) of Pub. L. 92-463, that it is necessary to conduct the above closed sessions to protect confidential proprietary information (5 U.S.C. 552 (b)(4)).

Practical considerations may dictate alterations in the above agenda or schedule. The Chairman of the Subcommittees 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.

The Advisory Committee on Reactor Safeguards is an independent group established by Congress to review and report on each application for a construction permit and on each application for an operating license for a reactor facility and on certain other nuclear safety matters. The Committee's reports become a part of the public record. Although ACRS meetings are ordinarily open to the public and provide for oral or written statements to be considered as a part of the Committee's information gathering procedure concerning the health and safety of the public, they are not adjudicatory type hearings such as are conducted by the Nuclear Regulatory Commission's Atomic Safety & Licensing Board as part of the Commission's licensing process. ACRS meet-

ings do not normally treat matters pertaining to environmental impacts outside the safety area.

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 may do so by providing 15 readily reproducible copies to the Subcommittees at the beginning of the meeting. Comments should be limited to safety related areas within the Committee's purview.

Persons desiring to mail written comments may do so by sending a readily reproducible copy thereof in time for consideration at this meeting. Comments postmarked no later than January 12, 1977, to Mr. Gary R. Quittschreiber, ACRS, NRC, Washington, DC 20555, will normally be received in time to be considered at this meeting.

Background information concerning items to be considered at this meeting can be found in documents on file and available for public inspection at the NRC Public Document Room, 1717 H St., N.W., Washington, DC 20555; at the Cherokee County Library, 300 E. Rutledge Ave., Gaffney, SC 29340 (regarding the Cherokee Station); and at the Davie County Public Library, 461 N. Main Street, Mocksville, NC 27028 (regarding the Perkins Station).

(b) Those persons wishing to make an oral statement at the meeting should make a written request to do so, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Subcommittees will receive oral statements on topics relevant to the Committee's purview at an appropriate time chosen by the Chairman.

(c) Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call on January 18, 1977 to the Office of the Executive Director of the Committee (telephone 202/634-1374, Attn: Mr. Gary R. Quittschreiber) between 8:15 a.m. and 5:00 p.m., EST.

(d) Questions may be propounded only by members of the Subcommittees and their consultants.

(e) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct 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.

(f) Persons with agreements or orders permitting access to proprietary information may attend portions of ACRS meetings where this material is being discussed upon confirmation that such agreements are effective and relate to the material being discussed.

The Executive Director of the ACRS should be informed of such an agreement at least three working days prior to the meeting so that the agreement can be confirmed and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. Minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to Mr. Gary R. Quittschreiber of the ACRS Office, prior to the beginning of the meeting.

(g) A copy of the transcript of the open portion(s) of the meeting where factual information is presented will be available for inspection on or after January 26, 1977 at the NRC Public Document Room, 1717 H St., N.W., Washington, D.C. 20555; at the Cherokee County Library, 300 E. Rutledge Ave., Gaffney, S.C. 29340 (regarding the Cherokee Station); and at the Davie County Public Library, 461 N. Main St., Mocksville, N.C. 27028 (regarding the Perkins Nuclear Station).

Copies of the minutes of the meeting will be made available for inspection at the NRC Public Document Room, 1717 H St., N.W., Washington, D.C. 20555 after April 19, 1977.

Copies may be obtained upon payment of appropriate charges.

Dated: December 22, 1976.

JOHN C. HOYLE,
Advisory Committee Management Office.

[FR Doc.76-38296 Filed 12-29-76;8:45 am]

PRIVACY PROTECTION STUDY COMMISSION

RESEARCH AND STATISTICS

Supplemental Notice of Hearings

The Privacy Protection Study Commission, in a notice published in the FEDERAL REGISTER on December 16, 1976, CFR, Vol. 41, No. 243, p. 55007), announced that it will hold hearings on its draft recommendations on Research and Statistics between 9:30 a.m. and 5:30 p.m. on January 5 and 6, 1977 in Room 2358, Rayburn House Office Building, Washington, D.C.

The purpose of this supplemental notice is to announce that written statements concerning the Commission's draft recommendations will be accepted and made part of the record of the Commission until February 5, 1977 which is thirty days after the last day of the hearings.

CAROLE W. PARSONS,
Executive Director, Privacy Protection Study Commission.

[FR Doc.76-38339 Filed 12-29-76;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[Administrative Proceeding File No. 3-5136
File Nos. 2-26768, 22-8118]

CANADIAN PACIFIC LIMITED

Application and Opportunity for Hearing

DECEMBER 21, 1976.

Notice Is Hereby Given That Canadian Pacific Limited ("Canadian Pacific") filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeship of Bank of Montreal Trust Company ("Montreal Trust") under two indentures, one of which has been qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Montreal Trust from acting as Trustee under a new indenture.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest it shall within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such Section provides, in effect, with certain exceptions that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same issuer are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of the issuer are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures.

Canadian Pacific alleges that: (1) Montreal Trust presently is acting as trustee under the Equipment Trust Agreement for Canadian Pacific Railway Company Equipment Trust, Series R (the "Series R Indenture") which is one of the six presently existing equipment trusts. The Series R Indenture was qualified under the Act. Of the $25,020,000 principal amount of Series R Certificates issued, $9,060,000 remains outstanding, and has a final maturity of July 17, 1982.

(2) None of the six existing equipment trusts is in default.

(3) Canadian Pacific intends to create, on or about January 1, 1977, an equipment trust to be designated as Canadian Pacific Limited Equipment Trust, Series W, under which approximately $35,000,-

000 principal amount of equipment trust certificates are expected to be issued pursuant to an Equipment Trust Agreement (the "Series W Indenture"). The Series W Indenture concerns a private offering not subject to the Act. The Series W Trust has a final maturity of January 15, 1992. Canadian Pacific desires to appoint Montreal to act as trustee under the Series W Indenture.

(4) The Series R equipment trust certificates are, and the Series W equipment trust certificates will be, secured by separate lots of identified railroad cars, so that should Montreal have occasion to proceed against the security under one of these trusts, such action would not affect the security, or the use of any security, under the other trust. Thus, the existence of the other trusteeship should in no way inhibit or discourage Montreal's actions.

(5) The trusteeship of Montreal Trust under the Series R equipment trust certificates, qualified under the Act, and under the new Series W equipment trust certificates not subject to the Act is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Montreal Trust from acting as trustee of either said indenture.

Canadian Pacific has waived notice of hearing, hearing, and any and all rights to specify procedures under the Rules of Practice of the Securities and Exchange Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, which is a public document on file in the office of the Commission at the Public Reference Room, Room 6101, 1100 L Street, N.W., Washington, D.C. 20549.

Notice Is Further Given that any interested person may, not later than January 17, 1977, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropirate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.76-38257 Filed 12-29-76;8:45 am]

[File No. 81]

ELPAC, INC.

Application and Opportunity for Hearing

DECEMBER 16, 1976.

Notice Is Hereby Given that Elpac, Inc. ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), that Applicant be granted an exemption from the reporting provisions of section 15(d) of that Act.

Section 15(d) provides that each issuer who has filed a registration statement which has become effective pursuant to the Securities Act of 1933, as amended, shall file with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, such supplementary and periodic information, documents, and reports as may be required pursuant to section 13 of the 1934 Act in respect of a security registered pursuant to section 12 of that Act.

Section 12(h) of the 1934 Act empowers the Commission to exempt, in whole or in part, any issuer or class of issuers from the provisions of section 15(d) or if the Commission finds, by reason of the number of public investors, amount of trading interest in the securities, and nature and extent of the activities of the issuer, income or assets of the issuer or otherwise, that such exemption is not inconsistent with the public interest or the protection of investors.

The Applicant states, in part:

1. Applicant is a Delaware corporation subject to the reporting provisions of section 15 (d) of the 1934 Act.

2. As a result of a merger on August 27, 1974, the Applicant became a wholly-owned subsidiary of Newpark Resources, Inc., a Nevada corporation.

In the absence of an exemption, Applicant would be subject to the periodic reporting requirements of section 15(d) of the 1934 Act through December 31, 1976.

Applicant argues that there would be no useful purpose served by the filing of continued reports for the fiscal year ending December 31, 1976, in view of the fact it has but one stockholder.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 500 North Capitol Street, Washington, D.C. 20549.

Notice is further given that any interested person not later than January 10, 1977 may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities & Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. Persons who request a hearing or advise as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after said date an order granting the application may be issued upon request or upon the Commission's own motion.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.76-38256 Filed 12-29-76;8:45 am]

[Rel. No. 34-13114]

TRADING IN SECURITIES ISSUED OR GUARANTEED BY THE GOVERNMENT OF HUNGARY

Applicability of Johnson Act

On January 22, 1974, the Commission published Securities Exchange Act Release No. 10610,[1] "Trading in Securities Issued or Guaranteed by the Governments of Bulgaria, Hungary and Romania." In that release the Commission withdrew, effective January 28, 1974, its earlier request that brokers and dealers refrain from effecting transactions in securities issued or guaranteed by the governments of Bulgaria, Hungary and Romania. The Commission advised, however, that its action was subject to the Johnson Act (18 U.S.C. 955), which prohibits trading in securities issued by foreign governments after April 13, 1934 if such foreign government is in default of obligations to the United States and is not a member of both the International Monetary Fund and the International Bank for Reconstruction and Development.

The Commission noted in Securities Exchange Act Release No. 10610 that it had been advised by the staff of the Department of State that Hungary was in default in payment of its obligations to the United States and, not being a member of both the International Monetary Fund and the International Bank for Reconstruction and Development, appeared to be subject to the Johnson Act prohibitions. The Commission has recently been advised by the Acting General Counsel of the Department of the Treasury that Hungary is not now in default of obligations to the United States and that, in his opinion, Hungary is therefore not now subject to the restrictions of the Johnson Act, Accordingly, the Commission believes it is now appropriate to withdraw its previous cautionary notice, in Securities Exchange

[1] 39 FR 3932 (Jan. 31, 1974).

Act Release No. 10610, that "the Johnson Act may restrict trading in bonds issued by Hungary."

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

DECEMBER 28, 1976.

[FR Doc.76-38466 Filed 12-29-76;8:45 am]

SMALL BUSINESS ADMINISTRATION

CONCORD DISTRICT ADVISORY COUNCIL

Public Meeting

The Small Business Administration Concord District Advisory Council will hold a public meeting at 10 a.m. until 12 noon, Wednesday, January 19, 1977, in the Federal Building, 55 Pleasant Street, Room 213, Concord, New Hampshire, to discuss such matters as may be presented by members, staff of the Small Business Administration or others present. For further information write or call Bert Teague, at the above address (603) 834-7011.

Dated: December 20, 1976.

HENRY V. Z. HYDE, Jr.,
Deputy Advocate for Advisory Councils.

[FR Doc.76-38340 Filed 12-29-76;8:45 am]

LENDING INSTITUTIONS

Maximum Interest Rates

Notice is given that the Small Business Administration ("SBA") has established the maximum rates of interest that lending institutions participating with SBA may charge on loans approved by SBA after January 1, 1977, under Section 7 of the Small Business Act, as amended, and Section 502 of the Small Business Investment Act, as amended.

Effective January 1, 1977, the maximum rate of interest acceptable to SBA on a guaranteed loan or guaranteed revolving line of credit shall be nine and one-quarter percent (9¼%) per year, and the maximum rate on an immediate participation loan shall be eight and one-quarter percent (8¼%) per year. These maximum interest rates are three-quarters percent (¾%) lower than those published in the FEDERAL REGISTER on October 13, 1976 (41 FR 44903), and shall remain in effect until notification of a change is issued by SBA.

The "SBA Optional Peg Rate" for the quarter-year beginning January 1, 1977, will be seven and one-quarter percent (7¼%) per year. This is an optional "peg" rate for use in connection with fluctuating-interest rate loans made in participation with SBA.

This Notice is issued under 13 CFR 120.3(b)(2)(iv).

(Catalog of Federal Domestic Assistance Programs:
No. 59.002 Economic Injury Disaster Loans (E.F.)
No. 59.012 Small Business Loans
No. 59.013 State and Local Development Company Loans
No. 59.014 Coal Mine Health and Safety Loans
No. 59.017 Meat and Poultry Inspection Loans (Consumer Protection Loans)
No. 59.018 Occupational Safety Health Loans
No. 59.001 Displaced Business Loans
No. 59.003 Economic Opportunity Loans for Small Business
No. 59.010 Product Disaster Loans (E)
No. 59.020 Base Closing Economic Injury Loans (E.F.)
No. 59.021 Handicapped Assistance Loans (E.F.)
No. 59.022 Emergency Energy Shortage Economic Injury Loans (E.F.)
No. 59.023 Strategic Arms Economic Injury Loans (E.F.)
No. 59.024 Water Pollution Control Loans (E.F.)
No. 59.025 Air Pollution Control Loans (E.F.).)

Dated: December 28, 1976.

LOUIS F. LAUN,
Deputy Administrator.

[FR Doc.76-38459 Filed 12-29-76;8:45 am]

DEPARTMENT OF STATE

[Public Notice CM-7/11]

STUDY GROUP 2 OF THE U.S. NATIONAL COMMITTEE FOR THE INTERNATIONAL RADIO CONSULTATIVE COMMITTEE (CCIR)

Meeting

The Department of State announces that Study Group 2 of the U.S. National Committee for the International Radio Consultative Committee (CCIR) will meet on January 26, 1977, at 9:30 a.m. in Room 521, Federal Office Building 10B, 7th and Independence Avenue SW., Washington, D.C.

Study Group 2 deals with matters relating to the communications for scientific satellites, space probes, spacecraft, exploration satellites (e.g., meteorological and geodetic), and to interference problems concerning the radioastronomy and radar astronomy services. The purpose of the meeting will be a review of work programs in preparation for the international meeting of Study Group 2, Geneva, September 1977.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Admittance of public members will be limited to the seating available.

Dated: December 22, 1976.

JOHN J. O'NEILL, Jr.,
Director, Office of International Communications Policy.

[FR Doc.76-38341 Filed 12-29-76;8:45 am]

[Public Notice CM-7/12]

STUDY GROUP CMTT OF THE U.S. NATIONAL COMMITTEE FOR THE INTERNATIONAL RADIO CONSULTATIVE COMMITTEE (CCIR)

Meeting

The Department of State announces that Study Group CMTT of the U.S. National Committee for the International Radio Consultative Committee (CCIR) will meet on January 26, 1977, at 10 a.m. in Room 4071, Communications Satellite Corporation, 950 L'Enfant Plaza SW., Washington, D.C.

Study Group CMTT deals with technical standards for telecommunication systems to permit the transmission of sound and television programs over long distances. The purpose of the meeting on January 26 is to review the work under way in preparation for the international meeting of CMTT in Geneva in September 1977.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Admittance of public members will be limited to the seating available.

Dated: December 22, 1976.

JOHN J. O'NEILL, Jr.,
Director, Office of International Communications Policy.

[FR Doc.76-38342 Filed 12-29-76;8:45 am]

[Public Notice No. CM-7/10]

INTERNATIONAL TELEGRAPH AND TELEPHONE CONSULTATIVE COMMITTEE (CCITT); STUDY GROUP 1 OF THE U.S. NATIONAL COMMITTEE

Meeting

The Department of State announces that Study Group 1 of the U.S. CCITT National Committee will meet on January 18-19, 1977 at 10:00 a.m. in Room 511 of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. This Study Group deals with U.S. Government regulatory aspects of international telegraph and telephone operations and tariffs.

The Committee will consider the development of U.S. positions to be taken at international CCITT meetings now scheduled for March and April, 1977 in Geneva, Switzerland. The Committee will discuss aspects of global maritime services and questions related to the settlement of accounts in international telecommunications relations on the first day (January 18). The following day's considerations will study questions and positions relative to international leased channel and public data services.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Admittance of public members will be limited to the seating available.

Dated: December 17, 1976.

ARTHUR L. FREEMAN,
Chairman, U.S. CCITT National Committee.

[FR Doc.76-38249 Filed 12-29-76;8:45 am]

[Public Notice No. CM-7/9]

OCEAN AFFAIRS ADVISORY COMMITTEE

Meeting

The Ocean Affairs Advisory Committee will meet on January 25, 1977 in

conference room 1408 of the Department of State, Washington, D.C. at 2:00 p.m.

The Committee will discuss the future of international cooperation in marine science and technology and executive branch organization for dealing with marine science and technology, including the further development of national marine science and ocean policy and upcoming programs and events. This session will be open to the public. The public will be admitted to the session to the limits of seating capacity and will be given the opportunity to participate in discussions according to the instructions of the Chairman.

The Ocean Affairs Advisory Committee will continue on January 26 in a session which will not be open to the public since the discussions will be devoted to matters exempt from public disclosure under 5 U.S.C. 552(b)(1) and the public interest requires that such discussions be withheld from disclosure. The purpose of the discussion will be to elicit views on alternatives and options open to the United States in development of international marine science and technology policy and its application in the conduct of U.S. foreign relations, and to assist in the preparations for future negotiations in these areas. The disclosure of the alternatives and options under consideration at this time, and discussions of their pros and cons, could be prejudicial to the U.S. negotiating position and the conduct of foreign relations. This portion of the meeting will include classified briefings and examination and discussion of classified documents, pursuant to Executive Order 11652.

Dated: December 21, 1975.

ROZANNE L. RIDGWAY,
Deputy Assistant Secretary for Oceans and Fisheries Affairs.

[FR Doc.76-38248 Filed 12-29-76;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RADIO TECHNICAL COMMISSION FOR AERONAUTICS (RTCA) EXECUTIVE COMMITTEE

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1) notice is hereby given of a meeting of the RTCA Executive Committee to be held January 28, 1977, Air Transport Association of America Conference Room A-B-C, 5th Floor, 1709 New York Avenue NW., Washington, D.C., commencing at 9:30 a.m. The Agenda for this meeting is as follows: (1) Approval of Minutes of November 3, 1976 and November 17, 1976 Meetings; (2) Special Committee Activities Report for November-December, 1976; (3) Chairman's Report of RTCA Administration and Activities; (4) Briefing on Global Positioning System; (5) Consideration of Reports by Special Committees; and (6) Consideration of Establishing Special Committees.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the hearing. Persons wishing to attend and persons wishing to present oral statements should notify, not later than the day before the meeting, and information may be obtained from, RTCA Secretariat, 1717 H Street NW., Washington, D.C. 20006; (202) 296-0484. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on December 16, 1976.

KARL F. BIERACH,
Designated Officer.

[FR Doc.76-38097 Filed 12-29-76;8:45 am]

National Highway Traffic Safety Administration

Federal Highway Administration

EVALUATION OF ADEQUACY OF HIGHWAY SAFETY STANDARDS

Public Meeting

This notice announces that the National Highway Traffic Safety Administration (NHTSA) and the Federal Highway Administration (FHWA) will hold a joint public meeting, to receive preliminary briefings on the findings of the Safety Management Institute and Roy Jorgensen, Associates, Inc., two contractors working for the Department of Transportation on a study of the adequacy and appropriateness of the highway safety program standards. Initial analyses made by Department staff will also be discussed at the meeting.

The study is being conducted pursuant to section 208(b) of the Federal-Aid Highway Act of 1976, Pub. L. 94-280, 90 Stat. 454, which provides that the Secretary of Transportation shall conduct an evaluation of the adequacy and appropriateness of all uniform safety standards established pursuant to section 101 of the Highway Safety Act of 1966, Pub. L. 89-564, 80 Stat. 731 (23 U.S.C. 402).

The meeting will be held January 6, 1977, from 9 a.m. to noon and from 1 p.m. to 4 p.m. at the Department of Transportation Headquarters Building, Room 6244, 400 7th Street, SW., Washington, D.C. 20590.

State and local officials and other interested individuals and groups are invited to attend the meeting and to present oral or written comments. Persons may make written comments subsequent to the date of the meeting.

Such comments should be sent to Mr. H. V. Hawley, NHTSA, Room 5130, 400 7th Street, SW., Washington, D.C. 20590. Individuals with questions about the meeting may call Mr. Hawley at (202) 426-1693.

(Sec. 208(b), Pub. 92-280, 90 Stat. 454; Sec. 101, Pub. L. 89-564, 80 Stat. 731 (23 U.S.C. 401 et seq.).

Issued on: December 23, 1976.

HOWARD L. ANDERSON,
Associate Administrator for Safety, Federal Highway Administration.

FRED W. VETTER, Jr.,
Associate Administrator for Traffic Safety Programs, National Highway Traffic Safety Administration.

[FR Doc.76-38226 Filed 12-29-76;8:45 am]

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

GRANTING OF RELIEF PURSUANT TO SECTION 925(c), TITLE 18, UNITED STATES CODE

Notice is hereby given that pursuant to 18 U.S.C. section 925(c) the following named persons have been granted relief from disabilities imposed by Federal laws with respect to acquisition, transfer, receipt, shipment or possession of firearms incurred by reason of their convictions of crimes punishable by imprisonment for a term exceeding one year.

It has been established to my satisfaction that the circumstances regarding the convictions of each applicant's record and reputation are such that the applicants will not be likely to act in a manner dangerous to public safety and that the granting of the relief will not be dangerous to the public interest.

Adams, Marion Alven, Route 2, Bardstown, Kentucky, convicted on November 25, 1974, in the Nelson Circuit Court, Nelson County, Kentucky.

Adelsberger, Robert G., 435 Keeney Drive, St. Charles, Missouri, convicted on April 13, 1954, in the Circuit Court, St. Louis, Missouri.

Anzivino, Lawrence Paul, Jr., South 30 West 29838 Sunset Drive, Waukesha, Wisconsin, convicted on September 17, 1963, and on March 10, 1965, in the County Court, Branch II, Waukesha, Wisconsin.

Ashley, Thomas Jason, 115 Hall Street, Jonesville, North Carolina, convicted on May 12, 1975, in the United States District Court for the Middle District of North Carolina.

Awtrey, Richard L., 3109 South St. Paul, Wichita, Kansas, convicted on March 20, 1967, in the Sedgwick County District Court, Wichita, Kansas.

Barber, George L., 7800 East 100th Street, Kansas City, Missouri, convicted on October 19 1938, in the District Court, Third Judicial District, Prowers County, Colorado; and on November 15, 1939, in the District Court of Sedgwick County, Kansas.

Beckman, William H., Rhame, North Dakota, convicted on April 6, 1931, in the District Court of North Dakota.

Bernard, James E., 2701 Clear Creek, South Lake Tahoe, California, convicted on January 11, 1973, in the United States District Court, Northern District of Illinois, Eastern Division, Illinois.

Blackwood, Robert A., 56 Inman Circle, NE, Atlanta, Georgia, convicted on April 24, 1972, in the United States District Court, Southern District of New York, New York; and on November 21, 1972, in the United States District Court, Northern District of Georgia, Atlanta, Georgia.

Byrd, David K., 1250 East Main Street, Reedsburg, Wisconsin, convicted on September 22, 1972, in the County Court, Branch II, Sauk County, Wisconsin.

Cerda, James D., 2807 Anita Lane, Monroe, Louisiana, convicted on September 19, 1974, in the Fourth Judicial District Court, Parish of Ouachita, Louisiana.

Cooley, Eugene P., 19013 Wildemere, Detroit, Michigan, convicted on September 25, 1961, in the Recorder's Court, Detroit, Michigan.

Coon, Raymond S., 2110 Broadway, Everett, Washington, convicted on July 6, 1967, in the Superior Court for the County of Snohomish, Washington.

Dennison, Roger A., 53 Grove Street, Manchester, Connecticut, convicted on November 10, 1967, in the Hartford County Superior Court, Hartford, Connecticut.

Erspamer, Mark F., 1000 Lakeshore Drive, Moose Lake, Minnesota, convicted on November 14, 1969, and on December 17, 1971, in the District Court, Fourth Judicial District, Hennepin County, Minnesota.

Frye, Richard Wesley, 16 SW Pacific Avenue, Chehalis, Washington, convicted on October 29, 1973, in the Superior Court of Washington, Lewis County.

Gireth, Leslie B., 20006 Blackhawk, Chatsworth, California, convicted on September 28, 1935, and on October 26, 1955, in the Los Angeles Superior Court, Pasadena, California; and on February 26, 1969, in the Los Angeles County Superior Court, Los Angeles, California; and on January 22, 1974, in the Los Angeles Municipal Court, Los Angeles, California.

Goldthorpe, James W., 2551 Sierra Boulevard, Sacramento, California, convicted on December 1, 1958, in the Graham County Superior Court, Graham County, Arizona.

Gross, Felton Leroy, 1113 Sigsbee, SE, Grand Rapids, Michigan, convicted on December 29, 1958, in the Ingham County Circuit Court, Mason, Michigan.

Hallopeter, Donald R., 8025 NE 142nd, Bothell, Washington, convicted on July 17, 1968, in the Superior Court, Snohomish County, Washington.

Hamilton, David, 2533 Glendale, Detroit, Michigan, convicted on March 29, 1961, in the Circuit Court, Wayne County, Michigan.

Hayden, Wayne M., RR No. 3, Box 411, Martinsville, Indiana, convicted on September 27, 1939, in the Morgan County Circuit Court, Martinsville, Indiana.

Hockaday, Lafon Evans, Jr., 5471 SW 78th Street, Miami, Florida, convicted on September 9, 1971, in the United States District Court for the Southern District of Florida.

Honebrink, Ernest W., 538 Bean Street, Anoka, Minnesota, convicted on July 19, 1944, in the General Court Martial, Fort Sheridan, Illinois.

Hudson, Billy A., Route 6, Box 225, Rocky Mount, Virginia, convicted on September 21, 1970, in the Corporation Court of Lynchburg, Virginia.

Johnson, Adrian W., 4430 Paradise Avenue West No. A, Tacoma, Washington, convicted on January 14, 1970, in the Pierce County Superior Court, Tacoma, Washington.

Jones, Arestine, 2620 Kim Avenue, Sacramento, California, convicted on August 9, 1962, in the United States District Court for the Northern District of California, Northern Division.

Kuethe, Robert W., 510 East University Avenue, Bloomington, Illinois, convicted on July 27, 1970, in the Superior Court, Glynn County, Georgia.

Laughridge, Roy L., 547 North Anteros Street, Stockton, California, convicted on October 5, 1951, in the Superior Court of San Joaquin County, California.

McCauley, Leroy A., 241 SW Lamar Street, Myrtle Creek, Oregon, convicted on April 28, 1971, in the Circuit Court, Douglas County, Roseburg, Oregon.

Marks, Elmer, Jr., Lakeshore Drive, Ontonagon, Michigan, convicted on or about Januanary 13, 1960, in the Circuit Court for the County of Ontonagon, Michigan.

Massey, James G., Route 3, Keelers Mill Road, Greenville, South Carolina, convicted on May 10, 1963, in the Court of General Sessions, Greenville, South Carolina.

Maxwell, Robert H., 740 S. Erady Street, Dearborn, Michigan, convicted on August 25, 1952, in the Circuit Court for Kalamazoo County, Michigan.

Meyer, William T., RR 1, Box 147, Riverside, Iowa, convicted on May 18, 1970, and on February 22, 1971, in the District Court, Dickinson County, Iowa.

Monk, Rodney, 1505 Fourth Avenue, North, Fargo, North Dakota, convicted on September 24, 1964, and on November 29, 1968, in the District Court, First Judicial District, Cass County, North Dakota.

Mulroyan, Donald B., 1376 Selby Avenue, St. Paul, Minnesota, convicted on April 11, 1972, in the District Court, Second Judicial District for Ramsey County, Minnesota.

Murray, Harvey Gene, 519 Road of Remembrance, Jackson, Mississippi, convicted on October 20, 1972, in the United States District Court, Southern District of Mississippi.

Myers, William Lee, PO Box 524, Happy Top Section, Andrews, North Carolina, convicted on November 17, 1969, in the United States District Court for the Middle District of North Carolina; and on March 13, 1973, in Scotland County, North Carolina Superior Court.

Nelson, Gerald John, 16 East 15th Street, Minneapolis, Minnesota, convicted on October 3, 1973, in the District Court, Stearns County, St. Cloud, Minnesota.

Nelson, Richard L., 942 N. Adoline, Fresno, California, convicted on July 14, 1969, in the Superior Court, Merced County, Merced, California; and on August 29, 1972, in the Superior Court, Fresno County, Fresno, California.

Nielsen, Paul L., 214 North 6th Avenue, Wausau, Wisconsin, convicted on April 17, 1973, in the County Court, Marathon County, Wausau, Wisconsin.

Owen, Melton D., 7381 20th Avenue, Jenison, Michigan, convicted on January 17, 1949, in the Circuit Court for the County of Kent, Michigan.

Peters, Charles R., 3520 Horse Drive, Indianapolis, Indiana, convicted on December 26, 1968, in the Criminal Court, Division 1, Merion County, Indianapolis, Indiana.

Pierstorff, Duane H., 123 West Fifth Street, Central City, Kentucky, convicted on May 16, 1963, in the Dane County Court, Branch II, Madison, Wisconsin; and on July 6, 1972, in the Fayette County Circuit Court, Second Division, Lexington, Kentucky.

Plaisance, Lawrence N., 5849 Coubrá Drive, Marrero, Louisiana, convicted on November 30, 1961, in the 24th Judicial District Court, Jefferson Parish, Louisiana.

Prestridge, Charles William, 1821 Pennsylvania Avenue, South, St. Louis Park, Minnesota, convicted on February 3, 1971, in the District Court for the Fourth Judicial District, County of Hennepin, Minnesota; and on June 15, 1971, in the United States District Court for the District of Minnesota, Fourth Division.

Ramsay, James W., 3323 Wilshire Drive, Redding, California, convicted on April 3, 1972, in the Superior Court of the State of California, in and for the County of Santa Clara.

Raymond, Kenneth V., 5948 California Avenue, SW, Seattle, Washington, convicted on January 15, 1957, in the United States District Court, Western District of Wisconsin.

Reed, Gene W., 1010 Mosby Road, Memphis, Tennessee, convicted on March 2, 1973, in the United States District Court, Western District of Tennessee.

Sedar, Joseph W., 9064 Willowgrove Avenue, Santee, California, convicted on January 31, 1966, in the United States District Court, Central Judicial District of California.

Showalter, George A., 11990 Beach Boulevard, Jacksonville, Florida, convicted on February 14, 1972, in the Circuit Court, Clay County, Florida.

Skelton, Randall A., 407 Collidge Avenue, Holden, West Virginia, convicted on April 11, 1972, in the Sixth Judicial Circuit Court, Pinellas County, Florida.

Smith, Ivay P., 8989 Concord Street, Detroit, Michigan, convicted on September 7, 1956, in the Recorder's Court, City of Detroit, Michigan.

Smith, Jerry W., Route 3, Box 24E, Saltville, Virginia, convicted on May 1, 1962, in the Circuit Court of Smyth County, Virginia.

Spaulding, Michael L., 19941 MacArthur, Redford, Michigan, convicted on July 25, 1969, in the United States District Court, Southern District, West Virginia.

Stebbins, Eugene T., 433 Brockwood Avenue, McMinnville, Oregon, convicted on September 24, 1971, in the Circuit Court for the State of Oregon, Yamhill County.

Stillwell, Jimmie Dean, 7707 East 111th Terrace, Kansas City, Missouri, convicted on February 20, 1961, in the District Court of Pottawatomie County, Oklahoma.

Woody, Hubert Nathaniel, Jr., Route 9, Box 401-B, Vander, North Carolina, convicted on May 17, 1962, in the United States District Court, Eastern District, North Carolina.

Younggren Gail Wayne, Box 17, Beldenville, Wisconsin, convicted on or about September 17, 1973, in the District Court, Fourth Judicial District, Hennepin County, Minnesota; and on February 16, 1971, in the District Court, Tenth Judicial District, Isanti County, Minnesota.

Signed at Washington, D.C., this 14th day of December, 1976.

REX D. DAVIS,
Director, Bureau of Alcohol, Tobacco and Firearms.

[FR Doc.76-38270 Filed 12-29-76;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 223]

ASSIGNMENT OF HEARINGS

DECEMBER 27, 1976.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of

cancellation or postponements of hearings in which they are interested.

MC 2202 (Sub-No. 478), Roadway Express, Inc., has been continued to February 27, 1977, at the Office of the Interstate Commerce Commission, Washington, D.C.

MC 95540 (Sub-No. 961), Watkins Motor Lines, Inc., now being assigned January 31, 1977, (1 day), at Chicago, Ill., Room 350 230 South Dearborn St.

MC 66571 (Sub 7), Red Line, Inc. now assigned January 24, 1977 at Roanoke, Virginia and will be held in Room 226, Richard H. Poff Federal Building, 210 Franklin Road S.W.

MC 130387, Group Charter & Tour Concepts, Inc. now assigned January 5, 1977, at Newark, New Jersey and will be held in the Moot Court Room, 2nd Floor, Seton Hall Law School, 1111 Raymond Boulevard.

MC 141097 (Sub-No. 4), Cal-Tex, Inc., now being assigned March 8, 1977 (2 days), at Los Angeles, Calif.; in a hearing room to be later designated.

MC 141722, Norm's Delivery Service, Inc., now assigned March 8, 1977, at Los Angeles, Calif. is canceled and application dismissed.

MC 61592 (Sub 394), Jenkins Truck Line, Inc. now being assigned March 14, 1977 (2 weeks) at Seattle, Washington in a hearing room to be later designated.

MC 139236 (Sub 1), M.O.R.T. Enterprises, Inc. now being assigned March 9, 1977 (3 days) at Seattle, Washington in a hearing room to be later designated.

MC 74321 (Sub 123), B.F. Walker, Inc. now being assigned March 8, 1977 (1 day) at Seattle, Washington in a hearing room to be later designated.

No. 36467, Passenger Fare Increase, November 1976 Rockland Coaches, Inc. now assigned January 10, 1977 at New York, New York is cancelled and reassigned January 4, 1977 (4 days) at New York, New York and will be held in Room F-2220, Federal Building, 26 Federal Plaza.

FF-C-62, Rail Van, Inc., Freight Handlers Inc., Foutty Freight, Inc., Trailer Train, Inc. Trans-Rail, Inc. Lee Lydic, and Robert Marden—Investigation of Operations, now assigned February 7, 1977, at Cleveland Ohio is canceled.

MC 142310, H. O. Wolding, Inc., now being assigned February 7, 1977 (1 day), at Chicago, Ill., in Room 286, Everett McKinley Dirksen Building, 219 South Dearborn Street.

MC 119988 (Sub-No. 96), Great Western Trucking Co., Inc., now being assigned February 8, 1977 (1 day), at Chicago, Ill. in Room 286, Everett McKinley Dirksen Building.

MC 117940 (Sub-No. 184), Nationwide Carriers, Inc., now being assigned February 9, 1977 (3 days), at Chicago, Ill. in Room 286, Everett McKinley Dirksen Building, 219 South Dearborn St.

MC-F 12822, Overnite Transportation Company — Purchase — O'Nan Transportation Co., Inc. and MC 109533 (Sub 75), Overnite Transportation Company now being assigned March 15, 1977 (9 days) at Louisville, Kentucky in a hearing room to be later designated.

MC 141172 (Sub-1), Retta Trucking Co., Inc., now being assigned March 28, 1977 (1 day) at New York, N.Y., in a hearing room to be later designated.

MC 103066 (Sub-No. 44), Stone Trucking Company, now being assigned March 29, 1977 (2 days) at New York, N.Y., in a hearing room to be later designated.

MC 142047 (Sub-2), Cheyenne Truck Leasing, Inc., now being assigned March 31, 1977 (2 days) at New York, N.Y., in a hearing room to be later designated.

MC 117644 (Sub 45), D & T Trucking Co., Inc. now being assigned March 28, 1977 (1 week) at Chicago, Illinois in a hearing room to be later designated.

MC 106603 (Sub 149), Direct Transit Lines, Inc. now being assigned March 25, 1977 (1 day) at Chicago, Illinois in a hearing room to be later designated.

MC 139928 (Sub 1), American Coach Lines, Inc. now being assigned March 22, 1977 (3 days) at Milwaukee, Wisconsin in a hearing room to be later designated.

Sec. 5b Appl. No. 2, Western Railroad Agreement now being assigned April 25, 1977 at the Offices of the Interstate Commerce Commission in Washington, D.C.

Sec. 5b Appl. 3, Eastern Railroads Agreement now being assigned May 9, 1977 at the Offices of the Interstate Commerce Commission in Washington, D.C.

Sec. 5b Appl. No. 6, Southern Railroads Agreement now being assigned May 18, 1977 at the Offices of the Interstate Commerce Commission in Washington, D.C.

MC 109324 (Sub-34), Garrison Motor Freight, Inc., now being assigned February 14, 1977 (2 weeks), at Memphis, Tennessee; in the Executive Plaza Inn, 1471 E. Brooks Road.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-38364 Filed 12-29-76;8:45 am]

[Notice No. 224]

ASSIGNMENT OF HEARINGS

DECEMBER 27, 1976.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promtply as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

Correction

MC-F-11025, Virginia - Carolina Freight Lines, Inc.—Purchase—Merit Transport Corporation (Joseph Keane, Statutory Receiver), now being assigned January 24, 1977, at the Offices of the Interstate Commerce, Commission, Washington, D.C., instead of January 24, 1976.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-38365 Filed 12-29-76;8:45 am]

[NOTICE No. AB 18 (Sub-No. 18)]

CHESAPEAKE AND OHIO RAILWAY CO.

Abandonment of Portion of Railway Trackage (Elmdale Subdivision Between Alma and North Greenville, Also the Remus Subdivision Between Edmore and Remus, in Gratiot, Montcalm, Isabella and Mecosta Counties, Michigan)

DECEMBER 16, 1976.

The Interstate Commerce Commission hereby gives notice that its Section of Energy and Environment has concluded that the proposed abandonment of the Chesapeake and Ohio Railway Company trackage between Alma and North Greenville and between Edmore and Remus, a distance of approximately 54.20 miles, in Gratiot, Montcalm, Isabella, and Mecosta Counties, Mich., if approved by the Commission, does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, et seq., and that preparation of a detailed environmental impact statement will not be required under section 4332(2)(C) of the NEPA.

It was concluded, among other things, that the associated environmental impacts are not considered significant because the diversion of traffic from the subject line to the area's highway network would result in an average traffic volume increase of less than five trucks a day with only minor consequent alterations in ambient noise levels, highway conditions, exhaust emissions, and fuel consumption. In addition, no definitive industrial location plans exist in the area and the likelihood of major industrial development in the near future appears remote. Accordingly, it was determined that rural and community development would not be subjected to a serious adverse effect, if the proposed abandonment is approved. Furthermore, no major historic or ecological impacts are involved with the potential railroad salvage operations, traffic diversion, or future uses of the right-of-way.

This conclusion is contained in a staff-prepared environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-275-7011.

Interested persons may comment on this matter by filing their statements in writing with the Interstate Commerce Commission, Washington, D.C. 20423, on or before January 31, 1977.

It should be emphasized that the environmental threshold assessment survey represents an evaluation of the environmental issues in the proceeding and does not purport to resolve the issue of whether the present or future public convenience and necessity permit discontinuance of the line proposed for abandonment. Consequently, comments on the environmental study should be limited to discussion of the presence or absence of environmental impacts and reasonable alternatives.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-38366 Filed 12-29-76;8:45 am]

[Vol. No. 63]

PETITIONS FOR MODIFICATION, INTERPRETATION OF REINSTATEMENT OF OPERATING RIGHTS AUTHORITY

DECEMBER 23, 1976.

The following petitions seek modification or interpretation of existing operat-

ing rights authority, or reinstatement of terminated operating rights authority.

An original and one copy of protests to the granting of the requested authority must be filed with the Commission within 30 days after the date of this FEDERAL REGISTER notice. Such protest shall comply with Special Rule 247(d) of the Commission's general rules of practice (49 CFR 1100.247)[1] and shall include a concise statement of protestant's interest in the proceeding and copies of its conflicting authorities. Verified statements in opposition should not be tendered at this time. A copy of the protest shall be served concurrently upon petitioner's representative, or petitioner if no representative is named.

No. MC 119395 (Sub-No. 2) (Notice of filing of petition to modify permit), filed November 30, 1976. Petitioner: WILLIAM'S CHEMICAL TRANSPORT, INC., 500 Lambson Lane, New Castle, Del. 19720. Petitioner's representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, D.C. 20001. Petitioner holds a motor *contract carrier* Permit in No. MC 119395 (Sub-No. 2), issued November 16, 1973, authorizing transportation over irregular routes, of (1)(a) *drugs, in containers*, from the facilities of ICI America, Inc., at Newark, Del., to points in Connecticut, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont, and the District of Columbia; and (b) *returned shipments* of the commodities in (1)(a) above, from points in the destinations set forth in (1)(a) above to the above-described origin facilities; (2) *materials, equipment, and supplies* used in the manufacture and distribution of drugs (except in bulk), from points in the destinations set forth in (1)(a) above to the above-described origin facilities; (3)(a) *chemicals*, in containers, from the facilities of ICI America, Inc., at New Castle, Del., to points in Connecticut, Maine, Maryland (except Baltimore), Massachusetts, New Hampshire, New Jersey (except Trenton, Camden, and points within 20 miles of New York, N.Y.), New York (except Beacon, N.Y., and points in the New York, N.Y., commercial zone as defined by the Commission), Pennsylvania (except Ambler, Harrisburg, Philadelphia, Chester, Fernwood, and Marcus Hook), Rhode Island, and Vermont, and the District of Columbia; and (3)(b) *returned shipments* of the commodities in (3)(a) above, from points in the destinations set forth in (3)(a) above to the above-described origin facilities; and (4) *materials, equipment, and supplies* used in the manufacture, sale, and distribution of chemicals (except in bulk), from points in the destinations set forth in (3)(a) above, including the excepted points, to the above-described origin facilities, limited in (1), (2), (3), and (4) above to a transportation service to be performed under a continuing contract, or contracts, with ICI America, Inc., of Wilmington, Del.

By the instant petition, petitioner seeks to modify the authority above to read as follows: "(1) *Drugs and chemicals*, in containers, and *materials, equipment, and supplies* used in the manufacture and distribution of drugs and chemicals (except in bulk), between the facilities of ICI United States, Inc., at or near Newark, Del., on the one hand, and, on the other, points in Connecticut, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont and the District of Columbia; (2) *chemicals*, in containers, from the facilities of ICI United States, Inc., at or near New Castle, Del., to points in Connecticut, Maine, Maryland (except Baltimore), Massachusetts, New Hampshire, New Jersey (except Trenton, Camden, and points within 20 miles of New York, N.Y.), New York (except Beacon, N.Y., and points in the New York, N.Y. commercial zone as defined by the Commission), Pennsylvania (except Ambler, Harrisburg, Philadelphia, Chester, Fernwood, and Marcus Hook), Rhode Island, and Vermont, and the District of Columbia; and (3) *materials, equipment, and supplies*, used in the manufacture, sale, and distribution of chemicals (except in bulk), from points in the destinations set forth in (2) above, including the excepted points, to the above described origin facilities, restricted in (1), (2), and (3) above to the transportation of traffic transported under a continuing contract, or contracts, with ICI United States, Inc., of Wilmington, Del."

No. MC 119547 (Sub-No. 41) (Notice of filing of petition to modify certificate), filed October 27, 1976. Petitioner: EDGAR W. LONG, INC., Route 4, Zanesville, Ohio 43701. Petitioner's representative: Edgar W. Long (same address as petitioner). Petitioner holds a motor *common carrier* Certificate in No. MC 119547 (Sub-No. 41), issued December 20, 1976, authorizing transportation over irregular routes, of *brick and clay products* (except commodities in bulk), from Ava, Ohio, to points in Wisconsin, Illinois, Indiana, Ohio, Kentucky, Virginia, Tennessee, North Carolina, South Carolina, Georgia, Alabama, Mississippi, and Florida.

By the instant petition, petitioner seeks to modify the authority above by adding an additional commodity and territorial description that reads as follows: "*supplies and materials* used in the manufacture and sale of brick and clay products (except in bulk), from points in that part of the United States in and east of Wisconsin, Illinois, Kentucky, Tennessee and Mississippi, to Ava, Ohio."

REPUBLICATIONS OF GRANTS OF OPERATING RIGHTS AUTHORITY PRIOR TO CERTIFICATION

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the FEDERAL REGISTER.

An original and one copy of protests to the granting of the authority must be filed with the Commission within 30 days after the date of this FEDERAL REGISTER notice. Such protest shall comply with Special Rule 247(d) of the Commission's general rules of practice (49 CFR 1100.247) addressing specifically the issue(s) indicated as the purpose for republication, and including a concise statement of protestant's interest in the proceeding and copies of its conflicting authorities. Verified statements in opposition shall not be tendered at this time. A copy of the protest shall be served concurrently upon the carrier's representative, or carrier if no representative is named.

No. MC 136888 (Sub-No. 6) (Republication), filed January 19, 1976, published in the FEDERAL REGISTER issue of March 4, 1976, and republished this issue. Applicant: NORMAN & SON, INC., 2520 North 69th Street, Houston, Tex. 77080. Applicant's representative: Timothy Mashburn, P.O. Box 2207, Austin, Tex. 78767. An Order of the Commission, Review Board Number 2, dated November 29, 1976, and served December 14, 1976, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a *common carrier* by motor vehicle, over irregular routes, in the transportation of *metals and alloys* (except scrap metals), in bulk, in dump vehicles, between points in Texas, on the one hand, and, on the other, points in Alabama, Arizona, Arkansas, Colorado, Kansas, Louisiana, Mississippi, Missouri, New Mexico, Oklahoma, Tennessee, and Texas; that applicant is fit, willing and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. The purpose of this republication is to indicate the addition of Texas as an additional radial state in applicant's grant of authority.

MOTOR CARRIER, BROKER, WATER CARRIER AND FREIGHT FORWARDER OPERATING RIGHTS APPLICATIONS

The following applications are governed by Special Rule 247 of the Commission's general rules of practice (49 CFR § 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date of notice of filing of the application is published in the FEDERAL REGISTER. Failure to seasonably file a protest wil be construed as a waiver of opposition and participation in the proceeding. A protest under these rules should comply with section 247(d)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (including a copy of the specific portions of its authority which pro-

[1] Copies of Special Rule 247 (as amended) can be obtained by writing to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

testant believes to be in conflict with that sought in the application, and describing in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or applicant if no representative is named. If the protest includes a request for oral hearing, such requests shall meet the requirements of section 247(d)(4) of the special rules, and shall include the certification required therein.

Section 247(f) further provides, in part, that an applicant who does not intend timely to prosecute its application shall promptly request dismissal thereof, and that failure to prosecute an application under procedures ordered by the Commission will result in dismissal of the application.

Further processing steps will be by Commission order which will be served on each party of record. Broadening amendments will not be accepted after the date of this publication except for good cause shown; and restrictive amendments will not be entertained following publication in the FEDERAL REGISTER of a notice that the proceeding has been assigned for oral hearing.

Each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

No. MC 4405 (Sub-No. 539), filed December 1, 1976. Applicant: DEALERS TRANSIT, INC., 522 South Boston Avenue, Enterprise Bldg., Tulsa, Okla. 74103. Applicant's representative: Michael E. Miller, 502 First National Bank Bldg., Fargo, N. Dak. 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers, semi-trailers and trailer chassis*, (except those designed to be drawn by passenger automobiles, in initial movements, in truckaway service), from Sedgwick County, Kans., to points in the United States (except Alaska, Hawaii and Kansas).

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Dallas, Tex.

No. MC 19157 (Sub-No. 21), filed December 3, 1976. Applicant. McCORMACK'S HIGHWAY TRANSPORTATION, INC., Route 3, Box 4 Campbell Road, Schenectady, N.Y. 12306. Applicant's representative: Clem Tomlins, (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cameras and commodities*, used in the operation, production, distribution and sale of cameras (except commodities in bulk, and those which because of size or weight require the use of special equipment), between Finley, Tenn., on the one hand, and, on the other, Cambridge, Waltham, Norwich, New Bedford and Needham, Mass., and Rochester and Binghampton, N.Y.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Schenectady, N.Y., or Louisville, Ky.

No. MC 22195 (Sub-No. 169), (Correction), filed October 26, 1976, published in the FEDERAL REGISTER issue of November 24, 1976, and republished as corrected this issue. Applicant: DAN DUGAN TRANSPORT COMPANY, a Corporation, 41st & Grange Avenue, Sioux Falls, S. Dak. 57105. Applicant's representative: Fred Fischer, (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia*, in bulk, in tank vehicles, (1) from the facilities of Gulf Central Pipeline located at or near Spencer, Iowa, to points in Iowa, Minnesota, Nebraska, North Dakota and South Dakota, (2) from the facilities of Gulf Central Pipeline located at or near Holstein, Iowa, to points in Iowa, Minnesota, Nebraska, North Dakota and South Dakota; and (3) from the facilities of Gulf Central Pipeline located near David City, Nebr., to points in Iowa, Kansas, Minnesota, Nebraska, and South Dakota. Note: The purpose of this republication is to indicate the destination territory sought in paragraph (3) above.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Kansas City, Mo. or Sioux Falls, S. Dak.

No. MC 35628 (Sub-No. 387), filed November 26, 1976. Applicant: INTERSTATE MOTOR FREIGHT SYSTEM, a Corporation, 134 Grandville Avenue, S.W., Grand Rapids, Mich. 49503. Applicant's representative: Michael P. Zell, (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), Serving: (1) plantsite and storage facilities of Auburn Hosiery Mills, Inc., at or near Auburn, Ky.; and (2) the plantsite and storage facilities of Ardco, Inc., at Elkton, Ky., as off-route points in connection with applicant's otherwise authorized operation.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Bowling Green, Ky.; Nashville, Tenn.; or Washington, D.C.

No. MC 42537 (Sub-No. 54), filed November 26, 1976. Applicant: CASSENS TRANSPORT COMPANY, a Corporation, P.O. Box 468, Edwardsville, Ill. 62025. Applicant's representative: Donald W. Smith, Suite 2465, One Indiana Square, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Motor vehicles* (except automobiles), in initial truckaway service, and motor vehicles in secondary truckaway service, cabs chassis and bodies, from the facilities of Chrysler Corporation, at St. Louis, Mo., and points in St. Louis County, Mo., to points in Delaware, Maryland, New Jersey, Virginia and the District of Columbia, restricted to traffic having a prior movement from the facilities of Chrysler Corporation, or imported by Chrysler Corporation.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Detroit, Mich., or Washington, D.C.

No. MC 50307 (Sub-No. 86), filed November 22, 1976. Applicant: INTERSTATE DRESS CARRIERS, INC., 247 West 35th Street, New York, N.Y. 10001. Applicant's representative: Herbert Burstein, One World Trade Center, Suite 2373, New York, N.Y. 10048. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wearing apparel* in boxes or cartons and on hangers; and *materials, supplies and equipment* used in the manufacture of wearing apparel, (1) between Morgantown, W. Va., and Woodsfield, Ohio, (2) between Woodsfield, and Cleveland, Ohio; and (3) between Woodsfield, Ohio and Pennsylvania, New Jersey and New York.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either New York, N.Y., or Washington, D.C.

No. MC 65665 (Sub-No. 15), (Amendment), filed June 9, 1976, published in the FEDERAL REGISTER issue of September 16, 1976, republished as corrected this issue. Applicant: IMPERIAL VAN LINES, INC., 2805 Columbia St., Torrance, Calif. 90503. Applicant's representative: Alan F. Wohlstetter, 1700 K St., N.W., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Potting mixes*, from Norco, Calif., to points in the United States (except Alaska and Hawaii). The purpose of this republication is to amend applicant's territorial description to read "from Riverside, Calif." in lieu of "from Norco, Calif."

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Los Angeles, Calif.

No. MC 66531 (Sub-No. 7), filed November 26, 1976. Applicant: INTERSTATE GROCERY DISTRIBUTION SYSTEM, INC., 2200 48th Street, North Bergen, N.J. 07047. Applicant's representative: George A. Olsen, 69 Tonnele Ave., Jersey City, N.J. 07306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Drugs, medicines, chemicals, pharmaceuticals, cleaning, scouring or washing compounds, impregnated paper, corn syrup* (except medicated corn syrup), *dental instruments, needles, glassware*, (except agricultural insecticides), *petroleum naphtha, coal tar dyes* (except indigo coal tar dyes), *coal tar colors* (except synthetic indigo coal tar colors), *bathroom or lavatory fixtures*

(except china), *flour enriching compound, dry flavoring compounds, advertising matter, glass and plastic bottles, steel, aluminum or plastic bottle caps, paper and paperboard,* and *tubes cellulose film,* between East Brunswick, Clifton, Lodi and East Rutherford, N.J., on the one hand, and, on the other, piers in New York Harbor, N.Y., as defined by the Commission.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either New York, N.Y. or Washintgon, D.C.

No. MC 78687 (Sub-No. 43), filed December 2, 1976. Applicant: LOTT MOTOR LINES, INC., 118 Monell Street, Penn Yan, N.Y. 14527. Applicant's representative: E. Stephen Heisley, 666 Eleventh Street, N.W., Suite 805, Washington, D.C. 20001. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Soda ash,* in bulk, from Solvay, N.Y., to points in North Carolina.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C., together with application of Richard Dahn, Inc.

No. MC 94201 (Sub-No. 144), filed November 3, 1976. Applicant: BOWMAN TRANSPORTATION, INC., 1010 Stroud Avenue, Gadsden, Ala. 35903. Applicant's representative: Donald B. Sweeney, Jr., 603 Frank Nelson Building, Birmingham, Ala. 35203. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Brass, bronze, and copper pipe, tubing, fittings, rods, castings and valves or cocks,* from the plantsite, storage and warehouse facilities of Mueller Brass Co. located at or near Covington, Tenn., to points in Alabama, Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Mississippi, Missouri, North Carolina, Ohio, Rhode Island, South Carolina, Texas, Virginia, points in Connecticut, New Jersey, and New York within 35 miles of Columbus Circle, N.Y., Baltimore, Md., Philadelphia, Pa. and the District of Columbia.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Charlotte, N.C. or Birmingham, Ala.

No. MC 94201 (Sub-No. 146), filed November 26, 1976. Applicant: BOWMAN TRANSPORTATION, INC., P.O. Box 17744, Atlanta, Ga. 30316. Applicant's representative: Maurice F. Bishop, 603 Frank Nelson Bldg., Birmingham, Ala. 35203. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Materials, equipment, machinery and supplies,* used in the manufacturing, processing and distribution of iron and steel articles (except commodities in bulk, in tank and dump vehicles), from points in the United States in and east of Iowa, Kansas, Minnesota, Oklahoma and Texas, to the plantsite and facilities of American Cast Iron Pipe Company, at Birmingham, Ala.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Birmingham, Ala., or Washington, D.C.

No. MC 100666 (Sub-No. 338), filed December 2, 1976. Applicant: MELTON TRUCK LINES, INC., P.O. Box 7666, Shreveport, La. 71107. Applicant's representative: Wilburn L. Williamson, 280 National Foundation Life Bldg., 3535 N.W. 58th Street, Oklahoma City, Okla. 73112. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Asphalt* (except in bulk), from Lawrenceville, Ill., to Shreveport, La.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Dallas, Tex.

No. MC 106497 (Sub-No. 137), filed November 18, 1976. Applicant: PARKHILL TRUCK COMPANY, P.O. Box 912, Joplin, Mo. 64801. Applicant's representative: A. N. Jacobs, P.O. Box 113, Joplin, Mo. 64801. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Materials, equipment, parts and supplies* (except commodities in bulk), used in the manufacturing, processing, and distribution of boilers and boiler parts, from points in the United States (except Alaska and Hawaii), to Danville, Ky.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Memphis, Tenn., or Washington,D.C.

MC 107403 (Sub-No. 993), filed December 3, 1976. Applicant: MATLACK, INC., Ten West Baltimore Ave., Lansdowne, Pa. 19050. Applicant's representative: John Nelson, (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Alloys, ores and miners* (except salt, lime, limestone and flourspar products), dry, in tank or hopper type vehicles, from the plantsite of C–E Minerals, located at Wilmington, Del., to points in Ohio and Pennsylvania.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C.

No. MC 109584 (Sub-No. 170), filed November 26, 1976. Applicant: ARIZONA-PACIFIC TANK LINES, a Corporation, 3980 Quebec St., P.O. Box 7240, Denver, Colo. 80207. Applicant's representative: Rick Barker (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Liquid graphite,* in bulk, in tank vehicles, from Buckeye, Ariz., to Cucamonga, Calif.; Denver, and Pueblo, Colo.; Provo, Utah; and Houston, Tex.

NOTE.—Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Phoenix, Ariz., or Los Angeles, Calif.

No. MC 115651 (Sub-No. 27), filed November 29, 1976. Applicant: KANEY TRANSPORTATION, INC., 7222 Cunningham Rd., Rockford, Ill. 61102. Applicant's representative: R. D. Higgins, (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Liquid and dry fertilizers,* in bulk; and (2) *liquid fertilizer solutions,* in bulk, from Fulton, Ill., to points in Illinois, Iowa, Minnesota, Missouri and Wisconsin.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or St. Louis, Mo.

No. MC 116273 (Sub-No. 207), filed November 26, 1976. Applicant: D & L TRANSPORT, INC., 3800 South Laramie Avenue, Cicero, Ill. 60650. Applicant's representative: William R. Lavery (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Liquid styrene,* in bulk, in tank vehicles, from Marseilles, Ill., to Valley Park, Mo.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Chicago, Ill.

No. MC 116325 (Sub-No. 74), filed December 2, 1976. Applicant: JENNINGS BOND, doing business as: BOND ENTERPRISES, P.O. Box 8, Lutesville, Mo. 63762. Applicant's representative: Robert E. Tate, P.O. Box 517, Evergreen, Ala. 36401. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Laminated beams, and accessories therewith, lumber and lumber products,* from Cedar County, Mo., to points in the United States (except Alaska and Hawaii); and (2) *materials and supplies* used in the production of laminated beams, and accessories therewith, lumber and lumber products (except commodities in bulk, in tank vehicles), from points in the United States (except Alaska and Hawaii), to Cedar County, Mo.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either St. Louis, Mo. or Birmingham, Ala.

No. MC 117815 (Sub-No. 261), filed December 1, 1976. Applicant: PULLEY FREIGHT LINES, INC., 405 S. E. 20th Street, Des Moines, Iowa 50317. Applicant's representative: Larry D. Knox, 900 Hubbell Bldg., Des Moines, Iowa 50309. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Frozen potatoes and frozen potato products,* from Minneapolis, Minn., to points in Iowa, Kansas, Missouri and Nebraska.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Minneapolis, Minn.

No. MC 117940 (Sub-No. 201), filed November 26, 1976. Applicant: NATIONWIDE CARRIERS, INC., P.O. Box 104, Maple Plain, Minn. 55359. Applicant's representative: Allan L. Timmerman, (Same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by retail and wholesale department and hardware stores (except

foodstuffs, articles of unusual value, commodities in bulk, and household goods as defined by the Commission), from the Los Angeles, Calif., Commercial Zone as defined by the Commission; the Los Angeles, Calif., Harbor Commercial Zone as defined by the Commission; and the Seattle, Wash., Commercial Zone as defined by the Commission, to points in Minnesota and South Dakota, restricted to the transportation of traffic originating at the named origins and destined to the named destination points.
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NOTE.—Applicant holds contract carrier authority in MC 114789 and subs thereunder, therefore dual operations may be involved. Common control may also be involved. If a hearing is deemed necessary, the applicant requests it be held at either Minneapolis, Minn. or St. Paul, Minn.

No. MC 118159 (Sub-No. 190), filed November 26, 1976. Applicant: NATIONAL REFRIGERATED TRANSPORT, INC., P.O. Box 51366, Dawson Station, Tulsa, Okla. 74151. Applicant's representative: Neil A. DuJardin, P.O. Box 2298, Green Bay, Wis. 54306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Glass containers*, from the plantsite and warehouse facilities of Midland Glass Company, Inc. located at or near Henryetta, Okla., to points in the United States (except Alaska and Hawaii); and (2) *materials, equipment, and supplies* used in the manufacture and distribution of glass containers (except in bulk), from points in the United States (except Alaska and Hawaii), to the plantsite and warehouse facilities of Midland Glass Company, Inc. located at or near Henryetta, Okla.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Chicago, Ill.

No. MC 118431 (Sub-No. 23), filed November 22, 1976. Applicant: DENVER SOUTHWEST EXPRESS, INC., P.O. Box 9799, 1310 Stagecoach Road, Little Rock, Ark. 72209. Applicant's representative: David R. Parker, 1600 Broadway, 2310 Colorado State Bank Bldg., Denver, Colo. 80202. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Wire, cable, power cords, bars, rods, scrap and reels*, (a) between points in Arizona, Georgia, Louisiana, Maryland, Michigan, New York, Ohio, Oklahoma, Oregon, Tennessee, Utah, Washington, Wisconsin, and the District of Columbia; and (b) between points in Arizona, Georgia, Louisiana, Maryland, Michigan, New York, Ohio, Oklahoma, Oregon, Tennessee, Utah, Washington, Wisconsin, and the District of Columbia, on the one hand, and, on the other, points in Arkansas, California, Florida, Illinois, Indiana, Kentucky, Massachusetts, Missouri, Nebraska, New Jersey, Pennsylvania, South Carolina, Texas, Vermont, and Virginia; and (2) *materials, supplies and equipment* utilized in the manufacture, production and distribution of the commodities named in (1) above between points in Arizona, Arkansas, California, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, and the District of Columbia, restricted against the transportation of commodities in bulk, and further restricted to the transportation of traffic originating at or destined to the plantsites and facilities utilized by General Cable Corporation, under a continuing contract, or contracts, with General Cable Corporation.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Denver, Colo. or Little Rock, Ark.

No. MC 118959 (Sub-No. 141), filed November 19, 1976. Applicant: JERRY LIPPS, INC., 130 S. Frederick Street, Cape Girardeau, Mo. 63701. Applicant's representative. James W. Muldoon, 50 West Broad Street, Columbus, Ohio 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Adhesives*, when moving in mixed shipments with paper and paper products, (1) From the plantsites and facilities of The Mead Corporation located at or near Chillicothe and Schooleys, Ohio, to points in Florida, (2) From the plantsites and facilities of The Mead Corporation located at or near Chillicothe and Schooleys, Ohio, to points in that part of Georgia on and south of a line beginning on the Florida-Georgia State Boundary line, thence along U.S. Highway 319 to Thomasville, Ga., thence along Georgia Highway 122 to Waycross, Ga., thence along U.S. Highway 84 to the Atlantic Ocean, (3) From the plantsites and facilities of The Mead Corporation located at or near Chillicothe and Schooleys, Ohio, to points in that part of Alabama on and south of a line beginning at the Florida-Alabama State Boundary line, thence along U.S. Highway 331 to junction U.S. Highway 84, thence along U.S. Highway 84 to junction U.S. Highway 43, thence along U.S. Highway 43 to junction Alabama Highway 56 thence along Alabama Highway 56 to the Alabama-Mississippi State Boundary line (4) From the plantsites and facilities of The Mead Corporation located at or near Chillicothe and Schooleys, Ohio, to points in that part of Mississippi on and south of a line beginning at the Alabama-Mississippi State Boundary line, thence along Mississippi Highway 42 to Hattiesburg, Miss., thence along U.S. Highway 98 to the Mississippi-Lousiana State Boundary line, (5) From the plantsite and facilities of The Mead Corporation located at or near Chillicothe and Schooleys, Ohio, to points in that part of Louisiana on and south of a line beginning at the Mississippi-Louisiana State Boundary line, thence along U.S. Highway 84 to junction Louisiana Highway 28 to junction Louisiana Highway 8, thence along Louisiana Highway 8 to the Louisiana-Texas State Boundary line; and (6) From the plantsite and facilities of The Mead Corporation located at or near Chillicothe and Schooleys, Ohio, to points in that part of Texas along Texas Highway 63 to Jasper, Tex., thence along U.S. Highway 190 to Bryan, thence along Texas Highway 21 to junction U.S. Highway 290 thence along U.S. Highway 290 to junction U.S. Highway 377, thence along U.S. Highway 377 to the International Boundary line between the United States and the Republic of Mexico.

NOTE.—Applicant presently has authority to transport paper and paper products from the above described origin to the requested destination territory. Applicant holds contract carrier authority in MC 125664, therefore dual operations may be involved. Common control may also be involved. If a hearing is deemed necessary, the applicant requests it be held at Columbus, Ohio or Washington, D.C.

No. MC 119619 (Sub-No. 93), filed December 6, 1976. Applicant: DISTRIBUTORS SERVICE CO., A Corporation, 2000 West 43rd Street, Chicago, Ill. 60609. Applicant's representative: Arthur J. Piken, Suite 1515, One Lefrak City Plaza, Flushing, N.Y. 11368. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foods, frozen or other than frozen* (except commodities in bulk), in vehicles equipped with mechanical refrigeration, from Clayton and Milford, Del., and Pocomoke City, Md., to Chicago, Ill., and Napoleon, Ohio.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C., or Philadelphia, Pa.

No. MC 119670 (Sub-No. 26), filed November 26, 1976. Applicant: THE VICTOR TRANSIT CORPORATION, 5250 Este Avenue, Cincinnati, Ohio 45232. Applicant's representative: Robert H. Kinker, P.O. Box 464, Frankfort, Ky. 40601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Manufactured fertilizer* and *Materials* used in the manufacture of fertilizer, (except in bulk), from Winchester, Ky., to points in West Virginia.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Cincinnati, Ohio.

No. MC 119789 (Sub-No. 319), filed December 3, 1976. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 6188, Dallas, Tex. 75222. Applicant's representative: James K. Newbold, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Melamine plastic materials and urea moulding compounds* (except in bulk), in mechanically refrigerated equipment, from the plantsite and warehouse facilities of Plastic Manufacturing Company, located at Dallas, Tex., to points in California, Mississippi, Ohio, Pennsylvania and Virginia.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Dallas, Tex.

No. MC 123407 (Sub-No. 343), filed December 1, 1976. Applicant: SAWYER TRANSPORT, INC., South Haven Square, U.S. Highway 6, Valparaiso, Ind. 46383. Applicant's representative: Robert

W. Sawyer (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Building materials* (except commodities in bulk), between Rapid City, S. Dak., on the one hand, and, on the other, points in the United States including Alaska but excluding Hawaii.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Rapid City, S. Dak. or Minneapolis, Minn.

No. MC 123544 (Sub-No. 9), filed November 15, 1976. Applicant: BERTSCH TRUCKING, INC., Box 15, Hillsboro, N. Dak. 58045. Applicant's representative: William S. Rosen, 630 Osborn Building, St. Paul, Minn. 55102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Farm machinery and implements and parts thereof*, from Fargo, N. Dak., to points in Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Lousiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Texas, Utah, Washington, Wisconsin and Wyoming; and (2) *damaged, broken, defective or rejected farm machinery, implements or parts thereof*, from the above named destinations in (1) above to Fargo, N. Dak.

NOTE.—Applicant holds common carrier authority in MC 135045 (Sub-No. 2), therefore dual operation may be involved. Common control may also be involved. If a hearing is deemed necessary, the applicant requests it be held at St. Paul, Minn.

No. MC 124373 (Sub-No. 17), filed December 2, 1976. Applicant: NELMAR TRUCKING CO., a Corporation, 1179½ Roosevelt Avenue, Carteret, N.J. 07008. Applicant's representative: E. Stephen Heisley, 666 Eleventh St., N.W. #805, Washington, D.C. 20001. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Prepared foods, and materials and supplies*, used in the manufacture sale and distribution of prepared foods (except commodities in bulk), between the facilities of New England Apple Products Company, Inc., located at or near Littleton, Mass., on the one hand, and, on the other, points in Connecticut, Delaware, Florida, Georgia, Maryland, Massachusetts, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Virginia, West Virginia, and the District of Columbia, restricted to traffic moving under a continuing contract or contracts with New England Apple Products Company, Inc., at Littleton, Mass.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C.

No. MC 125820 (Sub-No. 8), filed November 24, 1976. Applicant: ELK VALLEY FREIGHT LINE, INC., P.O. Box 40723, 526 Hagan Street, Nashville, Tenn. 37203. Applicant's representative: A. O. Buck, 618 United American Bank Building, Nashville, Tenn. 37219. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Fayetteville, Tenn., and Memphis, Tenn., serving no intermediate points: From Fayetteville over U.S. Highway 64 to its junction with Interstate Highway 40, thence over Interstate Highway 40 to Memphis, and return over the same route; and (2) between Nashville, Tenn., and Memphis, Tenn., as an alternate route for operating convenience only, in connection with carrier's presently authorized regular route operations and those proposed above, serving no intermediate points and serving Nashville, Tenn., for the purpose of joinder only: From Nashville over Interstate Highway 40 to Memphis, and return over the same route, restricted as follows: (I) Service at Memphis proposed above is restricted to that portion of Memphis and its commercial zone lying wholly within Tennessee; and (II) service at Memphis, Tenn., and its commercial zone is restricted against the handling of traffic originating at, destined to or interchanged at Nashville, Tenn., and/or Huntsville, Ala., and their respective commercial zones.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Fayetteville, Tenn.

No. MC 126049 (Sub-No. 19), filed December 2, 1976. Applicant: DODEN TRUCKING COMPANY, INC., Woden, Iowa 50484. Applicant's representative: Clayton L. Wornson, 626 Brick & Tile Bldg., Mason City, Iowa 50401. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ice cream, ice milk, sherbet and ice cream, ice milk, sherbet and fruit flavored novelty items*, from Mason City, Iowa to St. Cloud, Willmar, Wadena and Brainerd, Minn.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Mason City or Des Moines, Iowa.

No. MC 126600 (Sub-No. 14), filed November 22, 1976. Applicant: EHRSAM TRANSPORT, INC., 108 North Factory, Enterprise, Kans. 67441. Applicant's representative: Bob W. Storey, 403 Columbian Title Bldg., 820 Quincy, Topeka, Kans. 66612. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Elevator and power transmission equipment*; (2) *materials handling and processing equipment*; and (3) *foundary casting and materials and supplies* used in the manufacture of such commodities (except the commodities, the transportation of which because of their size and weight require use of special equipment and commodities in bulk), between Wichita, Kansas, on the one hand, and, on the other points in the United States, (except Alaska and Hawaii), under a continuing contract or contracts with Tramco Metal Products, Inc.

NOTE.—If a hearing is deemed necessary the applicant requests it be held at Topeka, or Kansas City, and/or Wichita, Kans.

No. MC 128030 (Sub-No. 109), filed November 26, 1976. Applicant: THE STOUT TRUCKING CO., INC., Rural Route No. 1, P.O. Box 177, Urbana, Ill. 61801. Applicant's representative: James F. Flanagan, 111 W. Washington Street, Chicago, Ill. 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, in containers, (1) from Evansville, Ind., to LaCrosse, Wis., Lockport, Chicago, LaGrange, Markham, Wheeling, Alsip, Calumet City, Geneva, and Waukegan, Ill.; (2) from LaCrosse, Wis., to Evansville, Ind., Lockport, Chicago, LaGrange, Markham, Wheeling, Alsip and Calumet City, Ill.; (3) from Newport, Ky., to Lockport, Chicago, LaGrange, Markham, Wheeling, Alsip, Calumet City, Geneva and Waukegan, Ill.; (4) from Milwaukee, Wis., to Mt. Carmel, Ill. and Monticello, Ind.; (5) from Louisville, Ky., to Monticello, Ind.; and (6) from Monroe, Wis., to Terra Haute, Ind.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Springfield or Chicago, Ill.

No. MC 128273 (Sub-No. 242), filed December 2, 1976. Applicant: MIDWESTERN DISTRIBUTION, INC., P.O. Box 189, Fort Scott, Kans. 66701. Applicant's representative: Elden Corban (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Foodstuffs*, (except frozen); and (2) *materials, equipment and supplies* used in the manufacture and distribution of bakery products, between points in Colorado on the one hand, and, on the other points in the United States (except Alaska and Hawaii).

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Denver, Colo. or Washington, D.C.

No. MC 128273 (Sub-No. 243), filed December 2, 1976. Applicant: MIDWESTERN DISTRIBUTION, INC., P.O. Box 189, Fort Scott, Kans. 66701. Applicant's representative: Elden Corban (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Non-ferrous metals*, from Houston, Tex., and Atlanta, Ga., to points in and east of Colorado, New Mexico, North Dakota, Nebraska, and South Dakota; and (2) *non-ferrous scrap metal*, from points in and east of Colorado, Nebraska, North Dakota, New Mexico and South Dakota.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Houston, Tex. or Atlanta, Ga.

MC 128273 (Sub-No. 245), filed November 24, 1976. Applicant: MIDWESTERN DISTRIBUTION, INC., P.O. Box 189, Fort Scott, Kans. 66701. Applicant's

representative: Elden Corban (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Refrigerant and dispersant gas*, in packages, from the plantsite and storage facilities of Kaiser Aluminum and Chemical Corporation, located at Gramercy, La., to points in Arizona, California, Oregon and Washington; and (2) *Empty containers*, from points in Arizona, California, Oregon and Washington, to the plantside and storage facilities of Kaiser Aluminum and Chemical Corporation, located at Gramercy, La.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either New Orleans, La. or Washington, D.C.

No. MC 129615 (Sub-No. 23), filed November 26, 1976. Applicant: AMERICAN INTERNATIONAL DRIVE-AWAY, a Corporation, P.O. Box 545, 123 N. First Street, Decatur, Ind. 46733. Applicant's representative: Robert Loser, Chamber of Commerce Building, Suite 1009, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fifth wheel trailers*, between points in Elkhart County, Ind., on the one hand, and, on the other, points in the United States, including Alaska and Hawaii.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Chicago, Ill. or Washington, D.C.

No. MC 129808 (Sub-No. 23), filed December 3, 1976. Applicant: GRAND ISLAND CONTRACT CARRIER, INC., P.O. Box 2078, Grand Island, Nebr. 68801. Applicant's representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Home decorating trimmings and accessories* (except in bulk), from Big Springs, Tex., to points in the United States (except Alaska and Hawaii); and (2) *materials, supplies and equipment* used in the manufacture, sale and distribution of the commodities named in (1) above, from points in the United States (except Alaska and Hawaii), to Big Springs, Tex., under a continuing contract, or contracts with Burwood Industries, Inc.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Chicago, Ill.

No. MC 133689 (Sub-No. 92), filed November 26, 1976. Applicant: OVERLAND EXPRESS, INC., 719 First St., S.W., New Brighton, Minn. 55112. Applicant's representative: Robert P. Sack, P.O. Box 6010, West St. Paul, Minn. 55118. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, and *foodstuffs* (except commodities in bulk), from Minneapolis-St. Paul, Minn., to points in Georgia, North Carolina, South Carolina and Tennessee.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Minneapolis, Minn.

No. MC 133689 (Sub-No. 93), filed December 2, 1976. Applicant: OVERLAND EXPRESS, INC., 719 First St., S.W., New Brighton, Minn. 55112. Applicant's representative: Robert P. Sack, P.O. Box 6010, West St. Paul, Minn. 55118. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts, and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from Fremont and Schuyler, Nebr., and Spencer, Fort Dodge and Hartley, Iowa, to points in Connecticut, Delaware, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, West Virginia, and the District of Columbia, restricted to traffic originating at the plantsite and facilities of Spencer Foods, Inc. at the above named origins.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Minneapolis, Minn.

No. MC 134113 (Sub-No. 9), filed December, 1, 1976. Applicant: HI-BALL TRUCKING, INC., 2348 Lockwood Road, P.O. Box 1117, Billings, Mont. 59101. Applicant's representative: Joe Gerbase, 100 Transwestern Building, 404 North 31st Street, Billings, Mont. 59101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Particle Board*, (1) between points in Montana; (2) between points in Colorado, Idaho, North Dakota, Wyoming and Montana; (3) from points in Washington and Oregon to points in Wyoming, Colorado and New Mexico; (4) from points in Idaho and Montana to points in New Mexico; (5) from points in Washington, Oregon and Idaho to points in Kansas; and (6) between points in Washington, Oregon and Idaho, on the one hand, and, on the other, points in Oklahoma and Texas.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Billings, Mont. or Missoula, Mont.

No. MC 134145 (Sub-No. 64), filed November 30, 1976. Applicant: NORTH STAR TRANSPORT, INC., Rt. 1, Highway 1 and 59 West, Thief River Falls, Minn. 56701. Applicant's representative: Robert P. Sack, P.O. Box 6010, West St. Paul, Minn. 55118. Authority sought to operate as a *contract carrier*, by motor vehicle over irregular routes, transporting: *Three wheeled utility trucks*, self-propelled, weighing less than 1500 pounds, from Roseau, Minn., to Spokane, Wash.; Santa Ana, Calif.; Gaithersburg, Md.; and Fuquay Varina, N.C., under a continuing contract, or contracts, with Polaris E-Z-Go Division of Textron, Inc.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Minneapolis, Minn.

No. MC 134599 (Sub-No. 150), filed November 22, 1976. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, P.O. Box 748, Salt Lake City, Utah 84110. Applicant's representative: Richard A. Peterson, P.O. Box 81849, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Rubber, rubber products, and equipment, materials and supplies* used in the production thereof, (except commodities in bulk or those which because of size or weight require the use of special handling or equipment), between Eau Claire, Wis., on the one hand, and, on the other, points in the United States (except Alaska, Hawaii, Montana, North Dakota, South Dakota, Minnesota, Iowa, Illinois, Indiana and Wisconsin), under continuing contract or contracts with Uniroyal, Inc.

NOTE.—Applicant holds common carrier authority in MC 139906 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Lincoln, Nebr., or Salt Lake City, Utah.

No. MC 135819 (Sub-No. 4), filed November 30, 1976. Applicant: WILLIAM H. PHILLIPS AND WILLIAM I. PHILLIPS, a Partnership, doing business as: PHILLIPS & PHILLIPS TRUCKING COMPANY, P.O. Box 1304, Storm Lake, Iowa 50588. Applicant's representative: Arlyn L. Westergren, 530 Univac Building, 7100 West Center Road, Omaha, Nebr. 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat byproducts and articles distributed by meat packinghouses* (except hides and commodities in bulk), from the plantsite and facilities utilized by Hygrade Products, Inc. located at or near Storm Lake and Cherokee, Iowa, to points in Connecticut, Delaware, Maryland, Massachusetts, New Jersey, Rhode Island and Virginia.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Omaha, Nebr.

No. MC 135874 (Sub-No. 62), filed November 30, 1976. Applicant: LTL PERISHABLES, INC., 550 E. 5th Street South, South St. Paul, Minn. 55075. Applicant's representative: Paul Nelson, (Same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods* (except in bulk), from the facilities of Saluto Foods, Inc. located at or near Benton Harbor, Mich., to point in North Dakota and South Dakota, restricted to the transportation of shipments originating at the name origins and destined to the named destinations.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at St. Paul, Minn.

No. MC 136168 (Sub-No. 13), filed November 18, 1976. Applicant: WILSON CERTIFIELD EXPRESS, INC., P.O. Box 717, Marshall, Mo. 65340. Applicant's representative: Donald L. Stern, 530 Univac Building, Omaha, Nebr. 68106.

Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the *Report in Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), (1) from the plantsites and warehouse facilities utilized by Wilson & Co., Inc., and its subsidiary, Anderson Meat Company, located at Oklahoma City, Okla., to points in Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee; and (2) *returned shipments, and materials, supplies and equipment* utilized in the manufacture, sale and distribution of the commodities named in (1) above, from points in Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee, to the facilities specified as origins in (1) above, under a continuing contract, or contracts, with Wilson & Co., Inc., and its subsidiary Anderson Meat Company, restricted to the transportation of traffic originating at the plantsites and warehouse facilities utilized by Wilson & Co., Inc., and its subsidiary, Anderson Meat Company, located at Oklahoma City, Okla.

NOTE.—Applicant has common carrier authority pending in MC 141641 Sub-Nos. 1 through 5, therefore dual operations may be involved. Common control may also be involved. If a hearing is deemed necessary, the applicant requests it be held at Dallas, Tex. or Kansas City, Mo.

No. MC 136228 (Sub-No. 25), filed December 2, 1976. Applicant: LUISI TRUCK LINES, INC., P.O. Box H, Milton-Freewater, Oreg. 97862. Applicant's representative: Philip G. Skofstad, 1300 NE Linden, P.O. Box 594, Gresham, Oreg. 97030. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Hanging beef carcasses, and fresh and frozen meat*, in boxes, from Wallula, Wash., to Reno and Sparks, Nev.

NOTE.—Applicant holds contract carrier authority in No. MC 136531 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, the applicant requests it be held at Portland, Oreg.

No. MC 136385 (Sub-No. 6), filed December 2, 1976. Applicant: HALL WAY, INC., P.O. Box 22, Ankeny, Iowa 50021. Applicant's representative: Kenneth F. Dudley, 611 Church Street, P.O. Box 279, Ottumwa, Iowa 52501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from Spencer and Hartley, Iowa to points in Illinois, restricted to traffic originating at the plantsites or facilities utilized by Spencer Foods, Inc.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Kansas City, Mo. or Chicago, Ill.

No. MC 138741 (Sub-No. 29), filed November 26, 1976. Applicant: E. K. MOTOR SERVICE, INC., 2005 North Broadway, Joliet, Ill. 60435. Applicant's representative: Tom B. Kretsinger, 910 Brookfield Building, 101 West Eleventh Street, Kansas City, Mo. 64105. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Particle board*, from Union and Wright City, Mo., to points in Wisconsin.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Washington, D.C. or Chicago, Ill.

No. MC 138807 (Sub-No. 15), filed November 26, 1976. Applicant: ZIP TRUCKING, INC., P.O. Box 5717, Jackson, Miss. 39208. Applicant's representative: K. Edward Wolcott, 1600 First Federal Bldg., Atlanta, Ga. 30303. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Drugs, medicines and toilet preparations*, in packages, from Gulfport, Miss., to Jacksonville, Fla., under a continuing contract, or contracts, with Sterling Drug, Inc.

NOTE.—Applicant holds common carrier authority in No. MC 141652 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Jackson, Miss. or Jacksonville, Fla.

No. MC 138841 (Sub-No. 7), filed November 26, 1976. Applicant: BLACK HILLS TRUCKING CO., a Corporation, P.O. Box 2130, Rapid City, S. Dak. 57701. Applicant's representative: James W. Olson, 821 Columbus, Rapid City, S. Dak. 57701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat*, from Rapid City, S. Dak., to points in California, Oregon, Rhode Island and Washington.

NOTE. If a hearing is deemed necessary, the applicant requests it be held at either Rapid City, S. Dak. or Denver, Colo.

No. MC 139113 (Sub-No. 7), filed December 3, 1976. Applicant: BRUNDIDGE TRANSPORTATION, INC., P.O. Box 187, Brundidge, Ala. 36010. Applicant's representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1267, Arlington, Va. 22210. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Ground, mixed, and blended spices, and mustard and mustard products*, from Grand Forks, N. Dak., to points in the United States (except Alaska and Hawaii); and (2) *Materials, equipment and supplies*, used in the manufacture or distribution of ground, mixed and blended spices, and mustard and mustard products, from points in the United States (except Alaska and Hawaii), to Grand Forks, N. Dak., under a continuing contract or contracts with The Baltimore Spice Company.

NOTE. If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C.

No. MC 139360 (Sub-No. 4), filed November 26, 1976. Applicant: RAEMARC, INC., 1531 Taylor Ave., Racine, Wis. 53403. Applicant's representative: Daniel C. Sullivan, 327 South LaSalle Street, Chicago, Ill. 60604. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in or distributed by manufacturers and distributors of liquid soap, toilet preparations and chemicals, when moving in bulk tank vehicles; and shipper-owned bulk tank vehicles, between the manufacturing and storage facilities of S. C. Johnson & Son, Inc., at or near Racine and Mount Pleasant, Wis.; Rockford, Ill.; and Shipshewana, Ind., under continuing contract with S. C. Johnson & Son, Inc.

NOTE. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 139379 (Sub-No. 1), filed December 2, 1976. Applicant: LES MATHRE TRUCKING, INC., 417-8th Street, Story City, Iowa 50248. Applicant's representative: Larry D. Knox, 900 Hubbell Bldg, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products, and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 MCC 209 and 766 in connection therewith, *equipment, materials and supplies* used in the conduct of packinghouses (except commodities in bulk), between the facilities of Farmland Foods, Inc., located at or near Crete, Nebr., and Denison, Carroll and Iowa Falls, Iowa, on the one hand, and, on the other, points in Illinois, Iowa, Kansas, Missouri, Minnesota, Nebraska, North Dakota, South Dakota and Wisconsin.

NOTE. If a hearing is deemed necessary, the applicant requests it be held at either Omaha, Nebr. or Des Moines, Iowa.

No. MC 139379 (Sub-No. 2), filed December 2, 1976. Applicant: LES MATHRE TRUCKING, INC., 417 8th Street, Story City, Iowa 50248. Applicant's representative: Larry D. Knox, 900 Hubbell Bldg., Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products, and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk), from the facilities of Farmland Foods, Inc., located at or near Crete, Nebr., and Denison, Carroll and Iowa Falls, Iowa, to points in Arizona, California, Colorado, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington and Wyoming.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Omaha, Nebr. or Des Moines, Iowa.

No. MC 139410 (Sub-No. 4), filed December 1, 1976. Applicant: MIKE PHILLIPS ENTERPRISES, INC., 301 South Third Street, Phoenix, Ariz. 85004. Applicant's representative: Laudell Hames, 4301 West Country Gables, Glendale, Ariz. 85306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Carbonated beverages and related packing material*, between Phoenix, Ariz.; Las Vegas, Nev. and St. George, Utah.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Phoenix, Ariz. or Los Angeles, Calif.

No. MC 139495 (Sub-No. 183), filed December 2, 1976. Applicant: NATIONAL CARRIERS, INC., 1501 East 8th Street, P.O. Box 1358, Liberal, Kans. 67901. Applicant's representative: Herbert Alan Dubin, 1819 H Street, NW., Suite 1030, Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Medical care devices or products*, in vehicles equipped with mechanical refrigeration, from Johnston County, N.C. to points in California, Colorado, Illinois, Louisiana, New Jersey, New York, Oregon, Tennessee, Texas, Utah, Washington and Wisconsin.

NOTE.—Applicant holds contract carrier authority in MC 133106 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C.

No. MC 139658 (Sub-No. 19), filed November 20, 1976. Applicant: HARRY POOLE, INC., 2322 Kensington Road, Macon, Ga. 31201. Applicant's representative: William Addams, Suite 212, 5299 Rosewell Road, N.E., Atlanta, Ga. 30349. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Zinc sulphate*, in bulk, in dump semi-trailers, and in bags, from Pelham, Ga., to points in Alabama, Florida, Mississippi, North Carolina, South Carolina, Tennessee and Virginia.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga.

No. MC 141255 (Sub-No. 7) (Correction), filed November 10, 1976, published in the FEDERAL REGISTER issue of December 2, 1976, republished as corrected this issue. Applicant: TANDY TRANSPORTATION, INC., 3501 Fairview, P.O. Box 7135, Fort Worth, Tex. 76111. Applicant's representative: Ralph W. Pulley, Jr., 4555 First National Bank Bldg., Dallas, Tex. 75202. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Electronic equipment, materials and supplies* (except commodities requiring the use of special equipment), from Seattle, Wash., to Randolph, Mass.; (2) *electronic equipment, materials and supplies* (except commodities requiring the use of special equipment), from Los Angeles, Calif. to Randolph, Mass.; (3) *antenna masts* (except commodities requiring the use of special equipment), from Tarrant City, Ala., to Randolph, Mass.; (4) *electronic stands KD* (except commodities requiring the use of special equipment), from St. Louis, Mo. to Randolph, Mass.; and (5) *electronic equipment* (except commodities requiring the use of special equipment), from Mundelein, Ill., to Randolph, Mass., the operations authorized herein in (1) through (5) are limited to a transportation service to be performed under a continuing contract or contracts with Tandy Corporation and its division.

NOTE.—The purpose of this republication is to indicate the correct origin in (3) above of this proceeding as Tarrant City, Ala., in lieu of Tarrant City, Mo., as previously published in error. If a hearing is deemed necessary, the applicant requests it be held at either Dallas, Tex. or Washington, D.C.

No. MC 141652 (Sub-No. 8), filed December 2, 1976. Applicant: ZIP TRUCKING, INC., P.O. Box 5717, Jackson, Miss. 39208. Applicant's representative: K. Edward Wolcott, 1600 First Federal Bldg., Atlanta, Ga. 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Steel doors, steel door frames, and brass, bronze, copper and steel hardware*, from the plantsite of Ceco Corporation located at or near Milan, Tenn., to points in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

NOTE.—Applicant holds contract carrier authority in No. MC 138807 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, the applicant requests it be held at Chicago, Ill.

No. MC 142107 (Sub-No. 1) (Amendment), filed May 24, 1976, published in the FEDERAL REGISTER issue of July 15, 1976, and republished as amended this issue. Applicant: H & M TRUCKING CO., P.O. Box 173, Clinton, Ill. 61727. Applicant's representative: B. W. LaTourette, Jr., 11 S. Meramec, Suite 1400, St. Louis, Mo. 63105. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Feed ingredients* (except commodities in bulk, in tank vehicles, and salt), between Cold Water, Mich.; Muncie, Plymouth, Logansport, Hammond, Indianapolis, Columbus, Frankfort and Mashawaka, Ind.; Cincinnati, Cleveland, Defiance, Wauseon and Clyde, Ohio; Kankakee, Deer Creek, Mason City, Chicago, Decatur, Rochelle, Lynn Center, East St. Louis, Danville, Champaign, Gibson City, Taylorville and Galesburg, Ill.; Milwaukee and Green Bay, Wis.; Cedar Rapids, Washington, Des Moines, Sioux City, Eagle Grove, Ft. Dodge, Belmont, Iowa Falls, Mason City, Davenport, Waterloo, Alta Vista and Tama, Iowa; Red Wing and Albert Lea, Minn.; and Marshall and Blackwater, Mo.

NOTE.—The purpose of this republication is to indicate applicant's amended request for authority. Hearing: Set for January 25, 1977 (2 days), at 9:30 a.m. local time, at Chicago, Ill.

No. MC 142346 (Sub-No. 1), filed November 10, 1976. Applicant: LARMER TRANSFER CO., a Corporation, 90129 Prairie Road, P.O. Box 706, Eugene, Oreg. 97402. Applicant's representative: Russell M. Allen, 1200 Jackson Tower, Portland, Oreg. 97205. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Steel plate, angle iron, bars, pipe and channel*, from the Portland docks, at Portland, Oreg., to the Farwest Steel Plant, at Eugene, Oreg., under contract with Farwest Steel Corporation.

NOTE.—If a hearing is deemed necessary, applicant request it be held at either Portland or Eugene, Oreg.

No. MC 142390 (Sub-No. 2), filed November 29, 1976. Applicant: TRANSIT MOVING, INC., Colonial Park, Suite 116, 1027 Hollywood Blvd., Iowa City, Iowa 52240. Applicant's representative: Carl E. Munson, 469 Fischer Building, Debuque, Iowa 42001. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic articles and materials*, expanded, in shipper-owned or shipper-leased trailers, (1) from Chicago, Ill., to Iowa City, Iowa, St. Louis, Mo. and Omaha, Nebr., and (2) from Omaha, Nebr., to Des Moines, Iowa, under a continuing contract, or contracts, with Clark-Crain Foam Industries, Inc.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Chicago, Ill. or Des Moines, Iowa.

No. MC 142578 (Sub-No. 2), filed December 2, 1976. Applicant: L & M DISTRIBUTORS, INC., 1705 Murphy, Missoula, Mont. 59801. Applicant's representative: Roy Lewellen (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Precut, knock down log homes, hardware and accessories*, used or useful in the construction thereof, (1) from the facilities of Alpine Log Homes, located at or near Victor, Mont., to points in the United States including Alaska, but excluding Hawaii; and (2) from points in the United States including Alaska, but excluding Hawaii, to the facilities of Alpine Log Homes, located at or near Victor, Mont., under a continuing contract or contracts with Alpine Log Homes, Inc.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Missoula, Helena or Billings, Mont.

No. MC 142593 (Sub-No. 2), filed December 3, 1976. Applicant: WARNER BROS. INC., P.O. Box 395, Sunderland, Mass. 01375. Applicant's representative: David M. Marshall, 135 State Street, Suite 200, Springfield, Mass. 01103. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Salt, rock salt and calcium chloride*, in bags and in bulk, between Deerfield and East Deerfield, Mass., on the one hand, and, on the other, points in Connecticut, Maine, New Hampshire, New York, Rhode Island and Vermont, under a continuing contract or

contracts with International Salt Company.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Hartford, Conn.; Boston, Mass.; or Albany, N.Y.

No. MC 142594 (Sub-No. 2), filed November 19, 1976. Applicant: BRAZOS, INC., 1602 Main Street, Lubbock, Tex. 79401. Applicant's representative: Richard Hubbert, 1607 Broadway, P.O. Box 2976, Lubbock, Tex. 79408. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, between the Lubbock Regional Airport and Lubbock, Tex., and the Dallas Fort Worth Airport located near Dallas, Tex., and Dallas, Tex., restricted to traffic having an immediate prior or subsequent movement by air.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Dallas or Lubbock, Tex.

No. MC 142656, filed November 22, 1976. Applicant: RON MORGAN, doing business as, DRILLING HOTSHOT SERVICE, Route 2, Box 229, Fort Smith, Ark. 72901. Applicant's representative: Tom Harper, Jr., 510 North Greenwood Avenue, P.O. Box 43, Fort Smith, Ark. 72902. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Machinery, equipment, materials and supplies* used in replacing, servicing, and repair of machinery and equipment, used in or in connection with the discovery, development, and production of natural gas and petroleum and their products and by-products, between Fort Smith, Ark., on the one hand, and on the other, points in Adair, Cherokee, Craig, Creek, Delaware, Haskell, Hughes, Latimer, LeFlore, Mayes, McIntosh, Muskogee, Nowata, Ofuskee, Okmulgee, Osage, Ottawa, Pittsburg, Rogers, Sequoyah, Tulsa, Wagoner, and Washington Counties, Okla., restricted against the transportation of commodities in bulk.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Fort Smith, Ark.

No. MC 142672, filed November 18, 1976. Applicant: DAVID BENEUX PRODUCE AND TRUCKING, INC., P.O. Box 232, Mulberry, Ark. 72947. Applicant's representative: Don Garrison, 204 Highway 71 North, Suite 3, Springdale, Ark. 72764. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fencing, fencing materials, wire and wire products and steel wire carriers*, (1) from Van Buren, Ark., to points in Alabama, Arizona, California, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, Nevada, New Mexico, Ohio, Oklahoma, Tennessee, and Texas; and (2) from Reno, Nev., to Van Buren, Ark.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Little Rock, Ark.

No. MC 142686, filed November 15, 1976. Applicant: MID-WESTERN TRANSPORT, INC., 5320 Industrial Road, Fort Wayne, Ind. 46825. Applicant's representative: Anthony E. Young, 327 South LaSalle Street, Chicago, Ill. 60604. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *General Commodities* (except commodities in bulk, foodstuffs and Classes A and B explosives), from the facilities of Essex International, Inc., at Paducah, Ky., and at points in Illinois, Indiana, Michigan, and Ohio, to points in Arizona, California, Colorado, Kansas, Nevada, Mexico, Oklahoma, Oregon, Texas, Utah and Washington; and (2) *returned shipments* of the above described commodities, *used reels and scrap wire*, from the destination states named in (1) above, to the facilities of Essex International, Inc., located at the points named in (1) above, restricted to a transportation service performed under a continuing contract, or contracts, with Essex International, Inc., at Fort Wayne, Ind.

NOTE.—Common control may be involved. If a hearing is deemed necessary, applicant does not specify a location.

No. MC 142688, filed November 26, 1976. Applicant: EDWARD G. LEROUX, JR., ROGER O. LEROUX, AND ROBERT ROMANO, a Partnership, doing business as LEROMA KENNELS, 304 Cambridge Road, Woburn, Mass. 01801. Applicant's representative: Edward G. Leroux, Jr., 4 Partridge Lane, Winchester, Mass. 01890. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Greyhound dogs*, between points in New Hampshire, Florida, Texas and Oklahoma.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Boston, Mass.

No. MC 142714, filed November 29, 1976. Applicant: HAWKEYE BUILDING SUPPLY TRANSPORTATION CO., 204 Iowa Street, Sioux City, Iowa 51102. Applicant's representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, lumber products, building materials*, and *such commodities* as are dealt in by building material dealers (except commodities in bulk, in tank vehicles), (1) from points in Iowa, Minnesota, Nebraska, and South Dakota, to Sioux City, Iowa; and (2) from Sioux City, Iowa, and points in Idaho, Montana, Oregon, Washington, and Wyoming, to points in Iowa, Minnesota, Nebraska, and South Dakota, under a continuing contract, or contracts, with Hawkeye Building Supply Co.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Sioux City, Iowa or Lincoln, Nebr.

PASSENGER APPLICATIONS

No. MC 140113 (Sub-No. 6), filed November 22, 1976. Applicant: MAPLEWOOD EQUIPMENT COMPANY, a Corporation, 419 Anderson Avenue, Fairview, N.J. 07022. Applicant's representative: Edward F. Bowes, P.O. Box 1409, 167 Fairfield Road, Fairfield, N.J. 07006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, between the Port Authority of New York and New Jersey Bus Terminal, at New York, N.Y., and the office and warehouse site of Walter Kane & Son, Inc., at Carlstadt, N.J., under a continuing contract or contracts with Walter Kane & Son, Inc.

NOTE.—Applicant holds common carrier authority in MC 138828 and subs thereunder, therefore dual operations may be involved. Common control may also be involved. If a hearing is deemed necessary, applicant requests it be held at Newark, N.J., or New York, N.Y.

No. MC 141082 (Correction), filed June 16, 1975, and published in the FEDERAL REGISTER issue of July 17, 1975, and republished this issue. Applicant: DOOR-TO-DOOR LIMOUSINE, INC., 293 Alden Street, Fairfield, Conn. 06430. Applicant's representative: Brain T. Silvestro, P.O. Box 777, Westport, Conn. 06880. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers, and their baggage* in the same vehicle with passengers, in door-to-door service in vehicles limited to eleven passengers, including the driver thereof, in charter and special operations, between Milford, Stratford, Bridgeport, Easton, Trumbull, Fairfield and Westport, Conn., on the one hand, and, on the other, the New York, N.Y. Commercial Zone as defined by the Commission and the Newark Airport, Newark, N.J.

NOTE.—The purpose of this republication is to indicate type of operations. If a hearing is deemed necessary, applicant requests it be held at Hartford, Conn.

No. MC 142710, filed November 29, 1976. Applicant: NOMADIC ENTERPRISES, INC., 40 Highland Avenue, Easthampton, Mass. 01027. Applicant's representative: David M. Marshall, 135 State Street, Suite 200, Springfield, Mass. 01103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, and *camping equipment*, in special operations, in personally conducted, all-expense, round-trip camping tours, beginning and ending at points in California, Connecticut, Maine, Massachusetts, New Hampshire, New York, (except points in that part of New York on and south of Interstate Highway 84), Rhode Island and Vermont, and extending to points in the United States, including Alaska but excluding Hawaii.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Hartford, Conn., Boston, Mass. or Albany, N.Y.

BROKER APPLICATIONS

No. MC 130426, filed November 16, 1976. Applicant: 4-SEASONS TOURS,

INC., 150 Woodring Lane, Newark, Del. 19702. Applicant's representative: Leonard A. Jaskiewicz, 1730 M Street, N.W., Washington, D.C. 20036. Authority sought to engage in operation, in interstate or foreign commerce, as a *broker* at Newark, Del., to sell or offer to sell the transportation of *Passengers and their baggage* in the same vehicle with passengers, by motor carrier, in special and charter operations, beginning and ending at points in New Castle and Kent, Del., Salem County, N.J., Chester County, Pa., and extending to points in the United States, including Alaska but excluding Hawaii.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Wilmington, Del. or Philadelphia, Pa.

FINANCE APPLICATION

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control through ownership of stock, of rail carriers or motor carriers pursuant to Sections 5(2) or 210a(b) of the Interstate Commerce Act.

An original and two copies of protests against the granting of the requested authority must be filed with the Commission within 30 days after the date of this Federal Register notice. Such protest shall comply with Special Rules 240 (c) or 240(d) of the Commission's general rules of practice (49 CFR 1100.240) and shall include a concise statement of protestant's interest in the proceeding. A copy of the protest shall be served concurrently upon applicant's representative, or applicant, if no representative is named.

No. MC-F-13029. Authority sought for continuance of control by AL J. SCHNEIDER, 2661 South Broadway, Green Bay, WI., 54304, of TRANS-NATIONAL TRUCK, INC., P.O. Box 4168, Amarillo, TX., 79105. Applicants' attorney: Charles W. Singer, 2440 East Commercial Boulevard, Ft. Lauderdale, FL., 33308. Operating rights sought to be controlled: *Meats, meat products, and meat byproducts*, and articles distributed by meat packinghouses, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, *hides and switches, outdoor cooking supplies*, and *advertising material* used in connection therewith, (1) *Canned vegetables*, and (2) *fresh vegetables* when moving in mixed shipments with canned vegetables, *lighting fixtures, light bulbs*, and *equipment, materials, and supplies* (except in bulk) used in the manufacture, production, distribution, and sale of lighting fixtures and light bulbs, *paper and paper products, paper bags, floor coverings, canned citrus juices*, and numerous other specified commodities, as a *common carrier* over irregular routes, from, to, and between specified points in all the States in the United States (except Alaska and Hawaii), with certain restrictions, as more specifically described in Docket No. MC 133655 and Sub numbers thereunder. This notice does not purport to be a complete description of all of the operating rights of the carrier involved. The foregoing summary is believed to be sufficient for purposes of public notice regarding the nature and extent of this carrier's operating rights, without stating, in full, the entirety thereof. AL J. SCHNEIDER, holds no authority from this Commission. However, it is affiliated with SCHNEIDER TRANSPORT, INC. (MC 51146), SCHNEIDER TANK LINES, INC., (MC 110989), NATIONAL REFRIGERATED TRANSPORT, INC., (MC 118159), and W N I, INC., (MC 141871), all are common carriers, authorized to operate collectively in all the States in the United States including the District of Columbia. Application has not been filed for temporary authority under section 210 a(b).

NOTE.—Motion to Dismiss filed simultaneously.

No. MC-F-13044 (CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE—PURCHASE (PORTION)—POINT EXPRESS, INC.), published in the December 16, 1976, issue of the FEDERAL REGISTER on page 55049. Application filed December 15, 1976, for temporary authority under Section 210a(b).

No. MC-F-13049. Authority sought by RYDER SYSTEM, INC., (non-carrier), 3600 N.W. 82nd Avenue, Miami, FL., 33166, to purchase from CLARK TRANSPORT COMPANY, INC., 13101 South Torrence Avenue, Chicago, IL., 60633, certain motor vehicle equipment and parts together with shop and office equipment used in connection with the operations of CLARK TRANSPORT COMPANY, INC. Applicants attorneys: Walter N. Bieneman Suite 102, 100 West Long Lake Road, Bloomfield Hills, MI., 48013 and Charles W. Singer, 2440 East Commercial Blvd., Ft. Lauderdale, FL., 33308. RYDER SYSTEM, INC., holds no authority from this Commission. However, it is affiliated with (1) COMPLETE AUTO TRANSIT, INC., 18544 W. Eight Mile Rd., Southfield, MI., 48075 and (2) M. & G. CONVOY, INC., P.O. Box 104, Buffalo, N.Y., 14210, (1) which is authorized to operate as a contract carrier in all of the States in the United States (except Alaska and Hawaii), and (2) which is authorized to operate as a common carrier in all of the States in the United States (except Alaska and Hawaii). Application has not been filed for temporary authority under section 210a(b).

NOTE.—As part of the transaction, CLARK TRANSPORT COMPANY, INC., submitted a Petition filed December 2, 1976, seeking (a) revocation or cancellation of certain portions of Docket No. MC 106647 and 106647 (Subs-No. 39 and 41) and (b) modification of a portion of Docket No. MC 106647. This petition is directly related to MC-F-13049.

No. MC-F-13059. Authority sought for purchase by NEW ULM FREIGHT LINES, INC., P.O. Box 347, New Ulm, MN 56073, of a portion of the operating rights of JOHNSRUD TRANSPORT, INC., Highway 9 West, P. O. Box 447, Cresco, IA 52136, and for acquisition by BARRY BLOEDEL, P.O. Box 347, New Ulm, MN 56073, of control of such rights through the purchase. Applicants' attorneys: James E. Ballenthin, 630 Osborn Bldg., Saint Paul, MN 55102 and Patrick E. Quinn, P.O. Box 82028, Lincoln, NE 68501. Operating rights sought to be transferred: *Dairy products*, as a *common carrier* over irregular routes from Mason City, Iowa, to points in Pennsylvania, New York, Massachusetts, Connecticut, New Jersey, Rhode Island, and Cleveland, Ohio, with no transportation for compensation on return except as otherwise authorized; *Butter*, from the plantsite of Associated Milk Producers, Inc., located at or near New Ulm, Minn., to points in Ohio, Pennsylvania, New York, New Jersey, Connecticut, Rhode Island, and Massachusetts. Vendee is authorized to operate as a *common carrier* in Connecticut, Illinois, Indiana, Iowa, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, West Virginia, and Wisconsin. Application has been filed for temporary authority under Section 210a(b).

OPERATING RIGHTS APPLICATION(S) DIRECTLY RELATED TO FINANCE PROCEEDINGS

The following operating rights application(s) are filed in connection with pending finance applications under Section 5(2) of the Interstate Commerce Act, or seek tacking and/or gateway elimination in connection with transfer applications under Section 212(b) of the Interstate Commerce Act.

An original and two copies of protests to the granting of the authorities must be filed with the Commission within 30 days after the date of this FEDERAL REGISTER notice. Such protests shall comply with Special Rule 247(d) of the Commission's general rules of practice (49 CFR 1100.247) and include a concise statement of protestant's interest in the proceeding and copies of its conflicting authorities. Verified statements in opposition should not be tendered at this time. A copy of the protest shall be served concurrently upon applicant's representative, or applicant if no representative is named.

Each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

No. MC 27817 (Sub-No. 125), filed November 19, 1976. Applicant: H. C. GABLER, INC., R.D. No. 3, N., P.O. Box 220, Chambersburg, Pa. 17201. Applicant's representative: Christian V. Graf, 407 North Front Street, Harrisburg, Pa. 17101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper, paper products and commodities* used in the manufacture, distribution and sale of paper and paper products (except commodities in bulk, in tank or hopper

type vehicles), (1) between the facilities of Hoerner Waldorf Corporation, located at Roanoke Rapids, N.C., on the one hand, and, on the other, points in Virginia, Maryland (except Baltimore and points in its commercial zone, as defined by the Commission), Delaware, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Maine, Vermont, New Hampshire and Pennsylvania (except Philadelphia and points in its commercial zone, as defined by the Commission); and (2) from Washington, D.C., to the facilities of Hoerner Waldorf Corporation, located at Roanoke Rapids, N.C.

NOTE.—The purpose of this application is to convert a Permit to a Certificate of Public Convenience and Necessity. This is a matter directly related to a Section 5(2) finance proceeding in MC–F–13036 published in the FEDERAL REGISTER issue December 16, 1976. If a hearing is deemed necessary, the applicant requests it be held at either Harrisburg, Pa. or Washington, D.C.

MOTOR CARRIER INTRASTATE APPLICATION(S)

The following application(s) for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to Section 206(a)(6) of the Interstate Commerce Act. These applications are governed by Special Rule 245 of the Commission's general rules of practice (49 CFR 1100.245), which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, and any other related matters shall be directed to the State Commission with which the application is filed and shall not be addressed to or filed with the Interstate Commerce Commission.

New York Docket No. T–3372, filed September 20, 1976. Applicant: WALSH TRUCKING COMPANY, INC., 54–60 48th Street, Maspeth, N.Y. 11378. Applicant's representative: Arthur Lieberstein, One Penn Plaza, New York, N.Y. 10001. Certificate of Public Convenience and Necessity sought to operate a freight service as follows: Transportation of *General commodities*, from all points in Nassau, Suffolk and Orange Counties, N.Y., to New York, N.Y. Intrastate, interstate and foreign commerce authority south. Hearing: Date, time and place not yet fixed. Requests for procedural information should be addressed to the New York State Department of Transportation, 1220 Washington Avenue, State Campus, Albany, N.Y. 12232 and should not be directed to the Interstate Commerce Commission.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76–38217 Filed 12–29–76;8:45 am]

federal register

THURSDAY, DECEMBER 30, 1976

PART II

DEPARTMENT OF DEFENSE

Corps of Engineers

■

CONTINUING AUTHORITIES PROGRAM

Monetary Limitations

Title 33—Navigation and Navigable Waters

CHAPTER II—CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY

[ER 1105-2-50]

PART 263—CONTINUING AUTHORITIES PROGRAM

Monetary Limitations

On 3 November 1976, the Chief of Engineers adopted a regulation on the Corps of Engineers Continuing Authorities Program. This program consists of seven legislative authorities under which the Chief of Engineers may plan, design and construct water resources projects without specific authorization from Congress. Each of the authorities has a monetary limitation per project and a monetary limitation for appropriations in any one fiscal year.

Section 133, Public Law 94-587, Water Resources Development Act of 1976 (90 Stat. 2917), amends two of these continuing authorities by raising the monetary limitations of Federal cost per project. The Act raised the limit on small flood control projects from $1 million to $2 million, except if the area has been declared a major disaster area by the President of the United States in the previous five years, in which case the limit is now $3 million rather than the previously authorized $2 million.

The Act also raised the limit of Federal cost on small navigation projects from $1 million to $2 million.

Since the amendments to this regulation do not change the policies and procedures for the Continuing Authorities Program, the changes are not being published under proposed rule-making procedures and are being adopted effective 22 October 1976, the date on which the President approved Public Law 94-587.

The Corps of Engineers has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: December 13, 1976.

RUSSELL J. LAMP,
Colonel, Corps of Engineers
Executive.

§ 263.17 [Amended]

1. Part 263, Subpart A, § 263.17(L)(1) is amended to change third word in sentence from "or" to "and" as follows: "Notify DAEN-CWO and DAEN-CWP-A * * * "

2. Part 263, Subpart A, § 263.20(a) is amended to add a third sentence as follows:

§ 263.20 Program funding.

(a) * * *

To expedite budget preparation, field operating agencies should insure that budgetary data on the Continuing Authorities Program are sent directly to DAEN-CWP-A or DAEN-CWO, depending on the authority.

* * * * *

3. Part 263, Subpart B, § 263.21(a) is amended by deleting the last three words, "states as follows", in the first sentence, and revising the sentence to read as follows:

§ 263.21 Small navigation project authority.

(a) *Legislative Authority.* Section 107 of the River and Harbor Act of 1960, as amended by section 310 of the River and Harbor Act of 1965, section 112 of the River and Harbor Act of 1970, and section 133(a) of the Water Resources Development Act, approved 22 October 1976, states:

4. Part 263, Subpart B, § 263.21(a)(b) is amended to change the amount from "$1,000,000" to "$2,000,000".

5. Part 263, Subpart C, § 263.23(a) is amended by deleting the last word, "states", in the first sentence, and revising the sentence to read as follows:

§ 263.23 Small flood control project authority.

(a) *Legislative Authority.* Section 205 of the Flood Control Act approved 30 June 1948, as amended by section 205 of the Flood Control Act approved 23 October 1962, Section 61 of the Water Resources Development Act approved 7 March 1974, and Section 133(b) of the Water Resources Development Act approved 22 October 1976, states:

* * * * *

6. Part 263, Subpart C, § 263.23(a) is amended to change the dollar amounts in third sentence of quoted matter to read as follows: "Not more than $2,000,000 shall be allotted under this section for a project at any single locality, except that are not more than $3,000,000 shall be allotted. * * *"

7. Part 263, App A(1). Table is amended to add new monetary limits established by law. The amended table reads as follows:

(1) Small Flood Control Project Authority (Sec. 205)

Section/law	Date	Public Law No.	Federal cost limitation per project/annual program limit
Sec. 205 of 1948 FCA	June 30, 1948	80-858	$100,000/$2,000,000
Sec. 212 of 1950 FCA	May 17, 1950	81-516	150,000/ 3,000,000
Public Law 685/84th Cong./2d sess.	July 11, 1956	84-685	400,000/10,000,000
Sec. 205 of 1962 FCA	Oct. 23, 1962	87-874	1,000,000/25,000,000
Sec. 61 of WRDA of 1974	Mar. 7, 1974	93-251	1,000,000/30,000,000 [1] 2,000,000
Sec. 133(b) of WRDA of 1976	Oct. 22, 1976	94-587	2,000,000/30,000,000 [1] 3,000,000

[1] Federal cost may go to higher amount if project is located in a major disaster area designated by the President.

8. Part 263, Appendix A(4). Table is amended to add new monetary limits established by law. The amended table reads as follows:

(4) Small Navigation Project Authority (Sec. 107)

Section/law	Date	Public Law No.	Federal cost limitation per project/annual program limit
Sec. 107 of 1960 R. & H. Act	July 14, 1960	86-645	$200,000/$2,000,000
Sec. 310 of 1965 R. & H. Act	Oct. 27, 1965	89-298	500,000/10,000,000
Sec. 112 of 1970 R. & H. Act	Dec. 31, 1970	91-611	1,000,000/25,000,000
Sec. 133(a) of WRDA of 1976	Oct. 22, 1976	94-587	2,000,000/25,000,000

[FR Doc.76-37204 Filed 12-29-76;8:45 am]

federal register

THURSDAY, DECEMBER 30, 1976

PART III

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

■

NATIONAL FLOOD INSURANCE PROGRAM

Final and Proposed Flood Elevation Determinations

Title 24—Housing and Urban Development

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

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI-2351]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the Borough of Morrisville, Buck County, Pennsylvania

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.10)), hereby gives notice of his final determinations of flood elevations for the Borough of Morrisville, Buck County, Pennsylvania under § 1917.9 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the Borough must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to § 1917.9(a), the Administrator has resolved the appeals presented by the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at the Administrative Office, Borough Hall, 35 Union Street, Morrisville, Pennsylvania.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one-percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width in feet from bank of stream to 100-yr flood boundary facing downstream	
			Left	Right
Delaware River	Southeast corporate limits	17	(1)	280
	Bowling Green Ave. (extended)	18	(1)	580
	E. Cleveland St. (extended)	19	(1)	460
	Philadelphia Ave. (extended)	20	(1)	140
	Moreau St. (extended)	22	(1)	1,300
	E. Palmer St. (extended)	25	(1)	100
	E. Trenton Ave.	27	(1)	25
	North corporate limits	28	(1)	300

[1] Outside of corporate limits.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: December 16, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-38033 Filed 12-29-76;8:45 am]

[Docket No. FI-2293]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the Borough of Parkside, Delaware County, Pennsylvania

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.10)), hereby gives notice of his final determinations of flood elevations for the Borough of Parkdale, Delaware County, Pennsylvania under § 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the Borough must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to § 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at the Borough office, 505 West Forestview Road, Parkside, Pennsylvania.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one-percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width in feet from bank of stream to 100-yr flood boundary facing downstream	
			Left	Right
Ridley Creek	From bank of Ridley Creek 120 ft along east corporate limits 280 ft along west corporate limits.	39	(1)	200

[1] Corporate limits.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: December 16, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-38035 Filed 12-29-76;8:45 am]

[Docket No. FI-2569]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the City of Belleair Bluffs, Florida

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.10)), hereby gives notice of the final determinations of flood elevations for the City of Belleair Bluffs, Florida under § 1917.9 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to § 1917.9(a), the Administrator has resolved the appeals presented by the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at City Hall, 115 Florence Drive, Belleair Bluffs, Florida 33540.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one-percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width in feet—Distance from coastline line to V-zone boundary
Gulf of Mexico	Sunset Dr. (extended)	13	150
	Del Rio Dr. (extended)	13	55

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: December 16, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-38024 Filed 12-29-76;8:45 am]

[Docket No. FI-2320]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the City of Longmont, Colorado

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.10)), hereby gives notice of the final determinations of flood elevations for the City of Longmont, Colorado under § 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to § 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at Civic Center, Longmont, Colorado 80501.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary	
			Right	Left
St. Vrain Creek	N. 119th St.	4,915	2,260	460
	Main St., U.S. 287	4,946	1,460	1,560
	Pratt Parkway	4,948	650	930
	Upstream of Colorado and Southern R.R.	4,960	3,015	2,350
	Boston Ave.	4,964	2,435	1,620
	Upstream of Sunset St.	4,970	2,885	920
	Upstream of Hover St.	4,983	3,690	280
	Downstream of Airport Rd.	5,020	[1] 555	205
Left Hand Creek	Florida Ave.	4,933	1,735	200
	Main St., U.S. 287	4,948	70	40
	S. Pratt Parkway	4,956	62	60
	Bowen St.	4,963	110	35
	Pike Rd.	4,971	125	105
Dry Creek	Main Street, U.S. 287	4,946	200	2,780
	Pratt Parkway	4,953	520	85
	Bowen St.	4,961	150	140
	Sherman St.	4,965	100	335
Spring Gulch	Martin St.	4,952	360	830
	East 5th Ave.	4,963	140	295
	East 9th Ave.	4,980	620	155
	Upstream Mountain View Ave.	4,998	128	75

[1] Width shown is measured from center of channel to boundary of prime urbanized area.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: December 16, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-38023 Filed 12-29-76;8:45 am]

[Docket No. FI-2305]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the City of Oil City, Venango County, Pennsylvania

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.10)), hereby gives notice of his final determinations of flood elevations for the City of Oil City, Venango County, Pennsylvania under § 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of

ninety (90) days has been provided. Pursuant to § 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at the bulletin board at City Hall, 1 Sycamore Street, Oil City.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one-percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width in feet from bank of stream to 100-yr flood boundary facing downstream	
			Left	Right
Oil Creek	Corporate limits (N)	1,009	5	340
	ConRail	1,007	60	20
	Cornplanter Ave. (extended)	1,005	540	(1)
Allegheny River	Corporate limits (S)	989	40	(1)
	Cowell St. (extended)	990	0	20
	Innis St. (extended)	991	20	30
	U.S. Highway 62	992	60	50
	ConRail	997	20	20
	Corporate limits (E)	1,092	(1)	

[1] Corporate limit.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: December 16, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-38037 Filed 12-29-76;8:45 am]

[Docket No. FI-2304]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the City of Pottsville, Schuylkill County, Pennsylvania

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.10)), hereby gives notice of his final determinations of flood elevations for the City of Pottsville, Schuylkill County, Pennsylvania under § 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to § 1917.8, no appeals were received from the community or from individuals within the community. Therefore, a publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at the City Clerks office, City Hall, 401 North Center Street, Pottsville.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one-percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width in feet from bank of stream to 100-yr flood boundary facing downstream	
			Left	Right
Schuylkill River	Collins St	617	[1] 50	50
	Route 61	614	175	125
	ConRail bridge	612	30	75
	do	606	200	200
		Sheet flow (average depth)		
Norwegian Creek (culvert).	Norwegian St	1.1	80	75
	East Arch St	1.1	60	50
West Branch of Schuylkill River.[2]	Upstream corporate limits		200	
	Route 209		100	
	Downstream corporate limits		60	(3)

[1] Width in feet from left bank of stream to corporate limit.
[2] Studied by approximate methods.
[3] Right bank, outside of corporate limits.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: December 17, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-38036 Filed 12-29-76;8:45 am]

[Docket No. FI-2307]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the City of Sandusky, Erie County, Ohio

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.10)), hereby gives notice of his final determinations of flood elevations for the City of Sandusky, Erie County, Ohio under § 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to § 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at the bulletin board, City Building, 222 Meigs Street, Sandusky, Ohio.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one-percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width in feet from bank of stream to 100-yr flood boundary facing downstream	
			Left	Right
Pipe Creek	Upstream corporate limits	583.0	960	105
	Con Rail	581.0	370	460
	Cleveland Rd. and U.S. Highway 6	579.0	540	800
Cold Creek main branch.	State Route 2	589.0	50	50
	Bardshar Rd. (State Route 99)	586.0	50	50
Mills Creek	Upstream corporate limits	597.0	20	200
	U.S. Highway 6 (extended)	589.0	260	580
	Con Rail	587.0	10	400
	do	586.0	200	50
	Monroe St	585.0	50	200
Sandusky Bay		577.2		
Lake Erie		577.2		

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: December 16, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-38030 Filed 12-29-76;8:45 am]

[Docket No. FI-2568]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the City of Stephenville, Erath County, Texas

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.10)), hereby gives notice of his final determinations of flood elevations for the City of Stephenville, Erath County, Texas under § 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with these criteria and reflect the base flood ele-

vations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to § 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at City Hall, 354 North Belknap Street, Stephenville, Texas.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one-percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width in feet from bank of stream to 100-yr flood boundary facing downstream	
			Left	Right
Town Creek	Upstream corporate limit	1,364	175	95
	Brenda St	1,328	60	160
	West Washington St	1,324	200	45
	Downstream corporate limit	1,310	115	150
Bosque River	Upstream corporate limit	1,276	(1)	680
	Route 108	1,270	(1)	225
	F.M. 8	1,263	80	280
	East Washington St	1,252	115	220
	South Graham St	1,244	295	265
	U.S. Route 377, 67	1,239	1,080	90
	Downstream corporate limit	1,237	730	540

[1] Corporate limits.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: December 16, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-38040 Filed 12-29-76;8:45 am]

[Docket No. FI-2281]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the City of Sylvania, Lucus County, Ohio

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.10)), hereby gives notice of his final determinations of flood elevations for the City of Sylvania, Lucus County, Ohio under § 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to § 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at the office of the Clerk-Auditor, City Hall, 6635 Maplewood Avenue, Sylvania.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one-percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width in feet from bank of stream to 100-yr flood boundary facing downstream	
			Left	Right
Ottawa River	South corporate limits	612	(1)	25
	Sylvania Country Club Bridge	615	70	130
	800 ft downstream from U.S. Route 23 exit ramp.	617	550	700
	50 ft downstream from Harroun Rd	634	10	550
Ten Mile Creek	South Main St	631	10	10
	100 ft upstream from Silica Dr	638	145	230
	Olde Post Rd	645	25	40
	100 ft downstream of Bonniebrook Rd	651	85	150
	90° from Radcliffe at Westbourne	645	255	70
	Bonniebrook Rd. (extended)	655	440	420
	South corporate limits (extended)	656	460	150
McPeak Drain	Granville Dr. (extended)	650	90	55
	Winding Way	662	200	200
	Grenlock (extended)	670	125	810
	North corporate limits	670	130	150
Schrieber Ditch	500 ft upstream of junction with Ten-mile Creek.	655	215	20
	Little Rd. (extended)	660	15	125
	100 ft downstream from Centennial Rd	675	115	45
	Centennial Rd. (corporate limits)	676	850	310
North Branch Ten-mile Creek.	Monroe St	631	15	15
	Maplewood Ave. (extended)	639	65	20
	Erie St. (extended)	643	25	115
	North corporate limits	648	15	185

[1] Corporate limits.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: December 16, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-38031 Filed 12-29-76;8:45 am]

[Docket No. FI-2285]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the City of York, York County, Pennsylvania

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.10)), hereby gives notice of his final determinations of flood elevations for the City of York, York County, Pennsylvania under § 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to § 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at the bulletin board in the main lobby of City Hall, 50 West King Street, York, Pennsylvania.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one-percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width in feet from bank of stream to 100-yr flood boundary facing downstream	
			Left	Right
Codorus Creek	250 ft upstream from northern corporate limits of the city of York.	363	80	(1)
	George Street Bridge	384	100	60
	Philadelphia Street Bridge	366	30	60
	College Avenue Bridge	367	60	10
	Grantley Road Bridge	369	120	(1)

[1] Corporate limits.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: December 16, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-38038 Filed 12-29-76;8:45 am]

[Docket No. FI-1029]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the Town of Brookline, Massachusetts

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.10)), hereby gives notice of the final determinations of flood elevations for the Town of Brookline, Massachusetts under § 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the Town must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to § 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at Town Hall, 333 Washington Street, Brookline, Massachusetts 02146.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width in feet from shoreline or bank of stream (facing downstream) to 100-yr flood boundary
Muddy River	Carlton St	11	Corporate limit to 270 ft northwest of corporate limit.
	Longwood Ave	11	Corporate limit to 140 ft west of corporate limit.
	Aspinwall Ave	11	Corporate limit to 100 ft northwest of corporate limit.
	do	11	100 ft northwest Netherlands Rd. to 140 ft southeast of Kent St.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: October 22, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-38025 Filed 12-29-76;8:45 am]

[Docket No. FI-2310]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the Town of Cheektowaga, Erie County, New York

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.10)), hereby gives notice of his final determinations of flood elevations for the Town of Cheektowaga, Erie County, New York under § 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the Town must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided.

Pursuant to § 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at the bulletin board in the foyer of the Town Hall, Broadway and Union Roads, Cheektowaga.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one-percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width in feet from bank of stream to 100-yr flood boundary facing downstream	
			Left	Right
Ellicott Creek	Upstream corporate limits	699	800	940
	Penn Central RR	698	950	[1] 1,800
	Rein Rd	697	170	1,850
	Aero Dr	694	200	3,750
	Amherst Villa Rd. (extended)	693	500	2,200
	New York State Thruway	684	0	(1)
	Downstream corporate limits	683	300	(1)
Scajaquada Creek	Upstream corporate limits	659	800	800
	Nagel Dr	655	300	200
	Union Rd	653	150	120
	Penn Central RR	651	125	375
	McNaughton Ave	650	600	1,400
	Central Blvd	649	500	1,300
	Harlem Rd	647	800	1,650
	Pinewood Terrace (extended)	645	300	300
Cayuga Creek	Upstream corporate limits	629	750	330
	Penn Central RR	628	50	30
	Rowley Rd	624	160	100
	Como Park Blvd	621	15	100
	Homewood Ave. (extended)	614	1,600	140
	Union Rd	608	60	900
	Henry St. (extended)	598	(1)	600
	Downstream corporate limits	569	(1)	950
Slate Bottom Creek	Upstream corporate limits (Transit Rd.).	667	120	120
	French Rd	664	120	200
	Borden Rd	660	80	190
	Brentwood Dr	648	110	190
	Towers Blvd	628	100	130
	Penn Central RR. (upstream)	612	380	550
	Union Rd	603	230	60

[1] Corporate limits.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: December 16, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-38029 Filed 12-29-76;8:45 am]

[Docket No. FI-2309]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the Town of Vestal, Broome County, New York

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.10)), hereby gives notice of his final determinations of flood elevations for the Town of Vestal, Broome County, New York under § 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the Town must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to § 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at the main entrance of the Town Hall, 605 Vestal Parkway West, Vestal.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one-percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width in feet from bank of stream to 100-yr flood boundary facing downstream	
			Left	Right
Susquehanna River	West corporate limits	828	1,750	(1)
	Casi Rd. (extended)	829	925	(1)
	Elizabeth St. (extended)	830	1,400	(1)
	Vestal Ave	831	50	(1)
	N.Y. Route 26	831	70	(1)
	N.Y. Route 17	833	40	(1)
	African Rd. (extended)	833	1,200	(1)
	Con Rail	836	700	(1)
	CEJ Memorial Bridge	837	50	(1)
	East corporate limits	839	100	(1)
Choconut Creek	Front St	830	100	140
	Main St	873	100	20
	do	887	10	400
	Meeker St	896	10	200
	Sheedy Rd. (extended)	930	70	220
	West Hill Rd	987	20	400
	Castleman Rd	1,023	200	100
	South corporate limits	1,039	40	500

[1] Outside corporate limit.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: December 16, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-38027 Filed 12-29-76;8:45 am]

[Docket No. FI-2318]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the Town of Williamstown, Massachusetts

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.10)), hereby gives notice of the final determinations of flood elevations for the Town of Williamstown, Massachusetts under § 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the Town must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to § 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at Town Hall, 1 North Street, Williamstown, Massachusetts 02167.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
Broad Brook	Boston & Main R.R	598	75	25
	Simonds Rd	619	250	35
Hoosic River	do	587	125	75
	Cole Ave	596	25	35
Green River	Main St. (Route 2)	616	150	90
	Green River Road Bridge 1 (Route 43)	822	90	35
	Bridge 2 (Route 43) Green River Rd	(1)	75	1,725
	New Ashford Rd	965	50	110
Hemlock Brook	Buskley St	624	40	190
	Main St	661	40	50
	Route 7 and 2	677	50	70
Hopper Brook	Hopper Rd	(1)	620	1,540

[1] Varies.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: December 16, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76–38026 Filed 12–29–76;8:45 am]

[Docket No. FI–2276]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the Township of Haverford, Delaware County, Pennsylvania

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.10)) hereby gives notice of his final determinations of flood elevations for the Township of Haverford, Delaware County, Pennsylvania under Section 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the Township must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to § 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at the Municipal Building, 2325 Darby Road, Havertown.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one-percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width in feet from bank of stream to 100-yr flood boundary facing downstream	
			Left	Right
Naylor's Run	Langhorne Ave	229	95	210
	Whitney Ave. (extended)	236	60	180
	Manoa Rd	237	50	90
Cobbs Creek	South corporate limits	135	430	300
	Manoa Rd	161	25	20
	Remington Rd. (extended)	171	160	60
	Lakeside Ave	209	50	30
	Eagle Rd	265	40	125
	Merwood Lane	284	140	20
	Admore Ave	300	190	20
	College Ave	337	240	100
Darby Creek	South corporate limit	155	60	(1)
	Burmont Rd	159	400	(1)
	Fairview Ave. (extended)	166	220	(1)
	Old West Chester Pike	185	60	(1)
	200 ft upstream of West Chester Pike	185	460	(1)
	Marple Rd	191	230	(1)
	Route 476, Mid-County Expressway	192	410	(1)
	Radnor and Chester Rd	202	780	(1)
	North corporate limit	204	304	(1)
Meadowbrook Run	50 ft downstream of Darby Rd	195	350	20

[1] Corporate limit.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: December 16, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76–38034 Filed 12–29–76;8:45 am]

[Docket No. FI-2348]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the Township of Lower Alsace, Berks County, Pennsylvania

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.10)), hereby gives notice of his final determinations of flood elevations for the Township of Lower Alsace, Berks County, Pennsylvania under § 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the Township must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to § 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at the Municipal Building, 25th and Harvey Streets, Reading, Pennsylvania.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one-percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width in feet from bank of stream to 100-yr flood boundary facing downstream	
			Left	Right
Schuylkill River	Southern corporate limit	181	40	(1)
	Northern corporate limit	183	67	(1)
Antietam Creek	Myrtle Ave.	397	20	267
	Marshall Ave. (extended)	411	70	40
Tributary C	T413	537	80	67
Tributary B	Lewis Rd. (extended)	436	250	160
	Butter Lane	497	(2)	253
	T454	560	133	187
	Pennsylvania Route 73 (T413)	572	25	67

[1] Corporate limit of stream is boundary.
[2] Outside corporate limit.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: December 16, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-38032 Filed 12-29-76;8:45 am]

[Docket No. FI-2286]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the Township of Spring Garden, York County, Pennsylvania

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.10)), hereby gives notice of his final determinations of flood elevations for the Township of Spring Garden, York County, Pennsylvania under § 1917.9 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the Township must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to § 1917.9(a), the Administrator has resolved the appeals presented by the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas

and the final elevations are available for review at the Office—Municipal Building, 558 South Ogontz Street, Spring Garden.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one-percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width in feet from bank of stream to 100-yr flood boundary facing downstream	
			Left	Right
Codorus Creek	Interstate 83 Bridge	362	(1)	1,280
	Eastern corporate limits of the city of York.	363	(1)	80
	Richland Avenue Bridge	371	(1)	160
	Indian Rock Dam Road Bridge	382	(1)	80
	Con Rail bridge	387	(1)	60
	Southern corporate limits of the township of Spring Garden.	390	(1)	30
Mill Creek	Loucks Mill Road Bridge	362	2,200	(1)
	Eberts Lane Bridge	374	600	(1)
	Eastern corporate limits of the city of York.	376	60	(1)
	Market Street Bridge	400	320	(1)
	Route 124 Bridge	433	180	(1)
	Southern corporate limits of the township of Spring Garden.	457	40	(1)

[1] Corporate limits.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: December 16, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-38039 Filed 12-29-76;8:45 am]

[Docket No. FI-2284]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the Village of Cayuga, Cayuga County, New York

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.10)), hereby gives notice of his final determinations of flood elevations for the Village of Cayuga, Cayuga County, New York under § 1917.9 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the Village must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to § 1917.9(a), the Administrator has resolved the appeals presented by the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at the Bulletin Board in the Village Hall, Cayuga.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one-percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width in feet from shoreline to 100-yr flood boundary
Cayuga Lake	Wheat St	388	20
	Cadet Lane	388	80
	Geneseo	386	40
	B	386	100
	A	388	70
	Intersection of Court and Water St	388	70

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: December 16, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-38028 Filed 12-29-76;8:45 am]

[Docket No. FI-2567]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the Village of Fremont, Wisconsin

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.10)), hereby gives notice of the final determinations of flood elevations for the Village of Fremont, Wisconsin under § 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the Village must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to § 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at Village Hall, Fremont, Wisconsin 54940.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
Wolf River	U.S. Highway 10	756	1,980	1,410

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: December 16, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-38041 Filed 12-29-76;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

[24 CFR Part 1917]

[Docket No. FI-2571]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the Borough of Landingville, Schuylkill County, Pennsylvania

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Borough of Landingville, Schuylkill County, Pennsylvania.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Borough must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the fire company, Landingville, Pennsylvania.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify the Honorable Bruce Unkle, Mayor of Landingville, Post Office, Landingville, Pennsylvania, 17942. The period of comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Schuylkill River	Upstream corporate limit.	490
	Main St.	486
	Downstream corporate limit.	477
Mahannon Creek	Upstream corporate limit.	488

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: December 16, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-38021 Filed 12-29-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2578]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Brighton, Colorado

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the City of Brighton, Colorado.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City of Brighton must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at City Hall, 14th and Mannock, Denver, Colorado 80202.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Honorable W. H. McNichols, Mayor, City Hall, 14th and Mannock, Denver, Colorado 80202. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
South Platte River	East 160th Ave.	4,960	1,350	(1)
	Base Line Rd.	4,953	900	(1)

[1] Bank outside corporate limits.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: December 15, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-38071 Filed 12-29-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2539]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Casper, Wyoming

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the City of Casper, Wyoming.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City of Casper must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at Room 124, City Clerk Treasurer's Office, City-County Building, Casper, Wyoming 82601.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Honorable Sam Wormus, Mayor, Room 124, City Clerk Treasurer's Office, City-County Building, Casper, Wyoming 82601. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
North Platte River	Burlington North	5,107	0	0
	Interstate	5,107	120	0
Garden Creek	Green Meadows	5,308	20	60
	Coffman Ave	5,282	120	220
	25th St	5,243	40	260
	23d St	5,219	60	30
	Cy Ave	5,178	120	20
	Bellaire Dr	5,147	40	320
Sage Creek	15th St	5,214	250	250
	12th St	5,205	60	70
	2d St	5,157	100	50
	Chicago & Northwestern RR	5,130	(1)	450
	Burlington North	5,105	20	40

1 Stream bank outside corporate limits.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: November 18, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-38069 Filed 12-29-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2573]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Port Clinton, Ottawa County, Ohio

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 400-4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the City of Port Clinton, Ottawa County, Ohio.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Council Chamber, City Hall, P.O. Box I, Port Clinton, Ohio 43452.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor John Fritz, City Hall, P.O. Box I, Port Clinton, Ohio 43452. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Lake Erie	I. Intersection of Perry St. and:	
	a. Linden St.	578
	b. Walnut St.	578
	c. Cedar St.	578
	d. Ash St.	578
	e. Lincoln Ave.	578
	f. Fulton St.	578
	g. Jefferson St.	578
	h. Madison St.	578
	i. Harrison Ave.	578
	II. Intersection of 2d St. and:	
	a. Madison St.	578
	b. Monroe St.	578
	c. Jackson St.	578
	III. Lake Shore Dr. at western corporate limits.	578
	IV. Brooklyn St. (entire length).	578
	V. Lake Erie shoreline at western corporate limits.	581
	VI. Lake Erie shoreline at eastern corporate limits.	579

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: December 15, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-38068 Filed 12-29-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2577]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the County of Alamosa, Colorado

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4 (a)), hereby gives notice of his proposed determinations of flood elevations for the County of Alamosa, Colorado.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the County of Alamosa must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at Alamosa County Office Building, Box 630, Alamosa, Colorado 81101.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. Lewis H. Entz, Chairman, Board of Commissioners, Alamosa County Office Building, Box 630, Alamosa, Colorado 81101. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Rio Grande	D. & R.G.W. RR. bridge.	7,537
	State Street Bridge	7,541

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: December 15, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-38072 Filed 12-29-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2579]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the County of Garfield, Colorado

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4 (a)), hereby gives notice of his proposed determinations of flood elevations for the County of Garfield, Colorado.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the County of Garfield must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at Garfield County Courthouse, P.O. Box 640, Glenwood Springs, Colorado 81601.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. Flaven Cerise, Chairman, Board of Commissioners, Garfield County Courthouse, P.O. Box 640, Glenwood Springs, Colorado 81601. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Colorado River	South Rifle Rd. (upstream side).	5,300
	State Highway 13 (upstream side).	5,302
Cattle Creek	State Highway 83 (downstream side).	6,026
Roaring Fork Creek.	14.5 mi upstream of mouth.	6,164
	0.2 mi downstream of County Road 100.	6,258

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: December 15, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-38070 Filed 12-29-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2570]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the Town of North Providence, Providence County, Rhode Island

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Town of North Providence, Providence County, Rhode Island.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Town must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Town Hall, 2008 Smith Street, North Providence, Rhode Island.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Salvatore Mancini, 11 George Street, North Providence, Rhode Island 02911. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Woonasquatucket River.	Greystone Ave	113
	Smith St	105
	Redeern St. (extended).	99
	Allendale St	89
	Southwest corporate limits.	72
West River	Pinewood Dr	186
	Apartment Roadway	173
	Brook Farm Rd	164
	West River Parkway	136
	Mineral Spring Ave	121
	Alexander St. (extended).	110
	Douglas Ave	90
	South corporate limits.	81
East Branch West River.	Conifer St	150
	Brook Farm Rd	141
	Side Dr. (extended)	137
	Brook Dale Rd	135
Lincoln Downs Brook.	Angell Rd	181
	Benjamin Dr	169
	Mineral Spring Ave	167
	Alexander St	159
	Lexington Ave	117
Upper Canada Pond Brook.	Garfield St	92
	Charles St	91
	Mineral Spring Ave	82
	Southeast corporate limits.	60

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: December 15, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-38022 Filed 12-29-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2576]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the Town of Steamboat Springs, Colorado

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the Town of Steamboat Springs, Colorado.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Town of Steamboat Springs must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at Town Offices, P.O. Box 1174, Steamboat Springs, Colorado 80477.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. Donald E. Barrett, President, Town Council, Town Offices, P.O. Box 1174, Steamboat Springs, Colorado 80477. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Yampa River	Stock Dr	6,676
	13th St.[1]	6,689
Soda Creek	Lincoln Ave. (U.S. 40).	6,700
	11th St.[1]	6,703
	Pine St	6,715
	Grove Pl.[1]	6,741

Source of flooding	Location	Elevation in feet above mean sea level
Butcherknife Creek.	Lincoln Ave	6,719
	Oak St	6,724
	Spruce St	6,764
Spring Creek	Lincoln Ave. (U.S. 40).	6,731
	Oak St.[1]	6,739
	Amethyst Dr	6,731
Fish Creek	U.S. Highway 40[1]	6,761
Walton Creek	do	6,756
Burgess Creek	do	6,757
	Sibley Rd	6,762
	Poma Rd	6,848
	Mount Werner Rd	6,963
	Storm Meadows Dr	7,038

[1] Downstream side of road.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: December 15, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-38073 Filed 12-29-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2575]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the Town of Westport, Connecticut

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the Town of Westport, Connecticut.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Town of Westport must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at Town Hall, 90 East State Street, Westport, Connecticut 06880.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Ms. Jacqueline Heneage, 1st Select person, Town Hall, 90 East State Street, Westport, Connecticut 06880. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Saugatuck River	State Street Bridge	13
	North Canal St	13
	Weston Rd	35
West Branch Saugatuck River.	Cavalry Rd	68
Aspetuck River	Weston Rd	39
	Lyons Plains Rd	45
	North Ave	70
	Bayberry Lane	91
Stoney Brook	Riverside Ave	11
	Sylvan Rd	13
	Kings Highway	37
Dead Man's Brook.	Jesup Rd	14
	Myrtle Ave	14
	Evergreen Parkway	34
	Compo Rd	41
	Lost Lodge Rd	94
	Roseville Rd	[1]135
	Pumpkin Hill Rd	[1]165
	North Ave	[1]182
	Cross Highway	197
	Vine Yard Lane	199
	Merritt Parkway	200
Muddy Branch	Connecticut Turnpike	11
	Nyala Farms Rd	14
	Center St	21
	Morningside Dr	28
	Turkey Hill Rd	40
	Meadowbrook Lane	53
	High Point Rd	68
Sasco Creek	Connecticut Turnpike	11
	Kings Highway	11
	Boston Post Rd	[1]17
	Wakeman Lane	40
	Long Lots Rd	62

[1] Upstream side of road.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: December 15, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-38074 Filed 12-29-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2574]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the Township of Cherry Hill, New Jersey

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the Township of Cherry Hill, New Jersey.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Township of Cherry Hill must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at Township Hall, 820 Mercer Street, Cherry Hill, New Jersey 08002.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor John A. Rocco, M.D., Township Hall, 820 Mercer Street, Cherry Hill, New Jersey 08002. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Cooper River	Cuthbert Rd	13
	Kings Highway	20
	Patco R R	37
	Interstate 295	41
	Evesham Rd	42
North Branch Cooper River.	Park Blvd	17
	Kings Highway	24
	Brace Rd	23
	Covered Bridge Rd	26
	Interstate 295	34
	New Jersey Turnpike	38
	Evans Lane	45
	Cropwell Rd	53
	Evesham Rd	70
Tindale Run	Haddonfield-Berlin Rd.	35
	Mansfield Blvd	44
Tributary No. 1	Rapid transit	43
	Burnt Mill Rd	45
	Haddonfield-Berlin Rd.	52
Tributary No. 2	Rapid transit	42
	Burnt Mill Rd	44
	Dumas Rd	49
	Evesham Rd	61
South Branch Pennsauken Creek.	Moorestown Pike	13
	Coopertown Rd	17
	New Jersey Route 38	24
	New Jersey Route 41	30
	Church Rd	34
	Interstate 295	40
	New Jersey Turnpike	44
	Green Tree Rd	58
	New Jersey Route 70	

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1968, as amended by 39 FR 2787, January 24, 1974.)

Issued: December 15, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-38075 Filed 12-29-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2572]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the Village of Put-In-Bay, Ottawa County, Ohio

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Village of Put-In-Bay, Ottawa County, Ohio.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Village must adopt flood plain management measures that are consistent with the flood elevations detemined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Village Hall Meeting Room, Catawava Avenue, Put-In-Bay.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Richard H. Fox, P.O. Box 121, Put-In-Bay, Ohio 43456. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Lake Erie	Intersection of Victory Ave. and Bay View Ave.	578
	Intersection of Catawba Ave. and Bay View Ave.	578
	Intersection of Hartford Ave. and Bay View Ave.	578
	Entire Chapman Ave.	578
	North end of Park Dr.	578
	Entire Cincinatt Ave.	579
	South end of Bay St.	579
	South end of Ibis St.	579
	South end of Shore Villa.	578
	South end of Chapman Ave.	578

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: December 15, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-38020 Filed 12-29-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2540]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Marinette, Wisconsin

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (P.L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 P.L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (Section 1917.4 (a)), hereby gives notice of his proposed determinations of flood elevations for the City of Marinette, Wisconsin.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City of Marinette must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at City Hall, 1901 Hall Avenue, Marinette, Wisconsin 54143.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Edward J. Parsek, City Hall, 1901 Hall Avenue, Marinette, Wisconsin 54143. The period for comment will be ninety day following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Green Bay	Eastern coast	584
Menominee River.	Ogden St.	584
	U.S. Highway 41	584
	C. & N.W. RR.	585
	Hattie St.	587
	Scott Paper Co. lower dam (downstream side).	588
	Scott Paper Co. lower dam (upstream side).	596
	Scott Paper Co. upper dam (downstream side).	603
	Scott Paper Co. upper dam (upstream side).	610
Madigan-Laverman Ditch.	West Bayshore St.	585
	Shore Dr.	588
	James St.	591
	Paul St.	592
	Edwin St.	593
	Pierce Ave.	593
	Industrial Parkway	604
North Branch Madigan-Laverman Ditch.	Cleveland Ave.	593
	Pierce Ave.	594

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968) effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: November 15, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-38139 Filed 12-29-76;8:45 am]

federal register

THURSDAY, DECEMBER 30, 1976

PART IV

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

■

EDUCATION OF HANDICAPPED CHILDREN AND INCENTIVE GRANTS PROGRAM

Assistance to States

DEPARTMENT OF HEALTH, AND WELFARE

Office of Education

[45 CFR Parts 100b, 121a, and 121m]

EDUCATION OF HANDICAPPED CHILDREN AND INCENTIVE GRANTS PROGRAM

Assistance to States

The Commissioner of Education, with the approval of the Secretary of Health, Education, and Welfare proposes (1) to amend Part 121a of Title 45 of the Code of Federal Regulations (Assistance to States for Education of Handicapped Children), and (2) to add a new Part 121m (Incentive Grants Program for handicapped children ages three through five), and (3) to make certain conforming amendments to Part 100b (General provisions for State-administered programs), to read as set forth below.

The authority for these regulations is contained in Part B of the Education of the Handicapped Act (EHA), as amended by Pub. L. 94–142 (20 U.S.C. 1401, 1402, and 1411 through 1420). Part B of the Act provides formula grant funds to State and local educational agencies to assist them in the education of handicapped children.

Pub. L. 94–142, enacted on November 29, 1975, contains extensive amendments to Part B, including provisions which are designed to assure that all handicapped children have available to them a free appropriate public education, to assure that the rights of handicapped children and their parents are protected, to assist States and localities to provide for the education of handicapped children, and to assess and assure the effectiveness of efforts to educate such children.

Most of the Pub. L. 94–142 amendments to Part B become effective on October 1, 1977. Therefore, the existing regulations in Part 121a, which will remain effective through Fiscal Year 1977, will be completely replaced by the new Part 121a set forth below.

As an incentive to educating handicapped children in the three, four, or five year old range, the Congress established an incentive grant authority, in which funds would be given to States on the basis of the number of children in these age ranges receiving special education and related services. Regulations for this program are proposed as a new Part 121m.

Pub. L. 94–142 also added other requirements that are being dealt with separately from these proposed regulations:

1. Requirements in section 5(b) that the Commissioner develop regulations relating to specific learning disabilities are included in proposed regulations published November 29, 1976 (41 FR 52403). The specific learning disabilities regulations will eventually be included in Part 121a.

2. A new section 607 of the EHA establishes a grant program to assist State and local educational agencies with elimination of architectural barriers. Proposed regulations will be published shortly.

3. A new section 606 of the EHA relating to nondiscrimination in employment of handicapped individuals by recipients of assistance under the EHA is being administered by the Office for Civil Rights. The Conference Report indicates:

> It is clear that qualified handicapped individuals who, because of their handicap, are refused employment by recipients of assistance under the Act are fully covered by the prohibition in section 504 of the Rehabilitation Act of 1973. The conferees expect that the Department of Health, Education, and Welfare regulations implementing section 504 will cover employees of such recipients of Federal assistance under this Act. The language of the amendment is designed to underscore the responsibility of the Secretary to pursue vigorously the enforcement of section 504 especially as it relates to the employment of administrators and teachers in programs for the education of handicapped children.
>
> (H.R. Rep. 94–664 at page 54)

4. Revisions to section 653 of the FHA (Centers on Educational Media and Materials for the Handicapped) will be included in reveisions to Part 121i to be published in the future.

Public Participation

Because of the potential impact that Pub. L. 94–142 will have on the education of all handicapped children throughout the Nation, and on the agencies that serve them, the Office of Education has been vitally concerned about the need for intensive public participation in the development of implementing regulations.

Therefore, at the time Pub. L. 94–142 was enacted, a decision was made (1) to "take the law to the field" before any writing was done, in order to seek comments and suggestions from partjes interested in the education of handicapped children, and (2) to convene a large outside writing group called RIT (regulations input team), to develop concept papers for use in writing the regulations.

The major steps and activties involved in carrying out these public participation objectives are set forth below:

(1) In January, 1976, the Office of Education contracted with the Council for Exceptional Children to develop three mediated tape-slide presentations for use in describing the significance and implication of Pub. L. 94–142 (one was geared to parents, one for general audiences, and one for administrators). Five hundred copies of these packets have been disseminated to State education agencies and major national parent organizations and advocate groups.

(2) In January, 1976, over 1,000 letters were sent to consumer/advocate agencies (a) to provide them with copies of the law and the Congressional Conference Report, and (b) to inform them about proposed public conferences on the law.

(3) During January and February, the Office of Education prepared a discussion guide and input sheets to be used at the various public meetings.

(4) From March through August, the Office of Education conducted or participated in approximately 20 public meetings about the law on both a geographic and special interest basis. Approximately 2,200 people participated in these meetings, and several hundred responses were received. An overview of these meetings is included below.

The first six conferences were regional meetings (conducted in Washington, San Francisco, Denver, Chicago, Boston, and Atlanta) attended by State and local educational agency personnel and representatives of parent coalitions.

In July, pilot meetings were conducted in four regions of the country (Tampa, Durham, New Hampshire, Minneapolis, and San Diego) for key policy makers in the States, including representatives from the Governors' offices, State legislators, and State educational agency personnel.

A series of other public meetings were conducted for (a) representatives from all colleges and universities who receive training grants in special education, (b) nonspecial education personnel in local school districts, (c) school board representatives, and (d) parent-advocate organizations.

In addition, Office of Education staff were principal speakers at a number of major national conferences (including meetings of the Council for Exceptional Children and the American Psychological Association). These conferences involved thousands of people who have a direct interest in the education of handicapped children.

During the month of May, the Office of Education staff reviewed, analyzed and prepared the written comments received during the first eleven input meetings, and subsequently divided the comments into twelve broad topical areas in the law (e.g., individualized education program, least restrictive environment, and free appropriate public education).

(6) On June 7–9, the Office of Education convened a large national writing group of approximately 170 people, composed of parents, advocates, handicapped persons, representatives of special interest groups (e.g., AFT, NFA, private schools), and administrators of State and local programs. The group was divided into twelve writing teams to develop concept papers on the major topics in the law. Each writing team was provided copies of the comments and questions received during the input meetings, together with the legislative history for each topic. The twelve completed products developed by the RIT, served as the basis for these regulations.

During the months of July–November, the Office of Education prepared several redrafts of the concept papers and continued to seek inputs on each of these drafts from the RIT and other interested parties.

Minimum Regulations

A basic issue relating to the entire regulations package is concerned with the amount of detail and degree of specificity that is best suited to these regulations. During the input meetings a few commenters expressed the need for a great

degree of specificity and direction from the Federal level in order to insure effective implementation of the Statute. A larger number of commenters, however, expressed concern that the Department may tend to over-regulate, which could result in all State and local educational agencies being in non-compliance from the outset.

The Department sees the development of regulations for implementing Pub. L. 94-142 as being an evolutionary process which will continue over a period of several years. The actual impact and consequences of the statutory provisions and problems which States and local educational agencies may have in implementing these provisions are not known at this time. Therefore, the Department feels that the most rational approach to follow is (1) to write minimum regulations at this point, and (2) to amend and revise such regulations in the future as need and experience dictate.

Because the Statute is very comprehensive and specific on many points, the Department has elected (1) to incorporate the basic wording or substance of the Statute directly into the regulations, and (2) to expand on the statutory provisions only where additional interpretation seem to be necessary. In the summary of each of the subparts that follows, an attempt has been made to indicate (whenever possible) which requirements are statutory and which ones are regulations that attempt to interpret, clarify, or implement a specific requirement in the Act.

Consistency With Section 504 Regulations

An issue with which the Department is deeply concerned is maintaining consistency between Part B of the Education of the Handicapped Act and regulations being developed under section 504 of the Rehabilitation Act of 1973 (proposed 45 CFR Part 84 was published July 17, 1976 (41 FR 19548) and final regulations are scheduled to be published in January). To maintain consistency with the timetables for making available a free appropriate public education under section 612 (2)(B) of the EHA and the priorities under section 612(3) of the EHA, the Department intends to provide in final regulations for Part 84 that between the effective date of Part 84 and September 1, 1978, a recipient will be in compliance with the elementary and secondary section of Part 84 if it has provided services to all qualified handicapped persons according to the Part B priorities and is in compliance with Part B and regulations adopted under Part B.

As the regulations being developed under section 504 of the Rehabilitation Act of 1973 are in the process of being finalized at the same time these proposed regulations for Part B of the Education of the Handicapped Act are being published, every effort will be made to have the final regulations for Part B be consistent in concept, policy, and, wherever possible, consistent with the language of the final 504 regulations.

Part 121a—Organization

Part 121a is organized into the following seven subparts: (A) General, (B) State annual program plans and local applications, (C) Services, (D) Private Schools, (E) Procedural Safeguards, (F) State Administration, and (G) Allocations of Funds and Reports. A summary of each of these subparts, together with a discussion of some specific issues that have been raised, is included in the remaining sections of this part of the preamble.

Subpart A: General

Subpart A (1) sets forth the purposes of Part 121a and the scope of these new provisions (e.g., that they apply to all public educational agencies in a State that have direct or delegated authority for the education of handicapped children); and (2) includes definitions of statutory terms (e.g., free appropriate public education, special education, and related services) and other definitions related to these terms.

Discussion of Specific Issues. (1) There are two interrelated questions which have been raised with respect to the implementation of Part B of the Act, as amended by Pub. L. 94-142: (a) Is Part B basically a civil rights law, and (b) does a State have to meet the requirements of the Act if the State elects not to receive a grant under Part B? In responding to these questions, it is essential to show the linkage between Part B and Section 504 of the Rehabilitation Act of 1973, which is administered by the Office for Civil Rights:

Part B is a formula grant program which provides financial assistance to States for the education of handicapped children. As a condition for receiving a grant under Part B in any fiscal year, a State must demonstrate to the Commissioner that it has established procedures to insure that handicapped children are guaranteed certain basic rights and protections (e.g., right to free appropriate public education, due process, least restrictive environment, and non-discriminatory testing).

Many of the provisions under Part B are regarded as basic rights of handicapped children which (1) are guaranteed under the U.S. Constitution, (2) have been reiterated in a series of court rulings over the past six years, and (3) are specifically included in the regulations on section 504 of the Rehabilitation Act of 1973. Section 504 is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance. The "504" regulations will apply (a) to each recipient of Federal financial assistance, and (b) to each program or activity that receives or benefits from such assistance.

Since Part B is a formula grant program, the requirements and conditions under the program apply to States which apply for and receive a grant. Thus, a State which elects not to receive a grant under Part B is not subject to its provisions. However, if the State receives any Federal financial assistance, it still would have to meet the basic rights provisions under section 504.

(2) Another related question was raised with respect to a situation in which a State receives a Part B grant, but one of the local educational agencies in that State elects not to participate under Part B. The response is similar to that given above:

If a local educational agency elected not to receive a Part B grant, that agency would not have to comply with the requirements of Part B. However, the State, as a recipient of Part B funds, would be required to insure that handicapped children residing in the jurisdiction served by the local educational agency would be afforded all of the rights and protections set out in the Statute and regulations. Moreover, if the local educational agency received any other Federal funds, it would have to meet the basic rights provisions under section 504.

(3) An additional question was raised with respect to whether the provisions of Part B apply to other public agencies that serve handicapped children within a State (e.g., State departments of mental health and welfare), since these agencies are not eligible to receive a Part B grant. The question must be answered in the affirmative, based on the following:

First, under the provisions of section 612 of the Act, each State, as a condition for receiving a Part B grant in any fiscal year, must assure that the rights and protections of the Statute are extended to all handicapped children in the State. In order to insure that these provisions would be carried out, the Congress required that—

> The State educational agency shall be responsible for assuring that the requirements of this part are carried out and that all educational programs for handicapped children within the State, including all such programs administered by any other State or local agency, will be under the general supervision of the persons responsible for educational programs for handicapped children in the State educational agency and shall meet education standards of the State educational agency. (Sec. 612(6))

Second, since the basic rights provisions under Part B are also included in the regulations for section 504, any recipient of HEW funds would have to be in compliance with these provisions. The extent to which these provisions apply is clearly set out in the "504" definition of recipient:

> "Recipient" means any State or political subdivision thereof, any instrumentality of a State or political subdivision thereof, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance. (Sec. 84.3(f))

Subpart B: State Annual Program-Plans and Local Applications

State annual program plans—General. Any State which desires to receive funds under Part B of the Act must submit an annual program plan to the Commissioner through its State educational

agency. Sections 121a.10–121a.14 of Subpart B are concerned with the submission, approval, publication, and effective dates of the annual program plan.

The requirement for submitting an annual program plan is set out in section 434(b) of the General Education Provisions Act (GEPA), as amended by Pub. L. 93–380. This provision requires each State to submit (1) a general application containing five basic assurances, and (2) an annual program plan for each Office of Education program under which funds are provided to local educational agencies, through, or under the supervision of, the State educational agency. Under section 434(b), and the implementing regulations (45 CFR 100b, Subpart B), the general application and an annual program plan take the place of a State plan for Part B (45 CFR 100b19).

Discussion of specific issues. Several commenters expressed a concern about requiring State educational agencies to submit annually an entire annual program plan when parts of the plan would not be changed from year to year. The Office of Education feels that this is a valid concern, and has adopted the following policy:

The fiscal year 1978 annual program plan, as the first plan under the provisions of Pub. L. 94–142, is to be a complete, intact document, which includes (1) all provisions previously required under Pub. L 93–380 that were continued under Pub. L. 94–142, and (2) any new provisions in the Statute. In cases where no changes are required in procedures previously submitted under Pub. L. 93–380 (such as procedures on confidentiality), those procedures may be incorporated verbatim into the FY 1978 annual program plan.

Beginning with the FY 1979 annual program plan, and for each year thereafter, State educational agencies may incorporate by reference the basic procedural sections which do not require change. For most States, this would include procedural safeguards, least restrictive environment, non-discriminatory testing, confidentality, procedures with respect to private school handicapped children, and child identification procedures.

ANNUAL PROGRAM PLANS—CONTENTS

The provisions to be included in the annual program plan for Part B are set forth in §§ 121a.20–121a49 of these regulations. They include (1) the conditions of eligibility and the State plan requirements under sections 612 and 613 of the Act, and (2) a provision under section 434(b)(1)(B)(ii) of the GEPA, which requires each annual program plan to "set forth a statement describing the purposes for which Federal funds will be expended during the fiscal year for which the annual program plan is submitted".

LOCAL EDUCATIONAL AGENCY APPLICATIONS—GENERAL

Section 614(a) of the Act requires that a local educational agency which desires to receive payments under Part B for any fiscal year shall submit an application to its State educational agency. Sections 121a.80–121a.87 of these regulations set out the requirements for submission of applications, responsibilities of State educational agencies, excess costs, requirements for consolidated applications, conditions for State educational agency approval or disapproval of a local application, and requirements relating to withholding of funds. These requirements are almost wholly statutory (See sections 614(b) and (c) of the Act).

Discussion of specific issues. The excess cost provision in the statute is designed to assure that all handicapped children receiving a free appropriate public education are guaranteed the basic funding provided all children in the local school district. The formula included in § 121a.82 of the regulations is related to the procedures set forth in the statute to identify the nature and extent of the basic per pupil allocation provided.

The Department has received numerous comments which have suggested that (a) the formula is unnecessary if one can accept the assumption that every child provided an education in the public schools automatically is provided the basic per pupil fiscal allocation, and (b) this provision would present enforcement difficulties given the relative lack of pupil based accounting systems in local educational agencies.

The basic intent of the excess cost provision is to insure that State and local educational agencies provide the same support for handicapped children as they do for all other children, and that the Part B funds are used to supplement the State and local commitment. In keeping with this intent, the regulations add that neither a State or local educational agency may use funds provided under Part B to pay all of the special education and related services given to a handicapped child.

The Department solicits further comment on the requirements regarding excess costs.

LOCAL EDUCATIONAL AGENCY APPLICATIONS CONTENTS

Sections 121a.100–121a.117 set forth the contents of the local applications. These provisions are taken directly from section 614(a) of the Statute; and, no substantive change is made, except to add an additional requirement that each local educational agency shall include a statement describing how the funds under Part B will be expended during the fiscal year for which the application is submitted.

Discussion of specific issues. Section 614(a)(2)(C) of the Statute sets forth the following requirement with respect to "comparability": The local application must provide satisfactory assurance that

State and local funds will be used in the jurisdiction of the local educational agency or intermediate educational unit to provide services in program areas which, taken as a whole, are at least comparable to services being provided in areas of such jurisdiction which are not receiving funds under this part.

The regulations repeat the statutory requirement without elaboration. Comments are sought on how to interpret this requirement, which is identical to the comparability requirement under Title I of the Elementary and Secondary Education Act, except that it uses the term "program areas" rather than "project areas".

The issues which must be resolved are (1) what does "program area" mean, and (2) what is to be compared—e.g., equitable availability of services in geographic areas; whether all programs for handicapped children with a particular disability are comparable; or whether programs for one disability are comparrable to those for another disability.

APPLICATION FROM SECRETARY OF INTERIOR

Sections 121a.124–121a.129 set forth the requirements for participation by the Secretary of Interior on behalf of handicapped children in schools on reservations operated by the Bureau of Indian Affairs. These regulations follow the Statutory requirement in section 611(f) with respect to payments and the submission of a local educational agency application by the Secretary of Interior to the Commissioner. However, the regulations (1) add certain additional requirements (e.g., monitoring procedures that are required in the State annual program plans and "other material as agreed to by the Commissioner and the Secretary of Interior"); and (2) authorize the Bureau of Indian Affairs to utilize the same amount of its allotment for "State administration" that is provided by the Statute for State educational agencies. These additions are necessary because of the fact that BIA, in effect, is both a State and a local educational agency.

PUBLIC PARTICIPATION

Section 612(7)(B) of the Act requires each State to assure that there are public hearings, adequate notice of such hearings, and an opportunity for comment available to the general public prior to the adoption of the policies, programs, and procedures required under sections 612 and 613 of the Statute. Sections 121a.130–121a.132 of these regulations set out the specific requirements for State educational agencies to follow in implementing this statutory provision with respect to their annual program plans.

SUBPART C: SERVICES

GENERAL

Section 121a.200 requires each State to insure that free appropriate public education is available to all handicapped children ages 3–18 by September 1, 1978, and to all such children ages 3–21 by September 1, 1980. This is a statutory provision, as is the exception that the provision does not apply to handicapped children ages 3–5 and 18–21 if it is inconsistent with State law or practice, or the order of any court.

Section 121a.201 deals with the methods, costs, and payments involved in providing free appropriate public education.

Section 121a.202 (1) interprets the statutory requirement that each State

and local educational agency adopt a goal of providing full educational opportunities to all handicapped children, and (2) requires those agencies to take steps to insure that handicapped children have available to them the variety of programs and services (including non-academic and extra curricular services) that are available to non-handicapped children.

Section 121a.203 specifically requires that physical education services be available to every handicapped child receiving a free appropriate public education.

Discussion of specific issues. (1) A question has been raised concerning the meaning of "free appropriate public education" and "full educational opportunity goal", since both terms are used in the Statute and are included in this subpart. There is an obvious interrelatedness between these two terms; but there are some clear differences, as set forth in the following paragraphs:

"Full educational opportunity goal" is a very broad, all encompassing term, which (a) covers all handicapped children, ages birth through twenty-one, (b) includes a basic planning dimension, including making projections of the estimated numbers of handicapped children, and (c) does not set specific timelines for service, but, rather, requires each State to set its own timetable. The term "goal" implies an intent or direction to follow and is future oriented. Based on these characteristics, a State could be totally committed to implementing this provision, and could be in compliance with the Act, but may never achieve its goal in the absolute sense.

"Free appropriate public education" refers to a part of the goal of providing full educational opportunities to all handicapped children, but it is more narrow in scope and specific in purpose. This provision (a) focuses on known handicapped children within specific age ranges, (b) sets out mandated timelines for service, and (c) is present oriented. As set forth in the Statute, the right to free appropriate public education, in effect, is regarded as a basic right; and each State must carry out this provision within the specified time limits in order to be in compliance with this Act:

(2) A number of commenters have asked for clarification (a) of the general provision on free appropriate public education in Section 612(2)(B) of the Statute, and (b) of the exception clause in that provision for handicapped children ages 3–5 and 18–21. These regulations interpret the Statute as follows:

First, with respect to the general provision—

Free appropriate public education must be available to all handicapped children within the State mandated age ranges by the dates set forth in the statute.

If a State has no mandatory law, the State must make a free appropriate public education available within the statutory timelines to all handicapped children ages six through seventeen.

Second, with respect to serving handicapped children ages three through five and eighteen through twenty-one—

If a State does in fact make available public education to all non-handicapped children in any of these age groups (e.g., kindergarten for five year olds), free appropriate public education must be available to all handicapped children in that age group by the dates set forth in the Statute.

If a State does in fact make available public education to a majority of handicapped children in any of these age groups, a free appropriate public education must be made available to all handicapped children in that age group within the timelines.

In any case in which the provision of services to handicapped children ages 3–5 and 18–21 is inconsistent with State law or practice, or the order of any court, the State educational agency must, in its annual program plan, (a) provide a detailed description of the extent to which the exception applies, and (b) include a copy of each State law, court order, or other document which provides a basis for the exception.

Comments are specifically requested on the Department's interpretation of this statutory provision.

(3) Several questions arose concerning the meaning of the term "available" in the requirement that free appropriate public education must be available to all handicapped children. As used in these rules, the term "available" is intended to protect the individual rights of parents and children to decide whether or not to participate in programs which provide free appropriate public education. If the parents or child elect to avail themselves of these programs, it is the responsibility of the State or local educational agency to provide such programs in conformance with the provisions of this Act. This requirement applies to (1) both instructional and evaluational services, and (2) requires the timely delivery of such services.

(4) Several commenters have asked if free appropriate public education includes room and board. The proposed regulations state, in effect, that—

Each State may utilize whatever placement alternatives and methods of providing services that are necessary to assure that a free appropriate public education is available to all handicapped children.

Whenever placement in a public or private residential program is necessary to provide free appropriate public education to a handicapped child, the cost of the program, including room and board, must be at no cost to the parents of that child.

In carrying out these provisions, each State must determine the methods and sources of payment, and may utilize various State, local, Federal, and private sources of support that are available in the State.

(5) A number of commenters questioned why physical education services are given special attention in these rules. This position was taken to conform with Congressional intent as stated in the House of Representatives Report No. 94–332:

> The Committee expects the Commissioner of Education to take whatever action is necessary to assure that physical education services are available to all handicapped children, and has specifically included physical education within the definition of special education to make clear that the Committee expects such services, specifically designed where necessary, to be provided as an integral part of the educational program of every handicapped child.

PRIORITIES IN THE USE OF PART B FUNDS

As part of the provision on free appropriate public education, the law requires each State and local educational agency to establish priorities, first with respect to handicapped children not receiving an education (defined as "first priority children" in the regulations), and second with respect to handicapped children, within each disability, with the most severe handicaps who are receiving an inadequate education (defined as "second priority children"). The law further requires that, except for State Administration funds, each State and local educational agency must use its full entitlement under Part B "in accordance with the priorities established under section 612(3)."

Sections 121a.210–121a.214 of these regulations interpret the statute with respect to implementing these priority requirements.

Discussion of specific issues. (1) A number of questions were raised concerning the scope and extent of the priority requirement to the first priority children—e.g., (a) if a State's mandate is 3–18, would all of the Part B funds have to be expended for the first priority children in these age ranges before the funds could be spent on second priority children, and (b) are there any age spect to implementing these priority requirement?

The proposed regulations specify that all Part B funds must be utilized to provide direct special education and related services to first priority children ages 3–21, to the extent that State mandate applies to children in this age range. For example, if a State's mandatory law is 4–17, the Part B funds must be expended to provide a free appropriate public education to all first priority children in this age range, and may not be used for second priority children until this requirement is met.

The proposed regulations do not impose any age priorities. Thus, if a State's mandate is 3–18, the State may utilize its funds to provide special education and related services to any first priority child in that age range.

(2) A related question was raised concerning States which either do not have any mandate or their laws do not include all handicapped children covered by Part B. The wording of the Statute is such that it requires all States to make a free appropriate public education available to all handicapped children ages six through seventeen, who are defined in the Act, even if the State does not have a mandatory law in this age range.

(3) Many commenters asked for clarification of when a local educational agency may proceed to use its Part B funds for the second priority. The proposed regulations specify that before the Part B funds can be used for any other purpose, the local educational agency must provide assurance satisfactory to the State educational agency (a) that all first priority children have a free appropriate public education available to them, (b) that it has a system for the identification, location, and evaluation of handicapped children, and (c) that whenever a first priority child is identified, located, and evaluated, the agency will make a free appropriate public education available to the child in accordance with an individualized education program.

(4) A question posed by a number of commenters is: If a State or local educational agency has met the first priority requirement under State mandate (e.g. 5–17), must that agency move to the second priority or can the Part B funds be targeted on first priority children below the mandated age range? Under the proposed rules, a State or local educational agency would have the option to spend its Part B funds (a) on other unserved handicapped children not covered by the mandate, including children ages 0–2, (b) to meet the second priority, or (c) to do both.

(5) Several commenters have asked if a State educational agency can utilize its portion of the Part B funds for inservice training if the training is related to the priorities. In accordance with the Statute and with Congressional intent, the first priority must be met before Part B funds could be used for any other purpose. Thus, if there are known first priority children in a State, the State educational agency would have to assure that a free appropriate public education is available to such children within the State mandated age range. Once that priority is met, the State may utilize its funds (a) for direct services to second priority children, (b) for inservice training under either priority, or (c) for other services under either priority, as authorized under § 121a.250 of Subpart C ("Use of State educational agency allocation for direct and support services.").

(6) A number of commenters have asked what the term "inadequate education" means in the second priority (e.g. handicapped children within each disability, with the most severe handicaps who are receiving an inadequate education).

Under the proposed regulations "inadequate education" means receiving some but not all of the special education and related services specified for a handicapped child in his or her individualized education program (IEP).

During school year 1977–78, it is expected that all second priority children will receive a basic education, but some of these children may not receive all of the services required by their EIPs. However, under the Statute, all services in a child's IEP must be provided by September 1, 1978.

Comments are invited on whether the regulations should require a local educational agency to provide all of the IEP services in school year 1977–78.

INDIVIDUALIZED EDUCATION PROGRAMS

Sections 121a.220–121a.226 of the regulations interpret the statutory requirement that free appropriate public education includes an individualized education program for every handicapped child so served.

The individualized education program (IEP) is a written statement developed in a meeting with a representative of the local educational agency, the teacher, the parent, and the child, where appropriate. The written statement on each child includes documentation of decisions reached about the objectives, content, implementation and evaluation of the child's educational program.

An IEP must be developed for any handicapped child who is placed in a private school by a State or local educational agency.

Discussion of specific issues. (1) Many commenters raised the issue of whether the IEP is a legally binding document.

The interpretation of these rules reflects the intent of Congress as stated in the Congressional Record of the House by Mr. Quie,

> It is important to point out that (the individualized educational program) is an educational program developed jointly, but it is not intended as a binding contract by the schools, children, and parents.

Therefore, while the State or local educational agency is responsible for providing the services delineated in the IEP, such agency does not violate these regulations if the child does not achieve the growth projected in the annual goals and objectives.

(2) Questions were asked concerning the participation in the planning conference of parents who have a communication barrier such as deafness or whose native language is other than English. The rules for this Subpart assure the active participation of such parents. The local educational agency must provide an interpreter or take whatever action is necessary in order that the parent may understand the proceedings.

(3) Several commenters requested an interpretation of the requirements for participants at the individual planning conference, specifically, the representative of the local educational agency. Questions were raised to determine whether (a) the representative of the local educational agency may be the child's teacher, and (b) what qualifications that representative must have. Under the statute, the representative of the local educational agency must be someone other than the child's teacher. The regulations repeat the statutory language regarding the local educational agency representative.

(4) Several commenters raised concerns regarding whether or not the agency may proceed to develop the individualized education program if the parents are unwilling or unable to attend the individual planning conference. The proposed rules specify that the agency shall make every attempt to assure parental participation, including convening the participants at a mutually agreed-upon time and place. However, if these efforts are unsuccessful, the agency must document these attempts and may proceed without parental participation.

(5) The statute mandates that an IEP for each child must be established or revised, as appropriate, at the beginning of each school year. Questions were raised concerning the timing of the individualized planning conferences in order to insure that this requirement would be met. These regulations specify that for a handicapped child already receiving special education and related services, the planning conferences must be conducted early enough to insure that the child's IEP is developed (or revised) by the beginning of the next school year. To meet this provision, a local educational agency could conduct the meeting for the child at the end of the school year or during the summer.

(6) A point was made by many commenters that a local educational agency may develop an IEP on a child based only on existing (limited) resources available in the school district. Under the proposed rules, each child's IEP must include specific services needed by that child (determined without regard to local availability of such services).

Part B funds may be used to provide these services for a first priority child. After the first priority is met, Part B funds may be used to provide services for a second priority child if that child was not previously receiving all of the services required under his or her IEP.

See the discussion under "PRIORITIES IN THE USE OF PART B FUNDS" (issue number (6)), which relates to whether all of these services must be provided.

DIRECT SERVICES BY THE STATE EDUCATIONAL AGENCY

Section 614(d) of the Act provides that whenever a State educational agency determines that a local educational agency is either unable or unwilling to submit a consolidated application or to serve handicapped children, or has a handicapped child who can best be served in a regional or State center, the State must use the local educational agency's Part B entitlement to provide special education and related services directly to the handicapped children residing in the area served by that agency. Section 121a.240 of Subpart C incorporates the statutory requirement verbatim.

Sections 121a.250 and 121a.251 set out statutory requirements regarding the use of the State educational agencies' entitlement for direct and support services.

Discussion of specific issues. With respect to the State educational agency's use of a local educational agency's entitlement to provide direct services to handicapped children in the local agency, several questions have been raised: (1) Can a local educational agency refuse "to establish and maintain

programs of free appropriate public education for handicapped children"?

Under Section 504 of the Rehabilitation Act of 1973, "no otherwise qualified handicapped individual in the United States . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Thus, a local educational agency would not be in compliance with the basic provisions of section 504 if the agency did not make available a free appropriate public education for its handicapped children.

(2) Since every local educational agency could potentially have a handicapped child who could best be served in a regional or State center, how is the requirement in section 614(d) of the Act (§ 121a.240 of this regulation) to be implemented?

Comments are requested regarding (a) the extent to which the Department should regulate on this provision, and (b) whether or not each State should be permitted to implement the requirement in accordance with its own State procedures (e.g., each State determines the conditions under which it will become directly involved in placing a handicapped child outside of the local educational agency and whether Part B entitlements will be used for such purposes).

COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT

Sections 121a.260–121a.268 implement the statutory requirement in section 613(a)(3) that a State develop and implement a comprehensive system of personnel development including (a) inservice training of general and special educational instructional and support personnel, and (b) procedures to insure that all personnel necessary to carry out the purposes of the Act are appropriately and adequately prepared and trained. The statute also requires procedures for acquiring and disseminating to teachers and administrators of programs for handicapped children significant information derived from educational research, demonstration, and similar projects, and for adopting promising educational practices and materials developed through those projects.

SUBPART D: PRIVATE SCHOOLS

PARTICIPATION OF PRIVATE SCHOOL CHILDREN

Section 613(a)(4)(A) of the Act requires States and local educational agencies to establish policies and procedures to insure that, to the extent consistent with the number and location of handicapped children enrolled in regular and special private elementary and secondary schools, provision is made for the participation of such children in the program assisted or carried out under this part by providing for such children special education and related services. This basic statutory requirement, and the implementing regulations, have been in effect since 1966, when the original State grant program for the education of handicapped children was enacted. (Pub. L. 89-750).

Sections 121a.300–121a.306 of these proposed programmed regulations incorporate the existing rules regarding participation of private school handicapped children.

Section 121a.301 requires that determinations of the special educational needs of handicapped children enrolled in private elementary and secondary schools must be made on a basis comparable to that used for handicapped children who are enrolled in public, elementary and secondary schools.

Section 121a.302 specifies that programs assisted under Part B of this Act must be designed to provide services to handicapped children enrolled in private schools within the geographical area served by the program or project.

Section 121a.303 requires that the services of public school personnel must be made available to handicapped children enrolled in private schools provided that (1) the services required by such children are not normally provided by the private school, and (2) the administrative control and direction of these services is maintained by the State educational agency or local educational agency.

Section 121a.304 includes requirements regarding equipment purchased with Part B funds. The public agency shall retain the title and administrative control over such equipment which is placed for a limited time on private school premises.

Section 121a.305 speaks to the issue of prohibition of segregation of children who participate at a public school facility from a private school or another public school. Such children may not be placed in classes that are separated on the basis of the child's school enrollment or religious affiliation.

Section 121a.306 requires that funds provided under Part B or properly derived from those funds shall not be used to the benefit of a private school.

PLACEMENT OF HANDICAPPED CHILDREN IN PRIVATE SCHOOLS

Section 613(a)(4)(B) of the Act requires States to insure that handicapped children placed in or referred to a private school or facility by a State or local educational agency must be provided special education and related services (1) in conformance with an individualized education program, and (2) at no cost to the parents. The Statute further requires that the State educational agency must assure that the private facilities meet State standards and that children placed in such facilities have the same rights they would if served by a public educational agency.

Sections 121a.320–121a.323 of these regulations interpret this statutory requirement. These rules (1) set out the implementation requirements for State educational agencies to follow, (2) specify that if the parents of a handicapped child decide not to take the opportunity for a free appropriate public education, neither the State nor local educational agency is required to pay for the child's education; and (3) point out that disagreements between the parent and the public educational agency regarding the availability of an appropriate education may be the subject of a due process hearing.

SUBPART E: PROCEDURAL SAFEGUARDS

DUE PROCESS PROCEDURES

Sections 121a.400 through 121a.414 of Subpart E set forth requirements to insure that handicapped children and their parents are guaranteed procedural safeguards in matters relating to the provision of a free appropriate public education. Because of the specificity of the due process procedures in section 615 of the Statute, the Department has elected to incorporate these procedures substantially verbatim into the proposed regulations and to expand the statutory provisions only where additional interpretation seemed to be necessary. The additional items added by the proposed regulation are as follows:

(1) The Statute specifies that parents of a handicapped child must be afforded the opportunity to obtain an independent evaluation of the child. The proposed regulations address the issue of who pays for the evaluation and under what circumstances. (See § 121a.403)

(2) The Statute requires written prior notice in the native language of the parents in matters relating to the identification, evaluation, and educational placement of a handicapped child. The proposed regulations specify (a) what the content of the notice must be, (b) that the notice must be in language understandable to the general public, and (c) that when the native language is not written, steps must be followed by the agency to insure that the parents understand the notice. (See § 121a.404)

(3) The Statute specifies that a hearing may not be conducted by an employee of the agency in which the handicapped child receives education or care. The proposed regulations add: (a) That the person serving as hearing officer may not have a personal or profesional interest which would conflict with his or her objectivity in the hearings, and (b) that a person meeting the conditions of impartiality who is paid by an agency to serve as a hearing officer would not be considered to be an employee of the agency. (See § 121a.407)

(4) The proposed regulations require agencies to take steps to insure that all hearings and reviews (a) will be commenced and completed as quickly as possible and (b) will be conducted at times and places which are reasonably convenient to the parents of the child involved. (See § 121a.412)

(5) The statute requires an agency to appoint a surrogate parent (not an employee of the agency) to protect the rights of a handicapped child whenever the child's parents are unknown, unavailable, or the child is a ward of the State. The proposed regulations (a) require agencies to have a method for determining when a child needs a surrogate and for assigning a surrogate to the child, (b) set out criteria for selecting surrogates, and (c) specify that a person

paid by an agency to serve as a surrogate would not be considered to be an employee of that agency. (See § 121a.415)

Discussion of specific issues. (1) Many commenters have expressed concerns (a) that local educational agencies are totally vulnerable in any due process hearing and (b) that the entire process works only to the advantage of the individual handicapped child or his parents regardless of what the subject or purpose of the hearing may be. The Department's view with respect to this concern is as follows:

A basic tenet of the American system of government, as provided by the United States Constitution, is that any individual who is threatened or becomes subject to serious or adverse action by public authorities must be provided with full rights of due process of law. Such procedures provide to the individual the opportunity to contest the proposed action within a series of proceedings which insure that fairness and good judgment govern the entire decision-making process.

The implementation of these procedures, however, must not be misunderstood by public educators, handicapped children, their families or advocates. They are not intended to give an advantage to any "side" in the decision-making process. Rather they are to produce a setting in which the interested parties effectiveness and finally, their rights understand the nature of a child, his needs, the procedures and process used to obtain that information, the proposed plan to meet the needs of the child, the review procedures to determine program effectiveness and finally, their rights under the law. Invoking due process procedures does not inherently create adversary settings. The goal of the process is better programming for children, with better understanding of all parties—parents, children, educators and advocates, of their responsibilities, and a forum for continuous review.

(2) A question has been raised regarding whether the superintendent of a public institution for the handicapped (such as a State residential school for the deaf) can serve as the surrogate parent for a child in that institution. Section 615(b)(1)(B) of the Statute provides that a surrogate parent may not be an employee of the State educational agency or local educational agency in which the child receives education or care. However, section 612 of the Act insures that the rights and benefits of the Statute (including due process rights) apply to all handicapped children in the State regardless of what agency is providing them with special education and related services. Therefore, the department's view is that it would be inconsistent with the Statute for the superintendent or any other employee of an institution to serve as a surrogate parent for a child in that institution.

PROTECTION IN EVALUATION PROCEDURES

Section 612(5)(C) of the Act requires States to establish non-discriminatory testing procedures for use in the evaluation and placement of handicapped children. The requirements for States to follow in carrying out this provision are set out in §§ 121a.430–121a.433 of Subpart E. These requirements are designed to insure that children are not misclassified or unnecessarily labeled as being handicapped because of inappropriate selection, administration, or interpretation of evaluation materials.

While the term "nondiscriminatory testing" is generally used with respect to this provision, the provision clearly applies to evaluation materials and procedures used with all handicapped children. Thus, the title "Protection in Evaluation Procedures", as used in these proposed regulations, is considered to be more appropriate than "Nondiscriminatory Testing".

A decision was made by the Office of Education to adopt the evaluation procedures in the proposed regulations under section 504 of the Rehabilitation Act of 1973. This decision was made (1) in order to insure consistency between the two sets of regulations and (2) because the "504" provisions cover the basic points on evaluation in which there is general professional agreement (e.g., that evaluation procedures be multi-factored, multisourced, and carried out by qualified personnel).

LEAST RESTRICTIVE ENVIRONMENT

Section 612(5)(B) of the Act requires States to establish procedures to insure that to the maximum extent appropriate, handicapped children are educated with children who are not handicapped, and that removal of handicapped children from the regular education environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. The minimum requirements for States to follow in carrying out this provision are set out in §§ 121a.440–121a.445 of Subpart E.

These proposed regulations (1) require each State educational agency to inform public educational agencies about the least restrictive alternative provision, to assist them with its implementation, and to monitor their progress, and (2) set forth additional requirements designed to insure effective implementation of this provision for each handicapped child.

Discussion of specific issues. (1) A number of comments expressed concerns (a) that in carrying out the least restrictive environment provision too much emphasis would be focused on having handicapped children educated with children who are not handicapped, and (b) that there may be an overzealous implementation of this provision without regard to the needs of individual handicapped children.

These concerns were dealt with directly in the June 6, 1975 Report of the House of Representatives on HR 7217 (H. Rept. No. 94–332, p. 9):

> The Committee understands the importance of providing educational services to each handicapped child according to his or her individual needs. These needs may entail instruction to be given in varying environments, i.e., hospital, home, school, or institution. The Committee urges that where possible and where most beneficial to the child, special educational services be provided in a classroom situation. An optimal situation, of course, would be one in which the child is placed in a regular classroom. The Committee recognizes that this is not always the most beneficial place on instruction. No child should be denied an educational opportunity; therefore, H.R. 7217 expands special educational services to be provided in hospitals, in the home, and in institutions.

With respect to the above concerns, this proposed regulation sets out three points:

(a) That each handicapped child's educational placement must be determined at least anually and be based on his or her individualized education program.

(b) That steps be taken to assure that implementation of this provision will not produce a harmful effect on the child or reduce the quality of services which he or she requires.

(c) When there is evidence to suggest that a local educational agency is placing its handicapped children in an environment without regard to their specific, individual needs, the State educational agency must assist in planning and implementing any necessary corrective action.

(2) In drafting this proposed regulation, the issue was raised about the desirability of setting out a specific continuum of educational placements or program options which every State must follow. The decision was made to permit each State to develop its own continuum provided that the continuum includes the various alternative placements set forth in the Statute.

CONFIDENTIALITY

The regulations on confidentiality, as set out in §§ 121a.450–121a.466, were previously published in final form on February 27, 1976 (41 FR 8603–8610) to comply with the requirement under Pub. L. 93–380 and an additional provision under Pub. L. 94–142. These regulations are being republished and renumbered in this package of proposed rules for the convenience of the reviewers. Certain portions of the final (existing) regulations have been moved to other sections of these proposed rules, but the rules are substantially the same:

Section 121a.10 of the existing (February 27, 1976) regulations is incorporated in Subpart B of these proposed rules.

The definitions of "consent" and "formal evaluation" in § 121a.15 of the existing regulations have been moved to a definition section for Subpart E. The word "formal" has been deleted from "Formal evaluation" and the definition has been expanded.

The definition of "parent" has been moved to subpart A and has been revised to apply more generally to all parents covered under Part B of the Act.

The requirement that parental consent must be obtained before an evaluation is conducted (as set out in § 121a.15 of existing regulations) has been moved to the due process procedure in § 121a.404 of this subpart.

OFFICE OF EDUCATION HEARING PROCEDURES

Sections 121a.480 through 121a.483 set out the hearing procedures which the Office of Education will use whenever a State educational agency has the right to a hearing under Part B of the Act, including (1) disapproval of the State's annual program plan, (2) a decision by the Commissioner to withhold funds for non-compliance with Part B, and (3) a request by a State for a waiver of the supplanting requirement under section 613(a)(9) of the Statute. These hearing procedures are based on other procedures used within the Department (e.g., the grant appeals board, 45 CFR Part 16).

Additional procedures to be used in withholding funds from a State educational agency when the State is in substantial noncompliance with Part B of the Act are set out in §§ 121a.490–121a.493 of this subpart. These procedures are elaborated on in section 616 of the Act.

SUBPART F: STATE ADMINISTRATION

Sections 121a.500 through 121a.502 of Subpart F set forth the responsibilities of the State educational agency for the use of funds for all educational programs for handicapped children within the State. These proposed regulations (1) set forth the percentage of the State allotment for administration, (2) delineate the allowable administrative expenditure, and (3) provide for the reallocation of local educational agency funds.

ADVISORY PANEL

Sections 121a.550 through 121a.552 set forth requirements for a State advisory panel on the education of handicapped children. The membership of such panel is composed of persons who are involved in or concerned with the education of handicapped children.

The advisory panel is responsible for (1) advising the State educational agency of Statewide unmet needs in the education of handicapped children, (2) commenting on the rules for issuance by the State and the procedures for distributing funds under this Part, and (3) assisting the State in developing and reporting of data and evaluations to assist the Commissioner in performing his responsibilities under section 618.

Discussion of specific issues. Several persons have asked whether the State requirement for consultation with individuals concerned with the Education of the Handicapped Act as stated in section 612(7)(A) requires each State to assure that in carrying out the eligibility requirements in the Statute, procedures are established for consultation with individuals involved in or concerned with the education of handicapped children, including handicapped individuals and parents or guardians of handicapped children. Comments are invited on the issue of whether these requirements can be effectively met through the use of the State advisory panel.

SUBPART G: ALLOCATION OF FUNDS; REPORTS

ALLOCATIONS

Sections 121a.600 through 121a.607 set forth the conditions under which States receive and distribute funds under this part.

These proposed regulations (a) delineate the State entitlement and formula for each fiscal year from 1978 to 1982 and thereafter and (b) specify the limitations and exclusions related to this formula as set forth by the requirements for child count.

The procedures are defined for the ratable reduction of funds; (a) the dates for local educational agencies to report to the State, and (b) the reallocations of such monies and the amount of funds available.

Section 121a.603 of the proposed regulations repeats the hold harmless provision which ensures a funding level at least equal to that in fiscal year 1977, and the distribution of funds to the State educational agency and the local educational agencies for fiscal years 1978, 1979, and thereafter.

Sections 121a.604 and 121a.605 set forth the requirements for the distribution of funds to the State educational agency and local educational agencies for fiscal year 1978, 1979, and thereafter.

Section 121a.606 sets forth the formula and entitlements for local educational agencies and § 121a.607 specifies the provisions for entitlements to Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

REPORTS

Sections 121a.650 through 121a.654 set forth the requirements for the annual report of children who have been served during that year. The proposed regulations specify (1) the report requirement, (2) information required in the report, (3) certification of the accuracy of the report, (4) the criteria used for counting children. Section 121a.654 sets forth additional responsibilities of the State educational agency to coordinate a Statewide effort to assure an accurate and unduplicated count to meet the requirements of section 611(a)(3) and section 617(a)(1)(D) of the Statue.

The preamble and regulations for Child Count were published in proposed form in the FEDERAL REGISTER on September 8, 1976. The comment period for these regulations has ended; however, they are being reprinted here for the convenience of the reader.

Discussion of specific issues. (1) One issue raised by the commenters on the proposed "child count" regulations is the eligibility of certain classes of children to be counted under Pub. L. 94–142: (e.g., Children who receive an education, provided at the expense of the military or the local educational agency, on a United States military base).

Further comments are invited as to the eligibility of those children to be counted under Pub. L. 94–142 and the effects that this count would have on the continued eligibility of those children to be counted (or even served) under other federal programs providing assistance to the military based school.

(2) A number of questions were raised with respect to counting handicapped children enrolled in regular private elementary and secondary schools under the provisions of section 613(a)(4)(A) of the Act §§ 121a.300–121a.306 of Subpart D of these regulations).

A private school handicapped child may be counted provided that the child (a) is a "handicapped child", as defined in § 121a.4 of Subpart A, and (b) is receiving special education and related services through State, local or Federal funds. It should be noted that private school handicapped children must receive special education and related services in conformance with an individualized education program.

(3) A question was raised as to whether (a) "deaf-blind" should be added as a category in the child count provisions, or (b) whether the Department should utilize only the specific types of handicaps defined in the Statute and have the children reported separately as "deaf" or "visually handicapped". The issue involved is that there are many other categories which could also be added; but in doing so, it would reduce the chances of receiving an unduplicated count of children. Comments are requested regarding this question.

(4) Another issue is whether funds available to a State under EHA Part B can be used in part to support educational programs for children in State operated or State supported schools. The present section 613(a)(9) of EHA (effective until 10/1/77) requires that a State Plan provide assurance that EHA Part B funds "shall not be made available for handicapped children eligible for assistance under section (121) of the Elementary and Secondary Education Act of 1965."

The Office of Education has interpreted this provision to preclude use of Part B funds on children who either were eligible to be counted or actually counted under section 121. For FY '78 and thereafter the present section 613(a)(9) will be dropped. New section 611(a)(5)(A)(iii) (effective 10/1/77) may only prohibit the Commissioner for purposes of Part B from counting handicapped children who are counted under section 121 of ESEA. This provision, once in effect, may not preclude Part B funding of those children who have not been counted under that section. Comments are invited on this issue.

PART 121m: INCENTIVE GRANTS

Part 121m sets forth the conditions under which States may receive incentive grants to assist in the education of handicapped children ages three through five. Congress established incentive grants in the recognition that when education begins at the earlier stages of development (1) benefits are maximized, (2) additional or more severe handicaps may be prevented, and (3) greater long-term cost effectiveness is realized.

Discussion of specific issues. (1) A question arose as to (a) whether States

could use the incentive grant funds to provide services only to those children who were counted to generate those monies, or (b) whether the State educational agency may determine if additional, previously unserved children are to be served with these funds. These regulations reflect the intent of the legislation by allowing the State educational agency to determine the optimal use of these funds for children ages three through five who are counted as receiving special education and related services or children who were previously unserved.

(2) A related issue was raised regarding the expenditure of equal dollars for each child. It was felt that for optimal implementation of the legislation the States should have flexibility in determining the amount spent on individual children so long as each child served is provided a free appropriate public education.

(3) An issue was raised concerning the possible use of incentive grant funds for children from birth through two years of age. Section 619 and the legislative history specify that the use of incentive grant funds is limited to children ages three through five years. However, the State's entitlement under section 611 of the Act may be used for children from birth through age twenty-one.

(4) Another issue was whether a State must be serving all handicapped children ages three through five in order to qualify for the funds. The proposed rules interpret the statute to regard as eligible those States which offer programs to any of the handicapped children in this age range. Therefore, any State which serves any portion of the three, four, or five year old handicapped population may apply.

PUBLIC HEARINGS

The Office of Education will hold public hearings on these proposed regulations at the following times and locations:

City	Date/time	Address
Washington, D.C.	Feb. 3, 1977, 9:30 a.m. to 3 p.m.	Regional Office Bldg. No. 3, Auditorium No. 3, 7th and D Sts., SW., Washington, D.C. 20202.
San Francisco.	Feb. 8, 1977, 9:30 a.m. to 3 p.m.	Federal Office Bldg., 450 Golden Gate, Room 2007, San Francisco, Calif. 94102.
Denver	Feb. 9, 1977, 9:30 a.m. to 3 p.m.	Post Office Bldg., Room 269, 18th and Stout Sts., Denver, Colo. 80202.
Chicago	Feb. 10, 1977, 9:30 a.m. to 3 p.m.	Rebecca Crown Center/Hardin Hall, 633 Clark, Evanston, Ill. 60201.
Boston	Feb. 15, 1977, 9:30 a.m. to 3 p.m.	Post Office and Court House Bldg., Room 208, Boston, Mass. 02109.
Atlanta	Feb. 18, 1977, 9:30 a.m. to 3 p.m.	Board of Education, City of Atlanta, Board Room, 159 Garnett, SW., Atlanta, Ga. 30323.

The purpose of these hearings is to receive comments and suggestions on the proposed rules for consideration by the Office of Education in preparing final regulations for Part 121a. (Assistance to States for the Education of Handicapped Children) and Part 121m. (Incentive Grants program for Handicapped children ages three through five.)

In order to insure that all interested parties will have an opportunity to make comments at the hearings, the Office of Education recommends the following procedure:

(1) Each person planning to make an oral presentation should: (a) prepare a written statement of his/her comments in advance of the hearings; (b) make the presentation as concise as possible; and (c) submit a copy of the prepared statement to the Bureau of Education for the Handicapped, Office of Education, Regional Office Building No. 3, 7th and D Streets, SW, Washington, D.C. 20202.

NOTE.—If a person has extensive comments to make, it is recommended that the person's oral presentation include only a summary of the comments and that the full, written statement be sent to the above address.

(2) In presenting both oral and written statements, each commenter should (a) indicate his/her name, title, and address, (b) identify each specific subpart and section of the regulations on which comments are being made, (c) describe the concern with respect to that subpart and section, and (d) specify the recommended action to be taken.

NOTICE OF PUBLIC HEARINGS ON SPECIFIC LEARNING DISABILITIES REGULATIONS

In accordance with proposed rules on Specific Learning Disabilities, published in the FEDERAL REGISTER on November 29, 1976 (41 FR 52403), notice is hereby given that The Office of Education will hold six public hearings on these regulations. These hearings will be conducted in conjunction with the hearings on Parts 121a. and Parts 121m. to enable interested parties opportunity to comment on each of these proposed rules. The recommended procedures for making oral presentations on Specific Learning Disabilities are the same as those specified in the preceding paragraphs for Parts 121a and Parts 121 m. Following are the times and locations for the hearings on Specific Learning Disabilities:

City	Date/time	Address
Washington, D.C.	Feb. 4, 1977, 9:30 a.m. to 3 p.m.	Regional Office Bldg., No. 3, 7th and D Sts., S.W., Washington, D.C. 20202.
San Francisco	Feb. 7, 1977, 9:30 a.m. to 3 p.m.	Federal Office Bldg., 450 Golden Gate, Room 2007, San Francisco, Calif. 94102.
Denver	Feb. 8, 1977, 9:30 a.m. to 3 p.m.	Post Office Bldg., Room 269, 18th and Stout Sts., Denver, Colo. 80202.
Chicago	Feb. 9, 1977, 9:30 a.m. to 3 p.m.	Rebecca Crown Center/Hardin Hall, Northwestern University, 633 Clark, Evanston, Ill. 60201.
Boston	Feb. 16, 1977, 9:30 a.m. to 3 p.m.	Post Office and Court House Bldg., Room 208, Boston, Mass. 02109.
Atlanta	Feb. 17, 1977, 9:30 a.m. to 3 p.m.	Board of Education, City of Atlanta, 159 Garnett, S.W., Atlanta, Ga. 30323.

WRITTEN COMMENTS

The Office of Education invites written comments and recommendations on these proposed regulations. All written materials should be sent to: Bureau of Education for the Handicapped, Office of Education, Room 2015 Regional Office Building No. 3, 7th and D Streets, SW, Washington, D.C. 20202.

The written comments should (1) include the name, title, address, and telephone number of the commenter, (2) identify each specific subpart and section of the regulations on which comments are being made, (3) describe the concern with respect to that subpart/section, and (4) specify the recommended action to be taken.

Comments received in response to the notice will be available for public inspection at the above office Monday through Friday between 8 a.m. and 4 p.m. All relevant material must be received on or before March 1, 1977.

All comments written and oral will be reviewed by the Office of Education and considered in preparation of final regulations.

Questions about these proposed regulations may be addressed to Mr. Thomas B. Irvin, at the above address, or by phone (202) 245-9405.

The United States Office of Education has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 1182 and OMB circular A-107.

(Catalog of Federal Domestic Assistance Number 13.449, Handicapped Preschool and School Programs.)

Dated: December 16, 1976.

EDWARD AGUIRRE,
U.S. Commissioner of Education.

Approved: December 22, 1976.

MARJORIE LYNCH,
Acting Secretary of Health, Education, and Welfare.

Title 45 of the Code of Federal Regulations is amended as follows:

PART 100b—STATE ADMINISTRATED PROGRAMS

1. In Part 100b, § 100b.17 is revised to read as follows:

§ 100b.17 General applications.

(a) The general application of a State must meet the requirements of section 434(b)(1)(A) of the General Education Provisions Act.

(b) A State does not have to resubmit its general applications.

(20 U.S.C. 1232c(b)(1)(A).)

(c)(1) The following statutes require that a State must submit certain provisions to the Commissioner which are similar to provisions in the general application.

(2) Subject to paragraph (d) of this section, if the Commissioner has approved a State's general application, the State does not have to submit the provi-

sions required under the following statutes:

(i) *Compensatory education.* Section 142(a) (2) and (3) of Title I of the Elementary and Secondary Education Act of 1965, as amended.

(20 U.S.C. 1232c(b)(1)(A)(ii) (II), (III).)

(ii) *School library resources.* Section 203(a) (5), (6) and (7) of Title II of the Elementary and Secondary Education Act of 1965, as amended.

(20 U.S.C. 1232c(b)(1)(A)(ii) (II), (III), and (IV).)

(iii) *Supplementary educational centers and services; guidance, counseling, and testing.* Section 305(b) (9)(B), (10), and (11) of Title II of the Elementary and Secondary Education Act of 1965, as amended.

(20 U.S.C. 1232c(b)(1)(A)(ii) (II), (III) and (IV).)

(iv) *Education of the handicapped.* Section 613(a) (7)(A), (9)(B), and (10) of Part B of the Education of the Handicapped Act, as amended.

(20 U.S.C. 1232c(b)(1)(A)(ii) (II), (III) and (IV).)

(v) *Adult education.* Section 306(a) (6) and (7) of the Adult Education Act, as amended.

(20 U.S.C. 1232c(b)(1)(A)(ii) (II), (III).)

(vi) *Strengthening instruction in academic subjects.* Section 1004(a) (2) and (3) of Title X of the National Defense Education Act of 1958, as amended.

(20 U.S.C. 1232c(b)(1)(A)(ii), (II), (III).)

(vii) *State reading improvement programs.* Section 714(a)(10) of Title VII–B of the Education Amendments of 1974.

(20 U.S.C. 1232c(b)(1)(A)(ii), (III).)

(d)(1) The general application does not change the legal substance of the provisions listed under paragraph (c)(2) of this section.

(2) If a provision listed in paragraph (c)(2) of this section is different in wording from an assurance in the general application, the provision listed in that paragraph governs any question of compliance with the assurance.

(20 U.S.C. 1232c(b)(1)(B)(i), (b)(1)(B)(iii), (b)(2).)

2. In Part 100b, § 100b.35 is revised to read as follows:

§ 100b.35 Effective date of an application, plan, or amendment.

(a) Federal funds are available only for obligations incurred under:

(1) A State plan approved by the Commissioner (in the case of the programs set forth in § 100b.10 other than those referenced in § 100b.15(a)); or

(2) A general application and an annual program plan approved by the Commissioner (in the case of the programs referenced in § 100b.15(a)).

(b) A State plan, general application, annual program plan, or amendment to any of them, is effective on the date the State submits it to the Federal Government in substantially approvable form. However, the effective date cannot be earlier than the first day of the fiscal period for which it is submitted.

(c) The Commissioner sends the State agency a notice of approval, including notice of the effective date, when the application, plan, or amendment is approved.

(d) Federal funds are not available for obligation by a State or local agency before the effective date of the State plan or annual program plan (whichever is submitted under paragraph (a) of this section). If funds are expressly made available by statute for the development of the State plan, general application, or annual program plan, the first sentence of this paragraph does not apply to obligations by the State for that purpose.

(20 U.S.C. 1221e-3(a)(1).)

3. In Part 100b, § 100b.55 is revised to read as follows:

§ 100b.55 Obligation by recipients.

(a) *Period for obligation.* Federal funds which the Federal government may obligate during a fiscal period remain available for obligation by State and local recipients through the end of that fiscal period. Federal funds made available for construction of facilities remain available for obligation by State and local recipients for that purpose for a reasonable period of time as determined by the Commissioner.

(b) *Carryovers.* In accordance with section 414(b) of the General Education Provisions Act, any Federal funds which are not obligated by State and local recipients before the end of the fiscal period under paragraph (a) of this section, remain available for obligation by those agencies for one additional fiscal year.

(c) *Determinations of obligation.* (1) An obligation for the acquisition of real or personal property, for the construction of facilities, or for the performance of work, is incurred by a recipient on the date it makes a binding written commitment.

(2) An obligation for personal services, for services performed by public utilities, for travel, or for the rental of real or personal property, is incurred by a recipient on the date it receives the services, its personnel takes the travel, or it uses the rented property.

(20 U.S.C. 1221c(a); 1225(b); 1232c(b)(1)(A)(ii)(II).)

4. Part 121a is revised to read as follows:

PART 121a—ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

Subpart A—General

Sec.
121a.1 Purpose.
121a.2 Applicability to State, local, and private agencies.
121a.3 General provisions regulations.
121a.4 Definitions.

Subpart B—State Annual Program Plans and Local Applications

ANNUAL PROGRAM PLANS—GENERAL

Sec.
121a.10 Condition of assistance.
121a.11 Contents of plan.
121a.12 Certification by the State educational agency and attorney general.
121a.13 Approval; disapproval.
121a.14 Effective period of annual program plan.

ANNUAL PROGRAM PLANS—CONTENTS

121a.20 Public participation.
121a.21 Right to a free appropriate public education.
121a.22 Timelines and ages for free appropriate public education.
121a.23 Full educational opportunity goal.
121a.24 Full educational opportunity goal—data requirement.
121a.25 Full educational opportunity goal—timetable.
121a.26 Full educational opportunity goal—facilities, personnel, and services.
121a.27 Priorities.
121a.28 Identification, location, and evaluation of handicapped children.
121a.29 Confidentiality of personally identifiable information.
121a.30 Individualized education programs.
121a.31 Procedural safeguards.
121a.32 Least restrictive environment.
121a.33 Protection in evaluation procedures.
121a.34 Responsibility of State educational agency for all educational programs.
121a.35 Monitoring procedures.
121a.36 Implementation procedures—State educational agency.
121a.37 Procedures for consultation.
121a.38 Compliance with Part B of the Act.
121a.39 Other Federal programs.
121a.40 Comprehensive system of personnel development.
121a.41 Private schools.
121a.42 Recovery of funds for misclassified children.
121a.43 Control of funds and property.
121a.44 Records.
121a.45 Hearing on application.
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121a.86 State educational agency approval; disapproval.
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LOCAL EDUCATIONAL AGENCY APPLICATIONS—CONTENTS

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121a.101 Confidentiality of personally identifiable information.
121a.102 Full educational opportunity goal; timetable.
121a.103 Facilities, personnel, and services.
121a.104 Personnel development.
121a.105 Priorities.
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APPLICATION FROM SECRETARY OF INTERIOR

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121a.127 Public participation.
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PUBLIC PARTICIPATION

121a.130 Public hearings before adopting an annual program plan.
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GENERAL

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Subpart D—Private Schools

PARTICIPATION OF PRIVATE SCHOOL CHILDREN

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121a.301 Determinations.
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STATE ADVISORY PANEL

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ALLOCATIONS

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121a.650 Annual report of children served—report requirement.
121a.651 Annual report of children served—information required in report.
121a.652 Annual report of children served—
121a.653 Annual report of children served—criteria for counting children.
121a.654 Annual report of children served—other responsibilities of the State educational agency.

AUTHORITY: Part B of the Education of the Handicapped Act, Pub. L. 91-230, Title VI, as amended, 89 Stat. 773 (20 U.S.C. 1401-1420), unless otherwise noted.

Subpart A—General

§ 121a.1 Purpose.

The purpose of this part is:

(a) To insure that all handicapped children have available to them a free appropriate public education which includes special education and related services to meet their unique needs,

(b) To insure that the rights of handicapped children and their parents are protected,

(c) To assist States and localities to provide for the education of all handicapped children, and

(d) To assess and insure the effectiveness of efforts to educate those children.

(20 U.S.C. 1401(c).)

§ 121a.2 Applicability to State, local, and private agencies.

(a) *States.* This part applies to each State which receives payments under Part B of the Education of the Handicapped Act.

(b) *Public agencies within the State.* The annual program plan is submitted by the State educational agency on behalf of the State as a whole. Therefore, the provisions of this part apply to all political subdivisions of the State that are involved in the education of handicapped children. These would include: (1) The State educational agency, (2) local educational agencies and intermediate educational units, (3) other State agencies (such as Department of Mental Health and Welfare), and (4) State correctional facilities.

(c) *Private schools.* The State educational agency, local educational agencies, and intermediate educational units are responsible for insuring that the rights and protection under this part are given to children referred or placed in private schools by a State or local educational agency.

(20 U.S.C. 1412(1); 1413(a)(1))

§ 121a.3 General provisions regulations.

Assistance under Part B of the Act is subject to Parts 100, 100b, 100c, and 121 of this chapter, which include definitions and requirements relating to fiscal, administrative, property management, and other matters.

(20 U.S.C. 1401–1418)

§ 121a.4 Definitions.

As used in this part:

"Free appropriate public education" means special education and related services which:

(a) Are provided at public expense, under public supervision and direction, and without charge,

(b) Meet the standards of the State educational agency, including the requirements of this part,

(c) Include preschool, elementary school, or secondary school education in the State involved, and

(d) Are provided in conformity with an individualized education program which meets the requirements under §§ 121a.220–121a.227 of Subpart C.

(20 U.S.C. 1402(18))

"Handicapped children" means those children evaluated in accordance with §§ 121a.430–121a.433 of Subpart E as being mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, or as having specific learning disabilities, who because of those impairments need special education and related services. The terms used in this definition are defined as follows:

(a) "Deaf" means a hearing impairment which is so severe that the child's hearing is non-functional for the purposes of educational performance.

(b) "Hard of hearing" means a hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance but which is not included under the definition of "deaf" in this section.

(c) "Mentally retarded" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.

(d) "Orthopedically impaired" means a severe orthopedic impairment which adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g. poliomyelitis, bone tuberculosis, etc.) and impairments from other causes (e.g., fractures or burns which cause contractures, amputation, cerebral palsy, etc.).

(e) "Other health impaired" means limited strength, vitality, or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes.

(f) "Seriously emotionally disturbed" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree: an inability to learn which cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms, or fears associated with personal or school problems. The term includes children who are schizophrenic or autistic. The term does not include children who are socially maladjusted but not emotionally disturbed.

(g) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or to do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, minimal brain disfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, of motor handicaps, of mental retardation, or of environmental cultural, or economic disadvantages.

(h) "Speech impaired" means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, which adversely affects a child's educational performance.

(i) "Visually handicapped" means a visual impairment which, after correction, adversely affects a child's educational performance. The term includes both partially seeing and blind children.

(20 U.S.C. 1402(1), (15))

"Include" means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

(20 U.S.C. 1401–1418)

"Local educational agency," as defined in § 121.2 of this chapter, includes an intermediate educational unit.

(20 U.S.C. 1402(8), (22))

"Native language," when used with reference to a person of limited English-speaking ability, means the language normally used by that person, or in the case of a child, the language normally used by the parents of the child.

(20 U.S.C. 880b–1(a)(2); 1402(21))

"Parent" includes a parent, a guardian, a surrogate parent appointed under Subpart E, or a person acting as a parent of a child in the absence of a parent or guardian.

(20 U.S.C. 1401–1418)

Comment. The term "parent" is defined to include persons acting in the place of a parent, such as a grandmother or stepparent with whom a child lives, as well as persons who are legally responsible for a child's welfare.

"Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluation purposes. The term also includes school social work services, parent counseling and training, providing parents with information about child development, and assisting parents in understanding the special needs of their child. The terms used in this definition are defined as follows:

(a) "Audiology" means:

(1) Identification of children with hearing loss;

(2) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(3) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

(4) Creation and administration of programs of hearing conservation; and

(5) Counseling and guidance of pupils, parents, and teachers.

(b) "Counseling services" means activities conducted by a certified counselor.

(c) "Early identification" means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(d) "Medical services" means procedures performed by a licensed physician to determine a child's need for special education and related services.

(e) "Occupational therapy" means services provided by a licensed occupational therapist.

(f) "Physical therapy", means activities for restoring damaged or atrophied muscles to improve use.

(g) "Psychological services" means:

(1) Administering psychological and educational tests;

(2) Interpreting the results;

(3) Gathering and interpreting information about child behavior;

(4) Working with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations; and

(5) Planning and managing a program of psychological services, including psychological counseling for children and parents.

(h) "Recreation" includes leisure education.

(i) "Speech pathology" means:

(1) The identification of children with speech or language disorders;

(2) Diagnosis and appraisal of specific speech or language disorders;

(3) Referral for medical or other professional attention necessary for the habilitation of speech or language disorders;

(4) Provision of speech and language habilitation; and

(5) Counseling and guidance of parents, children, and teachers

(j) "Transportation" includes:

(1) Travel to and from school and between schools,

(2) Travel in and around school buildings, and

(3) Specialized equipment if required.

"Special education" means specially designed instruction, at no cost to the parents or guardians, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions. The term includes speech pathology, audiology, occupational therapy, and physical therapy, if the service is considered "special education" rather than a "related service" under State standards. The terms in this definition are defined as follows:

(a) "At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees which are normally charged to non-handicapped students or their parents as a part of the regular education program.

(b) "Physical education", includes special physical education, adapted physical education and motor development, and means the development of physical and motor fitness, fundamental motor skills and patterns, body mechanics, individual and group games and sports, skills to include intramural and lifetime sports, and dance and movement education.

(c) "Vocational education" means organized educational programs which are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

(20 U.S.C. 1402(16))

Subpart B—State Annual Program Plans and Local Applications

Annual Program Plans—General

§ 121a.10 Condition of assistance.

(a) In order to receive funds under Part B of the Act, a State must submit an annual program plan to the Commissioner through its State educational agency.

(b) For the purposes of this subpart, the term "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(20 U.S.C. 1232c(b), 1402(6), 1412, 1413)

Comment. Section 434(b) of the General Education Provisions Act (GEPA), as amended by Pub. L. 93-380, requires each State to submit (1) a general application containing five assurances, and (2) an annual program plan for each Office of Education program under which funds are provided to local educational agencies through, or under the supervision of, the State educational agency. Under Section 434(b), and the implementing regulations (45 CFR 100b, Subpart B), the general application and an annual program plan take the place of a State plan for Part B (45 CFR 100b.19). Under 45 CFR 100b.18(c), material may be incorporated by reference in an annual program plan if the material is in a document previously approved by the Commissioner and on file in the Office of Education. This should save some paperwork, particularly in the years after the first annual program plan (for school year 1977-1978) is submitted under these regulations.

The provisions to be included in the annual program plan for Part B are set forth in §§ 121a.20-121a.49 of these regulations (which include the conditions of eligibility and the State plan requirements under sections 612 and 613 of the Act) and section 434(b)(1)(B)(ii) of the GEPA (which requires each annual program plan to "set forth a statement describing the purposes for which Federal funds will be expended during the fiscal year for which the annual program plan is submitted").

§ 121a.11 Contents of plan.

Each annual program plan must contain the provisions required in this subpart.

(20 U.S.C. 1412, 1413, 1232(c)(b))

§ 121a.12 Certification by the State educational agency and attorney general.

Each annual program plan must include:

(a) A certification by the officer of the State educational agency authorized to submit the plan that:

(1) The plan has been adopted by the State educational agency, and

(2) The plan is the basis for the operation and administration of the activities to be carried out in that State under Part B of the Act; and

(b) A certification by the State Attorney General or other authorized State legal officer that:

(1) The State educational agency has authority under State law to submit the plan and to administer or to supervise the administration of the plan, and

(2) All plan provisions are consistent with State law.

(20 U.S.C. 1413(a))

§ 121a.13 Approval; disapproval.

(a) The Commissioner shall approve any annual program plan which meets the requirements of this part and Subpart B of Part 100b of this chapter.

(b) The Commissioner shall disapprove any annual program plan which does not meet those requirements but may not finally disapprove a plan before giving reasonable notice and an opportunity for a hearing to the State educational agency.

(c) The Commissioner shall use the procedures set forth in §§ 121a.480-121a.483 of Subpart E for a hearing under this section.

(20 U.S.C. 1413(c))

§ 121a.14 Effective period of annual program plan.

(a) Each annual program plan is effective for a period from the date it becomes effective under § 100b.35 of this chapter through the following June 30.

(b) The Commissioner may extend the effective period of an annual program plan on the request of a State.

(20 U.S.C. 1413(a), 1232c(b))

Comment. The Office of Education is proposing to use the period July 1-June 30 for State annual program plans in those programs where appropriations become available for obligation by the Federal Government each July 1 (the so-called "advance funded" programs). The purpose of this is to meet the statutory requirement for an annual program plan covering a 12-month period and at the same time to conform as closely as possible to the regular school year. However, even if the proposed procedure is adopted, the obligational period of State and local agencies for funds from any fiscal year would not be changed. If a State submits its annual program plan and receives its grant on the earliest possible date (July 1), the funds are available for obligation at the State and local level for 27 months. (This period includes the 12-month carryover provision under the Tydings Amendment. See 45 CFR 100b.55 (Obligation by recipients).) For example, if a State received its grant for fiscal year 1978 on July 1, 1977, the funds would be available for obligation at the State and local level from July 1, 1977 through September 30, 1979. The rules which govern when an annual program plan becomes effective, and State and local authority to obligate the Federal funds, are located in 45 CFR Part 100b, Subpart B. (Also, see the comment following § 121a.132 of this subpart.)

Annual Program Plans—Contents

§ 121a.20 Public participation.

(a) Each annual program plan must include procedures which insure that the requirements §§ 121a.130-121a.132 are met.

(b) Each annual program plan must also include the following:

(1) A statement describing the methods used by the State educational agency to provide notice of the public hearings on an annual program plan. The statement must include:

(i) A copy of each news release and advertisement used to provide notice,

(ii) A list of the newspapers and other media in which the State educational agency announced or published the notice, and

(iii) The dates on which the notice was announced or published.

(2) A list of the dates and locations of the public hearings on the annual program plan.

(3) A summary of comments received by the State educational agency and a description of the modifications that the State educational agency has made in the annual program plan as a result of the comments.

(4) A statement describing the methods by which the annual program plan will be made public after its approval by the Commissioner. This statement must include the information required under paragraph (b) (1) of this section.

(20 U.S.C. 1412(7))

§ 121a.21 Right to a free appropriate public education.

(a) Each annual program plan must include information which shows that the State has in effect a policy which insures that all handicapped children have the right to a free appropriate public education within the age ranges and timelines under § 121a.22.

(b) The information must include a copy of each State statute, court order, State Attorney General opinion, and other State document that shows the source of the policy.

(c) The information must show that the policy:

(1) Applies to all public agencies in the State which provide special education and related services to handicapped children;

(2) Applies to all handicapped children;

(3) Implements the priorities established under § 121a.27(a)(1) of this subpart; and

(4) Establishes timelines for implementing the policy, in accordance with § 121a.22.

(20 U.S.C. 1412(1))

§ 121a.22 Timelines and ages for free appropriate public education.

(a) *General.* Each annual program plan must include in detail the policies and procedures which the State will undertake or has undertaken in order to insure that a free appropriate public education is available for all handicapped children ages three through eighteen within the State not later than September 1, 1978, and for all handicapped children ages three through twenty-one within the State not later than September 1, 1980.

(b) *Documents relating to timelines.* Each annual program plan must include a copy of each statute, court order, attorney general decision, and other State document which demonstrates that the State has established timelines in accordance with paragraph (a) of this section.

(c) *Exception.* The requirement in paragraph (a) of this section does not apply to a State with respect to handicapped children ages three, four, five, eighteen, nineteen, twenty, or twenty-one to the extent that the requirement would be inconsistent with State law or practice, or the order of any court, respecting public education for one or more of those age groups in the State.

(d) *Documents relating to exceptions.* Each annual program plan must:

(1) Describe in detail the extent to which the exception in paragraph (c) of this section applies to the State, and

(2) Include a copy of each State law, court order, and other document which provides a basis for the exception.

(20 U.S.C. 1412(2)(B))

§ 121a.23 Full educational opportunity goal.

Each annual program plan must provide that the State has a goal of providing full educational opportunity to all handicapped children ages birth through twenty-one.

(20 U.S.C. 1412(2)(A))

§ 121a.24 Full educational opportunity goal—data requirement.

(a) *Annual program plan for school year 1977–1978.* (1) The annual program plan for school year 1977–1978 must include the following information:

(i) The estimated number of handicapped children who need special education and related services.

(ii) The number of handicapped children ages 18 through 21 who are receiving special education and related services during school year 1976–1977.

(iii) The estimated number of handicapped children who will receive special education and related services during school year 1977–1978.

(2) The data under paragraph (a)(1) of this section must be provided:

(i) For each of the following age ranges (except under paragraph (a)(1)(ii) of this section): birth through two, three through five, six through seventeen, and eighteen through twenty-one, and

(ii) For each disability category (except for children ages birth through two).

(3) The annual program plan must include a description of the basis used to determine the data required under this paragraph.

(b) *Annual program plans for school years after 1977–1978.* Beginning with school year 1978–1979, each annual program plan must contain the following information:

(1) The estimated number of handicapped children who need special education and related services.

(2) For the current school year:

(i) The number of handicapped children, ages birth through two, who are receiving special education and related services; and

(ii) The number of handicapped children:

(A) Who are receiving a free appropriate public education,

(B) Who need, but are not receiving a free appropriate public education,

(C) Who are enrolled in public and private institutions who are receiving a free appropriate public education, and

(D) Who are enrolled in public and private institutions and are not receiving a free appropriate public education.

(3) The estimated numbers of handicapped children who are expected to receive special education and related services during the next school year.

(4) A description of the basis used to determine the data required under this paragraph.

(5) The data required by paragraph (b)(1), (2), and (3) of this section must be provided:

(i) For each disability category (except for children ages birth through two), and

(ii) For each of the following age ranges: birth through two, three through five, six through seventeen, and eighteen through twenty-one.

(20 U.S.C. 1414(2)(A))

Comment. In Part B of the Act, the term "disability" is used interchangeably with "handicapping condition". For consistency in this regulation, a child with a "disability" means a child with one of the impairments listed in the definition of "handicapped children" in § 121a.4, if the child needs special education because of the impairment. In essence, there is a continuum of impairments. When an impairment is of such a nature that the child needs special education, it is referred to as a disability, in these regulations, and the child is a "handicapped" child.

The data requiremnts for school year 1977–78 under paragraph (a)(1)(ii) of this section are written to avoid duplication with the "child count" requirements for school year 1976–77 as set forth in Subpart G. The count requirements in subpart G were published in proposed form in the FEDERAL REGISTER on September 8, 1976.

Most of the data required for school year 1978–79 parallel the evaluation requirements in section 618(d)(1) of Part B, and are included in the annual program plan for the following reasons:

(1) There is a close relationship between: (a) the requirement in section 618 (which calls for an annual report on the progress made toward the provision of a free appropriate public education for all handicapped children), and (b) the goal of full educational opportunity under section 612(2)(A)).

(2) The inclusion of the data is also consistent with the practice of requiring States to incorporate both evaluation and planning components into their annual program plans (e.g., by indicating the extent to which the previous year's objectives were achieved and setting forth new objectives for the coming year). This practice has proven to be sufficiently effective over the six years before the enactment of Pub. L. 94–142 to justify continuing it.

The data on free appropirate public education in Section 618 will be provided for the first time in the annual program plan for fiscal year 1978–79. However, the requirement is included in the regulations at this time in order to enable States to begin developing the capacity to collect the data well in advance of the submission date.

§ 121a.25 Full educational opportunity goal—timetable.

(a) *General requirement.* Each annual program plan must contain a detailed timetable for accomplishing the goal of providing full educational opportunity for all handicapped children ages birth through twenty-one, within each disability category.

(b) Content of timetable. The timetable must indicate what percent of the total estimated number of handicapped children the State expects to have full educational opportunity in each succeeding school year.

(20 U.S.C. 1412(2)(A))

§ 121a.26 Full educational opportunity goal—facilities, personnel, and services.

(a) *General requirement.* Each annual program plan must include a description of the kind and number of facilities, personnel, and services necessary throughout the State to meet the goal of providing full educational opportunity for all handicapped children. The State educational agency shall include the data required under paragraph (b) of this section and whatever additional data is necessary to meet the requirement.

(b) *Statistical description.* Each annual program plan must include the following data:

(1) The number of additional special class teachers, resource room teachers, and itinerant or consultant teachers needed for each disability category and the number of each of these who are currently employed in the State.

(2) The number of other additional personnel needed, and the number currently employed in the State, including school psychologists, school social workers, occupational therapists, home-hospital teachers, speech pathologists, teacher aides, vocational education teachers, work study coordinators, physical education teachers, recreation therapists, diagnostic personnel, supervisors, and other instructional staff.

(3) The total number of personnel reported under paragraph (b) (1) and (2) of this section, and the salary costs of those personnel.

(4) The number and kind of facilities needed for handicapped children and the number and kind currently in use in the State, including regular classes serving handicapped children, self-contained classes on a regular school campus, resource rooms, private special education day schools, public special education day schools, private special education residential schools, public special education residential schools, hospital programs, occupational therapy facilities, physical therapy facilities, public sheltered workshops, private sheltered workshops, and other types of facilities.

(5) The total number of transportation units needed for handicapped children, the number of transportation units designed for handicapped children which are in use in the State, and the number of handicapped children who use these units to benefit from special education.

(c) *Data categories.* The data required under paragraph (b) of this section must be provided as follows:

(1) Estimates for serving all handicapped children who require special education and related services,

(2) Current year data, based on the actual numbers of handicapped children receiving special education and related services (as reported under Subpart G), and

(3) Estimates for the next school year.

(d) *Rationale.* Each annual program plan must include a description of the means used to determine the number and salary costs of personnel.

(20 U.S.C. 1412(2)(A))

§ 121a.27 Priorities.

(a) *General requirement.* Each annual program plan must include information which shows that:

(1) The State has established priorities which meet the requirements under §§ 121a.210–121a.212 of Subpart C,

(2) The State priorities meet the timelines under § 121a.22 of this subpart, and

(3) The State has made progress in meeting those timelines.

(b) *Child data.* (1) Each annual program plan must show the number of handicapped children known by the State to be in each of the first two priority groups named in § 121a.210(a) of Subpart C:

(i) By disability category, and

(ii) By the age ranges in § 121a.24(a)(2)(i) of this subpart.

(2) The annual program plan for school year 1977–1978 must include a description of the procedures the State educational agency has used in determining the number of handicapped children in the second priority group under § 121a.210(a) of Subpart C.

(c) *Activities and resources.* Each annual program plan must show for each of the first two priority groups:

(1) The programs, services, and activities that are being carried out in the State,

(2) The Federal, State, and local resources that have been committed during the current school year, and

(3) The programs, services, activities, and resources that are to be provided during the next school year.

(20 U.S.C. 1412(3))

§ 121a.28 Identification, location, and evaluation of handicapped children.

(a) *General requirement.* Each annual program plan must include in detail the policies and procedures which the State will undertake or has undertaken to insure that:

(1) All children who are handicapped, regardless of the severity of their handicap, and who are in need of special education and related services are identified, located, and evaluated; and

(2) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services.

(b) *Information.* Each annual program plan must:

(1) Designate the State agency (if other than the State educational agency) responsible for coordinating the planning and implementation of the policies and procedures under paragraph (a) of this section;

(2) Name each agency that participates in the planning and implementation and describe the nature and extent of its participation;

(3) Describe the extent to which:

(i) The activities described in paragraph (a) of this section have been achieved under the current annual program plan, and

(ii) The resources named for these activities in that plan have been used;

(4) Describe each type of activity to be carried out during the next school year, including the role of the agency named under paragraph (b)(1) of this section, timelines for completing those activities, resources that will be used, and expected outcomes;

(5) Describe how the policies and procedures under paragraph (a) of this section will be monitored to insure that the State educational agency obtains:

(i) The number of handicapped children within each disability category that have been identified, located and evaluated, and

(ii) Information adequate to evaluate the effectiveness of those policies and procedures; and

(6) Describe the method the State uses to determine which children are currently receiving special education and related services and which children are not receiving special education and related services.

(20 U.S.C. 1412(2)(C))

Comment. The State is responsible for insuring that all handicapped children are identified, located, and evaluated, including children in all public and private agencies and institutions in the State.

§ 121a.29 Confidentiality of personally identifiable information.

(a) Each annual program plan must include in detail the policies and procedures which the State will undertake or has undertaken in order to insure the protection of the confidentiality of any personally identifiable information collected, used, or maintained under this part.

(b) The Commissioner shall use the criteria in §§ 121a.450–121a.465 of Subpart E to evaluate the policies and procedures of the State under paragraph (a) of this section.

(20 U.S.C. 1412(2)(D); 1417(c))

Comment. The confidentiality regulations were published in the FEDERAL REGISTER in final form on February 27, 1976 (41 FR 8603–8610), and meet the requirements of Pub. L. 94–142. Those regulations are incorporated in §§ 121a.450–121a.465 of Subpart E.

§ 121a.30 Individualized education programs.

(a) Each annual program plan must include information which shows that each local educational agency in the

State maintains records of the individualized education program for each handicapped child, and each local educational agency establishes, reviews, and revises each program as provided in Subpart C.

(b) Each annual program plan must include:

(1) A copy of each State statute, policy, and standard that regulates the manner in which individualized education programs are developed, implemented, reviewed, and revised, and

(2) The procedures which the State educational agency follows in monitoring and evaluating those programs.

(20 U.S.C. 1412(4))

§ 121a.31 Procedural safeguards.

Each annual program plan must include procedural safeguards which insure that the requirements in §§ 121a.00–121a.414 of Subpart E are met.

(20 U.S.C. 1412(5)(A))

§ 121a.32 Least restrictive environment.

(a) Each annual program plan must include procedures which insure that the requirements in §§ 121a.440–121a.445 of Subpart E are met.

(b) Each annual program plan must include the following information:

(1) The number of handicapped children in the State, within each disability category, who are participating in regular education programs, consistent with §§121a.440–121a.445 of Subpart E.

(2) The number of handicapped children who are in separate classes or separate school facilities, or who are otherwise removed from the regular education environment.

(20 U.S.C. 1412(5)(B))

§ 121a.33 Protection in evaluation procedures.

Each annual program plan must include procedures which insure that the requirements in §§ 121a.430–121a.433 of Subpart E are met.

(10 U.S.C. 1412(5)(C))

§ 121a.34 Responsibility of State educational agency for all educational programs.

Each annual program plan must include information which shows:

(a) That the State educational agency is responsible for insuring that the requirements of this part are carried out; and

(b) That each educational program for handicapped children administered within the State, including each program administered by any other State or local agency:

(1) Is under the general supervision of the persons responsible for educational programs for handicapped children in the State educational agency, and

(2) Meet education standards of the State educational agency (including the requirements in this part).

(c) The information under paragraph (a) of this section must include a copy of each State statute, State regulation, signed agreement between respective agency officials, and other document that shows compliance with that paragraph.

(20 U.S.C. 1412(6).)

§ 121a.35 Monitoring procedures.

Each annual program plan must include monitoring procedures which the State educational agency follows in insuring that State and local agencies:

(a) Are effectively implementing the procedural safeguards under Subpart E; and

(b) Are using Part B funds properly and efficiently.

(20 U.S.C. 1412(6).)

§ 121a.36 Implementation procedures—State educational agency.

Each annual program plan must describe the procedures the State educational agency follows to inform each State and local agency of its responsibility for insuring effective implementation of procedural safeguards for the handicapped children served by that State or local agency.

(20 U.S.C. 1412(6).)

§ 121a.37 Procedures for consultation.

Each annual program plan must include an assurance that in carrying out the requirements of section 612 of the Act, procedures are established for consultation with individuals involved in or concerned with the education of handicapped children, including handicapped individuals and parents or guardians of handicapped children.

(20 U.S.C. 1412(7)(A).)

§ 121a.38 Compliance with Part B of the act.

Each annual program plan must set forth policies and procedures designed to insure that funds paid to the State under Part B of the Act are spent in accordance with the provisions of Part B, with particular attention given to sections 611(c) and 611(d) of the Act.

(20 U.S.C. 1413(a)(1).)

§ 121a.39 Other Federal programs.

Each annual program plan must provide that programs and procedures are established to insure that funds received by the State or any of its political subdivisions under any other Federal program, including section 121 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 241e–2), section 305(b)(8) of that Act (20 U.S.C. 844a(b)(8)) or Title IV–C of that Act (20 U.S.C. 1831), and section 110(a) of the Vocational Education Act of 1963, under which there is specific authority for assistance for the education of handicapped children, is used by the State, or any of its political subdivisions, only in a manner consistent with the goal of providing free appropriate public education for all handicapped children, except that nothing in this section limits the specific requirements of the laws governing those Federal programs.

(20 U.S.C. 1413(a)(2).)

§ 121a.40 Comprehensive system of personnel development.

Each annual program plan must include the material required under §§ 121a.260–121a.268 of Subpart C.

(20 U.S.C. 1413(a)(3).)

§ 121a.41 Private schools.

Each annual program plan must include policies and procedures which insure that the requirements of Subpart D are met.

(20 U.S.C. 1413(a)(4).)

§ 121a.42 Recovery of funds for misclassified children.

Each annual program plan must include policies and procedures which insure that the State seeks to recover any funds provided unuer Part B of the Act for services to a child who is determined to be erroneously classified as eligible to be counted under section 611(a) or (d) of the Act.

(20 U.S.C. 1413(a)(5).)

§ 121a.43 Control of funds and property.

Each annual program plan must provide assurance satisfactory to the Commissioner that the control of funds provided under Part B of the Act, and title to property acquired with those funds, is in a public agency for the uses and purposes provided in this part, and that a public agency administers the funds and property.

(20 U.S.C. 1413(a)(6).)

§ 121a.44 Records.

Each annual program plan must provide for keeping records and affording access to those records, as the Commissioner may find necessary to assure the correctness and verification of reports and of proper disbursement of funds provided under Part B of the Act.

(20 U.S.C. 1413(a)(7)(B).)

§ 121a.45 Hearing on application.

Each annual program plan must include procedures to insure that the State educational agency does not take any final action with respect to an application submitted by a local educational agency before giving the local educational agency reasonable notice and an opportunity for a hearing.

(20 U.S.C. 1413(a)(8).)

§ 121a.46 Prohibition of commingling.

Each annual program plan must provide assurance satisfactory to the Commissioner that funds provided under Part B of the Act are not commingled with State funds.

(20 U.S.C. 1413(a)(9)(A).)

Comment. This assurance is satisfied by the use of a separate accounting system that includes an "audit trail" of the expenditure of the Part B funds. Separate bank accounts are not required. (See 45 CFR 100b, Subpart F (Cash Depositories).)

§ 121a.47 Annual evaluation.

Each annual program plan must include procedures for evaluation at least annually of the effectiveness of programs in meeting the educational needs of handicapped children, including evaluation of individualized education programs.

(20 U.S.C. 1413(a)(11).)

§ 121a.48 State advisory panel.

Each annual program plan must provide that the requirements of §§ 121a.550–121a.552 of Subpart F are met.

(20 U.S.C. 1413(a)(12).)

§ 121a.49 Description of use of Part B funds.

(a) *State allocation.* Each annual program "plan" must include the following information about the State's use of funds under § 121a.250 of Subpart C and § 121a.500 of Subpart F:

(1) A list of administrative positions, and a description of duties for each person whose salary is paid in whole or in part with those funds.

(2) For each position, the percentage of salary paid with those funds.

(3) A description of each administrative activity the State educational agency will carry out during the next school year with those funds.

(4) A description of each direct service and each support service which the State educational agency will provide during the next school year with those funds, and the activities the State advisory panel will undertake during that period with those funds.

(b) *Local educational agency allocation.* Each annual program plan must include:

(1) An estimate of the number and percent of local educational agencies in the State which will receive an allocation under this part (other than local educational agencies which submit a consolidated application),

(2) An estimate of the number of local educational agencies which will receive an allocation under a consolidated application,

(3) An estimate of the number of consolidated applications and the average number of local educational agencies per application,

(4) A description of direct services the State educational agency will provide under § 121a.240 of Subpart C.

(20 U.S.C. 1232c(b)(1)(B)(ii).)

LOCAL EDUCATIONAL AGENCY APPLICATIONS—GENERAL

§ 121a.80 Submission of application.

In order to receive payments under Part B of the Act for any fiscal year a local educational agency must submit an application to the State educational agency.

(20 U.S.C. 1414(a).)

§ 121a.81 Responsibilities of State educational agency.

Each State educational agency shall establish the procedures and format which a local educational agency uses in preparing and submitting its application.

(20 U.S.C. 1414(a).)

§ 121a.82 Excess costs.

(a) Each local educational agency shall maintain records which show that the agency uses funds provided under Part B of the Act only for the excess costs of special education and related services for handicapped children.

(b) For the purposes of this part, "excess costs" means costs:

(1) Which are for special education and related services, and

(2) Which are above the costs of regular education for an elementary or secondary school student in the local educational agency.

(c) The cost of regular education is computed as follows:

(1) Add all expenditures of the local educational agency in the preceding school year, except capital outlay and debt service:

(i) For elementary school students, if the handicapped child is an elementary school student, or

(ii) For secondary school students, if the handicapped child is a secondary school student.

(2) From this amount, subtract the total of the following amounts:

(i) Amounts the agency spent in the preceding school year from funds awarded under Part B of the Act and Titles I and VII of the Elementary and Secondary Education Act of 1965, and

(ii) Amounts from other sources which the agency spent in the preceding school year for:

(A) Programs for handicapped children,

(B) Programs to meet the special educational needs of educationally deprived children, and

(C) Programs of bilingual education for children with limited English speaking ability.

(3) Divide the result under paragraph (d)(2) of this section by the average number of students enrolled in the agency in the preceding school year:

(i) In its elementary schools, if the handicapped child is an elementary school student, or

(ii) In its secondary schools, if the handicapped child is a secondary school student.

(d) The cost of regular education under a consolidated application of two or more local educational agencies is the average of the combined cost of regular education in those agencies for elementary or secondary school students, as the case may be.

(e) Neither a State educational agency or a local educational agency may use funds provided under Part B of the Act to pay for all of the special education and related services given to a handicapped child.

(20 U.S.C. 1401(20); 1414(a)(1).)

§ 121a.83 Consolidated applications.

(a) *Voluntary applications.* Local educational agencies may submit a consolidated application for payments under Part B of the Act.

(b) *Required applications.* A State educational agency may require local educational agencies to submit a consolidated application for payments under Part B of the Act if the State educational agency determines that an individual application submitted by a local educational agency will be disapproved because:

(1) The agency's entitlement is less than the $7,500 minimum required by section 611(c)(4)(A)(i) of the Act, or

(2) The agency is unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of handicapped children.

(c) *Size and scope of program.* The State educational agency shall establish standards and procedures for determinations under paragraph (b)(2) of this section.

(20 U.S.C. 1414(c)(1).)

§ 121a.84 Payments under consolidated applications.

In any case in which a consolidated application is approved by the State educational agency, the payments to the participating local educational agencies must be equal to the sum of the entitlements of the separate local educational agencies.

(20 U.S.C. 1414(c)(2)(A).)

§ 121a.85 State regulation of consolidated applications.

(a) The State educational agency shall issue regulations with respect to consolidated applications submitted under this part.

(b) The State educational agency's regulations must:

(1) Be consistent with section 612(1)–(7) and section 613(a) of the Act, and

(2) Provide participating local educational agencies with joint responsibilities for implementing programs receiving payments under this part.

(20 U.S.C. 1414(c)(2)(B).)

(c) If an intermediate educational unit is required under State law to carry out this part, the joint responsibilities given to local educational agencies under paragraph (b)(2) of this section do not apply to the administration and disbursement of any payments received by the intermediate educational unit. Those administrative responsibilities must be carried out exclusively by the intermediate educational unit.

(20 U.S.C. 1414(c)(2)(C).)

§ 121a.86 State educational agency approval; disapproval.

(a) *Approval.* A State educational agency shall approve any application submitted by a local educational agency if the State educational agency determines that the application meets the requirements under §§ 121a.100–121a.117. However, the State educational agency may not approve any application until the Commissioner approves its annual program plan for the school year covered by the application.

(b) *Disapproval.* The State educational agency shall disapprove an application if the State educational agency determines that the application does not meet a requirement under §§ 121a.100–121a.117.

(20 U.S.C. 1414(b)(1).)

(c) In carrying out its functions under this section, each State educational agency shall consider any decision resulting from a hearing under §§ 121a.400–121a.414 of Subpart E which is adverse to the local educational agency involved in the decision.

(20 U.S.C. 1414(b)(3).)

§ 121a.87 Withholding.

(a) If a State educational agency, after giving reasonable notice and an opportunity for a hearing to a local educational agency, decides that the local educational agency in the administration of an application approved by the State educational agency has failed to comply with any requirement in the application, the State educational agency, after giving notice to the local educational agency, shall:

(1) Make no further payments to the local educational agency until the State educational agency is satisfied that there is no longer any failure to comply with the requirement; or

(2) Consider its decision in its review of any application made by the local educational agency under § 121a.86;

(3) Or both.

(b) The public notice provision in § 121a.492 of Subpart E applies to any local educational agency receiving any notice from a State educational agency under paragraph (a) of this section.

(20 U.S.C. 1414(b)(2).)

LOCAL EDUCATIONAL AGENCY APPLICATIONS—CONTENTS

§ 121a.100 Child identification.

Each application must include procedures which insure that all children residing within the jurisdiction of the local educational agency who are handicapped, regardless of the severity of their handicap, and who are in need of special education and related services are identified, located, and evaluated, including a practical method of determining which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services.

(20 U.S.C. 1414(a)(1)(A).)

Comment. The local educational agency is responsible for insuring that all handicapped children within its jurisdiction are identified, located, and evalauted, including children in all public and private agencies and institutions within that jurisdiction.

§ 121a.101 Confidentiality of personally identifiable information.

Each application must include policies and procedures which insure that the criteria in §§ 121a.450–121a.464 of Subpart E are met.

(20 U.S.C. 1414(a)(1)(B).)

§ 121a.102 Full educational opportunity goal; timetable.

Each application must: (a) Include a goal of providing full educational opportunity to all handicapped children, and

(b) Include a detailed timetable for accomplishing the goal.

(20 U.S.C. 1414(a)(1)(C).)

§ 121a.103 Facilities, personnel and services.

Each application must provide a description of the kind and number of facilities, personnel, and services necessary to meet the goal in § 121a.102.

(20 U.S.C. 1414(a)(1)(E).)

§ 121a.104 Personnel development.

Each application must include procedures for the implementation and use of the comprehensive system of personnel development established by the State educational agency under § 121a.40.

(20 U.S.C. 1414(a)(1)(C)(i).)

§ 121a.105 Priorities.

Each application must include priorities which meet the requirements of §§ 121a.210–121a.212.

(20 U.S.C. 1414(a)(1)(C)(ii).)

§ 121a.106 Parent involvement.

Each application must include procedures to insure that, in meeting the goal under § 121a.102, the local educational agency makes provision for participation of and consultation with parents or guardians of handicapped children.

(20 U.S.C. 1414(a)(1)(C)(iii).)

§ 121a.107 Participation in regular education programs.

(a) Each application must include procedures to insure that to the maximum extent practicable, and consistent with §§ 121a.440–121a.445, of Subpart E, the local educational agency provides special services to enable handicapped children to participate in regular educational programs.

(b) Each application must describe:

(1) The types of alternative placements that are available for handicapped children, and

(2) The number of handicapped children within each disability category who are served in each type of placement.

(20 U.S.C. 1414(a)(1)(C)(iv).)

§ 121a.108 Public control of funds.

Each application must provide assurance satisfactory to the State educational agency that control of funds provided under Part B of the Act and title to property acquired with those funds, is in a public agency for the uses and purposes under this part, and that a public agency administers the funds and property.

(20 U.S.C. 1414(a)(2)(A).)

§ 121a.109 Excess cost and nonsupplanting.

Each application must provide assurance satisfactory to the State educational agency that the local educational agency uses funds provided under Part B of the Act:

(a) Only for the excess costs of special education and related services for handicapped children, and

(b) To supplement and, to the extent practicable, increase the level of State and local funds expended for the education of handicapped children, and in no case to supplant those State and local funds.

(20 U.S.C. 1414(a)(2)(B).)

Comment. Under statutes such as Title I of the Elementary and Secondary Education Act of 1965, as amended, the requirement is to not "supplant" funds that "would" have been expended if the Federal funds were not available. The requirement under Part B, however, is to not supplant funds which have been "expended." This use of the past tense suggests that the funds referred to are those which the State or local agency actually spent at some time before the use of the Part B funds. Therefore, in judging compliance with this requirement, the Commissioner looks to see if Part B funds are used for any costs which were previously paid for with State or local funds.

§ 121a.110 Comparable services.

Each application must provide assurance satisfactory to the State educational agency that State and local funds are used in the jurisdiction of the local educational agency to provide services in program areas which, taken, as a whole, are at least comparable to services being provided in areas of the local educational agency which are not receiving funds under this part.

(20 U.S.C. 1414(a)(2)(C).)

§ 121a.111 Information—reports.

Each application must provide that the local educational agency furnishes information (which, in the case of reports relating to performance, is in accordance with specific performance criteria developed by the local educational agency and related to program objectives) as may be necessary to enable the State educational agency to perform its duties under this part, including information relating to the educational achievement of handicapped children participating in the local educational agency's programs for handicapped children.

(20 U.S.C. 1414(a)(3)(A).)

§ 121a.112 Records.

Each application must provide that the local educational agency keeps such records, and affords access to those records, as the State educational agency may find necessary to insure the correctness and verification of the information that the local educational agency furnishes under § 121a.111.

(20 U.S.C. 1414(a)(3)(B).)

§ 121a.113 Public participation.

Each application must:

(a) Include procedures for making the application and all documents related to the application available to parents and the general public, and

(b) Provide that all evaluations and reports required under § 121a.111 are public information.

(20 U.S.C. 1414(a)(4))

§ 121a.114 Individualized education program.

Each application must include procedures to assure that the local educational agency complies with §§ 121a.220–121a.226 of Subpart C.

(20 U.S.C. 1414(a)(5))

§ 121a.115 Local policies consistent with statute.

Each application must provide assurance satisfactory to the State educational agency that all policies and programs which the local educational agency establishes and administers are consistent with section 612(1)–(7) and section 613(a) of the Act.

(20 U.S.C. 1414(a)(6))

§ 121a.116 Procedural safeguards.

Each application must provide assurance satisfactory to the State educational agency that the local educational agency has procedural safeguards which meet the requirements of §§ 121a.400–121a.414 of Subpart E.

(20 U.S.C. 1414(a)(7))

§ 121a.117 Use of Part B funds.

Each application must describe how the local educational agency will use the funds under Part B of the Act during the next school year.

(20 U.S.C. 1414(a))

APPLICATION FROM SECRETARY OF INTERIOR

§ 121a.125 Authority to participate; payments.

(a) The Commissioner is authorized to make payments to the Secretary of the Interior according to the need for that assistance for the education of handicapped children on reservations serviced by elementary and secondary schools operated for Indian children by the Department of the Interior.

(b) The amount of those payments for any fiscal year shall not exceed one percent of the aggregate amounts available to all States for that fiscal year under Part B of the Act.

(20 U.S.C. 1411(f)(1))

§ 121a.126 Submission of annual application; approval.

In order to receive payments under this, the Secretary of Interior shall submit an annual application which:

(a) Meets the substance of the requirements under section 614(a)(1)–(7) of the Act;

(b) Includes monitoring procedures which the Secretary of Interior follows to insure that all elementary and secondary schools operated by the Department of Interior are:

(1) Effectively implementing the procedural safeguards under Subpart E, and

(2) Are using Part B funds properly and effectively; and

(c) Includes other material as agreed to by the Commissioner and the Secretary of Interior.

(20 U.S.C. 1411(f))

§ 121a.127 Public participation.

The Secretary of Interior shall provide for public participation in the development of its application.

(20 U.S.C. 1411(f))

§ 121a.128 Use of Part B funds.

(a) The Secretary of Interior may use five percent of its payments in any fiscal year, or $200,000, whichever is greater, for administrative costs in carrying out the provisions of this Part.

(b) The remainder of the payments to the Secretary of Interior in any fiscal year must be used in accordance with the priorities under §§ 121a.210–121a.212 of Subpart C.

(20 U.S.C. 1411(f))

§ 121a.129 Applicable regulations.

The Secretary of Interior shall comply with the substance of the requirements under Subparts C, E, and F.

(20 U.S.C. 1414(a))

PUBLIC PARTICIPATION

§ 121a.130 Public hearings before adopting an annual program plan.

(a) Prior to its adoption of an annual program plan, the State educational agency shall:

(1) Make the plan available to the general public,

(2) Hold public hearings, and

(3) Provide an opportunity for comment by the general public on the plan.

(b) *Notice.* (1) The State educational agency shall provide notice to the general public of the public hearings.

(2) The notice shall be in sufficient detail to inform the public about:

(i) The purpose and scope of the annual program plan and its relation to Part B of the Education of the Handicapped Act,

(ii) The availability of the annual program plan,

(iii) The date, time, and location of each public hearing, and

(iv) The procedures for submitting written comments about the plan.

(2) The notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify the general public about the hearings, enough in advance of the date of the public hearings to afford interested parties throughout the State a reasonable opportunity to participate.

(c) Each State educational agency shall conduct the public hearings at times and places that afford interested parties throughout the State a reasonable opportunity to participate.

(20 U.S.C. 1412(7)(B))

§ 121a.131 Review of public comments before adopting plan.

Before adopting its annual program plan, the State educational agency shall:

(a) Review and consider all public comments, and

(b) Make any necessary modifications in the plan.

(20 U.S.C. 1412(7)(B))

§ 121a.132 Publication and availability of approved plan.

After the Commissioner approves an annual program plan, the State educational agency shall give notice in newspapers or other media, or both, that the plan is approved. The notice must name places throughout the State where the plan is available for access by any interested person.

(20 U.S.C. 1412(7)(B))

Comment. A State educational agency may elect to send a copy of its proposed annual program plan to the Commissioner for technical assistance purposes at the same time that the plan is being made available for public comment. However, funds cannot be obligated by a State before the date on which its official adopted plan is received in substantially approvable form by the Federal Government. (See 45 CFR 100b.35.)

EXAMPLE: A State educational agency's proposed plan for school year 1977–1978 is received by the Bureau of Education for the Handicapped on June 1, 1977. Its official plan is received on August 1. When BEH approves the plan (e.g. September 1), the State educational agency will receive a grant award document which will show August 1, 1977 as the earliest date of obligation under the 1977–1978 plan.

Subpart C—Services

GENERAL

§ 121a.200 Timeliness for free appropriate public education.

(a) *General.* Each State shall insure that free appropriate public education is available to all handicapped children ages three through eighteen within the State not later than September 1, 1978, and to all handicapped children ages three through twenty-one within the State not later than September 1, 1980.

(b) Paragraph (a) of this section does not apply to a State with respect to handicapped children ages three, four, five, eighteen, nineteen, twenty, or twenty-one, if the application of the requirement would be inconsistent with State law or practice, or the order of any court, respecting public education within those age groups in the State.

(c) As used in paragraph (b) of this section, the term "practice" means that the State:

(1) Does not in fact make public education available to all non-handicapped children in one or more of those age groups, and

(2) Does not in fact make public education available to a majority of handicapped children in the age groups to which paragraph (c)(1) of this section applies.

(20 U.S.C. 1412(2)(B); Sen. Rept. No. 94-168, p. 19 (1975))

§ 121a.201 Free appropriate public education—methods and costs.

(a) Each State may use whatever placement alternatives and methods of

providing services to handicapped children which are necessary to carry out the requirement in § 121a.200 of this subpart, subject to the requirements in §§ 121a.440–121a.445 of Subpart E.

(b) If placement in a public or private residential program is necessary to provide free appropriate public education to a handicapped child, the cost of the program, including room and board, must be at no cost to the parents of that child.

(c) In carrying out this section, each State:

(1) Shall determine the methods and source of payment, and

(2) May use whatever State, local, Federal, and private sources of support are available in the State.

(20 U.S.C. 1402(18); 1412(2)(8))

§ 121a.202 Full educational opportunity goal.

(a) *Program options.* In meeting the full educational opportunity goal under §§ 121a.23 and 121a.102 of Subpart B, each State and local educational agency shall take steps to insure that handicapped children have available to them the variety of programs and services available to nonhandicapped children, including art, music, industrial arts, home economics and vocational education.

(b) *Non-academic services.* (1) Each State and local educational agency shall provide non-academic and extracurricular services and activities in such manner as is necessary to afford handicapped children an equal opportunity for participation in those services and activities.

(2) Non-academic and extracurricular services and activities include athletics, health services, recreational activities, special interest groups or clubs sponsored by the State or local educational agency, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the State or local educational agency and assistance in making outside employment available.

(20 U.S.C. 1412(2)(A); 1414(a)(1)(C))

Comment. The terms "full educational opportunity goal" and "free appropriate public education" are distinguished in this regulation as follows. "Full educational opportunity goal" is an all encompassing term, which: (a) Covers all handicapped children, ages birth through twenty-one, (b) includes a basic planning dimension, including making projections of the estimated numbers of handicapped children, and (c) does not include specific statutory timelines for service, but rather, requires each State to set its own timetable. The term "goal" implies an intent or direction to follow and is future-oriented. Based on these characteristics, a State could be totally committed to implementing this provision, and could be in compliance with the Act, but may never fully achieve its goal in the absolute sense. On the other hand, "free appropriate public education" refers to a part of the goal of providing full educational opportunity to all handicapped children, but it is more narrow in scope and specific in purpose. This latter provision: (a) focuses on handicapped children within specific age ranges, and (b) includes the timelines required by statute.

§ 121a.203 Physical education.

(a) Physical education must be made available to every handicapped child receiving a free appropriate public education.

(b) Each handicapped child must be afforded the opportunity to participate in the regular physical education program available to non-handicapped children, unless:

(1) The child is enrolled full time in a separate facility;

(2) The child needs specially designed physical education, as prescribed in the child's individualized education program;

(3) The parents and the public educational agency agree that the child should not participate in the regular program.

(d) If specially designed physical education are prescribed in a child's individualized education program, the public agency responsible for the education of that child shall provide the services directly, or make arrangements for it to be provided through other public or private programs.

(e) The public agency responsible for the education of a handicapped child enrolled who is full time in a separate facility, or who is not able to participate in the regular physical education program, shall take steps to insure that physical education provided to that child is comparable to services provided to non-handicapped children.

(20 U.S.C. 1402(16))

§ 121a.204 Incidental use of property.

Property may be used for purposes other than those provided in Part B of the Act only for related educational purposes on public premises, and only as long as that use does not interfere with the use of the property in a program carried out under Part B of the Act.

(20 U.S.C. 1413(a)(1))

PRIORITIES IN THE USE OF PART B FUNDS

§ 121a.210 Definitions of "first priority children" and "second priority children."

For the purposes of §§ 121a.211—121a.214, the term:

(a) "First priority children" means handicapped children who are not receiving any education; and

(b) "Second priority children" means handicapped children, within each disability, with the most severe handicaps who are receiving some but not all of the special education and related services specified in the individualized education programs of those children.

(20 U.S.C. 1412(2)(B).)

§ 121a.211 Priorities.

Except for funds which the State uses for administration under § 121a.500 of Subpart F, each State and local educational agency shall use funds provided under Part B of the Act in the following order of priorities:

(a) To provide free appropriate public education to first priority children, including the identification, location, and evaluation of first priority children.

(b) To provide free appropriate public education to second priority children.

(c) To meet the other requirements in this part.

(20 U.S.C. 1411(b)(1)(B), (b)(2)(B), (c)(1)(B), (c)(2)(A)(ii).)

§ 121a.212 First priority—age groups covered.

The priority in § 121a.211(a) of this subpart applies to handicapped children in the age groups for which the State must make available free appropriate public education under § 121a.200 of this subpart.

(20 U.S.C. 1411(b)(1)(B), (b)(2)(B), (c)(1)(B), (c)(2)(A)(ii); 1412(2)(B))

§ 121a.213 Services to other children.

If a State or local educational agency has fully met the priority under § 121a.211(a), that agency may use funds provided under Part B of the Act:

(a) To provide a free appropriate public education to first priority children in the age groups not covered under § 121a.200(a) in that State; or

(b) To meet the priority in § 121a.211(b); or

(c) Both.

(20 U.S.C. 1411(b)(1)(B), (b)(2)(B), (c)(1)(B), (c)(2)(A)(ii).)

§ 121a.214 Application of local educational agency to use funds for the second priority.

A local educational agency may use funds provided under Part B of the Act for the priority in § 121a.211(b) if it provides assurance satisfactory to the State educational agency in its application (or an amendment to its application):

(a) That all first priority children have a free appropriate public education available to them;

(b) That the local educational agency has a system for the identification, location, and evaluation of handicapped children, as described in its application; and

(c) That whenever a first priority child is identified, located, and evaluated, the local educational agency makes available a free appropriate public education to the child.

(20 U.S.C. 1411(b)(1)(B), (c)(1)(B); 1414(a)(1)(C)(ii).)

INDIVIDUALIZED EDUCATION PROGRAMS

§ 121a.220 Scope.

Each State and local educational agency shall insure that an individualized education program is provided for each handicapped child who is receiving or will receive special education, regardless of what institution or agency provides or will provide special education to the child.

(20 U.S.C. 1401(18); 1412(2)(B); 1414(a)(5), (a)(6).)

§ 121a.221 State educational agency responsibility.

(a) The State educational agency shall insure that each local educational agency

establishes and implements an individualized education program for each handicapped child.

(b) The State educational agency shall require each public agency which provides special education or related services to a handicapped child to establish policies and procedures for developing, implementing, reviewing, maintaining, and evaluating an individualized education program for that child.

(20 U.S.C. 1412(4), (6).)

§ 121a.222 Local educational agency responsibility.

(a) Each local educational agency shall develop, or revise, whichever is appropriate, an individualized education program for every handicapped child at the beginning of the school year, and review and if appropriate revise its provisions periodically, but not less than annually.

(b) Each local educational agency is responsible for initiating and conducting meetings for developing, reviewing, and revising a child's individualized education program.

(c) For a handicapped child who is receiving special education, a meeting must be held early enough so that the individualized education program is developed (or revised, as appropriate) by the beginning of the next school year.

(d) For a handicapped child who is not receiving special education, a meeting must be held within thirty days of a determination that the child is handicapped, or that the child will receive special education.

(20 U.S.C. 1414(a)(5).)

Comment. The Conference report for Public Law 94-142 states:

The conference substitute also requires each local educational agency to provide assurances that it will establish, or revise, whichever is appropriate, an individualized education program for each handicapped child at the beginning of each school year and will then review and, if appropriate revise, the provisions of such program periodically, but not less than annually. In the initial year of a handicapped child's participation in a program of free appropriate public education the individualized education program shall be established at the beginning of the school year and reviewed at least once during that year. Thereafter, the Conferees intend that this provision requires at least one annual review of the child's individualized education program.

(H. Rept. No. 94-664, P. 39 (1975).)

§ 121a.223 Participants in meetings.

The local educational agency shall insure that each meeting includes the following participants:

(a) A representative of the local educational agency, other than the child's teachers, who is qualified to provide, or supervise the provision of, special education.

(b) The child's teacher or teachers, special or regular, or both, who have a direct responsibility for implementing the child's individualized education program.

(c) One or both of the child's parents, subject to § 121a.225.

(d) Where appropriate, the child.

(e) Other individuals, at the discretion of the parent or agency.

(20 U.S.C. 1414(a)(5).)

§ 121a.224 Parent participation.

(a) Each local educational agency shall take steps to insure that one or both of the parents of the handicapped child are present at each meeting or are afforded the opportunity to participate, including scheduling the meeting at a mutally agreed on time and place.

(b) If neither parent can attend, the local eduactional agency shall use other methods to insure parent participation, including individual or conference telephone calls.

(c) A meeting may be conducted without a parent in attendance if the local educational agency is unable to convince the parents that they should attend. In this case the local educational agency must have a record of its attempts to arrange a mutually agreed on time and place, such as:

(1) Detailed records of telephone calls made or attempted and the results of those calls,

(2) Copies of correspondence sent to the parents and any responses received, and

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(d) The local educational agency shall take whatever action is necessary to insure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

(20 U.S.C. 1414(a)(5).)

§ 121a.225 Content of individualized education program.

The individualized education program for each child must include:

(a) A statement of the child's present levels of educational performance, including academic achievement, social adaptation, prevocational and vocational skills, psychomotor skills, and self-help skills.

(b) A statement of annual goals which describes the educational performance to be achieved by the end of the school year under the child's individualized education program;

(c) A statement of short term instructional objectives, which must be measurable intermediate steps between the present level of educational performance and the annual goals;

(d) A statement of specific educational services needed by the child, (determined without regard to the availability of those services) including a description of:

(1) All special education and related services which are needed to meet the unique needs of the child, including the type of physical education program in which the child will participate, and

(2) Any special instructional media and materials which are needed;

(e) The date when those services will begin and length of time the services will be given;

(f) A description of the extent to which the child will participate in regular education programs;

(g) A justification for the type of educational placement which the child will have;

(h) A list of the individuals who are responsible for implementation of the individualized education program; and

(i) Objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved.

(20 U.S.C. 1414 (a)(5).)

§ 121a.226 Private school placements.

(a) The State educational agency shall insure that an individualized education program is developed, maintained, and evaluated for each child placed in a private school by the State educational agency or a local educational agency.

(b) The agency which places or refers a child shall insure that provision is made for a representative from the private school (which may be the child's teacher) to participate in each meeting. If the private school representative cannot attend a meeting, the agency shall use other methods to insure participation by the private school, including individual or conference telephone calls.

(20 U.S.C. 1413(2)(4)(B).)

DIRECT SERVICE BY THE STATE EDUCATIONAL AGENCY

§ 121a.240 Use of local educational agency allocation for direct services.

(a) A State educational agency shall use the payments which would have been available to a local educational agency and provide special education and related services directly to handicapped children residing in the area served by the local educational agency, if the State educational agency determines that the local educational agency:

(1) Is unable or unwilling to establish and maintain programs of free appropriate public education;

(2) Is unable or unwilling to be consolidated with other local educational agencies in order to establish and maintain those programs; or

(3) Has one or more handicapped children who can best be served by a regional or State center designed to meet the needs of those children.

(20 U.S.C. 1414(d).)

(b) A State educational agency may not distribute funds to a local educational agency, and shall use those funds to insure the provision of a free appropriate public education to handicapped children residing in the area served by the local educational agency, in any fiscal year, if:

(1) The local educational agency is entitled to less than $7500 for that fiscal year, or

(2) The local educational agency does not submit an application that meets the requirements of §§ 121a.100–121a.117 of Subpart B.

(20 U.S.C. 1411(c)(4).)

§ 121a.241 Nature and location of services.

The State educational agency may provide special education and related services under § 121a.240(a) in such manner, and at such locations as it considers appropriate. The manner in which the education and services are provided must be consistent with the requirements of this part, but §§ 121a.440–121a.445 of Subpart E do not apply.

(20 U.S.C. 1414(d).)

§ 121a.250 Use of State educational agency allocation for direct and support services.

(a) The State shall use the remainder of its allocation under § 121a.600 of Subpart G above the amount used for administration under § 121a.500 of Subpart F, to provide support services and direct services in accordance with the priorities under §§ 121a.210–121a.214.

(b) For the purposes of paragraph (a) of this section:

(1) "Direct services" means services provided directly to a handicapped child by the State or by contract.

(20 U.S.C. 1411(b)(2); 1411(c)(2).)

(2) "Support services" includes implementing the comprehensive system of personnel development under §§ 121a.260–121a.268 recruitment and training of hearing officers and surrogate parents, and public information activities relating to a free appropriate public education for handicapped children.

(c) The requirement in section 613(a)(9) of the Act, which relates to commingling, supplementing, and supplanting with Federal funds, does not apply to funds that the State uses under paragraph (a) of this section.

(20 U.S.C. 1411(c)(3).)

§ 121a.251 State matching.

Beginning in the period July 1, 1978–June 30, 1979, and for each following year, the funds that a State uses under § 121a.250 must be matched on a program basis by the State from funds other than Federal funds. This requirement does not apply to funds that the State uses under § 121a.240(b).

(20 U.S.C. 1411(c)(2)(B), (c)(4)(B).)

COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT

§ 121a.2660 Scope of system.

Each annual program plan must include a description of programs and procedures for the development and implementation of a comprehensive system of personnel development which includes:

(a) The inservice training of general and special educational instructional and support personnel;

(b) Detailed procedures to insure that all personnel necessary to carry out the purposes of the Act are appropriately and adequately prepared and trained, and that activities sufficient to carry out this personnel development plan are scheduled; and

(c) Effective procedures for acquiring and disseminating to teachers and administrators of programs for handicapped children significant information derived from educational research, demonstration, and similar projects, and for adopting, where appropriate, promising educational practices and materials developed through those projects.

(20 U.S.C. 1413(a)(3).)

§ 121a.261 Definition of "appropriately and adequately prepared and trained."

As used in §§ 121a.260–121a.268, "appropriately and adequately prepared and trained" means that the State has completed the following steps:

(a) Certification of all special education instructional personnel who qualify under State standards.

(b) Temporary certification, where allowable under State standards, of those personnel who do not qualify for certification.

(c) Certification, under State standards, of all regular education personnel who serve handicapped children, and participation by those personnel in inservice education programs designed to develop skills, attitudes, and the acquisition of information specific to the needs of handicapped children.

(d) State certification, registration, or licensing of all support personnel who provide direct services to handicapped children, including therapeutic recreation personnel, occupational therapists, itinerant resource personnel, physical therapists, diagnosticians, psychologists, counselors, and aides.

(e) Ongoing participation by all of the personnel named in paragraphs (a)–(d) of this section in training activities, based on the State's needs assessment under § 121a.263(b)(1), to update their skills and attitudes as necessary to educate handicapped children and to acquire information regarding new instructional practices and procedures.

(20 U.S.C. 1413(a)(3).)

§ 121a.262 Participation of other agencies and institutions.

(a) The State educational agency must insure that all public and private institutions of higher education, and other agencies and organizations (including parent and other advocacy organizations) in the State which have an interest in the preparation of personnel for the education of handicapped children, have an opportunity to participate fully in the development, review, and annual updating of the comprehensive system of personnel development.

(b) The annual program plan must describe the nature and extent of participation under paragraph (a) of this section and must describe responsibilities of the State educational agency, local educational agencies, public and private institutions of higher education, and other agencies:

(1) With respect to the comprehensive system as a whole, and

(2) With respect to the personnel development plan under § 121a.264.

(20 U.S.C. 1412(7)(A); 1413(a)(3).)

§ 121a.263 Inservice training.

(a) As used in this section, "inservice training" means any training other than that received by an individual in a full-time program which leads to a degree.

(b) Each annual program plan must provide that the State educational agency:

(1) Conducts an annual needs assessment to determine if a sufficient number of adequately and appropriately prepared and trained personnel are available in the State; and

(2) Initiates innovative and experimental inservice personnel development programs based on the assessed needs of State-wide significance related to the implementation of the Act.

(c) Each annual program plan must include the results of the needs assessment under paragraph (b)(1) of this section, broken out by need for new personnel and need for retrained personnel.

(d) The State educational agency may enter into contracts with institutions of higher education or other agencies, institutions, or organizations (which may include parent or other advocacy organizations), to carry out experimental or innovative personnel development programs, development or modification of instructional materials, and dissemination of significant information derived from educational research and demonstration projects.

(e) Each annual program plan must provide that the State educational agency insures that ongoing inservice training programs are available to all personnel who are engaged in the education of handicapped children, and that these programs include:

(1) The use of incentives which insure participation by teachers (such as released time, payment for participation, options for academic credit, salary step credit, certification renewal, or updating professional skills);

(2) The involvement of local staff; and

(3) The use of innovative practices which have been found to be effective.

(f) Each annual program plan must:

(1) Describe the process used in determining the inservice training needs of personnel engaged in the education of handicapped children;

(2) Identify the areas in which training is needed (such as individualized education programs, non-discriminatory testing, least restrictive environments, procedural safeguards, and use of parent surrogates in due process hearings);

(3) Specify: (i) The groups requiring training (such as special teachers, regular teachers, administrators, psychologists, speech pathologists, audiologists, physical education teachers, therapeutic recreation specialists, physical therapists, occupational therapists, medical personnel, parents, volunteers, hearing officers and parent surrogates), and

(ii) The estimated number in each group;

(4) Describe the content and nature of training for each area under paragraph (f)(2) of this section;

(5) Describe how the training will be provided in terms of (i) geographical scope (such as Statewide, regional, or local), and (ii) staff training source (such as college and university staffs, State and local educational agency personnel, and non-agency personnel);

(6) Specify: (i) The funding sources to be used,

(ii) The cost of the training, and

(iii) The time frame for providing it; and

(7) Specify procedures for effeotive evaluation of the extent to which program objectives are met.

(g) Each annual program plan must include a description of changes the State educational agency expects to make in the provision under paragraph (f) of this section during the three years after the annual program plan takes effect.

(20 U.S.C. 1413(a)(3).)

§ 121.264 Personnel development plan.

Each annual program plan must: (a) Include a personnel development plan which provides a structure for personnel planning and focuses on preservice and inservice education needs;

(b) Describe the results of the needs assessment under § 121a.263(b)(1) with respect to identifying needed areas of training, and assigning priorities to those areas;

(c) Identify the target populations for personnel development, including general education and special education instructional and administrative personnel, support personnel, and other personnel (such as paraprofessionals, parents, parent surrogates, and volunteers);

(d) Identify programs of preservice and inservice training in the areas identified under § 121a.263(f)(2);

(e) Describe the instructional skills, attitudes, information, and interdisciplinary procedures indentified at the local or State level as essential to meeting the purposes of the Act;

(f) Provide for the use of local resources in personnel development activities;

(g) Provide for the identification of all personnel in need of training and provide that programs are available and provision is made for participation; and

(h) Describe the training of special education instructional and support personnel and regular education personnel during the current school year and the next school year, including steps that must be taken to insure that all personnel needed to meet the full educational opportunity goal under §§ 121a.23 and 121a.102 of Subpart B will be appropriately and adequately prepared and trained.

(20 U.S.C. 1413(a)(3).)

Comment. The data required in §§ 121a.24 and 121a.26 of Subpart B on the numbers of handicapped children and the kind and number of personnel needed will serve as the uniform data base within the State for the personnel development system under § 121a.264 of this subpart. The data may also be used by institutions of higher education and other nonprofit educational training agencies in submitting personnel preparation applications under Part D of the Act. Section 121f.9 of the regulations under Part D (45 CFR 121f.9) provides as follows:

§ 121f.9 *State personnel needs.*

Each application shall include (a) a statement by the State educational agency of personnel needs for education of the handicapped and a statement by the applicant of how the proposed program relates to those stated needs, and (b) a description of the ways in which the recipient's program goals and objectives relate to the purposes of Part D of the Act.

(20 U.S.C. 1431, 1432, 1434.)

§ 121a.265 Dissemination.

(a) Each annual program plan must include a description of the State's procedures for acquiring, reviewing, and disseminating to general and special educational instructional and support personnel, administrators of programs for handicapped children, and other interested agencies and organizations (including parent and other advocacy organizations) significant information and promising practices derived from educational research, demonstration, and other projects.

(b) Dissemination includes:

(1) Making those personnel, administrators, agencies, and organizations aware of the information and practices;

(2) Training designed to enable the establishment of innovative programs and practices targeted on identified local needs; and

(3) Use of instructional materials and other media for personnel development and instructional programming.

(20 U.S.C. 1413(a)(3).)

§ 121a.266 Adoption of educational practices.

(a) Each annual program plan must provide for a statewide system designed to cause the widespread adoption of educational practices proven effective through research and demonstration.

(b) Each annual program plan must provide for thorough reassessment of educational practices used in the State.

(c) Each annual program plan must provide for the identification of State, local, and regional resources (human and material) which will assist in meeting the State's personnel preparation needs.

(20 U.S.C. 1413(a)(3).)

§ 121a.267 Evaluation.

(a) The annual program plan must include procedures for evaluating the extent to which the State's comprehensive system of personnel development is meeting the needs for personnel in the State.

(b) These procedures must include:

(1) A plan for evaluating the overall organization and effectiveness of the comprehensive system and the State educational agency's procedures for administration of the system; and

(2) The use of accountability measures to insure the adequate delivery of the training and services outlined in the system.

(20 U.S.C. 1413(a)(3).)

§ 121a.268 Technical assistance to local educational agencies.

Each annual program plan must include a description of technical assistance that the State educational agency gives to local educational agencies in their implementation of the State's comprehensive system of personnel development.

(20 U.S.C. 1413(a)(3).)

Subpart D—Private Schools

Participation of Private School Children

§ 121a.300 General.

Each State and local educational agency shall insure that to the extent consistent with the number and location of handicapped children in the State who are enrolled in regular or special private elementary and secondary schools, provision is made for the participation of those children in the program assisted or carried out under this part by providing for those children special education and related services.

(20 U.S.C. 1413(a)(4)(A); 1414(a)(6).)

§ 121a.301 Determinations.

Determinations with respect to the special education and related services needs of handicapped children enrolled in private elementary and secondary schools, the number and types of children who will participate under this part, and the types of services which will be provided for them may be made only after consultation with persons knowledgeable as to the needs of those children, and on a basis comparable to that used in providing for the participation under this part, of handicapped children enrolled in public elementary and secondary schools.

(20 U.S.C. 1413(a)(4)(A).)

§ 121a.302 Services.

Programs and projects assisted or carried out under Part B of the Act must be designed to provide, to the extent consistent with the number of handicaped children enrolled in private elementary and secondary schools in the geographical area served by the program or project, services which aid in meeting the special education and related services needs of those children. Services may be provided through such arrangements as dual enrollment, educational radio and television, and the provision of mobile equipment, and may include professional and paraprofessional services.

(20 U.S.C. 1413(a)(4)(A).)

§ 121a.303 Personnel.

(a) Public school personnel may be made available in other than public school facilities only to the extent necessary to provide services required by the handicapped children for whose needs

those services were designed, and only when those services are not normally provided by the private school.

(b) Each State or local educational agency providing services to children enrolled in private schools shall maintain administrative control and direction over those services.

(c) The services provided with funds under Part B of the Act for eligible handicapped children enrolled in private schools may not include the payment of salaries of teachers or other employees of private schools except for services performed outside their regular hours of duty and under public supervision and control, nor may the services include the use of equipment purchased with Part B funds, other than mobile or portable equipment, on private school premises, or the construction of private school facilities.

(20 U.S.C. 1413(a)(4)(A).)

§ 121a.304 Equipment.

(a) Equipment acquired with funds under Part B of the Act may be placed on private school premises for a limited period of time, but the title to and administrative control over all equipment must be retained and exercised by a public agency.

(b) In exercising administrative control, the public agency shall keep records of and account for the equipment, and shall insure that the equipment is used solely for the purposes of the program or project, and remove the equipment from the private school premises if necessary to avoid its being used for other purposes or if it is no longer needed for the purposes of the program or project.

(c) Mobile or portable equipment may be used on private school premises only for such period of time within the life of the current program or project for which the equipment is intended to be used, as is necessary for the successful participation in that program or project by eligible handicapped children enrolled in private schools.

(2 U.S.C. 1413(a)(4)(A).)

§ 121a.305 Prohibition of segregation.

Programs or projects carried out in public facilities, and involving joint participation by eligible handicapped children enrolled in private schools and handicapped children enrolled in public schools, may not include classes that are separated on the basis of school enrollment or the religious affiliations of the children.

(20 U.S.C. 1413(a)(4)(A).)

PLACEMENT OF HANDICAPPED CHILDREN IN PRIVATE SCHOOLS

§ 121a.320 Responsibility of State educational agency.

Each State educational agency shall insure that a handicapped child who is placed in or referred to a private school or facility by the State educational agency or a local educational agency:

(a) Is provided special education and related services:

(1) In conformance with an individualized education program which meets the requirements under §§ 121a.220–121a.227 of Subpart C;

(2) At no cost to the parents or guardians; and

(3) Which meet education standards of that State educational agency (including the requirements in this part) which apply to public agencies under § 121a.34 of Subpart B; and

(b) Has all of the rights of a handicapped child who is served by a public agency.

(20 U.S.C. 1413(a)(4)(B).)

§ 121a.321 Implementation by State educational agency.

In implementing § 121a.320, the State educational agency shall:

(a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;

(b) Disseminate copies of the State standards to each private school to which the State educational agency or a local educational agency has referred or placed a handicapped child; and

(c) Provide an opportunity for those private schools to participate in the development and revision of the State standards.

(20 U.S.C. 1413(a)(4)(B).)

§ 121a.322 Placement of children by parents.

(a) If a handicapped child has available a free appropriate public education in a local educational agency that is in or readily accessible from the child's home community and the parents choose to place the child in a private school, neither the State or the local educational agency is required by this part to pay for the child's education.

(b) Disagreements between a parent and a State or local educational agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures under §§ 121a.400–121a.415 of Subpart E.

(20 U.S.C. 1413(a)(4)(B).)

§ 121a.323 Placement in another State.

In addition to the requirements under § 121a.320, if a State or local educational agency refers or places a child in a private school in another State, the State educational agency of the State where the private school is located shall insure that the school meets its education standards.

(20 U.S.C. 1413(a)(4)(B).)

Subpart E—Procedural Safeguards

DUE PROCESS PROCEDURES FOR PARENTS AND CHILDREN

§ 121a.400 Definitions of "consent", "evaluation", and "personally identifiable".

As used in this part: "Consent" means that: (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication unless it clearly is not feasible to do so;

(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and

(c) The parent understands that the granting of consent is voluntary on the part of the parent.

"Evaluation" means procedures used to determine whether a child is handicapped and the nature and extent of the special education and related services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered to or procedures used with all children in a school, grade, or class.

(20 U.S.C. 1415.)

"Personally identifiable" means that information includes:

(a) The name of the child, the child's parent, or other family member;

(b) The address of the child;

(c) A personal identifier, such as the child's social security number or student number; or

(d) A list of personal characteristics or other information which would make it possible to identify the child with reasonable certainty.

(20 U.S.C. 1415, 1417(c).)

§ 121a.401 General responsibility of State and local educational agencies.

(a) Each State and local educational agency shall provide procedural safeguards to handicapped children and their parents with respect to the provision of a free appropriate public education.

(b) The State educational agency shall insure that each public agency in the State adopts and implements procedural safeguards which meet the requirements of this subpart.

(20 U.S.C. 1415(a).)

§ 121a.402 Opportunity to examine records.

The parents of a handicapped child shall be afforded, in accordance with the procedures in §§ 121a.452–121a.459 an opportunity to examine all relevant records with respect to:

(a) The identification, evaluation, and educational placement of the child, and

(b) The provision of a free appropriate public education to the child.

(20 U.S.C. 1415(b)(1)(A).)

§ 121a.403 Independent educational evaluation.

(a) *General.* (1) The local educational agency shall inform the parents of a handicapped child that they have a right to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.

(2) For the purposes of this section, "independent educational evaluation" means an evaluation conducted by a fully certified or licensed professional examiner who is not employed by and

does not routinely provide evaluations for, the State or local educational agency responsible for the education of the child in question.

(b) *Parent right to evaluation at public expense.* A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the local educational agency. However, the local educational agency may initiate a hearing under § 121a.406 of this subpart to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(c) *Parent initiated evaluations.* If the parent obtains an independent educational evaluation at his or her own expense, the results of the evaluation:

(1) Must be considered by the State and local educational agency in any decision made with respect to the provision of a free appropriate public education to the child, and

(2) May be presented by either party as evidence at a hearing under this subpart regarding that child.

(d) *Requests for evaluations by hearing officers.* If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(e) *Agency criteria.* Whenever the State or local educational agency pays for an independent educational evaluation, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the State or local educational agency uses when it initiates an evaluation.

(20 U.S.C. 1415(b)(1)(A))

§ 121a.404 Prior notice; parent consent.

(a) Written notice which meets the requirements under § 121a.405 must be given to the parents of a handicapped child a reasonable time before the State or local educational agency:

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the free appropriate public education provided to the child, or

(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the free appropriate public education provided to the child.

(b) Parental consent must be obtained before an evaluation is conducted.

(20 U.S.C. 1415(b)(1)(C), (D))

§ 121a.405 Content of notice.

(a) The notice under § 121a.404 must include:

(1) A full explanation of all of the procedural safeguards available to the parents under Subpart E;

(2) A description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected;

(3) A description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal; and

(4) A description of any other factors which are relevant to the agency's proposal or refusal.

(b) The notice must be:

(1) Written in language understandable to the general public, and

(2) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(c) If the native language or other mode of communication of the parent is not a written language, the State or local educational agency shall take steps to insure:

(1) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(2) That the parent understands the content of the notice, and

(3) That there is written evidence that the requirements in paragraph (c)(1) and (2) of this section have been met.

(20 U.S.C. 1415(b)(1)(D))

§ 121a.406 Impartial due process hearing.

(a) A parent or a local educational agency may initiate a hearing on any of the matters described in § 121a.404(a)(1) and (2).

(b) The hearing must be conducted by the State or local educational agency, as determined under State statute, State regulation, or a written policy of the State educational agency.

(20 U.S.C. 1415(b)(2))

§ 121a.407 Impartial hearing officer.

(a) A hearing must not be conducted:

(1) By an employee of the State or local educational agency who is involved in the education or care of the child, or

(2) By any person having a personal or professional interest which would conflict with his or her objectivity in the hearing.

(b) A person who otherwise qualifies to conduct a hearing under paragraph (a) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

(20 U.S.C. 1414(b)(2))

§ 121a.408 Hearing rights.

Any party to a hearing has the right to:

(a) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children;

(b) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(c) Obtain a written or electronic verbatim record of the hearing;

(d) Obtain written findings of fact and decisions. (The State or local educational agency shall transmit those findings and decisions, after deleting any personally identifiable information, to the State advisory panel established under Subpart F).

(20 U.S.C. 1415(d); 1417(c))

§ 121a.409 Hearing decision; appeal.

A decision made in a hearing conducted under this subpart is final, unless a party in the hearing appeals the decision under § 121a.411 or § 121a.412.

(20 U.S.C. 1415(c))

§ 121a.410 Administrative appeal; impartial review.

(a) If the hearing is conducted by a local educational agency, any party aggrieved by the findings and decision in the hearing may appeal to the State educational agency.

(b) If there is an appeal, the State educational agency shall conduct an impartial review of the hearing. The official conducting the review shall:

(1) Examine the entire hearing record.

(2) Insure that the procedures at the hearing were consistent with the requirements of due process,

(3) Afford the parties an opportunity for oral argument, and

(4) Make an independent decision on completion of the review.

(c) The decision made by the reviewing official is final, unless a party brings a civil action under § 121a.412.

(20 U.S.C. 1415(c))

§ 121a.411 Civil action.

Any party aggrieved by the findings and decision made in a hearing who does not have the right to appeal under § 121a.409 of this subpart, and any party aggrieved by the decision of a reviewing officer under § 121a.410, has the right to bring a civil action under section 615(e)(2) of the Act.

(20 U.S.C. 1415)

§ 121a.412 Timeliness and convenience of hearings and reviews.

State and local educational agencies shall take steps to insure that each hearing and review conducted under this subpart:

(a) Is commenced and completed as quickly as possible, consistent with fair consideration of the issues involved, but not later than 45 days after receipt of a complaint, unless the parties agree to an extension, and

(b) Is conducted at a time and place which is reasonably convenient to the parents and child involved.

(20 U.S.C. 1415)

§ 121a.413 Child's status during proceedings.

(a) During the pendency of any administrative or judicial proceeding regarding a complaint, unless the State or local educational agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement.

(b) If the complaint involves an application for initial admission to public

school, the child, with the consent of the parents, must be placed in the public school program until the completion of all the proceedings.

(20 U.S.C. 1415(e)(3))

§ 121a.414 Surrogate parents.

(a) *General.* The State educational agency shall insure that the rights of a child are protected when the parents of the child are not known, unavailable, or the child is a ward of the State, including the assignment of an individual to act as a surrogate for the parents. This must include a method (1) for determining whether a child needs a surrogate parent, and (2) for assigning a surrogate parent to the child.

(b) *Criteria for selection of surrogates.* (1) The State or local educational agency may select a surrogate parent in any way permitted under State law.

(2) State and local educational agencies shall insure that a person selected as a surrogate:

(i) Has no interest that conflicts with the interests of the child he or she represents; and

(ii) Has knowledge and skills, that insure adequate representation of the child.

(c) *Non-employee requirement; compensation.* (1) A person assigned as a surrogate must not be an employee of the State or local educational agency which is involved in the education or care of the child.

(2) A person who otherwise qualifies to be a surrogate parent under paragraph (b) and (c)(1) of this section, is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

(d) *Responsibilities.* The surrogate may represent the child in all matters relating to:

(1) The identification, evaluation, and educational placement of the child, and

(2) The provision of a free appropriate public education to the child.

(20 U.S.C. 1415(b)(1)(B))

PROTECTION IN EVALUATION PROCEDURES

§ 121a.430 General.

Testing and evaluation materials and procedures used for the purposes of evaluation and placement of handicapped children must be selected and administered so as not to be racially or culturally discriminatory.

(20 U.S.C. 1412(5)(C))

§ 121a.431 Evaluation; change in placement.

(a) An evaluation must be conducted before any action is taken with respect to:

(1) The initial placement or denial of placement of a handicapped child in a special education program, or

(2) The transfer or denial of transfer of a child from a special education program to full-time regular class placement.

(b) Subject to paragraph (a) of this section, and the requirement for reevaluation in § 121a.433, any change in a child's special education placement (such as changing from a self contained special class to a resource room) must be based on:

(1) The child's current individualized education program, and

(2) Any other information relating to the child's current educational performance.

(20 U.S.C. 1412(5)(C))

§ 121a.432 Evaluation procedures.

State and local educational agencies shall insure, at a minimum, that:

(a) Tests and other evaluation materials:

(1) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so;

(2) Have been validated for the specific purpose for which they are used;

(3) Are recommended by their producer for the specific purpose for which they are used; and

(4) Are administered by personnel who meet applicable certification or licensure requirements under State law;

(b) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient;

(c) In test selection and administration, if a test is administered to a child with impaired sensory, manual or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors which the test purports to measure);

(d) No one test or type of test or other means of evaluation is used as the sole criterion for placement;

(e) Information from sources other than ability or achievement tests, including information concerning physical condition, sociocultural background, and adaptive behavior in home and school, is gathered and considered and the weight given to each of these sources is documented;

(f) The interpretation of the evaluation data and the subsequent determination of the child's educational placement are made by a team or group of persons knowledgeable about the child, the meaning of the evaluation results, the placement options, and the personnel available to provide special education and related services; and

(g) If the information derived either from ability and achievement tests or from other sources results in a showing that the child does not, because of a disability, need instruction in a special setting, the child is not placed outside the regular instructional setting.

(20 U.S.C. 1412(5)(C))

§ 121a.433 Reevaluation.

Each State and local educational agency shall insure:

(a) That an accordance with Subpart C, each handicapped child's individualized education program is revised periodically, but not less than annually, and

(b) That an evaluation of the child, based on procedures which meet the requirements under § 121a.432, is conducted every three years or more frequently if conditions warrant or if the child's parent or teacher requests an evaluation.

(20 U.S.C. 1412(5)(C))

LEAST RESTRICTIVE ENVIRONMENT

§ 121a.440 General.

(a) Each State educational agency shall insure:

(1) That to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and

(2) That special classes, separate schooling or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(b) For the purposes of this subpart, "applicable agency" includes:

(1) Each State and local educational agency,

(2) Each public agency in the State which is involved in the education of handicapped children, and

(3) Each private school in which a State or local educational agency places or refers a handicapped child.

(20 U.S.C. 1412(5)(B))

§ 121a.441 Continuum of alternative placements.

(a) Each State and local educational agency shall insure that a continuum of alternative placements are available to meet the needs of handicapped children for special education and related services.

(b) The continuum required under paragraph (a) of this section must:

(1) Include the alternative placements listed in the definition of special education under § 121a.4 of Subpart A (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions), and

(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

(20 U.S.C. 1412(5)(B))

§ 121a.442 Placements.

Each State and local educational agency shall insure that:

(a) Each handicapped child's educational placement:

(1) Is determined at least annually, and

(2) Is based on his or her individualized education program;

(b) To the extent necessary to implement an individualized education program for each handicapped child, the applicable agency must provide, or arrange for the provision of, all of the

various alternative placements included under § 121a.441 of this subpart;

(c) Unless a handicapped child's individualized education program requires some other arrangement, the child is educated in the school which he or she would attend if not handicapped; and

(d) In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which he or she needs.

(20 U.S.C. 1412(5)(B).)

§ 121a.443 Technical assistance and training activities.

Each State educational agency shall carry out activities to insure that teachers and administrators in all applicable agencies:

(a) Are fully informed about their responsibilities for implementing § 121a.440, and

(b) Are provided with technical assistance and training necessary to assist them in this effort.

(20 U.S.C. 1412(5)(B).)

§ 121a.444 Children in public or private institutions.

Each State educational agency shall make arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures) as may be necessary to insure that § 121a.440 is effectively implemented.

(20 U.S.C. 1412(5)(B).)

§ 121a.445 Monitoring activities.

(a) The State educational agency shall carry out activities to insure that § 121a.440 is implemented by each applicable agency.

(b) If there is evidence that a local educational agency makes placements that are inconsistent with § 121a.440 of this subpart, the State educational agency:

(1) Shall review the local educational agency's justification for its actions, and

(2) Shall assist in planning and implementing any necessary corrective action.

(20 U.S.C. 1412(5)(B).)

CONFIDENTIALITY OF INFORMATION

§ 121a.450 Definitions.

As used in this subpart:

"Destruction" means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

"Participating agency" means any agency or institution which collects, maintains, or uses information, or from which information is obtained, under this part.

(20 U.S.C. 1412(2)(D); 1417(c).)

§ 121a.451 Notice to parents.

(a) The State educational agency shall give notice which is adequate to fully inform parents about the requirements under § 121a.28 of Subpart B, including:

(1) A description of the extent to which the notice is given in the native languages of the various population groups in the State;

(2) A description of the children on whom information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

(3) A summary of the policies and procedures which participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

(4) A description of all of the rights of parents and children regarding this information, including the rights under section 438 of the General Education Provisions Act and Part 99 of this title (the Family Educational Rights and Privacy Act of 1974, and implementing regulations).

(b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.

(20 U.S.C. 1412(2)(D); 1417(c).)

§ 121a.452 Access rights.

(a) Each participating agency shall permit parents to inspect and review any personally identifiable information relating to their children which is collected, maintained, or used by the agency under this part. The agency shall comply with a request without unnecessary delay and before any hearing relating to the identification, evaluation, or placement of the child, and in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under paragraph (a) of this section includes:

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the information; and

(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the information.

(c) An agency may presume that the parent has authority to inspect and review information relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

(20 U.S.C. 1412(2)(D); 1417(c).)

§ 121a.453 Record of access.

Each participating agency shall keep a record of parties obtaining access to information collected, maintained, or used under this part (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the information.

(20 U.S.C. 1412(2)(D); 1417(c).)

§ 121a.454 Records on more than one child.

If any record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

(20 U.S.C. 1412(2)(D); 1417(c).)

§ 121a.455 List of types and locations of information.

Each participating agency shall provide parents on request a list of the types and locations of information collected, maintained, or used by the agency.

(20 U.S.C. 1412(2)(D); 1417(c).)

§ 121a.456 Fees.

(a) A participating agency may charge a fee for copies of records which are made for parents under this subpart if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

(b) A participating agency may not charge a fee to search for or to retrieve information under this subpart.

(20 U.S.C. 1412(2)(D); 1417(c).)

§ 121a.457 Amendment of records at parent's request.

(a) A parent who believes that information collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child, may request the participating agency which maintains the information to amend the information.

(b) The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the agency decides to refuse to amend the information in accordance with the request it shall inform the parent of the refusal, and advise the parent of the right to a hearing under § 121a.458.

(20 U.S.C. 1412(2)(D); 1417(c).)

§ 121a.458 Opportunity for a hearing.

The agency shall, on request, provide an opportunity for a hearing to challenge information to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

(20 U.S.C. 1412(2)(D); 1417(c).)

§ 121a.459 Result of hearing.

(a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.

(b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall inform the parent of

the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(c) Any explanation placed in the records of the child under this section must:

(1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and

(2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

(20 U.S.C. 1412(2)(D); 1417(c).)

§ 121a.460 Hearing procedures.

A hearing held under § 121a.458 of this subpart must be considered according to the procedures under § 99.22 of this title.

(20 U.S.C. 1412(2)(D); 1417(c).)

§ 121a.461 Consent.

(a) Parental consent must be obtained before personally identifiable information is:

(1) Disclosed to anyone other than officials of participating agencies collecting or using the information under this part, subject to paragraph (b) of this section; or

(2) Used for any purpose other than meeting a requirement under this part.

(b) An educational agency or institution subject to Part 99 of this title may not release information from education records to participating agencies without parental consent unless authorized to do so under Part 99 of this title.

(c) The State educational agency shall include policies and procedures in its annual program plan which are used in the event that a parent refuses to provide consent under this section.

(20 U.S.C. 1412(2)(D); 1417(c).)

§ 121a.462 Safeguards.

(a) Each participating agency shall protect the confidentiality of information at collection, storage, disclosure, and destruction stages.

(b) One official at each participating agency shall assume responsibility for insuring the confidentiality of any personally identifiable information.

(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under § 121a.29 of Subpart B and Part 99 of this title.

(d) Each participating agency shall maintain, for public inspection, a current listing of the names of those employees within the agency who may have access to personally identifiable information.

(20 U.S.C. 1412(2)(D); 1417(c).)

§ 121a.463 Destruction of information.

(a) All personally identifiable information collected, maintained, or used under this part must be destroyed within five years after the information is no longer needed to provide educational services to the child. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

(b) Before destruction of data, reasonable efforts must be made to notify parents that they have the right to a copy of any information which has been collected, maintained, or used under this part.

(20 U.S.C. 1412(2)(D); 1417(c).)

§ 121a.464 Children's rights.

The State educational agency shall include policies and procedures in its annual program plan regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability.

(20 U.S.C. 1412(2)(D); 1417(c).)

§ 121a.465 Enforcement.

The State educational agency shall describe in its annual program plan the policies and procedures, including sanctions, which the State uses to insure that its policies and procedures are followed and that the requirements of the Act and the regulations in this part are met.

(20 U.S.C. 1412(2)(D); 1417(c).)

§ 121a.466 Office of Education.

If the Office of Education or its authorized representatives collect any personally identifiable information which is not subject to 5 U.S.C. 552a (The Privacy Act of 1974), the Commissioner shall apply the requirements of 5 U.S.C. section 552a(b)(1)–(2), (4)–(11); (c); (d); (e)(1), (2), (3)(A), (B), and (D), (5)–(10); (h); (m); and (n), and the regulations implementing those provisions in Part 5b of this title.

(20 U.S.C. 1412(2)(D); 1417(c).)

OFFICE OF EDUCATIONAL PROCEDURES

§ 121a.480 Opportunity for a hearing.

The Commissioner gives a State educational agency reasonable notice and an opportunity for a hearing before taking any of the following actions:

(a) Disapproval of a State's annual program plan under § 121a.13 of Subpart B.

(b) Withholding payments from a State under § 121a.490 or under section 434(c) of the General Education Provisions Act.

(c) Waiving the requirement under § 121a.489 of this subpart regarding supplementing and supplanting with funds provided under Part B of the Act.

(20 U.S.C. 1232c(c); 1413(a)(9)(B); 1413(c); 1416.)

§ 121a.481 Hearing panel.

The Commissioner appoints a Hearing Panel consisting of not less than three persons to conduct any hearing under § 121a.480 of this subpart.

(20 U.S.C. 1232c(c); 1413(a)(9)(B); 1413(c); 1416.)

§ 121a.482 Hearing procedures.

(a)(1) If the Hearing Panel determines that oral testimony would not materially assist the resolution of disputed facts, the Panel shall give each party an opportunity for presenting the case:

(i) In whole or in part in writing, or

(ii) In an informal conference before the Hearing Panel.

(2) The Hearing Panel shall give each party:

(i) Notice of the issues to be considered (if this notice has not already been given); and

(ii) An opportunity to be represented by counsel.

(b) If the Hearing Panel determines that oral testimony would materially assist the resolution of disputed facts, the Panel shall give each party, in addition to the requirements under paragraph (a)(2) of this section:

(1) An opportunity to obtain a record of the proceedings;

(2) An opportunity to present witnesses on the party's behalf; and

(3) An opportunity to cross-examine witnesses either orally or with written questions.

(20 U.S.C. 1232c(c); 1413(a)(9)(B); 1413(c); 1416.)

§ 121a.483 Initial decision; final decision.

(a) The Hearing Panel shall prepare an initial written decision which includes findings of fact and the conclusions based on those facts.

(b) The Hearing Panel shall mail a copy of the initial decision to each party (or to the party's counsel) and to the Commissioner, with a notice that each party has an opportunity to submit written comments regarding the decision to the Commissioner within a specified reasonable time.

(c) The initial decision of the Hearing Panel is the final decision of the Commissioner unless, within 25 days after the end of the time for receipt of written comments, the Commissioner informs the Panel in writing that the decision is being reviewed.

(d) Review by the Commissioner is based on the decision, the written record, if any, of the Hearing Panel's proceedings, and written comments or oral arguments by the parties.

(e) No decision under this section becomes final until it is served on the State educational agency or its attorney.

(20 U.S.C. 1232c(c); 1413(a)(9)(b); 1413(c); 1416.)

§ 121a.489 Waiver of requirement regarding supplementing and supplanting with Part B funds.

(a) Under section 613(a)(9)(B) of the Act, the State educational agency must insure that Federal funds provided under Part B of the Act are used to supplement

and increase the level of State and local funds expended for the education of handicapped children, and in no case to supplant those State and local funds.

(b) If the State provides clear and convincing evidence that all handicapped children have available to them a free appropriate public education, the Commissioner may waive in part the requirement under section 613(a)(9)(B) of the Act if the Commissioner concurs with the evidence provided by the State.

(c) If a State wishes to request a waiver, it must inform the Commissioner in writing. The Commissioner then provides the State with a finance and membership report form which provides the basis for the request.

(d) In its request for a waiver, the State shall include the results of a special study made by the State to obtain evidence of the availability of a free appropriate public education to all handicapped children. The special study must include statements by a representative sample of organizations which deal with handicapped children, and parents and teachers of handicapped children, relating to the following areas:

(1) The adequacy and comprehensiveness of the State's system for locating, identifying, and evaluating handicapped children, and

(2) The cost to parents, if any, for education for children enrolled in public and private day schools, and in public and private residential schools and institutions.

(e) In its request for a waiver, the State shall include finance data relating to the availability of a free appropriate public education for all handicapped children, including:

(1) The total current expenditures for regular education programs and special education programs by function and by source of funds (State, local, and Federal) for the previous school year, and

(2) The full-time equivalent membership of students enrolled in regular programs and in special programs in the previous school year.

(f) The Commissioner considers the information which the State provides under paragraph (d) and (e) of this section, along with any additional information he may request, or obtain through on-site reviews of the State's education programs and records, to determine if all children have available to them a free appropriate public education, and if so, the extent of the waiver.

(g) The State may request a hearing under §§ 121a.480–121a.483 with regard to any final action by the Commissioner under this section.

(20 U.S.C. 1413(A)(9)(B).)

§ 121a.490 Withholding payments.

(a) The Commissioner may make the following findings only after reasonable notice and an opportunity for a hearing under §§ 121a.480–121.483 to the State educational agency involved (and to any local educational agency affected by any failure described in paragraph (a)(2) of this section):

(1) That there has been a failure to comply substantially with the provisions of section 612 and 613 of the Act, or

(2) That in the administration of the annual program plan there is a failure to comply with any provision of this part or with any requirement in the application of a local educational agency approved by the State educational agency under the annual program plan.

(b) After making either of the findings in paragraph (a) of this section, the Commissioner:

(1) Shall, after notifying the State educational agency, withhold any further payments to the State under this part, and

(2) May, after notifying the State educational agency, withhold further payments to the State under the Federal programs referred to in § 121a.39 of Subpart B which are within his jurisdiction, to the extent that funds under those programs are available for the provision of assistance for the education of handicapped children.

(c) If the Commissioner withholds payments under paragraph (b) of this section he may determine:

(1) That withholding is limited to programs or projects under the annual program plan, or portions of it, affected by the failure, or

(2) That the State educational agency must not make further payments under Part B of the Act to specified local educational agencies affected by the failure.

(20 U.S.C. 1416(a).)

§ 121a.491 Reinstating payments.

Until the Commissioner is satisfied that there is no longer any failure to comply with the provisions of this part, as specified in § 121a.490(a):

(a) No further payments shall be made to the State under this part or under the Federal programs specified in section 613(a)(2) of the Act which are within his jurisdiction to the extent that funds under those programs are available for the provision of assistance for the education of handicapped children, or

(b) Payments by the State educational agency under this part shall be limited to local educational agencies whose actions did not cause or were not involved in the failure.

(20 U.S.C. 1416(a).)

§ 121a.492 Public notice by State and local educational agencies.

Any State educational agency and local educational agency which receives a notice under § 121a.490(a) shall, by means of a public notice, take any necessary measures to inform the public within the agency's jurisdiction of the pendency of the action.

(20 U.S.C. 141(a).)

§ 121a.493 Judicial review of Commissioner's final action on annual program plan.

If any State is dissatisfied with the Commissioner's final action with respect to its annual program plan submitted under Subpart B, the State may under section 616(b) of the Act, within sixty days after notice of the action, file a petition for review of that action with the United States Court of Appeals for the circuit in which the State is located.

(20 U.S.C. 1416(b).)

Subpart F—State Administration

General

§ 121a.500 Federal funds for State administration.

A State may use five per cent of the total State allotment in any fiscal year under Part B of the Act, or $200,000, whichever is greater, for administrative costs related to carrying out sections 612 and 613 of the Act. However, this amount cannot be greater than the amount which the State may use under § 121a.604(a) or § 121a.605(a), as the case may be.

(20 U.S.C. 611 (b), (c).)

§ 121a.501 Allowable costs.

(a) The State educational agency may use funds under § 121a.500 of this Subpart for:

(1) Administration of the annual program plan and for planning at the State level, including planning, or assisting in the planning, of programs or projects for the education of handicapped children;

(2) Approval, supervision, monitoring, and evaluation of the effectiveness of local programs and projects for the education of handicapped children;

(3) Technical assistance to local educational agencies with respect to the requirements of this part;

(4) Dissemination and use of the results of educational research and demonstrations and dissemination of information, relating to Statewide special education activities for handicapped children and projects assisted under Part B of the Act;

(5) Leadership services for the program supervision and management of special education activities for the handicapped, and

(6) Other State leadership activities and consultative services.

(b) The State educational agency shall use the remainder of its funds under § 121a.500 in accordance with § 121a.250 of Subpart C.

(20 U.S.C. 1411 (b), (c).)

§ 121a.502 Reallocation of local educational agency funds.

If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all handicapped children residing in the area served by the local agency with State and local funds otherwise available to the local agency, the State educational agency may reallocate funds (or portions of those funds which are not required to provide special education and related services) made available to the local agency under § 121a.606 of Subpart G, to other local educational agencies within the State which are not adequately pro-

viding special education and related services to all handicapped children residing in the areas served by the other local educational agencies.

(20 U.S.C. 1414(e).)

STATE ADVISORY PANEL

§ 121a.550 Establishment.

(a) Each State shall establish, in accordance with the provisions of this subpart, a State advisory panel on the education of handicapped children.

(b) The advisory panel must be appointed by the Governor or any other official authorized under State law to make those appointments.

(c) If a State has an existing advisory panel that can perform the functions in § 121a.552, the State may modify the existing panel so that it fulfills all of the requirements of this subpart, instead of establishing a new advisory panel.

(20 U.S.C. 1413(a)(12).)

§ 121a.551 Membership.

The membership of the State advisory panel must be composed of persons involved in or concerned with the education of handicapped children. The membership must include at least one person representative of each of the following groups:

(a) Handicapped individuals.

(b) Teachers of handicapped children.

(c) Parents of handicapped children.

(d) State and local educational officials.

(e) Special education program administrators.

(20 U.S.C. 1413(a)(12).)

§ 121a.552 Advisory functions and procedures.

(a) The State advisory panel shall:

(1) Advise the State educational agency of unmet needs within the State in the education of handicapped children;

(2) Comment publicly on the rules or regulations proposed for issuance by the State regarding the education of handicapped children and the procedures for distribution of funds under this part; and

(3) Assist the State in developing and reporting such information and evaluations as may assist the Commissioner in the performance of his responsibilities under section 618.

(b) The advisory panel shall meet as often as necessary to conduct its business.

(c) By July 1 of each year, the advisory panel shall submit an annual report of panel activities and suggestions to the State educational agency. This report must be made available to the public in a manner consistent with other public reporting requirements under this part.

(d) Official minutes must be kept on all panel meetings and shall be made available to the public on request.

(e) All advisory panel meetings and agenda items must be publicly announced prior to the meeting, and meetings must be open to the public.

(f) When reviewing the findings and decisions from the hearings, submitted in accordance with § 121a.409(d) of Subpart E, the advisory panel must be considered to be a participating agency under §§ 121a.450–121a.465 of Subpart E.

(g) The advisory panel shall serve without compensation but may be reimbursed from funds under § 121a.500 for reasonable and necessary expenses for attending meetings and performing duties.

(20 U.S.C. 1413(a)(12).)

Subpart G—Allocation of Funds; Reports

ALLOCATIONS

§ 121a.600 State entitlement; formula.

(a) The maximum amount of the grant to which a State is entitled under section 611 of the Act in any fiscal year is equal to the number of handicapped children aged three through 21 in the State who are receiving special education and related services, multiplied by the applicable percentage, under paragraph (b) of this section, of the average per pupil expenditure in public elementary and secondary schools in the United States.

(b) For the purposes of the formula in paragraph (a) of this section, the applicable percentage of the average per pupil expenditure in public elementary and secondary schools in the United States for each fiscal year is:

(1) 1978—5 percent,

(2) 1979—10 percent,

(3) 1980—20 percent,

(4) 1981—30 percent, and

(5) 1982, and for each fiscal year after 1982, 40 percent.

(20 U.S.C. 1411(a)(1).)

(c) For the purposes of this section, the average per pupil expenditure in public elementary and secondary schools in the United States, means the aggregate expenditures during the second fiscal year preceding the fiscal year for which the computation is made (or if satisfactory data for that year are not available at the time of computation, then during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the United States (which, for the purpose of this section, means the fifty States and the District of Columbia), plus any direct expenditures by the State for operation of those agencies (without regard to the source of funds from which either of those expenditures are made), divided by the aggregate number of children in average daily attendance to whom those agencies provided free public education during that preceding year.

(20 U.S.C. 1411(a)(4).)

§ 121a.601 Limitations and exclusions.

(a) In determining the amount of a grant under § 121a.600 of this subpart, the Commissioner may not count:

(1) Handicapped children in a State to the extent that the number of those children is greater than 12 percent of the number of all children ages five through 17 in the State;

(2) Children with specific learning disabilities to the extent that the number of those children is greater than two percent of the number of all children ages five through 17 in the State; and

(3) Handicapped children who are counted under section 121 of the Elementary and Secondary Education Act of 1965.

(b) For the purposes of paragraph (a) of this section, the number of children aged five through 17 in any State shall be determined by the Commissioner on the basis of the most recent satisfactory data available to him.

(20 U.S.C. 1411(a)(5))

§ 121a.602 Ratable reductions.

(a) *General.* If the sums appropriated for any fiscal year for making payments to States under section 611 of the Act are not sufficient to pay in full the total amounts to which all States are entitled to receive for that fiscal year, the maximum amount which all States are entitled to receive for that fiscal year shall be ratably reduced. In case additional funds become available for making payments for any fiscal year during which the preceding sentence is applicable, those reduced amounts shall be increased on the same basis they were reduced.

(20 U.S.C. 1411(g)(1))

(b) *Reporting dates for local educational agencies and reallocations.*

(1) In any fiscal year in which the State entitlements have been ratably reduced, the State educational agency shall fix dates before which each local educational agency shall report to the State the amount of funds available to it which it estimates it will expend under this part.

(2) The amounts available under paragraph (a)(1) of this section, or any amount which would be available to any other local educational agency if it were to submit an application meeting the requirements of this part, which the State educational agency determines will not be used for the period of its availability, shall be available for allocation to those local educational agencies which the State educational agency determines will need and be able to use additional funds to carry out approved programs.

(20 U.S.C. 1411(g)(2).)

§ 121a.603 Hold harmless provision.

No State shall receive less than the amount it received under Part B of the Act for fiscal year 1977.

(20 U.S.C. 1411(a)(1).)

§ 121a.604 Within-State distribution: fiscal year 1978.

Of the funds received under § 121a.600 of this subpart by any State for fiscal year 1978:

(a) 50 percent may be used by the State in accordance with the provisions of § 121a.500 of Subpart F and § 121a.250 of Subpart C, and

(b) 50 percent shall be distributed to local educational agencies in the State in accordance with § 121a.606.

(20 U.S.C. 1411(b)(1).)

§ 121a.605 Within-State distribution: fiscal year 1979 and after.

Of the funds received under §121a.600 by any State for fiscal year 1979, and for each fiscal year after fiscal year 1979:

(a) 25 percent may be used by the State in accordance with §121a.500 of Subpart F and §121a.250 of Subpart C, and

(b) 75 percent shall be distributed to the local educational agencies in the State in accordance with § 121a.606.

(20 U.S.C. 1411(c)(1).)

§ 121a.606 Local educational agency entitlements; formula.

From the total amount of funds available to all local educational agencies, each local educational agency is entitled to an amount which bears the same ratio to the total amount as the number of handicapped children aged three through 21 in that agency who are receiving special education and related services bears to the aggregate number of handicapped aged three through 21 receiving special education and related services in all local educational agencies which apply to the State educational agency for funds under Part B of the Act.

(20 U.S.C. 1411(d).)

§ 121a.607 Entitlements to jurisdictions.

(a) The jurisdictions to which this section applies are Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(b) Each jurisdiction under paragraph (a) of this section is entitled to a grant for the purposes set forth in section 601 (c) of the Act. The amount to which those jurisdictions are so entitled for any fiscal year shall not exceed an amount equal to 1 percent of the aggregate of the amounts available to all States under this part for that fiscal year. Funds appropriated for those jurisdictions shall be allocated proportionately among them on the basis of the number of children aged three through twenty-one in each jurisdiction. However, no jurisdiction shall receive less than $150,000, and other allocations shall be ratably reduced if necessary to insure that each jurisdiction receives at least that amount.

(c) The amount expended for administration by each jurisdiction under this section shall not exceed 5 percent of the amount allotted to the jurisdiction for any fiscal year, or $35,000, whichever is greater.

(20 U.S.C. 1411(e))

REPORTS

§ 121a.650 Annual report of children served—report requirement.

(a) The State educational agency shall report to the Commissioner no later than April 1 of each year the number of handicapped children residing in the State who are receiving special education and related services.

(b) The State educational agency shall submit the report on forms provided by the Commissioner.

(20 U.S.C. 1411(a)(3); 1417(b))

§ 121a.651 Annual report of children served—information required in the report.

(a) In its report, the State educational agency shall include a table which shows:

(1) The number of handicapped children receiving special education and related services on October 1 and on February 1 of that school year, and the average of the numbers for those two dates;

(2) The number of those handicapped children within each disability category, as defined in the definition of "handicapped children" in § 121a.4 of Subpart A; and

(3) The number of those handicapped children within each of the following age groups:

(i) Birth through two;

(ii) Three through five;

(iii) Six through seventeen; and

(iv) Eighteen through twenty-one.

(b) The State educational agency may not report a multi-handicapped child under more than one disability category.

(20 U.S.C. 1411(a)(3); 1411(a)(5)(A)(ii); 1418(b); 1417(b))

§ 121a.652 Annual report of children served—certification.

The State educational agency shall include in its report a certification signed by an authorized official of the agency that the information provided is an accurate and unduplicated count of handicapped children receiving special education and related services on the dates in question.

(20 U.S.C. 1411(a)(3); 1417(b))

§ 121a.653 Annual report of children served—criteria for counting children.

(a) The State educational agency may include handicapped children in its report who:

(1) Are enrolled in a school or program which provides them with both special education and related services; or

(2) Are enrolled in a school or program which provides them only with special education, if they do not need related services to assist them in benefitting from that special education.

(b) The State educational agency may not include handicapped children in its report who:

(1) Are not enrolled in a school or program which provides them with special education;

(2) Are not provided with a related service that they need to assist them in benefitting from special education; or

(3) Are counted by a State agency under section 121 of the Elementary and Secondary Education Act of 1956, as amended.

(20 U.S.C. 1411(a)(3); 1417(b))

§ 121a.654 Annual report of children served—other responsibilities of the State educational agency.

In addition to meeting the other requirements in this subpart, the State educational agency shall:

(a) Establish procedures to be used by local educational agencies and other educational institutions in counting the number of handicapped children receiving special education and related services;

(b) Set dates by which those agencies and institutions must report to the State educational agency to insure that the State complies with § 121a.650(a);

(c) Obtain certification from each agency and institution that an unduplicated and accurate count has been made;

(d) Aggregate the data from the count obtained from each agency and institution, and prepare the reports required under this subpart; and

(e) Assure that documentation is maintained which enables the State and the Commissioner to audit the accuracy of the count.

(20 U.S.C. 1411(a)(3); 1417(b))

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5. A new Part 121m is added, to read as follows:

PART 121m—INCENTIVE GRANTS

Sec.

121m.1 Scope; purpose.
121m.2 General provisions regulations.
121m.3 Eligibility.
121m.4 Application.
121m.5 Application contents.
121m.6 Amount of grant.
121m.7 Participation by children not counted under Part B of the Act.
121m.8 Excess costs.
121m.9 Administration.
121m.10 Annual evaluation report.

AUTHORITY: Sec. 619 of Pub. L. 91-230, as amended, 89 Stat. 793 (20 U.S.C. 1419), unless otherwise noted.

§ 121m.1 Scope; purpose.

(a) This part applies to assistance under section 619 of the Act.

(b) The Commissioner awards a grant to each State which provides special education and related services to handicapped children ages three, four, or five.

(c) The State shall use funds provided under this part to give special education and related services to handicapped children in the age groups named in paragraph (b) of this section.

(d) The terms "special education" and "related services" have the meanings defined in § 121a.4 of this chapter.

(20 U.S.C. 1419(c))

Comment. The terms "related services" and "special education" are defined in § 121a.4 as follows:

"Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of dis-

abilities in children, counseling services, and medical services for diagnostic or evaluation purposes. The term also includes school social work services, parent counseling and training, providing parents with information about child development, and assisting parents in understanding the special needs of their child.

The terms used in this definition are defined as follows:

(a) "Audiology" means:

(1) Identification of children with hearing loss;

(2) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(3) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

(4) Creation and administration of programs of hearing conservation; and

(5) Counseling and guidance of pupils, parents, and teachers.

(b) "Counseling services" means activities conducted by a certified counselor.

(c) "Early identification" means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(d) "Medical services" means procedures performed by a licensed physician to determine a child's need for special education and related services.

(e) "Occupational therapy" means services provided by a licensed occupational therapist.

(f) "Physical therapy", means activities for restoring damaged or atrophied muscles to improved use.

(g) "Psychological services" means:

(1) Administering psychological and educational tests;

(2) Interpreting the results;

(3) Gathering and interpreting information about child behavior;

(4) Working with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations; and

(5) Planning and managing a program of psychological services, including psychological counseling for children and parents.

(h) "Recreation" includes leisure education.

(i) "Speech pathology" means:

(1) The identification of children with speech or language disorders;

(2) Diagnosis and appraisal of specific speech or language disorders;

(3) Referral for medical or other professional attention necessary for the habilitation of speech or language disorders;

(4) Provision of speech and language habilitation; and

(5) Counseling and guidance of parents, children, and teachers.

(j) "Transportation" includes:

(1) Travel to and from school and between schools,

(2) Travel in and around school buildings, and

(3) Specialized equipment if required.

(20 U.S.C. 1402(17))

"Special education" means specially designed instruction, at no cost to the parents or guardians, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions. The term includes speech pathology, audiology, occupational therapy, and physical therapy, if the service is considered "special education" rather than a "related service" under State standards. The terms in this definition are defined as follows:

(a) "At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees which are normally charged to non-handicapped students or their parents as a part of the regular education program.

(b) "Physical education", includes special physical education, adapted physical education and motor development, and means the development of physical and motor fiitness, fundamental motor skills and patterns, body mechanics, individual and group games and sports, skills to include intramural and lifetime sports, dance and movement education.

(c) "Vocational education" means organized educational programs which are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

(20 U.S.C. 1402(16).)

§ 121m.2 General provisions regulations.

Assistance under this part is subject to the requirements in Parts 100, 100b, 100c, and 121 of this chapter (including definitions and fiscal, administrative, property management, and other matters).

(20 U.S.C. 1419.)

§ 121m.3 Eligibility.

A State is eligible to receive a grant if the Commissioner has approved its annual program plan under Part 121a of this chapter.

(20 U.S.C. 1419(a).)

§ 121m.4 Application.

(a) To receive funds under this part, a State must submit an application to the Commissioner through its State educational agency.

(b) The application must be submitted as an attachment to the State's annual program plan submitted under Part 121a of this chapter. The Commissioner does not accept an application submitted after the date of that submission.

(20 U.S.C. 1419(b).)

§ 121m.5 Application contents.

An application must include the following material:

(a) A description of the State's goals and objectives for meeting the educational needs of handicapped children ages three through five. These goals and objectives must be consistent with the State's full educational opportunity goal under § 121a.23 of this chapter.

(b) A description of the objectives to be supported by the grant in sufficient detail to determine what will be achieved with the grant.

(c) A description of the activities to be supported by the grant. The activities must be related to the objectives under paragraph (b) of this section and must be described in sufficient detail to determine how the grant will be used.

(d) A description of the impact the proposed activities will have on handicapped children ages three through five. This description must include evidence that the proposed activities are of sufficient size, scope, and quality to warrant the amount of the expenditure. The application must indicate the number of children to be served and the number of handicapped children who will be benefitted indirectly. If children are to be benefitted indirectly, there must be a rationale that demonstrates the benefit.

(e) The number of local educational agencies or intermediate educational units, and the number and names of other agencies which will provide contractual services under the grant, the activities they will carry out, and the reasons for selecting these agencies.

(f) The dollar amounts that will be spent for each major activity described.

(g) A description of the procedures the State will use to evaluate the extent to which the activities met the objectives described under paragraph (b) of this section.

(20 U.S.C. 1419(b).)

§ 121m.6 Amount of grant.

(a) The amount of a grant is $300 multiplied by the average number of children ages three through five counted during the current school year under §§ 121a.650–121a.654 of this chapter.

(b) If appropriated funds are less than enough to pay in full the grants under this part, the amount of each grant is ratably reduced.

(20 U.S.C. 1419(a), (d).)

§ 121m.7 Allowable expenditures.

The State educational agency may use funds under this part to give special education and related services to handicapped children ages three through five who are not counted under §§ 121a.650–121a.654 of this chapter if the State educational agency assures that if those children have all of the rights afforded under part 121a of this chapter.

(20 U.S.C. 1419(c).)

Comment. In carrying out the provisions of this part some activities are considered particularly appropriate for the use of these funds: (1) Providing parents with child development information; (2) assisting parents in the understanding of the special needs of their handicapped child; (3) providing parent counseling and parent training, where

appropriate, to enable parents to work more effectively with their needs; (4) providing essential diagnosis and assessment; (5) providing transportation essential to the delivery of services; (6) providing speech therapy, occupational therapy, or physical therapy.

§ 121a.8 Excess costs.

(a) If local or State funds are available to pay for the education of non-handicapped children of the same age as the handicapped children served with funds under this part, funds equal to that amount must also be made available for these handicapped children, and the State may only use the funds under this part to supplement the local and State funds.

(b) If no local or State funds are available for non-handicapped children of the same age, funds under this part may be used to pay for all of the special education and related services for the handicapped children.

(20 U.S.C. 1419(c).)

§ 121m.9 Administration.

(a) The State educational agency shall administer the funds provided under this part.

(b) The State educational agency may use the funds itself, or may contract with local educational agencies, intermediate educational units, or other agencies.

(20 U.S.C. 1419(a).)

§ 121m.10 Annual evaluation report.

(a) Within 90 days after the end of the grant period, the State educational agency shall submit a report to the Commissioner on the activities carried out under this part during that period.

(b) The report must contain:

(1) The results of the evaluation under § 121m.5(g), and

(2) In brief narrative form, the impact that these funds have had on the State's educational services to handicapped children ages three through five.

(20 U.S.C. 1419(c).)

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THURSDAY, DECEMBER 30, 1976

PART V

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

■

GRANTS FOR COMMUNITY HEALTH SERVICES

Acquisition and Modernization of Existing Buildings

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER D—GRANTS

PART 51c—GRANTS FOR COMMUNITY HEALTH SERVICES

Acquisition and Modernization of Existing Buildings

The Assistant Secretary for Health of the Department of Health, Education, and Welfare, with the approval of the Secretary of Health, Education, and Welfare, hereby adopts a new Subpart E, entitled "Acquisition and Modernization of Existing Buildings," of Part 51c of Title 42, Code of Federal Regulations. For the reasons set out below, the Secretary has determined that public participation in rulemaking prior to issuance of these regulations and a delay in their effective date would be impractical and contrary to the public interest, and, accordingly, that good cause exists for making these regulations effective immediately on publication in the FEDERAL REGISTER.

Title V of Pub. L. 94–63 repealed section 314(e) of the Public Health Service Act and added a new section 330 thereto (42 U.S.C. 254c). The new section 330 continues the community health services program previously supported under section 314(e) but with a number of changes. Among the changes made in the community health services program by section 330 is the addition of authority for grantees to acquire and modernize existing buildings. Interim regulations implementing section 330 (42 CFR Part 51c Subparts A–D) were published on June 11, 1976 (41 FR 23852). However, the interim regulations do not implement the statutory authority to acquire and modernize existing buildings; in the preamble to the regulations, the Secretary stated that regulations implementing that authority would be issued in the near future. The regulations set forth below fulfill this commitment. They are being issued on an interim basis in order to provide a basis for, and clarify the responsibility of grantees under, grants which include acquisition and modernization authority at the earliest possible date.

Attention is called to the following features of the new Subpart E:

1. The regulations apply only to grants under section 330 which include the authority to acquire and/or modernize existing buildings. Not all section 330 grants will include such authority, and where it is not included the regulations do not apply.

2. Under the regulations, section 330 grants may include authority for (1) acquisition only, (2) modernization only, (3) both acquisition and modernization. All applications and grants will be subject to the general requirements set out in §§ 51c.503(a) and 51c.504(a); the specific requirements of §§ 51c.503 (b) and (c) and 51c.504 (b) and (c) will be applicable to a project according to whether it involves acquisition or modernization.

3. The definition of the term "modernization" has been adapted from the definition of the same term in Title XVI of the Act.

4. The requirements set forth in § 51c.504 are, in general, those applicable to the other acquisition and construction grant programs of the Public Health Service Act. One difference that should be noted is that the minimum standards for construction and equipment usually applicable to such programs have been modified to reflect only those standards relevant to an ambulatory health care facility.

5. Section 51c.505 provides that in determining the costs of the acquisition and modernization to be supported with grant funds, the Secretary will consider only those costs which are necessary for the operation of the approved project. This requirement expresses a policy that grant funds are not to be awarded to support costs which are unrelated to the purposes of section 330 of the Act.

6. Sections 330(c)(1) and (d)(2) provide that the costs of acquisition and modernization supported under section 330 may include the costs of amortizing the principal of, and interest on, loans. Section 51c.506 makes clear that these costs may include the costs of amortizing the principal of, and paying the interest on, pre-existing loans. Thus, where a grantee owns a building which it has mortgaged, grant funds may be used for payment of the principal and interest on the loan, provided that the building is being used for the purposes of the grant.

Interested persons are invited to submit written comments, suggestions or objections concerning the new Subpart E of Part 51c to the Director, Division of Policy Development, Bureau of Community Health Services, Health Services Administration, Room 6–17, 5600 Fishers Lane, Rockville, Maryland 20857, on or before March 1, 1977. All comments received in timely response will be considered, and will be available for public inspection at the above address during regular business hours. Following the close of the comment period, the regulations will be revised as warranted by the public comments received. It is intended that any revision of the regulations will be published within 60 days following the close of the comment period. The regulations as set forth below will be applicable and effective December 30, 1976. Revisions thereto, although applicable to grants awarded pursuant to the regulations promulgated herein, will be applicable only with respect to activities conducted under those grants on and after the date the revisions become effective.

A new Subpart E of Part 51c of Title 42, Code of Federal Regulations, is adopted effective December 30, 1976.

It is hereby certified that the economic and inflationary impacts of this regulation have been carefully evaluated in accordance with Executive Order 11821.

Dated: October 4, 1976.

JAMES F. DICKSON,
Acting Assistant Secretary for Health.

Approved: December 22, 1976.

DAVID MATHEWS,
Secretary.

Title 42, CFR Part 51c is amended by adding a new Subpart E, to read as follows:

Subpart E—Acquisition and Modernization of Existing Buildings

Sec.
51c.501 Applicability.
51c.502 Definitions.
51c.503 Application.
51c.504 Project elements.
51c.505 Determination of cost.
51c.506 Use of grant funds.
51c.507 Facility which has previously received Federal grant.

AUTHORITY: Secs. 215, 330, Public Health Service Act (42 U.S.C. 216, 254c).

SUBPART E—ACQUISITION AND MODERNIZATION OF EXISTING BUILDINGS

§ 51c.501 Applicability.

The regulations of this subpart, in addition to the regulations of the other applicable subparts of this part, are applicable to grants under section 330 of the Act for project costs which include the cost of acquisition and/or modernization of existing buildings (including the cost of amortizing the principal of, and paying the interest on, loans).

§ 51c.502 Definitions.

As used in this subpart:

(a) "Equipment" means discrete items of property which are necessary for the functioning of the project with respect to which the grant is made, but does not include items which have an expected service life of one year or less or items consumed or expended in use, such as glassware, chemicals, fuel, drugs, paper, and disposable household items.

(b) "Existing building" means a completed or substantially completed structure and the realty on which it is located.

(c) "Modernization" means the alteration, repair, remodeling and/or renovation of a building (including the initial equipment thereof) which, when completed, will render the building suitable for use by the project for which the grant is made. It includes onsite improvements to the building's site which are essential to the use of the building for the project.

§ 51c.503 Application.

(a) *General requirements.* An application for a grant under this part for a project under Subparts B, C, or D which includes the acquisition and/or modernization of an existing building must include the following:

(1) A legal description of the site and a drawing showing the location of the building;

(2) A description of the architectural, structural, and other pertinent characteristics of the building sufficient to show that it is, or that it will be, after alteration and renovation or after modernization, suitable for use by the project;

(3) A detailed estimate of the cost of the proposed acquisition and/or modernization;

(4) A description of, and copies of any relevant documents concerning, any existing or proposed financing arrangements for the acquisition and/or modernization;

(5) The proposed schedule for acquisition and/or modernization and occupancy;

(6) An assessment of the environmental impact of the proposed acquisition and/or modernization as called for by section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(c)) and such information as may be necessary to comply with the National Historic Preservation Act of 1966 (16 U.S.C. 470(f));

(7) Reasonable assurances that—

(i) The applicant has or will obtain a fee simple or such other estate or interest in the site, including necessary easements and rights-of-way, sufficient to assure for a period of not less than 20 years (in the case of interim facilities, for the period constituting the estimated useful life of such facilities) undisturbed use and possession for the purpose of the operation of the project;

(ii) The building will be used for the purposes for which the grant is made;

(iii) The building complies, or after alteration and renovation or after modernization will comply, with applicable State and local codes and with:

(A) "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped" Number ANSI A117.1–1961 (R 1971), as modified by other standards prescribed by the Secretary or the Administrator of the General Services Administration. The applicant shall be responsible for conducting inspections to insure compliance with the specifications;

(B) The applicable standards set forth in Life Safety Code 1973, NFPA No. 101, which is hereby incorporated by reference and made a part hereof. Copies of such document are available for examination at the Department's and Regional Offices' Information Centers listed in 45 CFR 5.31 and may also be obtained from the National Fire Protection Association, 470 Atlantic Avenue, Boston, MA 02210 for $3.00 per copy.

(iv) In the case of a public applicant with an approved project which involves the displacement of persons or businesses on or after January 2, 1971, whose real property has or will be taken, the applicant will comply with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646) and the applicable regulations issued thereunder (45 CFR Part 15);

(v) Sufficient funds will be available to meet any portion of the cost of acquiring and/or modernizing the building not borne by the grant under this part;

(vi) Sufficient funds will be available after acquisition and/or modernization of the building for effective use of the building for the purposes of the project;

(vii) The applicable requirements of the Flood Protection Act of 1973 have been met;

(8) Such other information as the Secretary may reasonably require.

(b) *Requirement for acquisition grants.* Except for a grant solely for amortization of principal and payment of interest on an existing loan, an application for a grant for a project which includes the acquisition of an existing building must include, in addition to the requirements of paragraph (a) of this section, evidence satisfactory to the Secretary that the applicant has explored other alternatives to the proposed acquisition (such as leasing facilities or acquiring other facilities in the project's catchment area) and that the proposed acquisition constitutes the soundest alternative from a financial and program standpoint.

(c) *Requirements for modernization grants.* In addition to the requirements of paragraph (a), an application for a grant for a project which includes modernization of an existing building must include the following:

(1) Plans and specifications for the proposed modernization which conform to the standards specified in § 51c.503(a)(7)(iii);

(2) Reasonable assurance that any laborer or mechanic employed by any contractor or subcontractor in the performance of work on the modernization project will be paid wages at rates not less than those prevailing on similar work in the locality as determined by the Secretary of Labor under the Davis-Bacon Act (40 U.S.C. 276a et seq.) and will receive compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in any workweek in excess of 8 hours in any calendar day; and

(3) Copies of any construction and materials contracts already entered into for the proposed modernization.

§ 51c.504 Project elements.

(a) *General requirements.* A grantee which has received a grant under section 330 of the Act for a project which includes the acquisition and/or modernization of an existing building must:

(1) *Assurances.* Comply with the assurances provided pursuant to this subpart.

(2) *Approval of estimated cost.* Not enter into any contract for the acquisition and/or modernization funded under this subpart where the cost of such acquisition and/or modernization exceeds the estimates in the application, without the prior approval of the Secretary.

(3) *Non-default.* Make every effort to prevent any default on any loan secured by the building and, in the event of a default, promptly notify the Secretary of the default and make every effort on a timely basis to cure the default.

(b) *Requirements for acquisition grants.* In addition to the requirements of paragraph (a) of this section, a grantee which has received a grant under section 330 of the Act for a project which includes the acquisition of an existing building must:

(1) *Bona-fide sale.* Acquire or, in the case of a grant solely for amortization of principal and payment of interest on an existing loan, have acquired the existing building pursuant to a bona-fide sale involving an actual cost to the applicant and resulting in additional or improved facilities for the purposes of the project.

(2) *Standards of construction and equipment.* Except in the case of a grant solely for amortization of principal and payment of interest on an existing loan, obtain a determination by the Secretary that the facility conforms (or upon completion of any necessary alteration and renovation or modernization will conform) to the standards set forth in § 51c.503(a)(7)(iii) of this subpart before entering into a final or unconditional contract for the acquisition. Where the Secretary finds that exceptions to or modifications of any such standards would be consistent with the purposes of the Act and of the program, he may authorize such exceptions or modifications.

(3) *Financing.* Where the grantee will obtain a loan secured by the building in order to acquire the building, obtain such financing at the lowest current rate prevailing in the area for comparable loans on comparable facilities.

(c) *Requirements for modernization grants.* In addition to the requirements of paragraph (a) of this section, a grantee which has received a grant under section 330 of the Act for a project which includes the modernization of an existing building must:

(1) *Costs in excess of approved costs.* Finance all costs in excess of the estimated costs approved in the application and submit to the Secretary for prior approval any changes that substantially alter the scope of the function, utilities, or safety of the facility.

(2) *Competitive bids.* (i) Obtain the approval of the Secretary before the project is advertised or placed on the market for bidding; such approval must include a determination by the Secretary that the final plans and specifications conform to the standards set forth in § 51c.503(a)(7)(iii) of these regulations.

(ii) Except as otherwise provided by State or local law, contract for construction (including the purchase and installation of built-in equipment) on a lump sum fixed-price basis, and award contracts on the basis of competitive bidding obtained by public advertising with award of the contracts to the lowest responsive and responsible bidders. The provision for exceptions based on State and local law shall not be invoked to give local contractors or suppliers a percentage preference over non-local contractors bidding for the same contract. Such practices are precluded by this paragraph.

(3) *Construction contracts.* (i) Include the following conditions and provisions in all construction contracts for the modernization project:

(A) The provisions set forth in "DHEW Requirements for Federally Assisted Construction Contracts Regarding Labor Standards and Equal Employment Opportunities," Form DHEW 514 (rev. 7/76) (issued by the Office of Grants Administration Policy, U.S. Department of Health, Education, and Welfare) pertaining to the Davis-Bacon Act, the Contract Work Hours Standards Act, and the Copeland Act (Anti-Kickback) Regulations, except in the case of contracts in the amount of $2,000 or less;

and pertaining to Executive Order 11246, 30 FR 12319 (September 24, 1965), as amended, relating to nondiscrimination in construction contract employment, except in the case of contracts in the amount of $10,000 or less;

(B) That the contractor shall furnish performance and payment bonds each of which shall be in the full amount of the contract price, and shall maintain, during the life of the contract, adequate fire, workmen's compensation, public liability, and property damage insurance: *Provided, however,* That in the case of a State or local unit of government which enters into a construction contract of less than $100,000, State or local provisions with respect to performance and payment bonds shall be deemed to meet the requirements of this paragraph; and

(C) That the Secretary shall have access at all reasonable times to work wherever it is in preparation or progress, and the contractor shall provide proper facilities for such access and inspection.

(ii) *Executive Order 11246.* Comply with the requirements of Executive Order 11246, 30 FR 12319 (September 24, 1965) as amended, relating to nondiscrimination in construction contract employment, and the applicable rules, regulations, and procedures prescribed pursuant thereto.

(4) *Modernization supervision.* Provide and maintain competent and adequate architectural or engineering supervision and inspection at the modernization site to insure that the completed work conforms with the plans and specifications.

(5) *Completion responsibility.* Complete the modernization in accordance with the grant application and the approved plans and specifications.

(6) *Progress reports.* Furnish progress reports and such other information concerning the modernization as the Secretary may require.

(d) The Secretary may at any time approve exceptions to the provisions of this section where he finds that such exceptions are not inconsistent with section 330 of the Act, other requirements of law, or the purposes of the program.

§ 51c.505 Determination of cost.

The cost of acquisition and/or modernization of existing buildings for which funds may be granted under this part will be determined by the Secretary, utilizing such documentation submitted by the applicant as the Secretary may prescribe (including the reports of such real estate appraisers as the Secretary may approve) and other relevant factors, taking into consideration only that portion of the existing building necessary for the operation of the approved project.

§ 51c.506 Use of grant funds.

Grant funds may be used to amortize the principal of or pay interest on a loan or mortgage on an existing building acquired under this part, including a building purchased by a grantee prior to the promulgation of this part, but only if the building is being used for the purposes of section 330 and complies with the applicable provisions of this subpart and only to the extent the Secretary finds such principal amounts and interest rates to be reasonable.

§ 51c.507 Facility which has previously received Federal grant.

No grant for the acquisition of a facility which has previously received a Federal grant for construction, acquisition, or equipment shall serve either to reduce or restrict the liability of the applicant or any other transferor or transferee from any obligation of accountability imposed by the Federal Government by reason of such prior grant.

NOTE.—Incorporation by reference provision approved by the Director of the FEDERAL REGISTER on September 15, 1976 and is on file in the Federal Register library.

[FR Doc.76-38208 Filed 12-29-76;8:45 am]

federal register

THURSDAY, DECEMBER 30, 1976

PART VI

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

■

COASTAL ZONE MANAGEMENT

State Administrative Grants

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[15 CFR Part 923]

COASTAL ZONE MANAGEMENT PROGRAM

Administrative Grants

The National Oceanic and Atmospheric Administration (NOAA) hereby proposes to amend regulations pursuant to section 306 of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451, et seq.), hereinafter referred to as the "Act," for the purpose of defining the procedures by which coastal States can demonstrate satisfactory completion of the new requirements contained in subsections 306(a)(1) pertaining to the three planning requirements of subsections 305(b)(7), (8) and (9) and 306(c)(2)(B) of the Act. Demonstration of satisfactory completion of these new requirements, in addition to completion of existing requirements, is necessary in order for the Associate Administrator for the Office of Coastal Zone Management of the National Oceanic and Atmospheric Administration to grant approval to State coastal management programs pursuant to section 306 of the Act. NOAA also proposes to adopt regulations pursuant to section 312 of the Act for the purpose of defining review, refinement and termination procedures for approved coastal management programs.

These new requirements were contained in or amended by Pub. L. 94-370, signed July 26, 1976, which made substantial changes in the Act. Previously, final regulations detailing procedures by which States can qualify to receive implementation grants pursuant to section 306 of the Act were published as 15 CFR Part 923 on January 9, 1975.

To effect necessary changes to 15 CFR Part 923, NOAA proposes the following:

(1) Adding three new sections to Subpart B of Part 923 to address the three new planning requirements included as part of section 306(a)(1) of the Act;

(2) Renumbering the sections of Subparts C, D, E and F to accommodate the addition of three new sections to Subpart B;

(3) Revising the renumbered § 923.42 in Subpart D to address the new requirements regarding State-local consultation procedures contained in subparagraphs (i), (ii) and (iii) of subsection 306(c)(2)(B) of the Act;

(4) Adding a new Subpart G to address the requirements contained in section 312 of the Act. Included in Subpart G are guidelines addressing amendments or modifications to approved coastal management programs, pursuant to subsection 306(g) of the Act;

(5) Making a number of deletions, additions, and changes in section references to the text of Subparts A–F to conform to changes in the Act resulting from the 1976 amendments or changes resulting from additions to the Part 923 requirements.

NOAA proposes to amend Part 923 to add the word "islands" into relevant portions of § 923.11 of Subpart B. The purpose of this insertion is to conform to the amended language of subsection 304(1) of the Act, which states in part:

> The term 'coastal zone' means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal states, and includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches.

NOAA proposes to amend Part 923 to add new §§ 923.18, 923.19 and 923.20 to address the approval requirements for the new planning elements of subsection 306(a)(1) of the Act relating to shorefront access, energy facility planning, and shoreline erosion. The details of these requirements are contained in proposed regulations amending 15 CFR 920 to add §§ 920.17, 920.18 and 920.19. These proposed regulations were published in the FEDERAL REGISTER on December 6, 1976 and are incorporated into these proposed regulations by reference. In reviewing State management programs for approval pursuant to section 306 of the Act, particular attention will be given to insuring that means have been developed to provide for:

(1) Implementation of policies or actions to ensure access or protection, as appropriate, for certain shorefront areas;

(2) Implementation of policies or actions to anticipate and manage impacts from energy facilities locating in or affecting a State's coastal zone; and

(3) Implementation of policies or actions to address shoreline erosion.

NOAA proposes to revise § 923.42 (as redesignated) of Subpart D to address the new requirements of subparagraphs (i), (ii) and (iii) of section 306(c)(2)(B) of the Act which deal with State-local consultation procedures during program implementation. Paragraphs (b) and (c) of § 293.42 contain the substance of these requirements which call for the incorporation of the following into State management programs:

(1) A procedure whereby local governments with zoning authority are notified to State management program decisions that may conflict with local zoning ordinances, decisions or other actions. The purpose of such notification is to enable local governments to determine if a conflict may occur, and to afford local governments an opportunity to comment on the proposed State management program decision;

(2) A provision indicating how the State agency will consider local comments and circumstances under which a State agency will consider holding public hearings;

(3) A provision indicating the procedures to be followed by a State agency with respect to implementation of a management program decision following receipt of local government comments; and

(4) A provision indicating what action the State agency will take in the event a local government pursues, during the thirty day comment period, an action that would conflict or interfere with the State's proposed management program decision.

Also included in this section are definitions of the terms "management agency," "management program decision," "conflict," "local zoning ordinance, decision or other action," "written comments," and "waiver" which are to be utilized for purposes of the State-local consultation mechanism required by subsection 306(c)(2)(B) of the Act.

Prior to issuance of these proposed regulations, NOAA distributed widely a draft paper on subsection 306(c)(2)(B) of the Act. A number of commentators indicated that it was unclear in the definition of management program decision whether individual permits would be subject to the State-local consultation procedure. The proposed regulations explicitly provide that individual permit or regulatory actions taken pursuant to major policy and planning decisions (which are subject to State-local consultation) are not subject to the State-local consultation mechanism. A number of reviewers indicated that the definition in the draft paper of what would constitute a local zoning ordinance, decision or other action was too broad. In response to these comments, the proposed regulations define this term as any local government land or water use action which regulates or restricts the construction, alteration or use of land, water or structures thereon or thereunder, and including specifically zoning ordinances, variances, special exceptions, master plans and official maps. State commentators objected to the provision in the draft paper that required provision in management programs requiring local governments to notify the State agency in writing of any actions taken by the local government during the thirty day comment period which would conflict or interfere with the proposed State management program decision. The proposed regulations encourage but do not require inclusion of such a provision in a State's management program.

NOAA proposes to add a new Subpart G—Review of Approved Management Programs to address the review, alteration and termination procedures of section 312 of the Act and the amendment procedures of subsection 306(g) of the Act.

Section 923.71 of Subpart G deals with the process of continuing review of approved management programs. The basic purposes of this review are to:

(1) Reassess and reconfirm the basic soundness and viability of a State's management program, given State and national goals and objectives;

(2) Evaluation State progress towards achievement of specific management policies and objectives; and

(3) Provide an opportunity for amendment or alteration, if appropriate, of a State's management program.

In reviewing performance, the Associate Administrator's primary concern will be to assess State adherence to the policies and programs contained in the approved management program and the fulfillment of work tasks contained in a State's grant application.

Section 923.72 deals with procedures for amending, pursuant to subsection 306 (g) of the Act, an approved coastal management program. Amendments or modifications are defined as changes relating to (a) basic program goals, objectives or policies, (b) changes in techniques (for achieving those goals, objectives or policies) that result in an environmental impact significantly different from previously approved techniques, or (c) result in significantly altered intergovernmental relationship not reviewed by and/or concurred with by affected agencies or units of government at the time of proposed modification. Amendments will be justified if they are in response to changes in coastal zone needs, programs, issues, priorities, social or political expectations or other factors bearing on the relevancy and viability of a State's coastal management program, provided further that such amendments are consistent with the findings and policies of sections 302 and 303 of the Act and with the requirements of section 306 of the Act. A State may request a program amendment at any time during program administration when such amendment is deemed necessary by the State.

State management programs that have been or will be approved, pursuant to section 306 of the Act, prior to October 1, 1978 without meeting the requirements of subsections 305(b)(7), (8) and (9) will need to be amended to incorporate these three planning requirements into their approved management programs. Paragraphs (c) and (d) of § 923.72 detail the amendment procedures with respect to these three planning requirements.

Section 923.73 deals with procedures for refining an approved management program. Refinements which do not require program amendment are changes relating to programs or techniques for attaining particular goals or objectives or for implementing particular policies (but not changes in these goals, objectives, or policies themselves). In addition, these proposed refinements will not (a) have an environmental impact significantly different from previously approved programs or techniques and (b) will not significantly alter previously approved intergovernmental arrangements with other State agencies, local governments and/or Federal agencies, unless the affected agencies/units of government concur in these refinements and must have the concurrence of the Associate Administrator.

Section 923.74 provides the circumstances under which and the procedures by which the Associate Administrator may terminate or withdraw section 306 funding, pursuant to subsection 312(b) of the Act. In addition to the provisions contained in the Grants Manual relating to termination or withdrawal of funding awarded pursuant to section 306, the Associate Administrator may recommend to the NOAA Grants Office that grant funding pursuant to section 306 be terminated or withdrawn if the Associate Administrator determines that:

(1) A State has failed or is failing to adhere to and was or is not justified in deviating from its approved management program; and

(2) That State has been provided notice of intent to terminate or withdraw funding; and

(3) That State has been provided an opportunity to demonstrate adherence or justification for program alteration or modification.

Paragraph (b) of § 923.74 provides information as to the content of notice of proposed termination or withdrawal of funding from the Associate Administrator as well as the time frame for and opportunities on the part of the State to present evidence of adherence or justification for program modification.

Prior to issuance of these proposed regulations, NOAA distributed widely a draft paper on section 312 of the Act. A number of State reviewers commented on the desirability of integrating review requirements into existing reporting procedures. This comment has been accompanied in the proposed regulations by relying on existing quarterly report and grant application procedures rather than requiring a separate document for program performance review purposes. Additional comments received from States indicated that the questions posed in the draft paper were too oriented towards national considerations and should be focused more on the specifics of State programs. This shift in emphasis to the specifics of State programs is reflected in the language of § 923.71.

NOAA proposed to delete references to preliminary approval in §§ 923.2 and 923.3 of Subpart A and in § 923.30 (as redesignated) in Subpart C. Requirements for preliminary approval pursuant to section 305(d) of the Act are addressed in Subpart E—Preliminary Approval of Part 920. Proposed regulations for Subpart E of Part 920 were published in the FEDERAL REGISTER on December 6, 1976.

NOAA has reviewed these proposed regulations pursuant to the National Environmental Policy Act of 1969 and has determined that promulgation of these regulations will have no significant impact on the environment.

Compliance with Executive Order 11821. The economic and inflationary impact of these proposed regulations has been evaluated in accordance with OMB Circular A-107 and it has been determined that no major inflationary impact will result.

NOAA invites public comment on these proposed regulations so that they may be modified, where necessary and legally permissible, to reflect fully the needs of the public and parties affected by the provisions.

Written comments should be submitted to the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Page Building 1, 3300 Whitehaven Street, NW., Washington, D.C. 20235 on or before February 3, 1977. Following the close of the comment period, and after review of comments, these proposed regulations may be amended to reflect necessary and permissible changes. Final regulations will then be published in the FEDERAL REGISTER.

Dated: December 27, 1976.

R. L. CARNAHAN,
Deputy Assistant Administrator for Administration.

In consideration of the foregoing, 15 CFR Part 923 is proposed to be amended as follows:

The Table of Contents is revised as follows:

PART 923—COASTAL ZONE MANAGEMENT PROGRAM ADMINISTRATIVE GRANTS

Subpart A—General

Sec.
923.1 Purpose.
923.2 Definitions.
923.3 Submission of management programs—general.
923.4 Evaluation of management programs—general.
923.5 Environmental impact assessment.

Subpart B—Land and Water Uses

923.10 General.
923.11 Boundary of the coastal zone.
923.12 Permissible land and water uses.
923.13 Areas of particular concern.
923.14 Guidelines on priorities.
923.15 National interest facilities.
923.16 Area designation for preservation and restoration.
923.17 Local regulations and uses of regional benefit.
923.18 Shorefront access planning.
923.19 Energy facility planning.
923.20 Shoreline erosion/mitigation planning.

Subpart C—Authorities and Organization

923.30 General.
923.31 Means of exerting State control over land and water uses.
923.32 Organizational structure to implement the management program.
923.33 Designation of a single agency.
923.34 Authorities to administer land and water uses, control development and resolve conflicts.
923.35 Authorities for property acquisition.
923.36 Techniques for control of land and water uses.

Subpart D—Coordination

923.40 General.
923.41 Full participation by relevant bodies in adoption of management programs.
923.42 Consultation and coordination with other planning.

Subpart E—Miscellaneous

923.50 General.
923.51 Public hearings.
923.52 Gubernatorial review and approval.
923.53 Segmentation.
923.54 Applicability of air and water pollution control requirements.

Subpart F—Applications for Administrative Grants

Sec.
923.60 General.
923.61 Administration of the program.
923.62 State responsibility.
923.63 Allocation.
923.64 Geographical segmentation.
923.65 Application for the initial administrative grant.
923.66 Approval of applications.
923.67 Amendments.
923.68 Applications for second and subsequent year grants.

Subpart G—Review of Approved Management Programs

923.70 General.
923.71 Review of performance.
923.72 Amendments or modifications to approved management programs.
923.73 Refinements to approved management programs.
923.74 Termination or withdrawal of administrative funding.

AUTHORITY: (Sec. 306 and 312, Coastal Zone Management Act of 1972, Pub. L. 92-583, 86 Stat. 1280, as amended by Pub. L. 94-370, 90 Stat. 1013).

Subpart A—General

Subpart A is amended as follows:

§ 932.1 [Amended]

(1) In subparagraph (b), the reference to "section 309 of the Act" should be changed to "section 312 of the Act".

§ 923.2 [Amended]

(2) Delete the definition of preliminary approval.

§ 923.3 [Amended]

(3) Delete subparagraph (b) which refers to preliminary approval.

(4) Redesignate subparagraph (c) as subparagraph (b).

§ 923.4 [Amended]

(5) In subparagraph (a), delete "national policies declared in section 303 of the Act" and substitute "national findings and policies contained in sections 302 and 303 of the Act".

Subpart B—Land and Water Uses

Subpart B is amended as follows:

§ 923.11 [Amended]

(1) In subparagraph (a)(3), insert the word "islands," between the words "of" and "transitional" so that the sentence reads in full:

(3) An identification of islands, transitional and intertidal areas, salt marshes, wetlands, and beaches.

(2) In subparagraph (b)(3), insert the word "islands," between "include" and "transitional" so that the sentence reads in full:

(3) A State's coastal zone must include islands, transitional and intertidal areas, salt marshes, wetlands, and beaches.

§ 923.12 [Amended]

(3) In subparagraph (b)(2)(iii), change "§ 923.17" to "§ 923.20" so that the sentence reads in full:

The analyses which the State will undertake pursuant to this section should also be useful in satisfying the requirements of §§ 923.13 through 923.20.

§ 923.13 [Amended]

(4) In subparagraph (b), after "Useful background information concerning the requirement appears in 15 CFR 920.13, which is incorporated here by reference.", insert the following:

States are advised to view this requirement in light of the specific requirements contained in §§ 923.18 through 923.20 and, to the extent possible, to incorporate these requirements into the analyses undertaken to fulfill the requirements of this section.

§ 923.14 [Amended]

(5) In subparagraph (b), after "The program should establish special procedures for evaluating land use decisions, such as the siting of regional energy facilities, which may have a substantial impact on the environment.", insert the following:

With specific regard to regional energy facilities, attention is drawn to § 923.19.

§ 923.15 [Amended]

(6) In subparagraph (b), revise statutory citation so it conforms to language in subsection 306(c)(8) of the Act, as amended. Therefore delete citation and substitute the following:

Prior to granting approval of a management program submitted by a coastal State, the Secretary shall find that * * * (t)he management program provides for adequate consideration in planning for, and in the siting of, facilities (including energy facilities in, or which significantly effect, such states' coastal zone) which are necessary to meet requirements which are other than local in nature. In the case of such energy facilities, the Secretary shall find that the state has given such consideration to any applicable interstate energy plan or program.

(7) In subparagraph (b), after "The States should also consult with adjacent and nearby States * * * to determine how regional needs may be met in siting facilities.", add the following:

Where interstate energy plans or programs exist, States should specifically indicate the consideration given these plans and programs in the development of the State's management program.

(8) In the Table entitled "Requirements which are other than local in nature," under "Cognizant Federal Agencies" delete "Atomic Energy Commission" and substitute "Energy Research and Development Administration, Nuclear Regulatory Commission."

§ 923.16 [Amended]

(9) In subparagraph (b)(1), after the first sentence, add the following:

This requirement will also be closely linked to that contained in § 923.20 if, as part of that latter requirement, States choose to develop a procedure for designating erosion areas for restoration or preservation purposes.

(10) Section 923.18 is added to read as follows:

§ 923.18 Shorefront access planning.

(a) *Requirement.* In order to fulfill the requirement contained in subsection 305(b)(7) of the Act, the management program must show evidence that the State has developed a planning process that can identify public shorefront areas appropriate for protection and/or increased access. This process should include, at a minimum, those items contained in § 920.17:

(1) A definition of the term "beach" and identification of public areas subject to the definition;

(2) A procedure for assessing public areas requiring access and/or protection as part of the process outlined in section 923.13;

(3) Development of State policies pertaining to shorefront access and/or protection;

(4) A method for designation, if appropriate, of shorefront areas as areas of particular concern (either as a class or as specific sites) for protection and/or access purposes;

(5) A mechanism for continuing refinement and implementation of necessary management techniques; and

(6) An identification of existing programs that can be applied to meet management needs.

(b) *Comment.* Statutory Citation: Subsection 305(b)(7):

The management program for each coastal state shall include * * * (a) definition of the term 'beach' and a planning process for the protection of, and access to, public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological, or cultural value.

Useful background information concerning this requirement appears in § 920.17, which is incorporated herein by reference. The basic purpose of developing and applying this planning process is to express some measure of State concern with respect to additional access or protection needs for public beaches and other public coastal areas of environmental, recreational, historic, esthetic, ecological or cultural value and to include these areas within the purview of the State's management program. Therefore, in reviewing the management program, particular attention will be directed towards development by the State of implementing policies or actions to insure access or protection, as appropriate, for these areas.

(11) Section 923.19 is added to read as follows:

§ 923.19 Energy facility planning.

(a) *Requirement.* In order to fulfill the requirements contained in subsection 305(b)(8) of the Act, the management program must show evidence that the State has developed a planning process that can anticipate and manage the impacts from energy facilities in or affecting the State's coastal zone. This process should include, at a minimum, those items contained in § 920.18:

(1) A means of identifying energy facilities which are likely to be located

in or which may significantly affect the coastal zone;

(2) A procedure for assessing impacts for such facilities;

(3) Development of State policies and other techniques for the management of energy facility impacts; and

(4) A mechanism for coordination and/or cooperative working arrangements, as appropriate, between the State coastal management agency and other relevant State, Federal and local agencies involved in energy facility planning and management.

(b) *Comment.* Statutory Citation: Subsection 305(b)(8):

The management program for each coastal state shall include * * * (a) planning process for energy facilities likely to be located in, or which may significantly affect, the coastal zones, including, but not limited to, a process for anticipating and managing the impacts from such facilities.

Useful background information concerning this requirement appears in § 920.18, which is incorporated herein by reference. The purpose of identifying energy facilities which may significantly affect the coastal zone is to assure the consideration of energy facilities as land or water uses having direct and significant impact on coastal waters and therefore subject to the management program. Accordingly, in reviewing the management program, particular attention will be directed towards development by the State of implementing policies or actions to anticipate and manage impacts from energy facilities locating in or affecting a State's coastal zone.

(12) Section 923.20 is added to read as follows:

§ 923.20 Shoreline erosion/mitigation planning.

(a) *Requirement.* In order to fulfill the requirements contained in subsection 305(b)(9) of the Act, the management program must show evidence that the State has developed a planning process that can assess the effects of shoreline erosion and evaluate ways to mitigate, control or restore areas adversely affected by erosion. This process should include, at a minimum, those items contained in § 920.19:

(1) A method for assessing the effects of shoreline erosion;

(2) A procedure for handling erosion effects;

(3) Development of State policies pertaining to erosion;

(4) A method for designation, if appropriate, of areas for erosion control, mitigation and/or restoration as areas of particular concern (as part of the process outlined in § 923.13) or as areas for preservation or restoration (as part of the process outlined in § 923.16); and

(5) A mechanism for continuing refinement and implementation of necessary management policies and techniques.

(b) *Comment.* Statutory Citation: Subsection 305(b)(9):

The management program for each coastal state shall include * * * (a) planning process for (A) assessing the effects of shoreline erosion (however caused), and (B) studying and evaluating ways to control, or lessen the impact of, such erosion, and to restore areas adversely affected by such erosion.

Useful background information concerning this requirement is contained in § 920.19, which is incorporated herein by reference. The basic purpose in developing a process to evaluate and, if appropriate, control and mitigate shoreline erosion is to assure consideration of erosion impacts within the purview of a State's management program. Therefore, in reviewing the management program, particular attention will be directed towards development by the State of implementing policies or actions to address shoreline erosion.

Subpart C—Authorities and Organization

Subpart C is revised as follows:

(1) Section 923.20 is redesignated § 923.30 and is revised as follows:

(2) Delete the following sentence in this section which refers to preliminary approval:

"Preliminary approval, however, can be given to a proposal which will require subsequent legislative or executive action for implementation and eligibility for administrative grants under section 306."

(3) Section 923.21 is redesignated § 923.31 and is revised as follows:

(4) In subparagraph (b), change references to "§§ 923.24, 923.25, and § 923.26" to "§§ 923.34, 923.35 and § 923.36."

(5) In subparagraph (b) change reference to section "§ 923.21" to "§ 923.31."

(6) In subparagraph (b) next to last sentence, change reference to "§ 923.24 and § 923.25" to "§ 923.34 and § 923.35."

(7) Section 923.22 is redesignated § 923.32 and revised as follows:

(8) In paragraph (a) change reference to "§ 923.21" and "§ 923.31."

(9) In subparagraph (b), change reference to "§ 923.31" to "§ 923.41."

(10) In subparagraph (b), change reference to "§ 923.23" to "§ 923.33."

(11) Section 923.23 is redesignated § 923.33 and is revised as follows:

(12) In subparagraph (b) redesignation of § 92333 change reference to "§ 923.22" to "§ 923.32."

(13) Section 923.24 is redesignated § 923.34 and is revised as follows:

(14) In subparagraph (b), change reference to "§§ 923.21, 923.25, and § 923.26" to "§§ 923.31, 923.35 and § 923.36."

(15) Section 923.26 is redesignated § 923.37 and is revised as follows:

(16) In subparagraph (b)(5), change references to "sections 923.21, 923.24 and 923.25" to "sections 923.31, 923.34 and 923.35."

Subpart D—Coordination

Subpart D is revised as follows:

(1) Section 923.30 is redesignated § 923.40.

(2) Section 923.31 is redesignated § 923.41 and is revised as follows:

(3) In subparagraph (a)(2), change reference to "§ 923.32" to "§ 923.42."

(4) In subparagraph (b)(2)(1), change reference to "§ 923.32" to "§ 923.42."

(5) In subparagraph (b)(2)(i)(a), change reference to "§ 923.41" to "§ 923.51."

(6) Section 923.32 is redesignated as § 923.42 and is revised as follows:

§ 923.42 Consultation and coordination with other planning.

(a) *Requirement.* In order to fulfill the requirements contained in section 306(c)(2) of the Act, the management program must include:

(1) An identification of those entities mentioned which have plans in effect on January 1 of the year submitted;

(2) A listing of the specific contacts made with all such entities in order to coordinate the management program with their plans;

(3) An identification of the conflicts with those plans which have not been resolved through coordination and continuing actions contemplated to attempt to resolve them; and

(4) Indication that a regular consultation mechanism has been established and is active to undertake coordination between the State management agency designated pursuant to § 923.33 and the entities in paragraph (B) of section 306(c)(2), especially with respect to local governments with zoning authority.

(b) *Comment.* Statutory Citation: Section 306(c)(2):

Prior to granting approval of a management program submitted by a coastal State, the Secretary shall find * * * that the State has:

(A) Coordinated its program with local, areawide and interstate plans applicable to areas within the coastal zone existing on January 1 of the year in which the State's management program is submitted to the Secretary, which plans have been developed by a local government, an areawide agency designated pursuant to regulations established under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, a regional agency, or an interstate agency; and

(B) Established an effective mechanism for continuing consultation and coordination between the management agency designated pursuant to paragraph (5) of this subsection and with local governments, interstate agencies, regional agencies and areawide agencies within the coastal zone to assure the full participation of such local governments and agencies in carrying out the purposes of this title; except that the Secretary shall not find any mechanism to be "effective" for purposes of this subparagraph unless it includes each of the following requirements:

(i) Such management agency is required, before implementing any management program decision which would conflict with any local zoning ordinance, decision, or other ac-

tion, to send a notice of such management program decision to any local government whose zoning authority is affected thereby.

(ii) Any such notice shall provide that such local government may, within the 30-day period commencing on the date of receipt of such notice, submit to the management agency written comments on such management program decision, and any recommendation for alternatives thereto, if no action is taken during such period which would conflict or interfere with such management program decision, unless such local government waives its right to comment.

(iii) Such management agency, if any such comments are submitted to it, within such 30-day period, by any local government—

(I) is required to consider such comments,

(II) is authorized, in its discretion, to hold a public hearing on such comments, and

(III) may not take any action within such 30-day period to implement the management program decision, whether or not modified on the basis of such comments.

Relevant background information on this requirement appears in § 920.55(f), and is incorporated by reference herein. While the State will exercise its authority over land and water uses of Statewide significance in the coastal zone by one or more of the techniques set forth in § 923.36, the State management program must be coordinated with existing local, areawide and interstate plans applicable to portions of the coastal zone. It should be noted that this section does not demand compliance of the State program with local plans, but the process envisioned should enable a State not only to avoid conflicts and ambiguities among plans and proposals, but also to draw upon the planning capabilities of a wide variety of governments and agencies. Coordination implies a high degree of cooperation and consultation among agencies, as well as a mutual willingness on the part of the participants to accommodate their activities to the needs of the others in order to carry out the public interest. Perceptions of the public good will differ and it is recognized that not all real or potential conflicts can be resolved by this process. Nevertheless, it is a necessary step. Effective cooperation and consultation must continue as the management program is put into operation so that local governments, interstate, regional and areawide agencies can continue to participate in the carrying out of the management program. The "plans" referred to in (A) shall be considered those which have been officially adopted by the entity which developed them, or which are commonly recognized by the entity as a guide for action. The list of relevant agencies required under § 923.41 will be of use in meeting this requirement. It will enable the State to identify those entities mentioned in (A) which have such plans and to provide evidence that coordination with them has taken place. In developing and implementing those portions of the program dealing with power transmission lines, pipelines, interstate transportation facilities which will significantly impact on neighboring States of a region, particular attention should be paid to the requirements of this section and to that of § 923.20.

(c) The purposes of the State-local consultation mechanism contained in subparagraphs (i), (ii) and (iii) of section 306(c)(2)(B) of the Act are:

(1) To provide explicitly in a State's management program for a mechanism to inform local governments with zoning authority of management program plans or policies which could conflict with such zoning authority;

(2) To allow local governments an opportunity to comment on State management program plans and policies which conflict with local government zoning;

(3) To require the State management agency to consider such comments, during which time it may hold a public hearing (at its discretion) on the matter, and to refrain from taking action to implement the proposed management program plan or policy during the comment period; and

(4) To permit the State management agency to implement the management program decision in the event the local government waives its right to comment, concurs with the proposed action, or takes action during the comment period which conflicts with or interferes with the proposed State management program decision (in which case, a local government forfeits its right to comment).

(c) Coastal zone management development and implementation is a dynamic process. Congress recognized that an effective means for pursuing this process required not only increased efforts by coastal State governments, but also participation by local governments. In its amendment of section 306(c)(2)(B) of the Act, Congress specifically developed a provision that major State policies and plan decisions to be implemented pursuant to an approved State management program require notice to local governments when such decisions could conflict with local government zoning. For the purposes of this section, the following terms shall have the following meanings:

(1) "Management agency" refers to the State agency designated by the Governor pursuant to § 923.33 to receive and administer grants for implementation of the management program and to any other State agency responsible for implementing a management program decision.

(2) "Management program decision" refers to major policy and planning elements such as the determination of permissible land and water uses, the designation of geographic areas of particular concern, the development of guidelines or standards regarding priority of uses in particular areas, the decision to acquire property for public uses, etc. Individual permit or regulatory actions taken pursuant to these major decisions are not subject to the State-local consultation mechanism. Examples of what might constitute a major State management program decision include, but are not limited to:

(i) A State management agency decision that a certain class of wetlands may not be filled and/or developed;

(ii) A decision prohibiting the development of non-water dependent facilities on certain shoreline areas;

(iii) A decision requiring that new development on the shoreline may not interfere with existing public rights of access to the sea, and that new developments of a certain magnitude are required to provide public access as part of the development; or

(iv) A decision to acquire urban shoreland for recreational purposes.

(3) "Conflict" (with a local zoning ordinance, decision or other action) shall be determined by the affected local government as a result of the notification procedure. A State management program decision may be considered to be in conflict with a local zoning ordinance if the decision is incompatible with or contradictory to that ordinance. However, a State management program decision that consists of additional but different requirements shall not be considered to be in conflict with a local zoning ordinance, decision or other action;

(4) "Local zoning ordinance, decision or other action" refers to any local government land or water use action which regulates or restricts the construction, alteration or use of land, water or structures thereon or thereunder. These actions include zoning ordinances, variances, special exceptions, master plans and official maps. Accordingly, a local government has the right to comment on a State management program decision when such decision conflicts with the above specified actions;

(5) "Written comments" from local governments shall be submitted in writing to the State management agency and may include recommendations for alternative actions and/or a request for a public hearing on the management program decision. The receipt of written documents during the 30-day comment period prohibits a State agency from taking any action during such period to implement the management program decision;

(6) "Waiver" of the right to a local government to comment (thereby permitting a State agency to proceed immediately with implementation of the management program decision) shall result following State agency receipt of a written statement on the part of a local government waiving its desire to comment, a written statement of concurrence with the management program decision, or a written statement indicating that the local government intends to take action which conflicts or interferes with the management program decision. A waiver of the right to comment or a waiver indicating concurrence may also be presumed if the local government fails to submit written comments to the State agency within the 30-day comment period. OCZM strongly encourages local government not to effect a waiver by silence as this process causes needless delay in implementing a management program decision.

(d) The State-local consultation mechanism called for in section 306(c)(2)(B) of the Act must be incorporated into each coastal State's management program.

(1) State programs must detail a procedure whereby local governments with zoning authority are notified of management program decisions which will affect their jurisdiction. For purposes of this consultation mechanism, local governments are those defined in section 304(10) of the Act which have some form of zoning authority. Such notice must be in writing and must inform the local government of its right to submit comments to the State management agency in the event the proposed State management program decision conflicts with a local zoning ordinance decision or other action.

The purpose of this notice and comment procedure is to enable State agencies and local governments to achieve a consensus, when appropriate and possible, with respect to proposed State land and water use regulatory and acquisition decisions. Local governments are encouraged to submit comments to State agencies with the objectives of attempting to assure that policies and plans developed at the State level have sufficient flexibility to accommodate the various and diverse needs of coastal communities. For example, in response to a State agency management decision proposing to prohibit development of non-water dependent commercial uses on the shoreline within the jurisdiction of a local government, that local government might comment that the restriction conflicts with an urban waterfront zoning ordinance that selectively permits such development as a means of promoting the economic viability of a redeveloping area. Based on such comment, the State management agency might be persuaded to modify its original proposal.

(2) State management programs must also provide that the State agency adequately consider all comments received by local governments. This consideration shall include a written response by the State agency to the local government within a reasonable period of time following receipt of local comments as to the outcome of the State agency's consideration of local comments. Such consideration may include a decision, at the discretion of the State agency, to hold a public hearing. State management programs should include a provision indicating the criteria by which the State management agency will determine to hold a public hearing. The State management program also must set forth public notice and other hearing procedure requirements. In the event that a local government requests a public hearing and such a request is granted, the State management program may provide or require that the local government requesting such hearing shall provide the required public notice and/or meeting facility. In the event a public hearing is held, the State agency shall provide written response to the affected local government, within a reasonable period of time and prior to implementation of the management program decision, on the results of the State agency's consideration of public hearing comments.

(3) State management programs shall include a provision indicating the procedures to be followed by a State agency regarding implementation of a management program decision following receipt of a local government's comments. The effect of a local government's submission of comments to a State agency is to stay the implementation of the management program decision during the 30-day comment period. OCZM encourages State agencies to extend the period of non-implementation for as long as it takes to consider adequately an affected local government's comments. This recommended delay should include the period during which a hearing is held.

(4) State management programs are encouraged to include a provision regarding notification in writing by local governments to the appropriate State agency of any actions taken during the 30-day comment period which conflict or interfere with the proposed management program decision. State management programs also should include a provision for local governments to waive in writing their right to comment. The implementation of a management program decision only need be delayed when a local government submits comments indicating conflict with a local zoning ordinance or suggesting modifications to a proposed State action which conflicts with this zoning authority. In those instances where the local government chooses to waive its opportunity to comment, or concurs with the State management decision, there is no need for further delay in implementing the proposed State management decision. In order to apprise the State agency of these views, local governments are strongly encouraged to affirmatively transmit such views in writing to the State agency (using the procedure described in the State's management program). Otherwise, the State agency will be compelled to await unnecessarily the expiration of the 30-day comment period before proceeding with the proposed decision. A local government forfeits its right to comment on a proposed State agency decision and its right to request a public hearing where the local government takes action during the comment period which conflicts or interferes with the proposed management decision. Where a local government intends to take such conflicting or interfering action, OCZM strongly encourages local governments to so advise the State agency in writing.

(5) State management programs shall indicate what action the State agency will take in the event a local government pursues a conflicting or interfering action. States are encouraged to develop their responses to conflicting local actions within the framework of sections 306(d)(1) and 306(e)(2) of the Act, and the related requirements of §§ 923.34 and 923.17. Section 306(d)(1) of the Act provides, inter alia, that the State has the management authority to resolve conflicts among competing uses. Section 306(e)(2) of the Act requires that the management program provide for a method of assuring local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land or water uses of regional benefit.

Subpart E—Miscellaneous

Subpart E is revised as follows:

(1) Section 923.40 is redesignated § 923.50.

(2) Section 923.41 is redesignated § 923.51.

(3) Section 923.42 is redesignated § 923.52.

(4) Section 923.43 is redesignated § 923.53.

(5) Section 923.44 is redesignated § 923.54.

Subpart F—Applications for Administrative Grants

Subpart F is revised as follows:

(1) Section 923.50 is redesignated § 923.60.

(2) Section 923.51 is redesignated § 923.61 and is revised as follows:

§ 923.61 [Amended]

(3) Change address listed in this section to:

Associate Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 3300 Whitehaven St., N.W., Washington, D.C. 20235.

(4) Section 923.52 is redesignated § 923.62.

(5) Section 923.53 is redesignated § 923.63 and is revised as follows:

(6) Change reference to "§ 923.55(e)" to "§ 923.65(e)."

(7) Section 923.54 is redesignated § 923.64 and is revised as follows:

(8) Change reference to "§ 923.43" to "§ 923.53."

(9) Section 923.55 is redesignated § 923.65 and is amended as follows:

§ 923.65 [Amended]

(10) In subparagraph (d), change reference to "Form CD–292" to "Form SF–424."

(11) In subparagraph (e), change reference to "Form CD–292" to "Form SF–424."

(12) In subparagraph (e)(3)(iii), change reference to "Form CD–292" to "Form SF–424."

(13) Section 923.56 is redesignated § 923.66.

(14) Section 923.57 is redesignated § 923.67.

(15) Section 923.58 is redesignated § 923.68 and is amended as follows:

§ 923.68 [Amended].

(16) In subparagraph (a)(1), change reference to "§ 923.55" to § 923.65."

(17) In subparagraph (a)(2), change reference to "Section 309(a)" to "Section 312(a) of the Act."

A new Subpart G is added as follows:

Subpart G—Review of Approved Management Programs

§ 923.70 General.

(a) This section establishes the procedures by which approved management programs will be reviewed annualy pur-

suant to section 312 of the Act. This section also established the criteria and procedures by which funding for approved management programs may be terminated or withdrawn, also pursuant to section 312 of the Act. Finally, this section establishes the guidelines by which amendments or refinements to approved management programs may be made, pursuant to sections 360(g) and 312 of the Act, respectively.

§ 923.71 Review of performance.

(a) The primary purpose of a continuing review by States and the Associate Administrator of management programs approved pursuant to section 306 of the Act are to:

(1) Reassess and reconfirm the basic soundness and viability of a State's management program, given State and national goals and objectives;

(2) Evaluate State progress towards achievement of specific management policies and objectives; and

(3) Provide an opportunity for amendment or alteration, if appropriate, of a State's management program.

Both the Associate Administrator and the States will be involved in this continuing review.

(b) *Comment.* Statutory Citation: Section 312(a)(1):

The Secretary shall conduct a continuing review of.—(1) The management programs of the coastal states and the performance of such states with respect to coastal zone management * * *

(1) The Associate Administrator's review of program performance will focus on both procedural and substantive aspects of coastal management. The Associate Administrator's primary concern will be to assess a State's performance in adhering to the goals, objectives, and policies contained in the approved management program and in carrying out the work task items contained in a State's grant application/work program approved pursuant to § 923.68. Satisfactory performance will consist of determinations that the State's coastal management program is being implemented procedurally in the manner described in the State's approved management document and approved grant award, and further that this operation is effective in terms of operational efficiency. Determinations of substantive program performance will include findings that the States' coastal management program policies and implementation techniques are in fact addressing the coastal management problems, goals, and objectives identified by the State, and further that adequate progress towards achievement of these goals has occurred over the course of the grant year. In setting these as the primary evaluation criteria, the Associate Administrator recognizes that these are not readily translatable into quantifiable indices of performance or progress, except to the extent a State's coastal management program goals and objectives are quantifiable. To the extent States can set quantifiable goals, they are encouraged to do so. It is further recognized that the adequacy of State performance with respect to any one aspect of the management program must be assessed in the context of overall performance in all areas as well as in the context of time scales required to accomplish particular objectives.

(2) To assist the Associate Administrator in assessing the quality of State performance, States will utilize their quarterly reports to the Associate Administrator (as defined in the Grants Manual) and their grant refunding applications (pursuant to section 923.68) to discuss progress and/or problems encountered in achieving particular substantive and procedural goals, objectives and policies. The level of reporting detail necessary will be determined by consultation between the Associate Administrator and the State management agency designated pursuant to § 923.33.

(3) States must build into their management programs their own monitoring systems that include techniques for insuring compliance by other State and local entities responsible for portions of program administration and implementation, for reporting violations of the management program, and for insuring public participation in the operation and evaluation of the management program. States may want to include a hearing and appeals procedure and/or a public hearing procedure as a monitoring mechanism.

(4) The Associate Administrator's assessment of State performance will consist to evaluation of the reports submitted by the State and periodic reviews, at the discretion of the Associate Administrator, of state implementation efforts, utilizing any of the following:

(i) Site visits by OCZM staff;

(ii) Meetings with or reviews by other Federal agencies;

(iii) Meetings with or reviews by other state agencies and or units of local governments involved in or affected by program implementation; and

(iv) Public hearings or meetings with public interest groups and the general public.

In cases where meetings with Federal agencies, other State agencies, local governments or the general public are requested, the designated State management agency shall be a co-sponsor of such meetings. Where the Associate Administrator's assessment of State performance, particularly with respect to continued effectiveness and relevancy of the management program, differs from the State's assessment, the Associate Administrator shall so advise the designated State management agency in order that the State agency may further assess their program objectives and procedures and or submit amendments or refinements, as and if appropriate, to the program.

§ 923.72 Amendments or modifications to approved management programs.

(a) Amendments or modifications to approved management programs will be justified if they are in response to changes in coastal zone needs, problems, issues, priorities, social or political expectations, or other factors bearing on the relevancy and viability of a State's coastal management program, provided further that such amendments/modifications are consistent with the findings and policies of sections 302 and 303 of the Act and with the requirements of section 306 of the Act. When a program amendment is necessary and justified, a State shall request, in consultation and cooperation with the Associate Administrator, and amendment to a State's approved management program pursuant to the requirements of subsection 306(g) of the Act.

(b) *Comment.* Statutory Citation: Subsection 306(g):

Any coastal State may amend or modify the management program which it has submitted and which has been approved by the Secretary, under this section, pursuant to the Secretary, under this section, pursuant to the required procedures described in subsection (c).

(1) Amendments or modifications are changes relating to basic program goals, objectives, or policies or changes in techniques (for achieving those goals, objectives or policies) that result in an environmental impact (as defined in the National Environmental Policy Act of 1969, Pub. L. 91–190, as amended by Pub. L. 94–83) significantly different from previously approved techniques, or result in significantly altered intergovernmental relationships not reviewed by and/or concurred with by affected agencies or units of government at the time of proposed modification. States may request a program amendment at any time during program implementation when such amendment is deemed by the State to be necessary. States should consult with the Associate Administrator prior to formal submission of the amendment(s) to assure that they are justified in the opinion of the Associate Administrator and to obtain the Associate Administrator's cooperation in meeting the requirements of subsection 306(g) of the Act. Pursuant to this section, amendments to approved management programs are to be reviewed and approved according to the same procedures utilized for initial management program approvals. The specifics of these procedures are contained in § 925.5. It should be noted that this procedure includes Environmental Impact Assessment (EIA) and Federal agency review requirements. The Associate Administrator will make a case-by-case determination as to the necessity of issuing an Environmental Impact Statement (EIS) prior to approving any amendments or modifications.

(2) Federal consistency, as provided for in section 307 of the Act, shall not apply to those parts of a State's coastal management program that are proposed for amendment unless and until such amendments are approved pursuant to the procedure contained in § 925.5. Federal consistency requirements will, however, be in effect for all parts of a State's approved management program not proposed for amendment.

(3) In cases where an amendment relates to an already approved program

goal, objective, policy, authority or other technique and the State acts to implement that amendment prior to approval by the Associate Administrator, such action may represent cause for notification by the Associate Administrator of intent to terminate or withdraw financial assistance pursuant to § 923.74. In cases where an amendment relates to a new goal, objective, policy or authority not previously contained in a State's approved coastal management program, the State may initiate implementation of such amendment provided it does not conflict with or contradict any existing approved management program goal, objective, policy or authority and with the understanding that section 306 funding for and Federal consistency relative to that amendment are not available unless and until the approval of the Associate Administrator is conferred.

(c) State management programs that have been or will be approved, pursuant to section 306 of the Act, prior to October 1, 1978 without meeting the requirements of subsection 305(b)(7), (8) and (9) and related §§ 923.18, 923.19 and 923.20 will need to be amended to incorporate these three planning requirements into their approved management programs.

(d) *Comment.* Statutory Citation: Subsection 306(g):

Except with respect to any such amendment which is made before October 1, 1978, for the purpose of complying with the requirements of paragraph (7), (8) and (9) of section 305(b), no grant shall be made under this section to any coastal state after the date of such an amendment or modification, until the Secretary approves such amendment or modification.

(1) In order to meet the requirement regarding integration of the subsection 305(b)(7), (8) and (9) planning requirements into an approved management program, States must have completed the requirements contained in §§1923.18, 923.19 and 923.20 and submitted these as amendments to be processed pursuant to § 925.5 by October 1, 1978. States are advised to consult with the Associate Administrator well before this date to assure that their efforts will meet the relevant Part 923 requirements at the time of their submission.

§ 923.73 Refinements to approved management programs.

(a) Since one of the primary purposes, as stated in § 923.71, of conducting a continuing review of program performance is to reassess and reconfirm the basic soundness and viability of a State's coastal management program, States may make minor refinements to their management programs without following the formal amendment procedures specified in subsection 306(g) of the Act. Such refinements may be made following consultation with and approval by the Associate Administrator.

(b) Refinements are changes relating to programs or techniques for attaining particular goals and objectives or for implementing particular policies (but not changes in these goals, objectives or policies themselves). In addition, these refinements will not have an environmental impact (as defined in the National Environmental Policy Act of 1969, Pub. L. 91–190, as amended by Pub. L. 94–83) significantly different from previously approved programs or techniques and will not significantly alter previously approved intergovernmental arrangements with other State agencies, local governments and/or Federal agencies, unless the affected agencies/units of government and the Associate Administrator concur in these refinements.

§ 923.74 Termination or withdrawal of administrative funding.

(a) In addition to the provisions contained in the Grants Manual relating to termination or withdrawal of funding awarded pursuant to section 306, the Associate Adminintrator may recommend to the NOAA Grants Office that grant funding pursuant to section 306 be terminated or withdrawn if the Associate Administrator determines that:

(1) A State has or is failing to adhere to and was or is not justified in deviating from its approved management program; and

(2) That State has been provided notice of intent to terminate or withdraw funding; and

(3) That State has been provided an opportunity to demonstrate adherence or justification for program alteration or modification.

(b) *Comment.* Statutory Citation: Subsection 312(b):

The Secretary shall have the authority to terminate any financial assistance extended under section 306 and to withdraw any unexpended portion of such assitance if (1) he determines that the state is failing to adhere to and is not justified in deviating from the program approved by the Secretary; and (2) the state has been given notice of the proposed termination and withdrawal and given an opportunity to present evidence of adherence or justification for altering its program.

(1) Situations which may cause the Associate Administrator to provide notice of intent to terminate or withdraw funding include:

(i) In evaluating a State's performance as part of the continuing review function pursuant to section 312 of the Act, the Associate Administrator determines that the State has not adhered to its management program approved pursuant to section 306 of the Act, and such lack of adherence is not justified;

(ii) In evaluating the continuing viability and relevancy of an approved management program as part of the continuing review function, the Associate Administrator determines that proposed amendments or alterations are not justified;

(iii) In evaluating a State's performance as part of the continuing review function, the Associate Administrator determines that the State is not adhering to its approved management program and/or its approved work program, and such lack of adherence is not justified;

(iv) In going through the amendment process where the amendment relates to a previously approved program goal, objective, policy, authority or other technique, a State acts to implement that amendment prior to approval by the Associate Administrator.

(2) In the event the Associate Administrator finds cause for terminating or withdrawing section 306 funding, notice in the form of a written document to the Governor of the State in question shall be provided advising the Governor of the intent to terminate an approved grant or to withdraw any unexpended portions of funding assistance. Included in this notice will be the reasons for the proposed termination or withdrawal of funds as well as notice of opportunity for the State to present evidence of adherence of justification for alteration of refinement of its program. Such opportunity to present evidence as referred to in subsection 312(b) of the Act shall consist of a thirty day period, commencing on the receipt of notice, within which the State may respond to this notice by providing written materials demonstrating adherence to or justification for refining or modifying its program. Within this thirty day period, a State may request additional time beyond the thirty day period to present evidence of adherence or justification for alteration or refinement. Such additional time shall not extend beyond a subsequent thirty days from the termination of the first thirty day period. In total then, a State may have a maximum of sixty days, from receipt of notice, in which to respond. Following receipt and evaluation of State's evidence with respect to adherence or justification for alteration, the Associate Administrator shall make a final determination with respect to termination or withdrawal of funding assistance. If the Associate Administrator decides termination or withdrawal of funding is appropriate, he/she shall so advise the NOAA Grants Office which shall take appropriate action to terminate or withdraw funds.

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THURSDAY, DECEMBER 30, 1976

PART VII

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

■

MOBILE HOMES

Construction and Safety Standards and Procedural and Enforcement Regulations

Title 24—Department of Housing and Urban Development

CHAPTER II—OFFICE OF ASSISTANT SECRETARY FOR HOUSING—FEDERAL HOUSING COMMISSIONER, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-76-435]

PART 280—MOBILE HOME CONSTRUCTION AND SAFETY STANDARDS

Modular Homes—Exemption From Standards Extended

The Department of Housing and Urban Development is issuing an amendment to 24 CFR 280.7, under which modular homes meeting the definition of "mobile home" found at § 603(6) of the National Mobile Home Construction and Safety Standards Act of 1974, 42 U.S.C. 5402(6) (the Act), were exempted from meeting the Federal mobile home standards until 150 days from June 15, 1976. The amendment to 24 CFR 280.7 will extend the exemption for modular homes until June 30, 1977.

The original exemption for modular homes, 24 CFR 280.7, was issued by the Department on June 21, 1976, at 41 FR 24968. The exemption was issued as the result of significant comment received from the modular housing industry to the effect that modular homes should not be considered to be mobile homes, regardless of the statutory definition and further to the effect that the modular housing industry would be seriously damaged if modular homes meeting the statutory definition of mobile home were required to meet the mobile home standards and to be labeled as mobile homes. In the June 21, 1976, publication, the Department requested comment on the exemption and particularly on the question of whether a modular home transported on a permanent chassis can fairly be considered not to meet the statutory definition of mobile home. The period for public comment ended on August 15, 1976.

The Department received 92 comments after the June 21, 1976, publication. The Department has considered those comments and all other comments that had previously been received concerning the status of modular homes under the Act. Most comments argued that modular homes were different from mobile homes and, therefore, despite the statutory definition, modular homes should not be covered by the Act. The only real difference any of the commenters discussed was the fact that modular homes are built to different standards than are mobile homes. Many commenters pointed to the fact that modular homes are eligible for longer term financing and are not subject to restrictive zoning to the same extent as are mobile homes. The latter points are tied to the fact that the structure meets modular housing rather than mobile home standards, so the sole difference of significance is the fact that the modular house is built to a different standard. The Department is unable to consider this a basis for excluding modular homes from the coverage of the Act if they meet the statutory definition of "mobile home." Whether or not a structure falls under the act is not determined by the standard to which it is constructed, but by the question of whether or not it meets the statutory definition of "mobile home."

Having reviewed all the comments and further researched and considered the modular housing issue at great length, the Department has confirmed its original opinion, expressed in the Preamble to the Mobile Home Procedural and Enforcement Regulations at 41 FR 19846, May 13, 1976, that a modular home that meets the statutory definition of "mobile home" is subject to the Act. Normally this would mean that modular homes must meet the Federal mobile home construction and safety standards and otherwise be subject to all of the provisions of the Act and the regulations issued pursuant to the Act. In this case, however, the Department has determined that modular homes may be considered to be mobile homes for which the Department has not yet developed a standard. As such, modular homes are not required to meet the current Federal mobile home standards, though modular homes and modular housing manufacturers are subject to the other provisions of the Act, particularly the provisions of section 615, 42 U.S.C. 5414, relating to actions required of manufacturers where imminent safety hazards are discovered or determined to exist.

In order to reflect these conclusions, the Department is issuing two amendments to its regulations, this one which extends the exemption for modular homes to June 30, 1977, and an amendment to 24 CFR Part 3282 that will establish the extent to which modular homes and modular housing manufacturers are subject to that Part and how the Department will implement the imminent safety hazard provisions of section 615 of the Act with respect to modular homes. This amendment will simply extend the exemption for modular homes until June 30, 1977, and will add the one- and two-family building code as one of the standards to be considered in determining whether a particular structure is a modular home. The latter change was suggested by several of the comments. The Department recognizes that extending the exemption is not an adequate permanent solution to the modular housing issue. The additional time will permit the Department to weigh alternative solutions and develop an appropriate permanent response to the issue.

This amendment will be effective as of November 15, 1976. This early effective date is necessary to assure continuity of the currently effective rule and to avoid disruption of the modular housing industry and the administrative process.

The Department has determined that an Environmental Impact Statement is not required with respect to this rule. A copy of the Finding of Inapplicability is available for inspection and copy according to Department rules and regulations during regular business hours at the Rules Docket Clerk, Office of the Secretary, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

It is hereby certified that the economic and inflationary impacts of the proposed rule have been carefully evaluated in accordance with OMB Circular A-107.

This rule is adopted as an amendment to Chapter II of 24 CFR because the mobile home standards were originally codified as part of that Chapter prior to the appointment of the Assistant Secretary for Consumer Affairs and Regulatory Functions who now has substantive responsibility for the mobile home standards. Because this is being published as part of Chapter II, it must be signed by the Assistant Secretary for Housing, as well as the Assistant Secretary for Consumer Affairs and Regulatory Functions. This will continue to be the case until the regulations have been appropriately recodified.

In consideration of the foregoing, 24 CFR 280.7 is revised to read as follows:

§ 280.7 Modular Homes.

A structure which meets the definition of "mobile home" set out in § 280.2(a)(16) is not subject to the provisions of this part if it enters the first stage of production before June 30, 1977, and meets any one or more of the following criteria:

(a) The structure is manufactured in accordance with and meets the following codes published by Building Officials and Code Administrators (BOCA) and the National Fire Protection Association (NFPA):

(1) BOCA Basic Building Code—1975;

(2) BOCA Basic Industrialized Dwelling Code—1975;

(3) BOCA Basic Mechanical Code—1975;

(4) BOCA Basic Plumbing Code—1975; and

(5) National Electrical Code—NFPA 70—1975.

(b) The structure is manufactured in accordance with and meets the following codes published by the Southern Building Code Congress (SBCC) and the NFPA:

(1) Standard Building Code—1976;

(2) Standard Gas Code—1976;

(3) Standard Mechanical Code—1976;

(4) Standard Plumbing Code—1975, with 1976 revision; and

(5) National Electrical Code—NFPA 70—1975.

(c) The structure is manufactured in accordance with and meets the following codes published by the International Conference of Building Officials (ICBO), the International Association of Plumbing and Mechanical Officials (IAPMO), and the NFPA.

(1) Uniform Building Code—1973; (ICBO)

(2) Uniform Mechanical Code—1975; (ICBO) and (IAPMO)

(3) National Electrical Code—NFPA 70—1975; and

(4) Uniform Plumbing Code—1973, (IAPMO)

(d) The structure is manufactured in accordance with and meets the follow-

ing codes published by BOCA, SBCC, ICBO, the American Insurance Association and the NFPA:

(1) One- and Two-Family Dwelling Code, 1975 edition; and

(2) National Electrical Code—70—1975.

(e) The structure meets a standard established by a state for modular homes, as distinct from mobile homes as they are defined by the state.

(f) The structure is built in accordance with an FHA Structural Engineering Bulletin and FHA Minimum Property Standards and is eligible for long-term financing under section 203(b) of the National Housing Act, 12 U.S.C. 1701 et seq.

(g) The structure is manufactured with and meets the following codes published by the American Insurance Association, (NFPA), (BOCA), (SBCC), (ICBO), (IAPMO), and the National Association of Plumbing-Heating-Cooling Contractors (NAPHCC):

(1) The National Building Code—1976;

(2) National Electrical Code—NFPA—70—1975;

(3) BOCA Basic Plumbing Code—1975 or Standard Plumbing Code with 1976 revision or Uniform Plumbing Code (IAPMO)—1973 or National Standard Plumbing Code (NAPHCC)—1973.

Provided, that any aspects of the cited codes or any state codes which are intended to apply to mobile homes, as such codes may define them, are pre-empted by the comparable aspects of the Federal standards.

(Secs. 604 and 625 of the National Mobile Home Construction and Safety Standards Act of 1974, 42 U.S.C. 5403, 5404 and 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).)

Effective date: November 15, 1976.

CONSTANCE B. NEWMAN,
Assistant Secretary for Consumer Affairs and Regulatory Functions.

JOHN T. HOWLEY,
Acting Assistant Secretary for Housing.

[FR Doc.76-38264 Filed 12-27-76;2:13 pm]

CHAPTER XX—OFFICE OF ASSISTANT SECRETARY FOR CONSUMER AFFAIRS AND REGULATORY FUNCTIONS, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-76-434]

PART 3282—MOBILE HOME PROCEDURAL AND ENFORCEMENT REGULATIONS

Modular Housing—Applicability of Imminent Safety Hazard Provisions; Interim Rule

The Department of Housing and Urban Development is issuing an Interim Rule to amend 24 CFR 3282.8(m) as published at 41 FR 24971 on June 21, 1976. The purpose of the amendment is to reflect the Department's conclusion that modular homes that meet the definition of mobile home in section 603(6) of the National Mobile Home Construction and Safety Standards Act of 1974, 42 U.S.C. 5402(6) (the Act), and manufacturers of such homes, are subject to the Act and particularly to the requirement of section 615 of the Act, 42 U.S.C. 5414, that manufacturers correct imminent safety hazards that are discovered or determined to exist in the homes. This amendment states how and to what extent the modular homes and manufacturers in question are subject to the provisions of 24 CFR Part 3282.

In an amendment to 24 CFR Part 280, being published concurrently with this amendment, the Department is extending the period during which modular homes meeting the statutory definition of "mobile home" are exempt from the Federal mobile home standards. The preamble to that amendment describes the process through which the Department reached the conclusion that the modular homes in question are subject to the Act, though they may be considered to be mobile homes for which no standard has been issued and are, therefore, not subject to the standards. That preamble also discusses the various comments received from the public on the modular housing issue.

The Department previously reached the conclusion that modular homes meeting the definition of mobile home, and manufacturers of such homes, were subject to the imminent safety hazard provisions of the Act. However, the Department has not to date issued any regulations reflecting that position because the Department believed it to be advisable first to review all comments on the modular housing issue which might advance arguments that modular homes do not fall under the Act. Having reviewed the comments and confirmed its initial conclusion that these modular homes are subject to the Act, the Department is now issuing an Interim Rule to establish an enforcement mechanism under § 615 of the Act, 42 U.S.C. 5414, with respect to these modular homes. This Interim Rule will be effective December 30, 1976 and will remain effective until March 15, 1977. Because the Department believes that this rule must be made effective without advance notice of rule making to advise manufacturers of the appropriate procedures to follow if an imminent safety hazard is discovered, the Department has determined that because of the importance of protecting the public safety advance notice and public procedure are impracticable and contrary to the public interest in this case. However, because the Department has never requested comment on this issue before, this will be an interim rule, and the Department is requesting comment from the public on the issues raised herein. Those comments will be evaluated, and the Department expects to issue a final rule before the interim rule expires on March 15, 1977.

This amendment states that modular homes meeting the definition of mobile home and manufacturers of such homes are subject to the provisions of section 615 of the Act with respect to imminent safety hazards. It also states that such modular homes and manufacturers are subject to the provisions of Part 3282 to the extent necessary to enforce the provisions of section 615. The Department expects manufacturers to correct imminent safety hazards found in the modular homes in question and, if necessary, the Department will make any determinations that may be appropriate under section 615(e) of the Act. The impact of this amendment will be to render the provisions of Subpart I of Part 3282 concerning imminent safety hazards effective with respect to modular homes meeting the definition of mobile home and manufacturers of such homes. Other sections of Part 3282 governs any proceedings necessary to enforce the provisions of section 615 of the Act with respect to imminent safety hazards. In particular, Subpart D with respect to hearings, presentations of views and investigations will govern such proceedings as appropriate. Modular home manufacturers will not be subject to the provisions of Subparts E and H of Part 3282 which establish extensive requirements for plant inspection and certification using a label prescribed by the Department. The intent of the Department in issuing this amendment is simply to give fair notice to modular home manufacturers that some of their homes are subject to the provisions of section 615 of the Act and to allow the Department to enforce those provisions. There is no intent to require modular home manufacturers to certify their homes as meeting the Federal mobile home standards or to require that modular home manufacturers obtain the design and production approvals required of mobile home manufacturers that are subject to the Federal mobile home standards.

As stated above, the Department has determined that it is necessary to issue this Interim Rule without seeking public comment. The rule is being made effective fifteen days from its publication in the FEDERAL REGISTER rather than in the usual thirty days because of its importance to public safety.

Interested persons may participate in the final rulemaking by submitting written data, views, or arguments to the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Comments received on or before January 31, 1977 will be considered before further action is taken with respect to this subject. Comments received after that date shall be considered only as time permits, or shall be considered as petitions for further rulemaking.

All written comments except those determined to be exempt by the Department under 24 CFR Part 15 under the Freedom of Information Act and the Privacy Act or the National Mobile Home Construction and Safety Standards Act of 1974 shall be available for examination by the public at the above address.

The Department has determined that an Environmental Impact Statement is

not required with respect to this interim rule. A copy of the finding of inapplicability is available for inspection and copying according to Department rules and regulations during regular business hours at the Rules Docket Clerk, Office of the Secretary, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

It is hereby certified that the economic and inflationary impacts of the rule have been carefully evaluated in accordance with OMB Circular A–107.

Accordingly, 24 CFR 3282.8(m) is amended to read as follows:

§ 3282.8 Applicability.

* * * * *

(m) *Modular homes.* Modular homes meeting the definition of mobile home set out at 24 CFR 3282.7(u) (modular-mobile homes) and manufacturers of such homes are subject to all provisions of Part 3282 unless the modular-mobile home is exempt from the mobile home standards under 24 CFR 280.7. A modular-mobile home that is exempt from the Federal mobile home standards under 280.7 and the manufacturer of such a home are subject to Part 3282 to extent necessary to assure that the manufacturer meets its responsibilities under section 615 of the Act, 42 U.S.C. 5414. Specifically, modular-mobile homes that are exempt from the Federal mobile home standards under 24 CFR 280.7 and manufacturers of such homes are subject to the provisions of Subpart I of Part 3282 with respect to imminent safety hazards. To the extent that other sections or subparts of Part 3282 must be followed in order to enforce section 615 of the Act, those sections and subparts will govern. In particular, Subpart D of Part 3282 will govern any hearings, presentations of views or investigations that are related to possible imminent safety hazards in modular-mobile homes. Modular-mobile homes that are exempt from the Federal mobile home standards under 24 CFR 280.7 and manufacturers of such homes are not subject to the requirements of the Subparts E and H with respect to certification of the modular-mobile home and with respect to the requirement that designs be approved and that production be subject to surveillance. This paragraph is effective until March 15, 1977.

(Secs. 615 and 625 of the National Mobile Home Construction and Safety Standards Act of 1974, 42 U.S.C. 5414 and 5424 and sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d)).

Effective Date: January 14, 1977.

CONSTANCE B. NEWMAN,
Assistant Secretary for Consumer Affairs and Regulatory Functions.

[FR Doc.76–38265 Filed 12–27–76;2:13 pm]

federal register

THURSDAY, DECEMBER 30, 1976

PART VIII

DEPARTMENT OF TRANSPORTATION

Materials Transportation Bureau

■

HAZARDOUS MATERIALS REGULATIONS

Consolidation and Miscellaneous Amendments

Title 49—Transportation

CHAPTER I—MATERIALS TRANSPORTATION BUREAU DEPARTMENT OF TRANSPORTATION

[Docket No. HM-103/112; Amdt. Nos. 171-32B, 172-29B, 173-94B, 174-26B, 175-1B, 176-1B]

HAZARDOUS MATERIALS REGULATIONS AND MISCELLANEOUS AMENDMENTS

Consolidation

On April 15, 1976, the Materials Transportation Bureau published a series of amendments identified as Docket HM-103/HM-112; Amdt. Nos. 171-32, 172-29, 173-94, 174-26, 175-1, 176-1, 177-35 (41 FR 15972). These amendments consolidated the air, water, and surface transportation hazardous materials regulations into one volume of the Code of Federal Regulations, 49 CFR Parts 100-189. In addition, basic changes were made to these regulations pertaining to shipping papers, package marking, package labeling, and transport vehicle placarding, requirements. Subsequent to that time, additional changes were made to these regulations and published in the FEDERAL REGISTER as amendments under Docket HM-103/112 (41 FR 40614, September 20, 1976). These latest amendments were published as a result of docketed comments, suggestions, and petitions for reconsideration. As a result of further comments and petitions, this document has been prepared to handle the editorial and clarification aspects of this consolidation, plus address petitions for reconsideration.

The American Trucking Associations, Inc., (ATA) submitted comments contending that "* * * the Materials Transportation Bureau and its predecessor, the Hazardous Materials Regulations Board, have failed to give sufficent rationale for many of the final rules developed * * *." The Bureau disagrees. The amendments published under Docket HM-103/112 are justified and supported by adequate rationale. This rationale has been established from the information gathered in the nearly five years of careful analysis and study which included public hearings, and input by carriers and shippers prior to adopting final rules. The Bureau published an Advanced Notice of Proposed Rule Making on June 27, 1972, which first established the intent to promulgate new requirements pertaining to the transportation of hazardous materials. In that document, five problem areas were identified which stated that the regulations:

(1) Generally were not addressed to more than one hazard;

(2) Did not in all instances require disclosure of the presence of hazardous materials in transport vehicles;

(3) Were not addressed to the different hazard characteristics of a mixed load of hazardous materials;

(4) Did not provide sufficient information whereby fire fighting and other emergency response personnel can acquire adequate immediate information to handle emergency situations; and

(5) Are inconsistent in their application to the different modes of transport.

The Bureau feels that the major problems identified nearly five years ago have in fact been solved by the amendments made under this docket.

A number of petitioners have urged that the Bureau reconsider its position relative to the use of abbreviations or codes on shipping papers. The Bureau believes, however, that sufficient and adequate information, for purposes of safety, must be conveyed on shipping papers in a uniform and readable manner. In addition, emergency response personnel must be able to quickly identify hazards of materials being transported in order that appropriate action can be initiated immediately. The use of codes and abbreviations in the past have not satisfied these requirements.

Several petitioners made comments concerning problems they envision relative to new requirements for dual labeling of certain materials. New requirements prescribe that a material classed as a flammable liquid that also meets the definition of a Class B poison must have both labels on the package. In the past, some materials having both hazards have been transported with foodstuff, but since the secondary hazard of a Poison B was not required to be identified, carriers unknowingly transported poisonous materials with foodstuffs. Now, however, these same materials should not be accepted by carriers transporting foodstuffs since the package is labeled "Poison" in addition to "Flammable liquid." The Bureau does not believe any significant problems will be experienced due to the dual labeling requirements now prescribed.

Since all of the comments, suggestions, and petitions have now been addressed either through this preamble or by direct communication with the petitioner, this will be the final document dealing with the consolidation of the hazardous materials regulations.

LIST OF SECTIONS AFFECTED AND SUMMARY OF CHANGES MADE IN THIS PUBLICATION

PART 171

§ 171.8 Definition of "consumer commodity" changed to include materials suitable for retail sales even if not specifically so intended. This definition includes items packaged suitably for retail sale but which may in fact be used in some other fashion.

§ 171.15 Update of section references dealing with immediate notification of radioactive contamination.

PART 172

§ 172.100 Clarification of appropriate optional use of prefix "mono".

§ 172.101 Revisions to Hazardous Materials Table to correct errors and incorporate changes made by this docket publication.

§ 172.201 Contrast requirements for basic shipping paper descriptions clarified.

§ 172.203 Replacement of repetitive language in shipping paper requirements for empty tank cars by reference to § 174.25(c).

§ 172.204 Addition of "is" in fifth line.

§ 172.304 Clarification: "Requirements" changed to "specifications" in section heading.

§ 172.306 Clarification of section heading and alternate marking exceptions.

§ 172.312 Addition of limited quantity exception from closure orientation for liquids. Comments were received which objected to the requirements that packages of flammable liquids in limited quantities be shipped with closures upward and so marked. The MTB agrees and has revised the section to include the previous exception of certain limited quantities of flammable liquids since the record does not reveal any problems with the exception.

§ 172.328 Editorial reorganization of text on cargo tank marking size.

§ 172.330 Clarification of marking distinction between tank cars and multiunit DOT 106 and 110 tank car tanks; addition of marking exception for use of chlorine label.

§ 172.400 Editorial contraction of text on portable tank labeling exception.

§ 172.406 Spelling correction.

§ 172.504 (a): Clarification of applicability of general placarding requirements to freight containers. Table I: Clarification of placarding for Radioactive Yellow III label. Addition of exception for Corrosive placarding of uranium hexaflouride; shipment less than 1,000 lbs. excepted, paralleling § 172.504 (c). Table II: Reference to existing placarding exception for materials corrosive only to steel. (c): Freight containers containing less than 1,000 lbs. of hazardous materials excepted from highway placarding in same fashion as motor vehicles.

§ 172.508 Clarification of requirement that placarding of motor vehicles, transport containers and portable tanks on rail cars must be equivalent to rail car placarding to be acceptable in lieu of rail car placarding. An additional section reference is added to reflect this intent.

§ 172.512 (a): "Freight container placarding table" is deleted. This table is a graphic summary of placarding requirements, but has caused confusion. (b): Change in reference to clarify placarding exception for smaller freight containers which are properly labeled.

§ 172.514 Section reference correction, without substantive change.

Appendix B to Part 172—Amendment of list of Empty placards to include those for which the Flammable-empty placard specifications are representative.

PART 173

§ 173.6 Clarification of pressure integrity of packages containing liquids to be shipped by air. The higher of the two existing standards applies.

§ 173.8 Spelling correction.

§ 173.29 (a) and (b) consolidated, (c)-(g) redesignated (b)-(f). (b): Nonmandatory loading instruction deleted as unnecessary (d): Reference to EMPTY labor corrected. (e): Same as (d). (f): No change.

§ 173.33 (c): Deleted. This paragraph addressed special permits for nonspecification cargo tanks. Exemption procedures are now set out in Part 107.

§ 173.116 (c): Deleted. Outage requirement for 150 proof spirits is adequately addressed in the more general paragraphs of this section.

§ 173.119 (a) and (m): Addition of prohibition against bulk shipment of organic peroxides in cargo tanks and tank cars. Organic peroxides were not a separate class before amendment of the regulations under HM-103/112 and were generally treated as oxidizing materials. In 1973 (38 FR 20837, August 3, 1973), paragraphs (m)(10) through (m)(15) were added to this section authorizing bulk rail and highway shipments of flammable liquids which are also oxidizing materials. That this change authorized shipment of organic peroxides was not fully realized until those substances were given a separate class under HM-

103/112. Although there may exist some liquid organic peroxides suitable for bulk shipment, a general authorization for such bulk shipments cannot be justified, was not intended, and is being withdrawn until such time as packaging specification for specifically identified organic peroxides can be published. (d): Correction of typographical error.

§ 173.124 (a)(5): Amendment of ethylene oxide tank car marking in favor of existing standard marking requirements of § 172.330.

§ 173.217 Correction of typographical error and section reference.

§ 173.232 Increase in allowable quantities of aluminum powder shipped in portable tanks. Increase from 5,000 to 6,500 pounds gross weight is justified by the shipping record and reflects package size used by shippers.

§ 173.244 Deletion of paragraph (c) which concerns packaging and exceptions for corrosive solids already substantially addressed in preceding paragraphs of this section.

§ 173.249 Clarification of packaging required for certain alkaline liquids presently authorized for shipment by passenger aircraft.

§ 173.263 Revision to authorize 15 percent hydrochloric acid to be shipped as ORM–D (see comment under § 173.1200).

§ 173.276 Deletion of reference to percentage concentration of hydrazine. "Hydrazine, aqueous solution" is an asterisk entry in § 172.101 and the shipper is responsible for determining whether the solution meets a hazard definition.

§ 173.288 Typographical correction.

§ 173.294 Clarification of packaging for monochloracetic acid solution. This section is intended to address packaging for both anhydrous and solution forms.

§ 173.300 Correction of classification for flammable compressed gas as "flammable gas". "Flammable compressed gas" is not an authorized class.

§ 173.301 Clarification of paragraph (i), concerning testing of compressed gas cylinders in domestic use, to reference existing exception in paragraph (j).

§ 173.306 Correction of two inaccurate section references.

§ 173.315 Note 14: Typographical correction. Correction of section references concerning MC 330 and 331 cargo tank marking and shipping paper entries for anhydrous ammonia. Note 15: Section reference correction as above for anhydrous ammonia.

§ 173.332 Amendment of tank car marking requirement for hydrocyanic acid in favor of standard marking requirements of § 172.330.

§ 173.338 Deleted. See 41 FR 15985 (April 15, 1976).

§ 173.343 Clarification of Class B poison definition eleminating extraneous reference and excluding Irritating materials.

§ 173.345 (a): Addition of exception for limited quantities of Poison B liquids from placarding and from highway and rail requirements other than those relating to shipping papers and to prohibition against commingling with foodstuffs. This exception parallels similar exceptions for limited quantity shipments of other classes of hazardous materials. (d): Clarification of permissible ORM–D classification of certain medicines.

§ 173.354 Amendment of tank car marking requirement for motor fuel antiknock compound in favor of standard marking requirements of § 172.330.

§ 173.364 Clarification of permissible ORM–D classification of certain medicines otherwise subject to Poison B solid classification.

§ 173.384 Addition of provisions for shipment of monochloracetone, stabilized. This same provision was deleted as proposed under HM-103/112, based on erroneous information that the material was not being shipped.

§ 173.386 "Exceptions" substituted for "Exemptions", as the latter is properly used in reference to procedures under Part 107.

§ 173.392 Correction of section references relating to marking, labeling and placarding requirements for low specific activity radioactive material.

Appendix following § 173.432—deletion of appendix. This information already appears in Tables 1 and 2 of Appendix A to Part 172.

§ 173.800 Deletion of ORM–B classification of ammonium hydrogen flouride. Several petitioners indicate that classification as a corrosive material may be more appropriate, and the classification consequently has been withdrawn pending further evaluation.

§ 173.1025 Provision for water shipment of non-ferrous metal shavings in compressed bales. This manner of shipment is common and was previously authorized under 46 CFR Part 146.

§ 173.1200 (a): Typographical corrections. (a)(2)(iii): Revision permitting shipment as ORM–D of corrosive liquids in concentrations of 15 percent or less in 1 qt. inside containers. This revision is based on the fact that 15 percent solutions are available through consumer retail outlets and upon the excellent safety record in commercial transportation of such liquids in 1 qt. containers. The 15 percent limitation will be subject to further reevaluation in the future. (a)(8)(ii): Addition of requirement that metal containers be used to ship compressed gases in quantities between 7.22 and 50 cubic inches. The word "metal", appearing in (a)(8)(ii), was inadvertently omitted.

Appendix A—clarification of procedures used to test skin corrosion.

PART 174

§ 174.5 Deletion of requirement that railway fusees be carried in a metal box. Fusees are not explosives and may be carried by railway personnel for immediate use.

§ 174.8 Clarification of inspection requirements applicable to only those placarded cars that are loaded.

§ 174.10 (a): Deletion of roof inspection for cars laden with Explosives. Outside roof inspection is not practical. (c) Deletion of format requirement for freight bill placarding endorsement. This provision already appears in § 174.25(a).

§ 174.12 Amendment of requirement that intermediate carrier maintain file copy of shipper's certificate. The MTB agrees with comments suggesting that the origin carrier rather than intermediate carrier is the proper party to retain shippers' certificates.

§ 174.24 Transfer of (b) to § 174.26. Clarification of nonapplicability of general operating instructions to ORM classes.

§ 174.25 (a)(2)(ii): Elimination of spacing requirement for placard endorsement on rail shipping papers to facilitate computer processing. (b): Clarification of initial switching order requirements as applying only to loaded rail cars; deletion of shipper certification thereon when carrier has certified bill of lading; and deletion of requirement for placard endorsement thereon. (c): Rearrangement of text, and repeat of EMPTY placard requirements of § 172.510(c).

§ 174.26 (b): Elimination of "separate document" requirement for train consist showing car location. Documents required in paragraphs (a) and (b) may be separate, but need not be. (c): Former § 174.24(b).

§ 174.63 Substitution of "freight container" for "portable container" in section concerning lading requirements. "Freight container" is defined § 171.8 and includes "portable container", a term which is not defined.

§ 174.69 Revision to reflect existing requirements for removing, replacing or reversing placards on empty tank cars.

§ 174.84 Switching requirements clarified as applicable to flatcars carrying placarded freight containers.

§ 174.88 Placement of rail placarded "Explosives A" clarified with respect to occupied caboose.

§ 174.89 Placement of rail car placarded "Radioactive" clarified as applying only to loaded cars.

§ 174.104 Textual reorganization without substantive change.

§ 174.112 Addition of section references to reflect existing exceptions to closed rail car transportation of Class A explosives.

§ 174.480 Text change to reflect section heading, prohibiting comingling of poisonous flammable solids with foodstuffs.

§ 174.810 Authorization for wet electric storage batteries to be shipped in properly vented refrigerator or "plug-door" cars. Venting is intended to eliminate chance accumulation of hydrogen gas.

PART 175

§ 175.10 "Part" changed to "subchapter" to clarify exception from Hazardous Materials Regulations of certain items carried by air.

§ 175.30 Prohibition against accepting damaged containers for air carriage clarified. This section is not intended to prohibit acceptance of containers bearing superficial dents not affecting package integrity.

PART 176

§ 176.11 Clarification of use of IMCO Code for foreign shipments. Compliance with DOT Hazardous Materials Regulations is required for materials not addressed by IMCO requirements.

§ 176.30 Clarification of dangerous cargo manifest. This document is not intended to include any material not subject to the Hazardous Materials Regulations or the IMCO Code.

§ 176.45 Substitution of "Captain of the Port" for "District Commander". Coast Guard response to notification of damaged package can be more expeditiously handled in this manner.

§ 176.48 Similar change for same reasons as above.

§ 176.52 Same.

§ 176.63 Elimination of requirement for on-deck sun protection for portable tanks. The tanks are of such size as to render erection of shade structures impractical.

§ 176.74. Relaxation of 50 percent total open deck stowage limitation. The intent of this section as published was to establish a practical limitation. However the provision was not sufficiently detailed to be used so it is being made advisory rather than mandatory.

§ 176.83 (d)(3): Clarification of alternative nature of segregation requirements for containers stowed on or under deck. Some confusion exists as to whether fore-and-aft and athwartships separation requirements are additive. They are not. As between two containers, either fore-and-aft or athwartships separation is required, but not both.

§ 176.905 (c): Editorial. (i): Addition of exception to stowage requirements for vehicles when stowed in space especially suited for vehicles. (1): Clarification of stowage of vehicular equipment with vehicles, formerly contained in (i)(2). Vehicular equipment may be stowed with vehicles.

GRANDFATHER CLAUSE

A number of commenters have requested an extension of the mandatory compliance dates. The bureau has reviewed the submitted comments and does not believe sufficient justification has been presented for an extension of the compliance dates. However, it has concern that there is a large package inventory and that shippers did not have sufficient time to make changes in their packaging, marking, and labeling of hazardous materials. To provide relief from this burden, the Bureau has decided to extend the grandfather clause to January 1, 1977. This will provide the time required to reduce large inventories of packagings that complied with regulations in effect before July 1, 1976.

The extension of the grandfather clause provides that a package which is filled, marked, or labeled before January 1, 1977, in accordance with regulations in effect on June 30, 1976, may be offered for transportation and transported before July 1, 1977, even though it may not comply with the package, marking, and labeling provision amendments published in Docket HM-103/112 and effective on July 1, 1976.

In consideration of the foregoing, 49 CFR Parts 171 through 176 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

§ 171.8 [Amended]

1. § 171.8 is amended by changing the word "and" in the third line of the definition of "Consumer commodity" to read "or."

2. In § 171.15 paragraph (a)(4) is revised to read as follows:

§ 171.15 Immediate notice of certain hazardous materials incidents.

(a) * * *

(4) Fire, breakage, spillage, or suspected radioactive contamination occurs involving shipment of radioactive material. (See also §§ 174.45, 175.45, 176.48, and 177.807 of this subchapter.); or

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

3. In § 172.100 the introductory text of paragraph (c) is amended by changing "Compound, cleaning" in the fifth sentence to read "Compound, cleaning liquid"; paragraph (c)(7) is revised; the introductory text of paragraph (h) is amended by changing the word "specified" in the first line to read "specifies."

§ 172.100 Purpose and use of the table.

* * * * *

(c) * * *

(7) The use of the prefix "mono" is optional in any shipping name when appropriate. Thus, monoethanolamine may be used interchangeably with ethanolamine. In the "trichloromonofluoromethane" the term "mono" is considered as a prefix to the term "fluoromethane."

* * * * *

4. § 172.101 is revised as follows:

§ 172.101 Hazardous Materials Table.

§172.101 Hazardous Materials Table

(1) */W/A	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(4) Label(s) required (if not excepted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
	Accumulator, pressurized (*pneumatic or hydraulic*), *containing nonflammable gas*	Nonflammable gas	Nonflammable gas	173.306		No limit	No limit	1,2	1,2	
	Acetal	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,3	4	
	Acetaldehyde (*ethyl aldehyde*)	Flammable liquid	Flammable liquid	None	173.119	Forbidden	10 gallons	1,3	5	
A	Acetaldehyde ammonia	ORM-A	None	173.505	173.510	No limit	No limit			
*	Acetic acid (*aqueous solution*)	Corrosive material	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	Stow separate from nitric acid or oxidizing materials
	Acetic acid, glacial	Corrosive material	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	Stow separate from nitric acid or oxidizing materials. Segregation same as for flammable liquids
	Acetic anhydride	Corrosive material	Corrosive	173.244	173.245	1 quart	1 gallon	1,2	1,2	
	Acetone	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,3	4	
	Acetone cyanohydrin	Poison B	Poison	None	173.346	Forbidden	55 gallons	1	5	Shade from radiant heat. Stow away from corrosive materials
	Acetone oil	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Acetonitrile	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1	4	Shade from radiant heat
	Acetyl benzoyl peroxide, solid	Forbidden								
	Acetyl benzoyl peroxide solution, *not over 40% peroxide*	Organic peroxide	Organic peroxide	None	173.222	Forbidden	1 quart	1,2	1	
	Acetyl bromide	Corrosive material	Corrosive	173.244	173.247	1 quart	1 gallon	1	1	Keep dry. Glass carboys not permitted on passenger vessels
	Acetyl chloride	Flammable liquid	Flammable liquid	173.244	173.247	1 quart	1 gallon	1	1	Stow away from alcohols. Keep cool and dry. Separate longitudinally by an intervening complete compartment or hold from explosives
	Acetylene	Flammable gas	Flammable gas	None	173.303	Forbidden	300 pounds	1	1	Shade from radiant heat
A	Acetylene tetrabromide	ORM-A	None	173.505	173.510	10 gallons	55 gallons			
	Acetyl iodide	Corrosive material	Corrosive	173.244	173.247	1 quart	1 gallon	1	1	Keep dry. Glass carboys not permitted on passenger vessels
	Acetyl peroxide solution, *not over 25% peroxide*	Organic peroxide	Organic peroxide	173.153	173.222	Forbidden	1 quart	1,2	1	
	Acid butyl phosphate	Corrosive material	Corrosive	173.244	173.245	1 quart	5 gallons	1,2	1,2	Glass carboys in hampers not permitted under deck
	Acid carboy empty. *See* Carboy, empty									
*	Acid, liquid, n.o.s.	Corrosive material	Corrosive	173.244	173.245	1 quart	5 pints	1	4	Keep cool
*	Acid, sludge	Corrosive material	Corrosive	None	173.248	Forbidden	1 quart	1,2	1	
	Acrolein, inhibited	Flammable liquid	Flammable liquid and Poison	None	173.122	Forbidden	1 quart	1,2	5	Keep cool. Stow away from living quarters
	Acrylic acid	Corrosive material	Corrosive	173.244	173.245	1 quart	5 pints	1	1	
	Acrylonitrile	Flammable liquid	Flammable liquid and Poison	None	173.119	Forbidden	1 quart	1,2	5	Keep cool
	Actuating cartridge, explosive (*fire extinguisher, or valve*)	Class C explosive	Explosive C	173.114		50 pounds	150 pounds	1,2	1,2	Keep cool and dry
*	Adhesive, n.o.s. *See* Cement, liquid, n.o.s.									
	Aerosol product, each aerosol container exceeding 50 cubic inches capacity. See Compressed gas, n.o.s.									
*	Air, compressed	Nonflammable gas	Nonflammable gas	173.306	173.302	150 pounds	300 pounds	1,2	1,2	
	Aircraft rocket engine (*Commercial*)	Flammable solid	Flammable solid	None	173.238	Forbidden	550 pounds	1,3	5	
	Aircraft rocket engine igniter (*Commercial*)	Flammable solid	Flammable solid	None	173.238	Forbidden	25 pounds	1,3	5	
	Airplane flare. See Fireworks, special									
*	Alcohol, n.o.s.	Flammable liquid	Flammable liquid	173.118	173.125	1 quart	10 gallons	1,2	1	
*	Alcohol, n.o.s.	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
	Aldrin	Poison B	Poison	173.364	173.376	50 pounds	200 pounds	1,2	1,2	
A	Aldrin, cast solid	ORM-A	None	173.505	173.510	No limit	No limit			
	Aldrin mixture, dry (*with more than 65% aldrin*)	Poison B	Poison	173.364	173.376	50 pounds	200 pounds	1,2	1,2	
A	Aldrin mixture, dry, with 65% or less aldrin	ORM-A	None	173.505	173.510	No limit	No limit			

§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/W/A	Hazardous materials descriptions and proper shipping names	Hazard class	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
	Aldrin mixture, liquid (*with more than 60% aldrin*)	Poison B	Poison	173.345	173.361	1 quart	55 gallons	1,2	1,2	If flash point less than 141 DEG F., segregation same as for flammable liquids
A	Aldrin mixture, liquid, with 60% or less aldrin	ORM-A	None	173.505	173.510	No limit	No limit			
	Alkaline corrosive battery fluid	Corrosive material	Corrosive	173.244	173.249 173.257	1 quart	5 gallons	1,2	1,2	
	Alkaline corrosive battery fluid with empty storage battery	Corrosive material	Corrosive	None	173.258	Forbidden	5 pints	1,2	1,2	
*	Alkaline corrosive liquid, n.o.s.	Corrosive material	Corrosive	173.244	173.249	1 quart	5 gallons	1,2	1,2	
*	Alkaline liquid, n.o.s.	Corrosive material	Corrosive	173.244	173.249	1 quart	5 gallons	1,2	1,2	
*	Alkanesulfonic acid	Corrosive material	Corrosive	173.244	173.245	5 pints	1 gallon	1,2	1	
	Alkyl aluminum halides. *See* Pyrophoric liquid, n.o.s.									
A	Allethrin	ORM-A	None	173.505	173.510	No limit	No limit			
	Allyl alcohol	Flammable liquid	Flammable liquid and Poison	173.118	173.119	1 quart	10 gallons	1,2	1	
	Allyl bromide	Flammable liquid	Flammable liquid	173.118	173.119	Forbidden	10 gallons	1,2	1	
	Allyl chloride	Flammable liquid	Flammable liquid	None	173.119	Forbidden	10 gallons	1,3	5	
	Allyl chlorocarbonate	Flammable liquid	Flammable liquid	None	173.288	Forbidden	5 pints	1	5	Keep dry. Separate longitudinally by an intervening complete hold or compartment from explosives. Segregation same as for corrosive materials
	Allyl chloroformate. *See* Allyl chlorocarbonate									
	Allyl trichlorosilane	Corrosive material	Corrosive	None	173.280	Forbidden	10 gallons	1	1	Keep dry
	Aluminum alkyls. *See* Pyrophoric liquid, n.o.s.									
	Aluminum bromide, anhydrous	Corrosive material	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	Keep dry
	Aluminum dross, wet *or* hot. *See* Sec. 173.173									
	Aluminum hydride	Flammable solid	Flammable solid and Dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solid labeled Dangerous When Wet
*	Aluminum, liquid *or* paint. *See* Paint, enamel, lacquer stain, shellac, varnish, etc.									
*	Aluminum, metallic, powder	Flammable solid	Flammable solid	173.232	173.232	25 pounds	100 pounds	1,2	1,2	Keep dry. Segregation same as for flammable solids labeled dangerous when wet
	Aluminum nitrate	Oxidizer	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	
*	Aluminum phosphate solution	Corrosive material	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Aluminum phosphide	Flammable solid	Flammable solid and Dangerous when wet	None	173.154	Forbidden	25 pounds	1,2	1,2	Stow away from acids and oxidizing materials
	Amatol. *See* High explosive									
	2-(2-Aminoethoxy) ethanol	Corrosive material	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	N-Aminoethylpiperazine	Corrosive material	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Aminopropyldiethanolamine	Corrosive material	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	n-Aminopropylmorpholine	Corrosive material	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	bis (Aminopropyl) piperazine	Corrosive material	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Ammonia, anhydrous	Nonflammable gas	Nonflammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	4	Stow in well ventilated space
	Ammonia solution (*containing more than 44% ammonia*)	Nonflammable gas	Nonflammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	4	Stow in well ventilated space
	Ammonia solution (containing 44% or less ammonia in water). *See* Ammonium hydroxide									
	Ammonium arsenate, solid	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	Stow away from alkaline corrosives
	Ammonium bifluoride. *See* Ammonium hydrogen fluoride									

§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/W/A	Hazardous materials descriptions and proper shipping names	Hazard class	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
	Ammonium chlorate	Forbidden								
	Ammonium dichromate (*ammonium bichromate*)	Oxidizer	Oxidizer	173.153	173.154 173.235	25 pounds	100 pounds	1,2	1,2	
A	Ammonium fluoride	ORM-B	None	173.505	173.510 173.800	25 pounds	100 pounds			
*	Ammonium hydrogen fluoride solution	Corrosive material	Corrosive	173.244	173.245	1 quart	5 gallons	1,2	1,2	Keep dry
A	Ammonium hydrogen sulfate	ORM-B	None	173.505	173.510 173.800	25 pounds	100 pounds			
A	Ammonium hydrosulfide solution	ORM-A	None	173.505	173.510 173.605	10 gallons	55 gallons			
*	Ammonium hydroxide (*containing not more than 44% ammonia*)	Corrosive material	Corrosive	173.244	173.245	2 gallons	2 gallons	1	4	
	Ammonium nitrate (no organic coating)	Oxidizer	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	
	Ammonium nitrate (organic coating)	Oxidizer	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	
	Ammonium nitrate-carbonate mixture	Oxidizer	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	
	Ammonium nitrate fertilizer, *containing no more than 0.2% carbon*	Oxidizer	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	
	Ammonium nitrate-fuel oil mixture. See Nitro carbonitrate or *Explosive, Class A or B*									
*	Ammonium nitrate mixed fertilizer	Oxidizer	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	
*	Ammonium nitrate-phosphate	Oxidizer	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	
*	Ammonium perchlorate	Oxidizer	Oxidizer	173.153	173.154 173.239a	25 pounds	100 pounds	1,2	4	Stow away from powdered metals
*	Ammonium perchlorate. *See* High explosives									
	Ammonium permanganate	Oxidizer	Oxidizer	None	173.154	Forbidden	Forbidden	1,2	1,2	Separate from ammonium compounds and hydrogen peroxide. This material may be forbidden in water transportation by certain countries
	Ammonium picrate. See High explosive									
	Ammonium picrate, wet (*with 10% or more water*)	Flammable solid	Flammable solid	173.192		1 pound	1 pound	1	4	Stow away from heavy metals and their compounds
A	Ammonium polysulfide solution	ORM-A	None	173.505	173.510 173.605	10 gallons	55 gallons			
W	Ammonium sulfate nitrate	ORM-C	None	173.505	173.910			1,2	1,2	Must not be accepted for transportation while hot. Separate by an intervening hold or compartment from Class A explosives. Separate from other explosives, corrosive materials, flammable solids, liquids, or gases, oxidizing materials, organic peroxides, or organic materials
*	Ammonium sulfide solution	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1,2	
	Ammunition, chemical (containing a Poison A liquid or gas). See Chemical ammunition (containing a Poison A material)									
	Ammunition, chemical (containing a Poison B material). See Chemical ammunition (containing a Poison B material)									
	Ammunition, chemical (containing an irritating liquid or solid). See Chemical ammunition (containing an irritating material)									
	Ammunition, chemical, explosive, with Poison A material	Class A explosive	Explosive A and Poison gas	None	173.59	Forbidden	Forbidden	6	5	No other cargo may be stowed in the same hold with these items
	Ammunition, chemical, explosive, with Poison B material	Class A explosive	Explosive A and Poison	None	173.59	Forbidden	Forbidden	6	5	No other cargo may be stowed in the same hold with these items
	Ammunition, chemical, explosive, with irritant	Class A explosive	Explosive A and Irritant	None	173.59	Forbidden	Forbidden	6	5	No other cargo may be stowed in the same hold with these items
	Ammunition for cannon with empty projectile	Class B explosive	Explosive B	None	173.89	Forbidden	Forbidden	1,2	5	
	Ammunition for cannon with explosive projectile	Class A explosive	Explosive A	None	173.54	Forbidden	Forbidden	6	5	
	Ammunition for cannon with gas projectile	Class A explosive	Explosive A	None	173.54	Forbidden	Forbidden	6	5	
	Ammunition for cannon with illuminating projectile	Class A explosive	Explosive A	None	173.54	Forbidden	Forbidden	6	5	
	Ammunition for cannon with incendiary projectile	Class A explosive	Explosive A	None	173.54	Forbidden	Forbidden	6	5	
	Ammunition for cannon with inert loaded projectile	Class B explosive	Explosive B	None	173.89	Forbidden	Forbidden	1,2	5	

§172.101 Hazardous Materials Table (cont'd)

(1) */ W/ A	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(4) Label(s) required (if not excepted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
	Ammunition for cannon with smoke projectile	Class A explosive	Explosive A	None	173.54	Forbidden	Forbidden	6	5	
	Ammunition for cannon with solid projectile	Class B explosive	Explosive B	None	173.89	Forbidden	Forbidden	1,2	5	
	Ammunition for cannon without projectile	Class B explosive	Explosive B	None	173.89	Forbidden	Forbidden	1,2	5	
	Ammunition, non-explosive			173.55						
	Ammunition for small-arms with explosive projectile	Class A explosive	Explosive A	None	173.58	Forbidden	Forbidden	6	5	
	Ammunition for small-arms with incendiary projectile	Class A explosive	Explosive A	None	173.58	Forbidden	Forbidden	6	5	
	Ammunition, rocket. See Rocket ammunition									
	Ammunition, small-arms. *See* Small-arms ammunition									
	Amyl acetate	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1,2	
	Amyl acid phosphate	Corrosive material	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Amylamine	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Amyl chloride	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Amylene, *normal*	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,3	1,3	
	Amyl formate	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Amyl mercaptan	Flammable liquid	Flammable liquid	None	173.141	Forbidden	10 gallons	1,2	1	
	Amyl nitrite	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,3	4	
	Amyl trichlorosilane	Corrosive material	Corrosive	None	173.280	Forbidden	10 gallons	1	5	Keep dry
	Anhydrous ammonia. *See* Ammonia, anhydrous									
	Anhydrous hydrazine. *See* Hydrazine, anhydrous									
	Anhydrous hydrofluoric acid. *See* Hydrogen fluoride									
	Aniline oil drum, empty *See* 173.347(d)	Poison B						1,2	1	Do not accept unless returnable package notice is on drum and the instructions thereon have been carried out
	Aniline oil, liquid	Poison B	Poison	None	173.347	Forbidden	55 gallons	1,2	1,2	Stow away from oxidizing materials and acids
	Anisoyl chloride	Corrosive material	Corrosive	173.244	173.279	1 quart	1 quart	1	1	Keep dry
*	Antifreeze compound, liquid	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Antifreeze compound, liquid	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Antifreeze preparation, liquid	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Antifreeze preparation, liquid	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
	Antimonous chloride. *See* Antimony trichloride									
A	Antimony lactate, solid	ORM-A	None	173.505	173.510	No limit	No limit			
	Antimony pentachloride	Corrosive material	Corrosive	None	173.247	1 quart	1 quart	1	1	Keep dry. Glass carboys not permitted on passenger vessels
*	Antimony pentachloride solution	Corrosive material	Corrosive	173.244	173.245	1 quart	5 pints	1	1	Keep dry. Glass carboys not permitted on passenger vessels
	Antimony pentafluoride	Corrosive material	Corrosive	None	173.246	Forbidden	25 pounds	1	5	Keep dry
A	Antimony potassium tartrate solid	ORM-A	None	173.505	173.510	No limit	No limit			
A	Antimony sulfide, solid	ORM-A	None	173.505	173.510	No limit	No Limit			
	Antimony trichloride, solid	Corrosive material	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	Keep dry
*	Antimony trichloride solution	Corrosive material	Corrosive	173.244	173.245	1 quart	5 pints	1	1	Keep dry
*	Aqua ammonia solution (*containing 44% or less ammonia*). *See* Ammonium hydroxide									
*	Argon	Nonflammable gas	Nonflammable gas	173.306	173.302 173.314	150 pounds	300 pounds	1,3	1,3	
*	Argon, liquid pressurized	Nonflammable gas	Nonflammable gas	None	173.304	Forbidden	300 pounds	1,3	1,3	
	Arsenic acid, solid	Poison B	Poison	173.364	173.366	50 pounds	200 pounds	1,2	1,2	
*	Arsenic acid solution	Poison B	Poison	173.345	173.348	1 quart	55 gallons	1,2	1,2	

§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/W/A	Hazardous materials descriptions and proper shipping names	Hazard class	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
*	Arsenical compound n.o.s., liquid, *or* arsenical mixture, n.o.s., liquid	Poison B	Poison	173.345	173.346	1 quart	55 gallons	1,2	1,2	
*	Arsenical compound n.o.s., solid, *or* arsenical mixture, n.o.s., solid	Poison B	Poison	173.364	173.367	50 pounds	200 pounds	1,2	1,2	Keep dry
	Arsenical dip, liquid (*sheep dip*)	Poison B	Poison	173.345	173.346	1 quart	55 gallons	1,2	1,2	
	Arsenical dust	Poison B	Poison	173.364	173.368	50 pounds	200 pounds	1,2	1,2	
	Arsenical flue dust	Poison B	Poison	173.364	173.368	50 pounds	200 pounds	1,2	1,2	
	Arsenic bromide, solid	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Arsenic chloride (*arsenious*) liquid. *See* Arsenic trichloride									
	Arsenic iodide, solid	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Arsenic pentoxide, solid	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Arsenic, solid	Poison B	Poison	173.364	173.366	50 pounds	200 pounds	1,2	1,2	
	Arsenic sulfide, solid	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	Keep dry
	Arsenic trichloride, liquid	Poison B	Poison	173.345	173.346	1 quart	55 gallons	1,2	1,2	
	Arsenic trioxide, solid	Poison B	Poison	173.364	173.366 173.368	50 pounds	200 pounds	1,2	1,2	
	Arsenic, white, solid. *See* Arsenic trioxide, solid									
	Arsenious acid, solid. *See* Arsenic trioxide, solid									
*	Arsenious and mercuric iodide solution	Poison B	Poison	173.345	173.346	1 quart	55 gallons	1,2	1,2	
	Arsine	Poison A	Poison gas and Flammable gas	None	173.328	Forbidden	Forbidden	1	5	
W	Asphalt, *at or above its flashpoint*	ORM-C	None	None	None	Forbidden	Forbidden	1	5	When applicable, no fire or residue thereof may be present in the furnace heating the substance while the vehicle is on board a cargo vessel
*	Asphalt, cut back	Flammable liquid	Flammable liquid	173.118	173.131	1 quart	10 gallons	1,2	1	
*	Asphalt, cut back	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
	Automobile, motorcycle, tractor, or other self-propelled vehicle See Motor Vehicle									
	Automobile, motorcycle, tractor, or other self-propelled vehicle, engine, or other mechanical apparatus, with charged electric storage battery, wet See Motor Vehicle									
	1-Aziridinyl phosphine oxide (tris). *See* Tris-(1-aziridinyl) phosphine oxide									
	Bags, burlap, used, must be classed for the hazardous material previously contained in bag. See 173.28, 173.29									
	Bags, sodium nitrate, empty and unwashed	Flammable solid	Flammable solid	None	173.155	Forbidden	25 pounds	1,2	1,2	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
*	Barium azide, wet, *50% or more water*	Flammable solid	Flammable solid	None	173.239	Forbidden	1 pound	1,2	1,2	Stow away from heavy metals
	Barium chlorate	Oxidizer	Oxidizer	173.153	173.163	25 pounds	100 pounds	1,2	1,2	Separate from ammonium compounds. Stow away from powdered metals
*	Barium chlorate, wet	Oxidizer	Oxidizer	173.153	173.163	25 pounds	200 pounds	1,2	1,2	Separate from ammonium compounds. Stow away from powdered metals
	Barium cyanide, solid	Poison B	Poison	173.370	173.370	25 pounds	200 pounds	1,2	1,2	Stow away from acids
	Barium nitrate	Oxidizer	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	
A	Barium oxide	ORM-B	None	173.505	173.510 173.800	25 pounds	100 pounds			
	Barium perchlorate	Oxidizer	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	Stow away from powdered metals
	Barium permanganate	Oxidizer	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	Separate from ammonium compounds and hydrogen peroxide
	Barium peroxide (*binoxide, dioxide*)	Oxidizer	Oxidizer	173.153	173.156	25 pounds	100 pounds	1,2	1,2	Keep dry
	Barrel, empty. *See* Drum, empty									
	Battery charger with electrolyte (acid or alkaline battery fluid)	Corrosive material	Corrosive	None	173.259	Forbidden	5 pints	1,2	1,2	
	Battery, dry. Not subject to Parts 170-189 of this subchapter									
	Battery, electric storage, wet	Corrosive material	Corrosive	173.260		Forbidden	No limit	1,2	1,2	

§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(4)	(5)		(6)		(7)		
				Packaging		Maximum net quantity in one package		Water shipments		
*/W/A	Hazardous materials descriptions and proper shipping names	Hazard class	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
	Battery, electric storage, wet, with automobile, auto parts, engine (*or other specifically named mechanical apparatus*)	Corrosive material	Corrosive	173.250	173.260	No limit	No limit	1,2	1,2	Keep dry
	Battery, electric storage, wet with containers of corrosive battery fluid	Corrosive material	Corrosive	None	173.258	Forbidden	2 gallons	1,2	1,2	
	Battery fluid. See Electrolyte (acid) *or* Alkaline battery fluid									
W	Battery parts (*plates, grids, etc., unwashed, exhausted*)	ORM-C	None	173.505	173.915			1,2	4	
	Benzaldehyde	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
	Benzene (*benzol*)	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Benzene phosphorus dichloride	Corrosive material	Corrosive	None	173.250a	Forbidden	5 pints	1	5	
	Benzene phosphorus thiodichloride	Corrosive material	Corrosive	None	173.250a	Forbidden	5 pints	1	5	
*	Benzine	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Benzoyl chloride	Corrosive material	Corrosive	173.244	173.247	1 quart	1 quart	1	1	Keep dry. Glass carboys not permitted on passenger vessels
	Benzoyl peroxide	Organic peroxide	Organic peroxide	None	173.157 173.158	Forbidden	25 pounds	1,2	1	
	Benzyl bromide (*bromotoluene, alpha*)	Corrosive material	Corrosive	None	173.281	Forbidden	5 pints	1	5	Keep dry
	Benzyl chloride	Corrosive material	Corrosive	173.244	173.295	Forbidden	1 quart	1	4	Keep dry
	Benzyl chloroformate (*or Benzyl chlorocarbonate*)	Corrosive material	Corrosive	None	173.288	Forbidden	5 pints	1	5	Keep dry
*	Beryllium compound, n.o.s.	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Black powder	Class A explosive	Explosive A	None	173.60	Forbidden	Forbidden	6	5	
	Black powder igniter with empty cartridge bag	Class C explosive	Explosive C	None	173.106	50 pounds	150 pounds	1,3	1,3	
	Blasting caps—(*1,000 or less*) (*Show actual number*)	Class C explosive	Explosive C	None	173.103	Forbidden	Forbidden	1,2	5	Portable magazine or metal locker. Do not stow blasting caps with any high explosive. Do not handle blasting caps at the same time high explosives are being loaded
	Blasting caps—(*more than 1,000*) (*Show actual number*)	Class A explosive	Explosive A	None	173.66	Forbidden	Forbidden	6	5	Do not stow blasting caps with any high explosive. Do not handle blasting caps at the same time high explosives are being loaded
	Blasting caps—electric (*1,000 or less*) (*Show actual number*)	Class C explosive	Explosive C	None	173.103	Forbidden	Forbidden	1,2	5	Portable magazine or metal locker. Do not stow blasting caps with any high explosive. Do not handle blasting caps at the same time high explosives are being loaded
	Blasting caps—electric (*more than 1,000*) (*Show actual number*)	Class A explosive	Explosive A	None	173.66	Forbidden	Forbidden	6	5	Magazine. Do not stow blasting caps with any high explosives. Do not handle blasting caps at the same time high explosives are being loaded
	Blasting caps with metal clad mild detonating fuse—(*1,000 or less*) (*Show actual number*)	Class C explosive	Explosive C	None	173.103	Forbidden	Forbidden	1,2	5	Portable magazine or metal locker. Do not stow blasting caps with any high explosive. Do not handle blasting caps at the same time high explosives are being loaded
	Blasting caps with metal clad mild detonating fuse—(*more than 1,000*) (*Show actual number*)	Class A explosive	Explosive A	None	173.66 173.67	Forbidden	Forbidden	6	5	Do not stow blasting caps with any high explosive. Do not handle blasting caps at the same time high explosives are being loaded
	Blasting caps with safety fuse—(*1,000 or less*) (*Show actual number*)	Class C explosive	Explosive C	None	173.103	Forbidden	Forbidden	1,2	5	Portable magazine or metal locker. Do not stow blasting caps with any high explosive. Do not handle blasting caps at the same time high explosives are being loaded
	Blasting caps with safety fuse—(*more than 1,000*) (*Show actual number*)	Class A explosive	Explosive A	None	173.66 173.67	Forbidden	Forbidden	6	5	Do not stow blasting caps with any high explosive. Do not handle blasting caps at the same time high explosives are being loaded
	Blasting gelatin. See High explosive									
	Blasting powder. See Black powder									
W	Bleaching powder, *containing 39% or less available chlorine*	ORM-C	None	173.505	173.920			1,2	1,2	Keep dry. Stow separate from flammable liquids and acids. (Stow away from oils, grease, and similar organic materials)
	Bleaching powder, *over 39% available chlorine*	Oxidizer	Oxidizer	173.153	173.217	50 pounds	100 pounds	1,2	1,2	Keep cool and dry
*	Boiler compound, liquid	Corrosive material	Corrosive	173.244	173.249	1 quart	10 gallons	1,2	1,2	
	Bomb, explosive. See Explosive bomb									

§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/W/A	Hazardous materials descriptions and proper shipping names	Hazard class	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
	Bomb, explosive with gas, smoke, or incendiary material. See Explosive bomb									
	Bomb, fireworks. See Fireworks, special									
	Bomb, gas, smoke, or incendiary, non-explosive. See Chemical ammunition									
	Bomb, incendiary, or smoke without bursting charge. See Fireworks, special									
	Bomb, practice, with electric primer or electric squib (non-explosive)			173.55						
	Bomb, sand-loaded or empty (non-explosive)			173.55						
A	Bone oil	ORM-A	None	173.505	173.510	No limit	No limit			
	Booster, explosive	Class A explosive	Explosive A	None	173.69	Forbidden	Forbidden	6	5	
*	Bordeaux arsenite, liquid	Poison B	Poison	173.345	173.346	1 quart	55 gallons	1,2	1,2	
*	Bordeaux arsenite, solid	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Boron tribromide	Corrosive material	Corrosive	None	173.251	Forbidden	1 quart	1	5	
	Boron trichloride	Corrosive material	Corrosive	None	173.251	Forbidden	1 quart	1,2	5	Stow in well ventilated space. Shade from radiant heat. Segregation same as for nonflammable gases
	Boron trifluoride	Nonflammable gas	Nonflammable gas and Poison	None	173.302	Forbidden	Forbidden	1	5	Stow away from living quarters and foodstuffs
	Boron trifluoride-acetic acid complex	Corrosive material	Corrosive	173.244	173.247	1 quart	1 gallon	1,2	1,2	
	Bottles, having previously contained a hazardous material and not cleaned, See 173.29									
W*	Box toe board (*nitrocellulose base*)	ORM-C	None	173.505	173.925			1,3	1,3	Provide cool stowage in a compartment having a temperature not exceeding 130 DEG F., well away from any sources of heat, and in position to protect or move, even to jettison in event of fire. Separate from explosives, flammable liquids or gases, oxidizing materials, organic peroxides, or corrosive liquids.
*	Box toe gum	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Box toe gum	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Bromine	Corrosive material	Corrosive	None	173.252	Forbidden	1 quart	1	5	Keep cool
	Bromine pentafluoride	Oxidizer	Oxidizer	None	173.246	Forbidden	100 pounds	1	5	Shade from radiant heat. Segregation same as for corrosives
	Bromine trifluoride	Oxidizer	Oxidizer and Poison	None	173.246	Forbidden	100 pounds	1	5	Shade from radiant heat. Segregation same as for corrosives
	Bromoacetic acid, solid	Corrosive material	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	Keep dry
*	Bromoacetic acid solution	Corrosive material	Corrosive	173.244	173.245	1 quart	1 quart	1,2	1,2	Glass carboys in hampers not permitted under deck
	Bromoacetone, liquid	Poison A	Poison gas	None	173.329	Forbidden	Forbidden	1	5	Segregation same as for flammable liquids
	Bromobenzene	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
	Bromotoluene, alpha. *See* Benzyl bromide									
	Brucine, solid (dimethoxy strychnine)	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
W	Burlap bags, cleaned (*vacuum cleaned, wheel cleaned, or otherwise mechanically brushed*). *See* Burlap cloth									
W	Burlap bags, new. *See* Burlap cloth									
AW	Burlap bags, used and unwashed, *or* not cleaned	ORM-C	None	173.930		No limit	No limit	1	1	Keep cool
W	Burlap cloth (*hessian*)	ORM-C	None	173.931				1,2	1,2	Keep dry. Stow away from organic liquids
	Burnt cotton, not repicked	Flammable solid	Flammable solid	None	173.159	Forbidden	Forbidden	1	5	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Burnt fiber	Flammable solid	Flammable solid	None	173.169	Forbidden	Forbidden	1,2	1,2	Separate from flammable gases or liquids, oxidizing materials or organic peroxides
	Burster, explosive	Class A explosive	Explosive A	None	173.69	Forbidden	Forbidden	6	5	
	Butadiene, inhibited	Flammable gas	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	1	Stow away from living quarters
	Butane *or* Liquefied petroleum gas. *See* Liquefied petroleum gas									

§172.101 Hazardous Materials Table (cont'd)

(1) */ W/ A	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(4) Label(s) required (if not excepted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
	Butyl acetate	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	n-Butyl acid phosphate. *See* Acid butyl phosphate									
*	Butyl alcohol. *See* Alcohol, n.o.s.									
	Butylamine	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Butyl bromide, *normal*	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Butyl chloride	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Butyl ether	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1,2	
	Butyl formate	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	n-Butyl isocyanate	Flammable liquid	Flammable liquid and Poison	173.118	173.119	1 quart	10 gallons	1,2	1	
	Butyl mercaptan	Flammable liquid	Flammable liquid	None	173.141	Forbidden	10 gallons	1,3	5	
	Butyl phosphoric acid. *See* Acid-butyl phosphate									
	Butyl trichlorosilane	Corrosive material	Corrosive	None	173.280	Forbidden	10 gallons	1	1	Keep dry
	Butyraldehyde	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Butyric acid	Corrosive material	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Calcium arsenate, solid	Poison B	Poison	173.364	173.367 173.368	50 pounds	200 pounds	1,2	1,2	
	Calcium arsenite, solid	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
*	Calcium bisulfite solution. *See* *Calcium hydrogen sulfite solution									
	Calcium carbide	Flammable solid	Flammable solid and dangerous when wet	None	173.178	Forbidden	25 pounds	1,2	1,2	Keep dry. Stow away from copper, its alloys, and salts
	Calcium chlorate	Oxidizer	Oxidizer	173.153	173.163	25 pounds	100 pounds	1,2	1,2	Separate from ammonium compounds. Stow away from powdered metals and cyanide
	Calcium chlorite	Oxidizer	Oxidizer	None	173.160	Forbidden	100 pounds	1,2	1,2	Separate from ammonium compounds powdered materials, and cyanides
AW	Calcium cyanamide, not hydrated, containing more than 0.1% calcium carbide	ORM-C	None	None	173.945	25 pounds	200 pounds	1,2	1,2	Segregation same as for flammable solids labeled Dangerous When Wet
*	Calcium cyanide, solid *or* Calcium cyanide mixture, solid	Poison B	Poison	173.370		25 pounds	200 pounds	1,2	1,2	Stow away from corrosive liquids. Keep dry
*	Calcium hydrogen sulfite solution	Corrosive material	Corrosive	173.244	173.245	1 quart	5 gallons	1,2	1,2	
	Calcium hypochlorite mixture, *dry*, (*containing more than 39% available chlorine*)	Oxidizer	Oxidizer	173.153	173.217	50 pounds	100 pounds	1,2	1,2	Keep cool and dry
	Calcium, metal	Flammable solid	Flammable solid and Dangerous when wet	173.153	173.154	25 pounds	100 pounds	1,2	4	Keep cool and dry. Segregation same as for flammable solids labeled Dangerous When Wet
	Calcium, metal, crystalline	Flammable solid	Flammable solid and Dangerous when wet	None	173.231	Forbidden	25 pounds	1,2	5	Keep cool and dry. Segregation same as for flammable solids labeled Dangerous When Wet
*	Calcium nitrate (*See Sec. 173.182 Note*)	Oxidizer	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	
AW	Calcium oxide	ORM-B	None	173.505	173.850	25 pounds	100 pounds	1,2	1,2	Keep dry. Stow away from explosives, acids, combustible materials, and ammonium salts
	Calcium permanganate	Oxidizer	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	Separate from ammonium compounds and hydrogen peroxide
	Calcium peroxide	Oxidizer	Oxidizer	173.153	173.156	25 pounds	100 pounds	1,2	1,2	Keep dry
	Calcium phosphide	Flammable solid	Flammable solid and Dangerous when wet	None	173.161	Forbidden	25 pounds	1	5	Keep cool and dry. Segregation same as for flammable solids labeled Dangerous When Wet
	Calcium resinate	Flammable solid	Flammable solid	None	173.166	Forbidden	125 pounds	1	5	
	Calcium resinate, fused	Flammable solid	Flammable solid	None	173.166	Forbidden	125 pounds	1	5	
AW	Camphene	ORM-A	None	173.505	173.610	No limit	No limit	1,3	1,3	Stow away from foodstuffs and living quarters
	Camphor oil	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	

§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/W/A	Hazardous materials descriptions and proper shipping names	Hazard class	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
	Cannon primers	Class C explosive	Explosive C	None	173.107	50 pounds	150 pounds	1,3	5	
	Caprylyl peroxide solution	Organic peroxide	Organic peroxide	173.153	173.221	1 quart	1 quart	1,2	4	Keep cool. Stow separate from combustible materials, explosives, or acids
	Caps, blasting. See Blasting caps									
	Caps, toy. See Toy caps									
A	Carbaryl	ORM-A	None	173.505	173.510	No limit	No limit			
	Carbolic acid, liquid *or* Phenol, liquid (*liquid tar acid containing over 50% benzophenol*)	Poison B	Poison	173.345	173.349	1 quart	55 gallons	1,2	1,2	
	Carbolic acid, *or* Phenol	Poison B	Poison	173.364	173.369	50 pounds	250 pounds	1,2	1,2	
	Carbon bisulfide, *or* Carbon disulfide	Flammable liquid	Flammable liquid	None	173.121	Forbidden	Forbidden	1	5	Keep cool. Not permitted on any vessel transporting explosives
*	Carbon dioxide, liquefied	Nonflammable gas	Nonflammable gas	173.306	173.304 173.314 173.315	150 pounds	300 pounds	1,2	1,2	
*	Carbon dioxide-nitrous oxide mixture	Nonflammable gas	Nonflammable gas	173.306	173.304	150 pounds	300 pounds	1,2	1,2	
*	Carbon dioxide-oxygen mixture	Nonflammable gas	Nonflammable gas	173.306	173.304	150 pounds	300 pounds	1,2	1,2	
AW	Carbon dioxide, solid, *or* Dry ice, *or* Carbonice	ORM-A	None	None	173.615	440 pounds	440 pounds	1	1	Stow away from open ventilators. Stow away from cyanides or cyanide mixtures, liquid or dry
	Carbon monoxide	Flammable gas	Flammable gas	173.306	173.302	Forbidden	150 pounds	1	4	
*	Carbon remover, liquid	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
AW	Carbon tetrachloride	ORM-A	None	173.505	173.620	1 quart	55 gallons	1,2	1,2	Stow away from living quarters
	Carbonyl chloride. See Phosgene									
	Carboys, empty, must be classed for the hazardous material previously contained in carboy. See 173.29									
	Cartridge bags, empty, with black powder igniter	Class C explosive	Explosive C	None	173.106	50 pounds	150 pounds	1,3	1,3	
	Cartridge cases, empty, primed	Class C explosive	Explosive C	None	173.107	50 pounds	150 pounds	1,3	1,3	
	Cartridge, practice ammunition	Class C explosive	Explosive C	None	173.101a	50 pounds	150 pounds	1,2	1,2	
	Case oil. See Gasoline *or* Naphtha									
	Casinghead gasoline. See Gasoline									
W	Castor beans	ORM-C	None	173.505	173.952			1,2	1,2	Stow away from living quarters and foodstuffs. Bulk shipments permitted in tight vans or containers only on cargo vessels (Castor beans only)
W	Castor pomace. *See* Castor beans									
	Caustic potash, dry, solid, flake, bead, *or* granular. *See* Potassium hydroxide, dry, etc.									
*	Caustic potash, liquid *or* solution. *See* Potassium hydroxide solution									
	Caustic soda, dry, solid, flake, bead, *or* granular. *See* Sodium hydroxide, dry, etc.									
*	Caustic soda, liquid *or* solution. *See* Sodium hydroxide solution									
W	*Cellosolve. See* Ethylene glycol monoethyl ether									
W	*Cellosolve acetate. See* Ethylene glycol monoethyl ether acetate									
*	Cement, adhesive, n.o.s. *See* Cement, liquid, n.o.s.									
*	Cement, container, linoleum, tile, *or* wallboard, liquid	Flammable liquid	Flammable liquid	173.118	173.132	1 quart	15 gallons	1,2	1	
*	Cement, leather	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Cement, liquid, n.o.s.	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Cement, liquid, n.o.s.	Flammable liquid	Flammable liquid	173.118	173.132	1 quart	10 gallons	1,2	1	
*	Cement, pyroxylin	Flammable liquid	Flammable liquid	173.118	173.132	1 quart	15 gallons	1,2	1	
*	Cement, roofing, liquid	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Cement, rubber	Flammable liquid	Flammable liquid	173.118	173.132	1 quart	15 gallons	1,2	1	
	Cesium metal	Flammable solid	Flammable solid and dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet

§172.101 Hazardous Materials Table (cont'd)

(1) */W/A	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(4) Label(s) required (if not excepted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
*	Charcoal, activated	Flammable solid	Flammable solid	173.162	173.162	25 pounds	200 pounds	1,3	1,3	
	Charcoal briquettes *or* briquets	Flammable solid	Flammable solid	173.162	173.162	50 pounds	50 pounds	1,2	1,2	
	Charcoal screenings, made from "pinon" wood	Flammable solid	Flammable solid	173.162	173.162	25 pounds	200 pounds	1,2	1,2	
	Charcoal screenings, wet	Forbidden								
	Charcoal, shell	Flammable solid	Flammable solid	173.162	173.162	25 pounds	200 pounds	1,2	1,2	
	Charcoal, wet	Forbidden								
	Charcoal, wood, ground, crushed, granulated, *or* pulverized	Flammable solid	Flammable solid	173.162	173.162	25 pounds	200 pounds	1,2	1,2	
	Charcoal, wood, lump	Flammable solid	Flammable solid	173.162	173.162	50 pounds	50 pounds	1,2	1,2	
	Charcoal wood screenings, other than "pinon" wood screenings	Flammable solid	Flammable solid	None	173.162	Forbidden	Forbidden	1	1	
	Charged oil well jet perforating gun (*total explosive contents in guns 20 pounds or more per motor vehicle*)	Class A explosive	Explosive A	None	173.53 173.80	Forbidden	Forbidden			Forbidden
	Charged oil well jet perforating gun (*total explosive contents in guns not exceeding 20 pounds per motor vehicle*)	Class C explosive	Explosive C	None	173.53 173.110	Forbidden	Forbidden			Forbidden
	Chemical ammunition explosive. See Ammunition, chemical, explosive									
	Chemical ammunition, nonexplosvie (*containing a Poison B material*)	Poison B	Poison	173.345	173.350	Forbidden	55 gallons			*See* correct shipping name of applicable Poison B material for stowage, special handling, and special segregation requirements
	Chemical ammunition, nonexplosive (*containing an irritating material*)	Irritating material	Irritant	None	173.383	Forbidden	20 pounds			*See* correct shipping name of applicable Irritant material for stowage, special handling, and special segregation requirements
	Chemical ammunition, nonexplosive (*containing a poison A material*)	Poison A	Poison gas	None	173.330	Forbidden	Forbidden			*See* correct shipping name of applicable Poison A material for stowage, special handling, and special segregation requirements
*	Chemical kit	Corrosive material	Corrosive	173.286		1 quart	1 quart	1,3	1,3	
*	Chlorate and borate mixture (*containing more than 28% chlorate*)	Oxidizer	Oxidizer	173.153	173.229	25 pounds	100 pounds	1,2	4	Stow away from ammonium compounds and away from powdered metals
*	Chlorate and magnesium chloride mixture (*containing more than 28% chlorate*)	Oxidizer	Oxidizer	173.153	173.229	25 pounds	100 pounds	1,2	4	Stow away from ammonium compounds, and away from powdered metals
	Chlorate explosive, dry. See High explosive									
	Chlorate, n.o.s.	Oxidizer	Oxidizer	173.153	173.163	25 pounds	100 pounds	1,2	4	Stow away from ammonium compounds and away from powdered metals
*	Chlorate, n.o.s., wet	Oxidizer	Oxidizer	173.153	173.163	25 pounds	200 pounds	1,2	4	Stow away from ammonium compounds and away from powdered metals
	Chlorate of potash. *See* Potassium chlorate									
	Chlorate of soda. *See* Sodium chlorate									
	Chlorate powder. See High explosive									
*	Chlordane, liquid	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
	Chloric acid. (*see* chlorine dioxide hydrate)									
	Chloride of phosphorus. *See* Phosphorus trichloride									
	Chloride of sulfur. *See* Sulfur chloride									
W	Chlorinated lime (*chloride of lime.*) *See* Bleaching powder									
	Chlorine	Nonflammable gas	Nonflammable gas and Poison	None	173.304 173.314 173.315	Forbidden	Forbidden	1,2	5	Stow in a well-ventilated space. Stow away from organic materials
	Chlorine dioxide hydrate, frozen	Oxidizer	Oxidizer and Poison	None	173.237	Forbidden	Forbidden			Forbidden
	Chlorine trifluoride	Oxidizer	Oxidizer and Poison	None	173.246	Forbidden	100 pounds	1,3	5	Stow in well ventilated area away from organic material
	Chloroacetic acid, solid	Corrosive material	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	Keep dry
*	Chloroacetic acid, liquid *or* solution. *See* Monochloroacetic acid, liquid *or* solution									
	Chloroacetophenone, gas, liquid, *or* solid (CN)	Irritating material	Irritant	None	173.382	Forbidden	75 pounds	1	5	
	Chloroacetyl chloride	Corrosive material	Corrosive	None	173.253	Forbidden	1 quart	1	5	Keep dry
	Chlorobenzene. *See* Chlorobenzol									
	Chlorobenzol	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1,2	

§172.101 Hazardous Materials Table (cont'd)

(1) */- W/ A	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(4) Label(s) required (if not excepted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
	p-Chlorobenzoyl peroxide	Organic peroxide	Organic peroxide	None	173.157 173.158	Forbidden	25 pounds	1	1	
	Chlorodinitrobenzene. See Dinitrochlorobenzene									
	Chlorodinitrobenzol. See Dinitrochlorobenzol, solid									
AW	Chloroform	ORM-A	None	173.505	173.630	10 gallons	55 gallons	1,2	1,2	Stow away from living quarters and foodstuffs
	4-Chloro-o-toluidine hydrochloride	Poison B	Poison	None	173.362	Forbidden	1 quart	1,2	1,2	
	Chlorophenyltrichlorosilane	Corrosive material	Corrosive	None	173.280	Forbidden	10 gallons	1	1	Keep dry
	Chloropicrin, absorbed	Poison B	Poison	None	173.357	Forbidden	Forbidden	1	5	Keep cool
	Chloropicrin and methyl chloride mixture	Poison A	Flammable gas and Poison gas	None	173.329	Forbidden	Forbidden	1	5	Keep cool
	Chloropicrin and nonflammable, nonliquefied compressed gas mixture	Poison A	Nonflammable gas and Poison gas	None	173.329	Forbidden	Forbidden	1	5	Keep cool
	Chloropicrin, liquid	Poison B	Poison	None	173.357	Forbidden	Forbidden	1	5	Keep cool
	Chloropicrin mixture (*containing no compressed gas or poison A liquid*)	Poison B	Poison	None	173.357	Forbidden	Forbidden	1	5	Keep cool
A	Chloroplatinic acid, solid	ORM-B	None	173.505	173.510 173.800	25 pounds	100 pounds			
	2-Chloropropene	Flammable liquid	Flammable liquid	None	173.119	Forbidden	10 gallons	1,2	5	
	Chlorosulfonic acid	Corrosive material	Corrosive	173.244	173.254	1 quart	1 quart	1	1	Keep dry. Glass carboys not permitted on passenger vessels
	Chlorosulfonic acid-sulfur trioxide mixture	Corrosive material	Corrosive	173.244	173.254	1 quart	1 quart	1	1	Keep dry. Glass carboys not permitted on passenger vessels
	Chromic acid mixture, dry	Oxidizer	Oxidizer	173.153	173.164	25 pounds	100 pounds	1,2	1,2	Stow away from foodstuffs
	Chromic acid, solid	Oxidizer	Oxidizer	173.153	173.164	25 pounds	100 pounds	1,2	1,2	Stow away from foodstuffs. Stow separate from flammable liquids and solids
*	Chromic acid solution	Corrosive material	Corrosive	173.244	173.287	1 quart	1 gallon	1	1	
	Chromic anhydride. *See* Chromic acid, solid									
	Chromic fluoride, solid	Corrosive material	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	
*	Chromic fluoride solution	Corrosive material	Corrosive	173.244	173.245	1 quart	1 gallon	1,2	1,2	
	Chromic trioxide. *See* Chromic acid, solid									
	Chromium oxychloride *or* Chromyl chloride	Corrosive material	Corrosive	None	173.247	Forbidden	1 gallon	1	1	Keep dry. Glass carboys not permitted on passenger vessels
	Cigar and cigarette lighter fluid. See Lighter fluid									
*	Cigarette lighter (*or other similar ignition device*)	Flammable gas	Flammable gas	173.21	173.308	21 ounces	25 pounds	1	1	Not permitted in nonventilated container
*	Cigarette lighter (*or other similar ignition device*)	Flammable liquid	Flammable liquid	173.21	173.118	Forbidden	Forbidden	1	1	Not permitted in nonventilated container
	Cigarette load	Class C explosive	Explosive C	None	173.111	50 pounds	150 pounds	1,2	1,2	
	Cloud gas cylinder. See Chemical ammunition									
	Coal briquettes, hot	Forbidden								
	Coal facings. *See* Coal ground bituminous, *etc.*									
	Coal gas. See Hydrocarbon gas, nonliquefied									
	Coal, ground bituminous, sea coal; coal facings; *etc.*	Flammable solid	Flammable solid	173.165		Forbidden	Forbidden	1	1	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Coal oil (*export shipment only*). *See* Kerosene									
*	Coal tar distillate	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Coal tar distillate	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Coal tar dye, liquid (*not otherwise specifically named in Sec. 172.101*)	Corrosive material	Corrosive	173.244	173.245 173.249a	1 quart	10 gallons	1,2	1,2	
*	Coal tar light oil	Combustible liquid	None	173.118a				1,2	1,2	
*	Coal tar light oil	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Coal tar naphtha	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	

§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/W/A	Hazardous materials descriptions and proper shipping names	Hazard class	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
*	Coal tar naphtha	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Coal tar oil	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Coal tar oil	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1,2	
*	Coating solution	Flammable liquid	Flammable liquid	173.118	173.132	1 quart	15 gallons	1,2	1	
	Cobalt resinate, precipitated	Flammable solid	Flammable solid	None	173.166	Forbidden	125 pounds	1,2	1,2	
	Cocculus, solid (*fishberry*)	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
W*	Coconut meal pellets *containing at least 6% and not more than 13% moisture and not more than 10% residual fat content*	ORM-C	None	173.505	173.955			1,2	4	Keep dry
	Coir. *See* Fibers									
	Coke, hot	Forbidden								
	Collodion	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Collodion cotton, wet. *See* Nitrocellulose, wet									
	Cologne spirits (*alcohol*)	Flammable liquid	Flammable liquid	173.118	173.125	1 quart	10 gallons	1,2	1	
	Columbian spirits (*wood alcohol*)	Flammable liquid	Flammable liquid	173.118	173.125	1 quart	10 gallons	1,2	1	
	Combination fuze	Class C explosive	Explosive C	None	173.105	50 pounds	150 pounds	1,3	1,3	
	Combination primer	Class C explosive	Explosive C	None	173.107	50 pounds	150 pounds	1,3	5	
	Combustible liquid, n.o.s.	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
	Commercial shaped charge. *See* High explosive									
	Common fireworks. *See* Fireworks, common									
*	Compound, cleaning, liquid	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Compound, cleaning, liquid	Corrosive material	Corrosive	173.244	173.245	1 quart	1 quart	1,2	1,2	
*	Compound, cleaning, liquid	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Compound, cleaning, liquid (containing hydrochloric (muriatic) acid)	Corrosive material	Corrosive	173.244	173.263	1 quart	1 gallon	1	1	
*	Compound, cleaning, liquid (containing hydrofluoric acid)	Corrosive material	Corrosive	173.244	173.256	1 quart	1 gallon	1	4	
*	Compound, cleaning liquid (*containing phosphoric acid, acetic acid, sodium or potassium hydroxide*)	Corrosive material	Corrosive	173.244	173.245 173.249a	1 quart	1 quart	1,2	1,2	
*	Compound, enamel	Flammable liquid	Flammable liquid	173.118	173.128	1 quart	55 gallons	1,2	1	
*	Compound, lacquer, paint, *or* varnish removing, liquid	Corrosive material	Corrosive	173.244	173.245	1 quart	1 gallon	1,2	1,2	
*	Compound, lacquer, paint, *or* varnish, removing, reducing, *or* thinning, liquid	Combustible liquid	None	173.118a				1,2	1,2	
*	Compound, lacquer, paint, *or* varnish, removing, reducing, *or* thinning, liquid	Flammable liquid	Flammable liquid	173.118	173.128	1 quart	55 gallons	1,2	1	
*	Compound, polishing, liquid	Flammable liquid	Flammable liquid	173.118	173.129	1 quart	55 gallons	1,2	1	
*	Compound, rust preventing *or* Compound, rust removing	Corrosive material	Corrosive	173.244	173.245	1 quart	1 gallon	1,2	1,2	
*	Compound, tree *or* weed killing, liquid	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Compound, tree *or* weed killing, liquid	Corrosive material	Corrosive	173.244	173.245	1 quart	1 quart	1,2	1,2	
*	Compound, tree *or* weed killing, liquid	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Compound, tree *or* weed killing, liquid	Poison B	Poison	173.345	173.346	1 quart	55 gallons	1,2	1,2	
*	Compound, tree *or* weed killing, solid	Oxidizer	Oxidizer	173.153	173.154 173.229	25 pounds	100 pounds	1,2	1,2	
*	Compound, vulcanizing, liquid	Corrosive material	Corrosive	173.244	173.245	1 quart	1 quart	1,2	1,2	
*	Compound, vulcanizing, liquid	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Compound, water treatment, liquid. *See* Water treatment, liquid									
	Compressed gas, n.o.s.	Flammable gas	Flammable gas	173.306	173.302 173.304 173.305	Forbidden	300 pounds	1	4	

§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(4)	(5)		(6)		(7)		
				Packaging		Maximum net quantity in one package		Water shipments		
*/W/A	Hazardous materials descriptions and proper shipping names	Hazard class	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
	Compressed gas, n.o.s.	Nonflammable gas	Nonflammable gas	173.306	173.302 173.304 173.305	150 pounds	300 pounds	1,2	1,2	
	Consumer commodity	ORM-D	None	None	173.510 173.1200	65 pounds gross	65 pounds gross			Not subject to requirements of Part 176
	Container, reused or empty, must be classed for the hazardous material previously contained. See 173.28, 173.29									
	Copper acetoarsenite, solid (*emerald green, imperial green, King's green, moss green, meadow green, milis green, parrot green, Vienna green*)	Poison B	Poison	173.364	173.367	50 pounds	200 pounds	1,2	1,2	
	Copper arsenite, solid (*Scheeles green, cupric green, copper orthoarsenite, Swedish green*)	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
A	Copper chloride	ORM-B	None	173.505	173.510 173.800	25 pounds	100 pounds			
	Copper cyanide	Poison B	Poison	173.370		25 pounds	200 pounds	1,2	1,2	Stow away from acids
W	Copra	ORM-C	None	173.505	173.960			1,2	1,2	Segregation same as for flammable solids. Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Copra pellets. See Coconut meal pellets									
	Cordeau detonant fuse	Class C explosive	Explosive C	None	173.104	50 pounds	300 pounds	1,2	1,2	
	Corrosive battery fluid. *See* Electrolyte (acid), *or* Alkaline Corrosive battery fluid									
	Corrosive liquid, n.o.s.	Corrosive material	Corrosive	173.244	173.245 173.245a	1 quart	1 quart	1	4	
	Corrosive solid, n.o.s.	Corrosive material	Corrosive	173.244	173.245b	25 pounds	100 pounds	1	4	
*	Cosmetics, n.o.s.	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Cosmetics, n.o.s.	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Cosmetics, n.o.s.	Flammable solid	Flammable solid	173.153	173.154	25 pounds	100 pounds	1,2	1,2	
*	Cosmetics, n.o.s.	Oxidizer	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	
*	Cosmetics, n.o.s., liquid	Corrosive material	Corrosive	173.244	173.245	1 quart	1 quart	1,2	1,2	
*	Cosmetics, n.o.s., solid	Corrosive material	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	Keep dry
W	Cotton	ORM-C	None	173.505	173.965			1,2	1,2	Segregation same as for flammable solids. *See* 176.900 to 176.904
W	Cotton batting	ORM-C	None	173.505	173.970			1,2	1,2	Keep dry. Stow away from vegetable or animal oils. *See* 176.900 to 176.904
W	Cotton batting dross. *See* Cotton batting									
	Cotton, burnt. See Burnt cotton									
W	Cotton seed hull fiber *or* shavings, pulp, *or* cut linters. *See* Cotton batting									
	Cotton sweepings. *See* Cotton waste									
W	Cotton wadding. *See* Cotton batting									
W	Cotton waste	ORM-C	None	173.505	173.975			1,2	1,2	Keep dry. Stow away from vegetable or animal oils. *See* 176.900 to 176.904
	Cotton waste, oily (*with more than 5% of animal or vegetable oil*)	Flammable solid	Flammable solid	None	173.167	Forbidden	Forbidden	1,2	1,2	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Creosote, coal tar	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
	Creosote oil. See Creosote, coal tar									
	Crotonaldehyde	Flammable liquid	Flammable liquid and Poison	173.118	173.119	1 quart	1 gallon	1,2	1	
	Crotonic acid	Corrosive material	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Crotonylene	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,3	4	
	Crude nitrogen fertilizer solution (more than 25.3 p.s.i.g.)	Nonflammable gas	Nonflammable gas	173.306	173.304 173.314	Forbidden	300 pounds	1,3	1,3	
*	Crude oil, petroleum	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Crude oil, petroleum	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Cumene hydroperoxide	Organic peroxide	Organic peroxide	173.153	173.224	1 quart	1 quart	1,2	4	
	Cupric cyanide. See Copper cyanide									

§172.101 Hazardous Materials Table (cont'd)

(1) */W/A	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(4) Label(s) required (if not excepted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
*	Cuprichylene-diamine solution	Corrosive material	Corrosive	173.244	173.249	1 quart	1 gallon	1,2	1,2	
*	Cyanide *or* cyanide mixture, dry	Poison B	Poison	173.364	173.370	25 pounds	200 pounds	1,2	1,2	Keep dry. Stow away from acids
	Cyanogen bromide	Poison B	Poison	None	173.379	Forbidden	25 pounds	1	5	Shade from radiant heat. Segregation same as for corrosive materials
	Cyanogen chloride *containing less than 0.9% water*	Poison A	Nonflammable gas and Poison Gas	None	173.328	Forbidden	Forbidden	1	5	Shade from radiant heat
	Cyanogen gas	Poison A	Flammable gas and Poison Gas	None	173.328	Forbidden	Forbidden	1	5	
	Cyclohexane	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,3	4	
	Cyclohexanone peroxide, *50 to 85% peroxide*	Organic peroxide	Organic peroxide	173.157	173.158	Forbidden	25 pounds	1	1	
	Cyclohexanone peroxide, *not over 50% peroxide*	Organic peroxide	Organic peroxide	173.153	173.154	2 pounds	25 pounds	1,2	1,2	
	Cyclohexanone peroxide and bis (1-hydroxy cyclohexyl) peroxide mixture. *See appropriate cyclohexanone peroxide entry immediately preceding*									
	Cyclohexenyl trichlorosilane	Corrosive material	Corrosive	None	173.280	Forbidden	10 gallons	1	1	Keep dry
	Cyclohexyl trichlorosilane	Corrosive material	Corrosive	None	173.280	Forbidden	10 gallons	1	1	Keep dry
	Cyclopentane	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,3	4	
	Cyclopentane, methyl	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,3	4	
	Cyclopropane	Flammable gas	Flammable gas	173.306	173.304	Forbidden	300 pounds	1,2	1	
	Cyclotrimethylenetrinitramine, desensitized. See High explosive									
	Cyclotrimethylenetrinitramine, wet with not less than 10% water. See High explosive									
	Cylinder, empty, including ton tanks, must be classed for the hazardous material previously contained in cylinder. See 173.29									
	2,4-D. *See* 2,4-Dichlorophenoxyacetic acid									
A	DDT *or* Dichlorodiphenyltrichloroethane	ORM-A	None	173.505	173.510	No limit	No limit			
	Dead oil. See Creosote, coal tar									
	Decaborane	Flammable solid	Flammable solid and Poison	None	173.236	Forbidden	25 pounds	1,2	1,2	
	Decahydronaphthalene	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
	Decalin. See Decahydronaphthalene									
	Delay electric igniter	Class C explosive	Explosive C	None	173.106	50 pounds	150 pounds	1,3	1,3	
	Denatured alcohol. *See* Alcohol, n.o.s.									
	Depth bomb. See Explosive bomb									
	Detonating fuze, Class A explosive, *with or without radioactive components*	Class A explosive	Explosive A	None	173.69	Forbidden	Forbidden	6	5	
	Detonating fuze, Class C explosive	Class C explosive	Explosive C	None	173.113	50 pounds	150 pounds	1,3	1,3	
	Detonating primer	Class A explosive	Explosive A	None	173.68	Forbidden	Forbidden	6	5	
*	Diacetone alcohol	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Diacetyl	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
A	Diazinon	ORM-A	None	173.505	173.510	No limit	No limit			
	Diazodinitrophenol. *See* Initiating explosive									
A	Dibromodifluoromethane	ORM-A	None	173.505	173.510 173.605	10 gallons	55 gallons			
W	1,2-Dibromoethane. *See* Ethylene dibromide									
	Dichloroacetic acid	Corrosive material	Corrosive	173.244	173.245	1 quart	1 quart	1,2	1,2	Glass carboy in hampers not permitted under deck
	Dichloroacetyl chloride	Corrosive material	Corrosive	173.244	173.247	1 quart	1 gallon	1	4	Keep dry
A	Dichlorobenzene, ortho, liquid	ORM-A	None	173.505	173.510	No limit	No limit			
A	Dichlorobenzene, para, solid	ORM-A	None	173.505	173.510	No limit	No limit			

§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(4)	(5)		(6)		(7)		
				Packaging		Maximum net quantity in one package		Water shipments		
*/W/A	Hazardous materials descriptions and proper shipping names	Hazard class	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
	Dichlorobutene	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1,2	
A	Dichlorodifluoroethylene	ORM-A	None	173.505	173.510 173.605	10 gallons	55 gallons			
	Dichlorodifluoromethane	Nonflammable gas	Nonflammable gas	173.306	173.304 173.314 173.315	150 pounds	300 pounds	1,2	1,2	
	Dichlorodifluoromethane and difluoroethane mixture (*constant boiling mixture*)	Nonflammable gas	Nonflammable gas	173.306	173.304 173.314 173.315	150 pounds	300 pounds	1,2	1,2	
	Dichlorodifluoromethane-dichlorotetrafluoroethane mixture	Nonflammable gas	Nonflammable gas	173.306	173.304 173.314 173.315	150 pounds	300 pounds	1,2	1,2	
	Dichlorodifluoromethane-monochlorodifluoromethane mixture	Nonflammable gas	Nonflammable gas	173.306	173.304 173.314 173.315	150 pounds	300 pounds	1,2	1,2	
*	Dichlorodifluoromethane-trichloromonofluoromethane mixture	Nonflammable gas	Nonflammable gas	173.306	173.304 173.314 173.315	150 pounds	300 pounds	1,2	1,2	
	Dichlorodifluoromethane-trichloromonofluoromethane-monochloro difluoromethane mixture	Nonflammable gas	Nonflammable gas	173.306	173.304 173.314 173.315	150 pounds	300 pounds	1,2	1,2	
	Dichlorodifluoromethane-trichlorotrifluoroethane mixture	Nonflammable gas	Nonflammable gas	173.306	173.304 173.314 173.315	150 pounds	300 pounds	1,2	1,2	
	Dichlorodiphenyltrichloroethane. *See* DDT									
	Dichloroethylene	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Dichloroisopropyl ether	Corrosive material	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
A	Dichloromethane *or* methylene chloride	ORM-A	None	173.505	173.510 173.605	10 gallons	55 gallons			
*	Dichloropentane	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1,2	
A	2,4-Dichlorophenoxyacetic acid	ORM-A	None	173.505	173.510					
	Dichlorophenyltrichlorosilane	Corrosive material	Corrosive	None	173.280	Forbidden	10 gallons	1	1	Keep dry
	Dichloropropene and propylene dichloride mixture	Corrosive material	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Dicumyl peroxide *50% solution*	Organic peroxide	Organic peroxide	173.153	173.224	1 quart	1 quart	1,2	4	
	Dicumyl peroxide, dry	Organic peroxide	Organic peroxide	173.153	173.154	2 pounds	25 pounds	1,2	1,2	
A	Dieldrin	ORM-A	None	173.505	173.510	No limit	No limit			
	Diesel Fuel *See* Fuel oil									
	Diethylamine	Flammable liquid	Flammable liquid	173.118	173.119	Forbidden	5 pints	1,3	4	
	Diethyl cellosolve. *See* Ethylene glycol diethyl ether									
	Diethyl dichlorosilane	Flammable liquid	Flammable liquid	None	173.135	Forbidden	10 gallons	1	1	Keep dry. Segregation same as for corrosives
	Diethylene glycol dinitrate *See* 173.51	Forbidden								
	Di-(2-ethylhexyl) phosphoric acid	Corrosive material	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Diethyl ketone	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	1,1-Difluoro 1-chloroethane. *See* Difluoromonochlorethane									
	Difluoroethane	Flammable gas	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	1	
	Difluoromonochloroethane (*1,1-difluoro 1-chloroethane*)	Flammable gas	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	1	
	Difluorophosphoric acid, anhydrous	Corrosive material	Corrosive	None	173.275	Forbidden	1 gallon	1,2	1,2	
	Dihydropyran	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	4	
	Diisobutyl ketone	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
	Diisooctyl acid phosphate	Corrosive material	Corrosive	173.244	173.296	1 quart	1 quart	1,2	1,2	Glass carboys in hampers not permitted under deck
	Diisopropylamine	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Diisopropylbenzene hydroperoxide solution, *not over 60% peroxide*	Organic peroxide	Organic peroxide	173.153	173.224	1 quart	1 quart	1,2	4	
	Diisopropylethanolamine	Corrosive material	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Diisopropylether	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,3	4	

§172.101 Hazardous Materials Table (cont'd)

(1) */ W/ A	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(4) Label(s) required (if not excepted)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
				(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
	Dimethylamine, anhydrous	Flammable gas	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	4	
*	Dimethylamine, aqueous solution	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	2,3-Dimethylbutane	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,3	4	
	Dimethyl carbonate	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	1,4-Dimethylcyclohexane	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Dimethyldichlorosilane	Flammable liquid	Flammable liquid	None	173.135	Forbidden	5 pints	1,2	1	
	Dimethyl ether	Flammable gas	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	1	
	Dimethylhexane dihydroperoxide, dry	Forbidden								
	Dimethylhexane dihydroperoxide, (with 30% or more water)	Organic peroxide	Organic peroxide	None	173.157	Forbidden	25 pounds	1	1	
	Dimethylhydrazine, unsymmetrical (*UDMH*)	Flammable liquid	Flammable liquid and Poison	None	173.145	Forbidden	5 pints	1,2	1	Keep dry. Separate from corrosive and oxidizing materials, and organic peroxides
	Dimethyl sulfate	Corrosive material	Corrosive	None	173.255	Forbidden	1 quart	1	5	Keep cool
	Dimethyl sulfide	Flammable liquid	Flammable liquid	None	173.119	Forbidden	10 gallons	1,2	5	
	Dinitrobenzene, solid, *or* dinitrobenzol, solid	Poison B	Poison	173.364	173.371	50 pounds	200 pounds	1,2	1,2	
*	Dinitrobenzene solution	Poison B	Poison	173.345	173.346	1 quart	55 gallons	1,2	1,2	
	Dinitrochlorobenzol, solid *or* Dinitro chlorobenzene	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
A	Dinitrocyclohexylphenol	ORM-A	None	173.505	173.510	No limit	No limit			
*	Dinitrophenol solution	Poison B	Poison	173.345	173.362a	1 quart	65 pounds	1,2	1,2	Stow away from heavy metals and their compounds. If flash point is 141 DEG F or less segregation same as for flammable liquids
	Dioxane	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Dioxolane	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Diphenylaminechloroarsine (*DM*)	Irritating material	Irritant	None	173.382	Forbidden	75 pounds	1	5	
	Diphenyl dichlorosilane	Corrosive material	Corrosive	None	173.280	Forbidden	10 gallons	1	1	Keep dry
	Diphenyl methyl bromide, solid	Corrosive material	Corrosive	173.244	173.245b	25 pounds	100 pounds	1	4	
*	Diphenyl methyl bromide solution	Corrosive material	Corrosive	173.244	173.247	1 quart	1 gallon	1,2	1,2	
	Diphosgene. See Phosgene									
*	Disinfectant, liquid, n.o.s.	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Disinfectant, liquid	Corrosive material	Corrosive	173.244	173.245	1 quart	10 gallons	1	4	
*	Disinfectant, liquid	Poison B	Poison	173.345	173.346	1 quart	55 gallons	1,2	1	
*	Disinfectant, solid	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1	
	Dispersant Gas *or* Refrigerant Gas *See* 173.314 NOTE 13 and 173.315 NOTE 9									
*	Distillate (*petroleum or coal tar*)	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Divinyl ether	Flammable liquid	Flammable liquid	None	173.119	Forbidden	10 gallons	1,3	5	
	Dodecyl trichlorosilane	Corrosive material	Corrosive	None	173.280	Forbidden	10 gallons	1	1	Keep dry
*	Dressing, leather	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Dressing, leather	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Drier. See Paint drier, liquid									
	Drill cartridge			173.55						
*	Drugs, n.o.s.	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Drugs, n.o.s.	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Drugs, n.o.s.	Flammable solid	Flammable solid	173.153	173.154	25 pounds	100 pounds	1,2	1,2	
*	Drugs, n.o.s.	Oxidizer	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	
*	Drugs, n.o.s., liquid	Corrosive material	Corrosive	173.244	173.245	1 quart	1 quart	1,2	1,2	

§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/W/A	Hazardous materials descriptions and proper shipping names	Hazard class	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
*	Drugs, n.o.s., liquid	Poison B	Poison	173.345	173.346	1 quart	55 gallons	1,3	1	
*	Drugs, n.o.s., solid	Corrosive material	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	Keep dry
*	Drugs, n.o.s., solid	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,3	1,3	
	Drums, empty, must be classed for the hazardous material previously contained in drum. See 173.29									
	Dry ice. *See* Carbon dioxide, solid									
	Dusts, by-product, poisonous. *See* Arsenical dust									
*	Dye intermediate, liquid	Corrosive material	Corrosive	173.244	173.245 173.249a	1 quart	10 gallons	1,2	1,2	Stow away from foodstuffs and living quarters
	Dynamite. See High explosive									
	Electric blasting caps. *See* Blasting caps, electric									
	Electric squib	Class C explosive	Explosive C	None	173.106	50 pounds	150 pounds	1,3	1,3	
	Electric storage battery, wet. *See* Battery, electric storage, wet									
	Electrolyte (*acid*), battery fluid (*not over 47% acid*)	Corrosive material	Corrosive	173.244	173.257	1 quart	5 gallons	1,2	1,2	Glass carboys in hampers not permitted under deck
	Electrolyte (*acid*), *or* alkaline (*corrosive*) battery fluid packed with battery charger, radio current supply device, *or* electronic equipment and actuating device	Corrosive material	Corrosive	None	173.259	Forbidden	5 pints	1,2	1,2	
	Electrolyte (*acid*), *or* alkaline (*corrosive*) battery fluid packed with dry-storage battery	Corrosive material	Corrosive	None	173.258	Forbidden	5 pints	1,2	1,2	
	Empty cartridge bag with black powder igniter	Class C explosive	Explosive C	None	173.106	50 pounds	150 pounds	1,3	1,3	
	Empty cartridge case, primed	Class C explosive	Explosive C	None	173.107	50 pounds	150 pounds	1,3	1,3	
*	Enamel. *See* *Paint, enamel, lacquer, etc.									
	Engine, internal combustion			173.120				1,2	1,2	Not permitted in unventilated containers
	Engine starting fluid	Flammable gas	Flammable gas	None	173.304	Forbidden	60 pounds	1,2	5	
*	Eradicator, paint *or* grease, liquid	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Etching acid, liquid, n.o.s.	Corrosive material	Corrosive	None	173.299	Forbidden	10 pounds	1	5	
	Ethane	Flammable gas	Flammable gas	173.306	173.304	Forbidden	300 pounds	1,2	4	
	Ether (*ethyl*)	Flammable liquid	Flammable liquid	None	173.119	Forbidden	10 gallons	1,3	5	
	Ether, Ethyl. *See* Ether									
	Ethyl acetate	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Ethyl acrylate, inhibited	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Ethyl alcohol. *See* Alcohol, n.o.s.									
	Ethyl aldehyde. *See* Acetaldehyde									
	Ethyl benzene	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Ethyl borate	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	Keep dry
	Ethyl butyl acetate	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
	Ethyl butyl ether	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Ethyl butyraldehyde	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Ethyl butyrate	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1,2	
	Ethyl chloride	Flammable liquid	Flammable liquid	None	173.123	Forbidden	173.123	1,2	1	Segregation same as for flammable gases
	Ethyl chloroacetate	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
	Ethyl chloroformate (*chlorocarbonate*)	Flammable liquid	Flammable liquid and Poison	None	173.288	Forbidden	5 pints	1,2	1	
	Ethyl chlorothioformate	Corrosive material	Corrosive	173.244	173.245 173.245a	1 quart	1 quart	1,2	1	
	Ethyl crotonate	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Ethyl dichlorosilane	Flammable liquid	Flammable liquid	None	173.135	Forbidden	5 pints	1,2	1	

§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(4)	(5)		(6)		(7)		
				Packaging		Maximum net quantity in one package		Water shipments		
*/ W/ A	Hazardous materials descriptions and proper shipping names	Hazard class	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
	Ethylene	Flammable gas	Flammable gas	173.306	173.304	Forbidden	300 pounds	1,2	4	
	Ethylene chlorohydrin	Poison B	Poison	173.345	173.346	1 quart	55 gallons	1,2	1	Segregation same as for flammable liquids
AW	Ethylene dibromide (1,2-dibromethane)	ORM-A	None	173.505	173.620	1 quart	55 gallons	1,2	1,2	Stow away from living quarters
	Ethylene dichloride	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Ethylene glycol diethyl ether (*diethyl "Cellosolve"*)	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
	Ethylene glycol monoethyl ether (*"Cellosolve"*)	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
	Ethylene glycol monoethyl ether acetate (*"Cellosolve acetate"*)	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
	Ethylene glycol monomethyl ether (*methyl "Cellosolve"*)	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
	Ethylene glycol monomethyl ether acetate (*methyl "Cellosolve acetate"*)	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
	Ethylene imine, inhibited	Flammable liquid	Flammable liquid and Poison	None	173.139	Forbidden	5 pints	1,2	1	
	Ethylene oxide	Flammable liquid	Flammable liquid	None	173.124	Forbidden	173.124	1,2	1	Segregation same as for flammable gases
	Ethyl ether. See Ether									
	Ethyl formate	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,3	4	
	Ethylhexaldehyde	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
	Ethyl lactate	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
	Ethyl mercaptan	Flammable liquid	Flammable liquid	None	173.141	Forbidden	10 gallons	1,2	1	
	Ethyl methyl ether	Flammable liquid	Flammable liquid	None	173.119	Forbidden	10 gallons	1,3	1	Segregation same as for flammable gases
	Ethyl methyl ketone	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Ethyl nitrate (*nitric ether*)	Flammable liquid	Flammable liquid	173.118	173.119	Forbidden	Forbidden	1,2	1	
	Ethyl nitrite (*nitrous ether*)	Flammable liquid	Flammable liquid	None	173.119	Forbidden	Forbidden	1,3	5	
	Ethyl phenyl dichlorosilane	Corrosive material	Corrosive	None	173.280	Forbidden	10 gallons	1	5	
	Ethyl phosphonothioic dichloride, anhydrous	Corrosive material	Corrosive	173.244	173.245 173.245a	1 quart	1 quart	1	4	
	Ethyl phosphonous dichloride, anhydrous	Corrosive material	Corrosive	173.244	173.245 173.245a	1 quart	1 quart	1	4	
	Ethyl phosphorodichloridate	Corrosive material	Corrosive	173.244	173.245 173.245a	1 quart	1 quart	1	4	
	Ethyl propionate	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Ethyl silicate (*tetra ethyl ortho silicate*)	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
	Ethyl trichlorosilane	Flammable liquid	Flammable liquid	None	173.135	Forbidden	5 pints	1,2	1	
	Etiologic agent, n.o.s.	Etiologic agent	Etiologic agent	173.386	173.387	173.386	4 liters			Not permitted except under specific conditions approved by the Department
W	Excelsior (shredded wood) *when dry, clear, and free from oil*	ORM-C	None	173.505	173.980			1,3	1,3	Stow away from organic, corrosive, or oxidizing materials
W	Exothermic ferrochrome	ORM-C	None	173.505	173.985			1	1	
W	Exothermic ferromanganese. *See* Exothermic ferrochrome									
W	Exothermic silicon chrome. *See* Exothermic ferrochrome									
	Explosive auto alarm	Class C explosive	Explosive C	None	173.111	50 pounds	150 pounds	1,2	1,2	
	Explosive bomb	Class A explosive	Explosive A	None	173.56	Forbidden	Forbidden	1,2	5	Magazine stowage authorized. No other cargo may be stowed in the same hold with these items
	Explosive cable cutter	Class C explosive	Explosive C	None	173.102	50 pounds	150 pounds	1,3	1,3	
	Explosive mine	Class A explosive	Explosive A	None	173.56	Forbidden	Forbidden	1,2	5	Magazine stowage authorized. No other cargo may be stowed in the same hold with this material
	Explosive, new approval, and evaluation See 173.86									
	Explosive power device, Class B	Class B explosive	Explosive B	None	173.94	Forbidden	150 pounds	1,2	5	
	Explosive power device, Class C	Class C explosive	Explosive C	None	173.102	50 pounds	150 pounds	1,3	1,3	

§172.101 Hazardous Materials Table (cont'd)

burning. Not subject to requirements of

(1)	(2)	(3)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/W/A	Hazardous materials descriptions and proper shipping names	Hazard class	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
	Explosive projectile	Class A explosive	Explosive A	None	173.56	Forbidden	Forbidden	1,2	5	Magazine stowage authorized. No other cargo may be stowed in the same hold with this material
	Explosive release device	Class C explosive	Explosive C	None	173.102	50 pounds	150 pounds	1,3	1,3	
	Explosive rivet	Class C explosive	Explosive C	None	173.100	50 pounds	150 pounds	1,2	1,2	
	Explosive, sample for laboratory examination			173.86		Forbidden	173.86			
	Explosive torpedo	Class A explosive	Explosive A	None	173.56	Forbidden	Forbidden	1,2	5	Magazine stowage authorized. No other cargo may be stowed in the same hold with this material
*	Extract, liquid, flavoring	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Fabric with animal or vegetable oil. See Fibers or fabric containing not more than 5% animal or vegetable fat									
AW	Feed, wet, mixed	ORM-C	None	173.505	173.990	Forbidden	Forbidden	3	3	Stow in cool, dry, well ventilated compartment. Do not stow bags over ten tiers high without flooring off. Do not overstow
W	Felt, waste. *See* Cotton waste									
	Felt, waste, wet. *See* Waste wool, wet									
	Ferric arsenate, solid	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Ferric arsenite, solid	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
A	Ferric chloride, solid, *anhydrous*	ORM-B	None	173.505	173.510	25 pounds	100 pounds			
*	Ferric chloride solution	Corrosive material	Corrosive	173.244	173.245 173.245a	1 quart	10 quarts	1,2	1,2	
W	Ferrophosphorus	ORM-A	None	173.505	173.635			1,2	1,2	Keep dry. Stow away from living quarters
AW	Ferrosilicon, *containing 30% or more but not more than 70% silicon*	ORM-A	None	173.505	173.510 173.645	Forbidden	25 pounds	1,2	1,2	Keep dry. Stow away from living quarters. Segregation same as for flammable solids labeled Dangerous When Wet
	Ferrous arsenate (*iron arsenate*), solid	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Fertilizer ammoniating solution *containing free ammonia (more than 25.3 p.s.i.g.)*	Nonflammable gas	Nonflammable gas	173.306	173.304 173.314	Forbidden	300 pounds	1,2	4	
	Fertilizer, tankage. *See* Garbage, tankage									
W	Fibers (*jute, hemp, flax, sisal, coir, kapok, and similar vegetable fibers*)	ORM-C	None	173.505	173.965			1,2	1,2	Stow away from animal or vegetable oils. Segregation same as for flammable solids
	Fibers, burnt	Flammable solid	Flammable solid	None	173.169	Forbidden	Forbidden	1,2	1,2	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Fibers *or* fabric, containing not more than 5% animal *or* vegetable oil	Flammable solid	Flammable solid	None	173.170	Forbidden	Forbidden	1,2	1,2	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Film (nitrocellulose)	Flammable solid	Flammable solid	None	173.177	50 pounds	200 pounds	1,3	1,3	Stow away from other flammable cargo or substances
	Film, photographic, (including scrap film), safety, nonflammable, or slow									
	this subchapter									
	Firecracker. See Fireworks, common *or* special									
	Firecracker salute. See Fireworks, common *or* special									
*	Fire extinguisher	Nonflammable gas	Nonflammable gas	173.306		150 pounds	300 pounds	1,2	1,2	
	Fire extinguisher charge containing not more than 50 grains of propellant explosive per unit. Not subject to requirements of this subchapter									
	Fire extinguisher charge containing sulfuric acid	Corrosive material	Corrosive	173.261		1 quart	1 gallon	1,2	1,2	
	Fireworks, common	Class C explosive	Explosive C	None	173.100 173.108	50 pounds	200 pounds	1,3	1,3	Passenger vessels in metal lockers only
	Fireworks, exhibition display piece. See Fireworks, special									
	Fireworks, special	Class B explosive	Explosive B	None	173.88 173.91	Forbidden	200 pounds	3	3	Passenger vessels in metal lockers only. Toy torpedoes must not be packed with other special fireworks

§172.101 Hazardous Materials Table (cont'd)

(1) */ W/ A	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(4) Label(s) required (if not excepted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
W	Fish meal *or* fish scrap containing 6% to 12% water	ORM-C	None	173.505	173.995			1,2	1,2	Segregation same as for flammable solids. Separate from flammable gases or liquids, oxidizing materials, or organic peroxides. *Use double strip stowage* for cargo 6-12 percent moisture containing not more than 12 percent fat. *Use single strip stowage* for cargo 6-12 percent moisture containing 12-15 percent fat
	Fish meal *or* fish scrap containing less than 6% or more than 12% water	Flammable solid	Flammable solid	None	173.171	Forbidden	Forbidden	1,2	1,2	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Fissile radioactive material. *See* Radioactive material, fissile									
*	Flame retardant compound liquid	Corrosive material	Corrosive	173.244	173.291	1 quart	10 gallons	1,2	1,2	
	Flammable Gas n.o.s. *See* Compressed gas, n.o.s.									
	Flammable liquid, n.o.s.	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Flammable solid, n.o.s.	Flammable solid	Flammable solid	173.153	173.154	25 pounds	25 pounds	1,2	1,2	
	Flare. *See* Fireworks, common									
	Flare, airplane. *See* Fireworks, special									
	Flash cartridge. *See* Fireworks, special *or* Low explosives									
	Flash cracker. *See* Fireworks, common *or* special									
	Flash powder. *See* Fireworks, special *or* Low explosives									
	Flax. *See* Fibers									
	Flexible linear shaped charge, metal clad	Class C explosive	Explosive C	None	173.104	50 pounds	300 pounds	1,3	1,3	
	Flowers of sulfur. *See* Sulfur									
	Flue dust, poisonous	Poison B	Poison	173.364	173.368	50 pounds	200 pounds	1,2	1,2	
	Fluoboric acid	Corrosive material	Corrosive	173.244	173.283	1 quart	1 gallon	1,2	1,2	
	Fluoric acid. *See* Hydrofluoric acid									
	Fluorine	Nonflammable gas	Poison and Oxidizer	None	173.302	Forbidden	Forbidden	1	5	Stow in well ventilated space away from organic materials
	Fluorophosphoric acid, anhydrous. *See* Monofluorophosphoric acid, anhydrous									
	Fluorosilicic acid. *See* Hydrofluosilicic acid									
	Fluorosulfonic acid *or* Fluosulfonic acid	Corrosive material	Corrosive	None	173.274	Forbidden	1 gallon	1	5	Keep dry
AW	Formaldehyde, *or* formalin solution (*in containers of 110 gallons or less*)	ORM-A	None	173.505	173.510	10 gallons	55 gallons	1,2	4	
	Formaldehyde, *or* formalin solution (*in containers over 110 gallons*)	Combustible liquid	None	173.118a	None	10 gallons	55 gallons	1,2	1,2	
	Formalin. *See* Formaldehyde solution									
	Formic acid	Corrosive material	Corrosive	173.244	173.245 173.289	1 quart	5 gallons	1,2	1,2	Glass carboys in hampers not permitted under deck
*	Formic acid solution	Corrosive material	Corrosive	173.244	173.245 173.289	1 quart	5 gallons	1,2	1,2	
*	Fuel, aviation, turbine engine	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Fuel oil	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
	Fuel oil, Diesel. *See* Fuel oil									
	Fuel oil, No. 1, 2, 4, 5 *or* 6	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
	Fulminate of mercury, dry	Forbidden								
	Fulminate of mercury, wet. *See* Initiating explosive									
	Fumaryl chloride	Corrosive material	Corrosive	173.244	173.245 173.152	1 quart	1 quart	1	1	Glass carboys not permitted
*	*Fumigant*									
*	Furfural	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1	
	Fusee (*railway or highway*)	Flammable solid	Flammable solid	None	173.154a	50 pounds	200 pounds	1,3	1,3	
	Fuse igniter	Class C explosive	Explosive C	None	173.106	50 pounds	150 pounds	1,3	1,3	
	Fuse, instantaneous	Class C explosive	Explosive C	173.100		50 pounds	150 pounds	1,2	1,2	
	Fuse lighter	Class C explosive	Explosive C	None	173.106	50 pounds	150 pounds	1,3	1,3	

§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(4)	(5)		(6)		(7)		
				Packaging		Maximum net quantity in one package		Water shipments		
*/ W/ A	Hazardous materials descriptions and proper shipping names	Hazard class	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
	Fusel oil	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
	Fuse, mild detonating, metal clad	Class C explosive	Explosive C	None	173.104	50 pounds	300 pounds	1,2	1,2	
	Fuse, safety	Class C explosive	Explosive C	173.100		50 pounds	300 pounds	1,2	1,2	
	Fuze, combination	Class C explosive	Explosive C	None	173.105	50 pounds	150 pounds	1,3	1,3	
	Fuze, detonating	Class A explosive	Explosive A	None	173.69	Forbidden	Forbidden	6	5	
	Fuze, detonating, Class C explosive	Class C explosive	Explosive C	None	173.113	50 pounds	150 pounds	1,3	1,3	
	Fuze, detonating, radioactive	Class A explosive	Explosive A	None	173.69	Forbidden	Forbidden	6	5	
	Fuze, percussion	Class C explosive	Explosive C	None	173.105	50 pounds	150 pounds	1,3	1,3	
	Fuze, time	Class C explosive	Explosive C	None	173.105	50 pounds	150 pounds	1,3	1,3	
	Fuze, tracer	Class C explosive	Explosive C	None	173.105	50 pounds	150 pounds	1,3	1,3	
	Gallium metal, liquid	ORM-B	None	None	173.861	Forbidden	40 pounds	1	5	None
	Gallium metal, solid	ORM-B	None	None	173.862	Forbidden	40 pounds	1,3	1	Shade from radiant heat
W	Garbage tankage *containing 8% or more water*	ORM-C	None	173.505	173.1000			1,2	1,2	
	Garbage tankage, *containing less than 8% water*	Flammable solid	Flammable solid	None	173.209	Forbidden	Forbidden	1	1	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Gas cylinder, empty. *See* Cylinder, empty									
*	Gas drips, hydrocarbon	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Gas drips, hydrocarbon	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Gas identification set	Poison A	Poison gas	None	173.331	Forbidden	Forbidden	1	5	
*	Gas identification set	Irritating material	Irritant	None	173.331	Forbidden	Forbidden	1	5	
	Gas mine. See Explosive mine									
	Gas oil. *See* Fuel oil									
	Gasoline (*including casing-head and natural*)	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	4	
	Gelatine Dynamite. See High explosive									
	Germane	Poison A	Poison gas and Flammable gas	None	173.328	Forbidden	Forbidden	1	5	
	Grenade, empty, primed	Class C explosive	Explosive C	None	173.107	50 pounds	150 pounds	1,3	1,3	
	Grenade, hand *or* rifle, explosive (*with or without gas, smoke, or incendiary material*)	Class A explosive	Explosive A	None	173.56	Forbidden	Forbidden	1,2	5	No other cargo may be stowed in the same hold with these items
	Grenade, tear gas	Irritating material	Irritant	None	173.385	Forbidden	75 pounds	1,2	1	
	Grenade without bursting charge: With incendiary material (Special fireworks)	Class B explosive	Explosive B	173.91		Forbidden	Forbidden	3	3	Passenger vessels in metal lockers only
	Grenade without bursting charge: With smoke charge (Smoke grenade)	Class C explosive	Explosive C	173.108		50 pounds	150 pounds	1,3	1,3	
	Grenade without bursting charge: With Poison A gas charge	Poison A	Poison gas	173.330		Forbidden	Forbidden			*See* correct shipping name of applicable Poison A material for stowage, special handling, and special segregation requirements
	Grenade without bursting charge: With Poison B charge	Poison B	Poison	173.350		Forbidden	Forbidden			*See* correct shipping name of applicable Poison B material for stowage, special handling, and special segregation requirements
	Guanidine nitrate	Oxidizer	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	Separate from nitro-compounds, chlorates, and acids
	Guanyl nitrosamino guanylidene hydrazine. See Initiating explosive									
	Guanyl nitrosamino guanyl tetrazene. See Initiating explosive									
	Guided missile, without warhead. See Rocket motor, Class A explosive *or* Rocket motor, class B explosive									
	Guided missile with warhead. See Rocket ammunition with explosive, illuminating, gas, incendiary, *or* smoke projectile									
	Guncotton. See High explosive									

§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/W/A	Hazardous materials descriptions and proper shipping names	Hazard class	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
	Hafnium metal, dry (*See Note 3, Sec. 173.214*)	Flammable solid	Flammable solid	None	173.214	Forbidden	75 pounds	1	5	
	Hafnium metal, wet	Flammable solid	Flammable solid	None	173.214	Forbidden	150 pounds	1,2	5	
	Hair, wet	Flammable solid	Flammable solid	None	173.172	Forbidden	Forbidden	1,2	5	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Hand signal device	Class C explosive	Explosive C	None	173.108	50 pounds	200 pounds	1,2	1,2	
W	Hay	ORM-C	None	173.505	173.1005			1,2	1,2	Segregation same as for flammable solids. Stow away from animal or vegetable oils
W	Hay or straw (*loose, wet, or damp*)									Forbidden for water shipment
	Heater for refrigerator car, liquid fuel type (*containing fuel*)	Flammable liquid	Flammable liquid	173.146		Forbidden	Forbidden	1,2	1	
*	Helium	Nonflammable gas	Nonflammable gas	173.306	173.302 173.314	150 pounds	300 pounds	1,2	1,2	
*	Helium-oxygen mixture	Nonflammable gas	Nonflammable gas	173.306	173.302	150 pounds	300 pounds	1,2	1,2	
	Heptane	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
W	*Hessian. See* Burlap cloth									
W	Hexachloroethane	ORM-A	None	173.505	173.650			1,2	1,2	
	Hexadecyltrichlorosilane	Corrosive material	Corrosive	None	173.280	Forbidden	10 gallons	1	1	Keep dry
	Hexadiene	Flammable liquid	Flammable liquid	None	173.119	Forbidden	10 gallons	1,2	5	
	Hexaethyl tetraphosphate and compressed gas mixture	Poison A	Poison gas	None	173.334	Forbidden	Forbidden	1	5	Shade from radiant heat
	Hexaethyl tetraphosphate, liquid	Poison B	Poison	None	173.358	Forbidden	1 quart	1	4	
	Hexaethyl tetraphosphate mixture, dry (*containing more than 2% hexaethyl tetraphosphate*)	Poison B	Poison	None	173.377	Forbidden	200 pounds	1,2	5	
*	Hexaethyl tetraphosphate mixture, dry (containing not more than 2% hexaethyl tetraphosphate)	Poison B	Poison	173.377	173.377	50 pounds	200 pounds	1,2	4	
	Hexaethyl tetraphosphate mixture, liquid (*containing more than 25% hexaethyl tetraphosphate*)	Poison B	Poison	None	173.359	Forbidden	1 quart	1,2	5	
*	Hexaethyl tetraphosphate mixture, liquid (containing not more than 25% hexaethyl tetraphosphate)	Poison B	Poison	173.359	173.359	1 quart	1 quart	1,2	4	
	Hexafluorophosphoric acid	Corrosive material	Corrosive	None	173.275	Forbidden	1 gallon	1,2	1,2	
	Hexafluoropropylene	Nonflammable gas	Nonflammable gas	173.306	173.304 173.314 173.315	150 pounds	300 pounds	1	4	
*	Hexaldehyde	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1,2	
	Hexamethylene diamine, solid	Corrosive material	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	
*	Hexamethylene diamine solution	Corrosive material	Corrosive	173.244	173.292	1 quart	10 gallons	1,2	1,2	
	Hexamethylene imine	Corrosive material	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Hexane	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,3	4	
	Hexanoic acid	Corrosive material	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Hexyltrichlorosilane	Corrosive material	Corrosive	None	173.280	Forbidden	10 gallons	1	1	Keep dry
	High explosive	Class A explosive	Explosive A	173.65	173.61 to 173.87	Forbidden	Forbidden	6	5	
	High explosive, liquid	Class A explosive	Explosive A	None	173.62	Forbidden	Forbidden	6	5	
*	Hydraulic accumulator. *See* Accumulator, pressurized									
	Hydrazine, anhydrous	Flammable liquid	Flammable liquid and Poison	None	173.276	Forbidden	5 pints	1	5	Segregation same as for corrosives
*	Hydrazine, aqueous solution	Corrosive material	Corrosive	None	173.276	Forbidden	5 pints	1	5	
*	Hydriodic acid	Corrosive material	Corrosive	173.244	173.245	1 quart	1 gallon	1	1	Glass carboys not permitted on passenger vessel
	Hydrobromic acid, anhydrous. *See* Hydrogen bromide									
	Hydrobromic acid, *more than 49% strength*	Corrosive material	Corrosive	None	173.262	Forbidden	Forbidden	1	1	Glass carboys not permitted on passenger vessel
*	Hydrobromic acid not more than 49% strength	Corrosive material	Corrosive	173.244	173.262	1 quart	1 gallon	1	1	Glass carboys not permitted on passenger vessel

§172.101 Hazardous Materials Table (cont'd)

(1) */W/A	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(4) Label(s) required (if not excepted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
	Hydrocarbon gas, liquefied	Flammable gas	Flammable gas	173.306	173.304 173.314	Forbidden	300 pounds	1,2	1	
*	Hydrocarbon gas, nonliquefied	Flammable gas	Flammable gas	173.306	173.302	Forbidden	300 pounds	1,2	1	
*	Hydrochloric (*muriatic*) acid	Corrosive material	Corrosive	173.244	173.263	1 quart	1 gallon	1	1	Glass carboys not permitted on passenger vessel
	Hydrochloric acid, anhydrous. *See* Hydrogen chloride									
*	Hydrochloric acid mixture	Corrosive material	Corrosive	173.244	173.263	1 quart	1 gallon	1	1	Glass carboys not permitted on passenger vessel
*	Hydrochloric acid solution, inhibited	Corrosive material	Corrosive	173.244	173.263	1 quart	1 gallon	1	1	Glass carboys not permitted on passenger vessel
	Hydrocyanic acid, liquefied	Poison A	Flammable gas and Poison gas	None	173.332	Forbidden	Forbidden	1	5	
	Hydrocyanic acid (*prussic*), solution (*5% or more hydrocyanic acid*)	Poison A	Flammable gas and Poison gas	None	173.332	Forbidden	Forbidden	1	5	Shade from radiant heat. Aqueous solutions containing more than 20 percent hydrogen cyanide are not permitted in transportation by water
	Hydrocyanic acid (*prussic*), unstabilized	Forbidden								
	Hydrocyanic acid solution, less than 5% hydrocyanic acid	Poison B	Poison	None	173.351	Forbidden	25 pounds	1	5	Shade from radiant heat
	Hydrofluoric acid, anhydrous. *See* Hydrogen fluoride									
*	Hydrofluoric acid solution	Corrosive material	Corrosive	173.244	173.264	1 quart	1 gallon	1	4	
*	Hydrofluoric and sulfuric acids, mixture	Corrosive material	Corrosive	None	173.290	Forbidden	1 gallon	1	5	
	Hydrofluoroboric acid. *See* Fluoboric acid									
	Hydrofluorosilicic acid	Corrosive material	Corrosive	None	173.265	1 quart	1 gallon	1,2	1,2	
	Hydrogen	Flammable gas	Flammable gas	173.306	173.302 173.314	Forbidden	300 pounds	1,2	4	
	Hydrogen, Liquified	Flammable gas	Flammable gas	None	173.316	Forbidden	Forbidden			Forbidden
	Hydrogen bromide	Nonflammable gas	Nonflammable gas	173.306	173.304	Forbidden	300 pounds	1	4	
	Hydrogen chloride	Nonflammable gas	Nonflammable gas	173.306	173.304	Forbidden	300 pounds	1	4	
	Hydrogen fluoride	Corrosive material	Corrosive	None	173.264	Forbidden	110 pounds	1	5	Segregation same as for nonflammable gases
	Hydrogen iodide solution. *See* Hydriodic acid									
	Hydrogen peroxide solution (8% to 40% peroxide)	Oxidizer	Oxidizer	173.244	173.266	1 quart	1 gallon	1,2	1	Shade from radiant heat. Separate from permanganates. Keep away from powdered metals
	Hydrogen peroxide solution (40% to 52% peroxide)	Oxidizer	Oxidizer	173.244	173.266	Forbidden	Forbidden	1	4	Shade from radiant heat. Separate from permanganates. Keep away from powdered metals
	Hydrogen peroxide solution (over 52% peroxide)	Oxidizer	Oxidizer	None	173.266	Forbidden	Forbidden	1	5	Shade from radiant heat. Separate from permanganates. Keep away from powdered metals. Concentrations greater than 60% hydrogen peroxide not permitted on any vessel except under conditions approved by the Department
	Hydrogen selenide	Flammable gas	Flammable gas and Poison	None	173.328	Forbidden	Forbidden	1	5	
	Hydrogen sulfate. *See* Sulfuric acid									
	Hydrogen sulfide	Flammable gas	Flammable gas and Poison	None	173.304 173.314	Forbidden	300 pounds	1	5	
	Hydrosilicofluoric acid. *See* Hydrofluorosilicic acid									
	Hypochlorite solution *containing more than 7% available chlorine by weight*	Corrosive material	Corrosive	173.244	173.277	1 quart	4 gallons	1,2	1	Glass carboys in hampers not permitted under deck
A*	Hypochlorite solution containing not more than 7% available chlorine *by weight*	ORM-B	None	173.505	173.510	No limit	No limit			
	Igniter	Class C explosive	Explosive C	None	173.106	50 pounds	150 pounds	1,3	1,3	
	Igniter cord	Class C explosive	Explosive C	None	173.100	50 pounds	150 pounds	1,3	1,3	
	Igniter fuse, metal clad	Class C explosive	Explosive C	None	173.106	50 pounds	150 pounds	1,3	1,3	
*	Igniter, jet thrust (jato)	Class A explosive	Explosive A	None	173.79	Forbidden	Forbidden	6	5	
*	Igniter, jet-thrust (jato)	Class B explosive	Explosive B	None	173.92	Forbidden	550 pounds	1,3	5	
*	Igniter, rocket motor	Class A explosive	Explosive A	None	173.79	Forbidden	Forbidden	6	5	

§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/W/A	Hazardous materials descriptions and proper shipping names	Hazard class	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
*	Igniter, rocket motor	Class B explosive	Explosive B	None	173.92	Forbidden	550 pounds	1,3	5	
	Illuminating projectile. See Fireworks, special									
	Iminobispropylamine	Corrosive material	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Initiating explosive *Diazodinitrophenol*	Class A explosive	Explosive A	None	173.70	Forbidden	Forbidden	6	5	
	Initiating explosive *Fulminate of mercury*	Class A explosive	Explosive A	None	173.71	Forbidden	Forbidden	6	5	
	Initiating explosive *Guanyl nitrosamino guanylidene hydrazine*	Class A explosive	Explosive A	None	173.72	Forbidden	Forbidden	6	5	
	Initiating explosive *Lead azide, dextrinated type only*	Class A explosive	Explosive A	None	173.73	Forbidden	Forbidden	6	5	
	Initiating explosive *Lead mononitroresorcinate*	Class A explosive	Explosive A	None	173.70	Forbidden	Forbidden	6	5	
	Initiating explosive Lead styphnate (*lead trinitroresorcinate*)	Class A explosive	Explosive A	None	173.74	Forbidden	Forbidden	6	5	
	Initiating explosive *Nitro mannite*	Class A explosive	Explosive A	None	173.75	Forbidden	Forbidden	6	5	
	Initiating explosive *Nitrosoguanidine*	Class A explosive	Explosive A	None	173.76	Forbidden	Forbidden	6	5	
	Initiating explosive *Pentaerythrite tetranitrate*	Class A explosive	Explosive A	None	173.77	Forbidden	Forbidden	6	5	
	Initiating explosive Tetrazene (*guanyl nitrosamine guanyl tetrazene*)	Class A explosive	Explosive A	None	173.78	Forbidden	Forbidden	6	5	
*	Ink	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Ink	Flammable liquid	Flammable liquid	173.118	173.144	1 quart	10 gallons	1,2	1	
*	Insecticide, dry, n.o.s.	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Insecticide, liquefied gas (*containing no Poison A or B material*)	Nonflammable gas	Nonflammable gas	173.306	173.304	150 pounds	300 pounds	1,3	1,3	
	Insecticide, liquefied gas, containing Poison A material *or* Poison B material	Poison A	Poison gas	None	173.329 173.334	Forbidden	Forbidden	1	5	Shade from radiant heat
*	Insecticide, liquid, n.o.s.	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Insecticide, liquid, n.o.s.	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Insecticide, liquid, n.o.s.	Poison B	Poison	173.345	173.346	1 quart	55 gallons	1,2	1,2	
W	Insulation tape (*varnished cloth type*). *See* Oiled material									
	Iodine monochloride	Corrosive material	Corrosive	None	173.293	Forbidden	1 quart	1	5	Keep dry
	Iodine pentafluoride	Oxidizer	Oxidizer and Poison	None	173.246	Forbidden	100 pounds	1	1	Keep dry
	Iron chloride, solid. *See* Ferric chloride, solid									
	Iron mass *or* sponge, *not properly oxidized*	Flammable solid	Flammable solid	None	173.174	Forbidden	Forbidden	1,2	5	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Iron mass *or* sponge spent	Flammable solid	Flammable solid	None	173.174	Forbidden	Forbidden	1,2	5	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
A	*Iron, oxide, spent*					Forbidden	Forbidden			
	Iron sesquichloride, solid. *See* Ferric chloride									
	Irritating agent, n.o.s.	Irritating material	Irritant	173.382		Forbidden	75 pounds	1	1	Stow away from living quarters
	Isobutane *or* Liquefied petroleum gas. *See* Liquefied petroleum gas									
	Isobutyl acetate	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Isobutylamine	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Isobutylene or Liquefied petroleum gas. *See* Liquefied petroleum gas									
	Isobutyric acid	Corrosive material	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Isobutyric anhydride	Corrosive material	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Isooctane	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Isooctene	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,3	4	
	Isopentane	Flammable liquid	Flammable liquid	173.118	173.119	Forbidden	10 gallons	1,3	4	

§172.101 Hazardous Materials Table (cont'd)

(1) *I W/ A	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(4) Label(s) required (if not excepted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
	Isopentanoic acid	Corrosive material	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Isoprene	Flammable liquid	Flammable liquid	173.118	173.119	Forbidden	10 gallons	1,3	4	
	Isopropanol. *See* Alcohol, n.o.s.									
	Isopropyl acetate	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Isopropyl acid phosphate solid	Corrosive material	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	
	Isopropylamine	Flammable liquid	Flammable liquid	None	173.119	Forbidden	10 gallons	1,3	5	
	Isopropyl mercaptan	Flammable liquid	Flammable liquid	None	173.141	Forbidden	10 gallons	1,3	5	
	Isopropyl nitrate	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Isopropyl percarbonate, stabilized	Organic peroxide	Organic peroxide	None	173.282	Forbidden	Forbidden	5	5	
	Isopropylpercarbonate, unstabilized	Organic peroxide	Organic peroxide	None	173.218	Forbidden	Forbidden	5	5	
	Isopropyl phosphoric acid, solid. *See* Isopropyl acid phosphate, solid									
	Jet thrust igniter. *See* Igniter, jet thrust									
*	Jet thrust unit (*jato*)	Class A explosive	Explosive A	None	173.79	Forbidden	Forbidden	6	5	
*	Jet thrust unit (*jato*)	Class B explosive	Explosive B	None	173.92	Forbidden	550 pounds	1,3	5	
W	*Jute*. *See* Fibers									
W	*Kapok*. *See* Fibers									
	Kerosene	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Lacquer. *See* *Paint, enamel, lacquer, stain, etc.									
*	Lacquer base, liquid. *See* *Paint, enamel, lacquer, stain, etc.									
*	Lacquer base, *or* lacquer chips, dry	Flammable solid	Flammable solid	173.153	173.175	25 pounds	100 pounds	1	1	
*	Lacquer base *or* lacquer chips, plastic (*wet with alcohol or solvent*)	Flammable liquid	Flammable liquid	173.118	173.127	1 quart	25 pounds	1,2	1	
*	Lacquer removing, reducing, *or* thinning compound. *See* Compound, lacquer, paint, *or* varnish, *etc.*, removing, reducing *or* thinning liquid									
	Lauroyl peroxide	Organic peroxide	Organic peroxide	173.153	173.157 173.158	2 pounds	25 pounds	1,2	1	
	Lead arsenate, solid	Poison B	Poison	173.364	173.367	50 pounds	200 pounds	1,2	1,2	
	Lead arsenite, solid	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Lead azide. *See* Initiating explosive									
A	Lead chloride	ORM-B	None	173.505	173.510 173.800	25 pounds	100 pounds			
	Lead cyanide	Poison B	Poison	173.370		25 pounds	No limit	1,2	1,2	Stow away from acids
W	Lead dross	ORM-C	None	173.505	173.1010			1,2	1,2	Segregation same as for corrosive materials
	Lead mononitroresorcinate. *See* Initiating explosive									
	Lead nitrate	Oxidizer	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	Stow away from foodstuffs
	Lead peroxide	Oxidizer	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	Stow away from foodstuffs
W	Lead scrap. *See* Lead dross									
	Lead styphnate (*lead trinitroresorcinate*). *See* Initiating explosive									
	Lead sulfate, solid (*containing more than 3% free acid*)	Corrosive material	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	
*	Leather bleach *or* dressing	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Leather bleach *or* dressing	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
	Lighter fluid	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Lime-nitrogen. *See* Calcium cyanamide, not hydrated, etc.									
	Lime, unslaked. *See* Calcium oxide									
A	Lindane	ORM-A	None	173.505	173.510	No limit	No limit			
	Liquefied hydrocarbon gas. *See* Hydrocarbon gas, liquefied									

§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/W/A	Hazardous materials descriptions and proper shipping names	Hazard class	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
*	Liquefied nonflammable gas (*charged with nitrogen, carbon dioxide, or air*)	Nonflammable gas	Nonflammable gas	173.306	173.304	300 pounds	300 pounds	1,2	1,2	
	Liquefied petroleum gas	Flammable gas	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	1	
	Liquid other than one classed as flammable, corrosive, poison or irritant, charged with nitrogen, carbon dioxide, or air. See Compressed gas n.o.s.									
	Lithium acetylide-ethylene diamine complex	Flammable solid	Flammable solid and Dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solid labeled Dangerous When Wet
	Lithium aluminum hydride	Flammable solid	Flammable solid and Dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solid labeled Dangerous When Wet
	Lithium aluminum hydride, ethereal	Flammable liquid	Flammable liquid	None	173.137	Forbidden	1 quart	1	5	Segregation same as for flammable solids labeled Dangerous When Wet
	Lithium amide, powdered	Flammable solid	Flammable solid	173.153	173.168	25 pounds	100 pounds	1,2	4	Segregation same as for flammable solids labeled Dangerous When Wet
	Lithium borohydride	Flammable solid	Flammable solid and Dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet
	Lithium ferro silicon	Flammable solid	Flammable solid and Dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet
	Lithium hydride	Flammable solid	Flammable solid and Dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet
	Lithium hydride in fused solid form	Flammable solid	Flammable solid and Dangerous when wet	None	173.206	Forbidden	100 pounds	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet
	Lithium hypochlorite compound, dry (*containing more than 39% available chlorine*)	Oxidizer	Oxidizer	173.153	173.217	50 pounds	100 pounds	1,2	1,2	
	Lithium metal	Flammable solid	Flammable solid and Dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet
	Lithium metal, in cartridges	Flammable solid	Flammable solid and Dangerous when wet	173.206		1 pound	25 pounds	1,2	4	Segregation same as for flammable solids labeled Dangerous When Wet
	Lithium nitride	Flammable solid	Flammable solid and Dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	5	Segretation same as for flammable solids labeled Dangerous When Wet
	Lithium peroxide	Oxidizer	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	Keep dry
	Lithium silicon	Flammable solid	Flammable solid and Dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	1,2	Segregation same as for flammable solids labeled Dangerous When Wet
	London purple, solid	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Low blasting explosive. See Low explosive									
	Low explosive	Class A Explosive	Explosive A	None	173.60	Forbidden	Forbidden	6	5	
	Lye. See Sodium hydroxide, solid									
	Magnesium aluminum phosphide	Flammable solid	Flammable solid and Dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	1,2	Segregation same as for flammable solids labeled Dangerous When Wet
	Magnesium arsenate, solid	Poison B	Poison	173.364	173.367	50 pounds	200 pounds	1,2	1,2	
	Magnesium dross, wet or hot	Forbidden		173.173						
*	Magnesium, metal (*powdered, pellets, turnings, or ribbons*)	Flammable solid	Flammable solid and Dangerous when wet	173.153	173.220	25 pounds	100 pounds	1,2	1,2	Segregation same as for flammable solids labeled Dangerous When Wet
	Magnesium nitrate	Oxidizer	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	
	Magnesium perchlorate	Oxidizer	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,3	1,3	Stow away from powdered metals
	Magnesium peroxide, solid	Oxidizer	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	Keep dry

§172.101 Hazardous Materials Table (cont'd)

(1) */W/A	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(4) Label(s) required (if not excepted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
*	Magnesium scrap (*borings, clippings, shavings, sheet, turnings, or scalpings*)	Flammable solid	Flammable solid and Dangerous when wet	173.153	173.220	Forbidden	Forbidden	1,2	1,2	Segregation same as for flammable solids labeled Dangerous When Wet
A	Magnetized material	ORM-C	Magnetized material	None	173.1020	No limit	No limit			
A	Malathion	ORM-A	None	173.505	173.510	No limit	No limit			
A	Manganese dioxide	ORM-B	None	173.505	173.510	No limit	No limit			
	Matches, block. See Matches, strike anywhere									
	Matches, safety, *book, card, or strike-on-box*	Flammable solid	Flammable solid	173.176		50 pounds	50 pounds	1,2	1	
	Matches, strike anywhere	Flammable solid	Flammable solid	None	173.176	Forbidden	Forbidden	1,2	1	
	Matting acid. *See* Sulfuric acid									
*	Medicines, n.o.s.	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Medicines, n.o.s.	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Medicines, n.o.s.	Flammable solid	Flammable solid	173.153	173.154	25 pounds	100 pounds	1,2	1,2	
*	Medicines, n.o.s.	Oxidizer	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	
*	Medicines, n.o.s., liquid	Corrosive material	Corrosive	173.244	173.245	1 quart	1 quart	1,2	1,2	
*	Medicines, n.o.s., liquid	Poison B	Poison	173.345	173.346	1 quart	55 gallons	1,3	1	
*	Medicines, n.o.s., solid	Corrosive material	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	Keep dry
*	Medicines, n.o.s., solid	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,3	1,3	
	Memtetrahydro phthalic anhydride	Corrosive material	Corrosive	None	173.298	Forbidden	1 quart	1,2	1	
*	Mercaptan mixture, aliphatic (*in containers over 110 gallons*)	Combustible liquid	None	173.118a	None	Forbidden	10 gallons	1,2	1,2	
AW	Mercaptan mixture, aliphatic (*in containers of 110 gallons or less*) *see 173.141(b)*	ORM-A	None	173.505	173.510	Forbidden	10 gallons	1,3	5	Stow in well ventilated space away from living quarters
*	Mercaptan mixture, aliphatic	Flammable liquid	Flammable liquid	None	173.141	Forbidden	10 gallons	1,3	5	
	Mercuric acetate	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercuric-ammonium chloride, solid	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercuric benzoate, solid	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercuric bromide, solid	Poison B	Poison	173.364	173.365	Forbidden	25 pounds	1,2	1,2	
	Mercuric chloride, solid	Poison B	Poison	173.364	173.372	Forbidden	25 pounds	1,2	1,2	
	Mercuric cyanide, solid	Poison B	Poison	173.370		25 pounds	200 pounds	1,2	1,2	Stow away from acids
	Mercuric iodide, solid	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
*	Mercuric iodide solution	Poison B	Poison	173.345	173.346	1 quart	55 gallons	1,2	1,2	
	Mercuric oleate, solid	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercuric oxide, solid	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercuric oxycyanide, solid	Poison B	Poison	173.364	173.365	25 pounds	200 pounds	1,2	1,2	Stow away from acids
	Mercuric-potassium cyanide, solid	Poison B	Poison	173.364	173.365 173.370	25 pounds	200 pounds	1,2	1,2	Stow away from acids
	Mercuric-potassium iodide, solid	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercuric salicylate solid	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercuric subsulfate, solid	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercuric sulfate, solid	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercuric sulfo cyanate, solid or mercuric thiocyanate, solid	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercurol, or mercury nucleate, solid	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercurous acetate, solid	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercurous bromide, solid	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercurous gluconate, solid	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	

§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(4)	(5)		(6)		(7)		
				Packaging		Maximum net quantity in one package		Water shipments		
*/ W/ A	Hazardous materials descriptions and proper shipping names	Hazard class	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
	Mercurous iodide, solid	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercurous nitrate, solid	Oxidizer	Oxidizer	173.153	173.154	50 pounds	100 pounds	1,2	1,2	
	Mercurous oxide, black, solid	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercurous sulfate, solid	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
*	Mercury compound, n.o.s., solid	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercury fulminate. See Initiating explosive									
A	Mercury, metallic	ORM-B	None	None	173.860	173.860	173.860			
	Mesityl oxide	Flammable liquid	Flammable liquid	None	173.119	1 quart	10 gallons	1,2	1,2	
W	Metal borings, shavings, turnings, *or* cuttings	ORM-C	None	173.505	173.1025			1,2	1,2	Keep dry. Not permitted if temperature of material is at or above 1300DEG0 F
	Methane	Flammable gas	Flammable gas	173.306	173.302	Forbidden	300 pounds	1,2	4	
	Methanol. See Methyl alcohol									
	Methyl acetate	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Methyl acetone	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Methylacetylene-propadiene, stabilized	Flammable gas	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	1	
	Methyl acrylate, inhibited	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Methylal	Flammable liquid	Flammable liquid	None	173.119	Forbidden	10 gallons	1,3	5	
	Methyl alcohol	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Methylamine, anhydrous *or* Monomethylamine	Flammable gas	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1	4	
	Methyl amyl acetate	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1,2	
	Methyl amyl ketone	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
	Methyl bromide and ethylene dibromide mixture, liquid	Poison B	Poison	None	173.353	Forbidden	55 gallons	1	1	
	Methyl bromide and more than 2% chloropicrin mixture, liquid	Poison B	Poison	None	173.353	Forbidden	Forbidden	1	5	Shade from radiant heat
	Methyl bromide and nonflammable, nonliquefied compressed gas mixture, liquid (*including up to 2% chloropicrin*)	Poison B	Poison	None	173.353a	Forbidden	300 pounds	1	5	Stow away from living quarters
	Methyl bromide, liquid (*bromomethane*) (*including up to 2% chloropicrin*)	Poison B	Poison	None	173.353	Forbidden	55 gallons	1	5	Stow away from living quarters. Segregation same as for nonflammable gas
	Methyl butene	Flammable liquid	Flammable liquid	None	173.119	Forbidden	10 gallons	1,2	5	
	Methyl butyrate	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Methyl cellosolve. See Ethylene glycol monomethyl ether									
	Methyl cellosolve acetate. See Ethylene glycol monomethyl ether acetate									
	Methyl chloride	Flammable gas	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	4	
*	Methyl chloride-methylene chloride mixture	Flammable gas	Flammable gas	173.306	173.304 173.314	Forbidden	300 pounds	1,2	4	
	Methyl chlorocarbonate. See Methyl chloroformate									
A	Methyl chloroform	ORM-A	None	173.505	173.510 173.605	10 gallons	55 gallons			
	Methyl chloroformate	Flammable liquid	Flammable liquid and Poison	None	173.288	Forbidden	5 pints	1,2	1	
	Methylchloromethyl ether, anhydrous	Flammable liquid	Flammable liquid and Poison	None	173.143	Forbidden	Forbidden	1	5	Shade from radiant heat
	Methylcyclohexane	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Methylcyclopentane	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,3	4	
	Methyl dichloroacetate	Corrosive material	Corrosive	173.244	173.245	1 quart	1 quart	1,2	1,2	
	Methyldichloroarsine	Poison A	Poison gas	None	173.328	Forbidden	Forbidden	1	5	Shade from radiant heat

§172.101 Hazardous Materials Table (cont'd)

(1) */W/A	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(4) Label(s) required (if not excepted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
	Methyl dichlorosilane	Flammable liquid	Flammable liquid	None	173.136	Forbidden	5 pints	1,2	1	
	Methylene chloride. *See* Dichloromethane									
	Methyl ethyl ether. *See* Ethyl methyl ether									
	Methyl ethyl ketone	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Methyl ethyl pyridine	Corrosive material	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Methyl formate	Flammable liquid	Flammable liquid	173.118	173.119	Forbidden	10 gallons	1,3	4	
	Methylfuran	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,3	4	
	Methylhydrazine	Flammable liquid	Flammable liquid and Poison	None	173.145	Forbidden	5 pints	1,2	1	Stow separate from oxidizing materials and corrosives
	Methyl isopropenyl ketone, inhibited	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Methyl magnesium bromide in ethyl ether *not over 40% concentration*	Flammable liquid	Flammable liquid	None	173.149	Forbidden	Forbidden	1	1	Segregation same as for flammable solids. Separate from flammable gases or liquids, oxidizing materials or organic peroxides
	Methyl mercaptan	Flammable gas	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	1	
	Methyl methacrylate monomer, inhibited	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Methyl methacrylate monomer, uninhibited (*high-purity, if acceptable under Sec. 173.21 of this subchapter*)	Flammable liquid	Flammable liquid	173.118	173.119	Forbidden	Forbidden	1,2	1	
	Methyl norbornene dicarboxylic anhydride. *See* Memtetrahydro phthalic anhydride									
	Methyl parathion, liquid	Poison B	Poison	None	173.358	Forbidden	1 quart	1,3	1,3	
*	Methyl parathion mixture, dry	Poison B	Poison	173.377	173.377	50 pounds	200 pounds	1,2	1,2	
*	Methyl parathion mixture, liquid, (containing 25% or less methyl parathion)	Poison B	Poison	None	173.359	1/2 pint	1 quart	1,2	1,2	
	Methyl parathion mixture, liquid, (*containing over 25% methyl parathion*)	Poison B	Poison	None	173.359	Forbidden	1 quart	1,2	1,2	
	Methylpentadiene	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Methyl pentane	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Methyl phosphonothioic dichloride, anhydrous	Corrosive material	Corrosive	173.244	173.245 173.245a	1 quart	1 quart	1	4	
	Methyl phosphonous dichloride	Corrosive material	Corrosive	173.244	173.245 173.245a	1 quart	1 quart	1	4	
	Methyl propionate	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Methyl propyl ketone	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Methyl sulfate. *See* Dimethyl sulfate									
	Methyl sulfide. *See* Dimethyl sulfide									
	Methyltrichlorosilane	Flammable liquid	Flammable liquid	None	173.135	Forbidden	10 gallons	1,2	1	
	Methyl vinyl ketone, inhibited	Flammable liquid	Flammable liquid	173.147	173.147	4 ounces	10 gallons	1,2	1	
	Mild detonating fuse, metal clad. See Fuse, mild detonating, metal clad									
	Mine, empty See 173.55									
	Mine, explosive, with gas material. See Explosive mine									
	Mine rescue equipment containing carbon dioxide	Nonflammable gas	Nonflammable gas	173.306		150 pounds	300 pounds	1,2	1,2	
*	Mining reagent, liquid (*containing 20% or more cresylic acid*)	Corrosive material	Corrosive	173.244	173.245 173.249a	1 quart	10 gallons	1,2	1,2	
A	Mipafox	ORM-A	None	173.505	173.510	No limit	No limit			
	Mixed acid. *See* Nitrating (*mixed*) acid									
A	Molybdenum pentachloride	ORM-B	None	173.505	173.510 173.800	25 pounds	100 pounds			
	Monobromotrifluoromethane	Nonflammable gas	Nonflammable gas	173.306	173.304 173.314	150 pounds	300 pounds	1,2	1,2	
*	Monochloroacetic acid, liquid *or* solution	Corrosive material	Corrosive	173.244	173.294	1 quart	1 quart	1,2	1,2	Glass carboys in hampers not permitted under deck
	Monochloroacetone	Forbidden								

§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/W/A	Hazardous materials descriptions and proper shipping names	Hazard class	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
	Monochloroacetone, stabilized *or* inhibited	Irritating material	Irritant	None	173.384	Forbidden	5 gallons	1	1	Stow away from living quarters
	Monochlorodifluoromethane	Nonflammable gas	Nonflammable gas	173.306	173.304 173.314 173.315	150 pounds	300 pounds	1,2	1,2	
	Monochloroethylene. *See* Vinyl chloride									
	Monochloropentafluoroethane	Nonflammable gas	Nonflammable gas	173.306	173.304	150 pounds	300 pounds	1,2	1,2	
	Monochlorotetrafluoroethane	Nonflammable gas	Nonflammable gas	173.306	173.304 173.314	150 pounds	300 pounds	1,2	1,2	
	Monochlorotrifluoromethane	Nonflammable gas	Nonflammable gas	173.306	173.304	150 pounds	300 pounds	1,2	1,2	
	Monoethanolamine	Corrosive material	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
*	Monoethanolamine solution	Corrosive material	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Monoethylamine	Flammable liquid	Flammable liquid	None	173.148	Forbidden	5 pints	1,2	5	Segregation same as for flammable gas
	Monofluorophosphoric acid, anhydrous	Corrosive material	Corrosive	None	173.275	Forbidden	1 gallon	1,2	1,2	Keep dry
	Monomethylamine, anhydrous	Flammable gas	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	4	
*	Monomethylamine, aqueous solution	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,3	4	Stow away from mercury and its compounds
	Mortar stain, liquid	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Mortar stain, liquid	Flammable liquid	Flammable liquid	173.118	173.128	1 quart	55 gallons	1,2	1	
	Moth balls. See Naphthalene									
	Motion picture film. See Film									
	Motor fuel antiknock compound *or* antiknock compound	Poison B	Poison	None	173.354	Forbidden	55 gallons	1	5	If flashpoint less than 141 deg F., segregation same as for flammable liquids
*	Motor fuel n.o.s.	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Motor fuel, n.o.s.	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Motor, internal combustion			173.120						
	Motor vehicle, etc., *including automobile, motorcycle, truck, tractor, and other self-propelled vehicle or equipment powered by internal combustion engine, when offered new or used for transportation and which contain fuel in the engine or fuel tank or the electric storage battery is connected to either terminal of the electrical system*	ORM-C	None	173.120 173.250 173.306 173.120 173.250 173.257 173.306 175.305 176.905				1,2	1,2	Not permitted in nonvented container
	Muriatic acid. *See* Hydrochloric (muriatic) acid									
*	Naphtha	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Naphtha	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Naphtha distillate	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Naphtha distillate	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
AW	Naphthalene *or* Naphthalin	ORM-A	None	173.505	173.655	25 pounds	300 pounds	1,2	1,2	Segregation same as for flammable solids
*	*Naphtha petroleum. See* *Petroleum naphtha									
*	Naphtha, solvent	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Naphtha, solvent	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Natural gasoline. See Gasoline									
	Neohexane	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,3	4	
*	Neon	Nonflammable gas	Nonflammable gas	173.306	173.302	150 pounds	300 pounds	1,2	1,2	
	New explosive or explosive device			173.51	173.86					
	Nickel carbonyl	Flammable liquid	Flammable liquid and Poison	None	173.126	Forbidden	Forbidden	1	5	Not permitted on a vessel carrying explosives. Shade from radiant heat. Segregation same as for flammable liquids 1a *
	Nickel catalyst, wet, *finely divided, activated, or spent. With not less than 40% water or other suitable liquid*	Flammable solid	Flammable solid	None	173.233	Forbidden	100 pounds	1,2	1	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Nickel cyanide, solid	Poison B	Poison	173.370		25 pounds	200 pounds	1,2	1,2	Stow away from acids

§172.101 Hazardous Materials Table (cont'd)

(1) */W/A	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(4) Label(s) required (if not excepted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
	Nicotine hydrochloride	Poison B	Poison	173.345	173.346	1 quart	55 gallons	1,2	1,2	
	Nicotine, liquid	Poison B	Poison	None	173.358	Forbidden	55 gallons	1,2	1,2	
	Nicotine salicylate	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
*	Nicotine sulfate, liquid	Poison B	Poison	173.345	173.346	1 quart	55 gallons	1,2	1,2	
	Nicotine sulfate, solid	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Nicotine tartrate	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Nitrate of ammonia explosives. See High explosive									
*	Nitrate, n.o.s.	Oxidizer	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	
	Nitrating (*mixed*) acid	Oxidizer	Oxidizer	None	173.267	Forbidden	1 quart	1	5	Segregation same as for corrosive materials
	Nitrating (*mixed*) acid, spent	Corrosive material	Corrosive	None	173.248	Forbidden	1 quart	1	5	
	Nitric acid (*over 40%*)	Oxidizer	Oxidizer and Corrosive	None	173.268	Forbidden	5 pints	1	5	Segregation same as for corrosive materials. Stow away from hydrazine, separate from diethylenetriamine
	Nitric acid, fuming	Oxidizer	Oxidizer and Poison	None	173.268	Forbidden	Forbidden	1	5	Segregation same as for corrosive materials. Stow away from hydrazine, separate from diethylenetriamine
	Nitric acid, 40% or less	Corrosive material	Corrosive	None	173.268	Forbidden	5 pints	1	5	Stow away from hydrazine, separate from diethylenetriamine
	Nitric ether. See Ethyl nitrate									
	Nitric oxide	Poison A	Poison gas	None	173.337	Forbidden	Forbidden	1	5	
	Nitroaniline	Poison B	Poison	173.364	173.373	50 pounds	200 pounds	1,2	1,2	
	p-Nitroaniline. *See* Nitroaniline									
	Nitrobenzol, liquid (*oil of mirbane, nitrobenzene*)	Poison B	Poison	173.345	173.346	1 quart	55 gallons	1,2	1,2	
	Nitro carbo nitrate	Oxidizer	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	
	Nitrocellulose, colloided, granular *or* flake, wet with not less than 20% alcohol *or* solvent, *or* block, wet with not less than 25% alcohol	Flammable liquid	Flammable liquid	173.118	173.127	1 quart	25 pounds	1,3	1	
	Nitrocellulose, colloided, granular *or* flake, wet with not less than 20% water	Flammable solid	Flammable solid	173.153	173.184	25 pounds	100 pounds	1,3	1	
	Nitrocellulose, dry. See High explosive									
	Nitrocellulose flakes, wet with not less than 20% alcohol *or* solvent	Flammable liquid	Flammable liquid	173.118	173.127	1 quart	25 pounds	1,3	1	
	Nitrocellulose, wet with not less than 30% alcohol *or* solvent	Flammable liquid	Flammable liquid	173.118	173.127	1 quart	25 pounds	1,3	1	
	Nitrocellulose, wet with not less than 20% water	Flammable solid	Flammable solid	173.153	173.184	25 pounds	100 pounds	1,3	1	
	Nitrochlorobenzene, ortho, liquid	Poison B	Poison	173.345	173.346	1 quart	55 gallons	1,2	1,2	
	Nitrochlorobenzene, meta *or* para, solid	Poison B	Poison	173.364	173.374	50 pounds	200 pounds	1,2	1,2	
*	Nitrogen	Nonflammable gas	Nonflammable gas	173.306	173.302 173.314	150 pounds	300 pounds	1,2	1,2	
*	Nitrogen, pressurized Liquid	Nonflammable gas	Nonflammable gas	None	173.304	Forbidden	300 pounds	1,3	1,3	
	Nitrogen dioxide, liquid	Poison A	Oxidizer and Poison gas	None	173.336	Forbidden	Forbidden	1	5	Segregation same as for nonflammable gases. Stow away from organic materials
*	Nitrogen fertilizer solution	Nonflammable gas	Nonflammable gas	173.306	173.304 173.314	150 pounds	300 pounds	1,3	1,3	
	Nitrogen peroxide, liquid	Poison A	Oxidizer and Poison gas	None	173.336	Forbidden	Forbidden	1	5	Segregation same as for nonflammable gas. Stow away from organic materials
	Nitrogen tetroxide, liquid	Poison A	Oxidizer and Poison gas	None	173.336	Forbidden	Forbidden	1	5	Segregation same as for nonflammable gases. Stow away from organic materials
	Nitroglycerin, liquid, desensitized. See High explosive, liquid									
	Nitroglycerin, liquid, undesensitized See 173.51	Forbidden								
	Nitroglycerin, spirits of. See Spirits of nitroglycerin									
	Nitroguanidine, dry. See High explosive									
	Nitroguanidine, wet with not less than 20% water	Flammable solid	Flammable solid	173.153	173.184	25 pounds	100 pounds	1,2	4	
	Nitrohydrochloric acid	Corrosive material	Corrosive	None	173.278	Forbidden	5 pints	1	5	
*	Nitrohydrochloric acid, diluted	Corrosive material	Corrosive	None	173.278	Forbidden	5 pints	1	5	
	Nitromannite. See High explosive									

§172.101 Hazardous Materials Table (cont'd)

(1) */ W/ A	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(4) Label(s) required (if not excepted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
	Nitromethane	Flammable liquid	Flammable liquid	173.118	173.149a	1 quart	10 gallons	1,2	1,2	
	Nitromuriatic acid. *See* Nitrohydrochloric acid									
	Nitrosoguanidine. *See* Initiating explosive									
	Nitrostarch, dry. *See* High explosive									
	Nitrostarch, wet with not less than 30% alcohol *or* solvent	Flammable liquid	Flammable liquid	173.118	173.127	1 quart	25 pounds	1,2	1	
	Nitrostarch, wet with not less than 20% water	Flammable solid	Flammable solid	173.153	173.184	25 pounds	100 pounds	1	4	
	Nitrosyl chloride	Nonflammable gas	Nonflammable gas	173.306	173.304 173.314	Forbidden	300 pounds	1	4	
	Nitrourea. *See* High explosive									
	Nitrous oxide	Nonflammable gas	Nonflammable gas	173.306	173.304 173.315	150 pounds	300 pounds	1,2	1,2	Under deck stowage must be in well-ventilated space
	Nitroxylol	Poison B	Poison	173.345	173.346	1 quart	55 gallons	1,2	1	
	Nonflammable gas n.o.s. *See* Compressed Gas, n.o.s.									
*	Nonliquefied hydrocarbon gas	Flammable gas	Flammable gas	173.306	173.302	Forbidden	300 pounds	1,2	1	
	Nonyl trichlorosilane	Corrosive material	Corrosive	None	173.280	Forbidden	10 gallons	1	1	Keep dry
	Nordhausen acid. *See* Sulfuric acid									
W	Oakum	ORM-C	None	173.505	173.1030			1,2	1,2	
	Octadecyltrichlorosilane	Corrosive material	Corrosive	None	173.280	Forbidden	10 gallons	1	1	Keep dry
	Octane	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Octyl trichlorosilane	Corrosive material	Corrosive	None	173.280	Forbidden	10 gallons	1	1	Keep dry
*	Oil, *described as oil*, n.o.s., petroleum oil, *or* petroleum oil, n.o.s.	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Oil, *described as oil*, oil, n.o.s., petroleum oil, *or* petroleum oil, n.o.s.	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Oiled clothing (*manufactured article properly dried to prevent spontaneous heating*). *See* Oiled material									
AW	Oiled material (*manufactured article properly dried to prevent spontaneous heating*)	ORM-C	None	173.505	173.1035	No limit	No limit	1,3	1,3	
	Oiled paper (*manufactured article properly dried to prevent spontaneous heating*). *See* Oiled material									
	Oil of mirbane. *See* Nitrobenzol, liquid									
	Oil of vitriol. *See* Sulfuric acid									
	Oil well cartridge	Class C explosive	Class C explosive	None	173.112	50 pounds	150 pounds	1,3	1,3	
	Oleum (*sulfuric acid fuming*)	Corrosive material	Corrosive	None	173.272	Forbidden	5 pints	1,2	1	Under deck stowage must be in metal drums only. Keep dry
*	Organic peroxide, liquid, *or* solution, n.o.s.	Organic peroxide	Organic peroxide	173.153	173.221	Forbidden	1 quart	1,2	1,2	Stow separate from combustible materials, explosives, or acids.
*	Organic peroxide, solid, n.o.s.	Organic peroxide	Organic peroxide	173.153	173.154	Forbidden	25 pounds	1,2	1,2	Stow separate from combustible materials, explosives, or acids.
*	Organic Peroxide liquid *or* solution, n.o.s.	Flammable liquid	Organic peroxide and flammable liquid	None	173.119	Forbidden	1 quart	1,2	5	Stow separate from combustible materials, explosives, or acids
*	Organic phosphate, organic phosphate compound, *or* organic phosphorus compound; mixed with compressed gas	Poison A	Poison gas	None	173.334	Forbidden	Forbidden	1	5	Shade from radiant heat
*	Organic phosphate, organic phosphate compound, *or* organic phosphorus compound; liquid	Poison B	Poison	None	173.358	Forbidden	1 quart	1,2	5	
*	Organic phosphate, organic phosphate compound, *or* organic phosphorus compound; solid *or* dry	Poison B	Poison	None	173.377	Forbidden	200 pounds	1,2	4	
*	Organic phosphate mixture, organic phosphate compound mixture, *or* organic phosphorus compound mixture; liquid	Poison B	Poison	173.359	173.359	1/2 pint	1 quart	1,2	5	
*	Organic phosphate mixture, organic phosphate compound mixture, *or* organic phosphorus compound mixture, solid *or* dry	Poison B	Poison	173.377	173.377	50 pounds	200 pounds	1,2	4	
AW	ORM-A n.o.s.	ORM-A	None	173.505	173.510	No limit	No limit	1,2	1,2	Stow away from living quarters
AW	ORM-B n.o.s.	ORM-B	None	173.505	173.510	No limit	No limit	1,2	1,2	
	ORM-C. *See* 173.500 & 176.900									
	Orthonitroaniline. *See* Nitroaniline									

§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/W/A	Hazardous materials descriptions and proper shipping names	Hazard class	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
	Oxidizer, *or* Oxidizing material, n.o.s.	Oxidizer	Oxidizer	173.153	173.154	25 pounds	25 pounds	1,2	1,2	
	Oxidizer material packed with other articles See 173.152									
*	Oxygen	Nonflammable gas	Oxidizer	173.306	173.302 173.314	150 pounds	300 pounds	1,2	1,2	Under deck stowage must be in well ventilated space
*	Oxygen, pressurized liquid	Nonflammable gas	Oxidizer	None	173.304	Forbidden	Forbidden	1,3	1,3	Stow separate from acetylene. Do not overstow with other cargo
*	Paint drier, liquid	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Paint drier, liquid	Flammable liquid	Flammable liquid	173.118	173.128	1 quart	55 gallons	1,2	1	
*	Paint, enamel, lacquer, stain, shellac, *or* varnish; aluminum, bronze, gold, wood filler, liquid *or* lacquer base, liquid	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Paint, enamel, lacquer, stain, shellac, *or* varnish; aluminum, bronze, gold, wood filler, liquid, *or* lacquer base, liquid	Flammable liquid	Flammable liquid	173.118	173.128	1 quart	55 gallons	1,2	1	
*	*Paint, reducing or thinning compound. See* *Compound, lacquer, paint, *or* varnish, reducing *or* thinning liquid, etc.									
	Paper caps. See Toy caps									
W	Paper scrap (*when dry, clean, and free from oil*)	ORM-C	None	173.505	173.1075			1,2	1,2	
	Paper stock, wet	Flammable solid	Flammable solid	None	173.185	Forbidden	Forbidden	1,2	1,2	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Paper waste (*when dry, clean, and free from oil*). *See* Paper scrap									
	Paper waste, wet. *See* Waste paper, wet									
	Paramenthane hydroperoxide	Organic peroxide	Organic peroxide	173.153	173.224	1 quart	1 quart	1,2	4	
	Paranitroaniline, solid. *See* Nitroaniline									
	Parathion and compressed gas mixture	Poison A	Poison gas	None	173.334	Forbidden	Forbidden	1,3	5	
	Parathion, liquid	Poison B	Poison	None	173.358	Forbidden	1 quart	1,3		
*	Parathion mixture, dry	Poison B	Poison	173.377	173.377	50 pounds	200 pounds	1,3	1,3	
	Parathion mixture, liquid	Poison B	Poison	None	173.359	Forbidden	1 quart	1,3	1,3	
	Paris green, solid. *See* Copper acetoarsenite, solid									
	Pentaborane	Flammable liquid	Poison and flammable liquid	None	173.138	Forbidden	Forbidden	1	5	Segregation same as for flammable solids. Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Pentaerythrite tetranitrate. See Initiating explosive									
	Pentaerythrite tetranitrate, desensitized, wet. See High explosive									
	Pentane	Flammable liquid	Flammable liquid	173.118	173.119	Forbidden	10 gallons	1,3	4	
	Pentolite, dry. See High explosive									
	Peracetic acid solution, *not over 40% peracetic acid and not over 6% hydrogen peroxide*	Organic peroxide	Organic peroxide	173.223	173.223	1 pint	5 pints	1	4	Shade from radiant heat
*	Perchlorate, n.o.s.	Oxidizer	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,3	1,3	Stow away from powdered metals
	Perchloric acid, *exceeding 50% but* not exceeding 72% strength	Oxidizer	Oxidizer	None	173.269	Forbidden	5 pints	1	5	Segregation same as for corrosive materials. Stow away from hydrazine
	Perchloric acid exceeding 72% strength	Forbidden								
*	Perchloric acid, not over 50% acid	Oxidizer	Oxidizer	173.244	173.269	Forbidden	5 pints	1	1	Segregation same as for corrosive materials. Stow away from hydrazine
	Perchloro-methyl-mercaptan	Poison B	Poison	173.345	173.360	Forbidden	10 pounds	1	4	
	Percussion cap	Class C explosive	Explosive C	None	173.107	50 pounds	150 pounds	1,3	1,3	
	Percussion fuze	Class C explosive	Explosive C	None	173.105	50 pounds	150 pounds	1,3	1,3	
A	Perfluoro-2-butene	ORM-A	None	173.505	173.510 173.605	10 gallons	55 gallons			
*	Permanganate, n.o.s.	Oxidizer	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	Separate from ammonium compounds, hydrogen peroxide, and acids
	Permanganate of potash. See Potassium permanganate									
*	Peroxide, organic *See* Organic Peroxide									
W	Pesticide, water reactive, *including but not limited to fungicides, and herbicides, etc., which contain manganese ethylenebisdithio carbamate*	ORM-C	None	173.505	173.1040			2	2	Keep dry

§172.101 Hazardous Materials Table (cont'd)

(1) */ W/ A	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(4) Label(s) required (if not excepted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
W	Petroleum coke (*uncalcined*)	ORM-C	None	173.505	173.1045			1,2	1,2	Not permitted if temperature of material is at or above 130 deg F.
	Petroleum crude. *See* Crude oil									
*	Petroleum distillate	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Petroleum distillate	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,3	4	
	Petroleum ether	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,3	4	
	Petroleum gas, liquefied. *See* Liquefied petroleum gas									
*	Petroleum naphtha	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Petroleum naphtha	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
A	Phencapton	ORM-A	None	173.505	173.510	No limit	No limit			
	Phenol. *See* Carbolic acid									
	Phenyl dichloro arsine	Poison B	Poison	None	173.355	Forbidden	30 gallons	1	5	
A	Phenylenediamine, meta or para, solid	ORM-A	None	173.505	173.510	No limit	No limit			
	Phenyl trichlorosilane	Corrosive material	Corrosive	None	173.280	Forbidden	10 gallons	1	1	Keep dry
	Phosgene (diphosgene)	Poison A	Poison gas	None	173.333	Forbidden	Forbidden	1	5	
	Phosphine	Poison A	Flammable gas and Poison gas	None	173.328	Forbidden	Forbidden	1	5	
*	Phosphoric acid *or* Phosphoric Acid Solution	Corrosive material	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	Glass carboys in hampers not permitted under deck
	Phosphoric acid triethylenemimine. *See* Tris-(1-aziridinyl phosphine oxide)									
	Phosphoric anhydride (*phosphorus pentoxide*)	Corrosive material	Corrosive	None	173.188	Forbidden	100 pounds	1,2	1,2	Keep dry. Glass bottles not permitted under deck
	Phosphorus, amorphous, red	Flammable solid	Flammable solid	None	173.189	Forbidden	11 pounds	1,2	1,2	
	Phosphorus bromide. *See* Phosphorus tribromide									
	Phosphorus chloride. *See* Phosphorus trichloride									
	Phosphorus heptasulfide	Flammable solid	Flammable solid	None	173.225	Forbidden	10 pounds	1,2	1	Separate from oxidizing materials
	Phosphorus oxybromide	Corrosive material	Corrosive	None	173.271	Forbidden	1 quart	1	1	Keep dry. Glass carboys not permitted on passenger vessels
	Phosphorus oxychloride	Corrosive material	Corrosive	None	173.271	Forbidden	1 quart	1	1	Keep dry. Glass carboys not permitted on passenger vessels
	Phosphorus pentachloride, solid	Corrosive material	Corrosive	None	173.191	Forbidden	5 pounds	1	1	Keep dry
	Phosphorus pentasulfide	Flammable solid	Flammable solid, and Dangerous when wet	None	173.225	Forbidden	11 pounds	1,2	1,2	Separate from oxidizing material
	Phosphorus sesquisulfide	Flammable solid	Flammable solid, and Dangerous when wet	None	173.225	Forbidden	11 pounds	1,2	1	Separate from oxidizing materials
	Phosphorus tribromide	Corrosive material	Corrosive	None	173.270	Forbidden	1 quart	1	1	Keep dry. Glass carboys not permitted on passenger vessels
	Phosphorus trichloride	Corrosive material	Corrosive	None	173.271	Forbidden	1 quart	1	1	Keep dry. Glass carboys not permitted on passenger vessels
	Phosphorus trisulfide	Flammable solid	Flammable solid	None	173.225	Forbidden	10 pounds	1,2	1	Separate from oxidizing materials
	Phosphorus, white *or* yellow, dry	Flammable solid	Flammable solid and Poison	None	173.190	Forbidden	Forbidden	1,2	5	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Phosphorus, white *or* yellow, in water	Flammable solid	Flammable solid and Poison	None	173.190	Forbidden	25 pounds	1,2	5	Separate from flammable gases or liquids, oxidizing materials or organic peroxides
	Phosphoryl chloride. *See* Phosphorus oxychloride									
	Photographic film. *See* Film									
	Photographic flash powder. *See* Fireworks, special *or* Low explosives									
	Picrate, dry. *See* High explosive									
	Picrate of ammonia. *See* High explosive									
	Picric acid, dry. *See* High explosive									
	Picric acid, wet, with not less than 10% water	Flammable solid	Flammable solid	None	173.192 173.193	1 pound	25 pounds	1	5	Under deck stowage permitted on cargo vessels if wet with more than 30% water. Stow away from heavy metals and their compounds

§172.101 Hazardous Materials Table (cont'd)

(1) */W/A	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(4) Label(s) required (if not excepted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
	Picric acid, wet with not less than 10% water, over 25 pounds. See High explosive									
	Pine oil	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
	Pinwheels. *See* Fireworks, common									
	Pivaloyl chloride. *See* Trimethyl acetylchloride									
*	Plastic solvent, n.o.s.	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Plastic solvent, n.o.s.	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Plutoniumnitrate solution	Radioactive material	Radioactive (See Sec. 172.403)	173.393	173.396			1,2	1,2	
	Poisonous liquid, n.o.s. *or* Poison B, liquid, n.o.s.	Poison B	Poison	173.345	173.346	1 quart	55 gallons	1,2	1	
	Poisonous liquid *or* gas, n.o.s.	Poison A	Poison gas	None	173.328	Forbidden	Forbidden	1	5	
	Poisonous solid, n.o.s. *or* Poison B, solid, n.o.s.	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1	
*	Polish, metal, stove, furniture *or* wood, liquid	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Polish, metal, stove, furniture *or* wood, liquid	Flammable liquid	Flammable liquid	173.118	173.129	1 quart	55 gallons	1,2	1	
*	*Polymerizable material*			173.21						
	Potassium arsenate, solid	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Potassium arsenite, solid	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
*	Potassium bifluoride solution. *See* *Potassium hydrogen fluoride solution									
	Potassium bromate	Oxidizer	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	Separate from ammonium compounds. Stow away from powdered metals
	Potassium chlorate (*potash chlorate*)	Oxidizer	Oxidizer	173.153	173.163	25 pounds	100 pounds	1,2	1,2	Separate from ammonium compounds. Stow away from powdered metals
	Potassium cyanide, solid	Poison B	Poison	173.370		25 pounds	200 pounds	1,2	1,2	Stow away from acids
*	Potassium cyanide solution	Poison B	Poison	173.345	173.352	1 quart	55 gallons	1,2	1,2	Stow away from acids
	Potassium dichloro isocyanurate. See Potassium dichloro-s-triazinetrione									
	Potassium dichloro-s-triazinetrione, *dry (containing more than 39% available chlorine)*	Oxidizer	Oxidizer	173.153	173.217	50 pounds	100 pounds	1,2	1,2	
A	Potassium dichromate	ORM-A	None	173.505	173.510	No limit	No limit			
A	Potassium fluoride	ORM-B	None	173.505	173.510	No limit	No limit			
*	Potassium fluoride solution	Corrosive material	Corrosive	173.244	173.249	1 quart	5 gallons	1,2	1,2	
	Potassium hydrate. *See* Potassium hydroxide									
*	Potassium hydrogen fluoride solution	Corrosive material	Corrosive	173.244	173.249	1 quart	5 gallons	1,2	1,2	
A	Potassium hydrogen sulfate, solid	ORM-B	None	173.505	173.510 173.800	25 pounds	100 pounds			
	Potassium hydroxide, dry solid, flake, bead, *or* granular	Corrosive material	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	Keep dry. Do not stow with metals or alloys such as brass, copper, tin, zinc, aluminum, solder, or lead
*	Potassium hydroxide, liquid *or* solution	Corrosive material	Corrosive	173.244	173.249	1 quart	10 gallons	1,2	1,2	
*	Potassium hypochlorite solution. *See* Hypochlorite solutions containing more than 7% available chlorine by weight									
A	Potassium metabisulfite	ORM-B	None	173.505	173.510	No limit	No limit			
	Potassium, metal	Flammable solid	Flammable solid and Dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet
	Potassium, metal liquid alloy	Flammable solid	Flammable solid and Dangerous when wet	None	173.202	Forbidden	1 pound	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet
	Potassium nitrate	Oxidizer	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	
	Potassium nitrite	Oxidizer	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	Separate from ammonium compounds and cyanides. Stow away from foodstuffs
	Potassium nitrate mixed (*fused*) with sodium nitrite	Oxidizer	Oxidizer	173.153	173.183	25 pounds	100 pounds	1,2	1,2	Separate from ammonium compounds and cyanides. Stow away from foodstuffs
	Potassium perchlorate	Oxidizer	Oxidizer	173.153	173.219	25 pounds	100 pounds	1,3	1,3	Stow away from powdered metals

§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/W/A	Hazardous materials descriptions and proper shipping names	Hazard class	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
	Potassium permanganate	Oxidizer	Oxidizer	173.153	173.154 173.194	25 pounds	100 pounds	1,2	1,2	Separate from ammonium compounds and hydrogen peroxide
	Potassium peroxide	Oxidizer	Oxidizer	None	173.154	Forbidden	100 pounds	1,2	1,2	Keep dry
	Potassium sulfide	Flammable solid	Flammable solid	173.153	173.207	25 pounds	300 pounds	1,2	1,2	Separate from liquid acids, flammable gases or liquids, oxidizing materials or organic peroxides
	Pressurized product. See Compressed gas, n.o.s.									
	Primer. See Cannon primer, combination primer, or small-arm primer									
	Primer, detonating. See Detonating primer									
	Projectile, explosive. See Explosive projectile									
	Projectile, gas, nonexplosive. See Chemical ammunition, containing Poison or Irritating Material									
	Projectile, gas, smoke, or incendiary, with burster or booster with or without detonating fuze. See Explosive projectile									
	Projectile, illuminating, incendiary or smoke, with expelling charge but without bursting charge. See Fireworks, special									
	Projectile, sand-loaded, empty or solid See 173.55									
	Propane *or* Liquefied petroleum gas. *See* Liquefied petroleum gas									
*	Propellant explosive	Class A explosive	Explosive A	None	173.64	Forbidden	Forbidden	6	5	
	Propellant explosive (*solid, Class B, and small-arms primer*) *See* *Propellant explosive, solid									
	Propellant explosive in water (*Smokeless powder*)	Class B explosive	Explosive B	None	173.93	Forbidden	Forbidden	1,3	5	Magazine stowage authorized
	Propellant explosive in water, unstable, condemned, *or* deteriorated (*smokeless powder*)	Class B explosive	Explosive B	None	173.93	Forbidden	Forbidden	1,3	5	Magazine stowage authorized
*	Propellant explosive, liquid	Class B explosive	Explosive B	None	173.93	Forbidden	10 pounds	1,2	5	Magazine stowage authorized
*	Propellant explosive, solid	Class B explosive	Explosive B	None	173.93	Forbidden	10 pounds	1,3	5	Magazine stowage authorized
	Propionaldehyde	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Propionic acid	Corrosive material	Corrosive	173.244	173.245	1 quart	5 gallons	1,2	1,2	Separated by a complete compartment or hold from organic peroxides
*	Propionic acid solution	Corrosive material	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	Separated by a complete compartment or hold from organic peroxides
	Propionic anhydride	Corrosive material	Corrosive	173.244	173.245	1 quart	1 quart	1,2	1	Keep dry
	Propyl acetate	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Propyl alcohol. *See* Alcohol, n.o.s.									
	Propylamine	Flammable liquid	Flammable liquid	None	173.119	Forbidden	10 gallons	1,3	5	
	Propyl chloride	Flammable liquid	Flammable liquid	None	173.119	Forbidden	10 gallons	1,3	5	
	Propylene diamine	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Propylene dichloride	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Propylene imine, inhibited	Flammable liquid	Flammable liquid	None	173.139	Forbidden	5 pints	1,2	1	
	Propylene *or* Liquefied petroleum gas. *See* Liquefied petroleum gas									
	Propylene oxide	Flammable liquid	Flammable liquid	173.118	173.119	Forbidden	1 gallon	1,3	4	
	Propyl formate	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Propyl mercaptan	Flammable liquid	Flammable liquid	None	173.141	Forbidden	10 gallons	1,2	5	
	Propyl trichlorosilane	Corrosive material	Corrosive	None	173.280	Forbidden	10 gallons	1	1	Keep dry
	Prussic acid. See Hydrocyanic acid (*prussic*), liquid *or* unstabilized									
	Pyridine	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Pyrophoric liquid, *or* Pyroforic liquids, n.o.s.	Flammable liquid	Flammable liquid	None	173.134	Forbidden	Forbidden	1	5	Shade from radiant heat. Separate from flammable gases or liquids, oxidizing materials, or organic peroxides

§172.101 Hazardous Materials Table (cont'd)

(1) */W/A	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(4) Label(s) required (if not excepted)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
				(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
	Pyro sulfuryl chloride	Corrosive material	Corrosive	173.244	173.247	1 quart	1 quart	1	4	Keep dry. Glass carboys not permitted on passenger vessels
	Pyroxylin plastic scrap	Flammable solid	Flammable solid	None	173.195	Forbidden	Forbidden	1	5	Shade from radiant heat
	Pyroxylin plastics, rods, sheets, rolls, or tubes	Flammable solid	Flammable solid	173.197		50 pounds	350 pounds	1,3	1	
*	Pyroxylin solution	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Pyroxylin solution	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Pyroxylin solvent, n.o.s.	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Pyroxylin solvent, n.o.s.	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Pyrrolidine	Flammable liquid	Flammable liquid	173.118	173.119	Forbidden	10 gallons	1,2	1	
	Quicklime. *See* Calcium oxide									
	Radioactive device, n.o.s.	Radioactive material	None	173.391				1,2	1,2	
*	Radioactive material, fissile, n.o.s.	Radioactive material	Radioactive	173.393	173.396			1,2	1,2	
*	Radioactive material, low specific activity *or* LSA, n.o.s.	Radioactive material	Radioactive	173.392	173.393			1,2	1,2	
*	Radioactive material, n.o.s.	Radioactive material	Radioactive	173.393	173.395			1,2	1,2	
*	Radioactive material, limited quantity, n.o.s.	Radioactive material	None	173.391				1,2	1,2	
*	Radioactive material, special form, n.o.s.	Radioactive material	Radioactive	173.393	173.394			1,2	1,2	
	Rags, oily	Flammable solid	Flammable solid	None	173.199	Forbidden	Forbidden	1,2	1,2	Keep dry. Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Rags, wet	Flammable solid	Flammable solid	None	173.200	Forbidden	Forbidden	1	1	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Railway Fusee. *See* Fusee									
	Railway torpedo. *See* Torpedo, railway									
	Range oil. *See* Fuel oil									
*	*Reducing compound, paint, varnish, lacquer, etc. See* *Compound, lacquer, paint, *or* varnish, etc., removing, reducing, *or* thinning, liquid									
	Refrigerant gas *See* Dispersant Gas									
*	Refrigerating machine	Nonflammable gas	Nonflammable gas	173.306		No limit	No limit	1,3	1,3	
*	Refrigerating machine	Flammable gas	Flammable gas	173.306		No limit	No limit	1,3	1,3	
*	Refrigerating machine	Flammable liquid	Flammable liquid	173.130	173.306	No limit	No limit	1,2	1	
*	*Removing compound, paint, varnish, lacquer, etc., See* *Compound, lacquer, paint, *or* varnish, etc., removing reducing, *or* thinning, liquid									
*	Resin solution (*resin compound, liquid*)	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
	Resin solution (*resin compound, liquid*)	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	55 gallons	1,2	1	
	Rifle grenade. *See* Grenade, hand or rifle, explosive									
	Rifle powder. *See* *Propellant explosive, or Black powder									
	Road asphalt *or* tar (*when heated to or above its flash point*). *See* Asphalt									
	Road asphalt *or* tar, liquid. *See* Asphalt, cut back									
*	Road oil	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
	Rocket ammunition with empty projectile	Class B explosive	Explosive B	None	173.90	Forbidden	Forbidden	1,3	5	
	Rocket ammunition with explosive projectile	Class A explosive	Explosive A	None	173.57	Forbidden	Forbidden	6	5	
	Rocket ammunition with gas projectile	Class A explosive	Explosive A	None	173.57	Forbidden	Forbidden	6	5	
	Rocket ammunition with illuminating projectile	Class A explosive	Explosive A	None	173.57	Forbidden	Forbidden	6	5	
	Rocket ammunition with incendiary projectile	Class A explosive	Explosive A	None	173.57	Forbidden	Forbidden	6	5	
	Rocket ammunition with inert loaded projectile	Class B explosive	Explosive B	None	173.90	Forbidden	Forbidden	1,3	5	

§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(4)	(5)						
	Rocket ammunition with smoke projectile	Class A explosive	Explosive A	None	173.57	Forbidden	Forbidden	6	5	
	Rocket ammunition with solid projectile	Class B explosive	Explosive B	None	173.90	Forbidden	Forbidden	1,3	5	
	Rocket body, with electric primer or electric squib, See 173.55									
	Rocket engine, liquid	Class B explosive	Explosive B	None	173.95	Forbidden	Forbidden	1,2	5	Magazine stowage authorized
	Rocket fireworks. See Fireworks, common									
	Rocket head. *See* Explosive projectile									
*	Rocket motor	Class A explosive	Explosive A	None	173.79	Forbidden	Forbidden	6	5	
*	Rocket motor	Class B explosive	Explosive B	None	173.92	Forbidden	550 pounds	1,3	5	
	Roman candle. See Fireworks, common									
W	Rosin (*colaphony*) or Resin	ORM-C	None	173.505	173.1060			1,2	1,2	
*	Rough ammoniate tankage (*less than 7% moisture content*)	Flammable solid	Flammable solid	None	173.210	Forbidden	Forbidden	1	5	
*	Rough ammoniate tankage 7% or more moisture content	Flammable solid	Flammable solid	None	173.210	Forbidden	Forbidden	1,2	1,2	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides. Temperature of tankage must not exceed 100 deg F.
W	Rubber curing compound (*solid*)	ORM-C	None	173.505	173.1065			1,2	1,2	
	Rubber scrap or rubber buffings	Flammable solid	Flammable solid	173.153	173.201	10 pounds	10 pounds	1,2	1,2	
*	Rubber shoddy, regenerated rubber, *or* reclaimed	Flammable solid	Flammable solid	173.153	173.201	10 pounds	10 pounds	1,2	1,2	
	Rubidium metal	Flammable solid	Flammable solid and Dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solid labeled Dangerous when wet
	Rubidium metal, in cartridges	Flammable solid	Flammable solid and Dangerous when wet	173.206		1 pound	25 pounds	1,2	4	Segregation same as for flammable solid labeled Dangerous when wet
	Rum, denatured	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Rust preventive coating	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
	Safety fuse. *See* Fuse, safety									
	Safety squib	Class C explosive	Explosive C	None	173.106	50 pounds	150 pounds	1,3	1,3	
	Salute. See Fireworks common *or* special									
	Sand acid. *See* Hydrofluorosilicic acid									
W	Sawdust (*when dry, clean, and free from oil*)	ORM-C	None	173.505	173.1070			1,2	1,2	Keep dry
	Selenic acid, liquid	Corrosive material	Corrosive	None	173.245	Forbidden	5 pints	1,2	1,2	
	Self-lighting cigarette	Flammable solid	Flammable solid	173.21		Forbidden	Forbidden	1,2	1,2	Keep dry
	Self propelled vehicle *See* Motor vehicle									
	Shaped charge, commercial. See High explosive 173.65(h)									
	Shellac. See *Paint, enamel, lacquer, stain, shellac, varnish, etc.									
	Shell, fireworks. *See* Fireworks, common *or* special									
	Ship, distress signal. See Fireworks, special									
	Signal flare	Class C explosive	Explosive C	None	173.108	50 pounds	200 pounds	1,2	1,2	
	Silicofluoric acid. *See* Hydrofluorosilicic acid									
	Silicon chloride *or* silicon tetrachloride	Corrosive material	Corrosive	173.244	173.247	1 quart	1 gallon	1	1	Keep dry. Glass carboys not permitted on passenger vessels
	Silicon chrome, exothermic. See Exothermic silicon chrome									
	Silicon tetrafluoride	Nonflammable gas	Nonflammable gas	173.306	173.302	Forbidden	300 pounds	1	4	Stow away from foodstuffs
	Silver cyanide	Poison B	Poison	173.370		25 pounds	200 pounds	1,2	1,2	Stow away from acids
	Silver nitrate	Oxidizer	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	Stow away from foodstuffs
	Sisal. See Fibers									
*	*Sludge acid. See* Acid, sludge									
	Small arms ammunition	Class C explosive	None	173.101		50 pounds	150 pounds	1,3	1,3	
	Small arms ammunition, irritating (*tear gas*) cartridge	Class C explosive	Irritant	None	173.101	Forbidden	150 pounds	1,3	1,3	

§172.101 Hazardous Materials Table (cont'd)

(1) */W/A	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(4) Label(s) required (if not excepted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
	Small arms primer	Class C explosive	Explosive C	None	173.107	50 pounds	150 pounds	1,3	1,3	
	Smoke candle	Class C explosive	Explosive C	None	173.108	50 pounds	200 pounds	1,3	1,3	
	Smoke generator. See Chemical ammunition, Poison A or B Material									
	Smoke grenade	Class C explosive	Explosive C	None	173.108	50 pounds	150 pounds	1,3	1,3	
	Smokeless powder for cannon or small arms. See Propellant explosive, Class A *or* B									
	Smokeless powder for small arms (*100 pounds or less*)	Flammable solid	Flammable solid	173.88	173.197a	Forbidden	Forbidden	1,3	1,3	Segregation same as for explosives
	Smoke pot	Class C explosive	Explosive C	None	173.108	50 pounds	200 pounds	1,3	1,3	
	Smoke projectile with bursting charge. See Explosive projectile									
	Smoke projectile with expelling charge but without bursting charge. See Fireworks, special									
	Smoke signal	Class C explosive	Explosive C	None	173.108	50 pounds	200 pounds	1,3	1,3	
	Soda amatol. See High explosive									
	Soda lime, solid	Corrosive material	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	Keep dry
A	Sodium aluminate, solid	ORM-B	None	173.505	173.510 173.800	25 pounds	100 pounds			
*	Sodium aluminate solution	Corrosive material	Corrosive	173.244	173.249	1 quart	5 gallons	1,2	1,2	
	Sodium aluminum hydride	Flammable solid	Flammable solid and Dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet
	Sodium amide	Flammable solid	Flammable solid and Dangerous When Wet	None	173.206	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solid labeled Dangerous When Wet
	Sodium arsenate	Poison B	Poison	173.364	173.365 173.368	50 pounds	200 pounds	1,2	1,2	
*	Sodium arsenite (*solution*) liquid	Poison B	Poison	173.345	173.346	1 quart	55 gallons	1,2	1,2	
	Sodium azide	Poison B	Poison	173.364	173.375	50 pounds	100 pounds	1,2	1,2	Stow away from heavy metals, especially lead and its compounds. Stow separate from acids
	Sodium bisulfate, solid *or* solution. *See appropriate* Sodium hydrogen sulfate entry									
	Sodium bisulfite, solid. *See* Sodium hydrogen sulfite, solid									
	Sodium bromate	Oxidizer	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	Stow separate from ammonium compounds. Stow away from powdered metals
	Sodium chlorate (*soda chlorate*)	Oxidizer	Oxidizer	173.153	173.163	25 pounds	100 pounds	1,2	1,2	Stow separate from ammonium compounds. Stow away from powdered metals
	Sodium chlorite	Oxidizer	Oxidizer	None	173.160	Forbidden	100 pounds	1,2	1,2	Stow separate from ammonium compounds. Stow away from powdered metals
*	Sodium chlorite solution (*not exceeding 42% sodium chlorite*)	Corrosive material	Corrosive	173.244	173.263	1 quart	4 gallons	1,2	1	Glass carboys in hampers not permitted under deck
	Sodium cyanide, solid	Poison B	Poison	173.370		25 pounds	200 pounds	1,2	1,2	Stow away from acids
*	Sodium cyanide solution	Poison B	Poison	173.345	173.352	1 quart	55 gallons	1,2	1,2	Stow away from acids
	Sodium dichloro isocyanurate. *See* Sodium dichloro-s-triazinetrione									
	Sodium dichloro-s-triazinetrione (*dry, containing more than 39% available chlorine*)	Oxidizer	Oxidizer	173.153	173.217	50 pounds	100 pounds	1,2	1,2	
A	Sodium dichromate	ORM-A	None	173.505	173.510	No limit	No limit			
A	Sodium fluoride, solid	ORM-B	None	173.505	173.510	No limit	No limit			
*	Sodium fluoride solution	Corrosive material	Corrosive	173.244	173.245	1 quart	5 gallons	1,2	1,2	Stow away from acids
	Sodium hydrate. *See* Sodium hydroxide									
	Sodium hydride	Flammable solid	Flammable solid and Dangerous when wet	None	173.198	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet
A	Sodium hydrogen sulfate, solid	ORM-B	None	173.505	173.510 173.800	25 pounds	100 pounds			
*	Sodium hydrogen sulfate solution	Corrosive material	Corrosive	173.244	173.245	1 quart	1 gallon	1,2	1,2	

§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/W/A	Hazardous materials descriptions and proper shipping names	Hazard class	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
A	Sodium hydrogen sulfite, solid	ORM-B	None	173.505	173.800	25 pounds	100 pounds			
	Sodium hydrosulfite (*sodium dithionite*)	Flammable solid	Flammable solid	173.153	173.204	25 pounds	100 pounds	1,2	1,2	Keep dry. Below deck stowage in metal drums only. Separate from flammable gases, liquids, oxidizing materials, or organic peroxides
	Sodium hydroxide, dry solid, flake, bead, *or* granular	Corrosive material	Corrosive	173.244	173.245b	25 pounds	200 pounds	1,2	1,2	Keep dry
*	Sodium hydroxide, liquid *or* solution	Corrosive material	Corrosive	173.244	173.249	1 quart	5 gallons	1,2	1,2	
A	Sodium metabisulfite	ORM-B	None	173.505	173.510	No limit	No limit			
	Sodium, metal *or* metallic	Flammable solid	Flammable solid and Dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet
	Sodium, metal dispersion in organic solvent	Flammable solid	Flammable solid and Dangerous when wet	None	173.230	Forbidden	10 pounds	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet
	Sodium, metal liquid alloy	Flammable solid	Flammable solid and Dangerous when wet	None	173.202	Forbidden	1 pound	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet
*	Sodium methylate, alcohol mixture	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Sodium methylate, alcohol mixture	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Sodium methylate, alcohol mixture	Corrosive material	Corrosive	173.244	173.245	1 quart	1 quart	1,2	1,2	
	Sodium methylate, dry	Flammable solid	Flammable solid	173.153	173.154	25 pounds	100 pounds	1,2	1	Segregation same as for flammable solids labeled Dangerous When Wet
	Sodium monoxide, solid	Corrosive material	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	Keep dry
	Sodium nitrate	Oxidizer	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	
	Sodium nitrate bags. See Bags, sodium nitrate, empty and unwashed									
	Sodium nitrite	Oxidizer	Oxidizer	173.153	173.154 173.234	25 pounds	100 pounds	1,2	1,2	Stow separate from ammonium compounds and cyanides. Bagged material not permitted on passenger vessels
	Sodium nitrite mixed (*fused*) with potassium nitrate	Oxidizer	Oxidizer	173.153	173.183	25 pounds	100 pounds	1,2	1,2	Stow separate from ammonium compounds and cyanides.
	Sodium nitrite mixture (*sodium nitrate, sodium nitrite, and potassium nitrate*)	Oxidizer	Oxidizer	173.153	173.234	25 pounds	100 pounds	1,2	1,2	Stow separate from ammonium compounds and cyanides.
A	Sodium pentachlorophenate	ORM-A	None	173.505	173.510	No limit	No limit			
	Sodium perchlorate	Oxidizer	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,3	1,3	Stow away from powdered metals
	Sodium permanganate	Oxidizer	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	Separate from ammonium compounds and hydrogen peroxide
	Sodium peroxide	Oxidizer	Oxidizer	None	173.187	Forbidden	100 pounds	1,2	1	Keep dry. Stow away from powdered metals, permanganates, combustible packing of other cargo, and combustible foodstuffs
	Sodium phenolate, solid	Corrosive material	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	
	Sodium phosphide	Flammable solid	Flammable solid and Dangerous when wet	None	173.154	Forbidden	25 pounds	1	5	
	Sodium picramate, wet (*with at least 20% water*)	Flammable solid	Flammable solid	None	173.205	Forbidden	25 pounds	1,2	5	Stow away from heavy metals, especially lead, and its compounds
	Sodium potassium alloy	Flammable solid	Flammable solid and Dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	5	Under deck stowage must be readily accessible. Segregation same as for flammable solids labeled Dangerous When Wet
	Sodium sulfate, acid. *See appropriate* Sodium hydrogen sulfate entry									
*	Sodium sulfide, anhydrous	Flammable solid	Flammable solid	173.153	173.207	25 pounds	300 pounds	1,2	1,2	Stow separate from liquid acids. Separate from flammable gases or liquids, oxidizing materials or organic peroxides
*	Solvent, n.o.s.	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Solvent, n.o.s.	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	*Sparklers. See* Fireworks, common									
	Spent iron mass. See Iron mass, spent									
	Spent iron sponge. See Iron sponge, spent									
	Spent mixed acid. See Nitrating acid									
	Spent sulfuric acid. See sulfuric acid, spent									

§172.101 Hazardous Materials Table (cont'd)

(1) */W/A	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(4) Label(s) required (if not excepted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
	Spirits of nitroglycerin, (*1 to 10%*)	Flammable liquid	Flammable liquid	None	173.133	Forbidden	6 quarts	1,2	5	Segregation same as for explosives
	Spirits of nitroglycerin, not exceeding 1% nitroglycerin by weight	Flammable liquid	Flammable liquid	173.118	173.133	1 quart	6 quarts	1,2	1	
	Spirits of salt. *See* Hydrochloric acid									
	Sporting powder. *See* Black powder *or* Propellant explosive, solid, Class B explosive									
	Spray starting fluid. *See* Engine starting fluid									
	Spreader cartridge. *See* Fireworks, special									
	Squib, electric or safety. *See* Electric squib *or* Safety squib									
*	*Stain*. *See* *Paint, enamel, lacquer, stain, shellac, varnish, etc.									
	Stannic phosphide	Flammable solid	Flammable solid and Dangerous when wet	None	173.154	Forbidden	25 pounds	1	5	Segregation same as for flammable solid labeled Dangerous When Wet
A	Stannous chloride, solid	ORM-B	None	173.505	173.510	No limit	No limit			
*	Starter cartridge	Class B explosive	Explosive B	None	173.92	Forbidden	200 pounds	1,3	5	
*	Starter cartridge	Class C explosive	Explosive C	None	173.102	50 pounds	150 pounds	1,3	1,3	
	Storage battery wet. *See* Battery, electric storage, wet									
	Straw. *See* Hay									
	Strontium arsenite, solid	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Strontium chlorate	Oxidizer	Oxidizer	173.153	173.163	25 pounds	100 pounds	1,2	1,2	Stow separate from ammonium compounds. Stow away from powdered metals
*	Strontium chlorate, wet	Oxidizer	Oxidizer	173.153	173.163	25 pounds	200 pounds	1,2	1,2	Stow separate from ammonium compounds. Stow away from powdered metals
	Strontium nitrate	Oxidizer	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	
	Strontium peroxide	Oxidizer	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	Keep dry
*	Strychnine salt, solid	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Strychnine, solid	Poison B	Poison	None	173.377	Forbidden	200 pounds	1,2	1,2	
	Styphnate of lead. *See* Initiating explosive									
	Styrene monomer, inhibited	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1,2	
	Succinic acid peroxide	Organic peroxide	Organic peroxide	173.153	173.157 173.158	Forbidden	25 pounds	1	1	
	Sulfur chloride (*mono and di*)	Corrosive material	Corrosive	None	173.247	Forbidden	1 gallon	1	1	Keep dry. Glass carboys not permitted on passenger vessels
	Sulfur dioxide	Nonflammable gas	Nonflammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	4	Stow away from living quarters
	Sulfur flower. *See* Sulfur									
	Sulfur hexafluoride	Nonflammable gas	Nonflammable gas	173.306	173.304	150 pounds	300 pounds	1,2	1,2	
	Sulfuric acid (*For fuming sulfuric acid, see Oleum*)	Corrosive material	Corrosive	173.244	173.272	1 quart	1 gallon	1	1	Keep dry. Under deck stowage is permitted on cargo vessels only in metal drums
	Sulfuric acid, spent	Corrosive material	Corrosive	None	173.248	Forbidden	1 quart	1	1	Under deck stowage is permitted on cargo vessels only in metal drums
	Sulfuric anhydride. *See* Sulfur trioxide, stabilized									
*	Sulfurous acid	Corrosive material	Corrosive	173.244	173.245	2 gallons	2 gallons	1,2	1	Glass carboys in hampers not permitted under deck
W	Sulfur, solid	ORM-C	None	173.505	173.1080			1,2	1,2	Protect from sparks and open flame. Stow separate from oxidizing materials. Segregation same as for flammable solids
	Sulfur trioxide, stabilized	Corrosive material	Corrosive	173.244	173.273	Forbidden	1 gallon	1,2	1,2	Keep dry. Glass bottles not permitted under deck
	Sulfuryl chloride	Corrosive material	Corrosive	173.244	173.247	1 quart	1 quart	1	1	Keep dry. Glass carboys not permitted on passenger vessels
	Sulfuryl fluoride	Nonflammable gas	Nonflammable gas	173.306	173.304 173.314	150 pounds	300 pounds	1,3	1	
	Sulphur. *See* Sulfur									
	Supplementary charge (explosive)	Class A explosive	Explosive A	None	173.69	Forbidden	Forbidden	6	5	
	Tankage. *See* Garbage tankage									

§172.101 Hazardous Materials Table (cont'd)

(1) */ W/ A	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(4) Label(s) required (if not excepted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
*	Tankage fertilizer	Flammable solid	Flammable solid	None	173.209	Forbidden	Forbidden	1	5	Keep dry. Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
*	Tankage, rough ammoniate	Flammable solid	Flammable solid	None	173.210	Forbidden	Forbidden	1	5	Keep dry. Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Tank car, containing residual phosphorus and filled with water or inert gas. See 173.190									
	Tank car, empty (*previously used for a hazardous material*), *See* 173.29									
	Tank car, empty (*previously used for a Poison A material*), *See* 172.510 and 173.29									
	Tank, portable, empty (*previously used for a hazardous material*), *See* 172.510, 173.29, and 172.514									
	Tank truck, empty, *See* 172.510, 172.514 and 173.29.									
*	Tar, liquid	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Tar, liquid	Flammable liquid	Flammable liquid	173.118	173.131	1 quart	10 gallons	1,2	1	
	Tear gas ammunition. See Chemical ammunition (containing an irritant material)									
	Tear gas candle	Irritating material	Irritant	None	173.385	Forbidden	75 pounds	1	5	Stow away from living quarters
	Tear gas cartridge. See Small arms ammunition irritating (*tear gas*) cartridge									
	Tear gas grenade. See Grenade, tear gas									
	Tertiary alcohol. See Alcohol, n.o.s.									
	Tertiary butyl isopropyl benzene hydroperoxide	Organic peroxide	Organic peroxide	173.153	173.224	1 quart	1 quart	1,2	4	
AW	Tetrachloroethane	ORM-A	None	173.505	173.620	1 quart	10 gallons	1,2	1,2	
A	Tetrachloroethylene *or* Perchloroethylene	ORM-A	None	173.505	173.510 173.605	10 gallons	55 gallons			
	Tetraethyl dithio pyrophosphate and compressed gas mixture	Poison A	Poison gas	None	173.334	Forbidden	Forbidden	1	5	Shade from radiant heat. Stow away from living quarters. Segregation same as for nonflammable gases
	Tetraethyl dithio pyrophosphate, liquid	Poison B	Poison	None	173.358	Forbidden	1 quart	1	5	
	Tetraethyl dithio pyrophosphate mixture, dry	Poison B	Poison	None	173.377	Forbidden	200 pounds	1	5	
	Tetraethyl dithio pyrophosphate mixture, liquid	Poison B	Poison	None	173.359	Forbidden	1 quart	1	5	
	Tetraethyl lead, liquid (*including flash point for export shipment by water*)	Poison B	Poison	None	173.354	Forbidden	55 gallons	1	5	If flash point is 141 deg F. or less, segregation must be the same as for flammable liquids
	Tetraethyl pyrophosphate and compressed gas mixture	Poison A	Poison gas	None	173.334	Forbidden	Forbidden	1	5	Shade from radiant heat. Stow away from living quarters. Segregation same as for nonflammable gases
	Tetraethyl pyrophosphate, liquid	Poison B	Poison	None	173.358	Forbidden	1 quart	1,2	5	
	Tetraethyl pyrophosphate mixture, dry	Poison B	Poison	None	173.377	Forbidden	200 pounds	1,2	5	
	Tetraethyl pyrophosphate mixture, liquid	Poison B	Poison	None	173.359	Forbidden	1 quart	1,2	5	
	Tetrafluoroethylene, inhibited	Flammable gas	Flammable gas	173.306	173.304	Forbidden	300 pounds	1,2	1,2	Stow away from living quarters
	1,2,3,6-Tetrahydrobenzaldehyde*	Corrosive material	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Tetrahydrofuran	Flammable liquid	Flammable liquid	None	173.119	Forbidden	10 gallons	1,3	5	
	Tetramethyl ammonium hydroxide, liquid	Corrosive material	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
A	Tetramethyl methylene diamine	ORM-A	None	173.505	173.510	No limit	No limit			
	Tetranitromethane	Oxidizer	Oxidizer	None	173.203	Forbidden	Forbidden	1	5	Shade from radiant heat. Stow away from foodstuffs
	Tetrazene (guanyl nitrosamino guanyltetrazene). See Initiating explosive									
	Tetryl. See High explosive									
*	Textile treating compound mixture, liquid	Corrosive material	Corrosive	173.244	173.245 173.249a	1 quart	10 gallons	1,2	1,2	
	Textile waste. *See* Cotton waste									
	Textile waste, wet	Flammable solid	Flammable solid	None	173.211	Forbidden	Forbidden	1,2	1,2	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
*	Thallium salt, solid, n.o.s.	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	

§172.101 Hazardous Materials Table (cont'd)

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	Thallium sulfate, solid	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Thinner for rust preventive coating. *See* *Rust preventive coating									
	Thinning compound, paint, varnish, lacquer, etc. See *Paint, enamel, lacquer, stain, shellac, varnish, etc.									
	Thiocarbonyl-chloride. See Thiophosgene									
	Thioglycolic acid	Corrosive material	Corrosive	173.244	173.245	1 quart	1 gallon	1,2	1,2	Glass carboys in hampers not permitted under deck
	Thionyl chloride	Corrosive material	Corrosive	None	173.247	Forbidden	1 gallon	1	1	Keep dry. Glass carboys not permitted on passenger vessels
	Thiophosgene	Poison B	Poison	None	173.356	Forbidden	1 gallon	1	5	Shade from radiant heat
	Thiophosphoryl chloride	Corrosive material	Corrosive	None	173.271	Forbidden	1 quart	1	1	Keep dry. Glass carboys not permitted on passenger vessels
A	Thiram	ORM-A	None	173.505	173.510	No limit	No limit			
	Thorium metal, pyrophoric	Radioactive material	Radioactive and Flammable solid	173.226	173.226			1,2	1,2	
	Thorium nitrate	Radioactive material	Radioactive and Oxidizer	173.392	173.393			1,2	1,2	Separate longitudinally by a complete hold or compartment from explosives
	Time fuze. See Fuze, time, non-detonating									
	Tin chloride, fuming. *See* Tin tetrachloride, anhydrous									
*	Tinning flux. *See* *Zinc chloride solution									
	Tin perchloride. *See* Tin tetrachloride, anhydrous									
	Tin tetrachloride, anhydrous	Corrosive material	Corrosive	173.244	173.247	1 quart	1 quart	1	1	Keep dry. Glass carboys not permitted on passenger vessels
	Titanium metal powder, dry or wet *with less than 20% water*	Flammable solid	Flammable solid	None	173.208	Forbidden	75 pounds	1,2	5	
	Titanium metal powder, wet with 20% or more water	Flammable solid	Flammable solid	None	173.208	Forbidden	150 pounds	1,2	5	
*	Titanium sulfate solution *containing not more than 45% sulfuric acid*	Corrosive material	Corrosive	173.244	173.297	1 quart	1 gallon	1	4	Shade from radiant heat. Keep dry
	Titanium tetrachloride	Corrosive material	Corrosive	173.244	173.247	1 quart	10 gallons	1	1	Keep dry. Glass carboys not permitted on passenger vessels
	Toluene (*toluol*)	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
A	Toluenediamine	ORM-A	None	173.505	173.510	No limit	No limit			
	Toluene diisocyanate	Poison B	Poison	173.345	173.346	Forbidden	55 gallons	1,3	1,3	Shade from radiant heat
	Toluene sulfonic acid, liquid	Corrosive material	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Torch. See Fireworks, common									
	Torpedo, railway	Class B explosive	Explosive B	None	173.91	Forbidden	200 pounds	1,2	1,2	Passenger vessels in metal lockers only
	Toy caps	Class C explosive	Explosive C	None	173.100 173.109	50 pounds	150 pounds	1,3	1,3	
	Toy propellant device	Class C explosive	Explosive C	None	173.111	50 pounds	150 pounds	1,3	1,3	
	Toy smoke device	Class C explosive	Explosive C	None	173.111	50 pounds	150 pounds	1,3	1,3	
	Toy torpedo. See Fireworks, special									
	Tracer	Class C explosive	Explosive C	None	173.105	50 pounds	150 pounds	1,3	1,3	
	Tracer fuze	Class C explosive	Explosive C	None	173.105	50 pounds	150 pounds	1,3	1,3	
	Tractor *See* Motor vehicle									
	Trailer or truck body with refrigeration or heating equipment *See* Motor vehicle									
	Treated paper (*manufactured article properly dried to prevent spontaneous heating*). *See* Oiled material									
	Treated textile (*manufactured article properly dried to prevent spontaneous heating*). *See* Oiled material									
	Trichloroacetic acid, solid	Corrosive material	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1	
*	Trichloroacetic acid solution	Corrosive material	Corrosive	173.244	173.245	1 quart	1 quart	1,2	1,2	Glass carboys in hampers not permitted under deck
A	Trichloroethylene	ORM-A	None	173.505	173.510 173.605	10 gallons	55 gallons			
	Trichlorosilane	Flammable liquid	Flammable liquid	None	173.136	Forbidden	10 gallons	1	5	Segregation same as for flammable solids labeled Dangerous When Wet
	Trichloro-s-triazinetrione (*dry, containing over 39% available chlorine*)	Oxidizer	Oxidizer	173.153	173.217	50 pounds	100 pounds	1,3	1,3	Keep dry

§172.101 Hazardous Materials Table (cont'd)

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	(mono-(Trichloro) tetra-(monopotassium dichloro)-penta-s-triazinetrione, dry (*containing over 39% available chlorine*)	Oxidizer	Oxidizer	173.153	173.217	50 pounds	100 pounds	1,3	1,3	Keep dry
	Trick matches	Class C explosive	Explosive C	None	173.111	Forbidden	Forbidden	1,3	1,3	
	Trick noise maker, explosive	Class C explosive	Explosive C	None	173.111	50 pounds	150 pounds	1,3	1,3	
	Triethylamine	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Trifluorochlorethylene	Flammable gas	Flammable gas	173.306	173.304 173.314	Forbidden	10 gallons	1,2	1	
	Trimethyl acetyl chloride	Corrosive material	Corrosive	173.244	173.247	1 quart	1 quart	1,2	1,2	
	Trimethylamine, anhydrous	Flammable gas	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1	4	
*	Trimethylamine, aqueous solution	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	Stow away from mercury and mercury compounds
	Trimethylchlorosilane	Flammable liquid	Flammable liquid	None	173.135	Forbidden	10 gallons	1,2	1	
	Trinitrobenzene, dry. See High explosive									
*	Trinitrobenzene, wet *containing at least 10% water*	Flammable solid	Flammable solid	173.212		1 pound	1 pound	1	4	Stow away from heavy metals and their compounds
	Trinitrobenzoic acid, dry. See High explosive									
*	Trinitrobenzoic acid, wet, *containing at least 10% water*	Flammable solid	Flammable solid	None	173.192 173.193	1 pound	25 pounds	1	5	Stow away from heavy metals and their compounds
	Trinitrobenzoic acid, wet, containing at least 10% water, over 25 pounds in one outside packaging. See High explosive									
	Trinitroresorcinol. See High explosive									
	Trinitrotoluene, dry. See High explosive									
	Trinitrotoluene, wet *containing at least 10% water*	Flammable solid	Flammable solid	173.212		1 pound	1 pound	1	4	Stow away from heavy metals and their compounds
	Tris-(1-aziridinyl) phosphine oxide	Corrosive material	Corrosive	173.244	173.299a	1 quart	1 gallon	1	1	Keep dry. Glass carboys not permitted on passenger vessels
*	Turpentine	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Turpentine	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1,2	
*	Turpentine substitute	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Turpentine substitute	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
W	Twisted jute packing (*rope*) (*treated or untreated*). *See* Oakum									
	Uranium hexafluoride, fissile (containing more than 0.7% U-235)	Radioactive material	Radioactive and corrosive	173.393	173.396			1,2	1,2	
	Uranium hexafluoride, low specific activity (*containing 0.7% or less U-235*)	Radioactive material	Radioactive and corrosive	173.392	173.393			1,2	1,2	
	Uranium metal, pyrophoric	Radioactive material	Radioactive and Flammable solid	173.392	173.393 173.396			1,2	1,2	
	Uranyl nitrate hexahydrate solution	Radioactive material	Radioactive and corrosive	173.392	173.393 173.395 173.396			1,2	1,2	
	Uranyl nitrate, solid	Radioactive material	Radioactive and oxidizer	173.392	173.393 173.396			1,2	1,2	Separate longitudinally by an intervening hold or compartment from explosives
	Urea nitrate, dry. See High explosive									
*	Urea nitrate, wet *with 10% or more water*	Flammable solid	Flammable solid	None	173.192 173.193	1 pound	25 pounds	1,2	1,2	
	Urea nitrate, wet with 10% or more water, over 25 pounds in one outside packaging. See High explosive									
	Urea peroxide	Organic peroxide	Organic peroxide	173.153	173.227	2 pounds	25 pounds	1	4	Keep dry. Shade from radiant heat
	Valeric acid	Corrosive material	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Valeryl chloride	Corrosive material	Corrosive	173.244	173.245	1 quart	1 gallon	1,2	1,2	
	Vanadium oxytrichloride	Corrosive material	Corrosive	173.244	173.247a	Forbidden	1 quart	1	4	Shade from radiant heat
	Vanadium tetrachloride	Corrosive material	Corrosive	173.244	173.247a	Forbidden	1 quart	1	4	Shade from radiant heat
	Varnish. See *Paint, enamel, lacquer, stain, shellac, varnish, etc.									
	Varnish drier. See *Paint drier, liquid									

§172.101 Hazardous Materials Table (cont'd)

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	Varnish remover or reducer. See *Compound, lacquer, paint or varnish removing, reducing, or thinning liquid									
	Varnish thinning compound. See *Compound, lacquer, paint, or varnish removing, reducing, or thinning liquid									
	Very signal cartridge	Class C explosive	Explosive C	None	173.108	50 pounds	200 pounds	1,3	1,3	
	Vinyl acetate	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Vinyl chloride	Flammable gas	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	4	Stow away from living quarters
	Vinyl ethyl ether, inhibited	Flammable liquid	Flammable liquid	None	173.119	Forbidden	1 gallon	1,3	5	
	Vinyl fluoride, inhibited	Flammable gas	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1	4	
	Vinylidene chloride, inhibited	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,3	4	
	Vinyl isobutyl ether	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Vinyl methyl ether, inhibited	Flammable gas	Flammable gas	173.306	173.304 173.314	Forbidden	20 pounds	1,2	1	Stow away from living quarters
	Vinyl trichlorosilane	Flammable liquid	Flammable liquid	None	173.135	Forbidden	10 gallons	1,2	1	
	Vitriol, oil of. *See* Sulfuric acid									
	War head. See Explosive projectile									
	Waste paper, wet	Flammable solid	Flammable solid	None	173.186	Forbidden	Forbidden	1,2	1,2	Separate from flammable gas or liquids, oxidizing materials, or organic peroxides
	Waste textile, wet	Flammable solid	Flammable solid	None	173.211	Forbidden	Forbidden	1,2	1,2	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Waste wool, wet	Flammable solid	Flammable solid	None	173.213	Forbidden	Forbidden	1,2	1,2	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Water reactive solid, n.o.s.	Flammable solid	Flammable solid and Dangerous when wet	173.153	173.154	Forbidden	25 pounds	1,2	4	Segregation same as for flammable solids labeled Dangerous When Wet
*	Water treatment compounds, liquid	Corrosive material	Corrosive	173.244	173.249	1 quart	10 gallons	1	1	
*	Wax, liquid	Combustible liquid	None	173.118a	None	No limit	No limit	1,2	1,2	
	Wet hair. See Hair, wet									
	Wet textile waste. See Waste textile, wet									
	White acid (*ammonium bifluoride and hydrochloric acid mixture*)	Corrosive material	Corrosive	173.244	173.264	1 quart	1 gallon	1	1	
*	*Wood filler. See* *Paint, varnish, lacquer, stain, shellac enamel, etc.									
	Wood shavings (*when dry, clean and free from oil*). *See* Sawdust									
	Wool waste. *See* Cotton waste									
	Wool waste, wet. See Waste wool, wet									
*	Xenon	Nonflammable gas	Nonflammable gas	173.306	173.302	150 pounds	300 pounds	1,2	1,2	
	X-ray film. See Film									
	Xylene (*xylol*)	Flammable liquid	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Xylyl bromide	Irritating material	Irritant	None	173.382	Forbidden	75 pounds	1	5	Stow away from living quarters
A	Yeast, active, *in liquid or pressed form*	ORM-C	None	None	173.1085	No limit	No limit			
	Zinc ammonium nitrite	Oxidizer	Oxidizer	None	173.228	25 pounds	100 pounds	1,3	5	This material may be forbidden in water transportation by certain countries
	Zinc arsenate	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Zinc arsenite, solid	Poison B	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Zinc chlorate	Oxidizer	Oxidizer	173.153	173.163	25 pounds	100 pounds	1,2	1,2	Stow separate from ammonium compounds and away from powdered metals
*	Zinc chloride solution	Corrosive material	Corrosive	173.244	173.245	1 quart	1 quart	1,2	1,2	
	Zinc cyanide	Poison B	Poison	173.370		25 pounds	200 pounds	1,2	1,2	Stow away from acids
	Zinc ethyl. See Pyrophoric liquids, n.o.s.									
*	Zinc muriate solution. *See* Zinc chloride solution									
	Zinc nitrate. See Nitrates, n.o.s.									

§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/W/A	Hazardous materials descriptions and proper shipping names	Hazard class	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
	Zinc permangante	Oxidizer	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	Separate from ammonium compounds and hydrogen peroxide
	Zinc peroxide	Oxidizer	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	Keep dry
	Zirconium hydride	Flammable solid	Flammable solid and Dangerous when wet	None	173.206	Forbidden	150 pounds	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet
	Zirconium metal, dry, *chemically produced, finer than 20 mesh particle size*	Flammable solid	Flammable solid	None	173.214	Forbidden	75 pounds	1	5	Separate from flammable gases or liquids, oxidizing materials or organic peroxides
	Zirconium metal, dry, *mechanically produced, finer than 270 mesh particle size*	Flammable solid	Flammable solid	None	173.214	Forbidden	75 pounds	1	5	Separate from flammable gases or liquids, oxidizing materials or organic peroxides
*	Zirconium, metal, liquid, suspensions	Flammable liquid	Flammable liquid	None	173.140	Forbidden	5 gallons	1	5	
	Zirconium metal, wet, *chemically produced, finer than 20 mesh particle size*	Flammable solid	Flammable solid	None	173.214	Forbidden	150 pounds	1,2	5	
	Zirconium metal, wet *mechanically produced, finer than 270 mesh particle size*	Flammable solid	Flammable solid	None	173.214	Forbidden	150 pounds	1,2	5	
	Zirconium picramate, wet *with at least 20% of water*	Flammable solid	Flammable solid	None	173.216	Forbidden	25 pounds	1	1	Stow away from heavy metals and their salts
*	Zirconium scrap (*borings, clippings, shavings, sheets, or turnings*)	Flammable solid	Flammable solid	173.153	173.220	Forbidden	Forbidden	1	4	Separate from flammable gases of liquids, oxidizing materials, or organic peroxides
	Zirconium tetrachloride, solid	Corrosive material	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	

5. In § 172.201 the introduction to paragraph (a)(1) and paragraph (a)(1)(ii) are revised to read as follows:

§ 172.201 General entries.

(a) * * *

(1) When a hazardous material and a material not subject to the requirements of this subchapter are described on the same shipping paper, the hazardous material description entries required by § 172.202 and those additional entries that may be required by § 172.203.

* * * * *

(ii) Must be entered in a color that clearly contrasts with any description of a material not subject to the requirements of this subchapter on the shipping paper except that a description on a reproduction of a shipping paper may be highlighted, rather than printed, in a contrasting color. (The provisions of this paragraph apply only to the basic description required by § 172.202(a)(1) and (2).) or

* * * * *

6. In § 172.203 paragraphs (e) and (g)(1) are revised; paragraph (g)(2) is deleted; paragraph (g)(3) is redesignated (g)(2) as follows:

§ 172.203 Additional description requirements.

* * * * *

(e) *Empty packagings.* For other than a tank car, the description on the shipping paper for an empty packaging containing the residue of a hazardous material may contain the word(s) "EMPTY"; or "EMPTY: Last contained * * *" followed by the name of the hazardous material last contained in the packaging. This entry may be before or after the basic description. For empty tank cars, see § 174.25(c) of this subchapter.

* * * * *

(g) * * *

(1) The shipping paper for a rail car containing a hazardous material must contain the notation "Placarded" followed by the name of the placard required for the rail car.

(2) The shipping paper for each specification DOT 112A or 114A tank car (without head shields) containing a flammable compressed gas must contain the notation, "DOT 112A" or "DOT 114A," as appropriate, and either "Must be handled in accordance with FRA E.O. No. 5" or "Shove to rest per E.O. No. 5."

* * * * *

7. In § 172.204 the introductory text of paragraph (a) is revised to read as follows:

§ 172.204 Shipper's certification.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, each person who offers a hazardous material for transportation shall certify that the material offered for transportation is in accordance with this subchapter by printing (manually or mechanically) the following statement on the shipping paper containing the required shipping description:

* * * * *

8. In § 172.304 the heading is revised to read as follows:

§ 172.304 Marking requirements.

* * * * *

9. In § 172.306 the heading and paragraph (a)(1) are revised as follows:

§ 172.306 Consignee's or consignor's name and address.

(a) * * *

(1) Transported by highway and will not be transferred from one motor carrier to another, or

* * * * *

10. In § 172.312 the introductory text of paragraph (a) is revised to read as follows:

§ 172.312 Liquid hazardous materials.

(a) Except as provided in this section and for limited quantities of flammable liquids packed in inside packagings of one quart or less, each package having an inside packaging containing liquid hazardous materials must be—

* * * * *

11. § 172.328 is revised to read as follows:

§ 172.328 Cargo tanks.

(a) *Size of marking.* When required to be marked, each cargo tank containing a hazardous material must be legibly marked in lettering two inches (50.8 mm.) or more in height.

(b) *Required markings: Hazardous materials other than gases.* When transporting a hazardous material other than a compressed gas in a cargo tank required by Part 173 of this subchapter to be marked with the proper shipping name of the contents, it must be marked as specified in this Part on each end and each side.

(c) *Required markings: Gases.* Each cargo tank transporting flammable or nonflammable compressed gas subject to this subchapter must be marked as specified in this Part on each end and each side with—

(1) The proper shipping name of the gas, or

(2) An appropriate common name for the material such as "Refrigerant Gas."

(d) *QT/NQT marking for MC 330 and MC 331 cargo tanks.* Each specification MC 330 and MC 331 cargo tank must be appropriately marked "QT" or "NQT" to indicate it is constructed of quenched and tempered steel (QT) or other than quenched and tempered steel (NQT). These markings must be placed near the specification identification plate.

(e) A cargo tank marked with the name of a specific hazardous material may not be used to transport any other material unless the marking is removed, or changed to identify the hazardous material the cargo tank contains, whichever is appropriate.

12. In § 172.330 the introductory text of paragraph (a) and paragraphs (c)(1) and (2) and (d) are revised; and paragraph (e) is added to read as follows:

§ 172.330 Tank cars.

(a) Except as provided in paragraph (e) of this section, when required to be marked by Parts 173 or 179 of this subchapter, each tank car and tank car tank used to transport a hazardous material must be marked as specified in this subpart with the—

* * * * *

(c) * * *

(1) Affixed to both sides of the tank car tank, and

(2) Except for tank cars transporting DOT 106 and 110 multi-unit tank car tanks, readily visible when viewed from each side of the tank car.

(d) A tank car tank marked with the name of a specific hazardous material may not be used to transport any other material unless the marking is removed, or changed to identify the hazardous material the tank car tank contains, whichever is appropriate.

(e) For a DOT 106 or 110 tank car tank, marking is not required when the CHLORINE label is used as provided in § 172.405(b).

13. § 172.400 paragraph (b)(6) is revised to read as follows:

§ 172.400 General labeling requirements.

* * * * *

(b) * * *

(6) Portable tank which is placarded in accordance with § 172.514.

* * * * *

§ 172.406 [Amended]

14. In § 172.406 paragraph (a) is amended by changing the word "market" in the fifth line to read "marked."

15. In § 172.504 paragraph (a) is revised; Table 1 is amended by revising the heading, by revising and adding additional reference to footnotes 3 and 4, and by adding a new footnote 6; Table 2 is amended by revising the heading and footnote 6; and paragraph (c)(1) is revised to read as follows:

§ 172.504 General placarding requirements.

(a) Except as otherwise provided in this subchapter, each motor vehicle, rail car, and freight container containing any quantity of a hazardous material must be placarded on each end and each side with the type of placards specified in the following tables and other placarding requirements of this subpart, including the specifications for the placards named in the tables and described in detail in §§ 172.519 through 172.558.

TABLE 1

If the motor vehicle, rail car, or freight container contains a material classed (described) as—	The motor vehicle, rail car, or freight container must be placarded on each side and each end—
* * *	* * *
	RADIOACTIVE [4] and CORROSIVE [6]
	RADIOACTIVE [4, 5] and CORROSIVE [6]

[1] * * *
[2] * * *
[3] FLAMMABLE SOLID "W" placard is required only when the DANGEROUS WHEN WET label is specified in § 172.101 for a material classed as a Flammable solid.
[4] Applies only to any quantity of packages bearing the RADIOACTIVE YELLOW III label. (See § 172.403.)
[5] * * *
[6] CORROSIVE placard not required for shipments of less than 1000 pounds gross weight.

* * * * *

TABLE 2

If the motor vehicle, rail car, or freight container contains a material classed (described) as—	The motor vehicle, rail car, or freight container must be placarded on each side and each end—
* * *	* * *

[1] See § 173.245(b) of this subchapter for authorized exemptions.

* * * * *

(c) * * *

(1) Motor vehicle, or a freight container if transported by highway only, containing less than 1,000 pounds (aggregate gross weight) of one or more materials covered by Table 2, or

* * * * *

16. In § 172.508, paragraph (a) is revised to read as follows:

§ 172.508 Placarding and affixing placards: rail.

(a) Each person offering a hazardous material for transportation by rail shall affix to the rail car containing the material, the placards specified by this subpart for the material unless the placards already displayed on motor vehicles, transport containers, or portable tanks that are on a rail car comply with §§ 172.502 and 172.504 as these sections pertain to placarding the rail car.

* * * * *

17. In § 172.512 the freight container placarding table is deleted; paragraph (b) is amended by changing reference "§ 172.405" to read "§ 172.406(e)(3)" in the eighth line; paragraph (a) is revised as follows:

§ 172.512 Freight container.

(a) *Capacity of 640 cubic feet or more.* Each person who offers for transportation a hazardous material in a freight container having a capacity of 640 cubic feet or more shall affix to the freight container the placards specified for the material in accordance with § 172.504. However,

(1) The placarding exception provided in § 172.504 (c)(1) applies, and

(2) The placarding exception provided by subparagraphs (c)(1) and (c)(2) of § 172.504 applies to each freight container being transported for delivery to a consignee immediately following an air or water shipment.

* * * * *

§ 172.514 [Amended]

18. § 172.514 paragraph (a) is amended by changing the section reference in the first sentence to read "§ 172.504(a)."

Appendix B—Part 172 [Amended]

19. In Appendix B To Part 172, paragraph 1.(c)(10) is amended by removing the word "COMBUSTIBLE" from the 7th line and adding the words "FLAMMABLE SOLID" and "FLAMMABLE SOLID W" in place thereof.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

19a. In the Table of Sections, § 173.338 is revised as follows:

Sec.
173.338 [Reserved].

20. § 173.6 paragraph (b)(3) is revised to read as follows:

§ 173.6 Shipments by air.

* * * * *

(b) * * *

(3) For any packaging with a capacity of 110 gallons or less containing liquids, sufficient outage (ullage) must be provided to prevent liquid contents from completely filling the packaging at 130°F. The primary packaging (which may include composite packaging), for which retention of the liquid is the basic function, must be capable of withstanding, without leakage, an internal absolute pressure of no less than 26 lbs./sq. inch or no less than the sum of the absolute vapor pressure of the contents at 130°F. (55°C.) and the atmospheric pressure at sea level, whichever is greater.

* * * * *

§ 173.8 [Amended].

21. In § 173.8 paragraph (b) is amended by changing "RTC" in the last sentence to read "CTC."

22. § 173.29 is revised to read as follows:

§ 173.29 Empty packagings, portable tanks, cargo tanks, and tank cars.

(a) Empty cylinders, barrels, kegs, drums, or other containers, except carboys (see paragraph (b) of this section) previously used for the shipment of any hazardous materials, as defined in this Part, if authorized for reuse must have all openings including removable heads, and filling and vent holes, tightly closed before being offered for transportation. Small quantities of the material with which containers were loaded may remain in "empty" containers. When the vapors remaining therein are unstable, it is permissible to add sufficient inert gas to render the vapors stable. They may be loaded in open or stock cars when desired. Cars should not be placarded but lighted open-flame lanterns or other open-flame lights should be kept away.

(b) Carboys previously used for the shipment of corrosive liquids, when offered to carriers for transportation as "empty" carboys, must have been thoroughly (completely) drained.

(c) Empty bottles, other than carboys previously used for the shipment of corrosive liquids, must be securely stoppered.

(d) Any packaging or accessory which has been used for a shipment of radioactive materials and which contains residual internal radioactive contamination, when shipped as empty, must be securely closed. The external surface must be free of significant removable radioactive contamination as provided in § 173.397(a). The radiation at the external surface of the packaging must not exceed 0.5 millirem per hour. The "Empty" label, described in § 172.450 of this subchapter, must be affixed to the packaging.

(e) Unless otherwise specifically provided, any empty packaging offered for transportation (see paragraph (a) of this section) bearing labels described in §§ 172.411 through 172.446 (except § 172.450 of this subchapter) must have these labels removed, obliterated, or completely covered. The label described in § 172.450 of this subchapter is authorized for the latter purpose. Each packaging which last contained explosives and on which the word "EXPLOSIVES" or the shipping name is printed, stenciled, or otherwise marked or applied, when shipped as empty, must have this marking completely covered or obliterated if shipped in less-than-carload or less-than-truckload lots, or on open-top or flat cars, or on open-top or flat bed motor vehicles or trailers. Covering or obliteration of these labels and markings is not required for carload or truckload shipments made in closed cars or van-type motor vehicles when loaded by the shipper and unloaded by the consignee or their authorized agents.

(f) An empty portable tank, cargo tank, tank car or multi-unit tank car tank may not be offered for transportation unless—

(1) Each opening is tightly closed except heater coil inlet and outlet pipes of empty tank cars; and

(2) Except as otherwise specified in this subchapter it is offered for transportation in the same manner as when it previously contained a greater quantity of a hazardous material. This requirement, as well as other provisions in this subchapter, does not apply to any tank that has been cleaned or purged of all hazardous materials residue or when it is reloaded with a material not subject to this subchapter.

§ 173.33 [Amended].

23. In § 173.33 paragraph (c) is deleted; paragraphs (d) through (l) are redesignated (c) through (k) respectively.

24. In § 173.116 paragraph (c) is deleted as follows:

§ 173.116 **Outage.**

* * * * *

(c) Deleted.

* * * * *

25. In § 173.119 the introductory text of paragraph (a) and paragraph (d) are revised; and paragraphs (m)(10), (11), (12), (13), and (15) are amended by adding the sentence "Not authorized for flammable liquids which are also organic peroxides" at the end of each paragraph as follows:

§ 173.119 **Flammable liquids not specifically provided for.**

(a) *Flammable liquids with flash point 20° F. or below.* Flammable liquids with flash point 20° F. or below and having vapor pressure (Reid [1] test) not over 16 pounds per square inch, absolute, at 100° F., other than those for which special requirements are prescribed in this Part, must be prepared for shipment in specification containers of a design and constructed of materials that will not react dangerously with or be decomposed by the chemical packed therein as required in the following paragraphs (see paragraphs (c) to (i) of this section for high pressure liquids, paragraphs (j) to (l) of this section for viscous liquids, and paragraph (m) of this section for flammable liquids which are also oxidizers, corrosive liquids, poison B liquids, or organic peroxides and § 173.134 for flammable liquids that are also pyrophoric liquids):

* * * * *

(d) *When the vapor pressure does not exceed 16 pounds per square inch, absolute, at 100° F.* When the vapor pressure does not exceed 16 pounds per square inch, absolute, at 100° F., flammable liquids must be packed as prescribed in paragraphs (a) and (b) of this section.

* * * * *

§ 173.124 **[Amended].**

26. § 173.124 paragraph (a)(5) is amended by deleting the third sentence which begins with the word "Each" and ends with the word "number."

27. In § 173.217 paragraph (a)(5) is revised; paragraph (a)(6) is amended by changing the section reference in the next to the last line of the paragraph to "§ 174.63";

§ 173.217 **Calcium hydrochlorite mixture, dry; lithium hypochlorite mixture, dry; mono-(trichloro) tetra-(monopotassium dichloro)-penta-s-triazinetrione, dry; potassium dichloro-s-triazinetrione, dry; sodium dichloro-s-triazinetrione, dry; trichloro-s-triazinetrione, dry.**

(a) * * *

(5) Specification 21C (§ 178.224 of this subchapter). Fiber drum must be made with integral inner body ply having 0.010-inch minimum aluminum facing and bottom interior with 0.001-inch minimum aluminum facing. Cover of drum must be gasketed. Authorized net weight not over 400 pounds. Authorized only for calcium hypochlorite mixtures, dry.

* * * * *

28. In § 173.232 paragraph (c)(6) is revised to read as follows:

§ 173.232 **Aluminum, metallic powder.**

* * * * *

(c) * * *

(6) Portable tanks, not over 6,500 pounds gross weight.

* * * * *

29. In § 173.244 paragraph (c) is deleted as follows:

§ 173.244 **Limited quantities of corrosive materials.**

* * * * *

(c) Deleted.

§ 173.249 **[Amended].**

30. In § 173.249 the introductory text of paragraph (b) is amended by deleting the words "cargo only" in the 5th line.

31. In § 173.263 a new paragraph (e) is added to read as follows:

§ 173.263 **Hydrochloric (muriatic) acid; hydrochloric (muriatic) acid mixtures; hydrochloric (muriatic) acid solution, inhibited; sodium chlorite solution (not exceeding 42 percent sodium chlorite); and cleaning compounds, liquids, containing hydrochloric (muriatic) acid.**

* * * * *

(e) Special exceptions for the shipment of certain dilute hydrochloric acid solutions in the ORM–D class are provided in Subpart N of this part.

32. In § 173.276 the introductory text of paragraph (a) is revised to read as follows:

§ 173.276 **Anhydrous hydrazine and hydrazine solution.**

(a) Anhydrous hydrazine and hydrazine solution must be packed in specification containers as follows:

* * * * *

33. In § 173.288 the introductory text of paragraph (a) is revised to read as follows:

§ 173.288 **Chloroformates.**

(a) Allyl chloroformate, benzyl chloroformate, ethyl chloroformate, and methyl chloroformate must be packaged as follows:

* * * * *

34. In § 173.294 the Heading and the introductory text of paragraph (a) are revised to read as follows:

§ 173.294 **Monochloroacetic acid, liquid or solution.**

(a) Monochloroacetic acid, liquid or solution, must be packed in specification containers as follows:

* * * * *

35. In § 173.300 the introductory text of paragraph (b) is revised to read as follows:

* * * * *

§ 173.300 **Definitions.**

(b) *Flammable compressed gas.* Any compressed gas as defined in paragraph (a) of this section shall be classed as "flammable gas" if any one of the following occurs:

* * * * *

36. In § 173.301 paragraph (i) is revised to read as follows:

§ 173.301 **General requirements for shipment of compressed gases in cylinders.** [1]

* * * * *

(i) *Foreign cylinders in domestic use.* Except as provided in paragraph (j) of this section, a charged cylinder manufactured outside the United States may not be offered for transportation to, from, or within the United States unless it has been manufactured, inspected, and tested in accordance with the applicable DOT specification set forth in Part 178 of this subchapter.

* * * * *

§ 173.306 **[Amended]**

37. In § 173.306 paragraph (d)(2) is amended by changing the reference "§ 176.328" to read "§ 176.905"; paragraph (f)(3)(i) is amended by changing the reference "(a)" to read "(f)."

38. In § 173.315 paragraph (a)(1) is amended by changing the references "§§ 173.401(a)(1) and 177.823(d)" to read "§§ 172.326 and 172.328"; Notes 14 and 15 are revised to read as follows:

§ 173.315 **Compressed gases in cargo tanks and portable tank containers.**

(a) * * *

(1) * * *

* * * * *

NOTE 14: Specifications MC 330 and MC 331 cargo tanks constructed of other than quenched and tempered steel "(NQT)" are authorized for all grades of anhydrous ammonia. Specifications MC 330 and MC 331 cargo tanks constructed of quenched and tempered steel "(QT)" (see marking requirements of § 172.328(c) of this subchapter) are authorized for anhydrous ammonia having a minimum water content of 0.2 percent by weight. Any tank being placed in anhydrous ammonia service or a tank which has been in other service or has been opened for inspection, test, or repair, must be cleaned of the previous product and must be purged of air before loading. See § 172.203(h) of this subchapter for special shipping paper requirements.

NOTE 15: Specifications MC 330 and MC 331 cargo tanks constructed of other than quenched and tempered steel (NQT) are authorized for all grades of liquefied petroleum gases. Only grades of liquefied petroleum gases determined to be "noncorrosive" are authorized in Specification MC 330 and MC 331 cargo tanks constructed of quenched and tempered steel (QT). "Noncorrosive" means the corrosiveness of the gas does not exceed the limitations for classification 1 of the ASTM Copper Strip Classifications when tested in accordance with ASTM D1838–64, "Copper Strip Corrosion by Liquefied Petroleum (LP) Gases." (For (QT) and (NQT) marking requirements see § 172.328(c) of this subchapter. For special shipping paper requirements, see § 172.203(h) of this subchapter.)

* * * * *

39. In § 173.332 paragraph (d) is revised to read as follows:

§ 173.332 Hydrocyanic acid, liquid (prussic acid) and hydrocyanic acid liquefied.

* * * * *

(d) Spec. 105A500–W or 105A600–W (§§ 179.100 and 179.101 of this subchapter). *Tank cars.* Tank must be restenciled 105A300–W and be equipped with safety valves of the type and size used on spec. 105A300–W (§§ 179.100 and 179.101 of this subchapter) tank car. Tank car tank must be equipped with approved dome fittings and safety devices, and with cork insulation at least 4 inches in thickness. Each tank car must be marked "HYDROCYANIC ACID" in accordance with the requirements of § 172.330 of this subchapter. Written procedure covering details of tank car appurtenances, dome fittings and safety devices, and marking, loading, handling, inspection, and testing practices shall be filed with and approved by the Bureau of Explosives before any tank car is offered for transportation of hydrocyanic acid. The maximum permitted filling density is 63 percent of the water capacity of the tank.

40. Section 173.338 is reserved.

§ 173.338 [Reserved].

41. In § 173.343 the introductory text of paragraph (a) is revised to read as follows:

§ 173.343 Poison B.

(a) For the purposes of Parts 170–189 of this subchapter and except as otherwise provided in this Part, class B poisons are those substances, liquid or solid (including pastes and semisolids), other than Class A poisons or Irritating materials, which are known to be so toxic to man as to afford a hazard to health during transportation; or which, in the absence of adequate data on human toxicity, are presumed to be toxic to man because they fall within any one of the following categories when tested on laboratory animals:

* * * * *

42. In § 173.345 the introductory text of paragraph (a) and paragraph (b) are revised to read as follows:

§ 173.345 Limited quantities of Poison B liquids.

(a) Limited quantities of Poison B liquids for which exceptions are permitted as noted by reference to this section in § 172.101 of this subchapter or as provided in § 173.359(c), in tightly closed inside packagings, securely cushioned when necessary to prevent breakage, are excepted from the specification packaging requirements when packed according to the following paragraphs. In addition, shipments are not subject to Subpart F of Part 172 of this subchapter, to Part 174 of this subchapter except §§ 174.24 and 174.680 and to Part 177 of this subchapter except §§ 177.817 and 177.841(e).

* * * * *

(b) Special exceptions for shipment of certain drugs and medicines in the ORM–D class are prescribed in Subpart N of this Part.

43. In § 173.354 paragraph (a)(4) is revised to read as follows:

§ 173.354 Motor fuel antiknock compound or tetraethyl lead.

(a) * * *

(4) Specification 105A300–W (§§ 179.100 and 179.101 of this subchapter). *Tank car.* Each tank car must be marked "MOTOR FUEL ANTIKNOCK COMPOUND" in accordance with the requirements of § 172.330 of this subchapter. Tank car not authorized for tetraethyl lead. Openings in tank heads to facilitate application of nickel lining are authorized on tank cars constructed before January 1, 1975. These openings must be closed in an approved (§ 179.3 of this subchapter) manner.

* * * * *

44. In §173.364 paragraph (a)(1) is amended by adding the word ", jars" following the word bags in the 7th line; paragraph (b) is revised to read as follows:

§ 173.364 Limited quantities of Poison B solids.

* * * * *

(b) Special exceptions for shipment of certain drugs and medicines in the ORM–D class are prescribed in Subpart N of this Part.

45. In § 173.384 a new section is added to read as follows:

§ 173.348 Monochloracetone, stabilized.

(a) Monochloracetone, stabilized, must be packed in specification containers as follows:

(1) Specification 5, 5A, or 17C (single-trip) (§§ 178.80, 178.81, 178.115 of this subchapter). Metal barrels or drums.

(2) Specification 15A, 15B, 15C, or 16A (§§ 178.168, 178.169, 178.170, 178.185 of this subchapter). Wooden boxes with inside glass bottles or tubes in metal cans hermetically sealed or with covers securely taped. The metal cans must be in corrugated fiberboard cartons, specification 2C (§ 178.22 of this subchapter). Bottles must not contain more than 1 pound of liquid each, must not be filled to more than 95 percent capacity, must be tightly and securely closed, and must be cushioned in cans with at least one-half inch of absorbent material. Cans must be made of metal at least 32-gauge U.S. Standard. The total amount of liquid per package must not exceed 24 pounds.

§ 173.386 [Amended].

46. In § 173.386 the introductory text of paragraph (d) is amended by changing the first word to read *"Exceptions."*

§ 173.392 [Amended].

47. In § 173.392 paragraph (a) is amended by changing the references "§§ 173.401 and 173.402" in the eighth and ninth lines to read "§§ 172.300 and 172.400 of this subchapter"; in paragraph (c)(7), the references to "§ 174.451(b) or § 177.823" in the fifth line are changed to read "§ 172.500"; in paragraph (d)(5) the references to "§ 174.541(b) or § 177.823" in the fifth line are changed to read "§ 172.500."

Appendix A Part 173 [Deleted].

48. The table shown as Appendix A to Part 173 and following § 173.432 is deleted.

§ 173.800 [Amended].

49. In § 173.800 the words "Ammonium hydrogen fluoride" are deleted and the word "Ammonium" is capitalized in the entry "ammonium hydrogen sulfate" in the Heading and introductory text of paragraph (a).

50. § 173.1025 is revised as follows:

§ 173.1025 Metal borings, shavings, turnings or cuttings.

Metal borings, shavings, turnings or cuttings, when offered for transportation by water, must be prepared for shipment in compliance with § 173.510 and must be packaged in a metal barrel or drum, or, for non-ferrous material only, in compressed bales wrapped in burlap provided the burlap shows no sign of oil.

51. In § 173.1200 the introductory text of paragraph (a), paragraph (a)(2)(iii), and paragraph (a)(8)(ii) are revised to read as follows:

§ 173.1200 Consumer Commodity.

(a) In order to be transported under the proper shipping name of "Consumer commodity," a material must meet that definition. It may be reclassed and offered for shipment as ORM–D material (see § 173.500) provided that an ORM–D exception is authorized in specific sections applicable to the material, and that it is prepared in accordance with the following paragraphs. (The gross weight of each package must not exceed 65 pounds and each package offered for transportation aboard aircraft must meet the requirements of § 173.6.)

* * * * *

(2) * * *

(iii) In metal or plastic inside containers, each having a rated capacity of not over 1 quart, packed in strong outside packaging provided the liquid mixture contains 15 percent or less corrosive material and the remainder of the mixture does not meet the definition of a hazardous material as defined in this subchapter. Not authorized for transportation by air.

* * * * *

(8) * * *

(ii) In inside metal container charged with a solution of materials and compressed gas or gases which is nonpoisonous, meeting all of the following:

* * * * *

52. Appendix A to Part 173 is amended by adding "not less than" following the word measuring in paragraph 2.; paragraphs 6 and 7 are renumbered 7 and 8, and a new paragraph 6 is added to read "6. Following this initial reading, all test sites are washed with an appropriate solvent to prevent further exposure."

PART 174—CARRIAGE BY MAIL

53. In the Table of Sections, § 174.63 is revised to read as follows:

"Sec. 174.63 Freight containers and portable tanks."

54. § 174.5 is revised to read as follows:

§ 174.5 Carrier's materials and supplies.

This subchapter applies to the transportation of a carrier's materials and supplies moving by rail, except that the shipper's certification is not required when these materials and supplies are being transported by the carrier who owns them. The requirements of this subchapter do not apply to railway torpedoes or fusees when carried in engines or rail cars. Railway torpedoes must be in closed metal boxes when not in use.

§ 174.8 [Amended].

55. In § 174.8 paragraph (b) is amended by adding the word "loaded" in the second line between the words "each" and "placarded."

56. In § 174.10 paragraph (a) is amended by deleting the words "including the roof" and the period in the sixth line and placing a period after the word "line" in the fifth line; paragraph (c) is revised to read as follows:

§ 174.10 Inspection of cars at interchange.

* * * * *

(c) A shipment of hazardous materials offered by a connecting carrier must comply with this subchapter, and the revenue waybill, freight bill, manifest of lading, card waybill, switching order, transfer slip ticket, or other billing, must bear the placard notation and endorsement prescribed by § 174.25 of this subpart.

* * * * *

§ 174.12 [Amended].

57. In § 174.12 paragraph (a) is amended by deleting the word "intermediate" and adding the word "origin" in place thereof in the first line.

58. In § 174.24 paragraph (b) is deleted; paragraph (c) is redesignated paragraph (b) and revised to read as follows:

§ 174.24 Shipping papers.

* * * * *

(b) This subpart does not apply to materials classed as ORM–A, B, C, or D.

59. In § 174.25 paragraph (a)(2)(ii) the introductory text of paragraph (b), paragraph (b)(4) and (c) are revised; paragraph (b)(6) is deleted as follows:

§ 174.25 Additional information on waybills, switching orders, and other billings.

(a) * * *

(2) * * *

(ii) In bold, upper case letters not less than $\frac{1}{16}$ of an inch high inside a rectangle made with asterisks (*) or the symbol for number (#).

* * * * *

(b) When the initial movement of a loaded rail car required to be placarded is a switching operation, the switching order, switching receipt, or switching ticket, and all copies thereof, prepared by the shipper, or by the carrier under the shipper's written authority, must contain the following:

* * * * *

(4) Except when a certified bill of lading is tendered to the carrier, the shipper's certification and signature specified in § 172.204 of this subchapter.

* * * * *

(6) Deleted.

(c) For empty tank cars which previously contained a hazardous material, other than a combustible liquid, or unless the tank car has been reloaded with a material not subject to this subchapter, or has been sufficiently cleaned of residue and purged of vapor to remove any potential hazard, the billing must show the word(s) "EMPTY" or "EMPTY: Last Contained," followed by the name of the hazardous material last contained in the tank car, the hazard class of the material and the word, "PLACARDED." For example, EMPTY: SULFURIC ACID, Corrosive Material, Placarded; or EMPTY: Last Contained SULFURIC ACID, Corrosive Material, Placarded.

* * * * *

60. In § 174.26 paragraph (b) is amended by deleting the words "on a separate document" in the last sentence of the paragraph; a new paragraph (c) is added to read as follows:

§ 174.26 Notice to train crews of placarded cars.

* * * * *

(c) A member of the train crew of a train transporting hazardous materials must have in his possession a copy of the shipping papers for the shipment of hazardous materials being transported showing the information required by §§ 172.202 and 172.203 of this subchapter.

§ 174.63 [Amended].

61. In § 174.63 Heading and paragraph (a) are amended by deleting the word "portable" whenever it appears preceding the word "container" and adding the word "freight" in place thereof.

62. In § 174.69 is revised to read as follows:

§ 174.69 Removal of placards and car certificates after unloading.

When lading requiring placards or car certificates is removed from rail cars other than tank cars, placards and car certificates must be removed by the party unloading the car. For empty tank cars, the placards must be removed, replaced or reversed in accordance with the provisions of § 172.510(c) of this subchapter

§ 174.84 [Amended].

63. § 174.84 is amended by adding the word "freight" preceding the word "container" each time it appears in the section.

§ 174.88 [Amended].

64. § 174.88 is amended by adding the words "an occupied" preceding the word "caboose" in the fourth line.

§ 174.89 [Amended].

65. § 174.89 is amended by adding the word "loaded" preceding the word "placarded" in the third line.

§ 174.101 [Amended].

66. In § 174.101 paragraphs (n), (n)(1), and (n)(2) are amended by deleting the word "portable" each time it appears in these paragraphs and adding the word "freight" in place thereof; paragraph (n)(3) is amended by adding the word "freight" preceding the word "container" in the second line.

67. In § 174.104 paragraph (f) is revised as follows:

§ 174.104 Class A explosives; car selection, preparation, inspection, and certification.

* * * * *

(f) Each car certificate for use in connection with the inspection of rail cars for the carriage of Class A explosives shall be printed on strong tag board measuring 7 by 7 inches, or 6 by 8 inches. It must be duly executed in triplicate by the carrier, and by the shipper if he loads the shipments. The original must be filed by the carrier at the forwarding station in a separate file and the other two must be attached to the car, one to each outer side on a fixed placard board or as otherwise provided.

---------- Railroad

CAR CERTIFICATE

No. 1---------- Station---------- 19--.

I hereby certify that I have this day personally examined Car Number----- and that the car is in condition for service and complies with the FRA Freight Car Safety Standards (49 CFR Part 215) and with the requirements for foreign cars used to transport explosives prescribed by the DOT Hazardous Materials Regulation (49 CFR Part 174).

Qualified Person Designated Under 49 CFR 215.15

No. 2 ---------- Station ---------- 19--.

I have this day personally examined the above car and hereby certify that the explosives in or on this car, or in or on vehicles or in containers have been loaded and braced; that placards have been applied, according to the regulations prescribed by the Department of Transportation; and that the doors of cars so equipped fit or have been stripped so that sparks cannot enter.

Shipper or his authorized agent

Qualified Person Designated Under 49 CFR 215.15

No. 3 ---------- Station ---------- 19--.

I hereby certify that I have this day personally supervised the loading of the vehicles or containers on and their securement to the above car.

Shipper or railway employee inspecting loading and securement

NOTE 1: A shipper must decline to use a car not in proper condition.

NOTE 2: All certificates, where applicable, must be signed.

NOTE 3: Car certificates remaining on hand as of the effective date of these regulations may be used until stocks are exhausted but not after July 1, 1977.

§ 174.112 [Amended].

68. In § 174.112 paragraph (b) is amended by adding reference to "(n), or (o)," in the second line following (b).

§ 174.480 [Amended].

69. § 174.480 is amended by deleting the word "oxidizer" in the second line and adding the words "flammable solid" in place thereof.

70. § 174.810 paragraph (c) is revised as follows:

§ 174.810 Special handling requirements for wet electric storage batteries.

* * * * *

(c) Wet electric storage batteries are not authorized in refrigerator or "plug-door" type cars unless the cars are provided with vents which will prevent an accumulation of gas within the car.

PART 175—CARRIAGE BY AIRCRAFT

§ 175.10 [Amended].

71. In § 175.10 paragraph (a) is amended by changing the word "part" in paragraph (a) to read "subchapter."

§ 175.30 [Amended].

72. In § 175.30 paragraph (b) is amended by deleting the word "dents," in the tenth line.

PART 176—CARRIAGE BY VESSEL

§ 176.11 [Amended].

73. In § 176.11 paragraph (a) is amended by adding the following sentence at the end of the paragraph. "However, a material which is a hazardous material under this subchapter, but which is not a hazardous material under the provisions of the IMCO Code, may be offered and accepted for transportation only if it is classed, described, packaged, marked, labeled and in the condition for shipment required by subchapter."

74. In § 176.30 paragraph (a) is revised to read as follows:

§ 176.30 Dangerous cargo manifest.

(a) The master of a vessel transporting hazardous materials or his authorized representative shall prepare a dangerous cargo manifest, list, or stowage plan. This document may not include a material which is not subject to the requirements of 49 CFR or the IMCO Code. This document must be kept in a designated holder on or near the vessel's bridge. It must contain the following information:

* * * * *

§ 176.45 [Amended].

75. In § 176.45 paragraph (a) is amended by deleting the words "District Commander" and substituting therefor the words "Captain of the Port."

§ 176.48 [Amended].

76. In § 176.48 paragraphs (a) and (c) are amended by deleting the words "District Commander" and substituting therefor the words "Captain of the Port."

§ 176.52 [Amended].

77. In § 176.52 paragraph (b) is amended by deleting the words "District Commander" and substituting therefor the words "Captain of the Port."

§ 176.63 [Amended].

78. In § 176.63 paragraph (b) is amended by deleting the period at the end of the paragraph and adding the following "except that such protection is not required for shipment in portable tanks."

§ 176.74 [Amended].

79. In § 176.74 paragraph (c) is amended by changing the word "may" in the second line to "should."

§ 176.83 [Amended].

80. In § 176.83 paragraph (d)(3)(i)(B) is amended by deleting the period at the end of the first sentence and adding in place thereof the words "or a"; paragraph (d)(3)(ii)(A) is amended by deleting the period at the end of the first sentence and the word "a" at the beginning of the second sentence and adding in place thereof the words "or a"; paragraph (d)(3)(ii)(B) is amended by deleting the word "and" in the fourth line and adding in place thereof the word "or"; paragraph (d)(3)(iii)(A) is amended by deleting the word "and" in the fifth line and adding in place thereof the word "or."

81. In § 176.905 paragraph (c) is amended by deleting the period at the end of the paragraph and the following parenthetical expression and adding in place thereof the following "as the phrase "specially suited for vehicle is defined in 46 CFR 70.10-44 or 46 CFR 90.10-38 as is appropriate."; paragraph (i) is revised; paragraph (i)(2) is deleted and paragraph (i)(3), (4), and (5) are renumbered (i)(2), (3), and (4), respectively; a new paragraph (L) is added to read as follows:

§ 176.905 Motor vehicles or mechanical equipment powered by internal combustion engines.

* * * * *

(i) Except when being transported in a space specially suited for vehicles, the following additional requirements apply to the stowage of any vehicles containing a flammable liquid:

* * * * *

(l) No hazardous materials other than motor vehicles or mechanized equipment and their equipment may be stowed in the same hold or compartment with any vehicle having a flammable liquid or flammable compressed gas in its tank.

GRANDFATHER CLAUSE

The effective date provision in Docket HM-103/112 (41 FR 15972-16131, April 15, 1976), appearing at 41 FR 16131, as amended at 41 FR 26014 (June 24, 1976), and at 41 FR 40691 (September 20, 1976), is further amended by revising the third numbered paragraph to read as follows:

Effective date: * * *

(1) * * *

(2) * * *

(3) A package filled, marked, or labeled before January 1, 1977, in accordance with regulations in effect on June 30, 1976, may be offered for transportation and transported, even though it does not comply with the package, marking, and labeling provisions of this amendment, if it (i) is offered for transportation before July 1, 1977, and (ii) complies with the package, marking, and labeling regulations in effect on June 30, 1976.

* * * * *

(18 U.S.C. 834, 46 U.S.C. 170(7), 49 U.S.C. 1471, 1472(h)(1), 1807, 49 CFR 1.53(e)-(h). Under a final rule making (41 FR 38175), on January 3, 1977, the authority citation for this amendment is changed to read; (40 U.S.C. 1803, 1804, 1808; 49 CFR 1.53(e).)

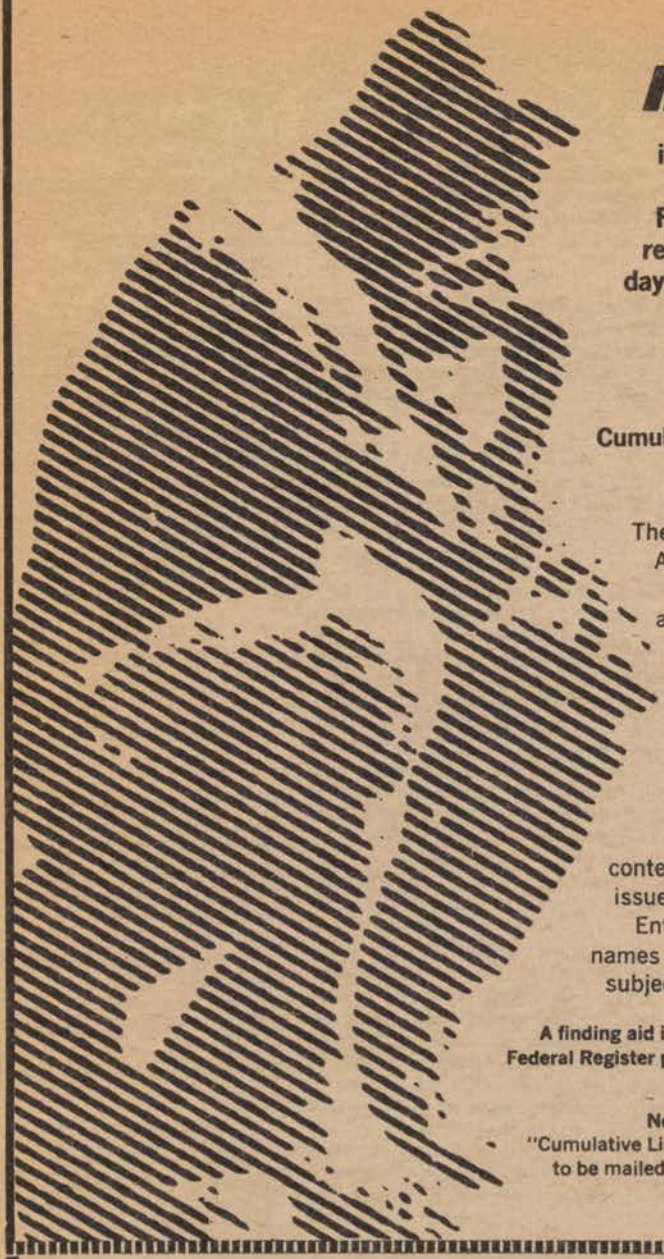
Effective Date: The changes effected by this publication consist of corrections, clarifications, and relaxations of previously published requirements. As these changes are not expected to impose significant burdens on anyone, and because of the need for expedited publication in order to avoid disruption of the staged implementation adopted for amendments in this docket, further public notice and opportunity for comment are being dispensed with, and the amendments contained herein are effective on December 30, 1976, subject to the applicable effective date provision at 41 FR 16131, as amended at 41 FR 26014 and 41 FR 40691, and as amended herein.

The Materials Transportation Bureau has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Issued in Washington, D.C. on December 22, 1976.

JAMES T. CURTIS, Jr.,
Director,
Materials Transportation Bureau.

[FR Doc.76-38409 Filed 12-29-76;8:45 am]



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